

## **Restorative Justice Will Heal Wounds of Racial Injustice Individually, In Communities, and In Society**

### **INTRODUCTION**

Our common humanity ties us together as social beings.<sup>1</sup> Racial injustice reverberates throughout American society, yet to this day the United States fails to recognize the harm perpetrated in its systems.<sup>2</sup> Current practices of restorative justice ask three key questions: “who was harmed; what was the nature of the harm; and how can the harm be repaired?”<sup>3</sup> Exploring these questions centers equity and unity to achieve a just outcome. When applied to racial injustice, restorative practices can help to heal the wounds of our society.

### **ANALYSIS**

Restorative practices have the potential to heal racial injustice on a personal, community, and societal level. Restorative practices deeply impact Black and Brown individuals in the criminal justice system by transforming their interactions with the system. Communities of color can work under restorative principles to heal racial trauma from within their own communities. The road to healing starts with those three seemingly simple questions surrounding harm.

#### **I) Healing Racial Injustice of BIPOC Individuals in the Criminal Justice System**

Restorative justice employed in the criminal justice system reframes key language in order to address the root of the problem. With equity at the center of the circle process, questions such as “is he guilty?” transform into, “does this punishment put him on a path to succeed?”

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<sup>1</sup> Daniel Griffith, *Healing the Harm: The Effectiveness of Restorative Justice in Response to Clergy Abuse*, 17, Univ. of St. Thomas L. J., 18, 20 (2020).

<sup>2</sup> Dr. Yohuru Williams, Distinguished University Chair and Professor of History and Founding Director of the Racial Justice Initiative, Univ. of St. Thomas, Historical Recovery and Contemporary Justice at the Univ. of St. Thomas, (Aug. 26, 2021).

<sup>3</sup> Griffith, *supra* note 1, at 20.

“How could she have done this?” turns into “what harm has she suffered that brought her here?” As flawed humans in a circle setting, no one person has decision-making power over another.<sup>4</sup> People are simply storytellers in a healing circle, guided by principles of fairness, humanity, and peace.<sup>5</sup> Restorative practices focus on actively listening to everyone’s personal narrative and hold great potential to heal racial wounds, but we must also be critical of how these practices contribute to racist systems and personal biases.

### **a) The Power of Active Listening in an Equitable Setting**

Active listening matters. John Jackson reminded us of the power of simply listening to a community that is all-too-often forgotten and overlooked.<sup>6</sup> Themes throughout *Just Mercy* and modern American culture exemplify the silencing of Black and Brown voices for centuries. Mr. Jackson pled for future lawyers not to “give up on” Black and Brown folks in the criminal justice system.<sup>7</sup> For him, it took one judge who asked a question about his needs to redirect his perspective, his path, and his entire future.<sup>8</sup>

Society is allegedly better-organized when everyone fits into a label, when we can check a box to identify people. Simplicity drives the core of the criminal justice system: crime, arrest, charge, convict, sentence. “At its core, restorative justice is fundamentally about a value-based approach to honoring the humanity and dignity of each person.”<sup>9</sup> Restorative practices dismantle this clarity and necessarily inundate the process with less efficiency, human emotion, and complexities. But, humanity and dignity must be at the core of racial justice work.

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<sup>4</sup> Beverly Bushyhead, Restorative Justice Facilitator, Restorative Justice in Practice at the Univ. of St. Thomas (Aug. 24, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> John Jackson, Restorative Justice Participant, Univ. of St. Thomas (Sept. 17, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Monica Cosby, Annalise Buth, *Restorative Revelations*, 17, Univ. of St. Thomas L. J., 81, 87 (2020).

