

RESTORATIVE JUSTICE ON THE COLLEGE CAMPUS

Promoting Student Growth and Responsibility, and
Reawakening the Spirit of Campus Community

Edited by

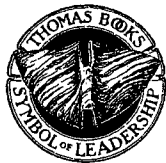
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Chapter 1

INTRODUCING RESTORATIVE JUSTICE TO THE CAMPUS COMMUNITY

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THE DISCIPLINARY PROBLEM

Although restorative justice is a new concept, there are already dozens of empirical evaluations demonstrating its effectiveness in criminal justice (see Braithwaite 2002 for a review). Participants tend to be more satisfied by their experiences with this process as compared with traditional court processes, and recidivism rates for offenders in restorative justice programs are lower than for those who received traditional sentences. On the basis of its rapid proliferation and successful outcomes, we find sufficient grounds for its adoption in campus judicial affairs. But there are other reasons as well. Restorative justice may be particularly well suited to campus communities because of their democratic and egalitarian ethos and educational mission.

The problem of student misconduct has several interrelated dimensions. First, students arriving on campus as freshmen experience a sudden, dramatic loss of supervision. Many of these students have not developed strong internal controls to regulate their behavior. This is especially true for students coming from very authoritative homes, where self-regulation was not cultivated (Colvin, 2000). For students whose behavior has been largely dependent on external controls, the liberated college environment may come as quite a shock.

Second, arriving students, who are anxious to make friends and establish a sense of belonging, are strongly pressured by peers to “party” with alcohol and other drugs. Prior research suggests that students overestimate the actual degree of alcohol and drug use by other students and seek to conform to the perceived norm (Perkins and Berkowitz, 1986). Research also shows that drug and alcohol use, and binge drinking in particular, is correlated with reduced academic performance. Even students who exercise modera-

tion are affected by property damage and unwanted sexual advances (Wechsler et al., 1994).

Third, student culture is at odds with mainstream society and legal codes with regard to drug use and underage alcohol consumption. Survey data from 2001 reveal that 85 percent of college students had consumed alcohol in the year prior to data collection and 36 percent had smoked marijuana. It should be noted that 65 percent of the survey sample was under age 21 (Core Institute 2003). College alcohol and drug policies, which obviously must comply with the criminal law, are accorded scant legitimacy among students. This dissensus creates an adversarial relationship between students and administration (as well as campus safety officers). Faculty members are caught in the middle and tend to remain awkwardly neutral about student extracurricular conduct. Campus life is strangely bifurcated. Students describe professors as their primary non-peer role models, yet the social control faculty exert in the academic sphere does not extend to the students' residential lives. In that realm, students largely fend for themselves.

Fourth, colleges typically rely on coercive techniques to gain compliance with college policies and the criminal law because they have had little alternative. Since college administrations cannot rely on student internal controls, and since dissensus precludes them from appealing to universal moral codes, administrators are forced to increase surveillance and punitive sanctions. This creates a conundrum because higher educational institutions in the United States often operate as cloistered liberal polities. While campuses generally repudiate authoritarian social control, they increasingly rely on the techniques of the police state to enforce campus policies. However, campus safety departments are rarely adequately staffed to accomplish coercive control, municipal police are not invited on campus, students remain largely free to consume drugs and alcohol at will, and an unlucky few are subject to increasingly harsh penalties when they are caught. Failing to achieve any deterrent effect, a common student reaction is that a few students are unfairly singled out for a punishment and call for campus officials to look the other way and leave them alone.

Fifth, because a quarter of the student body is new each year, disciplinary approaches must be educational and ongoing. Smith and Dickey (1999) describe a Milwaukee neighborhood street corner where the drug trade thrives. In a three-month period in 1996, 94 drug arrests were made, and most of those arrested were convicted and sentenced to two years in prison. Nevertheless, the drug trade continued unabated. The removal of one dealer merely created the opportunity for the next dealer to stake his claim on the corner. Just as Milwaukee police officers could not arrest their way out of the drug problem, colleges cannot effectively respond to student disciplinary problems (including the drug trade) through apprehension and removal. The continual student population turnover guarantees that indi-

vidual-level solutions cannot resolve community-level problems. Instead, solutions must continuously strive to socialize students to be community members who are able to consider the consequences of their behavior on the welfare of the community (DeJong et al., 1998).

The restorative approach described here offers a communitarian alternative to liberal avoidance and conservative crackdowns. It is an approach that focuses on moral education by integrating academic learning, student participation in the campus judicial process, and restorative justice principles. The approach is a response to both individual misbehavior and campus dissensus.

