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"Our Mission is to Build Critically Conscious Kids:" Constructing Holistic Models of Restorative Justice in Public Schools

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"Our Mission is to Build Critically Conscious Kids:"
Constructing Holistic Models of Restorative Justice in Public Schools

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Contents

Introduction

At my relatively large urban high school, we began the first day of classes each year the same way, with a welcome back assembly that included, among other things, the showing of an inspirational sports movie and a breakdown of last year's suspension data categorized by race. Even without the numbers in front of me, I could have told you that my school treated some of its students differently. Although most students at my racially and socioeconomically diverse high school were black or Latinx, white students like me were far more likely to be encouraged to take the more rigorous AP courses, designed to offer college preparation. As is common to many urban schools, my high school had a heavy police and security presence that required us to pass through metal detectors before entering the school building: as a white student, I rarely faced the suspicion or hostility so many of my black and Latinx classmates were greeted with by security guards each morning. And of course, as the suspension data showed, black and Latinx students were suspended and expelled at significantly higher rates than the white and Asian students in the building.

Racial disparities in school discipline aren't isolated to the high school I went to. Educators and advocates use the term "school-to-prison pipeline" to describe long-term negative effects and racial discrimination that occur in traditional forms of school discipline. Students who are punished with exclusionary discipline practices‑ out-of-school suspensions, expulsions, and alternative educational placements‑ are more likely to be involved in future behavioral incidents,[1] less likely to graduate,[2] and more likely to become involved in the criminal justice

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[1] Thalia Gonzales, "Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline," *Journal of Law & Education* 41 no. 2 (2012), 282

system.[3] Research has shown that exclusionary discipline has failed to resolve student behavior,[4] or improve school safety.[5] And, these policies harm black and Latinx students the most. During the 2006-2007 school year, every state reported suspending black students at a higher rate than white students, and an additional forty states and Washington, D.C. report suspending their Latinx students at higher rates as well.[6] Although black youth made up 17.1% of public school students nationwide in 2006, they accounted for 37.4% of suspensions and 37.9% of expulsions.[7]

This is a thesis on one prominent effort to reverse harmful and discriminatory trends of school discipline: restorative justice. Since the late 1990s, schools across the United States have experimented with restorative justice as a collective, dialogue-based based approach to school discipline. Restorative justice has developed over the past few decades out of the much older practices rooted in indigenous communities across the United States, Canada, Australia, and New Zealand, but it has only recently grown popular within the school reform movement. Although restorative justice is often introduced in conversations around school discipline, I am interested in its potential not just as an alternative to discipline, but as a pathway to conceiving

[2] Trevor Fronius, Hannah Persson, Sarah Guckenburg, Nancy Hurley, and Anthony Petrosino, "Restorative Justice in U.S. Schools: A Research Review," *WestEd Justice and Prevention Research Center* (2016), 16

[3] Ibid.

[4] Ibid, 19

[5] Ibid.

[6] "Test, Punish, and Push Out: How "Zero Tolerance" and High-Stakes Testing Funnel Youth Into the School-to-Prison-Pipeline," *The Advancement Project* (March 2010), 21

[7] Gonzales, "Keeping Kids in Schools," 283; For additional statistics on racial disparities in school discipline, see: Tony Fabelo, Michael D. Thompson, Martha Plotkin, Dottie Carmichael, Miner P. Marchbanks III, and Eric A. Booth, "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement," *The Council of State Governments Justice Center* and *Public Policy Research Institute at Texas A&M University* (July 2011); Jeffrey L. Jordan and Bulent Anil, "Race, Gender, School Discipline, and Human Capital Effects," *Journal of Agricultural and Applied Economics* 41 no. 2 (August 2009); John M. Wallace, Sara Goodkind, Cynthia M. Wallace, and Jerald G. Bachman, "Racial, Ethnic, and Gender Differences in School Discipline among U.S. High School Students: 1991-2005," *Negro Educational Review* 59 no. 1-2 (2008); Anne Gregory, Russell J. Skiba, and Pedro A. Noguera, "The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?" *Educational Researcher* 39 no. 1 (2010); Donald H. Stone, "Crime & Punishment in Public Schools: An Empirical Study of Disciplinary Proceedings," *American Journal of Trial Advocacy* 17 no. 2 (1993)

an alternative vision of justice. By rejecting the dominant justice paradigm that is both

individualistic and punitive, restorative justice opens up new questions about what a broader

vision of justice might encompass: How should justice account for systemic, institutionalized

harms that individuals and communities face? How can a theory of justice move beyond

responding to harm to creating conditions under which individuals can flourish? I will turn to the

practice of restorative justice in schools to explore these questions in this thesis. Before doing so,

I will outline a brief history of school-based restorative justice, looking at both the

school-to-prison pipeline and the growth and practice of restorative justice in education, in this

introduction.

The School-to-Prison Pipeline

Suspensions and other forms of exclusionary discipline have dominated school discipline

since zero-tolerance policies were introduced in 1980s.[8] These policies sought to mimic the

"tough on crime" mentality that was at the time shaping criminal justice policy. School districts,

and even the federal government,[9] originally introduced zero-tolerance policies in response to

public fears about youth drug usage and violence, but today, behavioral issues like tardiness,

disrespect, and noncompliance are routinely met with suspension and expulsion.[10] The impact of

these policies has been dramatic: between 1974 and 2000, the number of students suspended

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[8] "Test, Punish, and Push Out," *The Advancement Project*, 9

[9] In 1994, in response in part to high-profile school shootings like Columbine, the Clinton Administration passed the Gun-Free Schools Act, a zero-tolerance policy that mandated expulsion for at least a year for students who brought firearms to campus. A year later, the word "firearms" in the legislation became "weapons," which gave school administrators discretion to expel students not only for guns but for "nail clippers, files, and pocket knives." Ronnie Casella, "Zero Tolerance Policy in Schools: Rationale, Consequences, and Alternatives," *The Teachers College Record* 105 no. 5 (2003), 875

[10] Gonzales, "Keeping Kids in Schools," 287

from school each year has nearly doubled from 1.7 million to 3.1 million.[11] By 2006, one in

every fourteen U.S. public school students was suspended from school at least once.[12]

Exacerbating the harsh discipline problem is the growing presence of police in schools.

Increased police and security presence on school grounds has led to the direct criminalization of

young people, as referrals to law enforcement and school-based arrests have increased

significantly.[13] Schools, particularly those in urban settings that serve majority students of color,

have developed exceptionally close relationships with law enforcement, to the extent that some

even have their own police departments.[14] School-based policing is the "fastest growing area of

law enforcement" according to the National Association of School Resource Officers: in 2012

alone, Boston Public Schools budgeted $4.5 million to fund police and security presence in

schools.[15] New York City schools, which employ more than 5,000 "School Safety Agents," have

a policing budget of over $220 million.[16] A report from the Advancement Project writes that

"perhaps the most 'policed' group in the country right now – outside of prison and jail inmates -

is public school students."[17]

The majority of cases of exclusionary discipline, school-based arrests, and law

enforcement referrals in many jurisdictions are for nonviolent, noncriminal acts.[18] Civil rights

groups like the ACLU and the Advancement Project have documented some of the most

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[11] Ibid, 283
[12] Ibid.
[13] "Test, Punish, and Push Out," 4
[14] Ibid, 10
[15] Robin L. Dahlberg, "Arrested Futures: The Criminalization of School Discipline in Massachusetts' Three Largest School Districts," *ACLU, Citizens for Juvenile Justice, ACLU of Massachusetts* (Spring 2012), 9, 18
[16] "Test, Punish, and Push Out," 16
[17] Ibid, 4
[18] "Test, Punish, and Push Out," 4; Dahlberg, "Arrested Futures," 22-25; "School Discipline in Massachusetts - How Are We Doing? An Analysis of the First Year of the State's New School Discipline Law, Spring 2016," *Massachusetts Appleseed Center for Law and Justice* (2016), 2

egregious abuses, such as the story of a six-year old in Delaware who was suspended for 45 days after bringing a camping utensil from his Cub Scouts troop to school, and it was discovered the utensil contained a small knife.[19] Springfield, Massachusetts has had several cases over the past decade in which students were arrested by on-campus police officers for cursing at staff members and not responding to directions: these students were subsequently charged with some combination of disturbing a lawful assembly, assault and battery, and resisting arrest.[20] In late 2015, a South Carolina school made headlines when a video clip emerged of a school police officer throwing a 16-year old girl from her desk and then arresting her on the floor of the classroom after she failed to put her cell phone away.[21] If any more proof is needed that the students subjected to harsh policies of suspension, expulsion, and arrest aren't dangerous, pre-schoolers today are expelled at the highest rates of any students in the country, three times more often than students in grades kindergarten through 12.[22]

The studies and anecdotes are bad enough, but the story that's harder to tell is the impact these harsh discipline policies have on everyday school climate and community. Research has shown that exclusionary discipline alienates students from their school communities,[23] and the American Psychological Association found that zero-tolerance policies harm school climate by "promoting an irrational climate of fear."[24] The school-to-prison pipeline not only implies that schools are giving their students better preparation for prison than for college, but it reminds us

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[19] "Test, Punish, and Push Out," 13
[20] Dahlberg, "Arrested Futures," 24
[21] Jenny Jarvie, "Girl thrown from desk didn't obey because the punishment was unfair, attorney says," *Los Angeles Times,* October 29, 2015
[22] Walter S. Gilliam, "Prekindergarteners Left Behind: Expulsion Rates in State Prekindergarten Systems," *FCD Policy Brief Series No. 3* (May 2005), 3
[23] Gonzales, "Keeping Kids in Schools," 292
[24] Ibid, 297

that all too often, schools treat students like they're already there. Aside from the growing police presence, surveillance, and increasing arrest numbers, urban schools that serve majority students of color focus on a model of order and compliance that has become standard pedagogy.[25] In 1991, Martin Haberman coined the term "the pedagogy of poverty" to describe what has become standard teaching in underserved urban schools. Instead of education as a collaborative, exploratory project connected to students' real-world experiences and interests, it has become focused solely on behavior management and a rigid, one-way flow information from teacher to student.[26] Urban schools serving students of color, Haberman writes, have defined behavioral compliance, rather than genuine learning, as their measure of success.[27] Law and order, not education, has become their chief concern: Antonia Darder writes that students at these schools are "often perceived as more capable of violence and less capable of academic success."[28] At my own high school, it sometimes felt as if students could get more attention from the adults in the building by accidentally setting off the metal detector than by going to class.

Restorative Justice in Education

Faced with mounting evidence that traditional exclusionary discipline is both harmful to student outcomes and school community as well as racially discriminatory, progressive educators have turned to restorative justice as a solution. Schools in Minnesota and Pennsylvania were early restorative justice pioneers, incorporating "restorative measures" beginning in the late

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[25] Martin Haberman, "The Pedagogy of Poverty versus Good Teaching," *The Phi Delta Kappan* 73 no. 4 (December 1991), 290-291
[26] Ibid, 291
[27] Ibid, 292
[28] Antonia Darder, "Racism and the Charter School Movement: Unveiling the Myths," *Truthout*, November 30, 2014, 9

1990s and early 2000s to reduce suspensions and expulsions.[29] The practice soon proliferated across 27 states.[30] Although restorative justice has primarily been introduced and practiced by individual schools, it has become district-wide policy for a few school districts such as the Denver Public Schools and the Oakland and San Francisco Unified School Districts.[31] In 2014, restorative justice continued to gain traction when it was endorsed by the federal government. Under their Rethinking Discipline initiative, former Secretary of Education Arne Duncan and Attorney General Eric Holder cited racial discrimination and poor educational outcomes as core reasons for schools to shift away from the zero-tolerance policies that have been the default for decades.[32] To replace zero-tolerance, Duncan and Holder proposed new school discipline guidelines that urged schools to use exclusionary discipline only as a last resort and instead focus on building "positive climates" through an emphasis on social and emotional learning, peer mediation, and restorative justice.[33]

Restorative justice in education has been adapted from the original restorative justice theory that emerged as a critique of the criminal justice system. It can be broadly understood as a new approach to address conflict or violence that focuses not on punishment or retribution for wrongdoing, but on repairing the harm that has been caused. Restorative justice theory argues that after incidents of harm, our society often asks "what should we do to the person who is responsible?" instead of "what can we do to make things right?" Restorative justice aims to

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[29] Katherine Evans and Dorothy Vaandering, *The Little Book of Restorative Justice in Education: Fostering Responsibility, Healing, and Hope in Schools* (New York: Good Books, 2016), 17-18
[30] Anya Kemenetz, "School Suspensions Have Plunged: We Don't Yet Know If That's Good News," *NPR*, March 23, 2017
[31] Gonzales, "Keeping Kids in Schools," 306
[32] Donna St. George, "Holder, Duncan announce national guidelines on school discipline," *Washington Post,* January 8, 2014
[33] Gary Gately, "Obama Administration Unveils School Discipline Guidelines," *Juvenile Justice Information Exchange*, January 9, 2014

answer the latter question through practices that bring together community members to participate in dialogue with the purpose of rebuilding relationships and finding meaningful forms of accountability.

Restorative justice in education is rooted in the values of respect, dignity, and mutual concern-a sense of social belonging and responsibility for the school community.[34] In practice, restorative justice can take a variety of forms, with restorative circles and conferences as among the most common in school settings. Restorative conferences respond to specific incidents of conflict. In a conference, individuals who are directly involved meet with each other to discuss what happened and how to respond going forward. A mediator facilitates the conference by talking to participants ahead of time and guiding them towards a behavioral resolution. Circles can also respond to an incident of harm, but unlike conferences, they involve other members of the community in addition to those directly involved. A member of the community facilitates the circle by guiding the conversation and holding other participants to their shared guidelines and values. Participants pass a talking piece around the circle in one direction and when it reaches a participant, she may either speak or pass it to the next person as members of the circle respond to the facilitator's questions and to each other. Healing circles are convened in response to an act of harm, but schools that practice a more integrated form of restorative justice do not just hold circles to resolve conflict. They also engage in what are called talking circles on a regular basis. Talking circles, which often involve students and teachers, as well as at times other community members, create space for conversations on a variety of issues including academic, personal, and

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[34] Evans and Vaandering, *The Little Book of Restorative Justice in Education*, 5

political topics. In addition to conferences and circles, schools have also experimented with practices like peer mediation and youth boards as part of restorative justice.

At the school level, educators use restorative justice practices, such as conferencing or circles, to resolve behavioral problems without having to resort to exclusionary disciplinary policies that cause students to miss class time or even feel as if their school has given up on them. While many schools see restorative justice solely as a method of resolving disciplinary issues, other schools have integrated restorative justice values and philosophy more fully into their school culture. For these schools, the restorative justice focus on participation, dialogue, and empowerment provides opportunities for schools to foster close relationships between students and faculty, and create a school culture that engages and supports students rather than controls and manages them. In their manual on restorative justice for educators, Evans and Vaandering write that in the school setting, restorative justice must be "primarily about nurturing relational, interconnected school cultures" because behavioral problems and disciplinary incidents will continue as long as school culture remains otherwise alienating and authoritarian for students.[35] Within school settings, restorative justice is often explicitly tied to advancing an educational mission. Researchers Evans and Lester write that restorative justice allows schools to view conflict as a learning opportunity for students to engage in collective problem-solving.[36] Educators describe the restorative justice focus on building communities that give voice to all their members as transformative for school culture, as it presents a pathway towards creating equitable, collaborative, and peaceful learning communities.

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[35] Katherine Evans and Dorothy Vaandering, *The Little Book of Restorative Justice in Education: Fostering Responsibility, Healing, and Hope in Schools*, (New York: Good Books, 2016), xii
[36] Katherine R. Evans and Jessica N. Lester, "Restorative Justice in Education: What We Know So Far," *Middle School Journal* 44 no. 5 (2013), 59

As I have mentioned, I come to this project as a former student of a struggling, underperforming urban high school. My own background is out of synch with my school's profile: I was raised in a quiet, affluent, mostly white neighborhood in my mid-sized city, the daughter of two parents with advanced degrees. In many ways, this shielded me from the worst impacts of such an education: namely, that young people in these schools are more likely to be regarded as future criminals than as students worthy of intellectual engagement.

However, a school culture based on low expectations, distrust, and disengagement affects everyone trying to learn within it. This is best exemplified perhaps not by my school's low test scores, but by its high rates of chronic absenteeism in both students and teachers alike. I include this to foreground my own experiences and perspectives, as someone committed to positive school reform on both a moral and a deeply personal level. I began this project hopeful for what restorative justice might achieve in developing supportive, engaging learning communities in historically underserved schools, and I remain hopeful for the potential of restorative justice now. This is not to say that I will not raise critiques of restorative justice in this work: I discuss problems in both restorative justice theory and practice in the schools where I conducted my research. However, I have tried to research and write this project using the values restorative justice has taught me, first and foremost through an ethos of respect and generosity towards the schools, teachers, and students who gave me so much of their time and allowed me to observe, participate, ask questions about so many aspects of their work. In part, I hope this thesis will highlight the 'goodness' present at these schools and in their restorative justice work, as we consider what it means to build school communities that value and support students rather than disempower them and cast them out.

Theorizing Justice: Criminal, Restorative, and Social

In the thesis that follows, I will focus on theories of justice in that emerge from criminal, restorative, and social justice frameworks in order to construct a theory of holistic justice. In Chapter 1, I will look at the relationship between restorative justice and the criminal justice system in today's era of mass incarceration. Restorative justice theory has criticized carceral practices for their exclusive focus on law and retribution, instead arguing that justice should prioritize not the authority of the state but the voices of those affected by harm. However, I find restorative justice efforts within the criminal justice system to be insufficient, as such approaches have compromised certain core restorative justice values in order to find a place within the system. In Chapter 2, therefore, I will develop a theory of holistic justice that I argue is better suited to restorative justice theory. Drawing on Iris Marion Young's theories of justice, I argue that such a theory of holistic justice must account for the existence of structural harm in community settings, as well as individuals' opportunities for self-development and self-determination. I argue that restorative justice must situate itself within this broader vision of holistic justice, but also that restorative values and practices are particularly conducive to realizing this vision. In the final chapter, I will develop this theory further by engaging in ethnography at two schools, where I argue that school-based practice of restorative justice, although imperfect, creates possibilities for critiquing structural harm, fostering agency, and building community that bring us closer to a more just world.

Chapter One: Rethinking Criminal and Restorative Frameworks

In the 1970s, the first documented cases of restorative justice in North America were small, informal experiments asking if a system based on reconciliation rather retribution could better serve the cause of justice. In the decades since, the American criminal justice system, firmly rooted in principles of retribution, has expanded and grown more punitive: today, we are living in an unprecedented era of mass incarceration. Prison populations have swelled, and sentences have grown long and unforgiving.[37] Scholars and advocates have attributed the explosion in incarceration to a combination of resurging racial control and profit-based motives. Due to widespread racially discriminatory practices in law enforcement and corrections, the criminal justice system has been described as the natural heir to the systems of slavery and Jim Crow: today, black men and women alike are six times as likely to be incarcerated as their white counterparts.[38] Meanwhile, the 'prison-industrial complex' has become shorthand for the ways in which corporations profit off of mass incarceration through securing contracts for prison maintenance and services and through the exploitation of a captive labor pool to whom they do not have to pay minimum wage.[39]

To many, it has becoming increasingly clear that the prison system, introduced by Quakers in the 18th century as a humane alternative to brutal corporal punishment and public

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[37] "Fact Sheet: Trends in U.S. Corrections," Washington, D.C.: *The Sentencing Project*, December 2015; "Juvenile Life Without Parole: An Overview," Washington, D.C.: The Sentencing Project, July 2016; "A Living Death: Life Without Parole for Nonviolent Offenders," New York: The American Civil Liberties Union, 2013

[38] Michelle Alexander, *The New Jim Crow*, (New York: New Press, 2011); Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21; "Trends in U.S. Corrections," *The Sentencing Project*

[39] See, for example: Joel Rose, "FCC Moves To Cut High Cost Of Prisoners' Calls," *NPR,* October 21, 2015; Beth Schwartzapfel, "Modern-Day Slavery in America's Prison Workforce," *American Prospect*, May 28, 2014

executions, as a place where offenders could reflect and repent in solitude,[40] no longer prioritizes the rehabilitation of inmates, or even thinks about it at all. Prisons have become spaces to warehouse bodies rather than reform them: they function as sites of containment, deprivation, and outright violence for prisoners whom we have deemed disposable.[41] Violence is endemic on the inside, but not contained to it: prisons tear individuals from their communities and release them with no options for stable housing or employment, thus recreating the very conditions that lead to crime in the first place.[42]

Increasingly, criminal justice reform has garnered support from disparate corners of civil society. Activists, political elites, and even members of the conservative right have called for policy changes that would reduce the numbers of people in prison, invest in diversion and reentry programs, and improve conditions for those behind bars.[43] While politically viable reforms may correct some of the outcomes of the criminal justice system, leading to shorter sentences, fewer incarcerations, and better treatment for prisoners, they leave the logic of the criminal justice system in place. Such reforms presume the problem lies with the implementation, not the institutionalized justice system itself. In contrast, restorative justice theory argues that critiques around the edges do not go far enough. Criminal justice understands justice to mean upholding the rule of law: it balances individuals' rights with their responsibilities to determine if a crime

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[40] Jen Manion, *Liberty's Prisoners*, (Philadelphia: University of Pennsylvania Press, 2015), 17-18
[41] Alexander, *The New Jim Crow*, 18
[42] Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 16-17; Robert J. Sampson and Charles Loeffler, "Punishment's Place: The Local Concentration of Mass Incarceration," *Daedalus* 139 no. 3 (2010), 21
[43] See, for example: "Fact Sheet: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly-Incarcerated," *The White House*, November 2, 2015; "Phasing Out Our Private Prisons," *Department of Justice,* August 18, 2016 (This order has since been walked back by the Trump Administration); "Criminal Justice and Policing Reform," *Charles Koch Institute*; "Criminal Justice Reform: Task Force Description," *American Legislative Exchange Council*

has been committed, who is responsible, and what punishment they deserve. Restorative justice theory, on the other hand, argues for a fundamental shift in understanding crime and justice: the restorative lens views crime not as a violation of the law, but as a violation of relationships. Restorative justice involves the victim, the offender, and members of the community to determine if harm has been committed, who it has affected, and how it might be repaired.

Restorative justice opens up important critiques of criminal justice that I will explore in this chapter. Restorative theory has argued that the criminal justice focus on legal rules and procedures has disempowered the individuals involved, excluding their lived experiences and their humanity from the justice process. Instead, restorative theory suggests an alternate approach to justice based on participation, dialogue, and community involvement that I will discuss further in this chapter. I will question the limits of restorative justice practice in its current, most common iteration within the criminal justice system, arguing that the criminal justice setting constrains the ability of restorative justice to engage communities and fully contextualize harm by limiting its focus to narrow, interpersonal harms. I will then ask if we can broaden the scope of restorative justice to place it in context not just as an alternative to criminal justice practice, but as part of a broader and more radical tradition of social justice and movement towards a more socially just world.