Regardless of the label used (criminal, offender, perpetrator, etc.), the current criminal justice system defines each person by their crime. We unfairly label people as “felons” for their lifetime without regard to the whole, complex person capable of change. This label, based on one fatal action, “fail[s] to acknowledge the intricate nature of people and harm.”<sup>10</sup>

Restorative justice in the criminal system creates a space for relational beings (humans) to connect in an equalizing environment (the circle).<sup>11</sup> Nothing within the criminal justice system in its present state is equal. The system already punishes BIPOC individuals through labels and dehumanization and is simply not designed to see complexities and allow for important storytelling. In effect, the current system silences and condemns Black and Brown folks before legal proceedings even begin.<sup>12</sup>

Legal professionals who withhold key information about creative legal strategies fail to recognize the deeply biased effect of those decisions.<sup>13</sup> Defense counsel contribute to a racist system by failing to share their client’s narrative or even hear it for themselves.<sup>14</sup> But lawyers must get close in order to understand their clients.<sup>15</sup> Trauma-responsive lawyering will help to mend the broken criminal justice system.<sup>16</sup> All lawyers, regardless of race, need to embark on the journey of continuous self-reflection to “make meaning of our trauma exposure experiences.”<sup>17</sup> The use of trauma-informed lawyering, even outside of the formal restorative justice process, will pave the way toward healing our racialized wounds.

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<sup>10</sup> *Id.* at 100.

<sup>11</sup> *Id.* at 87.

<sup>12</sup> *See generally*, Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption*, (2014).

<sup>13</sup> Jackson, *supra*, note 6.

<sup>14</sup> *Id.*

<sup>15</sup> Stevenson, *supra* note 12, at 6.

<sup>16</sup> Mary Novak, Executive Director, Network Lobby for Catholic Social Justice, Exploring the Nature of Harm, Trauma, and its Effects at Univ. of St. Thomas (Aug. 23, 2021).

<sup>17</sup> Mary Novak, *Forming Restorative Justice Practitioners: Learning to Make Meaning of our Trauma Exposure Response*, 17, Univ. of St. Thomas L. J., 43, 52 (2020).

## **b) Acknowledgement as a Slippery Slope to Racist Behavior**

Restorative justice will not be an all-healing approach immune to racism and its effects.<sup>18</sup> Accountability can be a powerful component of the restorative process for the victim-survivor; some argue it is required.<sup>19</sup> But in order to truly address racial injustice, restorative practices must be open to accountability's many appearances. Without invalidating the pain that victim-survivors feel, restorative practitioners must recognize that acknowledgement could be simply showing up to the conversation. It takes great strength and vulnerability to show up to the table with people who may or may not understand your perspectives. If we do not give everyone the opportunity just to show up, how can we truly judge whether someone is remorseful?

Restorative justice must derive from a place of empathy and understanding that people are generally good. Steve Tillitt showed such compassion when he requested leniency during the sentencing of the woman who sold drugs to his late son.<sup>20</sup> Sometimes, restorative practices will be messy. The Tillitts were further traumatized by the family of the woman who sold drugs to their son.<sup>21</sup> No one can ignore the horrific nature of berating the mother whose son died in the courtroom bathroom.<sup>22</sup> At the same time, was there a cultural disconnect in the supposed lack of empathy shown by the person who sold drugs? Mr. Jackson might also seem apathetic to accountability for committing his crime because from his perspective he simply sold to other addicts without much harm. But does his desire to help the community in his own way and his sobriety resolve his alleged lack of accountability?

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<sup>18</sup> Cosby, Buth, *supra* note 9, at 88.

<sup>19</sup> Griffith, *supra* note 1, at 38.

*Note:* For clarity, the term victim-survivor is used here. This is not intended to discount the limitations that labels also place upon people who suffered based upon another's criminal actions.

<sup>20</sup> R. Stephen Tillitt, *The Quality of Mercy*, Bench & Bar of Minnesota, (April 2018), <http://mnbenchbar.com/2018/04/the-quality-of-mercy/>.

<sup>21</sup> Steve and Dee Dee Tillitt, Parents of Son Who Died from Opioid Use, *The Quality of Mercy Amidst the Opioid Crisis* at the Univ. of St. Thomas (Aug. 24, 2020).

