

A Discursive Public Health Approach to Wrongdoing and the Wrongdoer

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ABSTRACT

Punishment as retribution belongs to a penal philosophy that is archaic and discredited by penologists. Our correctional system, whose *raison d'être* is correcting or rehabilitating wrongdoers, serves instead to protect society against crime and exact such punishment on wrongdoers that they are expected to refrain from future wrongdoing regardless of the underlying reasons for the initial engagement in criminal activity. This logic assumes that man is a rational, pleasure-seeking creature who can be prevented from engaging in antisocial and illegal behavior simply because of the prospect that the pain of punishment will outweigh the benefits gained from the commission of the crime. This is another assumption that may again, be misplaced, if recidivism rates and prison population are any indication.

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Western approaches to reducing crime have focused solely on retribution and continue to do so despite not having had the desired impact. The utilitarian justification for this retributive approach is a reduction in recidivism of existing offenders and deterrence of would-be offenders. This assumes a societal desire to reduce crime by seamlessly reintegrating wrongdoers. This assumption may be misplaced.

If it was surmised, as early as 1965, that prisons were not achieving their proclaimed goals, and were instead a delusional concept and actively destructive, then what are we, as a society gaining from supporting a practice that now exists solely to facilitate higher profit margins for unscrupulous businesses and which ultimately marginalizes, on average, 2.7 million citizens, the vast majority of whom, in reality, have the potential to be contributing members of society. In essence, our criminal justice system does not dispense justice and our correctional system does not correct—enter Restorative Justice (RJ).

Restorative Justice (RJ) is a Public Health approach to crime that aims to support transformative change. This approach deals with violence as though it was an epidemic or contagious disease. To prescribe relevant solutions, policy makers and program designers study and analyze the underlying causes of violence and design targeted initiatives to curb its spread. Public health is a science based on a multi-disciplinary approach which utilizes a broad knowledge base to successfully respond to a range of health conditions. This necessarily means that acts of violence, must be viewed as (1) the symptom of a deeper health issue, particularly in the case of the wrongdoer (person who caused the harm), and (2) must be viewed from the perspective that just as there are secondary and tertiary victims of wrongdoing, society is a secondary and/or tertiary wrongdoer. We could argue that, as communities of care of both the person who has been harmed and the person who caused the harm, we have failed the wrongdoer in some way or we have created such a dysfunctional environment that the wrongdoer, for his/her own survival, was forced to engage in the inappropriate, antisocial, illegal, or nonconforming activity in the first place. This is particularly true for juvenile wrongdoers and wrongdoers who belong to other vulnerable or

marginalized groups. In essence, guilt is subjective and secondary and tertiary wrongdoers hold levels of culpability based on societal proximity to the primary wrongdoer.

A Public Health approach to violence emphasizes collective action from diverse sectors including health, education, social services, justice, policy, and the private sector, not only for the benefit of the victims/survivors but, and perhaps more importantly, for the benefit of the wrongdoer, especially if the goal is to give the victims (primary, secondary and tertiary) a greater sense of peace by reducing the likelihood that the wrongdoer will reoffend. And what of the wrongdoer? If the victim's sense of peace is inextricably tied to the likelihood that the wrongdoer will not reoffend then it stands to reason that the rehabilitation of the wrongdoer is as important as the victim's. With this many actors (primary, secondary, and tertiary wrongdoers and primary, secondary, and tertiary victims), it is no wonder that the process must be necessarily discursive.

The recognition of violence as a health issue is premised on the acknowledgement that violent behavior is rarely ever 'senseless' or 'violent', but rather arises from contextual, biological, environmental, systemic, and social stressors. It is analogous to an epidemic in which violence spreads, clusters, and transmits through exposure. Therefore, violence is not symptomatic of 'bad people' and can be better depicted as a negative health outcome resulting from exposure to numerous risk factors. This forms the basis of a trauma-informed approach suggesting that there is underlying historic or situational trauma for every violent act.

To be clear, the goal of RJ is not to be an alternative to the existing criminal justice system. In fact, to be truly effective, restorative processes and principles must be embedded into and operate within traditional criminal justice systems. Though RJ differs greatly from the current retributive criminal justice model, there are some noted similarities. Restorative processes, for example, embrace tenets of retributive justice in that offenders are assumed to be mentally competent and morally culpable actors and are expected to accept responsibility for their actions and acknowledge the impact on the parties directly involved as well as the wider community. A Restorative approach absolutely promotes accountability and Restorative practitioners are committed to a process of acknowledgement and admission. However, the focus is on the unacceptable deed and not on the doer who still has the potential to be a contributing member of society. While the doer is held accountable, the response to the deed need not necessarily be punitive but should, instead, focus on fostering reintegration of the wrongdoer rather than stigmatizing and marginalizing.