RESTORATIVE JUSTICE: PRINCIPLES AND VALUES

Restorative justice is an approach to criminal offending that emphasizes values of democratic participation, inclusion, and stewardship (Clear and Karp, 1999). Restorative justice encourages dialogue among victims and offenders to construct plans of action that hold offenders accountable and meet victims' needs. This approach may be effectively extended to the college arena, where misconduct is not always illegal, but often is a violation of campus honor codes and college policies. Restorative processes help educate community members about the need for civic commitment and build student capacity for evaluating the impact of their behavior on the community. They also legitimate college policies by creating not only due process, but also consensus around behavioral standards and equitable responses to misconduct. Offender accountability is central, but it is balanced with a concern for reintegration—which is defined by an offender's ability to regain trust through demonstrated good citizenship. The restorative values of repairing harm, reintegration, and community building is reflected in Figure 1.1.

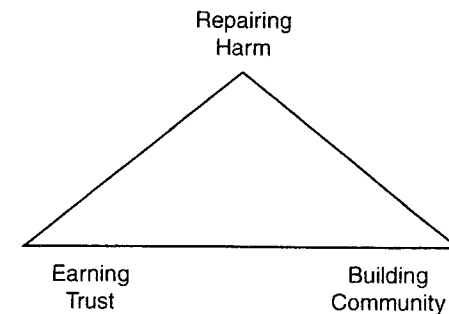


Figure 1.1 Restorative Justice Principles

Our approach is particularly concerned with the use of restorative justice in a well-defined community—the campus community. As such, we stress four principles to guide student judicial practices (Karp and Clear, 2002). First, the judicial system must be *accessible* to the student community. Students must know of the campus policies, which should be communicated clearly with a minimum of legalese. Practices of the judicial system should be consistent and respectful, but not rigidly bureaucratic.

Second, community members should participate actively in the process. On the college campus, this means that students should have active roles in the process, as should faculty, staff, and administration. *Community involvement* includes the active participation of offenders¹ in the decision-making process. Equally important is the voice of victims or “harmed parties.” More generally, a mechanism should exist to recruit volunteers in the community who are interested in the judicial process. A justice system is legitimated when participants in the process believe that others who participate represent the broader community. Without democratic representation, those who are sanctioned are less likely to view the process as just (Tyler, 1990).

Third, sanctioning should focus on repairing harm. Here, accountability is defined not by the proportional harm imposed on the offender, but by the offender’s obligation to make amends for the harm he or she has caused. Bazemore and Walgrave (1999) define restorative justice as “action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime” (p. 48). If a window has been broken, the offender’s obligation is to fix it. It is not possible for the offender to take responsibility for all types of harm; he or she, for example, cannot repair emotional harm. Nevertheless, the obligation remains for the offender to take steps toward ameliorating such harm through apology, expression of remorse, or victim-offender mediation. Communal harm can be repaired through community service work.

Fourth, the offender also incurs an obligation to reassure the community that he or she will not cause further harm to the community. The community, in turn, must strive to *reintegrate* the offender. This reciprocal process begins with an identification of offender risk factors. If the offender needs academic tutoring, psychological counseling, or other competency needs, these should be made available. Sanctions should be guided by the objectives of restoration and reintegration so that harm is repaired and offenders can become productive community members. Accountability is demonstrated through expressions of remorse and commitment, and through the completion of tasks negotiated as part of the sanctioning process.

1. We use the terms *offenders* and *victims* because that is the convention of criminologists. But in practice, we use terms that are less symbolically tied to criminal justice, such as *respondents* for offenders and *harmed parties* for victims.

Consider one recent case at Skidmore College. A student was arrested for dealing cocaine. After serving time in state prison, the student reapplied to Skidmore to complete his senior year. He was readmitted, but one of the stipulations required him to tell his story to other students so they might learn from his experience. For his project, he created a 30-minute video memoir, which the college uses as a platform for discussion about the risks of dealing drugs. While it was tempting to deny his readmission, enabling the student to take active responsibility for his behavior provided the campus with a new resource for discussing drug issues with the student body.

RETHINKING SANCTIONS AND EMBRACING RESTORATIVE JUSTICE

In a review of college judicial affairs practices, Dannells (1996) argues that the historical development of the field has moved away from retributive punishment and toward rehabilitation and the development of student self-discipline. “Throughout the 1950s and ’60s, disciplinary affairs became less punishment and control-oriented, more democratic, and more focused on reeducation and rehabilitation” (p. 177). This is certainly true as judicial officers increasingly provide direct counseling or refer students to treatment. Nevertheless, the continuum of sanctions is still defined by punishment and outcasting, rather than restoration and reintegration. Students are given warnings; their privileges are restricted (such as being prevented from participating in intercollegiate sports or in other cocurricular clubs); or they are removed from campus housing, suspended, or ultimately expelled. Nevertheless, the widely adopted “model student code” generally reflects a retributive rubric (Dannells, 1997, pp. 107–108; Stoner, 1998). Thus, a student already operating at the margins of social acceptability is progressively outcast from membership in the conventional college community. The restorative justice approach promotes inclusion over social distancing, emphasizing instead sanctioning strategies that rebuild conventional social ties to the college community.