<sup>22</sup> *Id.*

This accountability issue perfectly exemplifies the complexities that arise in restorative practices. To truly employ restorative justice with a racial justice lens requires close examination of the racist undertones of our own perceptions.<sup>23</sup> Restorative practitioners and participants must devote themselves to understanding and reflecting on their personal biases.

## **II) Healing Racial Trauma withing Black and Brown Communities**

Mr. Jackson proposed the use of healing circles to heal the many layers of wounds within his own community. His practical view demonstrates the anecdotal understanding of intergenerational trauma. Mary Novak shared with us the deep effects of intergenerational trauma, including alterations in the genetic makeup of BIPOC individuals, causing increased stress disorders related to traumatic events.<sup>24</sup>

Trauma is harm of the mind, body, and spirit.<sup>25</sup> Exposure to stress depends on the degree and frequency of exposure.<sup>26</sup> Positive stress is usually short-term and can be beneficial, and tolerable stress carries a moderate degree, usually in a short-term nature.<sup>27</sup> Toxic stress is prolonged, unpredictable, and severe.<sup>28</sup> Chronic toxic stress leads to trauma.<sup>29</sup> Black and Brown children experience trauma at higher rates, consequently affecting educational opportunities, health outcomes, and the probability of incarceration.<sup>30</sup>

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<sup>23</sup> Cosby, Buth, *supra* note 9, at 101.

<sup>24</sup> Novak, *supra*, note 16.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

Racialized trauma lives within the bodies of Black and Brown community members and sustains itself intergenerationally.<sup>31</sup> This trauma manifests into decreased physical health outcomes that individualized programming solutions have been unable to address for the past several decades.<sup>32</sup> The body will remain stuck in trauma without foundational healing to address the trauma living at the root of these issues.<sup>33</sup> This process necessarily involves growing out of the toxic white supremacist ideas have planted in our society.<sup>34</sup>

The victim-centered process of restorative justice therefore holds great potential for healing BIPOC communities. As Mr. Jackson mentioned, racialized trauma experienced over lifetimes and intergenerationally currently manifests in perpetuation of harm toward one another within the community.<sup>35</sup> The healing circle process can be used to mend the wounds caused by racialized trauma as well as the effects of that trauma manifesting itself in harm against one another.

### **III) Transforming Social Harm in Society**

“Racism is not absolutely, but is essentially an institutional phenomenon. [Racism] is prejudice plus power.”<sup>36</sup> As a country and a people, we cannot ask the question of who was harmed until we first recognize the harm perpetrated against Black and Indigenous individuals at the birth of this country. As Dr. Yohuru Williams shared, “Wounds produce narratives.” The United States fails to recognize, acknowledge, and own the atrocious harm of genocide and

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<sup>31</sup> Resmaa Menakem, *My Grandmother’s Hands: Racialized Trauma and the Pathway to Mending Our Hearts and Bodies*, 76 (2017), [https://cllic-stthomas.alma.exlibrisgroup.com/leganto/public/01CLIC\\_STTHOMAS/citation/9516887250003691?auth=SAML](https://cllic-stthomas.alma.exlibrisgroup.com/leganto/public/01CLIC_STTHOMAS/citation/9516887250003691?auth=SAML).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 77.

<sup>35</sup> Jackson, *supra*, note 6.

<sup>36</sup> Mahmoud El-Kati, *The Myth of Race, Reality of Racism: Critical Essays*, 1, 11 (2014).

slavery at its founding. “Because we have neither fully acknowledged nor reckoned with these twin traumas, much less worked to heal them, they perpetually reenact themselves transgenerationally.”<sup>37</sup>

Indigenous roots teach us that healing circles create unity and equity amongst participants, aligning individuals into one heart and one mind.<sup>38</sup> For years, our culture has centered White peoples’ voices and experiences in response to calls for racial justice. The recent backlash to supposed teaching of “critical race theory” (despite the falsehood of its presence in schools) offers a prime example of misunderstanding the goals of racial justice and the dire need for unity. Principles of ubuntu and indigenous practices should guide us toward racial healing, “I am because we are and we are because I am.”<sup>39</sup>

