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Addressing Systemic Harms Through Restorative Justice Principles

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Addressing Systemic Harms Through Restorative Justice Principles

A thesis submitted in partial fulfillment of the requirement
for the degree of Bachelor of Arts / Science in Department from
William & Mary

by

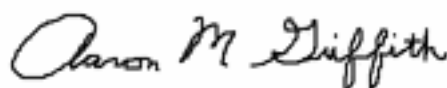
Elissa Gosling

Honors

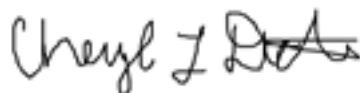
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Table of Contents

Introduction.....3

Section 1: The Realities of the U.S. Prison System.....5

Slavery’s Ties to the Development of the Prison System.....6

Modern Discrimination in the Justice System - The Police and The War on Drugs...9

The Entrenchment of It All.....14

Section 2: Incarcerated Life Trickles Outwards.....15

Physical Health.....15

Economic Health.....17

Mental Health.....18

Section 3: The Problem of Punishment.....19

Retribution..... 21

Deterrence..... 25

Reform.....29

Section 4: Healing.....32

What is Justice..... 32

What is Restorative Justice? 33

How Restorative Justice Functions..... 35

Values of Restorative Justice..... 37

Restorative Justice in Society..... 40

Justice Reinvestment..... 43

Philosophy of Restorative Justice – High-Risk Offenders..... 44

Conclusion..... 50
Bibliography.....54

Honors Thesis

Introduction

As humans we have the honor but also the duty to promote just systems. It is our responsibility to make sure we govern in a just way, educate and communicate in a just way, and confront unjust institutions head on looking to make substantial changes. This mindset seems intuitive, but in America we see and know of deep systemic racism coursing throughout every social institution, some of the most notable being the health care system, housing, education, and the justice system (Gosling 2020). This thesis aims to uncover the systematic racism in the prison system and how it has contributed to disproportionately oppress People of Color in the United States in other important facets of society such as in the previously mentioned social institutions of health care, education, and housing. It is intuitive that if an immoral institution has been created and upheld, especially one as intrusive and old as the American prison system that it is necessary to take a different action to make up for and compensate for the harm done. Throughout the first two sections I will point out specific racial injustices. One way to make up the debt owed to people of color is changing the prison system to a restorative justice process. This process involves a formal conference between those directly involved in the crime as well as family and community members. The conference allows the victim to be a part of a system that directly involves their emotions and being, and the offender is held accountable as well as the community. It is not good enough to just reform the justice system because it is doing what it was intended to do - oppress those who do not fit the description for the perfect society member. Instead we are morally

obligated to break it down and rebuild a new one. Restorative justice has the pillars that will allow us to move forward while acknowledging the past. We have a moral duty to change our justice system to one that acknowledges the harms it creates and changes our view of what justice should look like.

This essay will look into the brilliant writings of Angela Davis, Michel Foucault, and restorative justice scholars such as Howard Zehr, Rupert Ross, and Kay Pranis, as well as other academics from different backgrounds. These authors come from historical, sociological, philosophical, and government backgrounds. Incorporating a multitude of perspectives is helpful in understanding the big picture but it also is evidence that multiple fields of study have come to a similar conclusion about the benefits of restorative justice. Because this is the case, it is all the more reason to give restorative justice a fair look.

Before jumping into the thesis, I would like to discuss a couple of important thoughts that cannot go unacknowledged. This paper primarily focuses on the oppression of Black people through the justice system. It is important to acknowledge the injustice the justice system has served to Native people, Hispanic people, Middle Eastern people as well as multiple other groups that have been minoritized. The reason I am continuing with focusing primarily on the prison system's effect on Black Americans is because disparities tend to be more extreme between Black and White Americans and the history of the prison system mirrors strongly the history of African Americans.

The second acknowledgement is that the solution to my thesis is rooted in restorative justice principles and stems from Native teachings in America, Canada, and New Zealand. These ideas have been appropriated over the past but scholars more recently started to reacknowledge the significant influence Native people had and have on the theories. Through

appreciating the strengths and drawbacks of restorative justice as a practice, I hope to bring to light theories which have been studied for hundreds of years.

The third acknowledgement is that I am a White person writing about injustices done to Black people. This thesis has been helpful for self-education and hopefully will help educate other White people as to what needs to be done to correct the harm White people have caused.

This paper is split up into four different sections. The first looks at the realities of the United States Prison System and its oppression of Black people in America. The second section is about how these inequalities in prison life trickle outwards to multiple other facets of life and how those inequalities create disproportionate health between communities of color and White communities. The third section looks at the theories that charge punishment currently and why these theories are overused and tired. The final section develops a new idea for dealing with harm in America, which is through restorative justice and distributive justice and why justice demands this change.

Section 1: The Realities of the U.S. Prison System

This paper will follow the following argument: the prison system is racially oppressive and the oppression within prison trickles outwards and deeply negatively affects most other facets of life. Justice is carrying out what is morally right or fair. It is morally wrong to oppress others. The prison system is committing morally wrong acts. Therefore, the prison system is unjust. If the prison system is sufficiently unjust then it must be destroyed and rebuilt in the form of restorative justice to compensate the inequalities it has created. As concluded in the first half of the argument, the prison system is unjust. Therefore, it must be

destroyed and rebuilt in the form of restorative justice to compensate for the inequalities it has created.

Each point of the argument will be looked at and supported through a philosophical lens but also a sociological, historical, and psychological lens to understand. The majority of the paper will look into the racially oppressive nature of the prison system and the need for restorative justice as a way to compensate for the harm created because these premises, I believe, are the points of contention that could be questioned. Premise two, the definition of justice, is taken as an assumption. While other definitions could be used here, this one is a version of justice that is widely accepted as a basic definition.

This section will look at the inequalities of the current prison system as well as relevant systems for biases in the larger justice system (i.e. the police). However, the history of justice stems from racist roots and has only become a way to mass oppress people of color. Therefore, we must understand the history of oppression and how it has led to relevant present-day injustices within the Justice System. Slavery and the Black Codes are the two historical influences on the Justice System that this paper will unpack. These influences were a way to gain control over Black people in America and this control has changed into mass incarceration through a series of present-day injustices such as the war on drugs, stop-and-frisk procedures, and broken-windows policing.

Slavery's Ties to the Development of the Prison System

Angela Davis in her book "Are Prisons Obsolete" critiques the evolution of the American prison system. She also takes a look into Michel Foucault's "Discipline and Punish" to understand the common themes that unjust justice systems uphold such as control over those deemed unfit for society rather than those who truly have harmed society but also

look beyond European restraints and understand obstacles that America faces (Davis 2003). The penitentiary as we know it today, as a final punishment rather than a holding place until the corporeal punishment has been delivered, started around the American Revolution in America (Davis 2003: 26). The penitentiary system was set up to resemble the conditions of the slave. The imprisoned had to rely on others for basic necessities: food, water, shelter, and safety. They followed a strict schedule that must be followed that was labor based. The convicts had to live under an overseer and were coerced to depend on that overseer (Davis 2003: 27). White influencers of the time, at the forefront Thomas Jefferson, concluded that since Black people were coming from slavery where their days were already labor based and rigidly structured, the penitentiary punishment would do little to speak to their souls (not that White people believed Black people had souls or a moral standing to speak to)(Davis 2003: 362), and therefore should be banished.

The government sanctioned slavery through the thirteenth amendment after slavery was declared unlawful. The thirteenth amendment says explicitly: “Neither Slavery nor Involuntary Servitude, *except as a punishment for crime* whereof the party shall have been duly convicted...” This exception of slavery as a punishment for crime, noted in the constitution, is a loophole that allows the government to maintain the control over whomever they want, which, as we know, is People of Color, specifically Black Americans. Now, punishment could be delivered behind closed doors and barbed fences from where people are locked away and forgotten about (Gosling 2020). Rather than the atrocities being presented out in the open, Michel Foucault acknowledges that now mass loads of people could now be locked away and treated horribly in private (Simon 1991: 28-29). Before the war, prisons were mostly made up of White people because there were no free Black people to lock up, but

quickly after the war, prisons soon became the new residency of previous slaves. Where there once was a vast minority, once slavery was declared illegal, there were around 90% more Black convicts than White convicts, where previously the vast majority of prisoners were White (Davis 2003: 363). The change in numbers was immediate backlash to there being so many newly freed Black people. It became clear that Black people were being targeted through the passage of the Black Codes that deemed Black behavior criminal (Davis 2003: 29).

The Black Codes were the southern states government's response which allowed for the criminalization of actions deemed not-ideal-for-the-perfect-citizen when Black people were doing them. For example, a Black person possessing a firearm could lead to them being imprisoned and subjected to state sanctioned slavery (Davis 2003: 28). In France, Foucault saw a similar trend happening where white-collared workers were more prevalently pushed to civil courts unlike blue-collared workers who committed similar crimes but were sent to criminal court (Gosling 2020). While in this case there is economic discrimination rather than racial discrimination, there is a similar trend that oppresses those who are not deemed fit for civil society and are in turn criminalized (Simon 1991: 27-28). The Black Codes moved the demographic make-up of Alabama's prison convicts from 99% White before slavery was ended to majority Black soon after (Davis 2003: 29). At this point, race is now criminalized and the White narrative that Black people are criminals and dangerous could unquestionably continue and seep consciously or unconsciously into White American minds and actions.

The Black Codes were not the only clear sign that the Prison System was being manipulated to further control Black people in America. How prisoners were treated while incarcerated were on par with the horrors experienced during slavery. Under the convict lease

system, chain gangs became a popular way to enforce labor. Convicts were chained to one another and were told to complete manual labor such as fixing roads. If it was not done, they could be lashed by the chain (Davis 2003: 31). In 1880, The Yazoo Delta in Mississippi put out a report discussing prisoners that upon reading is almost impossible to tell whether the prisoners are slaves or convicts (Davis 2003: 32). The conditions for living lacked mattresses, blankets, and oftentimes clothes. The punishments involved lashes, chains, and often the conditions resulted in intense disease and physical problems such as pneumonia or shackle poisoning. It displays the total disregard for basic humanity. The convict leasing system and slavery were just one in the same.

As we can see, laws made it so freed Black slaves were funneled at mass into the prison system: the new system of control, and once there, they were back to being treated like slaves with conditions equal to or worse than slavery. But the racism coursing through the prison system is not one of the past.

