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Youth incarceration : restorative justice and social work practice

Elissa N. Berlinger

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Elissa Nicole Berlinger
Youth Incarceration: Restorative
Justice and Social Work Practice

ABSTRACT

This project examined the problem of juvenile crime and incarceration. I explored how two Criminal Justice theories—Attribution theory and Deterrence theory—support and explain the problem, and how two Social Work theories—Social Justice theory and Responsive Regulation theory—offer an alternative view and solution to the problem. I explained the principles and program models of Restorative Justice and strived to understand why there are so few Social Workers involved in Restorative Justice programs. Through this work, I addressed the following questions: with Restorative Justice carrying similar values as the Social Work profession, why are Social Workers not involved in Restorative Justice programs? How can Social Workers become more involved? And how can Restorative Justice more readily be used in the Social Work profession—especially in the area of youth crime and incarceration? The purpose of this project was to examine and explore how Restorative Justice contributes to Social Work practice and how the use of Restorative Justice practices can improve the capacity of Social Work as a field to attend to the problem of youth crime and incarceration.

The findings of this project show how little research has been conducted on Social Workers' involvement in Restorative Justice programs. Professional Social Work's direct involvement with the Criminal Justice system has declined markedly in the past 40 years, however Social Workers continue to have contact with individuals, families, and communities who are affected by crime and the Criminal Justice system. Restorative Justice offers a holistic approach toward work in corrections in which justice for the victim, offender, and the

community are all relevant.

**YOUTH INCARCERATION:
RESTORATIVE JUSTICE AND SOCIAL WORK PRACTICE**

A project based upon an independent investigation,
submitted in partial fulfillment of the requirements
for the degree of Master of Social Work

Elissa Nicole Berlinger
Smith College School for Social Work
Northampton, Massachusetts 01063

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CHAPTER I

Introduction

Purpose and reason

The purpose of this project is to examine “Restorative Justice” from two different theoretical perspectives; Criminal Justice Theories, and Social Work Theories. Restorative Justice is about reparative, reconciling, and reassuring solutions and is concerned about re-engaging communities in dealing with conflict and crime. In looking at the NASW code of ethics, three of the six key foundations—Social Justice, dignity and worth of the person, and importance of human relationships—relate directly to the values of restorative justice. Therefore, the specific questions addressed in this project were: with Restorative Justice programs carrying similar values as the Social Work profession, why are social workers not involved in Restorative Justice programs? How can more social workers become more involved? How can restorative justice be more readily used in the Social Work profession –especially in the area of youth crime and youth incarceration?

The reason I want to know this is because very little research has been conducted within the Social Work field pertaining to an understanding of the principles and engagement in the practice of Restorative Justice, and how these elements relate to key issues in the Social Work profession. Most of the current research conducted on Restorative Justice has been conducted through the Criminal Justice field. (Gumz & Grant, 2009; van Wormer, 2003).

For the past thirty years, Social Workers' involvement with the Criminal Justice system has markedly decreased. Much of this is related to a shift in the ideology of the courts starting in the 1970s. During this time, the courts became more conservative and mandatory sentencing laws began to appear. The courts focused less on restoration and rehabilitation and more on corrections (Gumz, 2004). This is still prevalent currently, however this may start to change with current Attorney General Eric Holder announcing his plan to stop mandatory sentencing for federal crimes and his goal of reducing the prison population, which is disproportionately large compared to the world prison population and disproportionately confining a large number of Latinos and African Americans (Holder, 2013).

Choi and Severson (2009) discuss "how individuals who have studied Restorative Justice recognize the compatibility of Restorative Justice concepts with the values long embraced by the Social Work profession" (p. 399). Similarly, many of the theories that have been developed and used in Restorative Justice literature pertain to Social Work theories, including "person-in-environment perspective" (Gumz and Grant, 2009), family systems theory (van Wormer, 2003), feminist theory (van Wormer, 2009), Strengths perspective (Van Wormer & Bednar, 2002), Social Justice theory, reintegrative shaming theory (Braithwaite, 2000), Responsive Regulation theory (Braithwaite, 2004; Burford & Adams, 2004) among others.

The Problem: Youth Crime and Youth Incarceration

Definition of youth crime

The legal definition of a juvenile is "a person who has not attained his eighteenth birthday. "Juvenile delinquency" is the violation of a law of the United States committed by a person prior to their eighteenth birthday, which would have been a crime if committed by an adult. A person over eighteen and under twenty-one years of age is also accorded juvenile

treatment if the act of juvenile delinquency occurred prior to his eighteenth birthday. *See* 18 U.S.C. § 5031.

(http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00038.htm).

However, this definition is at odds with 13 states. In 10 states, all 17 year olds are defined as adults and in three states, all 16 and 17 year olds are defined as adults (Snyder, 2001). Lambie and Randell (2013) report that in some states, children as young as fourteen and sometimes younger are transferred and sentenced in adult courts and incarcerated in adult prisons.

How large is this problem

According to the Office of Juvenile Justice and Delinquency Prevention, in 2010, the most recent year that statistics were published, there were 1,368,200 cases handled by juvenile courts in the US. Of these cases, 986,700 or 72.1% were male and 381,500 or 27.9% were female, 64.1% identified as “White,” 35.9% identified as “Minority,” 33% identified as “Black,” 1.5% identified as “American Indian” and 1.4% identified as “Asian/NHPI.” In 1997, there were 1,878,500 juvenile cases handled. The racial demographics were: 67.6% white, 32.4% minority, 29.6% were black, 1.5% American Indian and 1/3% were Asian/NHPI. Rodriguez (2013) states “according to government figures, 22% of all juvenile adjudicated cases result in residential placement” (p. 191) and in 1999, two-thirds of all youth in private facilities and more than half in public facilities were minorities. It is important to note in looking at the government figures on youth correctional confinement, data limitations exist due to most of the government figures present race differences as Blacks vs. Whites in institutions, severely limiting inquiries on racial and ethnic biases. Erickson (2012) reports that juveniles of color are three times more likely to be incarcerated than white youth and they are less likely to receive proper mental health treatment while incarcerated.

