

Topic: How can restorative justice improve the criminal justice system and access to justice and/or benefit Canadian society as a whole?

Martin Luther King, Jr. once said, “That old law about ‘an eye for an eye’ leaves everybody blind. The time is always right to do the right thing.” The principle behind this is about getting revenge and punishment like how the current retributive system focuses on incarceration. However, “an eye for an eye”, or getting revenge, isn’t always the solution to solving issues. Instead, a solution should be to focus more on rehabilitative measures to provide peace which is done through restorative justice. While retributive justice focuses more on punishing one for their wrongdoings, restorative justice focuses more on the rehabilitation process and healing both the offender and the victims involved. Even though restorative justice has never caught on significantly in popularity because of concerns regarding shared values, in its most successful cases, it provides a healing process in the form of long-term reparation that retributive justice simply cannot provide. Restorative justice can also address flaws in our criminal justice system like overrepresentation of oppressed and marginalized people, the extraordinary burden of proof on the victims, and the lack of chances in the youth justice system. It solves all of these issues by providing legal programs that focus on rehabilitation and guide the process to restore peace within a community. It provides a multitude of ways like healing circles or a government inquiry into the investigation process that retributive justice simply cannot provide. This essay will provide a deeper insight into the transformation of the Canadian criminal justice system through restorative justice as well as a detailed analysis on the benefits of society.

The Canadian criminal justice system has been ranked as one of the best in the world when considering factors like corruption, constraints on government power, fundamental rights, the civil system, and the justice system (World Justice Project, 2020). However, flaws still remain that require immediate change and attention. The first flaw is an overrepresentation of vulnerable populations like Indigenous people in the carceral system. Today, Indigenous adults represent less than 4.1% of the total Canadian adult population, but 26% of Indigenous adults are in federal custody. (Department of Justice Canada). The disproportionate number of Indigenous people being incarcerated suggests the persistence of discrimination against Indigenous people. According to Ivan Zinger, the correctional officer of Canada, “Indigenous people are more likely than others to be placed in maximum security institutions, serve higher proportions of their sentences behind bars before getting out on parole and are also returned to custody at much higher rates than non-Indigenous people.” He also mentions how the non-Indigenous prison population has decreased by 13.7% while the Indigenous population in prisons has increased by 43.4%. Thus, creating a pressing concern with the retributive system with the way it punishes offenders with imprisonment, debilitates an already oppressed population and perpetuates cycles of disempowerment like mental health issues, breaking families apart, etc.

The second flaw in the current criminal justice system is the requirement for a burden of proof on the victims. With the current system, it requires a high standard of proof for the conviction. This causes an immense problem for the victims as they may be reluctant to come forward and relive the trauma in front of skeptical people based on societal bias. In many cases, there were not enough pieces of evidence, especially with cases from decades ago when they didn't have things like DNA testing or the technology that we have today. One of the most outstanding flaws in Canadian history is the establishment of residential schools. Even though the last residential school closed in 1996, the trauma that victims had to experience still lives on today. When these types of cases go to court, they require a significant amount for a burden of proof on the victims. Thus, forcing the victims to relive the trauma that they had to experience years ago. In a more recent case concerning Chanel Miller, it is a prime example of how the entire process of how investigators investigate a case is completely incorrect. Chanel Miller was sexually assaulted in 2015 and for the longest time, was known as "Emily Doe" before becoming known to the world about who she was. For her case, instead of being concerned with the crime, investigators were far more concerned with taking tests and injecting all sorts of needles into her body to determine whether she was telling the truth instead of finding the offender. She says that, "It's infuriating how much victims have to sacrifice, how we have to speak in gruesome detail about private things." Thus, proving how retributive justice and the requirement for a burden of proof on victims is proving to be harmful especially to the victims.