Modern Discrimination in the Justice System - The Police and The War on Drugs

I started with the past to understand the racist roots of the American justice system, but the discrimination of Black Americans in our prison system is ongoing. It has evolved into the targeting of Black people by the police and the law (Gosling 2020). Politics started running crime rhetoric. Terms such as “Law and Order” and “War on Drugs” being common sayings among politicians, swaying public mindset to extreme degrees and encouraging police to fill prisons with whomever they could find (Wills 2016). The war on drugs was first met with contention because drug abuse was not a top concern for most communities at the time. To overcome and push forth his agenda, Reagan’s administration, as well as others that followed, offered millions of dollars in federal grants to police forces to fund units to follow

through with the war on drugs. The pentagon provided millions of dollars in equipment to forces in order to follow through with the war (Alexander 2010: 73). Strapped with cash and equipment, the police now deploy SWAT teams for the primary purpose of drug raids. These military-esque tactics incite fear and bring danger into the homes of those who are being invaded. The war on drugs is all about control, and with fully federally funded drug task forces, the executive branch has all of that control with little coming from the courts.

The war on drugs is responsible for two thirds of arrests federally and in 1990, 80% of those drug arrests were for marijuana - a drug “less harmful than tobacco or alcohol” (Alexander 2010: 59). Moreover, most of the charges are for possession, not for dealing, and are nonviolent. However, this rhetoric has paved the way for punitive draconian punishments. The number of people getting brought in has increased due to the war on drugs but more and more of those people are being actually sent to prison. The numbers of drug arrests leading to imprisonment quadrupled and therefore prisoner rates have skyrocketed (Alexander 2010: 59).

Recent data from John Pfaff suggests that drug charges are not the leading cause for mass incarceration and their influence has been overestimated (Lopez 2017). While it is true that while federally around half of the charges are drug charges, the vast majority, around 87% of those imprisoned, are within the state prison systems, and of those people, only 16% of cases are due to drug charges (Lopez 2017). Pfaff brings up a good point that it is not enough to just end the war on drugs when talking about prison reform, so why is the war on drugs still important to talk about? It is important to discuss because of the inequalities that lie within the drug charges and the narrative that it perpetuates.

There are few laws that surround the war on drugs. One of the main ones is the fourth amendment which gives the people rights against unlawful search and seizure. The exception is upon probable cause which has somewhat extensive guidelines to meet before it can be enacted. The fourth amendment came out of the American Revolution when officers would stop those who may be rebels. This act was viewed as tyrannical and signified British rule. However, the jurisprudence behind the enacting of the fourth amendment has changed since the war on drugs started in the 1980s (Alexander 2010: 61). In the late 80s and early 90s, the courts saw 30 cases concerning the fourth amendment and narcotics and 27 of them sided with the government choosing to uphold the executive branch's narrative of a war on drugs (Alexander 2010: 61).

In 1968, stop-and-frisk procedures became legal giving police officers lack of substantial reasoning to search a person; the police must simply believe the person is dangerous and engaging in criminal activity (Alexander 2010: 62). The stop-and-frisk program allows police to engage in racist stereotyping of people of color and not have a check on their actions of discrimination. We see this racist stereotyping in the statistics that have come out. In 2015, one out of every four people arrested for drug charges was Black (Fettig, 2018). Even though marijuana usage was about the same between Black and White populations, Black individuals are 3.7 times more likely to be arrested for it than White individuals (Fettig, 2018). So, while Pfaff is right that we need to look beyond the scope of drug charges and the war on drugs, it is still an important factor to consider when discussing prison reform or abolishment because it is a clear example of racism in the criminal justice system.

Sanctioned stereotyping allowed for broken windows policing (Gosling 2020). The theory of broken windows policing is that lower level disturbances can give way to more serious crimes, but the police can stop these higher-level crimes from happening by more closely regulating the community and increasing social control. However, this theory led to actions that are discriminatory by the police. The police occupied neighborhoods that were economically poor and where more People of Color lived. The police looked for smaller crimes to catch thus in the hopes of preventing more serious crimes (Wills 2016). However, this policing strategy led to over policing in Black neighborhoods and therefore more Black people going to prison (Wills 2016). The stipulation of stop-and-frisk is that the citizen must consent, but in a society where one person is wearing a badge and the other has been systematically oppressed for their whole life, there is no true consent, only coercion masking as consent. It is rare for police to inform that the citizen can say no and therefore police can over-police and sweep mass amounts of people without any real pushback (Alexander 2010: 63). The questions concerning consent do not rest simply with the people. Even the courts themselves acknowledge the reliance on “ignorance and powerlessness” for the police to continue these searches (Alexander 2010: 65). The courts went even as far to rule that police did not have to notify people of their right to not consent during the search and seizure process.

Traffic arrests demonstrate the extremeness of racist mass incarceration. Pretext stop laws allow for searches of vehicles and persons if they have been pulled over while driving. It is so easy for police to find something technically illegal with any driver - whether they do not stop for the correct number of seconds at the stoplight, if they turn their turn signal on too late, etc. (Alexander 2010: 66). Therefore, it would not be hard to target any specific group of

people. Officers are actually trained to use pretext stops to initiate a stop and then further the length of time to lead to a more extensive search of the car. This initiative which is taught all across the United States uses these pipeline tactics to intimidate and routinely check tens of thousands of people each year (Alexander 2010: 70). Only 1% of these stop-and-searches actually result in finding anything, so the vast majority of people who are at the whim of the police officer's power are innocent (Alexander 2010: 70).

In 1988 to 1992, one billion dollars' worth of assets were seized by federally funded drug task forces leaving those affected without a car, house, cash, or other necessary property for wellbeing. In just Florida alone, tens of thousands of dollars came from motorists pulled over under pretext stops (Alexander 2010: 79). In some of these cases, there were no criminal charges pressed at the end of the seizing. To put the cherry on top and to make matters all that more worse, in Louisiana, the money and assets taken from people would go towards police officer ski trips while the families in their community suffered and struggled to make up for all they lost (Alexander 2010: 79). The cases that could get the attention of the courts were egregious asset loss of rich White guys who were trying to get their mansion or jet back. What should someone do when an attorney is worth more than their assets? Should they risk pressing charges if it may result in retaliation on the officer's end? If wealth is so tied up with whether someone is guilty or can stand up to an unjust charge, how is the system still considered just?

Pretext laws and stop-and-frisk procedures give a lot of power to police to target groups of people while simultaneously being heavily influenced by the executive branch and the narrative that they are trying to perpetuate. Black motorists are three times more likely to be searched when pulled over than White motorists and are twice as likely to then be arrested

(Fettig 2018). This mix of power gives way to mass amounts of racial profiling. The safety of Black Americans is at risk constantly because of racial profiling. In 2012, one Black person was killed by the police every 28 hours, and racial profiling preempted at least 43% of these killings (Zack 2015: 64). This statistic means that 313 deaths by police occurred in just one year, and in theory the police are supposed to protect the public (Zack 2015: 64). However, as a system they are only protecting the White public (Gosling 2020).

Myisha Cherry critiques how the police are racially profiling Black people. A common explanation we hear in the media is that the police were afraid of the Black person they were arresting. Moreover, the media also perpetuates the stereotype that Black people, specifically Black men, are dangerous by depicting scenes of the constant overcriminalization of Black people (Cherry 2016: 2-3; Zack 2015: 79). But, is fear really the driving factor behind these murders? Cherry acknowledges that it could be fear but says that it is a fear of a different kind - a fear of “disrespect and dehumanization” (2016: 3). We need to change the narrative from one that depicts an entire race as being dangerous to one that unveils the power and negrophobia within the police and the media (Cherry 2016: 3). Cherry emphasizes that, like homophobia, negrophobia is surrounded in “negative attitudes... disliking of and prejudice of blacks” (2016: 3). As long as the current justice system exists, there will be room to further negrophobia. Moreover, police and other state actors can currently abuse the principle of qualified immunity which the Supreme Court created to shield actors for their misconduct (Schweikert 2020). For the most part, if a specific misconduct done has not previously been done, then it is quite easy for those who violated someone’s civil rights to evade the law (Schweikert 2020). Due to qualified immunity, accountability is not achieved and for this reason we can see police who act out of negrophobia do not face justice. This is not a matter

of reforming what we currently have but looking at the principles and history of our system and actually considering abolishing what we have to make room for a different system.

Highlighting this very point, at the William & Mary Asian and Pacific Islander American student run vigil in honor of the victims of the shooting in Atlanta, a student said, “the system that will allow our oppression will not eradicate it.”

The Entrenchment of It All

The “Justice System” has funneled people, primarily People of Color, into prisons to the point that one in every three Black boys born nowadays are expected to end up within the correctional system. In 2016, 27% of those arrested were Black compared to the general population where only 13.4% of people identify as Black or African American on the census (Fettig, 2018). In 2018, of the couple hundred thousand people serving life sentences, 48% of the population are Black (Fettig, 2018). There are harsher sentences for People of Color with a strong reason being unjust mandatory minimum laws; less opportunity for bail; higher rates of pretrial detainment resulting in more plea deals due to harsh conditions experienced; and greater disciplinary actions taken against, specifically for disobeying direct orders from a guard or other administrator (Fettig, 2018). While “most people branded felons, in fact, are not sentenced to prison,” they still carry around that “badge of inferiority” (Alexander 2010: 92). This marking follows individuals around constantly getting in the way of job interviews, housing applications, educational opportunities, and social patterns (Fettig, 2018). If there is a vast disparity of incarceration between Black and White people, it is not surprising to see communities of color start to suffer and are easily oppressed in other social systems.

The history of the prison system, racist legislation, current and past policing, and the war on drugs are just a few of the factors that have led to a racist and oppressive justice

system that has never and still is not functioning to serve true justice to the people of America. If anything, it has only supplied more injustice as the years have passed and has become the main tool for control, manipulation, and coercion of people of color, specifically Black people.

Section 2: Incarcerated Life Trickles Outwards

Racial inequalities within the justice system percolate outwards and influence racial inequalities in other social systems. How is current America affected by an unequal prison system? This section will unpack how a racist justice system has impacted the physical health, economic health, and emotional health of communities of color. Each of these health categories are also linked to one another because each social facet is intertwined with others.

Physical Health

A physically healthy community allows families to stay together. Loss of life of a family member can impact the mental health of the rest of the family and if medical bills are high, then it can impact the economic health of the family. Laurie Shrage studied the connection between rates of incarceration and the HIV/AIDS pandemic. Specifically, she looked at how these factors interacted within the demographic of Black men. Before her study, questions about causation between incarceration and HIV/AIDS were not studied, but general trends were found that positively correlated the two. Shrage took a different angle. She knew that Black women have high rates of HIV/AIDS and questioned why they have disproportionate rates of HIV/AIDS compared to White women (Shrage 2017: 449-450). She hypothesized that because there are high rates of Black men in prison, where HIV/AIDS is

more rampant, then Black communities are more likely to have it introduced disproportionately (2017: 450).