Mendel (2011), through the Annie E. Casey Foundation, published a report highlighting in 2007, “60,500 US youth were confined in correctional facilities or other residential programs each night on the order of juvenile delinquency court” (p.2) and two-fifths of these individuals were African American and one-fifth were Hispanic. Crimes committed ranged from minor property crimes to major violent crimes against other individuals. Institutional confinement occurs when “youth commit serious violent crimes, have a long history of offending, and /or have failed community supervision” (Rodriguez, 2013, p. 191). The United States had the highest number of youth in custody compared to other developed nations and “40% of committed youth are held in locked, long-term youth correctional facilities operated by state government, or private firms under contract with the state” (Mendel, 2011, p. 2).

The problem with incarceration

Institutional confinement of youth has significant implications for youth, families, and communities. Politicians from various viewpoints can dictate policies to be “tough on crime” and desire to teach young offenders “a lesson” by prosecuting them with as stiff prison sentences as adults. In contemporary juvenile justice, the systems have become more punitive and the punishments stricter (Reingle et al. 2010). Since the 1970s, juvenile incarceration rates have risen steadily as a result of state legal reforms that moved from an emphasis on diversion and rehabilitation toward more accountability, punishment, and concern for public safety (Erickson 2012; Reingle et al. 2010). Reingle et al. (2010) report, through the Justice Policy Institute, that \$88,000 is spent annually on incarcerating a juvenile offender in a residential facility. However, research increasingly indicates that solely punitive sanctions may not reduce recidivism for young offenders (Choi et al. 2011; Erickson 2012; Lemmon et al. 2005; Mendel 2011).

Mendel (2011) shows incarceration is less effective compared to probation or alternative sanctions and incarceration, in particular, is especially ineffective for less-serious youthful offenders and may actually increase recidivism for these youth. When juveniles are incarcerated, their sense of self and self worth, their positive aspirations for the future and their "little bit of childhood are taken away" (Lambie & Randell, 2013, p. 451).

Many adolescent offenders are vulnerable to peer influence, coercion, provocation, and immature decision-making, which may mitigate culpability in youth offending. When youth are transferred to the adult Criminal Justice system, they are gravely impacted with the following potential consequences: public record of convictions, compulsory reporting of conviction on employment applications, being subject to adult jurisdiction for all subsequent offenses committed as a juvenile, and potential to receive an adult sentence and incarceration in an adult prison. Incarceration disrupts community content and severely limits reinforcements of societal norms and expectations, as well as opportunities for youth to model adaptive interpersonal skills and relationship management (Lambie & Randell, 2013).

Rodriguez (2013) asserts long periods of confinement can lead to "severed familial relationships, disruption in school setting, and increased chances of reoffending" (p.191). Families deal with the separation and absence of the youth, and may have to replace any "economic resources formerly provided by the incarcerated youth" (p.192). While incarcerated, youth are not able to form pro-social relationships due to restricting autonomy, and thus limiting a young person's options for social interaction and potentially preventing successful reintegration into their community and family. The deterioration of communities can develop when adolescents are unable to take part in the "social fabric of their communities" (Rodriguez, 2013, p. 192) and the importance of social context in the lives of youth. Incarceration limits the

potential for the use of rehabilitative options that directly address the factors such as the environment in which the offending behavior occurs and the contextual factors that contrive to and maintain this behavior, when youth are removed from their community (Lambie & Randell, 2013).

Bechtold & Cauffman (2013) argue incarcerated youth may “develop more sophisticated criminal skills, become entrenched in the criminal culture, and become persistent offenders” (p. 2). Youth incarceration can lead to the exposure of physical and sexual abuse. There is an increased suicide rate among youth who are in adult facilities. Dangers associated with prison violence are noteworthy and associated with why incarceration of youth is a major problem. (Bechtold & Cauffman, 2013; Mendel, 2011). Inmate norms frequently support violent behavior and when youth have increased contact with other aggressive inmates, there is a higher likelihood of an individual possessing more aggressive behavior both while incarcerated and upon release (Lambie & Randell, 2013).

Research indicates education is a strong predictor of abstaining and desisting from delinquency and antisocial behavior. When juveniles are incarcerated, their access to proper educational services is decreased (Bechtold & Cauffman, 2013) leading to a greater cost to society when these individuals are released. Many struggle to become gainfully employed and to contribute productively to society, resulting in higher rates of incarceration later in life for these juveniles. The removal of youth from communities may produce the same collateral consequences as the imprisonment of adults (Lambie & Randell, 2013; Rodriguez, 2013).

According to Lambie & Randell (2013), fifteen percent of the facilities in the United States are over standard bed capacity and 20% are at bed capacity. It is challenging to fully rehabilitate youth in confinement settings due to the negative impact of victimization, social

isolation, unaddressed or exacerbated mental health issues, environmental and health needs. A large percentage of the youth incarcerated today suffer from a serious mental health diagnosis. The prevalence of emotional and behavioral problems among these youth is greater than within the general population (Erickson, 2012; Lambie & Randell, 2013) and few are receiving the treatment they need. Because of this, many have the inability to develop independent living skills, receive job training, or develop a working alliance with a mental health provider to learn about and manage their illness while incarcerated and when released (Erickson, 2012). Another major barrier that many of these incarcerated youth face are negative physical health conditions due to either risky sexual behavior and substance abuse/use prior to incarceration and an inability to seek physical activity while incarcerated. Over all, many of these youth will carry the social stigma of being incarcerated after being released.

Restorative Justice-An Alternative to Incarceration

Restorative Justice is an open concept, with numerous definitions, particularly looking at a process conception, a values conception, or a mixture of the two. The process conception is characterized by a process, which brings together all stakeholders in a particular offense to collectively resolve the harms and wrong doings. The values conception is characterized by a set of values or principles that distinguish Restorative Justice from traditional punitive state justice. With both concepts, there are three main pillars of Restorative Justice. First, Restorative Justice focuses on crime done to individuals and communities, with the harm to victims, offenders, and the community in need of healing. Second, wrongs and offenses to victims mean that offenders need to be held accountable and responsible. Third, Restorative Justice principles emphasize the importance of victims, offenders, and the community to be involved in a dialogue about what justice means in a particular case.

There are three main practices of restorative justice that have been researched and are widely used as an alternative to incarceration. These are Victim-Offender Mediation (VOM), Family Group Conferencing (FGC), and Peace Circles. These will be described in more detail in the next chapter.