When our society finally ties one’s individual existence with that of our neighbors, White Americans can begin to unravel the intergenerational trauma living within our own bodies.<sup>40</sup> Although the circle process does not seek discomfort amongst its members, discomfort may arise as a natural outgrowth.<sup>41</sup> In search of healing, we must lean into this discomfort. “Part of overcoming (sensitive) issues is not to make these conversations easier, but just to have them in the first place...Once you learn the language, you stop tip-toeing around what you can and cannot say, and that makes us better students, and it will make us better lawyers.”<sup>42</sup> Acknowledgement of the racial injustices that have occurred since this country’s inception and the echoes still reverberating throughout society today will be the first step to healing.

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<sup>37</sup> Fania Davis, *The Little Book of Race and Restorative Justice: Black Lives, Healing, and U.S. Social Transformation*, 8-14, 9 (2019), [https://librarysearch.stthomas.edu/permalink/01CLIC\\_STTHOMAS/1e58rqo/alma991014824740903691](https://librarysearch.stthomas.edu/permalink/01CLIC_STTHOMAS/1e58rqo/alma991014824740903691).

<sup>38</sup> Bushyhead, *supra*, note 4.

<sup>39</sup> Davis, *supra* note 37, at 15.

<sup>40</sup> Menakem, *supra* note 31, at 77.

<sup>41</sup> Bushyhead, *supra*, note 4.

<sup>42</sup> Helen Clarke Ebert, *A Crucial Conversation: Studying and practicing law in the post-Ferguson era*, St. Thomas Lawyer (Summer 2015), <https://news.stthomas.edu/publication-article/a-crucial-conversation/>.

Dr. Williams exposed the echoes of racial injustice throughout history with vast similarities to the lived experiences of Black and Brown folks today. “The centuries-long failure to confront this history dooms us perpetually to repeat it.”<sup>43</sup> Only four years ago, Resmaa Menakem wrote that “[o]ne of two things will happen: America will grow up and out of white-body supremacy; Americans will begin healing their long-held trauma around race; and whiteness will begin to evolve from race to culture, and then to community. The other possibility is that white-body supremacy will continue to be reinforced as the dominant structured form of energy in American culture...[and] the racialized trauma that wounds so many American bodies will continue to mutate into insanity and create even more brutality and genocide.”<sup>44</sup> The United States heads down a treacherous road toward insanity, brutality, and genocide without a sense of unified reflection on the trauma our nation feels inside our different bodies. Instead, restorative practices offer the opportunity for unified agreement, understanding, and exploration of our identities as individual members and as a whole society.

White and Black Americans alike carry intergenerational trauma in their bodies, requiring intentional healing in order to move forward.<sup>45</sup> Restoration centers humility to work toward change and to admit that we were wrong.<sup>46</sup> Restorative healing circles practiced in multi-generational, multi-ethnic, multi-racial, and diverse communities can build bridges toward true healing. In this context, accountability means acknowledgement of the harm and “[r]ecognizing all-White environments is critical to dismantling systems where whiteness prevails.”<sup>47</sup>

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<sup>43</sup> Davis, *supra* note 37, at 22.

<sup>44</sup> Menakem, *supra* note 31, at 15.

<sup>45</sup> *Id.* at 77.

<sup>46</sup> Prof. Mark Osler, Professor and Robert and Marion Short Distinguished Chair in Law, Univ. of St. Thomas, Mercy, Clemency and Restoration (Aug. 24, 2021).

<sup>47</sup> Sheryl Wilson, *Calling Out Whiteness*, *Colorizing Restorative Justice: Voicing Our Realities* 103-114, 104 (2020).

## **CONCLUSION**

Restorative practices hold the key to asking deep, meaningful questions of ourselves and our society in order to heal racial wounds. Without inquiring into the trauma that lays within our bodies, individuals in the criminal justice system, Black and Brown communities, and society as a whole will continue to suffer. Restorative practices will not resolve every racialized tension or injustice, but instead provide tools to move closer to healing the harms of our past.