

Using Restorative Justice as a Path Towards Racial Justice in the Education System

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I. Introduction

Prior to this course, I lacked a full awareness and understanding of the racial inequalities within our society. Although I thought I knew about the disparities within our criminal justice system, I was oblivious to the full extent. Even when I felt knowledgeable about racial disparities and injustice, statistics were still shocking, and the human realities were devastating.¹ Through impactful class discussions, motivating presentations, and revealing readings, I learned from my classmates and from presenters, and feel strongly that restorative justice can achieve, or start to achieve, racial justice in society.

As someone with a strong Christian faith foundation, promoting and effecting equality and justice is a paramount goal. Christianity lessons such as loving my neighbor as myself² and that all were created equal in God's image³, created the foundation of my childhood, and continued with me into adulthood. It was not until this course, however, that I truly saw where this philosophy needs to be shifted, as there are systems and larger institutions that perpetuate inequality.⁴ It is no longer enough to simply love others and expect an equal society.

Professor Rachel Paulose, during her discussion of *Just Mercy*, emphasized the systemic racism present in today's society, and the demonstrable impact present in the prison population.⁵ Dr. Artika Tyner, through her article *The Tangled Web of Mass Incarceration*, connects this disparagement to early childhood education.⁶ Dr. Tyner highlights the horrific realities associated with the school-to-prison

¹ BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* 153–55 (2015) (detailing the story of George Stinney, a fourteen-year-old Black boy who was executed); Dr. Yohuru Williams, Presentation to Restorative Justice Course at the University of St. Thomas School of Law (Aug. 26, 2021) (discussing the racial inequalities throughout history and into the present day).

² *Mark* 12:31.

³ *Genesis* 1:26–28.

⁴ See Professor Rachel Paulose, Presentation to Restorative Justice Course at the University of St. Thomas School of Law (Aug. 24, 2021) (general discussion focused on systemic racism and systems of injustice) [hereinafter Paulose Discussion].

⁵ *Id.*

⁶ Artika R. Tyner, *The Tangled Web of Mass Incarceration: Addressing the School-To-Prison Pipeline Through a Restorative Justice Approach*, 17 U. ST. THOMAS L.J. 59 (2020).

pipeline⁷, but also poses a potential solution: restorative justice within the education system.⁸ After reading her article, I kept returning to this idea, each time with the urgency that it could *begin* to resolve future racial injustices and disparities.

In this paper, I will incorporate my traditions and goals of achieving equality with the principles and practices learned throughout this course. I will look specifically at disciplinary practices in the education system, how a shift to a restorative justice approach can disrupt the school-to-prison pipeline, and how this disruption creates a step towards racial justice in society. First, I describe the school-to-prison pipeline, which provides a framework of social injustice and serves as what I believe to be a potential root of racial disparities in the criminal justice system. Next, I analyze restorative justice practices and their distinct way of addressing conflict among youth and students. Finally, I turn to restorative justice practices in the school system, an area that I believe can enact profound social justice, specifically highlighting how the Saint Paul Public School District implemented restorative justice practices, with insights from a current educator on the effectiveness and potential of these practices towards achieving justice.

II. School-to-Prison Pipeline

The school-to-prison pipeline is a “national trend wherein children are funneled out of public schools and into the juvenile and criminal justice systems.”⁹ As Dr. Tyner describes, trends in both disciplinary practices, and school’s reliance on interventions from law enforcement rather than teachers and administrators, negatively impacted the school-to-prison pipeline.¹⁰ Zero-tolerance policies, which criminalize minor infractions of school rules, automatically impose severe punishment regardless of the circumstances.¹¹ Schools placing law enforcement in their schools created a shift in handling discipline, as

⁷ Tyner, *supra* note 4, at 67 (“The school-to-prison pipeline is a civil rights issue which limits equal access to educational attainment for...students of color” in a society where “[e]ducation is of paramount importance not only for individual students but also for the collective and the betterment of society.”).

⁸ Tyner, *supra* note 4, at 73.

⁹ *School-To-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> (last visited Sept. 27, 2021) [hereinafter ACLU].

