

Legal Studies 162AC: Restorative Justice

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Course Description

This course advances the claim that the criminal justice system is both a product and a powerful engine of racial hierarchy in American society, and that strategies of restorative justice, which have recently garnered attention in settings from prisons to middle schools, hold out promise as practices of racial justice. We explore this thesis by examining the ways in which criminal justice systems shape the emotions and social relations of victims, offenders, and members of the larger community.

The course opens with a critique of the current focus of the criminal justice system on retribution and incarceration. It explores the racially disproportionate effects of this system, a product both of governmental failures to recognize the continuing economic, social and psychological effects of slavery and Jim Crow, and law's refusal to look beyond a narrow, individually-oriented notion of discrimination. The course also highlights the ways that the existing approach fosters vengeance and disgust toward offenders among the general population, and humiliation, emotional numbing, and isolation among those confined to prisons.

We then juxtapose to this approach the practices of restorative justice. Restorative justice views crime as a violation against the victim and the community as well as the state. Restorative practices involve the victim, the offender, the families, and the community in a shared search for solutions; they focus on the offender's accountability to the community, and obligation to repair the damage caused by the offense. The course highlights, in particular, the ways that face-to-face restorative practices respond to the emotional dimensions of the victim's injury, prevent the demonization of those who are already racialized as "other," and encourage the social reintegration of offenders.

We explore the use of restorative practices in indigenous cultures, the application of restorative justice principles to both juvenile and adult offenders in the United States, and the use of restorative justice techniques in educational institutions and workplaces. We also look at reparations movements in South Africa and the United States, to gauge the ways that engagements with victims, and individual and collective taking of responsibility for wrongdoing facilitate healing and reconciliation within communities. While we examine restorative justice

as a promising alternative to punitive approaches based on incarceration, the course also looks carefully at critiques of the restorative model, drawn from a number of contexts.

Finally, the course brings students into collaboration with several community-based organizations that engage in restorative justice practices. Practitioners from these organizations will come to our class, to expose students to the ways that restorative practices function on the ground. Student will observe and assess restorative practices that these organizations support in schools, prisons, and other locations. In analyses of what they have observed, they will reflect on best practices, and the application of restorative justice principles to other contexts. Part of each class session will be devoted to the discussion and assessment of students' experiences with their community partners. Students will contribute to these organizations by creating oral histories, both of organization leaders, and of the people they serve.

Evaluation

There will be two major course requirements for this class. The final project for the course will be an oral history, created for one of the three community partners for the course. Students will complete an oral history of one of the leaders of the community partner, or of one of the individuals who has been served by that community partner. Students will also be required to write a journal, which will be collected and read by instructors on a weekly or bi-weekly basis, depending on the segment of the course. In this journal, students will do two things: first, they will respond to prompts from the instructors, which will require them to engage the course readings; and second, they will reflect on their experiences in working with the community partner they have chosen and in preparing their oral histories. Class participation will also be figured into students' final grades. Course requirements will be weighted as follows in determining students' grades: Oral History (50%), Journal (35%), Class Participation (15%).

Topic Syllabus

WEEK 1

General Introductions, Explanation of Course, Expectations, Challenges; Life Histories of Students and Instructors

WEEKS 2 and 3

I. Why Do We Need Restorative Justice? Failures of the Criminal Justice System

Part I will offer a critical analysis of the current focus of the criminal justice system on retribution and on mass incarceration. It will explore the deeply hierarchizing effects that practices of disparate enforcement and mass incarceration have produced on Blacks and Latinos. For Blacks, these practices play a role that Michelle Alexander has analogized to the black codes and other devices of de jure segregation in the late 19th through mid-20th centuries. For Latinos, transitions in immigration enforcement such as “cimmigration” – the creation of mutually reinforcing regimes of criminal law and immigration – have meant mass incarceration, radical increases in deportation, and the separation of families. We will also interrogate the ways that the current approach functions – at times, purposefully – to foster vengeance and disgust toward offenders as a (racially-marked) social category, complicating the process of re-entry and reintegration. Not only will the course examine the emotions of those on the “outside”; it will also explore the emotions of those on the “inside,” analyzing the frank humiliations, micro-aggressions, sustained tedium, and isolation that characterize prisoners’ experience of carceral sanctions. We will also look critically at mainstream media reporting of crime, arguing that dominant patterns of coverage fuel punitive impulses, and contribute to the social isolation and dehumanization of Black and Latino youth.