Research

Very little research has been conducted within the Social Work field on how Social Work scholars understand the principles of and engage in the practice of Restorative Justice; and how these elements relate to key issues in the Social Work profession (Gumz & Grant, 2009, van Wormer, 2003). Given Social Work shares the values and goals of Restorative Justice, why are social workers not involved in Restorative Justice programs? How can more Social Workers become more involved? How can Restorative Justice be more readily used in the Social Work profession –especially in the area of youth crime and youth incarceration?

Importance to the profession of Social Work

Youth incarceration greatly impacts individuals, families, and communities. The research shows information about programs and theories that can be incorporated in Social Work practice to prevent youth incarceration and strengthen families and communities. Restorative Justice and Social Work are important independently and conjointly and the field of Social Work's ability to look deeper and understand the impact of crime on individuals, families, and communities will be discussed. The language used and the principles of Restorative Justice can be applied in both the micro, clinical setting through a strengths perspective and feminist lens, the mezzo setting through work with families, communities and education, and on the macro level through systems perspective and policy change in the Criminal Justice system.

Methodology

This is a theoretical study and the data came from published sources. These sources included databases such as PsychINFO, Social Science Abstracts, Social Work Abstracts, Academic Search premier, National Criminal Justice Reference Services, and others. Other sources were published books on restorative justice, such as “The little book for restorative justice” by H. Zehr (2002), Van Ness, D. and Heetderks Strong, K. (2006) book “Restoring justice: An introduction to restorative justice” and Ross, R. (1996) “Returning to the teachings: Exploring Aboriginal justice.”

Organization of the report

This report is organized into 5 chapters: Chapter 1, Introduction, includes what I want to do, why I want to do it, how I am going to do it, and details of the problem. Chapter 2 focuses on Restorative Justice and additional details of the problem. Chapter 3 examines Criminal Justice theories and how they explain or justify youth incarceration. Chapter 4 examines Social Work theories and how they explain, support, and justify the use of Restorative Justice. Chapter 5, Discussion, integrates the findings and discusses their implications for the profession of Social Work.

CHAPTER II

Restorative Justice

Restorative Justice is a systemic response to wrongdoing that emphasizes healing the wounds of victims, offenders, and communities caused by crime. It seeks to transform the traditional Criminal Justice approach of society's response to crime (Gumz & Grant, 2009). It is rooted in replacement of punishment as incarceration with dialogue and restitution, and the replacement of state agents of crime control with community agents (Dzur, 2003).

Liebmann (2007) defines Restorative Justice as the “term generally used for an approach to Criminal Justice...that emphasizes restoring the victim and the community rather than punishing the offender” (p. 25). Restorative Justice is about re-engaging communities in dealing with conflict and crime. Stuart (1997) adds, “a community is not a place, it is people” (vi). Stuart highlights the importance of partnership in Restorative Justice, explaining “circles are built around a holistic approach and thereby require access to a broad range of resources and services from the family, community, and the state” (vi). These two readings center Restorative Justice as a community process where all impacted parties are able to address transgressions in the community and become whole again.

Restorative Justice origins go back to ancient times, with restitution being paid to victims and wrongs being righted (Choi & Severson, 2009). However, van Wormer (2002) in Gumz (2004) argues historically, restorative concepts were favored more in minority communities --

African American, Latino, Canadian Mennonite, and Native American- where the emphasis is more on the collective rather than the individual.

The use of Restorative Justice principles and theory has increased dramatically within the past 30 years (Hurley, 2009). Courts are using Restorative Justice processes as a diversion to traditional retributive court processes in numerous types of cases and with juveniles in particular.

Principles of Restorative Justice

Zehr (2002) discusses three principles of Restorative Justice and these principles are described in numerous articles and books (Ikpa, 2007; Liebman, 2007; Van Ness & Strong, 2006). The first principle is crime is a violation of people and interpersonal relationships. In a restorative process, the group is to focus on the harms and impacts of the crimes rather than the rules that have been broken. The second principle is violations create obligations. The offender has a personal responsibility to those victimized and to the community. The community is to support the offender in improved competence and understanding as a result of the Restorative Justice experience. The third principle is the central obligation to put right the wrongs. The offender will work toward putting things right to address the harm done. The offender and/or the community will work to address the core causes of the harm and everyone involved in the process will find a way to be welcomed into the community through collaboration. The restorative process is one of respect for all parties.

Liebmann (2007) emphasizes six principles of Restorative Justice. First, victims support and healing is a priority. This is contrary to how many criminal courts operate, where the offender is the main priority and many of the resources are allocated and spent on punishing the offender. Second, offenders take responsibility for what they have done. Responsibility is different than punishment, and taking responsibility is a first step in the restorative process. Next,

there is a dialogue to achieve understanding. This gives victims the opportunity to ask the needed questions to help them heal, affords the offender the opportunity to explain their perspective, and supports the victim in understanding why the offense happened. Fourth, there is an attempt to put right the harm done. This is a continued step in taking responsibility for the wrongs that were done, potentially through restitution. Next, offenders examine how to avoid future offending. This usually occurs with the support of the community and by the offender facing the victim, there is less likelihood that they will reoffend. Last, the community helps to reintegrate both the victim and offender. This final step helps all impacted parties to feel whole again after a wrongdoing was committed

Restorative Justice Theory

Nils Christie, Howard Zehr, and John Braithwaite and Phillip Pettit were fundamental in conceptualizing Restorative Justice Theory.

Nils Christie

Nils Christie is a Norwegian sociologist and criminologist. He is one of the first scholars to theorize Restorative Justice. His groundbreaking paper, *Conflicts as Property* (1977), established an alternative justice model framework for conflict resolution, based on five elements of conflict he witnessed in Tanzania. First, the parties in conflict were in the center of the room and the center of everyone's attention. Second, close to the parties in conflict, were relatives and friends, who took part in the discussion and did not take over. Third, there was also participation from the general audience, asking short questions or telling jokes. Next, there were three judges, who were very inactive and unaware of the village matters. Everyone else in the room was an expert to the village norms and actions. They clarified what occurred through their participation.

Finally, there were no reporters in attendance; they were all there (Christie, 1977) as active participants.