The Individual, the State, and Early Formulations of American Criminal Justice

Although scholarship and popular understandings of mass incarceration generally trace prison expansion back only as far as a few decades, criminal justice throughout all of American

history has never been applied fairly or equally across color, gender, or class.[44] Criminal justice has maintained the subjugation of marginalized populations for as long as it has operated, but its doing so has indicated a disconnect between practice and the original ideals enshrined in the nation's founding documents. Our Constitution and Bill of Rights suggest an alternative criminal justice system to the one that has been put in place, a system that speaks clearly to the rights of the individual and the fear of state abuse of power.

From the beginning, American criminal justice ideals kept the rights of the accuser in mind. We expect criminal justice to maintain a balance between communal safety through crime control and upholding the due process rights that guarantee fair treatment under the law, but the procedures of our criminal justice system appear to be oriented towards the latter. The fourth, fifth, sixth, and eighth amendments of the Bill of Rights each protect citizens from systemic government abuse in straightforward terms, and the Supreme Court has interpreted the fourteenth amendment to apply many of these protections to state courts as well as the federal system. The fourth amendment concerns law enforcement, prohibiting "unreasonable searches and seizures" and requiring police to obtain warrants so as not to violate privacy and liberty. The various clauses of the fifth and sixth amendments aim to prevent state overreach during trials. The fifth amendment's double jeopardy clause prevents individuals from being tried twice for the same crime, and its self-incrimination provision prevents defendants from being compelled to testify against themselves. The fifth amendment requires a grand jury to indict in felony cases in federal courts, and it contains a due process clause that requires the state to recognize all legal rights an individual possesses. The sixth amendment provides protections in a similar vein: defendants

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[44] Manion, *Liberty's Prisoners*, 5, 8

have a right to know the charges against them, to a speedy and public trial with witnesses, and to counsel. In the case of conviction, the eighth amendment prohibits "cruel and unusual punishment." And while the Constitution primarily concerns itself with outlining the institutions of the federal government, it briefly forays into rights claims only to limit government's power to detain and imprison its citizens: Article I Section 9 reads, "the privilege of the Writ of Habeas Corpus shall not be suspended… No Bill of Attainder or ex post facto Law shall be passed."[45] In the decades since, landmark Supreme Court cases have upheld and at times expanded the rights of the accused: *Miranda v. Arizona* created the Miranda Rights that require police officers to inform those they are arresting that they have the right to remain silent or to consult with an attorney. *Gideon v. Wainwright* mandated the defendant's right to counsel applied to cases in state as well as federal court, regardless of the defendant's ability to pay. And *Mapp v. Ohio* prohibited use of evidence in state court that had been obtained in violation of protections against unreasonable search and seizure.

From the Constitution and the Bill of Rights emerges a criminal justice system that defines us as full and autonomous individuals: moral agents with rights but also with responsibility. The construction of the individual has both practical and ideological implications. Practically, the criminal justice system is guided by its exclusive focus on individual behavior, leading it to ask: who is responsible? What does she deserve? Ideologically, understanding ourselves as individual subjects helps to situate us before a state empowered to try, convict, and

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[45] Habeas corpus, literally, 'you have the body,' bars the state from imprisoning citizens without informing them of their charges. Prohibitions on Bill of Attainders and ex post facto laws prevent the government from passing laws that would declare a person or people guilty of a crime and from passing laws that would criminalize behavior retroactively, respectively. The Constitution does indicate that habeas corpus may be suspended in times of rebellion or war.

govern over us. We enter the criminal justice system as rights-bearing subjects, regarded above all else to be autonomous and self-determining.[46]

The law's emphasis on our self-determination conveys respect for the citizen as an intending agent, but centering the individual points justice in a narrow direction, focused only on determining if a crime has been committed and then, who is responsible. Here, understanding ourselves as autonomous and self-determining isolates us, severing personal behaviors from the social structures and home communities that shape them. The law, in constructing the individual, distills us to our actions while obscuring the forces that contextualize them. As legal scholar Roscoe Pound observes, "indeed, the common law knows individuals only," adding, "and that compels a narrow and one-sided view."[47] By failing to acknowledge the role broader communities and societies may play in fostering harms, the justice system mitigates the ability of these communities to respond collectively to crime and the conditions that give rise to it. Although racial justice-based activists and organizers have criticized community absence in the courtroom, it has barely registered. Instead, exclusively individualistic understandings of the law have long persisted as legal, popular, and social scientific consensus.[48]

Focus on the individual directs the two stages of criminal justice: the determination of guilt and the assignment of punishment. Each stage is a highly technical process oriented exclusively towards the offender, guided by strict and uniform application of procedure. The first stage, the trial, is an adversarial battle between the state and the defendant where each side presents a packaged, competing narrative of the truth before a judge who moderates and a jury

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[46] Craig Haney, "Criminal Justice and the Nineteenth-Century Paradigm: The Triumph of Psychological Individualism in the 'Formative Era,'" *Law and Human Behavior* 6 no. 3-4 (1982), 210
[47] Roscoe Pound, "Do We Need a Philosophy of Law?" *Columbia Law Review* 5 no. 5, (May 1905), 346
[48] Haney, "Psychological Individualism," 206

who decides. The founders' original ideals of inviolable individual rights unfold in the courtroom through a process heavily weighted towards the rights of the accused. At trial, the defendant is granted the presumption of innocence, and the prosecution must prove guilt according to the strictest standard of evidence− beyond a reasonable doubt. To further guard against state overreach and impunity, a jury of the defendant's peers, rather than the state itself, determines the verdict. The state, meanwhile, has inserted itself in the process not as arbiter but as victim.

If the jury returns or the defendant pleads guilty, as is the case in over 90% of federal cases[49] and 75% of state cases,[50] the process moves into the second stage: assignment of punishment, where the state plays the central authoritative role. If the trial process emphasizes the rights of the offender, sentencing determines how the offender is to be held responsible. The legal principles of proportionality and impartiality guide the sentencing process: the sentence is determined by the severity of one's crime, and imposed by a judge who stands as a theoretically unbiased figure removed from the proceedings.[51] Despite disparities in practice, the justice system's goal of uniform sentencing intends to recognize all offenders convicted of the same crime as equally culpable. This is predicated on the idea that culpability is solely and fully within the control of the offender, and that social facts do not matter. This highlights a contradiction for the legal system: because the law is concerned solely with its subjects to the exclusion of their situations, "it [is] left with abstract individuals, not persons."[52] In other words, criminal justice system's isolated focus on a single subject, the rights-bearing and uniquely culpable individual,

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[49] "United States Attorneys' Annual Statistics Report for Fiscal Year 2012," *United States Department of Justice*, 8
[50] Steven W. Perry and Duren Banks, "Prosecutors in State Courts, 2007 - Statistical Tables," *Bureau of Justice Statistics*, December 2011, 5
[51] Proportionality doctrine clarified in 3 SCOTUS cases: *Enmund v. Florida* (1982), *Solem v. Helm* (1983) and *Tison v. Arizona* (1987); Morris B. Hoffman, "The Case for Jury Sentencing," *Duke Law Journal* 52 (2003), 954
[52] Haney, "Psychological Individualism," 195

strips these very individuals of the context, history, and situations that makes them fully human.

Only through limiting circumstances can these contexts become relevant in the courtroom.

During the sentencing process, the defense may introduce mitigating factors, which might

include a defendant's remorse, lack of prior criminal history, or history of mental illness and

addiction, to argue for lessened culpability and a reduced sentence. This is particularly relevant

to capital cases: in 1978, the Supreme Court ruled that courts must consider the relevant

mitigating evidence before handing down a death sentence.[53] Mitigating factors can provide

emotionally resonant stories that portray a more complete portrait of the defendant in front of the

judge and jury, but they are also part of a courtroom strategy. Their role is to help the defendant

make a case for a reduced sentence, not to help us understand and act on a broader sense of

social responsibility.

The criminal justice system is designed to be both cautious and fair, but has strayed far

afield from both of these principles, if it ever practiced them. Although the system in practice

directly contradicts the founders' fears of an indiscriminate and unrestrained criminal justice

system, perhaps the way it has played out should not be considered too surprising. If the founders

took care to describe and limit the procedures of criminal justice, they hardly spoke to the

substance of crime at all. Thus, definitions of crime have always been highly politicized, and

even from the beginning have reinforced a social order of gendered, racist, and classist norms.[54]

Jen Manion in *Liberty's Prisoners* argues that the original penitentiary housed and attempted to

reform prisoners whose crimes could be classified as disrupting the social order: acting outside

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[53] Russell Stetler, "The Mystery of Mitigation: What Jurors Need to Make A Reasoned Moral Response in Capital Sentencing," *University of Pennsylvania Journal of Law and Social Change* 11 (2007-2008), 41-42
[54] Manion, *Liberty's Prisoners*, 5

of the expectations their gender or race demanded of them.[55] Most states operated debtors'

prisons until they were outlawed in 1833, making poverty an effective jail sentence.[56]

Throughout the next centuries, criminal justice expanded and adapted itself to the current

systems of racial control: slave patrols became Southern police departments,[57] and slavery grew

into convict leasing. Post-abolition, criminal justice did the work slavery no longer could: newly

freed black men were arrested and convicted for crimes such as 'idleness' and existing outside

the protection of a white employer.[58] Their convictions enabled the state to lease them to work on

the plantations they had just been released from, earning this system the title "slavery by another

name."[59]

     That the system could have veered so wildly off-track, even from the beginning, is

understandable. The framers may have laid the groundwork for a criminal justice system that

would protect the rights of the accused, but accused they had in mind were not the typical

criminals passing through the court system of the late eighteenth century. These rights were not

fashioned for the benefit of the indigent facing debtors' prison, or for the participants in the

rebellions that characterized the instability and insecurity of the nation's earliest days. Instead,

these amendments reflected the framers' responses to the high-profile, politically-charged cases

that had occurred in Britain prior to the revolution.[60] In several contemporary common law cases,

the Crown had charged government critics‑ white, male, and sometimes wealthy‑ with dissent,

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[55] Ibid.

[56] Eli Hager, "Debtors' Prisons, Then and Now: FAQ," *The Marshall Project,* February 24, 2015

[57] K. B. Turner, David Giacopassi, and Margaret Vandiver, "Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts," *Journal of Criminal Justice Education* 17 no. 1 (2007), 181

[58] Saidiya V. Hartman, *Scenes of Subjugation: Terror, Slavery, and Self-Making in Nineteenth-Century America,* (New York: Oxford University Press, 1997), 129

[59] Douglas A. Blackmon, *Slavery By Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008)

[60] William J. Stuntz, *The Collapse of American Criminal Justice* (Cambridge: Harvard University Press, 2011), 70

and the defendants managed acquittal through the creative use of legal argumentation. Inspired

by the arguments made in these cases, the founders incorporated protections against

self-incrimination, double jeopardy, and unreasonable search and seizure into the Bill of Rights.

[61] Thus, the founders' attempts to restrain state power reflected their admiration for the Crown's

pre-revolution critics far more than their vision for a day-to-day system of courts and corrections.

Today, we see that a justice system originally rooted in a fear of government abuse of

power, and designed explicitly to mitigate such abuse, has grown to have unprecedented control

over millions of Americans' lives, with unprecedented ability to deprive them of their liberty.

Having traced the criminal justice system and its early politicization back to the country's

inception, we must now ask: does the criminal justice system we see today represent a profound

misapplication of our earliest ideals, or is it the founders' ideals of justice that have led us astray?

Can we reign in the criminal justice system enough to fix its flaws, or do we need a new frame

entirely?

From Retribution to Restoration: A New Framework for Justice

Restorative justice theorists have argued that we need something different: beyond

marginal reforms, we need a new framework to understand crime and justice. Yet the exact

nature of that framework is in contention, even among members of the restorative justice

community.[62] Experiments in restorative practice began in the United States in the 1970s,[63] but

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[61] Ibid.

[62] Gerry Johnstone and Daniel W. Van Ness, *Handbook of Restorative Justice* (Devon, UK: Willan Publishing, 2007), 16-18

[63] Mark Umbreit and Marilyn Peterson Armour, Restorative Justice Dialogue: An Essential Guide for Research and Practice (New York: Springer Publishing Company, 2011), 10

the first attempts to articulate a full theory did not follow until the 1990s.[64] Restorative justice

has always been driven by practice rather than philosophy, and as a result, the field has become

populated with contradiction and disagreement.[65] While there is no one agreed-upon definition of

restorative justice, theorists and practitioners return to the same core values to guide their work:

respect, dialogue, egalitarianism, non-coercion, empowerment, and consensus. Many restorative

justice practitioners agree that restorative justice is more about adherence to values than it is

about specific processes or outcomes: it has been said that restorative justice "lives in

relationships and intentions, not systems or procedures."[66] As advocates and practitioners are

fond of saying, restorative justice "is a compass, not a map."[67]

     Fundamental to the criminal justice system's misunderstanding of justice, restorative

justice practitioners argue, is our misunderstanding of harm. While the criminal justice system

makes distinctions as to severity, it only recognizes one specific category of harm: crime, that

which violates the law. A restorative justice framework shifts the focus away from evaluating

how an action may have broken the law, and instead asks us to understand harm in the context of

who has been affected. Restorative justice understands harm as a violation not of the law, but as

a violation of interpersonal and community relationships.

     In rethinking harm, restorative justice advocates reject the criminal justice system's

binary relationship between the offender and the state, instead refocusing on the relationship

between the offender, victim, and community. To begin with, restorative justice theorists argue

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[64] Howard Zehr, *Changing Lenses: Restorative Justice for Our Times,* (Harrisonburg, VA: Herald Press, 2005), 14
[65] Johnstone and Van Ness, *Handbook*, 16
[66] Conrad and Unger, "Violence at School, the violence of schooling: Restorative alternatives," in *International Perspectives on Restorative Justice in Education,* ed. John Charlton, PJ Verrecchia, and David Polizzi (Richmond, ON: Centre for the Study of Crime, Restorative Justice, and Community Safety, 2011), 48
[67] Lode Walgrave, "Investigating the Potentials of Restorative Justice Practice," *Washington University Journal of Law & Policy* 36 (2011), 96

that traditional criminal justice has given control of the process to the state, at the expense of erasing the victim entirely. Each stage of the criminal justice process is offender-centric: the first stage determines guilt and the second assigns punishment. If the victim participates in the proceedings, it is as a witness, and even that is invitation only: the state is also free to pursue or drop charges without notifying the victim at all.[68] Instead, criminal justice recasts the state as the victim: since crime is a violation of the law, the state that creates and enforces the law is the party violated by crime.

As early as the 1970s, forerunners of restorative justice theory began to articulate the disempowerment victims faced at the hands of the courts, and imagined solutions that could exist outside of criminal justice. In his 1977 essay "Conflicts as Property," Nils Christie argues that conflicts had been "stolen" from the parties directly involved, and handed over instead to lawyers and judges who spoke the technical language of the courtroom. Legal professionals dominated the process at the expense of any other participation: victims and offenders, Christie writes, are not involved so much as represented in their own cases.[69] Christie suggests lay courts as the solution: courts that would be presided over by community members, where participation was not exclusive to those fluent in legal terminology.[70] Later, restorative justice theorists would move away from the courtroom setting in its entirety, but they remained inspired by Christie's analysis. In *Changing Lenses,* Howard Zehr, considered by many to be the grandfather of the restorative justice movement, argues that excluding victims from criminal justice processes amounts to their revictimization.[71] The violation of crime, Zehr argues, goes beyond the material

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[68] Zehr, *Changing Lenses,* 36
[69] Nils Christie, "Conflicts as Property," *The British Journal of Criminology* 17 no. 1 (1977), 3
[70] Ibid, 10
[71] Zehr, *Changing Lenses*, 36

harm against the body or property, to a violation of our core selves and our core beliefs.[72] Crime

is "devastating," he writes, "because it upsets two fundamental assumptions on which we base

our lives‒ our belief that the world is an orderly, meaningful place and our belief in personal

autonomy."[73] Crimes makes us believe we are powerless. Instead of displacing this fear, the

criminal justice system re-entrenches it by denying victims the ability to be heard in a

meaningful way. Christie writes that the victim is "a sort of double loser; first, vis-a-vis the

offender, but secondly and often in a more crippling manner by being denied rights to full

participation… the victim has lost the case to the state."[74]

Christie's ideas would form an enduring mantra for restorative justice: "the state has

stolen our conflicts."[75] For restorative justice advocates, this means that once acts of violence or

conflict are recategorized as crime, the participants and communities involved are forced to cede

control to the state. Intra-community issues are removed from the settings and contexts they're

grounded in and transferred to highly impersonal and technical courtrooms. There, the state

presides and its rules are so complex that courtroom participation is largely relegated to those

with law degrees rather than those directly affected by the harm. The state responds to conflicts

to uphold state authority and the legitimacy of the law; restorative justice, meanwhile, views

harm not as an opportunity for punishment but rather for community growth. Through restorative

processes, responding to harm should be seen as an opportunity for increased communication,

commitment, and accountability among community members in a space that requires participants

to broaden their understandings and confront their misconceptions of each other.

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[72] Ibid, 30
[73] Ibid.
[74] Christie, "Conflicts as Property," 3
[75] Carolyn Boyes-Watson, *Peacemaking Circles and Urban Youth: Bringing Justice Home* (St. Paul, MN: Living Justice Press, 2008), [retrieved: kindle, chapter 5, section 3]

If restorative justice theorists hope for a theory of justice that can understand the victim as a full being bestowed with both complexity and agency, they hope the same to be true for the offender. Although restorative justice theory uses terms like offender and victim, practitioners are often reluctant to, acknowledging the shifting nature of these roles. Restorative justice recognizes that offenders are often victims as well: if not of the specific harm in question, then frequently of broader problems such as social inequality and oppression, forces that often shape people's choices and behaviors. If offenders are responsible for their behavior, then communities face a collective and social responsibility as well to correct these injustices. This balance is missing from criminal justice: while the traditional process is centered solely on the offender, it does far more to objectify her than to humanize her. The offender becomes a person to be examined and passed judgement upon, but, much like the victim, is denied a voice: because truth in the criminal justice system is a competition between state's prosecutor and defendant's lawyer, rather than an acknowledgement of a more complex reality, the safer choice is often not to speak at all. Fearing their client's risk of self-incrimination, lawyers rarely allow defendants to take the stand and speak in their own defense.[76] Instead, lawyers, a judge, and a jury debate and impose guilt and punishment. All are intentionally removed from the conflict and the crime at hand.

Offenders are also denied opportunities for genuine accountability and genuine forgiveness. Just as the victim may need information, restorative justice advocates consider that an offender's need for forgiveness may be integral to the process of healing. In any case, the criminal justice system does not facilitate this exchange, nor does it provide space for the victim

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[76] Barbara A. Babcock, "Introduction: Taking the Stand," William & Mary Law Review 35 no. 1 (1993), 14-15

and the community to hold the offender accountable. The criminal justice system constructs an

abstract notion of accountability that holds the offender accountable to the state and its laws

rather than to those who have been harmed. This accountability is imposed through punishment,

but restorative justice theorists dispute the idea that offenders can passively accept

accountability. Restorative justice theorists critique the punishments favored by the criminal

justice system, namely prison terms and probation, as artificial and disconnected from the

individual, relational, and social consequences of the harm.[77] Instead, the consequences the

offender faces should respond to and make right the consequences of their harm.[78] Put another

way, restorative justice theory says that in cases of harm, the offender's guilt is less important

than her obligations.

Rather than working towards the goal of restoration, criminal justice calculates

punishment in accordance with what restorative theorists view as abstract, disconnected

principles of proportionality. This exposes a fundamental divergence between restorative and

criminal justice theory: while sentences are backwards-looking, calibrated to the severity of the

action, restorative consequences are intended to be forward-looking, calibrating themselves to

the need for repair.[79] Restorative justice acknowledges that it may not be possible for offenders

to meet the obligations opened up by the harms they have caused; still, they must learn from the

victim what it is they can begin to do to make it right.[80] Restoration often includes material and

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[77] Zehr, *Changing Lenses,* 78
[78] Lode Walgrave, *Restorative Justice, Self-Interest and Responsible Citizenship* (Cullompton, UK: Willan Publishing, 2008), 21
[79] Michael M. O'Hear, "Is Restorative Justice Compatible with Sentencing Uniformity?" *Marquette Law Review* 89 no. 2 (2005), 313
[80] Zehr, *Changing Lenses*, 152

financial compensation, but it may also be primarily symbolic: restoration through service, or changed behavior.

Restorative justice theory generally holds a negative view of our most common and widespread tool of accountability: the prison. For restorative justice advocates, prisons are not only ineffective and artificial measures of generating accountability, but they are also spiritually and physically damaging.[81] Prisons are spaces of violence and deprivation that remove offenders from their communities and sever them from their humanity. Not only do prisons lead to suboptimal outcomes by reducing the capacity for coping mechanisms that healthy individuals rely on in the outside world, but they are counterproductive to the restorative understanding of justice based on reconciliation.[82] Restorative justice rarely advocates for an offender's removal from her community, either as punishment or for rehabilitation.

Instead, restorative justice solutions focus primarily on reintegrating the offender back into her community whenever possible. This requires addressing the harm the offender caused not only to the victim, but to loved ones and other community members who have been impacted as well. Harm is then recast within a broader context that is conspicuously and intentionally absent from criminal justice. While the criminal justice system enshrines us as individuals with rights and liability, restorative justice believes offenders come from communities that, too, are often hurt by crime. Much like the victim, when harm occurs, the community is owed restoration that will make right the relationships and sense of safety that has suffered. Much like the offender, the community often bears accountability. Restorative justice theory has identified various ways that conditions in communities may lead to acts of harm: if individuals' needs are

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[81] Ibid, 41-43
[82] Ibid, 49

not being met, if there is no sense of safety, if there are consistent real or perceived abuses of power. In such cases, community members have an obligation to respond to not just to the interpersonal harm, but to these injustices as well.