A. Race and Mass Imprisonment

Week 2

1. Mass Imprisonment and The New Jim Crow

Dorothy Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 *Stan. L.Rev.* 1271 (2004)

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010).

Mumia Abu-Jamal, “Teetering Between Life and Death,” 100 *Yale L. J.* 993 (1991)

Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* (2001)

Spearlt, *Mental Illness in Prison: Inmate Rehabilitation and Correctional Officers in Crisis*, 14 *Berkeley J of Crim L.* 227 (2009)

Week 3

2. Latino Prison Populations and the Rise of “Cimmigration”

Pew Hispanic Center, *A Rising Share: Hispanics and Federal Crime* (2009)

Juliet Stumpf, *The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 *Amer. U. L. Rev.* 67 (2006).

B. The Emotions of Carceral Justice

Jeffrie Murphy, "Legal Moralism and Retribution Revisited" and "Shame Creeps Through Guilt and Feels Like Retribution" in *Punishment and the Moral Emotions* (2012).

Dan Kahan, "The Progressive Appropriation of Disgust" in Susan Bandes, *The Passions of Law* (NYU Press 1999)

Stephen Garvey, *Can Shaming Punishments Educate?* 65 *U Chi L. Rev.* 733 (1998).

Two views of life under SB 1070 [from AZ papers]

Alice Goffman, *On the Run: Wanted Men in a Philadelphia Ghetto*, ASR (2009).

WEEK 4

C. The Impact of the Media on Perceptions of Crime

Sara Sun Beale, "The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness," 48 *Wm. & Mary L. Rev.* 397 (Nov. 2006)

Jane Ellen Stevens, *Reporting on Violence: New Ideas for Television, Print and Web*, Lori Dorfman, ed. (Berkeley Media Studies Group, 2001)

Lori Dorfman and Lawrence Wallack, "Moving from Them to Us: Reframing Challenges in Violence Among Youth," (Berkeley Media Studies Group, 2009)

WEEKS 5 and 6

II. What is Restorative Justice?

Part II will juxtapose to this carceral regime emerging practices of restorative justice. Restorative justice views crime as a violation against the victim and the community as well as the state; it focuses on the offender's obligation to repair the damage caused by the offense. The course will identify restorative elements in the more collective or communitarian cultural practices of indigenous peoples of the United States, Australia, and New Zealand. Restorative practices involve the victim, the offender, the families, and the community in a shared search for solutions; they emphasize face-to-face encounters and offender accountability to the victim and the community rather than mere punishment. This approach takes African-Americans and Latinos (who tend to be racialized as potential offenders) and European-Americans (whose crimes are viewed as the aberrant acts of isolated individuals) and characterizes them as children, parents, and community members. Restorative justice thus prevents the dehumanization and encourages the social reintegration of those who are the disproportionate targets of criminal enforcement, even as it responds to the emotional dimensions of the victim's, and the community's, injury. Restorative justice also focuses on the root causes of

those behaviors deemed by society to be criminal and thus has the potential to expose both institutional bias and societal systems of violence.

Week 5

Principles and Practices

Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press 1990)

Daniel W. Van Ness, Karen Heetderks Strong, "Restorative Justice: Justice that promotes healing," excerpted from: *Restoring Justice*, 2nd edition (Anderson Publishing), pp. 65-82, 180-182, 184-188, 193-197, 200-204, 209-214

Jerry Johnstone, "Introduction: restorative approaches to criminal justice," from *A Restorative Justice Reader*, Jerry Johnstone, ed, (Willan Publishing), pp. 1-8

Tony F. Marshall, "Restorative justice: an overview," from *A Restorative Justice Reader*, Jerry Johnstone, ed, (Willan Publishing), pp. 28-31

A. The Emotions of Restorative Justice

Jeffrie Murphy, "Forgiveness, Reconciliation, and Responding to Evil" in *Punishment and the Moral Emotions*

Robert Enright and Bruce Kittle, "Forgiveness in Psychology and Law: The Meeting of Moral Development and Restorative Justice," 27 *Fordham Urban L. J.* 1621 (2000).

*Carrie Petrucci, "Apology in the Criminal Justice Setting: Evidence for Including Apology as an Additional Component in the Legal System," 20 *Behav. Sci. and Law* 337 (2002).