¹⁰ Tyner, *supra* note 4, at 60.

¹¹ ACLU, *supra* note 6.

“behaviors once handled by school personnel became referred to the police, increasing the criminal penalties students receive.”¹²

This pipeline is not without racial inequality. Studies by the National Center for Education Statistics and the U.S. Department of Education show disparities in out-of-school suspensions, with Black students experiencing them at a rate higher than any other group.¹³ A study detailed in Dr. Tyner’s article found that even though “Black students represent 16% of the student population, [they represent] 32-42% of students suspended or expelled.”¹⁴ An issue lies in thinking that students of color are misbehaving at a higher rate than their white counterparts.¹⁵ This implicit bias factors into many peoples’, myself included, views on racial disparities within schools. However, this rationalization is at odds with my foundation and philosophy. And these statistics highlighting disparities between students of color and white students are also without reason, as data shows no evidence that Black students engage in higher rates of misbehavior than other students.¹⁶ Despite this, minority students are suspended more frequently and with more serious consequences, when their behaviors were less-serious and more-subjective.¹⁷

When students are spending more time unsupervised and losing instructional time, they are at a clear disadvantage to succeed academically.¹⁸ And this academic failure is strongly associated with dropping out of school as well as future incarceration.¹⁹ It is easy to see the racial inequalities, and the system that then sets minority students up for failure. As Dr. Tyner points out, this pipeline only runs one

¹² Hani Morgan, *Restorative Justice and the School-to-Prison Pipeline: A Review of Existing Literature*, 2021 EDUC. SCI. 11(4).

¹³ Morgan, *supra* note 9.

¹⁴ Tyner, *supra* note 4, at 68.

¹⁵ Tyner, *supra* note 4, at 62.

¹⁶ Tyner, *supra* note 4, at 62.

¹⁷ Tyner, *supra* note 4, at 62.

¹⁸ Morgan, *supra* note 9; *see* FANIA DAVIS, *THE LITTLE BOOK OF RACE AND RESTORATIVE JUSTICE: BLACK LIVES, HEALING, AND U.S. SOCIAL TRANSFORMATION* 28–9 (2019).

¹⁹ Morgan, *supra* note 9; *see also* Paulose Discussion, *supra* note 4 (detailing the racial inequalities that exist in the prison population).

way.²⁰ By implementing restorative justice practices at one source of this issue, during violations of school policies or classroom arguments, there is potential to block the entrance to the pipeline.

III. Restorative Justice Practices

Restorative justice aims to promote conflict resolution by effectuating dialogue, permitting those who caused harm to detail their experiences, and allowing those who experienced harm to do the same.²¹ The philosophy of restorative justice comes from Indigenous peoples of New Zealand and North America, focusing on healing rather than punishment.²² Restorative justice is premised on “making things right,” a concept that looks different in every situation, but especially in a classroom or educational setting, and even more so when those practicing it are under the age of ten.²³

In the classroom, restorative justice practices include conversations, circle processes, and conferences involving all those affected by an incident.²⁴ These practices create opportunities for dialogue and resolutions to problems, often without the use of exclusionary discipline.²⁵ Rather, students are given the opportunity to “make things right” and try to repair the harm resulting from their actions, “while also developing conflict management skills and engaging in community-building.”²⁶

IV. Restorative Justice as a Tool in Schools to Start Achieving Racial Justice

I believe that implementing restorative justice practices within schools can begin a social change towards racial justice in the larger society, a line of thinking that is supported by the readings, speakers, and

²⁰ Tyner, *supra* note 4, at 62 (“A pipeline runs in a single direction, and once entered into the mouth, destiny sweeps everything before it to the bottom; a pipeline offers no exits, no deviations or departures, no way out – unless it fractures.”).

²¹ Morgan, *supra* note 9.

²² Dan Griffith, *Healing the Harm – The Effectiveness of Restorative Justice in Response to Clergy Abuse*, 17 U. ST. THOMAS L.J. 18 (2020); *see* Morgan, *supra* note 9.