Central to replacing outcasting with reintegration is to shift the burden of sanctioning responsibility from the college to the student. While suspension and expulsion must be retained, they are anticomunitarian devices that should be minimized wherever possible. The removal of a student from the community is likely to displace the problem to another, less fortified community without resolving it. We believe that suspension should be limited to two situations. First, colleges are not correctional facilities, and removal may be necessary when a student poses a threat to campus safety. Second, when a student refuses to participate in judicial proceedings, or a student fails to complete sanctioning tasks, then the student should be

removed. Otherwise, the goal should be reintegration through the development of personal responsibility.

We advocate a new conceptualization of suspension called “self-suspension.” Each student is obligated to repair harm and demonstrate his or her ability to be a member in good standing. A contract with the student should be negotiated and it should clearly detail what steps the student must take to regain social standing. While a student may apply for an extension if necessary, a student generally is not allowed to register for the following semester’s classes until the contract is complete.² Thus, a student who fails to comply with the college’s expectations for responsible membership loses his or her right to participate in community life. The burden of responsibility is shifted from the college to the student. In essence, restorative justice sends a very clear message to offenders: You have done wrong, and we can agree on this by clearly identifying the damage done to victims and the community. We will now give you the opportunity to take responsibility for what you have done by repairing that harm as best you can and demonstrating to us your ability to be a good citizen.

Apology. Apology occupies a central place in restorative justice. Retzinger and Scheff (1996) argue that reconciliation is predicated on a core sequence: “This process involves the social rituals of respect, courtesy, apology, and forgiveness. . . . The ideal outcome, from the point of view of symbolic reparation, is constituted by two steps: the offender first clearly expresses genuine shame and remorse over his or her actions. In response, the victim takes at least a first step towards forgiving the offender for the trespass. The core sequence generates repair and restoration of the bond between victim and offender, after this bond had been severed by the offender’s crime” (p. 316). The sanctioning process, therefore, must begin with an acknowledgment of responsibility for the offense, articulated through an apology. Our apology guidelines require that letters contain (1) an acknowledgement of responsibility, (2) a delineation of how the behavior was harmful, (3) an expression of remorse, and (4) a commitment to making amends and socially responsible behavior in the future.

From Fines to Restitution. Restitution should be distinguished from fines. Fines are imposed as a punishment to deter the misbehavior and, presumably, to generate revenue. Restitution is collected to pay for lost or damaged property as a result of the offense. The amount of a fine is determined by the deterrent need and is independent of the particular offense. Restitution is determined by the extent of harm. From the perspective of the offender, fines are likely to be perceived as arbitrary since the rationale for the amount

2. At Skidmore, this model works for all students except graduating seniors. For this group, failure to complete sanctions will prevent them from participating in commencement exercises and receiving their diploma.

is not transparent. More problematic, fines create moral ambiguity (Kahan, 1999). In a market society, goods and services have prices, but are morally neutral. If misbehavior is fined, the message of moral disapproval is easily obscured. Instead, we communicate that the behavior is acceptable “if you can afford it.” Restitution is paid in order to make amends. By clearly identifying harm, the offender learns why the behavior is morally unacceptable.

Enlightened Community Service. Community service is widely used in college judicial sanctioning, yet it often is not restorative. Community service can be misused as a retributive device. This is the case when it is merely a substitution for another punishment, scored on a rubric of punitive commensurability (Kahan, 1999)—40 hours of community service = \$400 fine = 4 days in jail = 40 lashes of the whip. The symbolism suggests it is just one more type of pain that can be imposed on the offender. This is just the wrong message to send to someone in need of community reintegration. If service is used as a punitive deterrent, why would the offender embrace it as a positive expression of community membership?

When used correctly, community service is central to a restorative approach. As restitution should be distinguished from fines, so should restorative community service be distinguished from punitive service (Bazemore and Karp, forthcoming 2004). If a student vandalizes a campus building, community service would be necessary—the student should fix the damage, perhaps working alongside maintenance staff. In a recent case at Skidmore College, two dormitory roommates had moved lounge furniture to their room. As part of our judicial process, the students learned that the violation not only was harmful to the other residents by denying them a comfortable common space, but also had broader effects on the college because visiting prospective students would only see unpleasant residential spaces. A contract was negotiated in which the two students would return the furniture and clean the lounge (renting an upholstery cleaner) in time for an upcoming event in which large numbers of prospective students would be visiting the campus. The students were encouraged not to do this alone, but to organize a dorm-wide “spring cleaning.” Their leadership would serve as a demonstration of their commitment to making amends and promoting school spirit.