David Lerman, "Forgiveness in the Criminal Justice System: If It Belongs, Then Why Is It So Hard to Find?" 27 *Fordham Urban L. J.* 1663 (2000).

WEEK 6

B. Oral History and Community Engagement with Restorative Practices

Week 7

I. Restorative Justice Models

Using case studies from California, Wisconsin, and Ontario, Canada, among others, we will look at the many settings in which government actors and community members are testing the potential of such practices, including victim offender reconciliation, school-based justice circles, juvenile justice family conferencing, prison programs and other contexts. A highlight of this unit will be a viewing and

discussion of the new Steve James-Alex Kotlowitz documentary, “The Interrupters,” which follows the efforts of a trio of former gang members who use restorative practices in unconventional ways to disrupt patterns of youth violence in Chicago.

A. Indigenous Traditions

Robert Yazzie, “‘Hosho Nahasdlii’—We Are Now in Good Relations: Navajo Restorative Justice, 9 St. Thomas L. Rev. 117, 117-124

Jim Consedine, “The Maori Restorative Tradition,” from *Restorative Justice: Healing the Effects of Crime*, pp. 81-97

Fred McElrea, “Justice in the Community: The New Zealand Experience”

John Braithwaite, *Crime, Shame and Reintegration*, (Cambridge Univ. Press, 1999), pp.97-107

WEEK 8

B. Restorative Justice and Crime

1. Restorative Justice and Juvenile Justice

Sacha M. Coupet, “What to Do with the Sheep in Wolf’s Clothing: The Role of Rhetoric and Reality About Youth Offenders in the Constructive Dismantling of the Juvenile Justice System,” 148 U. Pa. L. Rev. 1303 (2000)

Office of Juvenile Justice and Delinquency Prevention, “Balanced and Restorative Justice for Juveniles,” Univ. of Minnesota Balanced and Restorative Justice Project (1997)

Caren L. Flaten, “Victim-Offender Mediation: Application with Serious Offenses Committed by Juveniles,” from *Restorative Justice: International Perspectives*, B. Galaway and J. Hudson, eds. (Kugler Publications, 1996), pp. 387-401

Audrey Evje and Robert C. Cushman, “A Summary of the Evaluations of Six California Victim Offender Reconciliation Programs,” Executive Summary (May 2000)

Annett Fuentes, “Alameda County Pioneers Restorative Justice for Youth,” *New America Media*, posted: Jun 15, 2009

Steve James and Alex Kotlowitz, *The Interrupters* (Kartemquin Films, 2012).

Morris Jenkins, "Treatment of Juvenile Offenders: A Restorative Justice/Afrocentric Approach," *Social Policy Times*, 3(2), 8-10.

WEEK 9

2. Restorative Justice and Adult Offenders

Mark S. Umbreit, "Violent Offenders and their Victims," in *Mediation and Criminal Justice: Victims, Offenders and Community*, ed. M. Wright and B. Galaway (London: Sage, 1989), pp. 99-112

Michael M. O'Hear, "Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice," *20 Stan. L. & Pol'y Review* 463, 463-499

Jeanell Norvell, "An Adlerian Based First Time Felony Offender Diversion Program," associated content from Yahoo! <http://www.associatedcontent.com/>

3. Restorative Justice in Jails and Prisons [Speakers: Ex-Offenders – Insight Program]

Sunny Schwartz, Michael Hennessey & Leslie Levitas, "Restorative Justice and the Transformation of Jails: An Urban Sheriff's Case Study in Reducing Violence," *Police Practice*, 2003, Vol.4, No.4, pp. 399-410

James Gilligan and Bandy Lee, "The Resolve to Stop the Violence Project: Reducing violence in the community through a jail-based initiative," *Journal of Public Health*, Vol. 27, No. 2, pp. 243-148

"The Non-Traditional Approach to Criminal & Social Justice," *Prisoners Alliance with Community*, January 1997

"Responsibility, Rehabilitation, and Restoration: A Response and Implementation Plan," *Our Lady of the Rosary, San Quentin Catholic Chapel: Interfaith Roundtable*, June-July 2005

WEEK 10

4. Difficult Cases: Domestic Violence, Sex Offenders

Michael Schluter, "What is relational justice?" in *A Restorative Justice Reader*, Gerry Johnstone, ed., (Portland: Willan, 2003), pp. 305-307