Restorative justice programs have primarily grown through the criminal justice system in the four decades since their inception. Amidst a wide array of practices, victim-offender mediations (also known as victim-offender reconciliation programs) have emerged as the most prominent form of criminal justice-based restorative practice.[83] With hundreds of established programs across the country, victim-offender mediations bring together the victim, offender, and a trained facilitator so that the victim may tell the offender of the crime's lasting physical and emotional impact, ask lingering questions, and work with the offender to develop a restitution plan.[84] These mediations have primarily been used to address less serious or nonviolent offenses, such as property offenses and in cases with young offenders.[85] While victim-offender mediations are both the most common and the most studied forms of restorative practice, other practices have also been institutionalized: in Vermont, reparative boards comprised of community members work with offenders to develop restoration agreements and sanctions.[86] In New Zealand, family group conferencing, rooted in Maori tradition, brings together not just offenders and victims but their supporters, including friends and family, to discuss together the process of restoration.[87] In South Africa, the restorative justice-based Truth and Reconciliation Commission helped the nation grapple with the human rights abuses that had occurred during the era of

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[83]Gordon Bazemore and Mark Umbreit, "A Comparison of Four Restorative Conferencing Models," *Juvenile Justice Bulletin*, U.S. Department of Justice: Office of Juvenile Justice and Delinquency Prevention, February 2001, 2
[84] Ibid.
[85] Ibid.
[86] Ibid, 3
[87] Ibid, 5

apartheid.[88] Circle sentencing, which is regarded by some as the most holistic and intensive

restorative practice, has been in use in the United States since 1996.[89] Circles are open to all

community members, and inside the circle, it is not just the emotions and behaviors of the key

stakeholders that are addressed, but the needs of all those affected, including community

members.[90] Unlike victim-offender mediations, the circle process, which may include continuous

or follow-up circles, is generally reserved for serious crimes or repeat offenders.[91]

Initial Successes and Emerging Limits in Current Restorative Practice

A review of the research that has been conducted leaves us with reason to feel optimistic

about these programs. Ongoing research since the 1970s shows that victims and offenders alike

report high rates of satisfaction with restorative justice, and offenders have said they feel the

process is fair and thus more legitimate than traditional avenues of justice.[92] Compared to those

who go through traditional justice processes, restorative justice posts more positive numbers:

79% of victims in victim-offender mediations report satisfaction with the justice system,

compared to 57% of those who go through the court system.[93] Victims who go through the

mediation process report that they are less fearful of becoming revictimized, and rate the

opportunity to engage in dialogue with the offender as the most valuable part of the process,

even more so than the resulting restitution.[94] There is even some evidence that restorative justice

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[88] Lucy Allais, Restorative Justice, Retributive Justice, and the South African Truth and Reconciliation Commission, *Philosophy and Public Affairs* 39 no. 4 (September 2011), 331
[89] Bazemore and Umbreit, "A Comparison of Four Restorative Conferencing Models," 6
[90] Ibid.
[91] Ibid.
[92] Allison Morris, "Critiquing the Critiques: A Brief Response to Critics of Restorative Justice," *British Journal of Criminology* 42 (2002), 604-605
[93] Bazemore and Umbreit, "Four Restorative Conferencing Models," 3
[94] Ibid.

leads to decreasing recidivism for offenders who participated in victim-offender mediation, as well as for those who participated in circle sentencing.[95]

Yet clear tensions emerge for restorative justice programs operating through the criminal justice system. In practice, restorative justice has tied itself to the very system it criticizes, and theorists themselves have disagreed on some of their critiques. As the relationship between restorative and criminal justice has become further established, restorative justice theorists and practitioners themselves have begun to raise concerns.

Currently, most restorative justice programs do not just operate alongside or within the criminal justice system: they depend on it. Victim-offender mediations and other programs by and large receive their cases via court referral, handling cases that have been diverted from the traditional justice system before the trial takes place. In some cases, however, participants are referred to restorative justice programs only after the offender has admitted guilt, such that restorative conferencing plays a role only in determining the sentencing agreement. Many restorative justice proponents have worried that either of these paths risks compromising the restorative justice value of non-coercion.[96] While stakeholders such as the victim and offender still must agree to the restorative process for it to move forward, they ultimately need permission from the courts. If restorative conferencing does not end in a satisfactory agreement, offenders risk having their cases sent back to trial, where the most likely outcome is incarceration.[97] This calls into question whether or not the process can be considered truly non-coercive.

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[95] Ibid, 3, 7

[96] Johnstone and Van Ness, *Handbook*, 97-98

[97] Joanna Shapland, "Implications of Growth: Challenges for Restorative Justice," *International Review of Victimology* 20 no. 1 (2014), 123

Not all restorative justice practitioners are in agreement, however: some have argued in favor of the relationship between criminal and restorative justice. One particular school of restorative justice advocates has championed traditional justice as a check on restorative justice.[98] For these practitioners, restorative outcomes are the primary goal, while restorative processes of dialogue and participation are secondary.[99] It is not a contradiction, then, for restorative justice to recognize the legitimacy and the overarching ideologies of criminal justice, as long as the final sentence looks more like restitution and less like abstract punishment. And, while restorative justice theory has primarily defined itself in opposition to the punitive focus of criminal justice, some theorists have argued that punishment should not be seen as inherently contradictory to restorative aims. Allison Morris writes that it is not beyond the realm of possibility that the victim, offender, and community alike could determine that punishment in a particular case serves the goals of restoration.[100] Zehr, who originally defined himself against the concept of punishment in *Changing Lenses*, has since revised his position, saying, "I no longer see restoration as the polar opposite of retribution."[101] Both restoration and retribution, he writes, are guided by the same goal of "vindicat[ion] through reciprocity."[102]

Other practitioners have made the case that working within the system offers restorative justice the greatest opportunity to enact social change. Restorative justice cannot be successful in its goal of transforming criminal justice, they argue, if it disassociates itself and cedes the space entirely.[103] These advocates fear that if restorative justice maintains its independence as a

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[98] Johnstone and Van Ness, *Handbook*, 96
[99] Ibid.
[100] Morris, "Critiquing the Critiques," 606
[101] Howard Zehr with Ali Gohar, *The Little Book of Restorative Justice*, (Intercourse, PA: Good Books, 2003), 11
[102] Ibid, 59
[103] Ibid, 98

voluntary and informal program, it will too easily be marginalized, unable to exert meaningful influence over the criminal justice system. Even for practitioners established within the system, marginalization remains a fear. Conrad and Unger write that in practice, restorative justice programs have largely been limited to young offenders and less serious, nonviolent offenses.[104] They worry this narrow scope has undercut restorative justice's ability to enact systemic reform, and believe restorative justice programs should fight to access more cases within the system.[105] Along this line of thinking, proponents of mainstreaming restorative justice have argued close ties with criminal justice systems ought be celebrated and then expanded, as these ties give restorative justice access to "a much greater variety of situations and crimes."[106]

Institutionalization through the criminal justice system appears to provide a logical starting point for restorative justice projects, as the courts can supply them with both resources and cases. Yet the dual nature of this relationship raises deep concerns, and attempting restorative practice that is confined by the logic and processes of criminal justice creates certain unsolvable tensions. In my view, the boundaries and obligations of the criminal justice system, which are embedded not just in its practices and traditions but in the very Constitution, constrain both restorative justice's ambitions and its potential. I am concerned that confining restorative justice within the criminal justice system means that restorative practice can be too easily co-opted, forced to compromise on what I consider core, intrinsic values. Embedded in restorative theory is the promise that restorative justice is universal: it works for everyone, regardless of who we are or what we have done, because each of us is understood to be a full, complicated, and fundamentally good self. Beyond individuals, restorative theory has always

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[104] Conrad and Unger, "Violence at School," 52
[105] Ibid.
[106] Shapland, "Implications of Growth," 121

centered engaging and strengthening communities. Finally, restorative justice must move us

forward. It must be more than a response to individual instances of harm, and instead must learn

to address the conditions that make harm possible, and even prominent, in our society.

Practitioners should recognize each of these radical and deeply transformative values as

fundamental to a full theory and practice of restorative justice. These ideals ask us to reimagine

what we are worthy of and what we are capable of, both as individuals and in our communities.

Yet restorative justice's continued association with and reliance on the criminal justice system

risks each of these principles in turn.

Although restorative justice values universality, gatekeeping is common for restorative

programs operating within the traditional criminal justice setting. The courts retain the power to

determine which cases will be diverted into the restorative justice track, yet they use criteria that

are not only irrelevant but contrary to the values of restorative justice. While courts specifically

refer cases that have a victim willing to participate and an offender willing to accept

responsibility,[107] a condition both relevant and integral to the success of the restorative process,

they also make their decisions based on the type of offense. This reifies a traditional criminal

justice belief for the restorative setting: redemption is only narrowly accessible for offenders

who meet specific qualifications. Not only has restorative conferencing and mediation generally

been reserved for lesser offenses and juvenile offenders, but there have been moves to limit

restorative programs for repeat offenders.[108]

While restorative theory presents the community as a central stakeholder in the justice

process, criminal justice-based restorative practice has struggled to define community,

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[107] Conrad and Unger, "Violence at School," 53
[108] Shapland, "Implications for Growth," 118

sometimes leading to its absence entirely. In victim offender mediations, the most common

restorative practice, the community's absence is striking. Most mediations are conducted with

three people in the room: the offender, the victim, and the mediator. At times, lawyers or

"supporters" such as family members are also present, but this remains inadequate in

understanding who comprises community. By opening the process only as far as including

friends and family, and only so that they may provide secondary support for victim or offender,

the mediation is ensured to focus entirely on the specific incident of harm and the agreement of

restitution. This is incomplete according to restorative justice's own theory of crime.

Restorative justice theorists have presented a view of crime almost the complete opposite

of the traditional criminal justice view. While criminal justice views crime as an individual

violation of order and rule of law, restorative justice locates responsibility equally in community

structures, suggesting it is the system of order itself that is at fault. Howard Zehr has written

many people who commit crime feel powerless,[109] and advocate Susan Sharpe, drawing from

Canadian indigenous researchers, has argued that crime is the symptom of an unjust society.[110]

Restorative justice recognizes twin tenants of individual and collective accountability necessary

not only to respond to crime, but to respond to the conditions that allow it to continue.

Restorative justice, in theory, creates space for community members to begin to respond these

conditions, but the most common forms of restorative practice are restricted to the criminal

justice system's binary of victim and offender. As such, these restorative practices continue to

locate all accountability with the offender and prevent participants from thinking more broadly

about the contexts in which the harm occurred.

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[109] Zehr, *Changing Lenses,* 58-59

[110] Susan Sharpe, *Restorative Justice: A Vision for Healing and Change* (Edmonton, CA: Mediation and Restorative Justice Center, 1998), 11

Although restorative justice should look forward, its existence within the criminal justice system makes it an inherently reactionary process. Individuals only have access to restorative programs and the dialogue they entail after harm has already been committed. Restorative justice has argued for a more holistic conception of justice than the one criminal justice gives us: while criminal justice responds to crime as if it exists in isolation, restorative justice theorists say justice is a continual process of working towards righting social wrongs, and building and sustaining equal and just communities that are capable of both responding to and preventing harm.[111] This conception of restorative justice is both a proactive process and a daily practice that exists beyond the structure of mediations and circles. Yet restorative justice that operates within criminal justice is limited in exactly this way. It does not challenge the criminal justice logic of problem-responsiveness, and it does not follow participants back home. Restorative justice instead is reduced to a program to be requested and completed. At worst, restorative justice simply provides an alternative evaluation through which punishment is assigned, where community service replaces incarceration. While this might improve outcomes in some cases, it does not take responsibility for the work of restoring communities through building relationships and collective action.

Moving Forward: Restorative and Social Justice

It is clear that criminal justice frameworks constrain restorative justice: the current set-up limits restorative justice programs' cases, the cases' participants, and the subject of its inquiry. I believe this has profound and troubling implications, not just for restorative justice theorists and

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[111] Zehr, *Changing Lenses*, 134

practitioners who are interested in the realizing the full extent of their vision, but for our society as a whole. I argue that one of the most radical practices of restorative work is that it transforms those involved in the justice process from legal subjects into human beings. This has allowed, and even required, restorative justice to acknowledge what criminal justice does not: social injustice and structural violence, deeply embedded in our everyday practices and institutions, shape our behaviors and bear much of the responsibility for individual acts of crime.[112] Restorative justice prioritizes dialogue that brings systemic issues to the forefront: in conferences and mediations, restorative justice encourages practitioners and participants to remember that offenders have often been victims, and to view their experiences, histories, and situations not only as relevant, but as essential to understanding the offense and needed restoration.

At times, restorative justice has gone further, including discussions of systemic inequality not just in its practice but its theories. In *Changing Lenses*, Howard Zehr writes that although we consider the two spheres of legal and social justice separately, one cannot be cleaved from the other. Restorative justice strives to reconnect the two in a more holistic vision of what justice encompasses: Zehr writes that justice should be the process of "making-right," understanding this process not just to include righting the original offense, but also addressing the conditions that led to it.[113] Other restorative justice theorists have continued this line of thinking: beyond connecting criminality with social injustice, they have theorized a directly causal relationship.[114] They have drawn on the works of psychiatrist James Gilligan, who writes, "structural violence is not only the main form of violence… it is also the main cause of violent behavior."[115] He adds,

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[112] Bonnie Price Lofton, "Does Restorative Justice Challenge Systemic Injustices?" *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barbara Toews (Monsey: Willow Tree Press, 2004), 385-386
[113] Zehr, *Changing Lenses*, 134
[114] Conrad and Unger, "Violence at School," 32; Lofton, "Systemic Inequalities," 382
[115] James Gilligan, *Preventing Violence*, (New York: Thames and Hudson, 2001), 101-102

"we cannot expect to stop the kind of violence that we call crime until we stop the kind of violence that I have called structural."[116] For Gilligan and others, random acts of violence cannot be compared to violence that have been deeply embedded in our political and social systems. Individual acts of violence are not, as we often see them, aberrations of a just and orderly society, but rather the natural results of a deeply unequal and unjust one. Even the law, philosopher Elizabeth Grosz writes, casts itself above violence as a tool for maintaining order, hiding the reality that it is not only entrenched in structural violence, but upholds it.[117]

Restorative justice practitioners and theorists work to highlight the relationship between systemic injustice and individual crime, entirely obscured by criminal justice's intense focus on the individual. Yet restorative justice has been unable to do much more than acknowledge this relationship. Restorative justice understands social injustice as relevant to restorative dialogue as well as to people's lives, but has yet to develop a full theory of what a socially just world should look like, or how we can begin to build it. As Bonnie Price Lofton writes, "restorative justice practitioners often raise awareness of the causes of crime, but they offer no strategy for eliminating these causes."[118]

I believe these limitations are the direct result and natural condition of positioning restorative justice in opposition to criminal justice. Restorative analysis, as it has grown in theory and practice, remains steeped in critique of criminal justice. Indeed, restorative theorists and practitioners understand their work in contrast to the traditional processes and values of criminal justice. Through this lens, social injustice is simply another area where criminal justice fails to acknowledge the voices and the truths of its subjects. This is incomplete: it reduces recognition

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[116] Ibid.
[117] Elizabeth Grosz, "The Time of Violence: Deconstruction and Value," *Cultural Values* 2 no. 2-3 (2000), 194
[118] Lofton, "Does Restorative Justice Challenge Systemic Injustices?," 383

of social injustice to no more than another advantage among the long list of humanizing advantages restorative justice offers. If restorative justice is truly focused on repairing harm, it must above all recognize and respond to structural harms embedded in our policies, discourses, and institutions, harms that exist beyond the criminal justice purview. It must challenge the legitimacy of these harms precisely because we have come to accept them as natural and normal in our world.

Restorative justice can be, and therefore should be, thought of with the potential to do much more in this area. Beyond acknowledging social injustice, restorative justice, I believe, contains the tools to combat it. This chapter and many writers have covered the relationship between criminal justice and restorative justice, but we have yet to explore restorative justice within the context of social justice. In the next chapter, I will review theories of social justice, linking them to restorative justice ideals and goals. I will explore the relationship between social and restorative justice theories to examine what is missing in current conceptions of restorative justice and what tools restorative justice may contain to realize broader visions of justice. To do this, we must now turn to theories of social justice.

Chapter Two: A Vision of Holistic Justice

Present in restorative justice theory is a longing for social justice. Unlike the criminal justice system, which views individual acts of harm as aberrations in a society that is otherwise orderly and just, restorative justice theory has argued that criminal justice and social injustice must be understood in tandem; that one sphere cannot be cleaved from the other. In *Changing Lenses*, which remains the authoritative account of restorative justice theory, Howard Zehr writes "we have to see injustice holistically, without artificial lines between crimes and other injustices… those injustices [referring to interpersonal acts of harm] join with injustices of power and wealth."[119]

Yet Zehr and other theorists' attempts to link restorative and social justice have been less than fully realized. In the literature, this much is made clear: restorative justice acknowledges the role social inequality plays in giving rise to individual acts of harm. Because the criminal justice system views such "social facts" as irrelevant, restorative justice theory points to this difference between the two systems as one more example of restorative justice elevating people's real lives and experiences over the abstract and impersonal rules of the criminal justice system. And while this attention to social injustice may help restorative justice score points over criminal justice, it does not give us what I am looking for: a thorough account of the injustice that shapes our society and ourselves, and an alternate vision of social justice that connects restorative values and goals to broader movements for equity, agency, and liberation.

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[119] Zehr, *Changing Lenses*, 188; Some restorative justice practitioners have recognized that restorative theory has generally been inadequate in its discussion of social justice, and their writings on the subject are more nuanced. See Kay Pranis in R*estorative Community Justice: Repairing Harm and Transforming Communities* for an example. Here, I am concerned primarily with the view of social justice laid out by mainstream restorative justice accounts, which Zehr captures.

The theory is underdeveloped; the practice has moved in another direction entirely. As discussed in the last chapter, the institutionalization of restorative justice within the criminal justice system has convinced the movement to abandon its instincts. Instead, it is settling into its role as a "kinder criminal justice," a palatable alternative that has replaced testimony with dialogue and prison time with restitution. Trapped by the narrow ideology of criminal justice, restorative justice has too often limited mediations and conferences only to lesser crimes and limited participants, thus failing to include the wider community and preventing practitioners from raising the most pressing questions of social and collective responsibility. As a result, restorative practice has often been unable to follow through on its stated goals of helping communities develop their own responses to harm or empowering them to work proactively to prevent harm.

This is not to discount the successes of restorative justice programs taking root in districts across the country. Current iterations of restorative justice do represent an improvement over criminal justice: mediation programs have overall returned high satisfaction rates, indicating that participants have found healing in a process that is traditionally so disempowering.[120] Research has indicated restorative conferencing is successful in reducing the traumatic impact of crime,[121] as well as the likelihood of re-offending.[122] Further, as the movement continues to evolve, many restorative justice practitioners are increasingly aware of the potential problems inherent in their

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[120] Bazemore and Umbreit, "A Comparison of Four Restorative Conferencing Models," 3
[121] Caroline M. Angel, Lawrence W. Sherman, Heather Strang, Barak Ariel, Sarah Bennett, Nova Inkpen, Anne Keane, and Therese S. Richmond, "Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims." *Journal of Experimental Criminology* 10, no. 3 (2014), 302
[122] Lawrence W. Sherman, Heather Strang, Evan Mayo-Wilson, Daniel J. Woods and Barak Ariel. "Are Restorative Justice Conferences Effective in Reducing Repeat Offending?" *Journal of Quantitative Criminology* 31 (2015), 19

relationship to criminal justice, and are working to align practice with values.[123] Yet there is undeniably a gap between the most transformative vision of restorative justice and today's practice. The mainstreaming of the movement means that gap is widening.

I do not believe it is possible for restorative justice to realize its fullest, its most hopeful and most radical potential if it continues along the same path. In this chapter, I will offer another direction instead: drawing on the interest in social justice that is already present but largely unexplored, I will attempt to situate restorative justice within a vision of holistic justice, one that has developed outside of the restorative movement. I will argue that a theory of holistic justice, one that connects individual well-being to substantive attempts to understand and rectify historic and systemic injustice, is more compatible with restorative justice principles than continued connection to and critique of the criminal justice system. I will explore what a vision of holistic justice might look like, drawing on the ideas present in justice philosophy, critical race theory, and the tradition of radical black politics.

What should a theory of restorative justice tied to an emancipatory vision of holistic justice− rather an a critique of the legal system− look like? In my view, such a theory should include two things: first, it should contain an account, not merely an acknowledgement, of structural injustice. Only through looking at structural injustice can we begin to see the ways that legal oppression and material conditions have limited the flourishing of individuals within their communities, creating cycles of harm that prevent these individuals from exercising meaningful forms of self-actualization and agency. Second, it should recognize restorative values of participation, compassion, dialogue, and growth not just as part of the process to achieve justice,

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[123] Margarita Zernova and Martin Wright, "Alternative visions of restorative justice" in *Handbook of Restorative Justice* ed. Gerry Johnstone and Daniel W. Van Ness (Devon, UK: Willan Publishing, 2007), 99-100

but an essential component of justice itself. By recognizing more than individuals' legal status, and by making space for their psychic needs and well-being, holistic justice can value full personhood in ways that the criminal justice system cannot. Instead of justice centered on reciprocity or formal equality, restorative justice should tie itself to a definition that considers active support for individual and community development and well-being to be a core duty of justice.

An Account of Injustice

I want to start with a definition of injustice. Restorative theory tells us that social and structural injustice "is about wrongs having to do with the distribution of wealth and power"[124] but such a brief understanding is incomplete. Instead, I want to draw on the definition of injustice Iris Marion Young lays out in her book *Inclusion and Democracy.* I turn to Young because her writings on justice compel us to move beyond the traditional, individualistic framework of liberal justice, which often assumes homogeneity, to understand the how social groups and social differences impact experiences with inequity and injustice. There are "two general conditions of injustice," she writes, "oppression, institutional constraint on self-development, and domination, institutional constraint on self-determination."[125] Self-development, she writes, "certainly entails meeting people's needs for food, shelter, health care, and so on,"[126] here referring back to the same material conditions that Zehr alludes to in his understanding of injustice. Yet she also defines self-development as encompassing more than "the distribution of resources and positions" that make up Zehr's wealth and power. The focus on patterns of distribution that has

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[124] Zehr, *Changing Lenses,* 140
[125] Iris Marion Young, *Inclusion and Democracy* (Oxford, UK: Oxford University Press, 2000), 31
[126] Ibid, 32

dominated justice theory, Young writes, has primarily served to atomize us, viewing us as

individual points on a broader social plane.[127] Reducing justice to access to resources and status

before the law has reduced our sense of personhood, failing to account for many of the things we

consider integral to our full humanity, including our relationships, connections, and psychic

needs. Further, Young writes, such theories misunderstand the nature of injustice: they have

failed to recognize that injustice is less often about patterns of distribution− which implies

inequalities to be benign and unintentional− and more often about processes of power and

decisionmaking.[128]

Young argues instead that self-development should be understood in terms of the far

more expansive capabilities approach developed by Amartya Sen and Martha Nussbaum.[129]

Beyond meeting minimally satisfactory economic conditions, this theory argues, justice requires

that individuals have the material and institutional support they need to live "the kind of lives

they have reason to value."[130] This includes securing opportunities for, among potentially a much

longer list,[131] bodily integrity, imagination, communication, agency, and relationships. As Young

describes it, the capabilities approach should be understood as giving individuals real

opportunities and the necessary support to "learn and use satisfying and expansive skills."[132] In

short, the capabilities approach is about the right not just to survive but to self-actualize.

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[127] Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), 18
[128] Ibid, 33
[129] Ibid, 31
[130] Amartya Sen, *Development as Freedom*, (New York: Anchor Books, 1999), 10
[131] The capabilities approach intentionally does not lay out a definitive set of capabilities in an effort to avoid prescribing what others ought value; the closest is Nussbaum's list of 10 Central Human Capabilities that she argues should be the right of individuals regardless of the regime they live under or the demographic groups they belong to. In this sense, Nussbaum's list of capabilities closely mirrors a human rights framework. Among other capabilities, her list includes life, bodily health, senses imagination and thought, and practical reason. Nussbaum describes her list as necessary not for full social justice but for a minimally just world. Martha C. Nussbaum, "Beyond the Social Contract: Capabilities and Global Justice," *Oxford Development Studies* 32 no. 1 (March 2004).
[132] Young, *Democracy and Inclusion,* 31

Young defines her second condition of injustice, constraint on self-determination, as denying individuals the ability "to participate in determining one's action and the condition of one's action."[133] Again, she understands injustice expansively and as such, domination is more than direct interference in an individual's freedom and choices. Young argues that "institutional relations, including those that award differential power to some agents to constrain the choices and actions of others" comprise forms of domination as well.[134] Young's "institutional relations" speaks directly to the role marginalization and oppression plays in limiting self-determination. As Young explains, membership in social groups, which she defines as "a collective of persons differentiated from at least one other group by cultural forms, practice, or way of life,"[135] plays a significant role in determining the extent of our agency and our exposure to conditions of domination.[136] Any individual's power in the world is severely constrained when they are a member of a group that is afforded less dignity and fewer resources, or is more likely to be a target of state violence.