Rape and sexual assault run rampant in Prisons due to the toxic environments. There is a lack of a helpful route for help or even reporting for the 80,000 men and women who are sexually abused in prison each year (Shrage 2017: 453-455). Therefore, perpetrators are rarely held accountable, victims are trapped with their offenders, and the cycle of abuse continues (Shrage 2017: 453-455). Up until 2013, the Federal Bureau of Investigation did not even acknowledge men as potential rape victims thus enabling prison rape and sexual assault to be swept under the rug (Shrage 2017:454).

Furthermore, HIV/AIDs could be passed due to lack of proper health resources provided to people in prisons. For example, often there is withholding of condoms when it came to consensual sex and clean needles were not provided or regulated (Shrage 2017: 541). This lack of resources leads to sharing of unclean needles and passing of sexually transmitted infections (Shrage 2017: 541). Sex partners and significant others are more likely to come from your community, so when we have men who were leaving prison and going home to their communities, it makes sense to then see higher rates of HIV/AIDs in Black women (Shrage 2017: 451). This 2017 study points to how racism in the prison system can factor into the poor health of a community quite directly (Shrage 2017: 458).

Economic Health

While physical health is impacted negatively by being incarcerated, the economic health of a community is also largely impacted by mass incarceration. We see trends connecting incarceration and systemic poverty, lack of education, homelessness, and joblessness (Gosling 2020). How can we expect people who come out of prison after years of

being locked away, denied proper education and job training, and required to tell employers about their past to then resume a “free” life (Shrage 2017:457)? “The “correctional” facilities are setting people up for failure, and when the system itself targets people of color, those communities suffer” (Gosling 2020). Those previously incarcerated are ten times more likely than the general population to become homeless and being homeless increases your odds by 11 times to become incarcerated (Gray & Smith 2019: 2). The system is set up to ensure that when you leave you will be sent right back because life at that point is unsustainable or at least incredibly hard to restart (Simon 1991: 27). In Texas, Black people who are homeless are impacted at a disproportionate rate compared to the general Black population. With only 12.7 percent of the population of Texas being Black, 38.2 percent of the homeless population is Black and it is heavily caused by the disproportionate rate of incarceration (Gray & Smith 2019: 2). There is limited data surrounding the link between homelessness and incarceration, but there is a lack of resources for those leaving prison without having a safe and secure address to return to. Having little support to return back to society, it is not surprising that the unemployment rate of recently released offenders is 27 percent higher than the general population during the United States Great Depression (Bacon, Lee, Weber, & Duran 2020: 1). While the federal level of government has opened up restrictions slightly by allowing Pell Grants to be given to prisoners or ex-prisoners, the state level, which holds a vast majority of prisoners, continues to exacerbate the education and economic struggles ex-prisoners face. There are over 5,000 provisions at the state level for obtaining certain licenses for those who have been incarcerated and about 14,000 provisions across all states that limit occupational licensing (Bacon, Lee, Weber, & Duran 2020: 1-2).

Education is linked to economic well-being, and studies support that the higher the degree of education results in lower recidivism rates. The Prison Studies Project found that those incarcerated who complete the GED while in prison are 20 percent less likely to return to prison compared to the general incarcerated population, and the recidivism rate is lowered by 44% if the incarcerated person completes a college degree. Even with this knowledge, in 2003, only 26% of state prisoners completed their GED in prison and 68% of prisoners total did not receive even a high school diploma while in prison (Harlow 2003: 1).

Mental Health

Mental health has proven to suffer for those within prison. We see higher rates of mental health problems in the prison system than in the general population. There is relatively new information coming in from community psychologists and criminal justice experts on the effect of ACEs and incarceration. ACEs stand for Adverse Childhood Experiences. There are ten different experiences that fit into three different categories: childhood abuse, neglect, and household dysfunction. The number of ACEs a person has strong positive correlations with addiction rates, number of sexual partners, shortness of life, mental health, and most importantly for this paper, prevalence of juvenile incarceration. Juvenile offenders are four times more likely to report four or more ACEs than the general public (Baglivio & Epps, 21). Almost two million people enter the prison system with mental health problems and 45 percent of that group has what is considered a serious mental health problem. Moreover, addiction rates for those incarcerated are up to 3.7 percent times higher than the general population (Gray & Smith 2019: 4-5). While these studies cannot prove causation because they cannot be tested in a very controlled lab setting, the strong correlational data show support of the cyclic nature of how unchosen experiences and incarceration probabilities go

hand-in-hand. The trends are statistically significant and have been replicated over a series of other experiments, thus solidifying support for the importance of understanding this connection. Moreover, the ACE study addressed above studied and gathered usable data from over sixty thousand youths, which is a very large sample sized.

Prisons have not been held accountable for a long time and the effect they have on the physical, mental, and economical health of a community is intense. Sections one and two depict clear inequalities that stem from the racism within the prison system and therefore beg the question: what are we morally obligated to do about it?

Section 3: The Problem of Punishment

Premise nine of the argument states: if the prison system is sufficiently unjust then it must be destroyed and rebuilt in the form of restorative justice to overcompensate the inequalities it has created. The following two sections will unpack this premise. First, I will talk about the problem of punishment and the problems with most common theories that currently surround punishment. Section four will then discuss restorative justice as the most just theory and practice.

From section two, it is clear that the history and current workings of the prison system are racist and continue to be fueled by racist beliefs. There is a strong link between race and criminalization. Angela Davis notes that race, other than White, means punishment in America (Davis 2003: 367). As a society we should consider the link between crime and punishment and whether the former entails the latter. Davis references a 1991 study that found that only three out of every one hundred crimes that are committed are incarcerated (2003: 366). So much crime goes unpunished, which is not to be mistaken with the fact that they

should be addressed, but it is important to note that very few people answer for their crimes and how most that do are People of Color (Gosling 2020). How do we break this link between crime and punishment? Zehr recommends changing the narrative to injury and healing rather than crime and punishment (2015: 188). Therefore, justice would be a healing force that repairs rather than harms.

I would also like to look into why we need to abolish the prison system specifically as a form of reparation. Just having monetary reparations are not enough and could further create problems down the road. Even if we can dedicate the sheer volume of money needed to make up for the injustices done, once we give the money to those deserving, we would still have systemic problems that would eventually put Black people back at the bottom (Lyons 2017: 505, 513). While monetary reparations should occur, and will be a necessary action going forward, they cannot be the sole focus (Gosling 2020). Reparations in the form of systemic change are necessary and what better way to do this than to target a system that is inherently flawed and replace it with an innovative system that is conducive to healing. As a society we need to have open discussions about race but on a playing field that encourages voices that are normally overlooked or actively ignored (Gosling 2020).

Before unpacking restorative justice, I would like to dive deeper into the overused triad of theories of justice, or as Adrian Howe calls them, the “unholy trinity” (Howe 1994: 3) These theories are retribution, deterrence, and reform. They have been studied by philosophers and sociologists and most of the literature on punishment endlessly repeats these theories. These theories of punishment are aimed to punish crime. But races are criminalized and crime is punished, so maybe we need a different theory that breaks apart the crime and punishment link. While this paper does call for a break in the connection between crime and

punishment and will support an abolitionist theory of justice, I would like to outline where each theory in the unholy trinity suffers because it is in this routine thinking that the issues lie.

Retribution

First is the theory of retribution. America is mainly retributive. A common phrase associated with retribution is getting your “just deserts.” Retributivism is the idea that those who commit a crime are deserving of punishment and must be punished to the same degree of the offence committed (Ellis 2012: 64). This theory may have some intuitive pull, but is there anything more than just the pull? In order to justify removing freedom from an individual and subjugating them to a difficult life in prison, there needs to be more than just intuition. However, many theorists take retributivism seriously because it can have strong intuitive pull. For example, consider a case where someone who was raised well, does not seem to suffer from societal or mental pressures, and is guilty of premeditated murder. Most people in America would maybe have the intuition that this person deserves to be incarcerated or should be subject to significant harms. I would contest that this thought process is one that we have been raised to follow and there are other conclusions we can draw from this scenario.

‘Just deserts’ is not intuitive to many people. Those who contest the idea regard retribution as “vengeance in disguise” (Ellis, 53). Without further justification as to why people should suffer because they have committed a moral offence, it seems as though intuition or being a basic proposition is just not enough. Retribution does have some prima facie pull, but this initial intuition is overridden by our duty to deliver justice which we have failed miserably at doing. So, while any theory can rest on our intuitions about justice, if our intuitions are overridden by an opposing duty, then we were only prima facie justified and the theory does not stand. There is moral sway to move away from this prima facie intuition. As

we learn more about how our justice system works and as we compare our justice system to other countries', it becomes quite clear early on that we are not doing enough to deliver justice under a retributivist theory. Retributivists also cannot say that it is an absolute duty to punish those who are guilty because many offenses we let go unpunished (for example lying) because it would be too much on the legal system to do as such (Duff 2003: 19). It is also not considered an absolute duty because there are other demands that we put above it. Guilt is no longer a necessary condition to punishment. Instead it is considered sufficient for punishment (Duff 2003: 19). So those who do not have the retributive intuition are once again not worried by the arguments the retributivist poses.

The retributivist would say that this problem is a problem with how we carry out the theory rather than the theory itself. This is a very strong response but irrelevant to the thesis at hand. I am discussing current America and the injustices with our current justice system that do have a strong basis in retributive justice and are carrying out the theory poorly. If the theory fails to be able to put in place "correctly" after centuries of practice, why should we continue to rely on this theory? The poor application is important to the discussion at hand because it shows how retributivist theory is easily manipulated and distorted to give those in power more power. Moreover, it is important to note that in our society, retributivism does not make sense because some people are destined to be racially targeted and are more likely to go to prison for just existing and therefore the link between crime and punishment is not an isolated event but rather we are attempting to deliver justice on someone who was previously given an unfair disadvantage. I believe restorative justice principles cannot be manipulated as such or to such a strong degree, as I will discuss in the final section of this thesis.