Christie (1977) believes courts are peripheral in major ways, including being difficult to navigate and understand and not being covenant for individuals to access. He considers victims are a double loser with the current Western court process. First "vis-à-vis the offender "and second by "being denied rights to full participation in what might have been one of the more important virtual encounter in the [victim's] life" (p. 6). The victim has lost the case to the state, as the state is the party that brings the criminal charges forward. In terms of the state stealing conflicts from the people, Christie argues that the way the current system operates, there is a loss in opportunities for norm clarification for all involved.

As Dzur (2003) asserts, Christie believes even though an action caused harm or pain, there is no reason to respond in kind. Christie suggests conflicts are being treated as property and are being stolen by professionals, such as lawyers, judges, teachers, and Social Workers. He advocated giving conflicts back to participants and services, which help them resolve their conflicts themselves in a community orientated way (Liebmann, 2007).

The value of participatory justice is a main focus for Christie in his writings. He also published *Limits to Pain*, in 1981 where argues against the use of pain infliction to communicate values. He explicitly takes a moral stand in favor of creating severe restrictions on the use of man-made pain as a mean for social control. Through his writings, he argues to return responsibility for conflict resolution to communities (Christie, 1981; Dzur, 2003; Van Ness & Strong, 2006).

Through Christie's perspective, Restorative Justice returns the responsibility of conflict resolution to communities. Through this process, values can be communicated to reduce

alienation of victims, offenders, and communities, as is seen in the traditional Criminal Justice administration. Restorative Justice supports norms clarification and as a response to crime. It is characterized by direct communication between the owners of the conflict, leading to compensation and equal treatment of all parties involved (Christie 1977; Christie 1981; Dzur, 2003; Van Ness & Strong, 2006).

Howard Zehr

Howard Zehr, to many is known as the "grandfather" of Restorative Justice. Zehr is an American criminologist, who began as a practitioner and theorist of Restorative Justice in the last 1970s. A main theme of his work is respect for the dignity of all peoples. His major publication in 1990, entitled *Changing Lenses: A New Focus for Crime and Justice*, is widely cited and has been instrumental in the development of Restorative Justice theory and practice around the world. *The Little Book of Restorative Justice* (2002), lays out the principles and values of Restorative Justice. He has an active blog and trains individual all over the world on the use of restorative principles.

Zehr is active in summarizing the main differences between Restorative and Retributive Justice to help courts and communities understand Restorative Justice. He believes the current Criminal Justice system views crime as law breaking and justice as allocating blame and punishment (Van Ness & Strong, 2006). He believes "punishment does not give victims a real experience of justice and it does not give offenders a chance at real accountability" (Dzur, 2003, p. 285). Zehr believes for victims to overcome trauma and to regain a sense of power in the world, they need answers and information about the crime. "A dialogue between victim and offender cannot be dominated by state or Criminal Justice professionals," according to Zehr. (Dzur, 2003, p. 286). Zehr, as does Christie, states the dominant role of state officials and

professionals in the Criminal Justice system is hindering the satisfaction of victim's needs (Dzur, 2003).

Zehr stresses the value of a healing dialogue and argues that once a case is involved in the Criminal Justice system, victims lose control and are paralleled to a second victimization by the state. This occurs by being denied power and not being actively involved in the process. Offenders become bystanders as defense attorneys, judges, prosecutors, and juries make all critical decisions. The lack of public participation inherent in professionalization "results in stereotypical views of offenders and defensive fears about crime" (Dzur, 2003, p. 287). Zehr places the onus on the state to give back the traditional role of handing wrongdoings in a community, to the community.

John Braithwaite and Philip Pettit

John Braithwaite is an Australian criminologist and sociologist. He has been influential in the development of Restorative Justice programs in Australia and has written on Reintegrative Shaming, Responsive Regulation, and Restorative Justice. His original work, *Crime, Shame and Reintegration* (1989), examines how a in communitarian society, wrong doing shames not just the offender, but his/her family and sometimes the whole community (Van Ness & Strong, 2006). Shame is a key element of Reintegrative Shaming. He argues offenders experiencing a sense of shame that stigmatized them and left them as social outcasts were more likely to reoffend. Contrarily, offenders experiencing shame in relation to their intimate family and friends, who were forgiven and reintegrated into their family and society were less likely to reoffend. This is separating the deed from the doer, focusing on condemning the deed while encouraging the offender and treating them like a human being of intrinsic worth (Van Ness & Strong, 2006). He published *Restorative Justice and Responsive Regulation* (2002) and

numerous other articles that have been influential in this field. His work on Responsive Regulation will be discussed in more detail in the Social Work theory chapter. Braithwaite's work on reintegrative shaming influences his work with Pettit.

Philip Pettit is an Irish Political Scientist who is currently a faculty member at Princeton University and at The Australian National University. His work frequently addresses human values and moral theory. His books include *The Common Mind* (1996) and *Not Just Deserts: A Republican Theory of Criminal Justice* (1990), which he published with Braithwaite. Together, in 1994, Braithwaite and Pettit published *Republican Criminology and Victim Advocacy* as a follow-up article to their book.

Braithwaite and Pettit (1990) believe punishment is a direct threat to dominion. Dominion is "freedom conceived as social and political values; 'the condition of citizenship in a fair society; conditions under which each is properly safeguarded by the law against the predations of others'" (Dzur, 2003, p. 287). Dominion is to promote values, such as people physical integrity, freedom of movement, secure propriety rights, procedural rights, a suitable concern for equity, etc. (Braithwaite & Pettit, 1994).

Braithwaite and Pettit's (1994) dominion requires individuals to not think just about effects of crime in diminishing the dominion people enjoy, but also about the effects on peoples dominion of investing in authorities, such as police, courts, and prison officials with increased levels of power. This could negatively decrease dominion. Punitive responses to crime threaten freedoms of victims, offenders, innocent citizens, and communities. Restorative Justice communicates social norms through education and dialogue to help offenders recognize the wrongfulness of an act (Braithwaite & Pettit, 1994; Dzur, 2003) and occurs through repairing damage done with apologies, restitution, and reassuring the community they will not reoffend.