I want to use this understanding of structural injustice, and Young's inverse definition of social justice, which she describes as "institutional conditions for promoting self-development and self-determination of a society's members,"[137] as the starting point for developing a theory of holistic justice. Young's definition is, by her own admission, abstract, and it is possible for any number of people to agree with the definition while disagreeing about which goals and values would realize it. Before we begin to fill in these blanks, I want to note what is already unusually emancipatory about this definition. It departs from the traditional American understanding of

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[133] Ibid, 32
[134] Ibid.
[135] Young, *Justice and the Politics of Difference*, 47
[136] Ibid, 43
[137] Young, *Democracy and Inclusion*, 33

social justice, the universal application of formal political and economic rights, rightly declaring this to be insufficient.

The United States has historically defined individuals in isolation as equal, and celebrated expanding citizenship as fulfilling the promise of equality. In reality, even in lauded cases like Emancipation, citizenship has never actually created conditions of equality, but only obscured conditions of inequality.[138] Defining individuals as formally equal has served only to relegate the poverty, social hostilities, and other resulting legacies of institutions like slavery to the private sphere. After the promise of formal equality is realized, these problems then become collectively understood as personal failings, no longer a government responsibility.

Further, our current understanding of justice relies on abstracting away at personhood until it arrives at the universal self,[139] a problematic definition that breaks down too easily because the self it offers is impossibly aspirational, barely recognizable as a human being.[140] Our understandings of ourselves and our values in the world are contingent on identity, articulated based on story, tradition, culture, connection, and sense of place. Further, all of our experiences occur within relations of power and powerlessness; collective marginalization or privilege, too, is as formative as our personal identities. Young's theory embraces this rather than denies it: at its

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[138] On how citizenship expanded responsibilities for newly freed black Americans in the postbellum South without corresponding to expansions of rights and freedoms, see Saidiya V. Hartman, *Scenes of Subjugation: Terror, Slavery, and Self-Making in Nineteenth-Century America,* (New York: Oxford University Press, 1997), 133, 153; For how the post-Civil War citizenship amendments cemented public forgetfulness regarding slavery, see W.E.B Du Bois, *The Souls of Black Folk*, ed. David W. Blight and Robert Gooding-Williams, (Boston: Bedford, 1997), 45, 125; On problems with the contemporary legal understanding of the "universal self" and its privileging of whiteness and maleness, see john a. powell, *Racing to Justice: Transforming Our Conceptions of Self and Other to Build an Inclusive Society* (Bloomington, IN: Indiana University Press, 2012), 169-171
[139] Considering the diversity of human viewpoints and experiences, philosophers have often struggled with a universal theory of personhood. For Kant, the necessary condition of the self was the capacity for reason. This theory, which influenced common and widespread conceptions of morality, elevated human beings into members of a moral community, and granted them rights to status, dignity, and justice.
[140] powell, Racing to Justice, 167

core is a recognition of the diversity and complexity of what shapes our lives and gives them value. Justice as Young theorizes it mandates the right of individuals to live with dignity, security, and meaning according to their own values, and requires a collective rather than individualistic lens to identify and eliminate group-based systems of oppression and domination.

We are therefore starting with a far more expansive definition of social justice and injustice than the one that emerges from restorative justice theory, but a far more relevant one, too: restorative justice theorists have, in the past, drawn a bright line between their interpersonally-focused project and conditions for a socially just world. At times, this has led to dismissing the role of restorative justice in broader movements. For example, foundational restorative justice theorist John Braithwaite commented that he originally believed that the relationship between restorative justice and the fight for social progress to be "unimportant."[141] "Any kind of reform to the criminal justice system," he wrote, "does not seem central to achieving... social objectives."[142] Perhaps it is easy to think this way when our understanding of social justice is limited to questions of distribution of wealth and status. When we expand our thinking to include individuals' ability to participate, form meaningful relationships, act on their aspirations, and determine the conditions of their lives, and when we understand the role the criminal justice system has played in enforcing domination, oppression, and inequality in this country along racial lines, the core values restorative justice espouses and the skills it builds suddenly become quite relevant to this broader social project.

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[141] John Braithwaite, "Restorative Justice and Social Justice," *Saskatchewan Law Review* 63 (2000), 6
[142] Ibid.

A Brief History of Racialized State Violence

Now that we have, at least, an abstract definition of injustice, the next step is to

understand what the injustice in the context of American history looks like: what are its roots?

How is it perpetuated? How should we understand its effects? Because restorative justice work is

primarily based in prisons, schools, and local communities, this chapter will focus on a specific

dimension of injustice that has shaped these spaces, for which I will use Lisa Miller's term of

racialized state violence.[143] Racialized state violence refers both overtly oppressive policies and

institutions that enforce racially targeted violence and exploitation− such as slavery in the 17th

through 19th centuries, and the criminal justice system today− as well as policies and institutions

that permit black and brown communities to be exposed to social risks at unequal rates to that of

white communities. These social risks, such as unemployment, lack of health care, and unequal

access to education, comprise at least some of the constraints on self-development and

self-determination we have laid out under the definition of injustice.

Although the criminal justice system may deny it, the existence of racialized state

violence comes as no surprise to restorative justice practitioners, many of whom are working in

communities that have been devastated by its effects. Yet restorative justice theory, even when it

is explicit about the existence of structural inequality, has often failed to name that inequality's

racialized dimension. Even writers pushing for a more expansive conception of restorative

justice focused on root causes rather than individual cases generally refer to injustice under only

the broadest terms. In *Handbook of Restorative Justice*, Margarita Zernova and Martin Wright

write that "radical" restorative justice theorists believe theory and practice should focus on

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[143] Lisa Miller, "Racialized State Failure and the Violent Death of Michael Brown," *Theory & Event* 17 no. 3 (September 2014)

"social-structural pressures towards crime."[144] At the Center for Restorative Justice and

Peacemaking at the University of Minnesota, Mark Umbreit, Betty Vos and Robert Coates write

that to promote justice, restorative justice programs must focus on the causes of crime that "are

inseparable from the social injustice that permeates our society."[145] Bonnie Price Lofton

questions restorative justice's long-term effectiveness because the movement, as she sees it,

"fails to address the socio-economic roots of crime."[146] Each of these statements would suggest,

rightly, that our society parcels out opportunities and even dignity unequally. Yet nowhere is it

mentioned that the inequalities that divide our country have been profoundly shaped by racial

injustice. Where is the explicit talk of race?

The omission seems strange, because outside the restorative justice community, one story

is becoming increasingly familiar: the continued retrenchment of racism through legal means

such as laws, policies, and institutions. Although we have long clung to the narrative that

Emancipation and later the Civil Rights Movement achieved racial equality by extending

citizenship, granting formal political rights, and barring discrimination based on race, actual

history is not nearly so linear or so optimistic. Notwithstanding moments of genuine progress

such as the period of Reconstruction and the Civil Rights Movement, legal racism has remained

a constant, proving itself capable of enduring and adapting. We can trace its origins in the

post-slavery era back to the Black Codes, which were passed across Southern states after the

Civil War and then again after Reconstruction. These laws criminalized any meaningful exercise

of freedom by black individuals,[147] including movement and social associations.[148] The Black

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[144] Zernova and Wright, "Alternate visions" in *Handbook*, 100
[145] Mark Umbreit, Betty Vos, and Robert Coates, "Opportunities and Pitfalls Facing the Restorative Justice Movement," *Center for Restorative Justice and Peacemaking at the University of Minnesota,* April 21, 2005
[146] Lofton, "Does Restorative Justice Challenge Systemic Injustices?," 381
[147] Hartman, *Scenes of Subjugation,* 148-149

Codes eventually gave way to the system of Jim Crow laws that mandated racial segregation in

schools, on transportation, and in public spaces across the South.

The end of Jim Crow, officially brought about by the passage of the Civil Rights Act and

the Voting Rights Act, marked not the end of racial domination but the emergence of a new era

of racial control, this time operating through the criminal justice system.[149] Most notably,

Michelle Alexander's *The New Jim Crow* made mainstream the argument that mass incarceration

today is the natural inheritor to the systems of slavery and Jim Crow.[150] Beginning in the second

half of the twentieth century, in part as backlash to the perceived gains of the Civil Rights

Movement, a combination of new policies, shifting funds, and court decisions legalized and

incentivized law enforcement's targeting of black individuals and communities.[151] As a result,

police forces in marginalized communities become occupying armies: the federal government

offered local police departments grants for military equipment and training, which funded

millions of domestic orders to the Pentagon for items like aircrafts and grenade launchers.[152]

Supreme Court decisions in *Terry v. Ohio, Florida v. Bostwick,* and *Whren v. United States*

gutted privacy protections in favor of granting officers nearly-unchecked ability to stop and

search individuals in public, whether they were in cars, on public transportation, or simply

outside on the street.[153] Civil asset forfeiture policies, which allow police departments to

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[148] Ibid, 146

[149] Michelle Alexander, *The New Jim Crow*, (New York: New Press, 2011); Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21 (Fall 2007); Marie Gottschalk, *Caught: The Prison State and the Lockdown of U.S. Politics* (Princeton, NJ: Princeton University Press, 2015); *13th,* directed by Ava Duvernay. Kandoo Films, 2016; Radley Balko, *Rise of the Warrior Cop: The Militarization of America's Police Forces* (New York: PublicAffairs, 2013)

[150] Alexander, *The New Jim Crow*, 57-58

[151] Ibid, 56-57, 61-64, 73

[152] Ibid, 73-74; Balko, *Rise of the Warrior Cop*, 79; Peter B. Kraska, "Militarization and Policing—Its Relevance to 21st Century Police," *Policing* 1 no. 4 (2007), 6-7

[153] Alexander, *The New Jim Crow*, 63-68

confiscate property and holdings from those they suspect of crimes and keep such assets for themselves, made aggressive, scorched-earth policing tactics increasingly appealing for local law enforcement.[154]

These policies that have radically expanded police presence, power, and impunity are, on their face, race-neutral. In practice they have served another purpose entirely. The laws that permit officers to stop and search civilians have granted police departments wide berths to practice racial profiling,[155] as race has been deemed a stand-in for suspicious behavior.[156] In addition, laws and policies have reserved significant resources and lengthy punishments to target crimes like drug usage and gang activity in neighborhoods that are home to majority people of color. Policymakers and law enforcement have fought the War on Drugs and the War on Crime in these neighborhoods to the extent that even the word criminal has become racialized. Michelle Alexander writes:

> "the term *white crime* is nonsensical in this era of mass incarceration… what it means to be criminal in our collective consciousness has become conflated with what it means to be black, so the term *white criminal* is confounding, while the term *black criminal* is nearly redundant."[157]

Recent scholarship has documented the conflation of people of color, especially black people, and criminality,[158] and nowhere is the racial disparity more clear than in the numbers. Today, the

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[154] Ibid, 78-79; Gottschalk, *Caught*, 35
[155] Alexander, *The New Jim Crow,* 133-134
[156] Ibid, 132
[157] Ibid, 198
[158] Alexander is not the only one to make this argument; Angela Davis writes that "'criminals' and 'evildoers' are, in the collective imagination, fantasized as people of color." Similarly, Khalil Gibran Muhammad examines the role of ingrained notions of black criminality on American politics and urban development. Muhammad argues that equating black with 'criminal' and 'dangerous' has served to justify legal and social racism since the earliest days of post-abolition. Saidiya Hartman writes that discourses around criminality entrapped newly freed black Americans into unequal and oppressive citizenship after the end of slavery.
See: Davis, *Are Prisons Obsolete?* 16, Khalil Gibran Muhammad, *The Condemnation of Blackness* (Cambridge, MA: Harvard University Press, 2010), Hartman, *Scenes of Subjugation.*

rates of incarceration for individuals in low-income communities of color are historically unprecedented.[159] The incarceration rate for black Americans is nearly six times as high as that of white Americans; it is two and a half times higher for Latinx individuals than for whites.[160] This racial targeting has created a new, permanent underclass: those with criminal convictions are released from prison only to find that discrimination against them is legal in nearly all areas of social and civil life.[161]

Legal racism, however, is inseparable from another continuous pattern throughout American history: racialized economic development and exploitation. Where the government has supported mass incarceration on one hand, it has engineered divestment and poverty in many majority-black communities on the other. The racial wealth gap that exists in this country seems almost insurmountable: it would take the average black family over 200 years to build the level wealth that the average white family has today.[162] For Latino families, that number is 84 years.[163] This gap is not an accident: it's the result of decades of social engineering, the consequence of pursuing policies that invested in white communities while denying communities of color, particularly black communities, the same opportunities.

Immediately after the abolition of slavery, states across the South found alternate ways to perpetuate a system of forced labor based on race. Collectively, practices such as sharecropping, convict-leasing,[164] and vagrancy laws that made unemployment and 'idleness' illegal for newly

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[159] Heather Anne Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *The Journal of American History* 97 no. 3 (2010), 703-704
[160] Peter Wagner, "Incarceration is not an Equal Opportunity Punishment," *Prison Policy Initiative*, August 28, 2012
[161] Alexander, *The New Jim Crow,* 141
[162] Joshua Holland, "The Average Black Family Would Need 228 Years to Build the Wealth of a White Family Today," *The Nation*, August 8, 2016
[163] Ibid.
[164] The 13th amendment, which abolished slavery, also made this coerced, unpaid labor possible: in prohibiting "involuntary servitude," it granted an exception for "as a punishment for a crime." From the beginning, criminal justice created a legal path for reinforcing already-existing forms racial domination, here by permitting the system of

freed black Americans became known as "slavery by another name."[165] As Saidiya Hartman explains it, the freedom offered to the newly emancipated in the days following slavery meant the "freedom" to enter into exploitative and unequal labor contracts, contracts that were not a choice at all but compelled by the law.[166] Compounded by centuries of plunder during slavery and no genuine, lasting attempts at reparations after abolition (despite the initial Reconstruction promise of '40 acres and a mule'), the government ensured a system of economic inequality that grew white wealth and thrust black individuals into poverty.

Throughout the early to mid twentieth century, the government intervened in new ways to grow white wealth at the expense of black security. In particular, housing policy served to concentrate poverty and disadvantage wherever black families moved in. The federal government's Federal Housing Administration made it policy to deny mortgages to homes in neighborhoods where black families lived, a practice known as redlining.[167] Unable to get legitimate mortgages, black families frequently became targets for predatory lending, risky contracts, and subprime mortgages, all of which often led to home foreclosure.[168] The result was that, wherever black families moved in, pathways to investment withdrew and property values began to plummet.[169] This sparked white flight into the suburbs, as much a product of intentional social engineering as personal prejudices and attitudes.

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slavery to continue under the specific context of criminal justice. As already discussed, the substance of crime was highly politicized and racialized; this was not a neutral exception.

[165] Douglas A. Blackmon, *Slavery By Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008)

[166] Hartman, *Scenes of Subjugation*, 146

[167] Ta-Nehisi Coates, "The Case for Reparations," *The Atlantic*, June 2014

[168] Ibid.

[169] Ibid.

Throughout the twentieth century, the economic opportunities and security that were afforded to white communities were curtailed for black ones. The Social Security Act excluded jobs predominately held by black workers.[170] Planned suburban developments like Levittown, built with the intention to fulfill for white people the fantasy of middle class security, privacy, and homeownership, excluded black families from buying property and moving in.[171] Employers preferred to hire white workers, landlords preferred to rent to white tenants, and real estate agents preferred to sell to white homebuyers.[172] Housing discrimination meant black veterans were unable to take advantage of low mortgage rates, one of the key benefits of the GI Bill.[173] As the government subsidized white veterans and their families to build wealth, black families were precluded from the same opportunities. The government invested heavily in economic development for white communities, playing an influential role in building the white middle class. But at every turn, black families were shut out.

Where white communities were offered economic investment, black communities faced something else: a state that saw them as criminals rather than citizens. Prison *was* the social solution the government offered, and the combination of divestment from communities coupled with the radical expansion of the police and prison system fomented a cycle of violence and incarceration in many neighborhoods.[174] By flooding urban neighborhoods with police officers

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[170] Steven Mintz and Sara McNeill, "African Americans and the New Deal," *Digital History*, 2016

[171] Julia C. Mead, "Memories of Segregation in Levittown," *The New York Times*, May 11, 2003

[172] Marianne Bertrand and Sendhil Mullainathan, "Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination" *The American Economic Review* 94 no. 4 (September 2004), 997-998; Laura Giuliano, David I. Levine, and Jonathan Leonard, "Manager Race and the Race of New Hires," *Journal of Labor Economics* 27 no. 4 (2009), 603-604; Gillian B. White, "Education Gaps Don't Fully Explain Why Black Unemployment Is So High," *The Atlantic*, December 21, 2015; The Urban Institute, Margery Austin Turner, Diane K. Levy, Doug Wissoker, Claudia L. Aranda, Rob Pitingolo, and Rob Santos, "Housing Discrimination Against Racial And Ethnic Minorities 2012, *U.S. Department of Housing and Urban Development*, June 2013

[173] David Callahan, "How the GI Bill Left Out African Americans," *Demos*, November 11, 2013

[174] Miller, "Racialized State Failure"

engaged in broken windows policing, the government ensured that black individuals were more likely to be forced in capricious contact with law enforcement, and that contact was more likely to lead to arrest or incarceration. "Short of major wars," Elliot Currie writes, "mass incarceration has been the most thoroughly implemented government social program of our time."[175]

The consequences of this have been catastrophic. Historian Heather Anne Thompson writes that the dramatic increase of aggressive policing and mass incarceration, beginning with Lyndon B. Johnson's Law Enforcement Assistance Act of 1965, not only preceded the rising wave of violent crime of the late twentieth century, but played a central role in causing it.[176] Prisons emptied out neighborhoods, ripped parents from their children, and made those returning home unemployable in legitimate economies.[177] As Thompson explains it, mass incarceration "[tore] at the social fabric of inner city neighborhoods" to create the conditions that give rise to violence.[178] For Lisa Miller, racialized state violence means that "a contracting of the state's role in promoting social and economic security, particularly as it applied to blacks, deep cuts to the kind of social spending that had helped create the white middle class, and a funneling of national resources into the professionalization of police and prisons" has exposed black communities to social risks that their white counterparts have never been forced to face.[179] The state, she argues, has the ability to expand or diminish the social risks that correlate with violence: white communities have been protected while black communities have been left vulnerable.[180]

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[175] Currie, qtd. in *Are Prisons Obsolete?,* 11
[176] Heather Anne Thompson, "Inner City Violence in the Age of Mass Incarceration," *The Atlantic,* October 30, 2014
[177] Ibid.
[178] Ibid.
[179] Miller, "Racialized State Failure"
[180] Ibid.

In short, America has abandoned black urban neighborhoods. Beyond that, it has subjected those who live there to a level of violence− through surveillance, police harassment and brutality, and policies of racialized mass incarceration− that we frequently ignore when we collectively imagine what violence entails. Violence and crime are said to be the sole province of individual behavior, but state violence, and the displacement of that violence experienced as collective trauma, is all too often accepted as normal. For proponents of "law and order" policing and "tough on crime" policies, this is exactly what the government is supposed to be doing.

Today, racialized state violence continues to expand to new locations and new targets such as students in schools. The well-documented school-to-prison-pipeline shows how associations between blackness and criminality affects children: black and brown students are disproportionately subjected to harsh school discipline policies like suspensions and expulsions, a practice that increases their likelihood of dropping out, and in turn becoming justice-involved. [181] Increasingly, schools are not bothering with this litany of steps: the growing police presence in schools has led to an increasing number of arrests of students on school grounds, often for minor behavioral infractions like disruption, and these arrests are disproportionately against students of color.[182] In 2014, the US Department of Education's Office for Civil Rights reported that black students make up 16% of school enrollment, but over 30% of school arrests.[183] For decades, our response to problems in predominately black neighborhoods and schools has been to increase police presence and criminalization. There's evidence that doing so only compounds

[181] Johanna Wald and Daniel Losen, "Defining and Redirecting a School-to-Prison Pipeline," *New Directions for Youth Development* 99 (Fall 2003), 9-15; Kenneth J. Fasching-Varner, Roland W. Mitchell, Lori L. Martin, and Karen P. Bennett-Haron, "Beyond School-to-Prison Pipeline and Toward an Educational and Penal Realism," *Equity and Excellence in Education* 47 no. 4 (2014), 410-429

[182] Dahlberg, "Arrested Futures," 9-11

[183] "Civil Rights Data Collection: Data Snapshot: School Discipline," *U.S. Department of Education Office for Civil Rights*, March 2014

the problems and recreates cycles of violence, but these communities haven't been offered the resources to try anything else. Today, outcomes in just about any area we can name− health,[184] employment,[185] education,[186] subjection to state or interpersonal violence[187]− are unequal along racial lines, but that's not the result of individual choices. It's that way by design, thanks to a deep history of social engineering and social indifference. This is the story restorative justice has failed to lay out.

Frameworks for Holistic Justice

What would it mean for restorative justice to take seriously the history of racialized injustice in this country? If, instead of alluding to vague notions of structural injustice, the movement instead chose to ally itself with a broader project of justice that aims to understand past wrongs and build justice after decades of theft, violence, and exploitation? Throughout our history, forms of oppression and domination have been perpetrated against communities and social groups. Yet these same communities are excluded from our conversations about justice under the liberal assumption that justice is a project for individuals, pertaining to individual rights. These communities have been harmed materially, placing the individuals within them in precarious conditions and exposing them to social risks, such as a lack of healthcare, quality education, and safe and affordable housing, that correlate to a rise in violence. Young people

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[184] Institute of Medicine, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*, (Washington, DC: The National Academies Press, 2003)

[185] Valerie Wilson, "Black unemployment is significantly higher than white unemployment regardless of educational attainment," *Economic Policy Institute,* December 17, 2015

[186] "Racial and Ethnic Achievement Gaps," the Educational Opportunity Monitoring Project at *Stanford Center for Educational Policy Analysis*

[187] Phillip Atiba Goff, Tracey Lloyd, Amanda Geller, Steven Raphael, and Jack Glaser, "The Science of Justice: Race, Arrests, and Police Use of Force," *Center for Policing Equity* (July 2016); Erika Harrell, "Black Victims of Violent Crime," Bureau of Justice Statistics, U.S. Department of Justice (August 2007)

who should be given the capacity to flourish are instead receiving the message that they are criminals.