Retributivist supporters have answers as to why punishment is deserved proportionally to a crime, but each fall back on just basic intuitive tinges. Some retributivists say that the justification of “an eye for an eye” is that the person who has harmed has an unfair advantage and their sentence is the removal of that unfair advantage (Duff 2003: 21). However, this advantage is really hard to calculate and really only applies in cases such as stealing where a material possession has pushed the offender ahead (or tax evasion, etc.) (Duff 2003: 22). Furthermore, let us say that Kathy stole a car from Johnny by holding him at gunpoint. If the unfair advantage is the fact that Kathy now has financial benefits, then simply returning the car would not heal the harm of the terror Johnny felt. What if the advantage is the power and dominance Kathy now has over Johnny? If this is the case, then how do we calculate how much punishment to give her? What is ten years compared to twenty? Does that heal Johnny’s fear of her? Probably not. Each of these questions makes retributive justice seem like a guessing game as to what is really deserved when an offence has been committed. While we will have to make similar sorts of guesses to apply restorative justice theory, these guesses will not be inherently harmful. The guesses for restorative justice will look different and an incorrect application with this theory will be inclusive rather than exclusive punishment. So, maybe Kathy ends up taking extra classes on creating healthy priorities or navigating extreme anger problems.

Imprecision to some extent is inevitable in pretty much every theory offered, and it is especially difficult when it comes to consequentialism; however, this imprecision speaks to the generalizations we hold when it comes to crime. We are attempting to try to understand many different human cases that are individual and unique under one overarching moral theory. We cannot calculate desert at a state or federal level, in fact it is unclear as to who has

the authority or even then ability to calculate desert. Calculating moral gravity at a surface level seems easy enough to do (premeditated murder carries stronger moral gravity than stealing a loaf of bread), but even looking just underneath the surface, the psychology of the victim is quite similar between different crimes with seemingly very different moral gravities. For example, the psychological effects of a violent crime are actually quite similar to that of a home robbery (Zehr 2015). So maybe we do not know, truly, the moral gravity and thus the desert of a crime. Moreover, a difference of 10 and 20 years is not an uncommon imprecision when it comes to incarceration, and to the person giving the sentence these may seem relatively interchangeable, but to the person carrying out the sentence, the ten-year difference is incredible and vastly important to considering their livelihood. The imprecision of carrying out a theory is important when considering such a harmful punishment, so it seems plausible that we should attempt other solutions.

Another answer the retributivist gives is that the emotions felt when a crime is committed: repulsion; vengeance, hurt, anger; these emotions are guidance to the gravity of the moral wrong. Going with Kant logic, if I were to commit a crime, I would feel guilty and deserving of punishment; out of respect for the offender, I should treat them how I would want to be treated and thus, punish them. But consider who is giving the punishment. It is the state, the government. It is unclear as to why the state should be the one to perpetuate suffering based on emotion considering the judges will not feel the visceral emotions that the person harmed has felt (Duff 2003: 24). Moreover, just because we have negative emotions to indicate that the moral balance is off, it does not clearly justify that we could use those emotions as a reason to then harm the offender (Duff 2003: 24). Potentially it means we need to actually put more positive moral goodness into the world. There is more than one way to

appease a guilty conscience. Again, emotions as a reason to incite suffering on another is really only supported by an intuition.

Retributivists will also claim that punishment is a way to communicate to the person who has harmed their moral wrongdoing. But still, even here, it is unclear as to why excluding the person into prison is remotely the best way to communicate to the person that what they did was morally wrong. Understandably, action must be taken in order to show understanding that harm has been done, but action can be inclusive rather than exclusive (which prisons are). Instead, action can be working with the community. Moreover, the harm inflicted by prison guards, executioners, etc. is harmful to the people inflicting it. Even though they are working in a system that is declared just, they are still committing individual amoral acts themselves, and if one were to believe in souls, then their souls would be marked.

Recently we have witnessed the case regarding the murderer of George Floyd. On April 20, the police man who killed George Floyd was held accountable and the verdict was guilty, and he was sentenced to prison. However, many people are speaking up with the words “accountability is not justice.” We need to look for systemic change that gives those who have been oppressed true justice, not just hold people accountable. Retribution holds people accountable, but it should not be the way our justice system runs because it does not bring justice to survivors, victims, or groups of people who need systemic change.

Deterrence

The second theory in punishment literature is deterrence. Deterrence can be broken down into two categories: special deterrence and general deterrence. Special deterrence makes the individual more deterrable and general deterrence aims to deter the general public (Ellis 2012: 21). The distinction here is not too significant, but it comes into play when discussing

the downfalls of a deterrence theory. Deterrence simply put is best explained by an example. Let's say Thomas is walking to class and cannot find a trash can. He instead just throws his straw wrapper on the ground and continues walking. A policeman sees him and, because he works under deterrence theory, gives Thomas 20 years in prison. He knows that if he makes it known to the other students, by publicly declaring Thomas' conviction and sentence, then no other students on that campus will litter because they are facing a ridiculously extensive punishment if they do. There is a tradeoff happening of identifiable lives for statistical lives. Unfortunately, here we see a reason that is created rather than a necessary response that is intrinsic to the crime (Ellis 2012: 118).

Deterrence being the first and only priority of punishment, succumbs to immorality. Those that are being punished are being used for the good of society, thus they are not being respected as rational beings and ends in themselves (Duff 2003: 16). For example, in the case of Thomas, we are looking at Thomas as a vessel that we can use to lower crime rather than acknowledging that Thomas is a human being with a moral code and intrinsic value. This problem is common in utilitarian theory where you can use one person, or kill one person, to save the greater good. In *Crime and Punishment*, Raskolnikov kills one pawnbroker with the intention of distributing her large sums of money to all those in need in the community. To most, this seems wrong because we are treating the pawnbroker as a vessel to serve others rather than a person with a right to life that we have a duty to stand up for. Moreover, there is only a net gain of external goods (i.e. spread of money or fewer people littering), but the reformation of the offender for future deterrence purposes is only a side effect. Therefore, the soul or morality of that person is ignored, and for many, including Plato, this oversight is one that cannot be ignored (Ellis 2012: 80). Moreover, there would not even need to be a basis for

punishment. If a government wanted to stop their citizens from littering, they could snatch an innocent person off the street and have them publicly stoned as a warning for anyone who is caught littering. I mean, hey, there is still a net gain of less littering so why not? Intuitively this instance does not sit well with many people. For the diehard utilitarian ethicist, this may not pose a problem, but whatever theory of punishment comes out as the most just will be a practical theory that will be influenced by the history and current affairs of society. Therefore, any good theory of punishment will and should appeal to multiple forms of ethical models (Ellis 2012: 30). This rebuttal is an appeal to any theory that does not think innocent people should be punished, such as retributivism or restorative justice theory. However, as I note below, even adding a retributivist element to save an innocent person from punishment with deterrence theory, that theory still fails to accommodate all of what we want out of a theory of justice.

Maybe simple deterrence should be amended to make deterrence theory more palatable. One change would be to have the constraint of not being able to punish the innocent. A second change should include the component of education. If the person punished also received a moral education for the wrongs they committed, then the person would be treated as a rational individual who crossed a moral boundary but is capable of learning from their mistakes (Duff 2003: 90). However, Antony Duff would disagree that this is a good solution to the previous problem. By using punishment as the deterring reason to commit a crime would be coercion. The only good and acceptable deterring reason, in his eyes, would be the moral education (2003: 89). Anything past appealing to someone's moral intuitions as a reason to not commit a crime would be manipulating the person's own morality to act in such a way that the government wants (Duff 2003: 91).

In some cases, we think manipulation is okay. For example, in the Kantian case of lying to an axe murderer to protect an innocent person from being killed or telling the truth and letting the axe murderer kill the innocent person, it is unreasonable to say we cannot lie to the axe murderer. Instead, we should probably actively be manipulative in order to deter the axe murderer away from the area. So, why shouldn't the government be allowed to manipulate society on a mass level with benevolent aims of lessening crime? I would say that there is a clear difference in these two tactics of manipulation. In the Kant case, we have a much stronger duty to the innocent person of protecting their right to life than we do to not lie. Whereas in the case of the justice system, there is no duty to protect others through manipulating someone because the others are not facing any sort of immediate risk. So, the duty to not manipulate is the stronger duty in this case. It is plausible for the avid deterrence theorist to say that punishment does claim to reduce long-term risks to innocent people, so even though it is not immediate, it is still okay for the government to be manipulative. In response, I would say that there is still the difference of an individual who is manipulating compared to a body of government that needs to uphold values of transparency and fairness in order for the people that it governs to maintain trust in said government and these are values that must be upheld by a just government. So, while it may be successful to lesson crime due to mass manipulation, it is still unjust and therefore does not suit what we want out of a theory of punishment.

It is also important to apply a theory that works alongside human nature. Psychology reports on impulsivity and crime support the hypothesis that impulsivity is a causation factor of the number of crimes committed (Copeland-Teschner 1987: 4; Zimmerman 2009: 2). This being the case, there is not much foresight or forethought into the punishment of the crime,

therefore, how can we expect deterrence theory to work practically? In fact, according to The Sentencing Project, half of state prisoners are under the influence of drugs or alcohol at time of arrest, thus they are not acting in a rational manner and deterrence tactics are not at play in these cases (Wright 2010: 2). Deterrence could be an overall aim of a theory of punishment but cannot be the reasons for or guide how the theory is created because fundamentally it ultimately fails to address the person as a rational autonomous agent, and it lacks a practical understanding of crime.

With deterrence we also run into the problem that those who carry out the sentence will run into moral injury. Moral injury is the idea that those who commit or stand by and watch something traumatic happen that goes against their moral beliefs and expectations will be distressing and provide psychological damage (Norman & Maguen 2020). This situation occurs when an individual is in an organization or system where they are just one part of a machine. We see moral injury commonly in veterans, usually manifesting in the form of Post-Traumatic Stress Disorder. I think if deterrence is the main theory fueling punishment, then it is entirely probable that those carrying out sentences will be vulnerable to intense moral injury due to either over punishing crimes, or in the case of general deterrence, punishing innocents.

Reform

The last theory of punishment in the overused triad is reform. Reform of the offender is probably the closest to what is morally required but still ultimately fails to see the whole picture of what is required and needed. Reform of the offender can be seen in two different lights: external and internal. External reform of the offender falls under what I previously called special deterrence. Threats of punishment were not enough to deter the individual from

committing a crime, so they have to face it first-hand (Ellis 2012: 79-80). In theory, this may intuitively make sense, but in practice, recidivism rates are high, therefore the act of being incarcerated does very little to deter people from crime. A study by the Justice Department, completed in 2018, tracked 412,731 prisoners who were released from prison in 2005. Within just one year, about 45% of the people were back in prison and within nine years, 83% of those released in 2005 were back in prison (Clarke 2019). A theory should be tested and the theory of external reform is not supported by the evidence.