Part of this theorem, Braithwaite and Pettit (1994) argue, the system should mainly focus on "reintegration of victims and families of victims into their community; this in order that they can be restored to the dominion and sense of dominion they previously enjoyed" (p. 767). In their view, when a Restorative Justice conference occurs, it begins from the agreement that there is a wrong doing to be admitted on the part of offender and a problem-solving dialogue between two communities of care can occur after. The dialogue held can counter-act any power imbalances that may occur in the process (Braithwaite & Pettit, 1994). Similar to Christie and Zehr, they believe the right response to harmful acts is a de-centralized and de-professionalized process that engages victim and offender in dialogue. They believe in the state relinquishing more control and when the state relinquishes more control, citizens will "take them up, become more involved, and maintain a less punitive system than before" (Dzur, 2003, p. 289).

Three Main Practices of Restorative Justice

Restorative Justice is an evidenced-based approach in meeting the needs of victims, offenders, and communities. There are three main practices of Restorative Justice that have been researched. These are Victim-Offender Mediation (VOM), Family Group Conferencing (FGC), and Peace Circles. These programs are detailed in numerous readings, and below is a brief overview of these programs.

Victim Offender Mediation

Victim Offender Mediation (VOM) is the most common Restorative Justice program in the United States and North America (van Wormer, 2003; Gumz & Grant, 2009). The first VOM meeting, between victims and offenders, occurred in Elmira Ontario in 1974. A Mennonite Probation Officer took two young adults to apologize to 22 individuals whose houses they had vandalized. Mennonites in Elkhart, Indiana, beginning in 1978, replicated this program. During

the same time period, programs were starting in Europe in response to Nils Christie's 1977 paper, leading the development of mediation services sustained by community volunteers. The first VOM program in the UK was established in 1983, through South Yorkshire Probation as a hope to divert individuals away from prison (Leibmann, M 2007, Van Ness & Strong, 2006). The Victim Offender Mediation Association reports there are more than 1,200 known restorative justice programs in North American and Europe (www.voma.org).

This form of Restorative Justice is a face-to-face meeting involving a trained mediator, a crime victim, and the person who committed the crime. It is a voluntary, dialogue driven process used to obtain answers, repair harms, and make amends in a safe and controlled setting (Choi et al., 2011, van Wormer, 2003). There is extensive case preparation required before interactions begin, including an intake with all participating parties, preparation for mediation, mediation, and follow-up (Choi et al., 2010). This process “humanizes the Criminal Justice experience for both victim and offender” (Gumz & Grant, 2009, p. 121-122) through the use of open communication of all parties involved. The goal is to "empower participants, promote dialogue, and encourage mutual problem-solving" (Van Ness & Strong, 2006, p. 64). Research to date, underscores the power of well-run VOM programs (Choi et al., 2011; Kuo et al., 2010; Van Ness & Strong, 2006).

This practice is used most often with less serious offenses in the United States and used readily in the United Kingdom. It is known as one of the first restorative process of the modern time. This process has received criticism, as it does not fully involve the greater community. However, it is still used today with what is seen as much success in handling cases with a direct impact on the victim and offender.

Family Group Conferencing

FGC is also known as family group conferencing and was adapted from traditional practices of the Maori people of New Zealand. Children and youthful offenders were being removed from the homes of the Maori, impairing the family and "the future of the Maori people" (Van Ness & Strong, 2006, p. 29). This model is an outgrowth from the international women's and children's rights movements of the late 1980s and was developed as a "family group decision making model, to try and stop family violence" (van Wormer, 2003, p. 444) and adjudicate child welfare cases both in and out of the traditional Criminal Justice system (Leibmann, 2007). FGCs made its way to England and Oregon in the early 1990s and are currently being utilized in North America, Australia, Europe and New Zealand as a preferred sentencing and a Restorative Justice forum for youthful offenders and child welfare cases.

FGCs involve more persons than VOM. These members can include secondary victims (family members, friends, and supporters of the victims) because "these people have also been affected in some way by the offence, and because they care about one of the primary participants" (Van Ness, 2004, p. 97,). FGCs are facilitated, not mediated, and the facilitator assists the group, making sure the process "remains safe for all involved and that it does not wander into irrelevant side issues" (Van Ness & Strong, 2006, p. 66). There can be much preparation for these conferences; however, many are conducted with minimal preparation of the parties. The conference will take place even if the victim is not able to attend.

FGCs have been utilized with more serious offenses and repeat offenders. This is a rapidly expanding Restorative Justice approach to crime (Gumz & Grant, 2009, Jeong et al., 2012). This process is usually used with juvenile cases and it includes family members due to the influential role families play in a juvenile's life. The aim of this conference is to move beyond

the offense itself and to view family as a representative of community (Ikpa, 2007; Ross, 1996). Van Wormer (2003) argues FGCs are more likely than traditional forms of dispute resolution to give effective voice to those who are traditionally disadvantaged.

The New Zealand approach is based on social welfare and FGCs are currently used in child welfare practices around the world. Characteristics of this model entail the sharing of decision-making responsibilities with families. Process and decision-making are more likely to reflect the culture, traditions, and needs of the participants, stress on the quality of relationships, a proactive rather than an investigative model for addressing child mistreatment, and a focus on building up social networks (van Wormer, 2003). When addressing youthful offender situations, FGCs stress the awareness of the human impact of his or her behavior, involves the victim and community affected by the wrongdoing in the discussion of the offense, and solicits the families' support in the process of offender's making amends and repairing the harm (van Wormer, 2003).

Peacemaking Circles

Peacemaking Circles are a method of “communication and problem solving derived from aboriginal and Navajo traditions as a community-based way to resolve conflict” (Gumz & Grant, 2009, p. 122). The first Peacemaking Circles originated among the First Nations people of Canada. This is the most inclusive process of the three practices of Restorative Justice. Community members, victims, offenders, families and friends, representatives of the Criminal Justice system, and a facilitator, formally known as the "circle keeper," speak in a nonjudgmental way. Coates, Umbriet, and Voss (2003) argue the qualities of the circle keeper are consistent with Social Work practice, including a nonjudgmental approach, good listening skills, empathy, respect, patience, and understanding. The most important aspect of the Circle is the talking piece

that gets passed around. This is what regulates the conversation, so each individual has an equal opportunity to speak and makes it so every participant is responsible for the process and outcome of reaching a consensus (Leibmann, 2007; Stuart, 1997). This aids in building relationships, which is equally as important as tackling difficult issues (Stuart, 1997).