²³ Tyner, *supra* note 4, at 70.

²⁴ Morgan, *supra* note 9.

²⁵ Morgan, *supra* note 9.

²⁶ Tyner, *supra* note 4, at 72.

class discussions.²⁷ Restorative justice practices can tackle the racial injustice caused by the school-to-prison pipeline by fostering student communities rather than ostracizing them.²⁸

Utilizing restorative justice practices and values within schools addresses harms from a student's behavior while at the same time embraces a student's potential for individual growth.²⁹ These practices can take a variety of forms, but are centered on a set of core principles: focusing on relationships first and rules second; giving a voice to the person harmed and the person who caused the harm; engaging in collaborative problem-solving; enhancing personal responsibility; empowering change and growth; and including strategic plans for restoration and reparation.³⁰

All these principles allow students an opportunity to respond to misbehavior in an alternative way to a zero-tolerance procedure. After an incident, instead of an automatic suspension and shaming, students are given an opportunity to reflect, listen, and resolve their conflicts. From my experience, dialogue is one of the best ways to address a problem, whereas a zero-tolerance policy enforces just the opposite. And as Father Griffith noted, restorative justice circles welcome dialogue, in an atmosphere where everyone is on equal ground.³¹ This practice has the ability then to “support early intervention and create an alternative to entering the juvenile justice system.”³² On top of this, the restorative justice framework emphasizes a culture of peace and community of nonviolence, focusing on the idea that we are all neighbors.³³ The practices, to the greatest extent possible, seek to rebuild damaged relationships. When implemented in

²⁷ Morgan, *supra* note 9; DAVIS, *supra* note 15, at 30 (“There are growing numbers of studies establishing the effectiveness of school-based restorative justice in reducing suspensions, expulsions, and police referrals, while improving academic outcomes and decreasing violence.”); see Beverly Bushyhead, Presentation to Restorative Justice Course at the University of St. Thomas School of Law (Aug. 24, 2021) (describing that in order to start achieving equity, we need to talk about social narratives and address the fact that people are situated differently, specifically in the context of juvenile offenders).

²⁸ Although this paper primarily focuses on how schools react to students' behavior, Fania Davis suggests that to effectuate a change in the pipeline, the approach must simultaneously address relationships, institutional racism, and implicit bias. She continues that to rectify racial disparities in youth, interventions for implicit bias in adults is the necessary first step. DAVIS, *supra* note 15, at 32.

²⁹ Tyner, *supra* note 4, at 71.

³⁰ LORRAINE STUTZMAN AMSTUTZ & JUDY H. MULLET, *THE LITTLE BOOK OF RESTORATIVE DISCIPLINE FOR SCHOOLS: TEACHING RESPONSIBILITY, CREATING CARING CLIMATES* (2005).

³¹ Griffith, *supra* note 19, at 34.

³² Tyner, *supra* note 4, at 72.

³³ Tyner, *supra* note 4, at 71.

schools, restorative justice practices show reduced suspension and expulsion, decreased disciplinary referrals, improved academic achievement, and other beneficial results.³⁴

Dr. Tyner reviewed the success of restorative justice practices within the Denver and Oakland School Districts.³⁵ Additionally, in our own backyard, the Saint Paul Public School District began a “Restorative Practices Program” which focuses on building relationships, problem solving, and learning.³⁶ Their practice emphasizes a shift in students’ thinking, believing, and acting, grounded in how each student interacts in their daily relationships.³⁷ The district relied on this approach in October of 2016 when a fight, which would normally result in a three-day suspension, was resolved through a 90-minute listening session in which classmates were able to ask questions and describe how the altercation made them feel.³⁸ Instead of suspension being the first response, it became a last resort.³⁹ Along with this procedural change, students create sense of community where they feel safe to communicate their feelings and address any open wounds.⁴⁰

As a law student, it’s easy to hypothesize and analyze resources, then propose a solution to nationwide problem. After this class especially, I do not want to propose ideas and only *hope* for a solution. Rather, I want to move towards a societal change and suggest a route of action that shows potential. Because of my lack of familiarity with school systems and their various approaches to discipline, I spoke with an educator from the Saint Paul Public School District, Kindergarten teacher Emma Wigdahl at Mississippi

³⁴ David D. Karp & Beau Breslin, *Restorative Justice in School Communities*, YOUTH & SOC’Y 33(2), 249 (2009); *Improving School Climate: Findings from Schools Implementing Restorative Practices*, INTERNATIONAL INSTITUTE FOR RESTORATIVE PRACTICES (S. Lewis ed., 2009).