The second type of reform theory is internal reform. Internal reform looks to restore the moral code of the person incarcerated (Ellis 2012: 82-86). What seems to be the problem with a lot of reform theorists is the incessant need to communicate with people who have harmed by making them suffer. Just simply telling the person that they have committed an immoral act is simply not enough, instead the state needs to make sure that the offender “appreciate(s) the harmfulness of her action” and be made to endure a different type of suffering (Hampton 1984: 227). Therefore, reform theorists tend to pigeon hole themselves, insistent that inflicting exclusive and harmful punishment is the only way for an offender to learn. Moreover, Hampton’s narrative of punishment is fueled that there is a victim who has suffered and therefore that suffering needs to be acknowledged by the offender (Ellis 2012: 85). But, as Andrew Ellis points out, there are many crimes in which no victim can be named (such as speeding violations), and therefore the story that Hampton poses starts to unravel (2012: 85). Hampton could restrict her theory to cases where there is just a victim, but it does not encapsulate many cases. However, I realize that it is true that I argue that one size probably cannot fit all when it comes to justice. As I continue to analyze reform theory, I will approach other concerns with Hampton’s view.

However, I do not want to exclude the other half of internal reform theorists who support the idea that whichever treatment of rehabilitation works best we should pursue. Often for them even, the punishment of prison is a side effect to the treatment (Ellis 2012: 80). It is an unfortunate consequence to the needed time away from community to focus and learn. I think these internal reform theorists have started to understand part of the goal of healing but have ultimately failed to see the bigger picture outside of what punishment holds, and tend to focus only on the offender's reformation, excluding the victim, as well as excluding the reparation of harm between the individual parties as well as the community and the offender.

Giving Hampton the benefit of the doubt that punishment is the best way to morally educate an offender (which by no means am I supporting), she is still only focusing on a cognitive hole that the offender has (Ellis 2012: 86). She is missing out on the fact that individuals may have total awareness for the moral lines they are crossing but do it to survive (such as stealing food to feed the family), and in all other instances, telling them that it was morally wrong to do so will not change the fact that they acted out of survival instincts and will do so again if needed. Furthermore, if one were to take a harsher view of crime, offenders who commit a crime (for example, burglary) probably know they are crossing a moral line and just may not care about the victim's suffering (Ellis 2012: 86). It seems strange to assume that one does not know burglary is wrong and therefore they should not do it.

The three parts of the unholy trinity have been mixed and matched and cut and accommodated to new arguments, but maybe, just maybe, theories of punishment are missing out on a major factor: punishment is not the way to solve an injury that has led to harm in the community. Take the well-known psychological instance by behaviorist B.F. Skinner about

social control. He found, followed by predecessors, vast support that positive reinforcement is more effective with voluntary change than positive punishment (Dinsmoor 1992). So why have we created and committed to an entire system that focuses on positive punishment? I am not recommending positive reinforcement in place of prison, but rather acknowledging the failure of punishment when it comes to behavioral changes. Moreover, punishment is most effective when delivered immediately, and yet, in 1996, the Department of Justice reported that on average it takes just over seven months from arrest to conviction (Dinsmoor 1992; Levin, Brown, Langan 2000). Even with speedy trial laws at the federal court level, arrest to conviction can still take just over three months (U.S. DOJ: 1).

It is important to have a good grasp of what punishment is in the case of criminal justice. John Hasnas clearly explains criminal punishment as state imposed harm upon an individual who has broken the state's code, in this case the law (Hasnas 2017: 17).

Punishment does not include negotiations, restitution, or mediation between parties affected. When discussing the crime and trying to heal, actions may be taken that involve the offender to lose something (time, money, etc.) or feel like it is hard to do and difficult to complete (emotional pain, service with the community, moral and educational classes, etc.) but these are not given to the offender to purposefully punish the offender or to fulfil necessary harm towards the individual (Hasnas 2017: 18). As we advance our knowledge about the human condition, why are we not implementing methods to best serve ourselves? Abolitionists have the right idea. Instead of reforming a system that intends to punish and further inequalities, break down the system and build a new one. There are other theories of punishment out there, but a lot of them rotate on similar themes. Mostly that crime is connected to punishment. And therein lies the problem.

Section 4: Healing

From the first section it is evident that the prison system is unjust. The original argument states that if the prison system is unjust then it must be destroyed and rebuilt in the form of restorative justice to compensate the inequalities it has created. This section will support this argument.

What is Justice

According to Plato in *The Republic*, justice is an intrinsic good, and I think most would agree with this assessment. It is something that is good for its own sake and independent of the consequences attached (Book 2). He sees a just city state as one where “each part is performing its function well and not meddling in or usurping the function of another part” (Lemos 2019). The different parts in *The Republic* are the rulers, the warriors, and the craftsmen, but in our city state we have the people, the legislative branch, the executive branch, and the justice branch. These parts must work to create a balanced and temperate environment with agreement of who lies in each part and how each part functions in the greater society (Lemos 2019). If there is harmony between the four different parts, then there will be justice, serenity, and pleasure, and that is why these goods are intrinsic and of the highest order and thus should be sought out independent of consequences (Lemos 2019). While there are a lot of problems with Plato’s city state (such as it takes away individual autonomy and seems biased in the promotion of philosopher kings), the basic principle behind the drive of the city state is one of considerable positive weight and should be applied to countries, including America. Based on sections one and two of this thesis, it is evident that there is disagreement and harm between the people and the justice branch. In order to create a

just city state, this inharmonious situation should be rectified and therefore, independent of consequences such as logistics, economics, or potential fallacy, the prison system as we know it in America must no longer be the system we uphold and instead we need to seek out a new way to repair the harm done. Moreover, if the agreement never existed because it has a history of harm and disharmony, then all the more reason to reexamine its job in the society and our duty to unpacking it.

What is Restorative Justice?

Americans hold a myopic outlook towards the prison system. The vast majority of people could not begin to picture a country without a retributive punishment in response to crime, much less a society free from prisons. Abolitionist campaigns have successfully eradicated slavery, lynching under Jim Crow, and segregation. The abolitionist campaign against prisons is similar in that the previous movements were deeply radical and the systems were ingrained in society (Davis 2003: 24). However, if those are successful, this one can be too. The important key is to not eradicate this oppressive system just to create a new one. The new system I propose is based on restorative justice principles. A completely new system for dealing with those whose harm sounds like a huge undertaking but is a necessary one.

Restorative justice stems from Native people in Canada, Australia, New Zealand, and America (Zehr 2015: 234). Restorative principles look different in each context but have similar themes that underlie the process. Typically, restorative justice that is studied in current western America is circle healing, as outlined in the following paragraphs. But restorative justice can take many different forms. For example, Central Eskimos sometimes heal through song duels. When a conflict arises, each party writes and performs a song and dance which aims to insult the opponent while simultaneously bolster their own self representation (Eckett

& Newmark 1980: 192). The performance is supposed to be humorous and the opponent is supposed to respond to the insults with laughter (Eckett & Newmark 1980: 192). The song duels work to ease animosity due to the separation of the performance from everyday context, the involvement of the rest of the community who is acknowledged in the songs and takes part in the festivities, and the ritual aspect of it all (Eckett & Newmark 1980: 198). While the song duels are not sufficient for tackling the widespread lack of justice in America due to different obstacles and has drawbacks of its own, those noted principles that do make the song duels work are aspects that should be applied to justice.

In the mid 1970s, the Mennonite community in America started another push to move towards restorative principles, and again under the Obama administration under Vice President Joe Biden there was once more another push through the supplying of government funding. Restorative principles have been introduced to schools, criminal justice, the workplace, and community places such as places of faith.

How Restorative Justice Functions

Restorative justice functions as a circle conference. It is a space for those who have been harmed, those who have harmed, community members, law enforcement, and mediators to come together to listen and have a chance to speak. Rather than banishing people behind closed doors and using punishment as an excluding force, the circle allows for a sense of community that opens up the conversation and facilitates inclusion. The most common question I receive when I mention this thesis is “what is restorative justice.” It is important to know the practical process of restorative justice to have a clear picture of what makes it so new and fresh compared to the previous analyzed theories in section three.

The start of the circle is the call to circle that indicates that the process is starting and that opening of the circle is about to start. The opening of the circle sets a crucial tone (Redic & Able, 2020). It can be a game that incites laughter or foolishness to break down potential walls. It can be reflective of their last meeting. It can be calming like mindful eating (Redic & Able, 2020). Whatever is chosen is dependent on the group, the topic at hand, and the previous meeting or week. People learn when they are relaxed and having fun so applying this knowledge to a practical circle is necessary (Redic & Able, 2020).

Each circle has agreed upon guidelines and values. Guidelines emphasize what each person needs from the others in the circle. This list can look like openness to being challenged, kindness, authenticity, active listening, etc. Through stating guidelines, there can be an understanding that people are looking for similar things that you are and therefore starts to create a basic connection between parties (Redic & Able, 2020). The values graphic is what the individual wants to bring to the circle that makes them their best self. This list is another basis for community building and can be referred back to as the circle continues.

There is a talking piece where the person holding it is welcome to speak and everyone else is invited to listen. As the talking piece passes around the circle, it goes in the same order each time but can change directions (Redic & Able, 2020). Rather than approaching these conferences as conversations with dialogue, it is important to focus on the listening aspect to understand other's viewpoints (Redic & Able, 2020). Ritualizing the process makes the process more intuitive, and therefore each step should be followed each conference (Redic & Able, 2020). Moreover, the facilitators set the tone for each round of community building and should aim to be transparent and speak from their own personal experience at all times.

The rounds can start once all of the aforementioned pieces have been established. The rounds are started by the facilitator and tend to go around in a circle. If the content would be more oppressive to a single or a couple individual(s) (e.g. a discussion on race with only one Black person in the circle), then forms such as popcorn or fishbowl circles will take the pressure off of those individuals (Redic & Able, 2020). These situations are identified through body language, knowledge about the demographics of the group, and background knowledge about each case. Each round is concluded by a facilitator summarizing it to emphasize that each person has been heard and their voices are validated. Most likely, each round will be followed by a connecting round that allows each participant to deepen bonds with other participants (Redic & Able, 2020). Community building rounds make up 80% of restorative practices because it provides a base community that is open to empathizing with others and regarding others as human beings rather than previous labels or just strangers (Redic & Able, 2020).