One of the most used models of the restorative process is the Circle approach. Ikpa (2007), Ross (1996) and Stuart (1997) all discuss the use of the Circle approach and its inclusiveness of additional community members and stakeholders in the restorative process. Circles encompass more of the Restorative values by involving more members from the community and allows for a more complete integration back into the community after the process is complete.

Peacemaking circles take extensive time and financial resources to prepare and implement, however with the limited research that has been conducted, Stuart, indicates in Van Ness and Strong (2006) that "fewer offenders who had gone through the circle recidivated than offenders who were processed by standard Criminal Justice practices" (p. 68). The Circles bring people together in a way that creates trust, respect, intimacy, good will, belonging, generosity, mutuality and reciprocity. Peacemaking Circles are used Canada, US, New Zealand, South Africa, and with many of the Indigenous tribes around the world.

Summary

Van Wormer (2003) asserts that in Restorative Justice the emphasis is on restoring the individual to the community rather than removing him or her from the community; it "is an aspect of Restorative Justice of special benefit to women and minorities who so often fail to get individual attention through the adversarial process" (p. 446). Similarly, Restorative Justice has the ability to incorporate native rituals in healing meetings and inclusion of religious and

spiritual concepts that are culturally specific to the participants, which has special appeal for minority groups (van Wormer, 2003).

Restorative Justice is a new approach, an alternative to incarceration that has been used historically and traditionally. In the next Chapter I will examine two Criminal Justice theories that form the basis of the use of youth incarceration.

CHAPTER III

Criminal Justice Theories

Restorative Justice is an alternative to youth incarceration, the approach commonly used by the Criminal Justice system to address the problem of youth committing some sort of crime. In this chapter, I will review two theories- Attribution theory and Deterrence theory- that form the theoretical basis of the use of incarceration and other methods used historically by the Criminal Justice system.

Attribution theory

Attribution theory is a social psychology theory that numerous Criminal Justice theorist drawn upon to explain why individuals commit crime and to expound upon the reason why sentences are imposed on these individuals. Carroll (1978) and Shaver (1970) were influential in the development and use of this theory in Criminal Justice writings. Attribution theory posits individuals draw upon a set of rules or inferences when making causal explanations (Rodriguez, 2013; Albonetti 1991). Albonetti (1991) observes how judgments of causality are premised on both personal and environmental forces. This is thought to influence behavior. Carroll (1978) describes attribution theory as providing a scaffolding to understand how subjective human judgments form the basis for the way the legal and Criminal Justice system handle crime and criminals. Much of the research that has been conducted on attribution theory proposes various situations where a crime was committed, on both a person and property and asks the participants to react to these situations from a punitive perspective and from the perspective of describing the

likelihood that this person will reoffend in the future (Albonetti, 1991; Carroll, 1978; Herzog, 2008; Sanderson et al., 2000; Shaver, 1970; Tam et al., 2013).

According to Templeton and Hartnagel (2012) and Rodriguez (2013), attribution theory assumes people seek to make sense of their world by provenance actions to internal and external causes, or attributions. Internal attributions are characterized as personal choices or individual feelings, a psychological perspective. External attributions are described as forces beyond control of the individual or environmental factor, a sociological perspective. These attributions affect the responsibility assigned by individuals. Tam et al. (2013) describe people who believe in "psychological (vs. sociological causes) of crime" (p. 604) are more punitive in their view of sentencing and recidivism. These individuals are in favor of stricter, more punitive sentences. Sanderson et al. (2000) research on crime and punishment state individuals examine the role of both "personal and situational factors in determining the cause of events" (p.1138) and are particularly likely to focus on the role of personal factors. This leads to various pieces of information about the crime and criminal and may lead "to attributions about the offender's personality, which in turn leads to liability judgments" (Sanderson et al., 2000, p. 1138). This can lead to varying sentences and contribute to sentence disparities.

The defensive component of attribution theory is note worthy. Shaver (1970) challenges that defensive attribution mechanisms influence our observations of others unfortunate situations, such as crime victimization. There is a tendency toward self-protection, not unlike other motivation attritional errors. This leads to instances of defensive attribution. Defensive attribution looks at a situation that has affective significance for the perceiver's own wishes. Shaver (1970) continues, if in a situation an individual is faced with a negative view of character or abilities, one will attribute this failure not to themselves, but to external factors, often the

malice of the critics. This is seen as damaging to that individual's self-esteem. This can also occur when one is confronted by a physically threatening situation. Shaver (1970) contends the perceivers "defensive attribution embodies a distortion of the probability of being injured" (p. 113) and with this, chance becomes the least controllable factor and therefore the most threatening and the greatest cause of suffering. A belief is created, according to Shaver, in a 'just world' where "people get what they deserve, or after the fact-deserve what they get" (p. 113).

Herzog (2008) describes defensive attribution theory when an individual is confronted with the "apparently capricious victimization of a person, observers are cognitively threatened by the realization that such unwanted misfortunes could also befall them. Acknowledging such an unpleasant possibility produces a negative affective state and initiates a cognitive defensive mechanism to meet self-protective needs such as security and control over one's life" (p. 459). This defensive tendency, where the perceiver's objective is to avoid blame, is evidenced both by increased situational relevance and greater personal similarity to the person committing the crime.

Attributions by juvenile court officials help explain why youth take part in delinquent behavior and support in assessing means for intervention. This theory can be used in how court actors assess youths' culpability and in "explaining the more severe treatment received by minority youth in the justice system" (Rodriguez, 2013, p. 193). Internal attributes could be seen as moral character and one's ability to actually commit an offense. External and environmental attributes in juvenile courts could be family structure, peers, and neighborhood context (Rodriguez 2013).

Family structure, peers and neighborhood context are external factors commonly used when making assessments about youth in the juvenile justice system. External attributes are used

when attempting to reduce assigned responsibility of an individual. Individuals who believe that crime is caused by external attributions are more likely to favor rehabilitation or social crime prevention programs. However, there is an exception to this, according to Rodriguez (2013), "in the eyes of the court, certain external factors may place youth at a higher risk for reoffending because they are vulnerable in specific environmental conditions" (p. 194). It is possible to perceive youth as 'victims' of external circumstances and be in need of more formal social control. In other words, negative external attributes may not only be used as mechanisms through which assigned responsibility is reduced but also as a basis for more severe treatment, a concentrated disadvantage affecting at-risk youth.