The final flaw in the criminal justice system is with the youth justice system. There was a case back in 1974 regarding two teenagers who had gone on a vandalizing spree. However, instead of sending them to a juvenile detention center, the probation officer at the time proposed the idea that the two teenagers meet with their victims to discuss their actions and what should be done next. The two teenagers agreed to meet with the victims, and this led to the first victim-offender reconciliation program in Canada. In this example, retributive justice has proved that for youth, there should be more consideration into why the individual committed these offenses before sentencing them. If we consider why they committed the crime, we could help rehabilitate youth so that they don't commit the crime again. Punishment isn't necessarily always the best thing that one could do; instead, we should be considering how we can prevent future youth from committing these crimes.

The formal definition of restorative justice as provided by Cambridge is: "a way of dealing with crime that emphasizes taking responsibility for the effect of your crime on others, and trying to do something that makes things better for the victims". Restorative justice takes many forms such as a face-to-face meeting, sending letters to discuss the issue, and video conferences. There are many ways that a restorative justice session could end such as apologies being made, helping to make reparations with the victim and their family, or even a document. We see a prime example of a written document as a formal apology in 2009 when a document was written to formally apologize for the creation of residential schools. A restorative justice

meeting only occurs if both the offender and the victim agree to have it and the purpose is to provide an environment that promotes the work of recovery instead of incarceration. It requires the offender to take responsibility for the crimes that they have committed, it focuses on repairing harm to prevent the same crime from happening again, and it is a different mentality to provide a different outcome that is beneficial to all parties.

Restorative justice has the ability to solve many of the flaws in the criminal justice system that have been previously discussed. For the issue of overrepresentation, restorative justice has proven that it is helpful because of its encouragement for peace in the community. However, the reason that restorative justice programs in Canada have not been popular is simply because it is lacking in the country. Thus, for restorative justice to become more popular, more programs need to be developed. For the issue regarding a burden of proof, restorative justice could help with this problem because of the healing circle. The healing circle allows for victims who feel especially vulnerable to be able to talk about their experiences in a way that does not make them feel as if they are being threatened or being judged based on societal bias. For example, with the case of Chanel Miller, restorative justice would have been a perfect solution as it would allow her to open up to what she has to say about her experience without making her feel like she committed a crime. Finally, with the flaw concerning giving more second chances in the youth justice system, restorative justice allows a chance to provide rehabilitation towards the youth instead of conducting retributive justice by sending them to juvenile detention. After all, restorative justice did begin through a probation officer wanting two teenagers to meet with their victims to discuss their actions and why they did what they did instead of sending them to juvenile detention.

There have been many successful cases through the process of restorative justice that promote the fact that it should be continuously used and implemented more in the criminal justice system. One victim commented on the effectiveness of restorative justice, saying, “He apologized about what he did, and it helped us as a family … it is just about understanding and being able to accept what has happened and trying to move forward and making the situation better for everybody.” (International Journal for Crime, Justice, and Social Democracy). Another victim commented by saying, “I have new hope. Since then, the journey continues to make its way internally. I try to keep this peace that has been with me since this experience.” (20 Ans CSJR) According to a research paper conducted by the Justice Research and Statistics Association, they found that: “The programs studied produced “eight times more benefit in costs of crimes prevented than the cost of delivering restorative justice” (Strang et al., 2013, p.2). These findings led Strang and her colleagues to conclude that “on average, restorative justice causes a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims” (Strang et al., 2013).” Thus, restorative justice has proven to be not only successful but it is able to prevent these types of situations from happening again in the future.

In the status quo, retributive justice is something that provides consistent punishments but should be refocused towards rehabilitation instead of incarceration. Restorative justice provides rehabilitation through careful preparation before a meeting to help restore balance towards the community. It has provided many positives on why it should continue to be used including the many successful scenarios that have occurred and providing offenders with second chances. However, the lack of programs in Canada currently makes it difficult for restorative justice to become popular and begin to replace retributive justice. Nevertheless, restorative justice is the key to the future of the Canadian justice system because of its incredible outcomes.

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