The facilitators work and preparation can make the process seem intuitive and almost magical, but the role of the facilitator cannot be taken lightly. There are trainings in place currently that can properly train facilitators, however, since it will start to become a much larger process, trainings and new teachings must develop over time. Effective questions are only the start to the role of the facilitator. They must also keep in mind the timing, the summaries, and the physical space that each conference takes place in (Redic & Able, 2020). Most importantly, the facilitators have to be mindful of power dynamics in each group. In a criminal justice setting, we have cops and judges and other members of power working with those who have harmed. Moreover, those who have been harmed are sitting in the same circle as those who have harmed. It is important to name what is happening if it seems like there is

starting to be an oppressive situation and to revisit the guidelines or take a break (Redic & Able, 2020).

The final step of a community building conference is the closing activity. The closing activity can be used to decompress people after having a difficult discussion. Decompression can consist of physical movements or meditation. The closing can be a song to sing together or a quote read to reflect upon. Regardless of the closing, no one should leave the circle feeling burdened or overwhelmed with emotions (Redic & Able, 2020). The steps of a restorative conference create ritual and, in that ritual, roots an intuitive feeling to connect with those in the circle (Redic & Able, 2020). The connection created is the basis of restorative justice.

Values of Restorative Justice

The circle encourages seeking out the humanity in each individual there. Our current justice system and the triad of theories (except in some ways reform theory), the offender is only viewed as a committer of crime, a harmful individual, but the process does not allow for anything more. In a restorative justice setting, not only are the “ugly parts” looked at, but so are the parts of the offender that are hurt and sad and curious and emotional (Ross 2006: 109). The person is viewed in a holistic sense while also connecting the person to their environment and the larger national and worldwide community.

An incredibly important aspect of restorative justice that is forgotten in our traditional justice system is the rights of the person or people who have been harmed. The victim is only encouraged but never required to join the conversation. If they agree to join the conference, there are multiple conferences beforehand to prepare the victim for facing the person who harmed them. If the victim is unable or does not want to join the conversations, a person on

behalf of them can come in place or the offender can enter circle with people who have committed similar offences. The rights and safety of the victim are of utmost importance unlike in the current justice system. Currently there is legal jargon exclusive to lawyers, judges, and police that complicate and ultimately shut out the voices of those directly involved. The victim's wishes to prosecute or drop the case can be completely disregarded and they can often be left in the dust with little to no information about their own case (Zehr 2015: 36). The person who was harmed most likely is struggling with guilt over vengeful emotions, feelings of potential shame or blame, and other negative outlooks connected with the crime. These feelings may never go away, but certainly it is important to give security and power back to the victim. Most likely, many questions will arise that only the offender or those who understand the situation can answer, but currently the justice system only focuses on blame and does not tend to the victim and the lingering questions they have (Zehr 2015: 30-32).

Community is the main theme that runs through restorative justice practices and thus should be discussed. Community can look like a whole town, a place of faith, a school or a classroom, just to name a few. There are macro and micro communities, and focusing on the right level and size is important to the success of the practice (Cone 2019). Looking at the structures in place that surround an individual is called the ecological perspective and influences how we respond to individual situations and what interventions are appropriate. Community inherently calls for second order change - a change to structure and power dynamics - rather than only first order change which is aiding the individual (Cone 2019).

The conference is not the end, rather, each conference will conclude with a plan of further action the offender needs to take. These action plans should address both the

individual, for example educational classes on race, monetary reparations, but they should also address the community (Zehr 2015: 104). It is important to note that restorative practices are a way to respond to harm. There is not one cookie cutter method that has been developed through the years, but instead is a teaching and a philosophy to facilitate a society's response to each case. That being said, there can be similarities through actions taken between cases from the standpoint of the individual as well as the community. Individual actions tend to be monetary restitution (for the victim and those immediately affected), parole, but also classes that speak to ethics and the underlying reasons as to why that person committed that crime, therapy (substance abuse and/or mental), and guided work that is valued in the community. Providing the offender with an active role in the community highlights the inclusive nature that restorative justice is aiming for. Solutions to repairing harm should ultimately come from the offender because it speaks to the genuineness and accountability of the offender. However, these solutions are guided by the facilitators and the victim(s), and they should aim to creatively fit the case at hand. Some examples of community actions could be reallocating the police budget to education, which would help break the school to prison pipeline; continue having weekly restorative conferences; or placing money into affordable housing that ensures everybody has a safe place to sleep at night. The needs will differ based on the community and the current problems at hand, and these restorative conferences will create a space to unpack what these issues are and to have productive conversations (Gosling 2020). No two crimes are the same and thus they should not be treated with the same response.

In order to shift from a prison system to a restorative justice system, there must be accountability on the end of state and federal governments. According to Buddhist story "The Lion's Roar Sutta," when the head of society does not provide the many with the necessary

goods for living, poverty and then violence will start. Moreover, if the government then responds with violence (in the story it is a beheading, in this case it is incarceration), then it is setting the model that violence as a response is in fact effective, and thus it will incite more violence. The cycle can and has shown to be endless unless proper action is taken to properly heal (Loy 2000).

Restorative Justice in Society

The conversations going further need to address the police officers and judges who have blatantly perpetuated harm and racism (Gosling 2020). As seen in section one, the actions of the police and judges are strongly influenced by the government and politicians trying to appeal to their wealthier and influential constituents. Due to the control and excess of power this gives the executive branch, it would be good to move the process to a third-party committee of professionals in the fields of criminology, law, ethics, social justice and religious organizations. Peter Pettit in his paper “Is Criminal Justice Politically Feasible” upholds this idea of separation of justice from the influence of the general population.

As mentioned, the prison system needs total upheaval and replaced with something completely different and new. Pettit’s term “dynamic outrage,” which he develops in his paper, is one that can help make this point clear. Dynamic outrage works in three parts. First, a horrific act with negative moral weight happens. Second, it is identified and broadcasted to the public through media who in turn calls in outrage for change. Third, policy makers are influenced by the will of the people and make a change (Pettit 2002: 430). This cycle is repeated again later when it is realized that the policy change did little to actually satiate the people’s needs, and this second cycle calls in administrative change instead of policy change. Once again, if it seems as though the combined work between policy and administration has

yet to squelch the problem, then professionals take over (Pettit 2002: 430). Usually in a democratic society we see the factors necessary for dynamic outrage to work: a democratic society where policy makers are influenced by the people, media or a way for information to reach the people, and people who care about humanitarian issues and call for change (Pettit 2002: 432-433). This seems like a simple idea because it is a common theme in American politics since the start of democracy, but it's one that should be looked at in the case of criminal justice. Unfortunately, this dynamic outrage allows the narrative that is fed to the people to be the perpetrator of movement towards change, and in cases of criminal justice, the whole picture is not being painted to the people, only the fact that someone has harmed another and thus that person is seen as committing a wrong that must be corrected. Anger towards an individual who committed harm can result in really high sentencing and an increase in policing and harsh punitive measures due to the outcry of society. It is a mindset of vindication that sets the tone for how we react to criminal cases and from that point on precedence is a leading factor (Pettit 2002: 434). Politicians who did not lead the charge on harsh sentences were seen as weak and not a politician for their constituents. For example, Michael Dukakis of Massachusetts was one to enact lighter sentences and look toward other options, but in turn became a lesson to others on what happens if you are “soft on crime” due to the picture of inability that George Bush painted of Dukakis during their election campaigns (Pettit 2002: 437). Over time, precedent and history is a huge contributor to how we respond to crime in the modern day, and Pettit believes that it has gotten so bad that the current criminal justice system has “an inbuilt resistance to policy-making reform” (Pettit 2002: 440). If a system, which was built to be checked by policy makers and the executive branch, is not able to be checked properly due to this dynamic outrage, then it is not a

democratic process and not performing what we need from it. Instead it just grows stronger, unchecked and gaining more power.

We owe it to the countless people and communities who have been oppressed by the justice system to abolish the system and move towards a more inclusive form of healing (Gosling 2020). As Angela Davis says in her article *Racialized Punishment and Prison Abolition*, “an effective abolitionist campaign will have to directly address the role of race in the criminalization process” (2003: 368). I think it is important to reiterate that while this paper specifically looks at Black Americans, they are not the only group minorized, much less the only race, that this country owes reparations to in the form of restorative justice - just to name a few: the transgender community, Native people, and Latinx people (Davis 2003: 367; Gosling 2020). The state needs to overcome individual biases of potential influential constituents and provide the resources needed for those oppressed to have a platform and a voice that can be taken seriously and not dehumanized through the court process (Zehr 2015: 43). Restorative justice will do just this because it helps move some blame off of an individual and onto the community that the causal roots that affect more than just that individual.

Justice Reinvestment

As mentioned, justice cannot simply be a change to a restorative justice system but must also continue to push for more racial equality in communities. This movement is where justice reinvestment comes in. Justice reinvestment is diverting the \$56 billion dollars spent on our current prison system to funding necessary community resources such as stronger schools and teachers, playgrounds and public parks, access to grocery stores and medical facilities, affordable housing, mental health experts, affordable drug rehabilitation centers for all incomes, and better roads with lighted sidewalks (Cone 2019). Public safety does not come

from police roaming neighborhoods but rather putting the time and money into providing underserved neighborhoods with the resources that allow humans to flourish and have stability in their daily lives (Cone 2019). Effective programs that help decrease recidivism rates, such as thoughtful child care programs, could have the incentive of federal funding. Rather than incentivizing filling prisons and quotas, maybe incentivize politicians to support alternatives. Work with local ex-felons and study restorative justice conversations to know what each community needs in order to break the cycles that have been actively harming the people who live in them (Cone 2019).

While justice reinvestment seems to focus mostly on the practical implications of instituting restorative justice as the sole system of justice in America, it actually speaks to the theory behind why restorative justice is crucial. The criminalization of communities of color run deep and thus turning around only the system that brings justice to harm is not enough. Justice speaks to the morality of an act, and in this case, compensation in the form of justice reinforcement is not a supererogatory act. But rather, compensating for the centuries of abuse at the hands of the government is necessary to meet standards of morality. Justice reinvestment will solidify a commitment to humanity.

Philosophy of Restorative Justice – High-Risk Offenders

When I was first introduced to the philosophical views on punishment, my professor asked the class: would it be just if we sent the worst of the criminals, the Ted Bundy's of society, to a private island with all the luxuries they could want, and no one would know that they are there but they could not escape the island? Moreover, the rest of society is told that the criminals all received either life in prison or the death sentence. This thought experiment pokes at the theory behind punishment. Is it a mode of control, and thus deception of society

is a given? Is it inherent in justice to punish those who break the law and so the island is not morally acceptable? Or is the island actually completely fine because the rest of society is safe and that is why we punish? I think providing this black and white thought experiment is where the issue lies because none of these questions allows for alternative solutions outside of the unholy trinity. Maybe the Ted Bundy's of the world should be held accountable for their actions. Maybe neither a luxurious life or a life locked away are the appropriate responses.