Any project attempting to grapple with these facts requires a collective lens. Together, economic divestment, powerlessness, and psychological harm have worked in tandem to constrain entire communities from realizing meaningful forms of self-development and self-determination. Holistic conceptions of justice must recognize the wide-ranging forms of racialized, structural violence that have torn apart communities and in turn impacted nearly every aspect of community members' lives. Envisioning a holistic conception of justice requires us not only to shift our thinking to the collective, but to broaden it beyond "formal institutional rules," recognizing that injustice also takes root in our social climate with its accompanying social hostilities.[188] As such, justice must be multidimensional, both material and psychic: as theorist Shatema Threadcraft writes, it encompasses "political, economic, social, reproductive, emotional, and imaginative" aspects, all of which are dimensions of human life worthy of protection.[189]

There's precedent for extending the scope of justice beyond the domain of individual rights, as in the liberal legal framework, or material distribution, as it has been debated by most philosophers. A long history of black radical thought has viewed justice as both material and psychic, a promise of the realization of full personhood. For thinkers and activists who were countering forms of racialized legal and economic injustice in the post-Civil War and Civil Rights era, intertwining social respect with the fight for legal and material equality became essential.

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[188] Shatema Threadcraft, "'Movement' justice and the capabilities approach: Resources, social environments and social attitudes in black urban space," *Philosophy and Social Criticism* 41 no. 1 (2015), 57
[189] Ibid, 56

W.E.B Du Bois, writing on the the failed promise of Reconstruction, imagined an

American democracy that would be radical and liberatory, premised on genuine and substantive

freedom for all its citizens. For Du Bois, such a democracy would attend to both its citizens

material needs and their psychic fulfillment. Each person would enjoy a certain economic

standard that would allow them to live comfortably and without debt, and they would also have

the right to education, community relationships, and self-respect.[190] Du Bois' vision of

democracy meant, for workers, freedom from the exploitation of the wealthy planter and

capitalist classes; it meant genuine economic independence.[191] Just as important, it meant

fighting the "degradation of mankind" that slavery had inflicted upon black Americans.[192] This

required recognizing slavery as a form of both physical and psychological violence: Du Bois

writes, "the hurt to the Negro in this era [of slavery] was not only his treatment… it was the

wound dealt to his reputation as a human being."[193] Justice in the aftermath of slavery required

an uncompromising vision black humanity; this, along with material support and economic

investment, was a collective responsibility. "The burden [of justice for black Americans] belongs

to the nation," Du Bois wrote, "and the hands of none of us are clean if we bend not our energies

to righting these great wrongs."[194]

　　Throughout the Civil Rights Movement, Martin Luther King Jr. often equated a just

world with one that recognized the inherent dignity of its people. In *Letter from a Birmingham

Jail*, King accused white moderates of preferring "a negative peace, which is the absence of

[190] Lawrie Balfour, "Unreconstructed Democracy: W.E.B. Du Bois and the Case for Reparations," *The American Political Science Review* 97, no. 1 (February 2003), 36
[191] Ibid, 37
[192] W.E.B. Du Bois, *Black Reconstruction in America: An Essay toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880.* (Cleveland: Meridian, 1964), 39
[193] Ibid.
[194] Du Bois , *The Souls of Black Folk*, 72

tension to a positive peace which is the presence of justice."[195] A "a substantive and positive peace," he wrote, is one "in which all men will respect the dignity and worth of human personality."[196] King also drew a sharp line between law that was just and law that was violent, recognizing that the law was often a tool used to uphold an unjust order. He wrote, "one has a moral responsibility to disobey unjust laws… any law that uplifts human personality is just. Any law that degrades human personality is unjust."[197] Segregation laws, he added, are unjust because they "distort the soul and damage the personality."[198] King's choice to return to words like "dignity" "worth" and "uplift," in his passages on justice, pairing them with conceptions of "human personality" and "the soul," offers up an alternative subject of justice to the impersonal and atomized rights-bearer. Speaking under the shadow of racial segregation and terror, King understood full well that membership in a marginalized social group meant facing down forms of mental violence. In addition to legal and economic impacts, oppression robbed individuals of their sense of spirit, wholeness, and individuality. For King, justice must take psychological harm into account: the subject of justice someone worthy not just of legal standing but of social respect.

Writing in the tradition of black feminist thought, Audre Lorde in *Poetry is Not a Luxury* states the necessity of cultivating a sense of self that honors and nourishes imagination and creativity. A person's material status, she writes, and their psychic condition, are deeply intertwined. For her, the two rely on each other:

> "Our children cannot dream unless they live, they cannot live unless they are nourished, and who else will feed them the real food without which their dreams will be no different

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[195] Martin Luther King Jr., "Letter from a Birmingham Jail," April 16, 1963; published by the University of Pennsylvania's African Studies Center, ed. Ali B. Al-Dinar
[196] Ibid.
[197] Ibid.
[198] Ibid.

from ours? "If you want us to change the world someday, we at least have to live long enough to grow up!" shouts the child."[199]

For Lorde, tending to the self requires acknowledging that psychic needs, needs based on a sense of hope, emotion, and connection, are just as vital as those pieces of the self that are physical or mental. When Lorde declares that "poetry is not a luxury," she is writing to black women to tell them that they cannot find a true sense of freedom or justice under the rules that have dominated and marginalized them. "For within living structures defined by profit, by linear power, by institutional dehumanization," she writes, "our feelings were not meant to survive."[200] Those rules have denied the possibility and power of the whole self, fractured body from soul. Lorde's project requires caring for the spirit.

Radical black political movements, too, have connected demands for economic justice and political self-determination with the caretaking of themselves and their communities. The Black Panthers' 10 Point Program, created in 1966, begins, "We Want Freedom. We Want Power To Determine The Destiny Of Our Black Community."[201] For the Black Panthers, this demand for self-determination meant economic justice ("Full Employment," "Decent Housing")[202] and an end to the criminalization of black people ("An Immediate End To Police Brutality And Murder Of Black People," "Freedom For All Black Men Held In Federal, State, County And City Prisons And Jails") that for so long have comprised the dual tenants of legal racism.[203] Yet the Black Panthers also called for self-actualization and self-development, making one plank

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[199] Audre Lorde, "Poetry is Not a Luxury," published in *Women's voices, feminist visions: classic and contemporary readings*, ed. Susan M. Shaw and Janet Lee (New York: McGraw-Hill, 2012), 372-373
[200] Ibid, 373
[201] Huey P. Newton, *War Against the Panthers: A Study of Repression in America* (New York: Harlem River Press, 2000), 141
[202] Ibid, 141-142
[203] Ibid, 143

of their program "an educational system that will give to our people a knowledge of self."[204]

Neither improved material conditions nor an uplifted consciousness were possible without the

other: in closing, the Panthers wrote, "We Want Land, Bread, Housing, Education, Clothing,

Justice And Peace."[205]

The Movement for Black Lives, which released their policy platform in the summer of

2016, introduced a broad vision of justice that connects economic conditions with democratic

participation and community welfare. The platform, in their words, is a list of "Policy Demands

for Black Power, Freedom, and Justice."[206] The Movement for Black Lives includes traditional

remedies to economic and racial inequality, including a section entitled "economic justice" that

calls for protections for workers rights, progressive tax codes, job programs, and investment in

black institutions,[207] and a section focused on ending the "criminalization and dehumanization"

of black people.[208] Yet the platform also emphasizes community self-determination when it

comes to community institutions like education and law enforcement.[209] The platform calls for

"real community control by parents, students and community members of schools"[210] and "direct

democratic community control of local, state, and federal law enforcement agencies."[211] These

demands emphasize the necessity, as Iris Marion Young phrases it, of the right of community

members to have a say in determining the forces that shape their lives. The Movement for Black

Lives further connects justice to notions of empowerment and self-development, creating spaces

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[204] Ibid, 142
[205] Ibid, 144
[206] See, "A Vision for Black Lives: Policy Demands for Black Power, Freedom & Justice," published by The Movement for Black Lives (2016)
[207] See "A Vision for Black Lives," Economic Justice section
[208] See "A Vision for Black Lives," End the War on Black People section
[209] See "A Vision for Black Lives," Community Control section
[210] Ibid.
[211] Ibid.

for both physical and mental well being and freedom. As part of their Invest-Divest section, the platform demands "a free education for all… a curriculum that acknowledges and addresses students' material and cultural needs, physical activity and recreation, high quality food, free daycare, and freedom from unwarranted search, seizure or arrest."[212] In the Movement for Black Lives' vision, justice means the necessary conditions for self-development and self-determination: it means access to resources, a meaningful voice and active role in decisionmaking, and the ability to learn and grow in a space designed for one to thrive.

It is time for the restorative justice movement to stop hinting at these connections between the individual and the communal, the material and the psychic, and finally make them. And restorative justice values− participation, communication, relationship and community-building, and storytelling− seem well-positioned to work within a framework of justice that includes resisting structural inequality, caring for communities, and supporting individual development and well-being, both physical and psychic. In *Storytelling for Oppositionists and Others: A Plea for Narrative*, critical race theorist Richard Delgado writes that counterstories, told by members of marginalized groups, have a role to play in resisting structural oppression and injustice. "By becoming acquainted with the facts of their own historic oppression−" Delgado writes, "with the violence, murder, deceit, co-optation, and connivance that have caused their desperate estate− members of outgroups gain healing."[213] With new and liberatory knowledge, "one can stop perpetrating (mental) violence on oneself."[214]

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[212] See "A Vision for Black Lives," Invest-Divest section
[213] Richard Delgado, "Storytelling for Oppositionists and Others: A Plea for Narrative," *Michigan Law Review* 87 no. 8 (August 1989), 2437
[214] Ibid.

Delgado's "plea for narrative" refers to a grounded historical understanding of oppression, but it might also refer to the types of stories that emerge during circles and conferences in schools, prisons, and local communities, where members are given space to speak to their experiences. Delgado hopes storytelling can also promote group solidarity, strengthening community connections and ties and allowing individuals to recognize their own experiences in one another.[215] Storytelling has also been at the core of other anti-violence initiatives, for example Creative Interventions' StoryTelling and Organizing Project. Rather than using stories as a form of liberation from historic violence, as Delgado imagines, Creative Interventions views them as a tool to combat interpersonal violence. The project collects and shares stories of "everyday people ending violence through collective, community-based alternatives"[216] as a resource for understanding what harm and violence intervention facilitated by communities rather than the criminal justice system might look like. By returning responses to conflict and violence into the hands of those directly impacted by them, Creative Interventions argues their storytelling project is part of a broader grassroots movement for collective justice, "accountable to the vision of liberation and self-determination."[217] Delgado, organizations like Creative Interventions, and restorative justice practitioners alike recognize that dominant institutions often don't give a voice to those who have been harmed by their rules. For both, the creation of alternative forums– such as restorative justice conferences and circles– for such voices to be heard is a necessary component of justice.

Restorative justice, too, aligns itself with calls for democratic participation and self-determination. Restorative conferences and mediations require participation from those

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[215] Ibid.
[216] See, *Creative Interventions* website, "Stories" section
[217] Ibid.

directly impacted by harm, and circles involve those indirectly affected as well. In practice, restorative justice makes space for everyone present to speak and to share: this is guided either by the presence of a mediator or by the tradition of a talking piece. Participants make decisions based on consensus, and come to agreements based on their visions and values rather than predetermined laws and consequences. Taking Young's notion of self-determination‒ one's ability to participate in determining the conditions of one's life‒ as a condition of justice, restorative justice practices flip the traditional framework that makes community members solely objects of law enforcement and criminal justice, and instead makes them active participants in shaping the rules, consequences, and relationships that bind their communities.

Finally, restorative justice, when practiced in marginalized communities and schools that have suffered from decades of racialized state violence, recenters these communities as sources of value, and privileges their experiences and understandings over the traditionally dominant white perspective, which so frequently claims universality.[218] Within a critical race theory framework, Tara Yosso's Community Cultural Wealth Model aims to reverse the common understanding of communities of color as "places full of cultural poverty disadvantages" to focus on "the array of cultural knowledge, skills, abilities and contacts possessed by socially marginalized groups."[219] Yosso's model was not created for restorative justice practitioners, but her sources of value are closely aligned with restorative goals for community. The stories, emotions, and ideas shared in restorative practices can bring to light family history, memory, and cultural identity, present in Yosso's understanding of familial and social capital.[220]

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[218] Young, *Justice and the Politics of Difference*, 112
[219] Tara J Yosso, "Whose culture has capital? A critical race theory discussion of community cultural wealth," *Race Ethnicity and Education* 8 no. 1 (March 2005), 69
[220] Ibid, 79

Restorative justice draws on shared contexts and hopes, which are often expressed in conversations about identity and culture that circles and conferences make space for, to build relationships that can lead to collective forms of action. It can also create space for participants to share their aspirations, both for themselves and for their community, as well as forms of resistance they have learned against institutions "not created with Communities of Color in mind."[221] In this way, restorative justice considers material dimension of holistic justice as well: individuals are given space to discuss how structural harms and forms of racialized state violence have affected their lives and impacted their communities. Through practice, restorative justice builds skills for communication, collaboration, and problem-solving that allow individuals to go beyond identifying these problems to begin to address them. Restorative justice has always valued and centered its participants' lived realities, relationships, and visions of safe, healthy communities not facing harm. Yosso helps us understand this to be a liberatory act, and her model offers an alternative framework for what schools forced to work without equal distribution of resources or cultural standing may be able build on their own terms. In fact, many practitioners working in such schools today are using restorative justice values and practices to deepen these same sources of communal and individual strength, which I will explore more in the next chapter.

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[221] Ibid, 80

Chapter Three: Grassroots Restorative Justice in Urban Schools

A growing body of research has connected the zero-tolerance policies that proliferated throughout school districts in the 1980s and 1990s to the creation of a school-to-prison pipeline. [222] For students, time spent out of school as a result of suspensions and expulsions has been linked to further behavioral problems, disconnect from academic environments, and an increased likelihood of becoming involved in the justice system.[223] In response, educators across the country have turned to restorative justice as an alternative, a program and a philosophy they believe will help them build schools communities based on mutual respect rather the authoritarian, punitive climate zero-tolerance has instilled. The shift from zero-tolerance to restorative practice is popular: over the past five years, 27 states and 50 of the nation's largest school districts have revised their school discipline policies to reduce reliance on exclusionary discipline.[224] These changes have impacted some 6.35 million students.[225]

Most initial reports on restorative justice in schools are promising. Researcher Thalia Gonzales' examination of education-based restorative justice experiments across 12 states found that restorative justice programs overall led to a decrease in disciplinary incidents and suspension/expulsion rates in every school surveyed.[226] Another research review reports that all empirical studies of school-based restorative justice programs have found a reduction in

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[222] "Test, Punish, and Push Out," *The Advancement Project*, 9; Casella, "Zero Tolerance Policy in Schools," 875; Fronius, Persson, Guckenberg, Hurley, and Petrosino, "Restorative Justice in U.S. Schools," 16

[223] Gonzales, "Keeping Kids in Schools," 282, 291-292; Fronius, Persson, Guckenberg, Hurley, and Petrosino, "Restorative Justice in U.S. Schools," 16, Wald and Losen, "Defining and Redirecting a School-to-Prison Pipeline," 9-15; Fasching-Varner, Mitchell, Martin, and Bennett-Haron, "Beyond School-to-Prison Pipeline," 410-429

[224] Kemenetz, "School Suspensions Have Plunged"

[225] Ibid.

[226] Gonzales, "Keeping Kids in Schools," 305-321

exclusionary discipline and harmful behavior after the implementation of restorative justice.[227] A number of studies at individual schools have also shown that restorative justice has a positive impact on student attendance[228] while one study done of Oakland schools connected restorative justice with significant academic improvement, finding that graduation rates increased 60% over three years in schools that implemented restorative justice practices compared to only 7% for non-restorative justice schools.[229] Despite these findings, not everyone is positive about restorative justice: recently, Max Eden, a researcher with the Manhattan Institute, found that following a revision in New York City's discipline code to replace exclusionary discipline with restorative practices, students perceive their schools as less safe.[230] Yet by and large, support for restorative justice initiatives in schools has continued.

Massachusetts, with over 950,000 public school students, is one of the 27 states that has revised its discipline policy.[231] In this chapter, I will look at Massachusetts' statewide policy changes, as well as restorative justice initiatives at several Boston-area schools, to understand how some educators are using restorative justice efforts as more than just an alternative to discipline. I will argue that, for these schools, restorative justice is an opportunity to create participatory, engaged school climates, build student capacities for resilience, self-expression, and leadership, and connect school community members to broader conversations about social justice and equity. In these schools, restorative practices are not always successful. But a deeper

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[227] Fronius, Persson, Guckenberg, Hurley, and Petrosino, "Restorative Justice in U.S. Schools," 20
[228] Ibid, 21-22; Gonzales, "Keeping Kids in Schools," 314, 325
[229] Sonia Jain, Henrissa Bassey, Martha A. Brown, Preety Kalra, "Restorative Justice in Oakland Schools: Implementation and Impacts" (prepared for the Office of Civil Rights, U.S. Department of Education), Oakland, CA: Oakland Unified School District, Data in Action, 2014, 51
[230] Max Eden, "School Discipline and Disorder: Evidence from New York City Public Schools, 2012-16," *The Manhattan Institute* (Spring 2017), 22
[231] "2016-17 Enrollment By Grade Report (District)," Massachusetts Department of Elementary and Secondary Education

analysis of both their successes and challenges will help us understand how schools can chip away at systemic, embedded forms of racism and inequity that have devalued students and discounted their potential and instead begin to foster climates that encourage student growth, self-development, and self-determination. To advance this argument, I will evaluate what the quantitative data that looks at the relationships between restorative justice and disciplinary incidents, attendance, and graduation rates often misses: what are students actually experiencing? What conversations are they having, what skills are they building, and what new relationships and perspectives are they able to develop as a result of their experiences with restorative justice?

This question has been largely unexplored by the existing literature: research on restorative justice in educational settings is already limited, and the majority of it has focused on schools in Australia rather than the United States.[232] Although restorative justice has been welcomed as a potential solution to the school-to-prison pipeline, few researchers have specifically focused on restorative justice programs in urban schools that serve majority students of color.[233] If quantitative research on restorative justice in this environment is limited, qualitative research is even more so: the majority of the literature focuses on how restorative justice programs impact school disciplinary rates and incidents, and few go beyond this relationship to examine how students engage in restorative practices. In this chapter, I will rely on my own observations and interviews conducted at two Boston-area schools, as well as the case studies documented by researcher and restorative justice professional Anita Wadhwa in her book *Restorative Justice in Urban Schools: Disrupting the School to Prison Pipeline.* Wadhwa's ethnographic observations take place at two high schools also in the Boston area, which she

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[232] Evans and Lester, "Restorative Justice in Education: What We Know So Far," 60

[233] Anita Wadhwa, *Restorative Justice in Urban Schools: Disrupting the School to Prison Pipeline* (New York: Taylor and Francis, 2016), 26

refers to as Project Graduation and Equity High School.[234] Wadhwa's research was conducted at

schools with majority black populations, and Project Graduation in particular served a small

community of particularly high-risk students, students who had either failed a grade, been

suspended or expelled from prior schools, dropped out, or considered dropping out.[235]

As Wadhwa notes, the current restorative justice literature has neglected the relationship

between school disciplinary policies and race, despite the fact that an increasing number of

schools have turned to restorative justice specifically to remedy the disparate impacts of their

disciplinary policies on students of color.[236] As a result, current research lags behind current

practice, and there is little existing evidence that addresses the impact of school-wide restorative

justice initiatives on larger questions of race and equity. Wadhwa's research focuses on the

impact of restorative justice on mitigating and disrupting the pattern of racial disparities that

appear in school disciplinary policies. Her findings, based on observations and interviews with

students, staff, and community members, are particularly useful in exploring the role restorative

justice can play in raising awareness of and responding to the specific racial injustice that occurs

within the context of urban schools. I will use these findings within the school setting to engage

broader questions about how such programs contribute to a theory of holistic justice.

Although researchers have largely not focused on the relationship between race and

disciplinary policies, even policymakers have recognized the importance of correcting for

disparities. Cognizant of the inequities that both fuel and are exacerbated by exclusionary

discipline policies, Massachusetts adopted a new disciplinary code, known as Chapter 222,

beginning in the 2014-2015 school year. Advocates who drafted and supported Chapter 222 had

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[234] Ibid, 44
[235] Ibid, 43
[236] Ibid, 26

argued that school discipline strategies should increase students' time spent in school to "sever the school to prison pipeline"[237] and promote students' "sense of belonging and social responsibility."[238] Formally known as *An Act Relative to Student Access to Educational Services and Exclusion from School*, Chapter 222 laid out three goals: reduce the reliance on exclusionary discipline for minor incidents, strengthen due process protections for students and families facing disciplinary action, and improve monitoring and transparency through new reporting requirements particularly aimed at gathering data on marginalized groups.[239] Whereas zero-tolerance policies adopt the language and mentality of the criminal justice system, Chapter 222 explicitly turns to restorative justice as an antidote. It requires educators to try to use "evidence-based strategies and programs such as mediation, conflict resolution, restorative justice, and positive interventions and supports" before resorting to exclusionary discipline.[240] Chapter 222 has largely left the implementation of restorative justice up to individual schools, which has led to wide variations in actual practice.

In the year before Chapter 222 went into effect, school disciplinary incidents were already on the decline.[241] However, during that 2013-2014 school year, Massachusetts public schools still issued over 85,000 suspensions, 64% of which were in response to non-violent, non-criminal, non-drug incidents.[242] Black students, who make up 8.7% of the Massachusetts public school population, accounted for 43% of out-of-school suspensions and 39% of

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[237] Massachusetts Advocates for Children to Deval Patrick, August 6, 2012, in "School Discipline Resources," http://massadvocates.org/wp-content/uploads/2014/02/LettertoGovernorPatrick.pdf

[238] "School Discipline in Massachusetts," *Massachusetts Appleseed Center for Law and Justice*, 4

[239] Ibid.

[240] "Education Laws and Regulations," Massachusetts Department of Elementary and Secondary Education

[241] "School Discipline in Massachusetts," *Massachusetts Appleseed Center for Law and Justice,* 2

[242] Joanna Taylor, Matt Cregor, and Priya Lane, "Not Measuring Up: The State of School Discipline in Massachusetts," *Lawyers' Committee for Civil Rights and Economic Justice* (2014), 2

expulsions that year; 1 in 8 black students, and 1 in 10 Latinx students, faced discipline at least once, compared to 1 in 27 white students.[243] Disciplinary incidents in Massachusetts were also disproportionately concentrated, with 5% of schools accounting for almost 43% of all suspensions, expulsions, and alternative education placements.[244] Some charter schools reported suspending 6 out of every 10 students, and discipline rates were also shown to be particularly high in special education schools.[245]

The year immediately following the institution of Chapter 222 showed significant improvements, which can be attributed various aspects of the law that include but also extend beyond restorative practice. Suspension rates dropped for students of all races, ethnicities, and genders, and in all high-needs groups.[246] Overall, schools in Massachusetts reported a 21.2% reduction in disciplinary incidents, and the total number of students disciplined dropped from nearly 51,000 students to just over 40,000.[247] The racial discipline gap is also decreasing according to the data, but still persists: in the year before the law took effect, black students were suspended at a rate 8.2 points higher than white students.[248] This dropped to 6.3 points in Chapter 222's first year.[249] The gap between Latinx and white students also decreased, from 6.4 to 4.7 points.[250] The number of disciplinary incidents responding to non-violent, non-criminal, non-drug offenses is also decreasing, but remains high, and continues to account for the majority

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[243] Ibid.
[244] Ibid, 4
[245] Ibid.
[246] Ibid, 5-6
[247] "School Discipline in Massachusetts," *Massachusetts Appleseed Center for Law and Justice,* 7, 5
[248] Ibid, 7
[249] Ibid.
[250] Ibid.

of total disciplinary incidents in schools.[251] Overall, the discipline numbers suggest

Massachusetts is moving in a positive direction.