Barbara Hudson, "Restorative Justice: the challenge of sexual and racial violence," in *A Restorative Justice Reader*, Gerry Johnstone, ed., (Portland: Willan, 2003), pp. 441-444, 448

Meghan Condon, "Bruise of a Different Color: The Possibilities of Restorative Justice For Minority Victims Of Domestic Violence," 17 Geo. J. on Poverty L. & Pol'y 487

Robin J. Wilson, Janice E. Picheca, and Michelle Prinzo, "Circles of Support & Accountability: An Evaluation of the Pilot Project in South-Central Ontario," Correctional Service of Canada, May, 2005

Mary P. Koss, Karen J. Bachar, and C. Quince Hopkins, "Restorative Justice for Sexual Violence: Repairing Victims, Building Community, and Holding Offenders Accountable," Annals New York Academy of Science 989: 384-396 (2003)

WEEK 11

C. Restorative Justice in Civil Settings

1. Restorative Justice Programs in Schools

John Braithwaite, excerpts from Restorative Justice & Responsible Regulation (Oxford, 2002), pp.19, 214-223

Christina L. Anderson, "Double Jeopardy: The Modern Dilemma for Juvenile Justice," 152 University of Pennsylvania Law Review 1181 (1999), pp. 1181-1219

Ted Wachtel, "School," Real Justice: How we can revolutionize our response to wrongdoing (Pipersville: Piper's, 1997), pp. 123-137

Michael D. Sumner, Carol Silverman, Mary Louise Frampton, School-Based Restorative Justice as an Alternative to Zero-Tolerance Policies: Lessons from West Oakland (Thelton E. Henderson Center for Social Justice, UCB School of Law)

Implementing Restorative Justice: A Guide for Schools (Illinois Criminal Justice Information Authority)

2. Restorative Justice on Campuses

David Karp and Susanne Conrad, "Restorative Justice and College Student Misconduct," Public Organization Review: A Global Journal 5: 315-333 (2005)

3. Restorative Justice in Workplaces

Kay Pranis, "Healing and Accountability in the Criminal Justice System: Applying Restorative Justice Processes in the Workplace," 8 Cardozo Journal of Conflict Resolution 659

Margaret Thorsborne, "Beyond Punishment – Workplace Conferencing: An effective organizational response to incidents of workplace bullying," *Transformative Justice Australia* (Queensland)

WEEK 12

II. Broader Applications

This unit will explore the application of restorative justice principles and practices to racial healing in the broader context of communities and countries. We will inquire how reparations movements and truth and reconciliation processes in other countries and in the United States incorporate restorative justice approaches and whether those perspectives are effective in reducing racial divisions. We will also examine how restorative justice could be used as a tool of racial justice to transform communities when informed by an understanding of implicit and institutional bias.

A. Reparations

Randall Robinson, "What America Owes to Blacks and What Blacks Owe to Each Other," *African-American Law & Policy Report* 1 (2004), pp. 1-13

Troy Duster, "Repairing the National Memory by Acknowledging the Living Presence of 'Our Childhood Locked in the Closet,'" *6 African-American Law & Policy Report* 43 (2004), pp. 43-47

Eric K. Yamamoto, "Beyond Redress: Japanese Americans' Unfinished Business," *7 Asian Law Journal* 131 (2000), pp. 131-138

WEEK 13

B. Truth and Reconciliation Commissions

Alex Boraine, *A Country Unmasked: Inside South Africa's Truth and Reconciliation Commission*, (Oxford Univ. Press, 2000), pp. 340-378, 409-442

Lorna McGregor, "Individual Accountability in South Africa: Cultural Optimum or Political Facade?" *95 American J. Int'l Law* 32 (Jan. 2001), pp. 32-45

Dennis Sullivan and Larry Tifft, *Restorative Justice: Healing the Foundations of Our Everyday Lives* (Monsey, NY: Willow Tree, 2001), pp. 121-138

Lisa Magarrell and Joya Wesley, *Learning from Greensboro: Truth and Reconciliation in the United States* (University of Pennsylvania Press, 2008), pp. 3-12

C. Emotions of Transitional Justice

Laurel Fletcher and Harvey Weinstein, *Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation*, 24 Hum Rts Q 573 (2002).

Martha Minow, *Between Vengeance and Forgiveness* (1998).

Week 14 – Group Presentations