Restorative justice aligns with human psychology and adapts as the field grows. As we learn more about psychopathy, sociopathy, and Machiavellianism; we are uncovering more methods to teach morality and speak in a resonating way to people with these underlying mental conditions. Understanding the mental state of offenders that are considered pure evil humanizes this person and strips them of the title of monster. Serial murders are about one percent of murders any given year and most come from complex backgrounds and are biologically vulnerable to negative changes in their environment, similar to most people incarcerated (Morton & Hilts). As mentioned in section two, most juveniles who are incarcerated are four times more likely to report four or more ACEs compared to the rest of the population (Baglivio & Epps, 21); we see similar data for adults incarcerated as well. It is evident that children are easily influenced by their environment and with "a household member incarcerated" being a top three most common ACE for both men and women, it makes sense to say that violence and imprisonment is circular through generations. Violence must end through a showing of true humanity rather than further incarceration. Incarceration allows for harms to go unaccounted for because the offender is carted off and locked away and the community has an excuse to ignore that individual in context and the humanity behind

that person. Moreover, the Ted Bundy's of the world would now be responsible for making amends and facing their actions rather than being given the opportunity to ignore.

One of the main thoughts of an objector to restorative justice is that we need to be tough on crime. First, restorative justice is still tough on crime, it's just tough in a more humane way. Offenders who enter the restorative justice system must first claim guilt and accountability. They have to face their victim face-to-face and hear about the harm they have caused. Second, and more importantly, we should discard this notion that the only way to respond to crime is to be tough. It is possible, and has evidence for it, that talking with one another and choosing a different more humane route is successful and speaks to the person's rationality more than prison does. In Japan, the conviction rate of those who commit a crime is incredibly high, at 99.5 percent. But, a very small percentage is prosecuted, an even smaller amount of people are incarcerated, and even fewer people serve more than a year. Rates of confession are much higher in Japan because upon confession, a judge is more likely to reroute the case to one that will involve restitution and correction rather than punishment (Zehr 2015: 218-219). Over time as restorative principles have seeped into justice, forgiveness and asking for repentance have become institutionalized and normalized (Zehr 2015: 220). The prison system dehumanizes the people who enter it. The people are given numbers and wear the same clothing. There is no need for accountability on the side of the offender because the justice system decides everything for them. They are stripped of decision making abilities and personal expression making it easier for the state and the rest of society to just see all offenders as the same. Restorative justice makes the offender accountable for what they did.

The focus of this thesis is placed in history and current systems. One possible pushback from the retributivist is that maybe, simply, retributive justice is the most just way in theory even though empirically Japan is much more impressive. Further, the retributivist could say that American justice is not proper retributive justice and so they support reforming the justice system so that the deserts align better with the crime. Especially with high-risk offenders who seem to not have impact from society and carry out premeditated crimes, maybe retribution is what is needed. While the retributivist section starting on page 17 looks at some of the core problems with retributive justice, I would argue that that concern is not really what this paper is looking at. Maybe in a perfect world retributive justice could be considered; however, our current justice system has caused outright harm and injustice to so many different people, disproportionately that of marginalized communities, that the current system owes it to these communities to change completely as a form of reparation. Moreover, truly high-risk offenders are far and few between comparatively and maybe we should not be shaping our idea of justice to those few cases. Instead, let us look at what is just for the vast majority, and consider these high-risk cases through a similar lens but with different precautions.

Abolishing the prison system cannot happen overnight. It is necessary to have a functioning alternative in place to protect a similarly abusive system from happening again. Rather than creating more humane incarceration techniques (while this obviously should be pursued in the meantime), we could instead work to decarcerate other places of living such as schools and neighborhoods (Davis 2003: 108). Through distributive justice maintaining the flourishing of currently hurt communities and restorative justice to uncover the root of

problems in communities and allow victims to be heard and offenders to heal, we will be able to create a more just society.

There is something terrifying, though, about imagining a world with no prisons. It could shake people to the core thinking that offenders can run free or still be present in their lives. While many of those in prison are there for drug offenses or other victimless crimes, there is still a sizable portion that does involve a victim or victims. Moreover, while funneling money into better and safer communities, there will always be crime that needs to be addressed. I think this worry will always be present if restorative justice were to become a paradigm because it is limiting the control of the state over unfortunately incredibly harmful individuals. Enacting a restorative justice paradigm in place of the current justice system will be a slow going process which will change over time. As prisons are slowly defunded and the funds are diverted back into safer community projects, people will still be prosecuted, but more and more they will be sent down the conference path. However, can everyone be sent down the restorative path? Are there some who are still too harmful that they cannot overcome their crimes? Let us turn to case studies to unpack this question.

We see large scale success with youth restorative justice programs, such as in New Zealand. Juveniles is widely agreed upon as one population group that should be fought for to not be in prison. There is a procedure in place to divert youth away from court. First, police are told to give warnings, then they are told to divert the case. Three quarters of youth cases never go past police interaction (Morris 2004: 269). Moreover, no juvenile is allowed to be sentenced without first going through a family group conference. Moreover, the ideas of the conference should be considered and used in sentencing, if the individual still needs to be sentenced (Morris 2004: 268). In 2001, less than two fifths of cases ended in court orders and

of those left, usually the most dangerous offenders and considered purely indictable, only five percent received a custodial sentence (Morris 2004: 268). This case study shows that New Zealand is working with youth who are considered dangerous and still putting them through the restorative justice process. If we can have this hope and trust that the process can still work with dangerous youths, why not open it up to consideration of dangerous adults?

If restorative justice is institutionalized then it will encourage and become second nature to start giving the process the benefit of the doubt. It needs to be institutionalized not only in the process itself but in how we speak about crime at a national level. The words we use, how we view relationships, and what community looks like in America are all topics that need to be delved into and changed at a mass level. However, I think for those who we cannot imagine actually releasing due to the severity of their crimes we may need to still hold them away from the rest of society under surveillance but could still enact restorative justice principles and create a safer living and more reform focused process until they are able to undergo the restorative justice route. While these people would technically be incarcerated, the focus of why we are incarcerating them has changed. It is similar to that of a quarantine where public safety holds strong consideration weight. The conditions would be humane, and the process would still be present in order to encourage internal reform, but the realities of the situation would remain present and considered. Hopefully, these people, though, would be far and few between and eventually our progress in implementing a restorative system will be able to be successful with these offenders. However, the practicality of the few should not outweigh the theory behind what is just for the hundreds of thousands of offenders who have been oppressed by our current system.

Experimental cases of mass enacting of restorative justice show that even unspeakable crimes should be given the benefit of the doubt because they could still be positively impacted by the restorative justice process. For example, in Canada in a town called Hollow Water, sexual abuse runs rampant. Around eighty percent of the community are victims of sexual abuse and about fifty percent have sexually abused someone else (Ross 2006: 38). A team of social service providers, mostly Aboriginal women, came together to create a twenty sectioned training to create enough facilitators to work through the intergenerational trauma that was situated in their community (Ross 2006: 27). The team would cautiously approach the offender rather than the police (but would have police backup), the family members of those involved, and the victim. Each person would have a trained member beside them through every step of the process, removing isolation as an element of crime (Ross 2006: 32). The restorative process would start and would be repeated six months after it has finished in order to renew promises set and affirm community expectations. In nine years, this small town of Hollow Water worked with forty-eight offenders. Five of the offenders went to jail because they did not want to truly participate in the process (Ross 2006: 35). Of the remaining forty-three offenders who did go through the process, only two reoffended, making a recidivism rate of only four percent. Of the two who did reoffend, one did it before sentencing even happened and the second did it when the program was in its early stages (Ross 2006: 35). The second reoffender went through the process again, when it was a more solidified process in the community and made so much personal progress that he is now one of the members of the facilitating team (Ross 2006: 35). Sexual abuse is talked about as more taboo than other crimes, but by bringing it out from under the carpet it was swept under, the team was able to start working through a huge problem that was occurring for years. Obviously this

is one case study, but this one study can show the potential restorative justice has in discussing problems that seem too daunting to tackle.

This section looked at the barebones of restorative practices and how it looks on a surface level, what the transition to a just system looks like, and the theory that makes such a transition necessary due to the active harm towards People of Color in our current system and society. Considering that this argument follows, then it should be clear that restorative justice tactics should be introduced wide scale in America. I think restorative justice is more convincing witnessed in person rather than read about because you get first-hand experience of the power that it brings. However, if you are still not convinced that restorative justice is the new system we need to form, at the very least it should be clear that justice how we deliver it currently cannot continue. I recommend to everyone who reads this thesis to take a training course on restorative practices. If anything, it will open your mind to the power of community. Some days it seems as though it may not be enough, but the data supports that it will make a strong positive difference and those in the field who I have talked to are passionate and fully committed to restorative practices being the way to solve problems.

Conclusion

Restorative justice is a necessary form of reparation specific to the prison system. The prison system has oppressed People of Color in America from the start of its creation and has only furthered its oppression as the prison industry has grown. Those incarcerated are not provided any means of rehabilitation and re-enter society worse off than before. The cycle of incarceration continues and affects many other aspects of human life, for example the physical, mental, economic, and education health of a community (just to name a few). While

abolishing prisons is inevitably a difficult process, it is a necessary task because it is necessary to morality and promoting a just society.

So where do we go from here? Currently, there are quite a lot of nonprofits that either are completely separate from the government, are government funded, and or work with sections of the police force and local justice departments. There lacks a true central force that coordinates with all restorative justice organizations and therefore the success of each organization relies heavily on the charisma of the executive directors, staff, and board, and the strength of the connections within each local community.

In some cases, such as in a town called Genesee just outside Rochester, we see such volatile success. This is not uncommon. Genesee Justice, a program started around 1983, worked with the Sheriff's office to introduce restorative practices such as a victim-offender dialogue and later community involvement through community meetings (Obbie 2015). I had the opportunity to talk with Ed Minardo who ended up running the project once the original founder had to step down. While they initially saw wonderful results, Ed was immediately aware of the difficulties he faced due to the lack of funding provided by the government to support it. The project was slowly losing funds and there was discussion surrounding whether to replace the program with a new jail instead. Community members, an array of members from all facets of the justice system, and those who the program helped and worked with, all showed up in support of keeping the program running. For Minardo, this ended up being a bittersweet moment. He gave up his job so the funds could continue to go towards helping the program, but the program did in fact continue. However, nowadays, the program has pretty much absorbed into the rest of the local justice system (Obbie 2015). While it still spreads its values, the program without funding cannot continue as it should. Restorative justice is an

economically cheaper alternative but because there is not a decent system to continuously support this endeavor, it becomes weaker due to tight financials (Obbie 2015). This case also speaks to the importance of separation between the current justice system and the new justice system as it transfers over. If not thoughtfully and consciously kept apart, we run the risk of a new restorative justice system being swallowed up by the current overbearing system.