This theory may support and explanation of why certain youth, mainly minority youth are incarcerated at a higher percentage.

Deterrence theory

Cesare Beccaria and Jeremy Bentham are the grandfathers of deterrence theory. Their pioneer works are "On Crime and Punishment" (1764/1963) and "An Introduction to the Principles of Morals and Legislation" (1789), respectively. Bentham was convinced that crime came from the conscious, rational considerations of the individual (Kennedy, 1983). Beccaria argues punishment must be proportionate to the crime and crimes that cause the greatest damage to society should be punished most severely. He believed that certain punishment is a more effective deterrent than severe punishment (Kennedy, 1983, Paternoster, 2010).

Beccaria's deterrence theory has three main components. (Jordan and Myers, 2011; Kennedy, 2009; Paternoster, 2010). First, punishment should be certain. A strong impression needs to be made by the "high likelihood of punishment" (Jordan and Myers, p. 249) and this would result in individuals not committing crime. Secondly, punishment must be severe for

deterrence to take place. The “punishment should be severe enough to outweigh benefits derived from the illegal act” (Jordan & Myers, p. 250). Lastly, the punishment needs celerity or to be swift. If the punishment does not occur right away, there is “dissociation between the act and the punishment and an decreased likelihood of deterrence among offenders” (Jordan & Myers, p. 251).

Bentham believes that human behavior is directed by the twin goals of the attainment of pleasure and the avoidance of pain, and individuals strive for the balance between utility (pleasure) and disutility (pain). He argues an individual's inclination to offend consists of a desire to attain pleasures and avoid the pains. "The punishment of the offender is inflicted, and is justified in being inflicted, by imposing one or more of the pains" (Paternoster, 2012, p. 772). It is important to note the difference between specific and general deterrence theory. General deterrence theory relates to inhibiting those who have not yet offended from committing crimes at all. Specific deterrence theory is the belief criminal statutes contain a "credible threat-that it is hoped- will inhibit those who have been punished from committing additional crimes" (Paternoster, 2012, p. 776).

Deterrence theory was largely criticized and ignored for over two centuries until it saw resurgence in the late 1960s/1970s through today. The resurgence was in response to increasing crime rates, beliefs that rehabilitation was not successful, and political pressure. Paternoster (2012) contends the "belief or expectation that sanction threats can deter crime is at the heart of Criminal Justice system" (p. 766) and this has molded current policies such as police crack downs, enhanced enforcement and surveillance of high crime spots, mandatory minimum sentences, sentence enhancements for possessing a firearm, three strike laws, and youth being tried and housed as adults. These have all been enacted with the expectation they will

successfully engineer the crime rate down through deterrence (Paternoster, 2012). However, until recently, there was a lack of empirical evidence investigating these claims and thus it is difficult to determine the effectiveness of these policies.

Jeffery (1970), discussed three features about legal punishment that prevents it from being an even more effective deterrent. First, legal punishments are generally very uncertain. Second, punishments are only imposed long after the crime has been committed and therefore have a low celerity. Lastly, pleasures of crime are immediate and so they carry a greater weight than the delayed costs of crime in would be offenders' calculus. This expansion on classical deterrence theory lead to a growth of research in the 1960s. Gibbs, in Kennedy (2009), examined the relationship between certainty and severity of punishment in individual states and their corresponding crime rates. Zimring and Hawkins published *Deterrence: The Legal Threat in Crime Control* in 1973 and Gibbs published *Crime, Punishment, and Deterrence* in 1975 helped solidify deterrence theory and lead the way for a new window into the view on deterrence (Kennedy, 2009).

In the 1980s, Deterrence began to be seen as a theory about perceptions of sanctions, threats, and the relationships between those perceptions and self-reported behavior (Paternoster, 2012). Geerken and Grove (1975) in Paternoster (2012) pioneered perceptual theory of deterrence in to a social psychological theory "of thereat communication and to realize that if the object properties of punishment are important, it is only because they affect crime through individual perceptions" (p. 780). This lead to deterrence theory presuming that human beings are rational enough to consider the consequence of their actions and to be influenced by those consequences. Kennedy (2009) discusses at length about the importance of an effective deterrence regime that "assumes offenders and potential offenders know what they face: they are

aware of prospective consequences" (p. 26) believing that individuals commit crimes when expected benefits outweigh expected gains. A utility is created where total satisfaction is derived from a course of action or consumption and the utility of crime is equal to the sum of the benefits of crime, cost of crime, benefits of non-crime, and cost of non-crime. Relating back to Beccaria's three properties of legal punishment that are related to its cost: 1) certainty, 2) severity, and 3) celerity of punishment; legal punishment is more costly when it is more certain (Paternoster, 2012). Paternoster (2012) discusses the strong positive correlation between objective and subjective (perceptual) properties of punishment, explaining how subjective "properties of punishment are those properties that are thought to exist in a jurisdiction by its population of offenders and would be offenders" (p. 785), hoping individuals in a jurisdiction will be deterred by various laws, such as juvenile transfer, blended sentences, judicial waiver, direct file provisions, enhanced sentences, and statutory exclusion.

From the late 1980s to the mid-1990s, there was a surge in United States youth violence leading to swift political action, and the nation responding with 'get tough' policies. Bill Clinton's signing of a major crime bill in 1994 created dozens of new federal capital crimes, mandated life sentences for some three-time offenders, and authorized billions for state prison grants and the expansion of state and local police forces (Alexander, 2010). At the same time, many states were making it easier to 'transfer' or 'wave' certain youth to adult criminal courts, marking a turn in the juvenile justice system, away from issues of neglected, dependent children or treatment for troubled youth. The courts "started to see harsher sentences befitting of the adult system" (Trost, 2013, p. 295). Of importance, is the 'get tough' initiatives have increased, in spite of the fact of youth crime decreasing.

Numerous unintended consequences of the juvenile exclusion process have been found, including an increase of recidivism rates for excluded youth, longer incarceration rates, less likely to benefit from plea-bargaining leading to higher conviction rates for initial crimes (Jordan and Meyers, 2011; Lemmon et al., 2005, Redding, 2003). When juveniles are transferred to adult courts, they experience a longer processing time, going against one of the main tenants of deterrence theory. Beccaria was adamant on a sentence being severe, however not overly severe. Kennedy (2009), Lemmon et al. (2005), and Jordan and Meyers (2011) all report when juveniles are incarcerated for long periods of time, transferred to adult court, pick up sentence enhancements, etc. this goes against the original view of deterrence by being too severe. Up until 2005, juveniles could still receive the death penalty. The Supreme Court struck this down for juveniles, in 2010 it banned life without parole sentences, and in 2012 it barred mandatory life sentences (Bronner, 2012). However, this does not protect juveniles who are excluded and tried in the adult system, still creating the problem of youth incarceration.