Disciplinary incidents, however, are not the sum total of school climate. At urban schools

that serve majority students of color across the country, success is more often measured by

behavioral compliance than learning.[252] Too often, schools breed climates based on distrust and

low expectations for their students, and curriculums that seem to bear little relevance to students'

lives and experiences create feelings of disconnect and alienation.[253] In her article "Critical Care:

A Color(full) Analysis of Care Narratives in the Schooling Experiences of Puerto Rican Girls,"

Rosalie Rolón-Dow chronicles an urban school in the northeast that prided itself on its

multicultural, diverse student body but then failed to create an equally multicultural curriculum

that would have allowed students to see themselves, their identity, and their heritage inside the

classroom.[254] In her conversations with students, all of whom were Puerto Rican girls,

Rolón-Dow found that they were conscious of their culture's erasure in the academic setting, as

well as of the prejudiced views adults in the building held about them and their families.[255] Racist

norms‑ a eurocentric curriculum, teachers' low expectations, and teachers' negative assumptions

about students' home lives‑ entrenched the belief for these students that they and their success

mattered very little to the adults in the building.[256] They perceived that their school didn't care

about them. Just as racialized state violence has shaped the distributions of wealth and violence

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[251] Ibid, 8-9

[252] Haberman, "The Pedagogy of Poverty versus Good Teaching," 291

[253] Herb Kohl, I Won't Learn From You: And Other Thoughts on Creative Maladjustment, (New York: The New Press, 1994), 15-17, 25-27; Lisa Delpit, *Multiplication is for White People: Raising Expectations for Other People's Children,* (New York: The New Press, 2012), 75-76

[254] Rosalie Rolón-Dow, "Critical Care: A Color(full) Analysis of Care Narratives in the Schooling Experiences of Puerto Rican Girls," *American Educational Research Journal* 42 no. 1 (Spring 2005), 81

[255] Ibid, 100-101

[256] Ibid, 95

in communities across the country, racism too has permeated schools and diminished the quality of learning and quality of relationships within school walls. While for some, restorative justice is little more than an alternative to discipline, many schools see restorative justice practice as intimately connected to the learning communities they hope to build. For them, practice requires not just a shift in addressing discipline but in mindset towards every aspect of school climate.

In practice, restorative justice varies by school. Despite the statewide law, restorative justice in Boston schools isn't centralized, although it's coordinated and monitored out of Boston Public Schools' Office of Equity. Created in 1974 after Judge W. Arthur Garrity's court ruling ordered Boston to integrate its public schools, the Office of Equity was originally intended to oversee Boston's compulsory busing program. Later, it became responsible for monitoring the distribution of staff of color across the district as well.[257] Today, the Office of Equity has a civil rights division that both handles cases and actively pursues preventative strategies by offering schools training and guidance to handle civil rights issues that encompass race, sexuality, and gender identity.[258] The Office of Equity collects data around school discipline and analyzes it at the district-wide level, but so far has left implementation of Chapter 222 up to individual schools.[259] Schools are responsible for training their own staff and introducing restorative justice concepts, practices, and philosophies within their own buildings. The Office of Equity, according to Senior Equity Manager Steven Chen, is attempting to learn from schools on a case-by-case basis before they draft a district-wide policy.[260]

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[257] Steven Chen (Senior Equity Manager, Office of Equity, Boston Public Schools), in discussion with the author, October 15, 2016
[258] Ibid.
[259] Ibid.
[260] Ibid.

As restorative justice grows increasingly popular, its proponents fear that its introduction into the mainstream may lead to shallower forms of practice. As I discussed in Chapter 1, we have seen a similar story occur in the criminal justice system, as restorative justice programs have compromised on core values to fit, albeit with tension, within the confines of the existing system. Advocates worry that this trend will lead to restorative justice in education becoming more about superficial compliance than a deep commitment to building peaceful, strong communities. Chen says that restorative justice is "the new buzzword" in education circles: he worries that its popularity has incentivized schools to pick up progressive language that may not "have a lot of meaning."[261] In their article "Restorative Justice in Education: What We Know So Far," researchers Lester and Evans fear that when schools have deeply ingrained punitive ideologies, restorative justice will face resistance or be co-opted by these punitive mindsets.[262] To realize the democratic, participatory values inherent in the most radical, and as I will discuss, most successful forms of restorative justice, schools will need to shift traditional decision-making and leadership roles into the hands of students and community members. In naturally hierarchical schools, faculty and administration who are accustomed to making decisions on behalf of students may find this transition jarring or uncomfortable, and many have been reluctant to take it on. Indeed, for some schools in Boston, the new requirements may not amount to more than another step to check off before handing down a suspension. Yet some schools have chosen to integrate restorative justice into classrooms and hallways, beyond just the discipline code, as a method of building genuinely supportive relationships, safe climates, and engaging learning communities.

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[261] Ibid.
[262] Evans and Lester, "Restorative Justice in Education: What We Know So Far," 61

Two such schools in the Boston area are the Cesar Chavez School and Pathways Public Charter School.[263] Cesar Chavez enrolls students from kindergarten to eighth grade, over 90% of whom are Latinx. Cesar Chavez is fully bilingual, with classes, instruction, and administrative activities conducted in both Spanish and English. The school has been practicing restorative justice for several years now, a project originally introduced by the school's former principal. She had learned about restorative justice from other Boston schools that were deeply entrenched in the work, and designed a five-year plan for implementing restorative justice at Cesar Chavez. This vision involved scaling up restorative justice, from training just a few teachers at the beginning, to having students hold and facilitate their own circles by year five. This year, the 2016-2017 school year, marks year four of that five year plan.

The Cesar Chavez school's model of restorative justice, according to teacher Andrea Cardozo, is part of a broader focus on social and emotional learning that coincides with the school's initiative to implement a comprehensive behavioral health model to support students in their development. Andrea, a former special education teacher, was among the first teachers at Cesar Chavez to be trained in restorative justice methods and philosophy; as a result, she has taken a lead role in bringing restorative justice into the classroom. She leads weekly restorative circles with eighth grade students, and is training middle schoolers to co-lead and facilitate their own circles. Cesar Chavez has incorporated restorative justice into both its school climate initiatives and its discipline policies: during the 2014-2015 school year, the school reported zero suspensions. According to Andrea, the school no longer uses discipline methods that send students out of school. "We want them here," she says. Instead, they've turned to in-school

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[263] I have changed the names of all students, teachers, and schools I refer to in this chapter in order to protect their identities.

suspensions for serious cases, as well as to forms of what she calls "community service," which refers to student involvement through reading books or teaching lessons to younger students on a topic related to their infraction. Discipline at the Cesar Chavez, she says, is about "what lesson we can have [the students] teach others." She adds, restorative justice is about creating three things: a genuine sense of belonging, safety, and social responsibility.

Pathways Public Charter School opened its doors in 1996, and currently enrolls over 1,000 students in grades kindergarten through 12. The student body is diverse: a little over half of students are black, but there are significant numbers of Latinx, white, and Asian students as well. Pathways is comprised of side-by-side brick buildings in the Boston area, one for the upper school and one for the lower school. This year marks the sixth year of their restorative justice program. Like Cesar Chavez, Pathways began practicing restorative justice thanks to the vision of a former principal. They didn't, however, implement an incremental five-year plan. It was a "total overhaul," current restorative justice coordinator Micah Wilson says. This, too, came with initial problems. According to Micah, some teachers felt undermined, and the staff was at times stratified based on those who were trying to practice restorative justice and those who were not. Pathways offered its faculty trainings, which helped, but it still took a few years to receive buy-in from the community.

Today, Micah says, Pathways sometimes struggles to make a philosophy that most staff and community members believe in practical in everyday life at school. Teachers can often feel like, "we get it, it's nice‑" he says, "but it's not helping when there's a student screaming and cursing in my face." Pathways has worked to make restorative justice more than just a form of discipline. By creating the position of restorative justice coordinator, the school has hoped to

separate restorative justice implementation from the administration that is responsible for student discipline. Pathways still has a disciplinary system, but when conflict arises, that system turns to restorative practices‑ circles, support meetings, and behavioral agreements‑ first. Today, Micah says, restorative justice is no longer implemented in uneven pockets across the school. Instead, he describes it as a mandate, the go-to method that all members of the school community, from administrators down to students, use to think about solving problems and making improvements to the school's academic and social climate. He says, "it's our culture." Pathways is also invested in training its students to practice restorative justice independent of adults in the building. The Restorative Justice Alliance meets Fridays over lunch, a group of self-selecting or teacher-identified high school students who are working to become restorative justice leaders for their school, younger classmates, and the Boston community.

I began visiting the Cesar Chavez and Pathways Public Charter School in the fall of 2016, after connecting to Micah and Andrea. I visited these schools a total of 12 times. I made six visits to each school, where I was present in classrooms, joined all-class circles and Restorative Justice Alliance meetings, and observed student trainings and conflict-resolution circles. My findings are based on my field notes after these observations, as well as informal interviews and conversations with Micah, Andrea, and students at Cesar Chavez and Pathways Public Charter School. At Cesar Chavez, I spoke to seven eighth grade students, all 13 or 14 years old, all Latinx, black, or biracial. At Pathways, I interviewed seven high schoolers between the ages of 15 and 19. Five of these students were black, and two were white. Because a core principle of restorative justice is that each person is present and every voice counts‑ that observers must be participants‑ I participated in each circle I sat in on. To respect the space, I refrained from taking

notes during the circle process and wrote up my observations on the bus back to Wellesley. I joined Cesar Chavez most frequently for their weekly circles with the eighth grade class, where the topic of discussion was often related to social issues, student growth, or social and emotional learning. At Pathways, I attended bi-weekly Restorative Justice Alliance (also referred to as the RJ Alliance) meetings. In this chapter, I will first describe my observations and at each school and then draw conclusions about the students' and teachers' work with restorative justice to create educational environments that they hope will be more engaging, academically rigorous, participatory, and just.

Pathways Public Charter School

Walking through the halls of Pathways gives the impression that this is a school deeply connected to social justice and political consciousness. On various visits, I saw student work displayed in the hallways or sitting out in the library that discussed topics like gender equity and "women of color feminism." Black Lives Matter flags and posters are present in the hallways of both the upper and lower school. In the AP Spanish classroom, a construction paper cut-out on the wall reads "RACE = power + privilege." Other signs, many of which appeared after the 2016 election, display support for Muslim, immigrant, and LGBTQ communities. On a more recent visit, I notice that Pathways has begun a transgender-specific campaign, highlighting facts such as the disproportionately high suicide rate for trans individuals, which are written over the background of a trans pride flag.

On my first visit to Pathways, Micah shows me the school's restorative justice classroom. The sticker on the door reads "you are right where you belong," and inside, the classroom walls

are decorated with diverse images and student work. Micah tells me that choosing to highlight

and display quotes from and pictures of people of color is part of the restorative mindset, a

"restorative choice." It's the first time I hear someone discuss restorative justice outside of

explicit circles and conferences: here, restorative justice means not just participating in a specific

set of practices, but also in being purposeful about constructing an environment that is supportive

and inclusive. The choice is in contrast, he tells me, to the eurocentric images that dominated his

own education. At Pathways, it's important for these students to know that "you're included in

the narrative of success." This commitment to having the student body see themselves

represented in their academic community holds true outside the restorative justice classroom.

Micah's own office contains a large poster of John Coltrane, and the room I later visit to observe

a conflict-resolution circle is bare except for a framed image of Martin Luther King. In the lobby

of Pathways' upper school, Beyonce lyrics are posted on the wall. When I ask Micah about the

Black Lives Matter signs present in the hallways and displayed in office windows, I learn

students are also a part of making choices about the symbols in their academic environment.

Micah tells me the signs are an example of "students being reflective."

 At Pathways, the Restorative Justice Alliance meets biweekly on Fridays at lunch,

usually in the library. It's always a confidential conversation, with other students and teachers

not allowed in. Micah brings pizza and cookies, and the high school students‑ who number

between four and twelve, depending on the day‑ sit in a circle to discuss how to use restorative

justice to improve their school. RJ Alliance circles follow the traditional circle format: Micah

facilitates, opening with a check-in and bringing a talking piece that usually carries some form of

personal significance, such as the arts and crafts piece he brought one week that was made by his

daughter.[264] Check-ins at the beginning of the circle give students the chance to share how their week has been going, if they're stressed about the upcoming math test or excited about the basketball season. Micah frequently models for the students, passing them the talking piece first but speaking about more personal subjects, and often going into more depth, when the talking piece comes back to him. In one circle, he tells us during check-in that he recently lost his grandmother and shares memories of visiting her in the Caribbean, while in another, he turns check-in into a lesson, telling students that his own week has reminded him that sometimes you need things to get hard to keep you going. Although it's not often, students too share intimate details about their lives while in the circle. At one meeting, after most students mentioned school and church activities that were keeping them busy that week, Eric told us his father was recovering from surgery.

The RJ Alliance usually spends their circles discussing how best to implement restorative justice at Pathways, as well as how to bring their restorative justice project to the broader community. In their meetings, students discuss topics such as which classrooms could benefit from support circles, how students are responding to conflict in and outside the classroom, how to help younger students transition to Pathways' upper school, and plans for presenting on restorative justice at local conferences. Throughout the meetings, two recurring themes in particular stand out: first, Micah and students focus on how restorative justice practices can build cooperative, peaceful communities within school walls, and second, they discuss how older students can use their involvement in restorative justice to serve as role models for younger students.

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[264] In this thesis, I use the terms circle leaders, circle facilitators, and circle keepers interchangeably. This refers to the person who plans and guides the circle, comes up with the question prompts, provides the talking piece, and holds circle members accountable to the circle guidelines. This person is not responsible for the circle's outcome.

Micah enlists his students for help on the first goal of building collaborate, peaceful

learning environments, telling them he relies on their insights "on the ground" to identify areas

of conflict and disruptive behavior at school. During one week's meeting, Micah spends part of

the circle asking students which classes are having problems and in need of support. Based on

his students' recommendations or on teachers' requests, Micah makes visits and records

observations in the identified classrooms before scheduling a support circle. Such circles, he

says, are co-facilitated by him and the student members of the RJ Alliance, who are responsible

for the circle's planning and prompts. When it comes to solving problem behavior, the RJ

Alliance students are integral throughout the process. On one of my visits to Pathways, I join the

students and Micah on a trip down to the art classroom. The regular art teacher had been absent

with an injury and for the past three weeks, the class had been run by a student teacher and a

substitute. The interim teachers felt they were having trouble keeping the class on task, and

specifically requested help from the RJ Alliance. Micah and his students spend about twenty

minutes in the classroom, observing and chatting with students about their art projects. Later,

back upstairs in the library, Micah and the Restorative Justice Alliance students sit in a circle,

passing the talking piece around and discussing their observations and recommendations for the

class. Although one student describes the classroom as "chaos," others were more sympathetic to

the student teacher, expressing concern that her role was to be mentored, not to be in charge of

the classroom so soon. This perspective aligns with what Micah says he hopes for from the

follow-up support circles. It's important, he says, that teachers participate, because he wants

them "to be human" and to be perceived as such around their students. Through the circle

process, responding to disruptive behavior becomes a collaborative process rather than a form of

discipline imposed by teachers on students. Further, the RJ Alliance's involvement offers

students an opportunity to develop their own capacities for leadership and peacemaking: Micah

says improving school climate becomes "not just what someone tells you to do, but seeing what

you can do, and then respectfully inserting yourself in a way to build peace." In their

observations at Boston and San Francisco schools, researchers David Knight and Anita Wadhwa

write that restorative justice "recasts youth as problem-solvers and assets to school

communities."[265] Not only does restorative justice connect students to other members of their

school community, the practice follows students' lead as they develop their own strategies for

fostering strong relationships and addressing conflict and violence.

RJ Alliance students seem eager to take on this type of leadership role. In one meeting,

Micah tells his students that some of the lower school classrooms are having problems and he's

looking for older students to lead a circle. He and the students agreed that these circles are most

successful when organized and facilitated by students, without him in the room. When he asks,

all four of the students present volunteered to lead these support circles. Micah sees restorative

justice as an opportunity for older students to become role models to younger students. To me, he

describes the members of the RJ Alliance as his "X-Men" whose presence in the classroom

inspires younger students to focus and behave well in hopes of impressing the older kids. At one

RJ Alliance meeting I attend, the topic of conversation centered around this relationship as

Micah and the RJ Alliance students brainstormed what an effective mentorship between them

and younger students might look like. The RJ Alliance agreed that students at the lower school

take academics less seriously, which makes the transition into junior and senior year of high

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[265] David Knight and Anita Wadhwa, "Expanding Opportunity through Critical Restorative Justice Portraits of Resilience at the Individual and School Level," *Schools: Studies in Education* 11 no. 1 (Spring 2014), 14

school difficult. This was a view that Micah had expressed privately to me in another meeting as well, when he added that a significant number of students struggle for months or even a year, which can set them behind significantly.

As the RJ Alliance passes the talking piece around, students discuss the advantage of a one-on-one program versus working with an entire classroom, what the ideal frequency of visits would be, and if their presence makes younger students more likely to behave well or act up for attention. One student, Andre, suggests an exchange program that brings younger students into the upper school instead of the one-way interaction they had been discussing. Micah envisions the relationship as involving academic support and tutoring. Throughout the meeting, the students engage one another, often debating each other's ideas. When a new student, Alex, suggests hosting an alumni panel, Andre pushes back, arguing that a panel might come off like a lecture and that this program should involve current, not former, Pathways community members. At other points, students are vocally supportive of one another when they hear ideas they like. In Andre's case, he snaps his approval. At the end of the meeting, Micah asks which of the RJ Alliance students would be willing to work with him on beginning the mentorship pilot. All eight students present raise their hands.

Working with younger students is a particularly prominent, and exciting, part of the restorative justice work for Pathways students. Alex tells me he started coming to Restorative Justice Alliance meetings because he heard they were making plans to work with younger students who could use the help of restorative justice and he wanted to be a part of it. He says that he didn't take middle school seriously‑ "it was a joke to me"‑ and he now wants to work with younger students to help them see the importance of investing in their education. Maya, a

junior at Pathways, tells me she has facilitated a number of circles for younger students. She describes helping to lead a circle of fourth grade girls to "talk things out" over the social problems they were having, as well as leading a circle of seventh graders who were struggling academically and in danger of failing their classes. The seventh graders, she says, got their grades up, but facilitating a circle with students closer to her own age, in tenth grade, about behavioral problems in the classroom was less successful. "They're more stubborn," she says. "It's harder to get through." Andre also describes his relationship to a seventh grade student he has been mentoring. Andre tells me he connected to him through his work with the Restorative Justice Alliance, and they meet regularly to play games and work on homework.

The Pathways administration is now working to institutionalize this initiative to strengthen academic relationships across grades through restorative processes. The school's Chief Academic Officer has requested a series of circles in May and June of this year to help incoming seventh graders transition into Pathways' upper school. The circles will include participants across grade levels but will be led by older students. They're intended to address both the academic and communal aspects of the transition: Micah says they will emphasize building social and emotional skills as well as academic preparation. Of course, RJ Alliance students will be involved in planning for these circles, and have already been tapped to lead them.

In addition to the circles that respond to patterns of disruptive behavior such as in the art classroom, Micah also facilitates support circles, which are targeted towards addressing specific incidents. He documents these interventions on an excel spreadsheet, tracking information such as participants, initial agreements, and follow-up. I observe one such restorative justice

intervention on one of my visits to Pathways. Over lunch period, Micah brings three ninth grade girls and a counselor together into a circle to address a conflict that's arisen in the girls' music class. Laila and Briana have not been getting along: Laila has been interrupting class, and has directed her interruptions, largely, at Briana, cursing her out or insulting her with seemingly no provocation. Other students have started retaliating against Laila, according to the third student in the circle, Adele, who is friends with both Laila and Briana. They're now trying to provoke her, and Laila has responded by running out of class and slamming the door.

Micah opens the circle by telling Laila that we're here to support her, not attack her. He begins by passing the talking piece around and asking the girls to share their view of the problem. At first, the girls will only admit to being annoyed with each other; it takes a few rounds of the talking piece before they start to open up that there's more at stake. Laila's behavior has impacted their relationships with each other, cut into their class time, and affected their grades, the girls say. Beyond that, it's clear that it's bothering Briana not to know why Laila responds to her in this way. At one point, as the students respond to Micah's question about what they'd like to see from each other, Briana gets visibly frustrated. She says, "I've been telling Laila my problems with her, but she won't tell me what it is about me that she's reacting to. What *is* it?" The girls are honest, even harsh, with each other. Briana accuses Laila of overreacting and playing the victim, Laila responds to Briana's question by saying, "you're just not my type of person." Even Adele admits that she doesn't know how to get through to Laila anymore. Yet they're also open with, and at times sympathetic to, each other. Adele repeatedly stresses her love for both girls. Laila says she's struggling to balance her commitments to her

family, her school, and her mosque. "I hear that," Briana says, but adds, "you can't bring all that to school and just dump it on other people so we have to deal with it."

When he is handed the talking piece, Micah takes the moment to reframe the circle, summarizing the girls' comments often using kinder, more constructive language than they did initially. He pauses to remind the girls not to refer to each other in third person, and to praise Laila for her spirit. "You're a loud person," he says. "It's who you are… and I love that about you. When you come in in the morning and you say 'Hey Mr. Wilson,' that gets me *hyped!* But when you bring a negative energy into it, it gets different." He reminds the girls of the importance of the issue in front of them: "Laila," he says, "you're bringing this pain home. Briana, you're walking around with this frustration."

The circle ends without a firm behavioral commitment from Laila, but she does promise to spend the next few weeks thinking about what she's heard in the circle, and Briana promises to give her space. They each promise to practice patience and mindfulness; Adele promises to continue to be Laila's friend. Micah says he'll follow up with each of them in two weeks. He tells them that this process takes time and that their conflict won't dissipate overnight, but over time, their relationships will get easier. He closes the circle by thanking everyone specifically for what they brought today, including Laila for being honest, Adele for being willing to be patient and a friend, and me for observing.

Cesar Chavez School

The Cesar Chavez School is located at the top of a hill in a quiet section of a Boston neighborhood, nearby to community centers, beauty salons, and corner grocery stores. Inside,

what feels like every inch of the school is decorated with a mix of motivational quotes, most of which are student-made and written in both English and Spanish, and culturally relevant imagery such as a student-painted mural of Cesar Chavez, a poster of Guatemala, and a Puerto Rican flag that matches others flying in the neighborhood. Rules, values, and student work are displayed on doors, walls, and hallways in both English and Spanish. Other, more pointed messages, are expressed in both languages as well. Since the election, banners that read "all are welcome here!"/"¡todos son bienvenidos aquí!" have been hung throughout the halls. Walking down the hallway to the Resource Room where eighth grade circles are held, I notice the words "protest" and "resistance" are defined in large writing above a classroom door. Like Pathways' Beyonce quotes, Cesar Chavez also makes an effort at cultural relevance: lyrics from the song "My Shot" in the musical Hamilton, a hip-hop musical written by a Latinx composer, where actors of color portray the country's founding fathers, are posted on the wall.