Genesee Justice now works within the county's pre-established police and court systems.

Restorative practices in response to crime is such a foreign subject. Bringing it up as a subject in schools, mainly ethics and government classes, can spread the ideas and spark interest in younger generations. Moreover, normalizing restorative practices within the workplace, schools, places of faith, and other places where community may exist, will lead to normalization of restorative practices when it comes to justice. I also had the opportunity to volunteer for an organization called Partners in Restorative Initiatives (PiRI), also located in Rochester. They consult with local schools and the district as a whole to train the teachers and administration in how restorative practices work in a school setting. Teachers have started making family and academic circles so their students can learn as well as connect better with one another. Counselors are starting to work with classrooms as a whole rather than just individual students. Parents of the students are also incorporated in circles in the Rochester area as a way to better learn and communicate with their students. Schools have started reviewing their code of conduct from a restorative lens and implementing new procedures in ways of discipline that do not look like the common forms of detention or suspension. PiRI has also introduced restorative practices to workplaces such as with health professionals in hospitals to deal with the current COVID pandemic. It goes to show that restorative practices

are flexible and applicable to many different situations because it is a way of living and thinking rather than a set procedure.

This topic is timely. With the past Trump administration deeply disrespecting, harming, and oppressing pretty much everyone, but specifically Black Americans, there is a desire from the majority to right all the wrongs that have been made. Chants that “Black Lives Matter” rang throughout 2020, speaking out against police brutality, more so expressing the lack of basic acknowledgement of personhood given to Black people. It calls into question whether real progress has been made since the Civil Rights era. Many would say it just goes to show how deep inequalities lie. They have always been there, and these past four years have taken the blinders off of many White Americans as to how people and systems have been working together to change the narrative to allow for those in power to stay in power (i.e. White people). These blinders should have come off long ago. It is up to White people to educate ourselves and push for change.

Ethics and other virtues call for an immediate examination and review of its place in humanity. New executive orders to overturn all the previous harmful policies from the past four years is not enough. Rather than fixing symptoms of a destructive government, instead we have to look at the root causes as to how our systems have allowed this government to continue to carry out its ideas with the support of millions of followers. There is clearly a failure when it comes to communication and acknowledgement of common values, and hopefully this thesis has highlighted the need to find these values again. I do not have all the answers but there are many professionals with experience who have innovative ideas to solve many problems in America. I believe we should turn to these individuals and organizations

and give them our trust or at least a chance to show what can be done. Movement forward is needed, but we need to be thoughtful as to how it should happen.

Bibliography

- Alexander, M. (2010). *New Jim Crow: Mass incarceration in the age of colorblindness*. New York, New York: New Press.
- Bacon, L., Lee, G., Weber, J., & Duran, L. (2020, February). Laying the Groundwork: How States Can Improve Access to Continued Education for People in the Criminal Justice System. Retrieved from https://csgjusticecenter.org/wp-content/uploads/2020/02/Laying-the-Groundwork_Feb2020.pdf
- Baglivio, M. T., & Epps, N. (n.d.). The Prevalence of Adverse Childhood Experiences in the Lives of Juvenile Offenders. *Journal of Juvenile Justice*, 12-34.
- Cherry, M. (2016). The Color and Content of Their Fears. *Radical Philosophy Review*, 19(3), 1-5. doi:10.5840/radphilrev201619373
- Clarke, M. (2019, May 3). Long-Term Recidivism Studies Show High Arrest Rates. Retrieved November 25, 2020, from <https://www.prisonlegalnews.org/news/2019/may/3/long-term-recidivism-studies-show-high-arrest-rates/>
- Cone, Scott. *Destructive CJ Context*. Spring 2019. PowerPoint Presentation.
- Cone, Scott. *The Relevance of Context*. Spring 2019. PowerPoint Presentation.
- Copeland-Teschner, M. E. (1987). Abstract [Introduction]. *Risk-taking, impulsiveness, and the age-crime relationship* (pp. 4-5). Jacksonville, Florida: UNF Graduate Theses and

Dissertations.

Davis, A. Y. (2003). *Are prisons obsolete?: An open media book*. New York, New York: Seven Stories Press.

Davis, A. Y. (2003). Racialized Punishment and Prison Abolition. T. L. Lott & J. P. Pittman (Eds.), *A Companion to African-American Philosophy* (pp. 360-369). Oxford: Blackwell Publishing.

Duff, A. (2003). *Punishment, communication, and community*. New York, New York: Oxford Univ. Press.

Eckett, Penelope, and Russell Newmark. "Central Eskimo Song Duels: A Contextual Analysis of Ritual Ambiguity." *Ethnology*, vol. 19, no. 2, 1980, pp. 191–211., doi:10.2307/3773271.

Ellis, A. (2012). *The philosophy of punishment*. Exeter, UK: Imprint Academic.

Fettig, A. (2018, April 19). Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System. Retrieved from <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

Gosling, E. (2020). *Restorative Justice as a Form of Reparation* [PDF]. Williamsburg.

Gray, B., & Smith, D. (2019, February). Return to Nowhere: The Revolving Door Between Incarceration and Homelessness. Retrieved from <https://www.texascjc.org/return-nowhere-revolving-door-between-incarceration-and-homelessness>

Hampton, J. (1984). The Moral Education Theory of Punishment. *Philosophy & Public Affairs*, 13(3), 208-238.

Harlow, C. (2003). *Education and Correctional Populations* (pp. 1-12, Rep.). Washington, D.C.: U.S. Department of Justice.

- Hasnas, J. (2019). The Problem of Punishment. In 1084038807 823024987 C. Surprenant (Ed.), *Rethinking punishment in the era of mass incarceration* (pp. 15-33). Routledge.
- Howe, Adrian. *Punish and Critique: Toward a Feminist Analysis of Penalty*. New York: Routledge, 1994.
- James, D. A. (1992). *American Psychologist*, 47(11), 1454-1463.
<http://dx.doi.org.proxy.wm.edu/10.1037/0003-066X.47.11.1454>
- Lemos, Noah. "Republic." Greek Philosophy. 2019, Williamsburg, Blair Hall.
- Levin, D. J., Brown, J. M., & Langan, P. A. (2000). *State court sentencing of convicted felons, 1996*. Washington, DC: U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- Lopez, German. "Why You Can't Blame Mass Incarceration on the War on Drugs." *Vox*, Vox, 30 May 2017, www.vox.com/policy-and-politics/2017/5/30/15591700/mass-incarceration-john-pfaff-locked-in.
- Loy, D. R. (2000). How to Reform a Serial Killer: The Buddhist Approach to Restorative Justice. *Journal of Buddhist Ethics*, 7, 145-168.
- Lyons, D. (2017). Reparations for Slavery and Jim Crow (1069434244 814020436 N. Zack, Ed.). *The Oxford Handbook of Philosophy and Race*, 505-515.
- Morris, Allison. "Youth Justice in New Zealand." *Crime and Justice*, vol. 31, 2004, pp. 243–292.
- Morton, R. J., & Hilts, M. A. (Eds.). (n.d.). *Serial Murder: Multi-Disciplinary Perspectives For Investigators* (pp. 1-62, Rep.). District of Columbia: Federal Bureau of Investigation.
- Norman, Sonya B, & Maguen, Shira. "VA.gov: Veterans Affairs." *Moral Injury*, 19 May 2020, www.ptsd.va.gov/professional/treat/cooccurring/moral_injury.asp.
- Obbie, Mark. "The Unlikely Rise of Restorative Justice in a Conservative Upstate New York

- County.” *Slate Magazine*, Slate, 29 Dec. 2015, [slate.com/news-and-politics/2015/12/restorative-justice-its-rise-and-fall-in-rural-upstate-new-york-county.html](https://www.slate.com/news-and-politics/2015/12/restorative-justice-its-rise-and-fall-in-rural-upstate-new-york-county.html).
- Pettit, Philip. “Is Criminal Justice Politically Feasible?” *Buffalo Criminal Law Review*, vol. 5, No. 2, 2002, pp. 427–450.
- Plato. “The Republic.” Translated by Benjamin Jowett, The Project Gutenberg, 22 June 2016, www.gutenberg.org/files/1497/1497-h/1497-h.htm#link2H_4_0005.
- Redic, Danny, and Jessie Able. “Community Building Circle Training.” PiRI. 2020, Rochester, Zoom.
- Ross, R. (2006). *Returning to the teachings: Exploring Aboriginal justice*. Penguin Group.
- Schweikert, Jay. “Qualified Immunity.” American Bar Association, 17 Dec. 2020, www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/.
- Shrage, L. (2017). Race, Health Disparities, Incarceration, and Structural Inequality. *Oxford Handbooks Online*, 449-458. doi:10.1093/oxfordhb/9780190236953.013.25
- Simon, John K. (1991) “Michel Foucault on Attica: An Interview” in *Social Justice*, 18(3), 26-34.
- U.S. Department of Justice. (n.d.). *Felony Case-Processing Time* (pp. 1-3, Rep. No. 101985). National Criminal Justice Reference Service.
- Why Prison Education? (2018, March 25). Retrieved December 11, 2020, from <https://prisonstudiesproject.org/why-prison-education-programs/>
- Wills, V. (2016, July 18). Bad Guys & Dirty Hands. Retrieved November 19, 2020, from <http://www.thecritique.com/articles/bad-guys-dirty-hands/>
- Wright, Valerie. “Deterrence in Criminal Justice.” *The Sentencing Project*, 2010,

www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf.

Zack, N. (2015). Black Injustice and Police Homicide. In *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide* (pp. 63-91). Lanham, Maryland: Rowman and Littlefield.

Zehr, H. (2015). *Changing lenses: Restorative justice for our times*. Harrisonburg, VA: Herald Press.

Zimmerman, G. M. (2012). Chapter 1 [Introduction]. *Impulsivity, offending, and the neighborhood: Investigating the person-context nexus* (pp. 1-6). Albany, New York: Bibliogov.