³⁵ Tyner, *supra* note 4, at 75–6 (Denver Public Schools shifted their disciplinary practice from detention, expulsion, and suspension, to restorative circles and family conferencing; Oakland Public Schools enacted a middle school pilot program which eliminated violence and expulsions, replacing them with restorative justice circles, and has seen suspensions decrease 74% after two years).

³⁶ *Restorative Practices Overview*, SAINT PAUL PUBLIC SCHOOLS, <https://www.spps.org/restorativepractices> (last visited Sept. 27, 2021).

³⁷ *Restorative Practices*, NOKOMIS MONTESSORI, <https://www.spps.org/domain/14860> (last visited Sept. 27, 2021).

³⁸ Josh Verges, *Instead of Suspensions, Six St. Paul Schools Try Restorative Circles*, TWIN CITIES PIONEER PRESS (June 9, 2017, 7:00 AM) <https://www.twincities.com/2017/06/09/instead-of-suspensions-six-st-paul-schools-try-restorative-circles/>.

³⁹ *Id.*

⁴⁰ *Id.*

Creative Arts Elementary School.⁴¹ Although her school is not designated as a “Restorative Practice School” within the Saint Paul District, she described her technique in addressing disciplinary practices as one that mirrors restorative justice practices. In her classroom, she encourages students to build connections and relationships with each other and with her.⁴² By building these relationships, she sees few behavioral issues: students freely express their emotions and make mistakes, without fear of judgment or shame.

When asked if she believed whether restorative justice practices could disrupt or even eliminate the school-to-prison pipeline, Emma responded that she believes restorative justice can change the entire system.⁴³ She went on to say, “The whole reason kids are ending up in the prison system is because the school system is failing them by wrongly managing their behavior. The system needs to teach kids how to deal with their emotions, rather than punishing them for having emotions. Students are being punished for acting out, but we fail to consider why they are acting out.”⁴⁴ Emma sees the impact that restorative justice practices have on her students, one that if adopted at an early age at more elementary schools, could create a societal shift towards racial justice.

V. Conclusion

Before this course, I did not realize the extent to which racial disparities impact people in the criminal justice system, nor where their roots may be linked. Part of this was a conscious oblivion, one that I have reevaluated since this course. Although only a fraction of the issues that minorities and people of color are facing, I do see hope and potential in achieving racial justice through an elimination of the school-to-prison pipeline by restorative justice practices. John Choi, in his work with Ramsey County, believes that restorative justice is a replacement, not just an alternative to the juvenile justice system.⁴⁵ However, I

⁴¹ Emma Wigdahl is a current Kindergarten teacher at Mississippi Creative Arts Elementary School in the Saint Paul Public Schools District. Prior to her role within the St. Paul District, she worked at elementary schools in the Minneapolis Public School District and in the Brooklyn Center School District.

⁴² Emma noted that trusting relationships are vital, especially among students of color who have generational trauma and often times a negative outlook towards school, as it is a system that may have impacted them and their families. Interview with Emma Wigdahl, MEd., Kindergarten Teacher, Mississippi Creative Arts School (Sept. 26, 2021).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ John Choi, Presentation to Restorative Justice Course at the University of St. Thomas School of Law (Aug. 26, 2021).

think we can take this practice a step farther and implement it at earlier stages such as in elementary educations. Not only is it scholars like Dr. Tyner, or advocates and practitioners like Crixell Shell, or an eager law student like me, but it is also current educators like Emma Wigdahl, who see the possibility of equality from restorative justice practices within the education system.