Andrea's resource room, where restorative justice circles and trainings take place, doesn't look like a regular classroom. While it has some traditional elements‑ examples of sentence diagrams and fraction problems hang on the walls‑ students join each other for circles by sitting in brightly colored chairs laid out around a rug, where a potted plant forms the centerpiece. The space is cozy and bright. It's filled with books, including everything from picture books to the Harry Potter series to a number of books on restorative justice practice, and pictures of the students themselves take up an entire door. On the bulletin boards, Andrea posts questions that ask students for their opinions on topics like the recent change in Massachusetts marijuana policy, if a 15-year old should be tried in court as an adult, and if kindergarteners should be suspended from school. (With regards to the last question, every student has written some

variation of "no.") Another bulletin board contains a variety of restorative justice guidelines, all handwritten. These guidelines encompass norms for staff, for eighth graders, and specifically for circle conferencing. The eighth grade grade list reads:

> "Remain in the circle
> Speak from the heart
> Listen from the heart
> Without feeling rushed, say just enough."

The eighth grade students come to this classroom three times a week to learn and practice restorative justice. Once a week, they have their own circles, where they discuss topics related to the news or to growing up. Twice a week, many of them come back to learn how to be circle keepers. On these days, they work with Andrea through the process of planning circles for the younger students. By March, they are keeping circles in elementary school classrooms. Although the Cesar Chavez restorative justice program is in its fourth year, and students across all grade levels participate in weekly circles with their class, this project‑ training students to be restorative justice leaders‑ is new. Students that I talk to tell me they've only been involved for the past few months, since November or December. In addition to planning their own circles for other members of the Cesar Chavez community, students tell me about other work they've done that they're proud of: they've also designed a school-wide restorative justice poster campaign, and have gone to Harvard to present on restorative justice and lead a circle with graduate students there.

Andrea's weekly circles with the eighth grade students are intended to introduce conversation on a wide variety of topics. Her lesson plans include circles for teaching and learning, developing social and emotional skills, and having difficult conversations on social justice and inequity. Some circles offer students a chance to share their academic work, such as a

writing project they've spent time on. Prompts for other circles include building capacities for

emotional development, such as one circle plan that start with the question, "what triggers your

anger?" There are also plans for circles to tackle conversations around issues of white privilege

and bullying. When I visit Cesar Chavez only two weeks after the Donald Trump's election, that

day's circle topic is Islamophobia. In the circle, the students read two articles, one about a

Muslim woman who was harassed on a train, and another about a group of students and teachers

at a school in Massachusetts who wore hijabs in support of the Muslim community after the

election. The students and Andrea debate whether or not it's appropriate to respond to

Islamophobic bullying or harassment with violence of your own. Monica says that if "someone is

jumping you," it's okay to fight back; while most of the students back her up, Andrea disagrees.

On another day, the subject of the circle is healthy relationships, and students pass the talking

piece around while discussing the relationships in their own lives. Andrea asks questions like:

> "What do you do for people you have relationships with to make them happy?
> What do they do for you?
> What is a healthy relationship in your life? Why?
> What is the single most important ingredient in a healthy relationship?"

Students talk about their best friends; two boys mention their mom. To my right,

Elena says the best relationship in her life is with "Taneya, because she buys me food." Taneya,

who is sitting on my left, says "Really? Of all the things you could have said?" Elena responds,

"I said that because it's the least important." Although circles are often assumed to shed light on

structural barriers and forms of harm that would otherwise remain invisible in the classroom, not

all emotionally vulnerable moments they contain are negative: When Andrea closes the circle,

she ends with a quote that says healthy relationships are about two individuals helping each other

become their best selves. In between the comments of "that's deep" from the other students, Elena says, "that's you, Taneya. You make me my best self."

The circles cover other politically and socially relevant areas of conversation as well. On one of my visits, the students and Andrea read and discuss an article about the changes that come with puberty. While the conversation is primarily about physical development, there is some discussion of emotional difficulties as well, with Andrea acknowledging that this is often a period in which students are struggling to find their voice. Elena tells me that in circles, she's discussed Donald Trump and Black Lives Matter. Rafael says he's participated in circles that have discussed racism, immigration, and drugs. In fact, a number of students mention the circle on drugs to me in our conversations: Anthony says it's the most interesting one they've had. Another student, Adrian, says that classrooms across the school held circles on the day after Donald Trump's election. In the 90% Latinx school, teachers told their students that regardless of the election results, "everyone is welcome at this school."

Andrea's circles have an order to them: she begins with an opening, which is usually a quote of some kind. She brings a talking piece, usually a heart-shaped rock. Circle begins with a check-in, giving students the chance to share something personal, such as a highlight of their week, or something they're looking forward to. After several questions and rounds of passing the talking piece, Andrea reads a closing, which is either another quote or another check-in question such as, on one week, "what are you grateful for?" Maintaining the integrity of this structure matters to Andrea. "Nobody breaks my circle," she says. Anyone in the room is participating in the circle, and there are no interruptions or leaving the circle for any reason. Andrea understands

that "no circle is perfect," but holding the space is important, even when it means students need reminders of the guidelines they've created, or to sit in silence for a while.

In addition to participating in Andrea's circles, many of the eighth grade students are preparing, with Andrea's help, to run their own. These circles are designed for students in the younger grades, and the eighth graders spend sessions of their circle keeper's training pouring over lists of prompts to find ones that are developmentally appropriate. For the kindergarten-first grade class, they've chosen a question about favorite superheroes. Sometimes, for younger students, Andrea says, it might make sense to have them draw pictures rather than talk. On one of my visits, the eighth graders are leading a circle they've prepared for the third grade class. Although Andrea supplies the talking pieces after the students forget to bring their own, the circle's opening, check-in, questions, and closing all come from them. The eighth graders work alone or in pairs to facilitate circles of four to six third grade students. They've prepared prompts that focus on broader personal hopes and goals: what's someone or something you'll never give up on? What do you need to be successful? While the third grade students don't give particularly in-depth answers, they do cover a range of ideas: one girl mentions Harvard while a boy to her left defines success is "winning baseball trophies." The other, more immediately academic purpose of this circle comes out in the other genre of questions the eighth grade students ask, which center around the MCAS, Massachusetts' statewide standardized test. The MCAS will begin the day after this circle is held, and the eighth graders are trying to help the third graders, who will be taking the exam for the first time. They ask how the younger students are feeling, and pass the talking piece around to brainstorm strategies for when they get stuck in the exam. The third graders I'm watching are more likely to say they feel ready for the test than nervous,

and the eighth graders give them advice about eating and sleeping well beforehand that it seems like the third graders have heard before, which suggests that adults are prompting the eighth graders to a certain extent. When one eighth grade student, Matteo, finishes his circle early, he improvises, asking the younger students what they think the word empathy means. One boy tells him it's "knowing how people feel based on how they look, and helping them."

At the end, the third graders are asked to give feedback for their circle keepers. They mention who spoke clearly and explained things, and who didn't. One girl said she was excited to do a circle without teachers. Another boy, who participated in Daniella and Anthony's circle, said he felt "proud" to be a part of the eighth graders' circle because "the questions were about us, about ourselves." "You see," Andrea responds. "They want to get to know you!"

Findings

In this thesis, I turn to the practice of restorative justice in schools, as opposed to the more established and more common programs found in the criminal justice system, because schools provide unique contexts to explore restorative justice as more than simply an alternative to traditional punishment, whether incarceration or exclusionary discipline. Unlike restorative justice in the criminal justice system, which responds to individual cases of conflict and violence after they have occurred, restorative justice as practiced by these schools focuses in large part on disrupting systemic patterns of inequity and cultures of disempowerment in school settings. Educators and students use restorative justice to engage in practices of building community and developing agency that allow them to create the types of environments where they can best learn and be their full selves. Restorative justice is not solely about finding a better resolution to

interpersonal conflict, but is also intimately connected to creating conditions in which students receive opportunities to lead, to collaborate, to be valued, and to have a voice in their daily lives at school. These two goals work in tandem: open, participatory learning conditions also are a factor in reducing disciplinary incidents at school.

Restorative justice, according to experts and educators, including all that I've talked to, is easy to do wrong. In some schools, teachers have accused restorative justice initiatives of allowing problematic or even violent behavior to go unanswered, so that students do not face real consequences.[266] Observations of restorative practice, including Wadhwa's and my own, have found that it's fairly common for adults in the building to initiate, plan, and set the agenda for most circles, which can lead to students feeling less engaged or even silenced.[267] Community-based restorative justice advocates have expressed worries that restorative justice in education is becoming increasingly packaged and professionalized, introduced to school settings by those with little connection to the school or neighborhood community, who are more interested in results that can be quantified than anything else.[268] Wadhwa, in her work, also noted that when students facilitated support or healing circles, they were at times inconsistent in following through on behavioral agreements.[269] For these schools, attempting to balance a genuine need for accountability‑ for students' behavior at school as well as for adherence to circle guidelines‑ often comes into conflict with restorative values of non-punitiveness and non-authoritarianism.

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[266] See, for example: Teresa Watanabe and Howard Blume, "Why some LAUSD teachers are balking at a new approach to discipline problems," *Los Angeles Times* (November 7, 2015) and Juan Perez Jr., "Teachers complain about revised CPS discipline policy," *Chicago Tribune* (February 25, 2015)

[267] Wadhwa, *Restorative Justice and Urban Schools*, 140

[268] Ibid, 109

[269] Ibid, 142-143

Above all, educators have told me, restorative justice requires time. In one of our earliest conversations, Micah said to me that people like suspensions because they're a quick fix, implemented right away with minimal effort. Restorative justice requires far more planning, patience, and follow-up. But, he also told me, suspensions don't get to the root of the problem. If done well, restorative justice can be far more effective than traditional methods, but doing it well requires support, training, resources, and investment. In both of the experiences of Pathways and Cesar Chavez, that initiative couldn't come from a select few teachers. Efforts to implement restorative justice were successful because they happened under the direction of the administration.

I was interested in restorative justice at Pathways and Cesar Chavez not because they represent a typical school interested in implementing restorative justice but because they are atypical. Restorative justice in these schools has been well-established, after several years of practice and with the support of the school community at multiple levels throughout the administration, staff, and student body. Students and teachers invest in restorative justice not just as a means to address conflict and disciplinary incidents, but to create something positive: a school culture that is peaceful and community-oriented, that values student voice, student involvement, and student achievement. At these schools, restorative justice is not about solely about reducing what is harmful but also about building what is better.

In the previous chapter, I wrote that a vision of holistic justice must take into account individuals' material and psychic needs as well as the ways in which structural injustice, specifically racialized state violence, has constrained their self-development and self-determination. At Pathways and Cesar Chavez, as well as other schools with similar

missions, restorative justice can create relationships between students and educators, and between students and other students, that develop student capacities for academic engagement, social and emotional growth, leadership, and communication. Restorative justice further creates a forum for students to participate and take ownership over efforts to improve their school communities. While restorative justice helps to facilitate student development and agency specifically within the school setting, teachers and students use their work to remain connected to broader discussions about racialized injustice and inequity, to better understand their own experiences and those of their community's.

I'll begin here by discussing the role I've seen restorative justice play in fostering students' self-development in the academic context, which is a core part of Micah and Andrea's mission. Research has generally framed academic improvements as an added side benefit that occurs when disciplinary incidents drop; at Pathways and Cesar Chavez, restorative justice builds relationships between teachers and students that keep students engaged and motivated in their education. On one of my visits, I asked Micah about the connection between academics and restorative circles in the context of a conversation we are having about the administration using circles to help incoming seventh graders transition into the upper school. Micah told me that as an educator, he sets high expectations for his students, but he sees restorative justice as the means through which he can provide them with support to reach those expectations. He says he can't expect his students to achieve but abandon them to figure out how to get there on their own. At its best, restorative justice builds and maintains relationships between teachers and students so that students feel their teachers genuinely care about them and their success. These

relationships can help students develop a sense of confidence and psychological safety that

enables them to set high academic goals, take risks, and feel invested in their education.

It's hard to overstate the impact good teachers have on students' education. Multiple

researchers have shown that traditionally at-risk students who are able to succeed in their schools

attribute their success to at least one adult who supported them and was there for them.[270] British

researcher Peter Mortimore found that the quality of teaching has six to ten times as much impact

on students' success as all other factors‑ including poverty, inequity, and family problems‑

combined.[271] Educators and researchers agree that good teaching is even more imperative for

otherwise disadvantaged students; as Gloria Ladson-Billings argues, while children from more

privileged, wealthier backgrounds have been shown to perform well in school despite

substandard teaching, less privileged students are "school-dependent," and rely on their schools

and their teachers entirely to prepare them success.[272]

In our conversations, I hear from students at Pathways that restorative justice plays a key

role in fostering stronger relationships between them and their teachers. Andre tells me that

restorative justice has brought him closer to his teachers: "I ask how their day is, how their life

is," he says. "I can shoot them a text tonight about the homework." His teachers, he adds, "are

always available for you‑ they're here for you." Taylor, a senior, credits restorative justice for

changing the climate at Pathways from a place where "students acted up and got sent home" to a

place where teachers and students work through their problems together. Thanks to restorative

justice, she says, "you have to face your issues... and talk about your feelings before you

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[270] Delpit, *Multiplication is for White People*, 72; Michael Sandowski, "Portraits of Promise: Voices of Successful Immigrant Students," (Cambridge, MA: Harvard University Press, 2013)
[271] Delpit, *Multiplication is for White People,* 73
[272] Ibid, 72

explode." She adds that the restorative justice mindset‑ taking time to calm down, choosing to

engage in dialogue, and committing to finding a mutual solution‑ helped her get through an

argument with a teacher she is close with.

In her observations at Project Graduation, Wadhwa found that the closer connection

between students and teachers, and the genuine relationships and forms of care that emerged

through countless restorative justice circles, was an essential motivator for students. One student,

Darius, described his teachers at Project Graduation as "role models."[273] "The work that they

give me, the way that they challenge me… I haven't really been challenged like this before," he

said, giving credit in part to the circles for bringing students and teachers together, for creating

space for "a bunch of kids who can actually express themselves."[274] Another student, Jacob,

came to Project Graduation after years of suspensions and failing grades. At Project Graduation,

he found new academic motivation, which he attributed to his teachers who consistently showed

him that they cared about him and were proud of him.[275]

At Pathways, Micah also uses restorative justice to build a different kind of relationship,

connecting older students to younger students as tutors and academic mentors. He consistently

reminds the Restorative Justice Alliance that the younger students in the building look up to

them, and that he relies on them to model positive academic behavior that is more influential

coming the older students than in the form of a lecture from adults. A lot of the restorative justice

work at Pathways also centers around creating healthy classroom environments conducive to

learning. Micah and his students identify classes struggling with behavioral issues based on

either their own observations or others' requests, and plan and facilitate circles between students

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[273] Knight and Wadhwa, "Expanding Opportunity through Critical Restorative Justice Portraits," 20
[274] Ibid.
[275] Ibid, 21

and teachers to bring the problems to light and discuss potential solutions. During one

Restorative Justice Alliance meeting I observe, students discuss the success of some of these

circles in their own classes. On the whole, students seemed to agree that since these circles had

occurred, things had gotten better: teachers were more clear with their expectations, and students

felt the process worked because it was collaborative rather than punitive. Yet this wasn't the case

for everyone, as in the example of Kamari, who attributed the decline in behavioral problems in

her music class not to the circle they had held, but to the fact that students had stopped caring.

When students and teachers do buy in, circles can shed light on the root causes of

students' disengagement. At Pathways, students are able to provide context and feedback that

make sense of behavioral problems. Maya had observed that many students in the art classroom

we had visited were more focused on their conversation that their projects, and added that they

were likely overcompensating for the fact that their regular teacher hadn't allowed them to talk

while they worked. While Maya's example helps explain an intra-classroom dynamic, other

information revealed in circles can speak to deeper, harder to resolve problems. In the case of

Jacob at Project Graduation, circles allowed him to reveal that he was struggling with witnessing

violence at home and periodic homelessness, which impacted his behavior and his ability to

succeed in class.[276] The Project Graduation students Wadhwa observed were particularly at-risk,

yet all of the students in that class went on to graduate.[277]

Through restorative justice, students and teachers are able to develop close, trusting

relationships that help students feel connected to, rather than disempowered by, their own

education. Restorative justice can create a school environment where students feel supported,

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[276] Ibid.
[277] Ibid, 27

challenged, and motivated to succeed. At the same time, both restorative processes and the trust

between students and teachers enables students to be honest about larger obstacles that may be

preventing their success. This in turn allows teachers to better understand and support them in

and outside the classroom. While developing academic skills is crucial for students' own goals,

it's also a victory in the face of systemic, racialized injustice that has for so long led to lesser

quality education for many students of color. As researchers Duncan-Andrade and Morrell argue,

"there is no educational justice without the development of strong academic skills among

populations that have been historically underserved by our educational system."[278]

Also at the heart of school-wide restorative justice practice is the development of

students' social and emotional skills. Conversations during both talking and healing circles that

give voice to a variety of perspectives and experiences help develop students' capacities for

communication, for conflict-resolution, and for empathy. Daniella, an eighth grader at Cesar

Chavez, says of restorative justice: "It's changed my life, to be honest. I have two perspectives

now. One, my perspective. Then, to think about others for once." This is echoed by some of the

students I talk to at Pathways. Taylor says that restorative justice has taught her that "it's not just

me, it's not just you, it's both of us," which for her means asking other people questions to

understand where they're coming from. Her classmate April says restorative justice has taught

her to see multiple ways to handle situations. "I incorporate it everywhere I go," she says. "I see

a problem" among family, friends, or even strangers, "I try to help out as much as possible."

Andre says restorative justice has helped him to bridge gaps, and helped him develop a sense of

confidence in himself. "I feel like I can talk to any adult," he says. "I'm going to look at you like

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[278] Jeffrey M.R. Duncan-Andrade and Ernest Morrell, *The Art of Critical Pedagogy: Possibilities for Moving from Theory to Practice in Urban Schools* (New York: Peter Lang Publishing, 2008), 113

you're my equal. I don't feel scared when I'm in environments where people don't look like me." As a young black student who will have to navigate settings where people don't look like him, Andre suggests that restorative justice has given him the ability to be heard even in unjust or discriminatory institutions.

At Cesar Chavez, Elena says restorative justice has taught her "that you can handle situations in ways other than violence," such as through communication. "There's never really violence now" at her school, she says. "Now when there's a problem, everyone talks about it." *Everyone talks about it* seems to sum up the approach at Pathways as well as at Cesar Chavez: as I mentioned, Taylor says restorative justice changed the school from a place where students got kicked out for behavioral problems to a place where students are brought into dialogue to resolve their conflicts. I hear the same thing from Pathways senior Jay, who says that the pink slips‐ write-ups for academic and behavioral infractions‐ he used to see everywhere are now gone, replaced with one-on-one conversations with teachers and counselors. According to these students, restorative justice has helped them to hear one another, and to approach conflicts with the assumption that the resolution can benefit all involved instead of it being zero-sum.

Beyond fostering students' critical skills for success in both academic and social environments, restorative justice practice helps foster students' self-determination. In doing so, students begin to view themselves as part of a community in which they play an active role. Because they have the power to determine the conditions that shape their school, they become interested in using that power to build safe and peaceful communities. At Pathways, Alex was drawn to restorative justice for the chance to work with younger students. Andre and April, too,

are involved in mentoring younger students academically while Maya has stepped in to facilitate circles to address academic and social problems across different grade levels.

In my conversations with the eighth graders at Cesar Chavez, I hear from a number of students that involvement in restorative justice has made them feel more connected to their school and therefore responsible for what happens within it. Before getting involved with restorative justice, Rafael says, "I didn't really help out. I wasn't mindful of the younger kids at all… of how they look up to us." Adrian tells me that his most memorable experience with restorative justice has been reading to younger students. "It's fun," Daniella tells me, referring to circle keepers' training. "We're trying to create circles for younger kids‑ we're trying to create a better place and get students to share what's on their minds." For each of these students, reflecting on their experiences with restorative justice has led them to think about their own engagement with their school. That means more than just caring about the school community: it means taking part in improving it. Most of the Cesar Chavez students I talk to mention their responsibilities to younger students, saying that restorative justice has helped them to be visible and involved as good role models. In this way, restorative justice helps students to conceptualize their own leadership and agency. They also develop the skills to be active leaders and participants, as they work with Andrea and each other to plan their own circles, which involves creating the opening and closing, choosing or developing their own questions, modeling circle behavior for younger students, and receiving feedback on their work.

Students consistently reiterate that they see themselves as part of a broader community, and feel a sense of social responsibility and care for its members. Although agency is often understood as deeply individualistic, students discuss their relationships with their teachers and

each other, and their sense of belonging in their school community, as the source of their ability to affect change. Additionally, educators like Micah and Andrea offer their students forms of both material and psychic support so that they can participate. Micah, for example, is always feeding his students, bringing lunch for the Restorative Justice Alliance on Fridays. On one day that Adele doesn't have her lunch, he gives her his own. Students are also respected by their teachers, who solicit their views and take their suggestions seriously. I witness this many times, such as when Micah turns to his Restorative Justice Alliance students as experts on what healthy, peaceful dynamics in the art classroom would look like, and how they can begin to build them, or when Andrea gives her students the responsibility of planning and leading circles for third grade students.

As these students take part in building their communities based on values of empathy, participation, and social responsibility, they also benefit from them. They are building communities that try to hold individuals responsible for their actions without doing them harm. Laila's case makes this especially clear. Laila's behavior as Adele describes it‐ cursing, ignoring her teacher's instructions, slamming doors‐ reads nearly identical to the reports for several arrests the ACLU documented in the Springfield, Massachusetts school district. Instead of facing arrest, Laila joins a circle with school community members, including her close friend, who are there to listen and try to understand. In the circle, Laila opens up about feeling overwhelmed and overly sensitive to others, and is able to relate her situation honestly without fearing she will be shut down for some of her less polite comments. Rather than hearing that she is a problem, Laila is instead reminded of her relationships to other people at her school, and their investment in her well-being. While Laila could have been disciplined through a suspension or law enforcement

referral that would have sent the message that she was not welcome at Pathways, Micah instead wants her to hear that she is valued and supported. The circle reaffirms that while Laila commits to working on her own behavior, the other circle members re-commit to Laila.