Community service, properly understood, is a mechanism of reintegration for student offenders because it provides a venue for making their prosocial efforts visible to others and fostering positive social ties with the campus community. It is also a means of reframing individual student misconduct as a community issue. Since the problems that appear before judicial boards generally speak to the broader issues of student culture (e.g., underage drinking and drug use), service projects linked to the offense become vehicles of community education. The student who uses hate speech might work with a diversity specialist to organize a campus

event on multicultural issues; the drunk driver might work with MADD (Mothers Against Drunk Driving) to bring a relevant speaker to campus; the student who downloaded a term paper from the Internet might organize a session during freshman orientation regarding the standards of academic integrity. Community service sanctions may be endlessly creative as they seek to change the underlying social norms that reinforce individual misbehavior.

RESTORATIVE JUSTICE MODELS

Because restorative justice is an international movement and is practiced in many different settings—from elementary schools to maximum security prisons—a variety of models have developed. Each has a unique history with a different set of practices. Today, many people have been trained in multiple practices, incorporating elements of one as they use another, so it is often difficult to distinguish them. Bazemore and Umbreit (2001) and Roche (2003) identify four basic models: victim offender mediation (VOM), conferencing, circles, and boards.

Victim offender mediation was pioneered in the 1970s in Canada and the United States by secular practitioners/researchers such as Mark Umbreit (Umbreit, 1994) and faith community activists such as Howard Zehr (Zehr, 1990). Victim offender mediation, sometimes called victim offender reconciliation or victim offender dialogue, is used for minor crimes and for cases of serious violence. The goal of the dialogue between a victim and an offender may be for clarification and healing, providing victims an opportunity to convey the harm they have suffered and to ask questions of the offender that help them make sense of the crime. VOM is often also used to negotiate a restorative contract in which the offender agrees to tasks that will help repair the harm. Although campuses across the country have embraced mediation (Warters, 2000), VOM is distinct from the more common “settlement-driven mediation” because offenders must admit responsibility before the meeting.

Conferencing models, sometimes called family group conferencing or family group decision making, are similar to VOM except that they include “supporters” of the victim and the offender. These may be friends and family, and supporters actively participate in the discussion. Theoretically, supporters serve two important roles: support and accountability. First, they help create an environment in which the key stakeholders feel comfortable enough to speak openly and honestly. They also provide both support during the meeting and assistance with the completion of agreed-upon tasks. A victim might decide, for example, to return to school and a friend might offer to share an apartment. Second, supporters increase accountability,

such as by moderating extreme comments made during the meeting, by challenging dishonest statements, and by monitoring compliance with agreements. Conferencing has its origins in the tribal justice practices of the Maori and proliferated as a modern practice in New Zealand, beginning in 1989, and Australia before arriving in the United States (Hudson et al., 1996).

Circles, also called circle sentencing and peacemaking circles, have their roots in North American indigenous practices, but are now used in numerous U.S. jurisdictions (Coates et al., 2003; Pranis, Stuart, and Wedge, 2003). In 1982, the Navaho Nation formally resurrected traditional circle practices to address crime problems (Roche, 2003). In 1992, Judge Barry Stuart pioneered the use of circles in the Canadian court serving First Nations peoples in the Yukon (Stuart, 1996). Circles are inclusive of all affected parties in a criminal incident, and the number of participants can be in the dozens. In traditional peacemaking circles of indigenous people of North America, participants use a “talking piece” to regulate the flow of dialogue. The talking piece is a ritual object that symbolizes the commonality and interdependence of circle participants. The person holding the talking piece may speak for as long as he or she wishes and retains the full attention of circle members. This communication technique prevents individuals from dominating the conversation, allowing all members to speak and enabling them to prepare their thoughts before sharing them. A “keeper” of the circle facilitates the process and is responsible for setting a tone of respect, hope, and support. Unfortunately, we do not know of any peacemaking circle programs operating on the college campus and do not provide case studies of this practice.

Boards, known by a variety of monikers such as integrity boards, reparative boards, and community panels, originated with the Vermont Department of Corrections Reparative Probation Program in 1996 (Walther and Perry, 1997). There are now hundreds of board programs in juvenile and adult criminal justice across the United States (Schiff et al., 2001). In this model, a small group of trained volunteers representing the community meet with offenders and victims to negotiate a restorative contract. This model is the most similar to contemporary campus judicial boards that include students, faculty, and staff. However, they differ in their emphasis on restorative dialogue and the creation of reparative agreements. They tend to differ in sanctioning philosophy and in the training board members receive.

Whichever approach is taken, each seeks an outcome that is morally satisfying to the participants in the decision-making process, particularly those most deeply affected by the misconduct. Restorative practices may not succeed in every case, but they may more closely reflect the overarching mission of higher education than contemporary judicial affairs practices.

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