Restorative processes introduce tertiary level prevention which typically, in the case of the victim, but also necessarily in the case of the wrongdoer, addresses the problem at the root to reduce the likelihood of recidivism. This is a flexible and discursive process that can take any form, depending on the community, the design of the program, the nature of the case and the participants involved, with the intent of providing more equitable, accessible, compassionate, and pragmatic justice.

Retributive justice places emphasis on victim safety punishment of the wrongdoer, to the exclusion of short term, and perhaps more importantly, long term healing. If applied correctly, Restorative processes can lead to healing and transformation of people, relationships, and communities. In essence, the restorative process normalizes discursive dialogue and negotiation as opposed to the existing adversarial process and in which one social injury simply replaces another.

There is no argument that there are glaring inadequacies in the current framework of criminal justice. Most obvious is a lack of discursiveness, relativism and reflectiveness which limits justice because of its failure to address oppression and social inequalities. Through its discourse and its practices, the existing Criminal Justice system continually invokes and reproduces the dominant affluent caucasian male's subjectivity of law. In contrast, a fundamental feature of Restorative Justice is discursiveness. Almost all restorative models prescribe that all parties, victims, wrongdoers, and their communities of care, (as secondary and tertiary actors) participate in the process by sharing their own accounts of their experiences and contributing to the final decision on what needs to happen to make things right.

This allows for restorative processes to include the reproduction of the subjectivity of those involved via storytelling, external to the rigid confines of western law. Rather than giving privilege to the law, professionals and the state, restorative resolutions engage those who have been harmed, those who caused the harm, and their affected communities in a search for solutions that promote repair, reconciliation, and the rebuilding of relationships. Restorative justice seeks to build partnerships to re-establish mutual responsibility for constructive responses to wrongdoing within communities.

Restorative Justice has at its core the transformation of punitive attitudes when dealing with wrongdoers and the normalizing of a more pragmatic approach to violence, because it investigates the root cause of the behavior and targets it directly, rather than providing temporary relief of the symptoms through retribution and punishment. The process is often misconceived as being too soft and informal because it does not necessarily denounce the harm caused to the victim as unacceptable, nor does it necessarily contradict justifications and trivializations made by the wrongdoer, but rather focuses on the long-term healing of all parties involved. The process argues that both the victim and the wrongdoer, as primary actors, as well as their communities of care as secondary and tertiary actors have a role to play in the conflict. While this may reduce the wrongdoer's sense of personal responsibility, the approach encourages collective decision making.

The process facilitates communication and compensates for existing power imbalances by lending support to the weaker party. The setting is non-adversarial, provides the opportunity for wrongdoers to understand and take responsibility for their behaviors without blaming the victims, while identifying underlying comorbidities in the wrongdoer's unaddressed and past trauma such as drug or alcohol abuse. It is this open dialogue in a non-judgmental environment which aids the healing process of the victims as well as the wrongdoer and both parties' communities of care. It is also mandatory that the wrongdoer acknowledge the basic facts of the case and that the process maintains the interest of the victim even as it acknowledges the needs of the wrongdoer. Thus, considerable effort is spent within the RJ process assessing the risks and needs of the victims and mitigating any possible harm.

In the final analysis, the restorative process is used to bring victims and wrongdoers together to enable the wrongdoer to acknowledge and accept responsibility for the action that has caused the harm, to allow the victim the opportunity to talk about the impact of the wrongdoer's action, and to allow both parties to take an active part in the determination of what is needed to repair the harm done. From a restorative point of view, although much emphasis is placed on the victims and the

harm caused, there is a need to focus equally on wrongdoers and affected communities to consider all stakeholders' feelings. Although restorative processes represent more than just getting or giving justice, they ought not to be viewed as contradicting retributive processes as they borrow and blend many elements of traditional practices. Ultimately, however, it is about positively influencing human behavior through the use of an iterative process that invites the active participation of communities of care to not only accept responsibility for the wrongdoer's actions, in their capacity as secondary and tertiary wrongdoers, but to also share in the decision making as to what needs to happen to heal the harm, what needs to be done to meet the underlying needs of both the victim and the wrongdoer and how all parties can engage in behavior changes that contribute to the seamless reintegration of the wrongdoer and a reduction in the likelihood of recidivism.

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