As students and teachers use restorative justice to build communities that do not re-create patterns of harm, they also turn their gaze outward, to systemic forms of violence. Restorative justice does not, on its own, create the political engagement I saw present in these schools, both on the walls and in the curriculum. Yet for these schools, restorative justice exists within a broader commitment to social awareness and social justice. In practice, restorative justice is particularly conducive to introducing and facilitating meaningful conversations about these issues. I observed Cesar Chavez students use a circle period to discuss a rise in Islamophobia connected to Donald Trump's campaign and then his election. They discussed what solidarity with the Muslim community might look like, as well as acceptable forms of self-defense against harassment, bullying, and even hate-based violence. In these circles, students do not just discuss the existence of structural harm but also how they might respond to it. After Donald Trump's election, Cesar Chavez teachers used circles to re-dedicate themselves to their students, promising them that they were welcomed and valued at school regardless of what was happening outside it. Teachers recognize that political realities, including discourse that equates Latinx and immigrant with illegal, impact their students' safety, and that their students' lives continue to be affected by forms of racialized violence that view them, inherently, as criminals.

At Pathways, Andre says that restorative justice has introduced him to the concept of racial discrimination in school discipline practices, as well as how he can advocate for restorative justice as a potential solution. Schools that are punitive, he says, "may not realize it, but they're

targeting African-American students." He says that black youth who get in trouble for behavioral

problems often don't benefit from the same backgrounds as white students. "We don't see people

going to college too often," he says. "We don't know what our purpose is yet." As a result,

punitive policies target black students- who are still figuring these things out-

disproportionately. He says he thinks all schools should be practicing restorative justice but

"especially schools that educate youth of color."

In Wadhwa's observations, she witnessed a number of examples of teachers using talking

circles to bring attention to historical realities and individual experiences with racism and

racialized violence. At Equity High School, more than half of circles were dedicated to

discussing racism, sexism, or homophobia.[279] While these circles cannot solve many of the

problems that are discussed, they give participants a better context for understanding structural

issues and help them find ways to modify their own behavior to lessen the impact of these harms.

For example, white teachers at Equity, Wadhwa writes, at times struggled with issues around

race, but they were willing to join numerous numerous circles to discuss them. Through this

process, they developed relationships with their students that made them feel more comfortable

granting the students autonomy in the classroom.[280] Teachers at Project Graduation used circles

to teach students about the school-to-prison pipeline and its disparate impacts along racial lines,

to better explain their investment in restorative justice.[281] Students also facilitated their own

circles to engage questions of race and racism, such as the community forum Project Graduation

students organized after their unit on Richard Wright's *Native Son*, a 1940 novel that looks at

racism and poverty through a story about a black man's murder of a white woman in deeply

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[279] Wadhwa, *Restorative Justice and Urban Schools*, 150
[280] Ibid.
[281] Wadhwa and Knight, "Expanding Opportunity through Critical Restorative Justice," 25

segregated Chicago.[282] These circles involved not just students but other community members including members of the administration and school police officers. In one circle, the participants responded to student-developed questions and discussed their personal experiences with racism as well as the themes and relevance of *Native Son* on their lives and the lives of people they know today. Wadhwa describes the community response to the students' circles:

> Upon reconvening the entire group, Angela [a Project Graduation teacher] asks participants to debrief the circle process and their conversations. One white woman with silver hair pulled back into a ponytail says, "I've been in education 20 years, and this is the most moving event I have attended. To read such a powerful book, and have students lead us in conversations about something as difficult as race…" She turns her head around and extends her arm to the students. "You all are truly impressive." Once the event is over, Angela approaches me and looks exultant. "This is all because of circles! It's something we've been building over time. This is a process, and students are buying in."[283]

These schools entrust their students with difficult conversations, and in the *Native Son* case, they even entrust their students to lead them. At these schools, open discussions of racism, sexism, and homophobia are essential both to students' (and teachers') education as well as to the type of community they hope to build. Steven Chen, who helps oversee restorative justice in the Boston Public Schools, says circles can often lead to "unpacking 12, 15, sometimes 250 years of systemic racism" in order to understand where individuals are coming from.[284]

At the same time, schools hope to help students learn about the realities of racism and injustice not to feel helpless but to feel empowered. Restorative justice creates a sense of social responsibility within school walls, and adults in the building help students to develop relationships and skills to meet those responsibilities. Then, Wadhwa says, they take these skills with them. "Our mission," she tells me, "is to build critically conscious kids. Kids start speaking

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[282] Ibid, 26
[283] Ibid, 26-27
[284] Chen, in discussion with the author

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to the broader community... These are the people who are going to hopefully impact these other systems."[285] She is referring here to systems laden with injustice, specifically the juvenile justice and criminal justice systems. We "grow those people," she says. "Even though I do a lot of micro work at the schools, it feels very macro."[286]

Restorative justice in schools like Cesar Chavez and Pathways has helped replace the school-to-prison pipeline with an "opportunity pipeline" that helps youth develop leadership and communication skills, as well as a sense of awareness and resilience. Through restorative justice, young people are given space to "reflect, critique, and positively develop within a collective context."[287] Yet at even at schools where restorative practice and philosophy is deeply embedded in school culture, students and teachers face problems as they struggle to practice restorative justice that gives students genuine ownership over the process. When students feel restorative justice is initiated at them instead of with them, they are more likely to act out, to recreate harm, and to feel unable to broach the topics they hope to discuss.

To begin with, students try to push boundaries through disruptive behavior, which challenges teachers to respond with methods in keeping with restorative values. Circles in the resource room are often a challenge as Andrea struggles to get her students to focus and remain on task. They are often disrupted by comments, asides, and physical gestures between students; while this primarily comes from the boys, it is not exclusive to them. Wadhwa discusses a similar pattern in her research: she writes that, at Equity High School, she saw young men dominate the circles, sometimes with banter and "side chatter" rather participation in the

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[285] Anita Wadhwa (Restorative Justice Coordinator), in discussion with the author, September 19, 2016
[286] Ibid.
[287] Wadhwa and Knight, "Expanding Opportunity through Critical Restorative Justice," 14

conversation.[288] Other times, students step back entirely, such as in Andrea's classroom, where they often showed signs of disengagement. Students not infrequently pass the talking piece instead of participating, or provide one-word responses to questions. At times, they give the same response to a question that another student has just given, or they will repeat what Andrea has said.

When students don't take the circles seriously, it raises difficulties of enforcing accountability in an egalitarian context. Circles are intended to create space for students to be open and honest about their world and their views: other students' disruptive behavior violates the trust of the circle, but teachers exercising control to manage student behavior can also damage that trust. For example, when Andrea's circles get interrupted, she first refers back to the guidelines. To an extent, Andrea views disruptions from young people as normal, and she wants her circles to provide space for students to feel that they can be "real" and open instead of putting on a more professional facade. Yet there are also times when she steps in with authority that seems out of place with the restorative mindset. At times, to my discomfort, she evokes my status as an outsider to attempt to get her students to settle down. On one particularly difficult day, Andrea threatens to close the circle and make students come back and complete it during their lunch period. When Andrea struggles to get her students to engage in the circle and respect the norms they have agreed upon, she resorts to asserting a more punitive control through threatening her students with lunch detention. Wadhwa also witnessed teachers at Equity High briefly expelling students from circles when their behavior became too disruptive.[289]

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[288] Wadhwa, *Restorative Justice in Urban Schools*, 129
[289] Ibid, 134-135

Sometimes, students' disruptions in the circle go further, and cross the line into genuine harm. Wadhwa writes that at Equity High, some boys' comments reified traditional relationships of power and powerlessness, especially along gendered lines. Boys' side conversations sometimes kept the girls from participating, but in their conversations with her, they told her this was normal: boys talk, and girls listen.[290] Some of their comments in the circle reinforced forms of oppression, such as when some boys made homophobic comments, teased a Latina student for her accent, and teased a different male student for his effeminate voice.[291] Wadhwa writes that much of the disruptive behavior she witnessed seemed to be boys trying to perform gender expectations.[292] Two girls Wadhwa talked to said the boys in their class sometimes acted like they did not take the circle seriously because they wanted to be seen as "hard" and "macho."[293] Yet because of the dynamics of the circle, students are sometimes given a pass for this behavior.

Circles can also have somewhat of a didactic feel. For example, Anthony tells me that a circle he participated in on the topic of drugs focused primarily on resisting peer pressure and the negative effects drug usage has on young people's health. On one hand, that restorative justice creates space for students to talk about making healthy choices with their teachers is a positive thing, but Anthony's description of the circle made it clear that the conversation came with a pre-ordained lesson. It seems possible that focusing on this angle could cause some young people to feel judged. When adults, and not students, frame the topics of conversation, it may limit students' ability to feel they can be open and honest about their experiences. Additionally, at Equity High School, Wadhwa writes that top-down restorative justice bred distrust between

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[290] Ibid, 130
[291] Ibid.
[292] Ibid, 129-130
[293] Ibid, 130

teachers and students. There, teachers and administrators acted as gatekeepers for restorative justice practice. Although students at times requested circles when conflicts arose, teachers primarily decided which incidents merited healing circles.[294] Students did not always agree with their decisions, as they felt their teachers were inconsistent about which acts warranted restorative justice interventions and which did not. When one student tried to give faculty her input, she felt she was ignored.[295]

Handing control over to the students seems to solve some of these problems. Wadhwa writes that the boys who made insensitive and ignorant comments also kept some of the most powerful circles; in Andrea's class, students who I had seen disrupt rather than participate took seriously the circles they facilitated for the students in third grade.[296] When students feel ownership over the restorative justice process, they seem more likely to respect the values it sets forth as well as the other participants. Yet all too often, traditional school hierarchies spill over into restorative circles, shutting out students from higher levels of involvement. In the majority of circles I observed at both Pathways and Cesar Chavez, Micah and Andrea were responsible for planning and facilitating the circle. They provided the talking piece, chose the topic for discussion, and made decisions mid-circle about when to move on from a question or where to pass the talking piece next. With the exception of the eighth grade-led circles for third graders at Cesar Chavez, it was clear in each circle I witnessed that Micah or Andrea was in charge.

Finally, I want to note that restorative justice doesn't always feel transformative. Its impacts on students' behavior and worldviews can be limited. A few Cesar Chavez students tell me they didn't feel that participating in circle keeper's training had particularly impacted how

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[294] Ibid, 140
[295] Ibid..
[296] Ibid, 132-133

they felt about their school, or how they felt about their relationships outside of it. Some, however, were open to the idea that the restorative justice values and skills they were learning would come to affect them over time. At Pathways, Kiah, a senior, says that restorative justice still feels exclusive, in many ways, to the Alliance students. She says she appreciates the work they do within the group, which she used to be a part of, but they don't talk to the whole school, and as a result, many students outside the RJ Alliance are still unaware of their mission. My conversation with Jay, who is not a member of the RJ Alliance, seems to support Kiah's observation. Despite his close relationship with Micah, who had been his history teacher, Jay tells me he is only vaguely aware of what restorative justice does at Pathways.

Nor does restorative justice solve all behavioral issues. As I have already mentioned, it can present new issues of its own when teachers struggle to hold their students accountable to circle guidelines while acting in the spirit of the circle themselves. In some cases, students struggle to translate what they've learned in circles to their life outside of it: Wadhwa tells another story about Luis, a senior at Project Graduation, who was committed to restorative justice and his Project Graduation teachers and community. He participated in circles and in the Project Graduation community thoughtfully and honestly, yet he continued to commit violations, including taking an administrator's laptop, and incur suspensions outside of Project Graduation. [297] Luis's trajectory, Wadhwa writes, veered to one side or the other: he had been exposed to a lot of violence, and as a result spoke about his own life cavalierly. He didn't express remorse for the laptop incident and told his teachers he'd rather be suspended than work through a restorative justice intervention. Yet Luis also valued his relationships with his Project Graduation teachers,

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[297] Ibid, 81-82

and said he liked restorative justice because it makes him feel "like I'm somebody. I'm a powerful voice."[298] Luis did go on to graduate high school that year.

Despite its challenges, restorative justice has provided a framework through which schools can build lasting relationships that help young people to grow as students, as friends, and as community members, and call this growth justice. Even as restorative justice helps build students' capacities and foster agency in ways that are crucial for building just communities, it will have to grapple with the question of accountability. Educators continue to struggle with what it might mean to hold their students accountable in a democratic context instead of in the traditional school model where adults have explicit authority over their students. When adults cling to measures of authority, they introduce new problems to restorative justice practice as students are more likely to disengage or act in ways that are disruptive or even harmful. Yet this problem also offers school-based restorative justice a tremendous possibility to develop what so many of our social institutions have neglected: a form of accountability that rejects punishment to create opportunities for growth and for recommitting to our shared values.

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[298] Ibis, 85

Conclusion

Today, restorative justice practices are rapidly continuing to take root not only in schools, but in prisons, churches, and community-based organizations around the country. The sudden rise of restorative justice presents both challenges and possibilities, not just for educators, but for all those invested in working to create a more equal, more just world. Perhaps we are drawn to restorative justice for what we believe it says about us: that each of us are inherently deserving of respect, of a voice, and of a second chance. For individuals living and working in communities of color, where the policies that built mass incarceration and zero-tolerance in schools are directly tied to a broader system of racialized injustice that discounts their voices and devalues their lives, the restorative justice values of equal worth and equal participation can particularly resonate. I was drawn to the liberatory instinct of restorative justice: the first time that I learned that many restorative justice practices exist today alongside the criminal justice system instead of in place of it, I was deeply disappointed. It seemed to me that what restorative justice offered ‑ a powerful critique of the role systemic injustice plays in enabling interpersonal acts of harm and an alternate vision of what democratic, peaceful, resilient communities might look like ‑ could not coexist with a prison system focused so solely on the individual and responsible for so much violence. I instead turned to the schools to see what restorative justice practice might look like at its full potential, able to engage both community and a collective lens, outside the constraints of the criminal justice system.

In schools, educators use restorative justice practices to bring students into a community that fosters their self-development and self-determination. As we've seen, restorative justice has

the ability to help students build their capacities for communication, for patience, for leadership, for empathy, and for conflict-resolution. It can help young people figure out what it means to be in relationships with each other, with their teachers, and with students they hope to mentor as they learn to consider multiple perspectives and work through disagreement. These relationships, especially the caring, supportive relationships that are formed between teachers and students, engage students academically and help them to grow socially and emotionally.

All of these skills help students reconceive of themselves within the school context. While traditional styles of education, especially in urban schools that serve majority students of color, measure success through order enforced by surveillance and authoritarianism, restorative justice flips the paradigm that makes students passive objects of their own (too often inferior) education. Instead, these spaces and connections can help to empower students to identify problems and propose and enact solutions to begin to create their own ideal learning communities. Students at Pathways took part in this dynamic when they entered a dysfunctional art classroom to offer support and solutions for behavioral problems, as well as when they identified and worked with younger students looking to them for academic support and social guidance. These schools are not perfect‑ in their own ways, they struggle still with disengagement, disruption, and authoritarian relationships‑ but restorative justice can create the context to discuss these problems and to begin to find collective solutions. Through participation and decision-making in circles, students begin to develop agency and take active part in determining the conditions they will learn in, as eighth grade students at Cesar Chavez did when they designed developmentally-appropriate circles that built relationships across grade levels. This agency is tied to a vision of community: students view their ability to act through the lens of

social belonging and responsibility. They are acting not solely for themselves, but in order to realize the educational community they can envision, one where classroom environments are consistently respectful and engaging, and where older students take on responsibility as academic and personal mentors for students in younger grades. Self-determination and community-building become mutually reinforcing: restorative justice communities create space for student agency, and students in turn direct this agency towards improving their school communities.

Together, these acts of developing critical skills, fostering agency, and building community begin to look like the vision of holistic justice I outlined in Chapter 2. Restorative justice both creates space to develop an account and critique of racialized state violence, and it can begin to address students' material and psychic well-being. In urban schools like Pathways and Cesar Chavez, teachers use circles to explicitly address racism, through conversations where students talk about their own experiences and where they try to understand and respond to issues of systemic racism that range from Islamophobia to the school-to-prison pipeline. In this way, students can begin to understand racism as structural instead of solely interpersonal: as Wadhwa observed, "all the young people [in the Project Graduation class]... left with the ability to understand their individual experiences as representative of the experiences of millions of other people in the country."[299] Similarly, at Pathways, Andre connected his involvement in restorative justice to breaking the patterns of systemic discrimination black students face at school.

Additionally, restorative justice can take seriously young people's psychic needs as they continue to grow and develop: at these schools, it helps students to see themselves as worthy of

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[299] Knight and Wadhwa, "Expanding Opportunity through Critical Restorative Justice," 27

respect and their communities as sources of strength. Relationships with teachers can foster and further students' resilience and ambition, while relationships with younger students help them to conceive of themselves as leaders and role models. In instances of harm and conflict, such as Laila's case illustrates, students receive the message that they are valued members of the community. Restorative justice is more limited in its ability to affect material conditions. It cannot, on its own, solve the problems many students in urban schools face. It cannot redistribute funds and resources equally across schools, integrate districts that remain de facto segregated, or protect students who still go home to unsafe places and neighborhoods. Restorative justice can, however, develop awareness and a deeper analysis of these conditions, and it can begin to change school cultures of surveillance and authoritarianism in which students are expected to learn. At both Pathways and Cesar Chavez, students do not have to remove their shoes and pass through metal detectors to walk through the front door. I have never seen police officers or security guards on either campus. Students are not threatened with suspension or arrest for their misbehavior: they are not presumed to be dangerous to their own school environment. This is part of a conscious effort on behalf of the school to develop a safe and peaceful school culture, an effort in which restorative justice plays an integral part. Restorative justice can, in this way, affect the broader environments and contexts students learn in, beginning the process to transform rules-bound and punitive schools into more democratic spaces that value engagement and growth.

While these experiments are promising, they also pose challenges that so far remain unanswered. Both Wadhwa's and my observations show that while circles hold space for students to be genuine, vulnerable, and honest, students can also take that space as license to

recreate harm. While students' frequent disruptions can be interpreted either as natural to young people or as a sign of disrespect, what is most troubling is when these disruptions reinforce patterns of powerlessness and domination, most commonly with regards to gender. Teachers recognize this as a problem, but do not always step in for fear of acting in contrary to circle values that try to remove hierarchies and create spaces for all voices to be heard. When these patterns go unaddressed, restorative justice practices risk reifying the very forms of injustice they hope to combat. Privileged students – for example, the boys performing masculinity and native English speakers – are able to seek support for their ideas and develop their skills and agency at the expense of marginalized students who may feel alienated or silenced by their actions.

This raises questions about the relationship between accountability and authority that students and teachers must continue to address together. When educators do step in to address these problems, as Andrea and the teachers at Equity High exemplified, it can be to threaten punishment or expulsion, which reinforces punitive mindsets rather than restorative possibilities. In our society, accountability is most often punitive, enforced through methods like incarceration or exclusion. When accountability is not punitive, it is explicitly contractual, but neither punishment nor contracts seem to align with the types of communities restorative justice hopes to build: egalitarian, participatory, and non-coercive. It seems, then, that we need to begin to imagine new forms of accountability for a democratic context. How do we hold ourselves accountable not to an explicit, and often punitive, set of rules or contracts, but first and foremost to each other and to the values that we continue to create, and contest, together?

I have suggested that ownership in the process can play a role, and that students in both Wadhwa's and my observations were more likely to be accountable to each other and to

restorative values as circle leaders and not just participants. I also recognize that ownership alone is an insufficient response, both because a particular student or group of students cannot facilitate every circle, and also because while entrusting students with increasing responsibility is a positive notion in keeping with restorative values, it does not address the specific form of harm that is perpetuated when these students quiet other students' voices. The democratic nature of the circle is not a license for acts of harm to go uncontested, but it does suggest that teachers may need to decenter their own authority in the classroom. They must be willing to call attention to their students' harmful behaviors not as authoritarians or disciplinarians but as equal members of a circle they and their students are creating together. To do so, teachers cannot be the only ones calling out this behavior. They must introduce a dynamic from the beginning that empowers students to respond to their peers' and even their teachers' harmful behaviors as equal members of a circle and a community. When educators respond to harmful behaviors in circles with punitive measures, it reinforces the idea that the intervention is to deny one individual their voice. Instead, restorative justice must approach it through the opposite lens: participants are obligated to respond to acts of harm to ensure that all circle members – regardless of their gender, their first language, or any marginalized identity they might hold – continue to be heard. Restorative justice practices themselves can be useful here, as circles could potentially address injustice at not just the macro-level, but also the ways in which we recreate these injustices within our own communities.

The ideal of community, too, poses a question for restorative justice practice. In this thesis, I have repeatedly returned to communities as central to understanding holistic justice, both because we must recognize them as current targets of racialized state violence and because

they are potential spaces to foster self-development and self-determination. Yet 'community' is not, for everyone, necessarily a positive notion. Iris Marion Young critiques the ideal of community for being homogenizing and exclusionary.[300] She worries that idealizing community means avoiding politics, suppressing dissent for the sake of unity.[301] This fear is grounded, as students who perpetuate harmful behavior in circles often receive a pass in order to diffuse tension. Unchecked, this pressure towards community can cause individuals to feel they must ignore their own experiences with intra-community harm in order to maintain a shallow form of peace. This is, of course, contrary to the explicit purpose of restorative justice, which is to address harm constructively. It is therefore not enough to want to build community, but students and teachers must consistently engage in the question of what they want their community to be. The project of community-building at school must not only be able to embrace difference and hold room for disagreement, but consider itself stronger for doing so. This requires questioning traditional authority structures that bestow explicit power to certain individuals, such as teachers, to define the community's identity and worldview. Restorative justice practices must continue to decenter this authority: to make room for dissent, students must feel genuinely able to question and challenge the forms of teaching and others practices they see occurring in their schools.

Finally, we must also recognize the limits of restorative justice. At various schools, restorative justice is practiced within broader initiatives to support positive school climate and student learning. It can be implemented alongside other social and emotional skills-based curriculum or with other interventions focused on issues such as student behavior, mental health, and experiences with trauma. At Pathways, building relationships and community occurs not just

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[300] Young, *Justice and the Politics of Difference*, 234-235
[301] Ibid, 234

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through restorative justice, but also through the time students spend each day in advisory. In a conversation with Jay, he tells me that in his advisory period, he has discussed issues ranging from the recent presidential election to sexual consent. But, he stresses, it's primarily a time for students and their teacher to get to know one another. They engage in team-building activities and talk about what's going on in their lives. "I wouldn't say therapy," Jay says, "but it's putting your thoughts out there. It's a pretty supportive place."

Pathways' advisory program shows that restorative justice should not be the only place where students are engaged in relations of support and care. Likewise, students should have opportunities to learn about and discuss real-world issues of racism, discrimination, and racialized violence at school outside of their restorative justice practice. A positive school climate means students at these schools see people like them represented in the classroom curriculum, and that they feel their academics are related to the world around them. The work that begins in restorative justice circles‑ to discuss these issues and to build these relationships‑ must also spill over into classroom discussions, and maybe even into lunchtime chatter or into spaces outside school walls such as at home, in church or in mosque, or around the neighborhood. Restorative justice on its own is not an answer to decades of systemic racism and injustice enacted through law and policy. Within communities where it takes root, however, restorative justice creates space to understand and critique these policies. Even more critically, through restorative justice, we can develop our own values and capacities to begin to imagine something different: a vision of justice that does not isolate us but connects us to our histories and to each other, so that our practices of justice do not recreate cycles of harm but instead choose to center, each time, our well-being, our voices, and our full value as individuals.