Deterrence theory supports an explanation of unintended consequences of the exclusion process and long-term incarceration of youth offenders including widening the ability of prosecutors to try juveniles in the adult system, systemic discrimination of minorities, victimization of juveniles in adult prisons, the reduction of opportunities, etc. (Lemmon et al., 2005). Deterrence theory supports an explanation of the problem of youth incarceration rates and the disproportionate rates of minority youth in custody.

Summary

Attribution theory and Deterrence theory support an understanding of the problem of youth incarceration. Both are social psychology theories that have been modified and used as an explanation for crime and how the Criminal Justice system responds to crime. Attribution theory

posits that both internal and external attributes of an individual lead to why one commits crime and how they are perceived by other individuals, their community, and the court, leading to an increase in minority incarceration. Deterrence theory states that punishment needs to be certain, severe, and swift in order to be an effective deterrent to crime. This theory has evolved over the years and is used commonly today with various 'get tough' policies, including juvenile transfer, increased police presence in high crime areas, and mandatory minimum sentencing.

In the next Chapter I will examine two Social Work theories that form the basis of the use of an alternative to incarceration.

CHAPTER IV

Social Work Theories

In this chapter, I will review two theories- Social Justice theory and Responsive Regulation theory- that form the theoretical basis of the use of Social Work theory in finding an alternative to youth incarceration and other methods used historically by the Social Work Field.

Social Justice theory

Social Justice is defined as promoting a just society by challenging injustice and valuing diversity (Robinson, 2013). Social Justice is generally equated with the notion of equality or equal opportunity in society. John Rawls (2003) and David Miller (2003) each posit their own theory of social Justice. While neither can be seen as exhaustive, each offers a "complex theory of social justice that illustrates its broad meaning" (Robinson, 2013).

According to Rawls, Social Justice is about "assuring the protection of equal access to liberties, rights, and opportunities, as well as taking care of the least advantaged members of society" (Robinson, 2010, p. 79). His perspective on Social Justice is commonly referred to as "justice as fairness." He assumes that society is composed of a fair system of social cooperation between free and equal citizens. Rawls believes that "society is well-organized and regulated by a public perception of justice" (Robinson, 2010, p.79). His idea of Social Justice is developed around the idea of a social contract. This agreement is "necessary to assure Social Justice because public support is critical to the acceptance of the rules of the game" (p. 79). These rules "specify the basic rights and duties to be assigned by the main political and social institutions,

and they regulate the division of benefit arising from social cooperation and allot the burden necessary to sustain it" (p. 79). Rawls suggests Social Justice is about the advantages and disadvantages of society and how they should be distributed.

There are three main principles of Social Justice, according to Rawls: 1) Each person should have the same liberties; 2) Inequalities are acceptable if every person has the same opportunity for success; and 3) Inequalities are acceptable if they are arranged to the greatest benefit of the least-advantaged members of society. Rawls' first principle applies to the establishment of "constitutional essentials" (Robinson, 2010, p. 85). This principle can only be used to assess if citizens enjoy equal liberties according to the law. Rawls believes equality is the most important element of Social Justice.

Rawls' other principles apply to the main institutions of society, which include the law, policing, courts, and corrections (Robinson, 2010). In these institutions, inequalities are "acceptable if every person in society has a reasonable chance of obtaining the positions that lead to the inequalities" (Robinson, 2013). A free market system must be set within a framework of political and legal institutions that adjust the long-run trend of economic forces as to prevent excessive concentrations of property and wealth. Conversely, as was stated above, Rawls contends, "inequalities in society must be organized so that they are to the greatest benefit of the least advantaged members of society" (Robinson, 2013). Social Justice, according to Rawls, is not only *about* economic opportunity, it is *part* of the economic opportunity and by incarcerating individuals, youth in particular, they are being denied the opportunity to fully participate in the social cooperation of society. Wakefield (1998) argues Social Workers hold psychological goods; they help make the intangible tangible. Psychological goods are similar to economic goods, representing Social Justice commodities.

Miller discusses how Social Justice “deals with the distribution of good (advantages) and bad (disadvantages) in society, and more specifically with how these things should be distributed within society (Robinson, 2010, p. 82). Some of the advantages include money, property, jobs, education, personal security, housing, transportation and leisure opportunities. Disadvantages include military service, dangerous work, punishment for wrongdoing and other hardships. Miller's theory applies to both public goods as well as private commodities.

Miller's view of Social Justice is considered pluralistic or circumstantial because different parts of his "conception of Social Justice are more or less relevant depending on the circumstances" and the context of given situations (Robinson, 2013), as this influences individuals' views if something is judged as just or unjust. Miller believes Social Justice is a social virtue that "pertains to what you are due or owed, as well as what you owe others" (Robinson, 2013).

Miller points out, when considering policies to allocate advantages and disadvantages, "we must not judge them based on how they benefit us personally: justice is about assigning benefits whose values are established by their worth to the relevant population taken as a whole, and it must be blind to personal preferences" (Robinson, 2010, p. 83). This idea lends strongly to the belief that Social Justice efforts cannot merely be rationalizations of self-interest.

Miller's theory contains three elements of Social Justice: need, desert, and equality. Need is a "claim that one is lacking basic necessities and being harmed or is in danger of being harmed and/or that one's capacity to function is being impeded" (Robinson, 2013). Desert is a claim that one has earned reward based on performance. Superior performance should attract superior recognition. Equality refers to the social ideal that society regards and treats its citizens as equals and "benefits such as certain rights should be distributed equally" (Robinson, 2010, p. 83). The

elements all refer to outcomes, as just procedures will not necessarily produce just outcomes (Robinson, 2013). Miller asserts that whether need, desert, or equality take precedence varies on which mode of human relationship is being considered.

The three basic modes of human relationships according to Miller are solidarity community, instrumental associations, and citizenship. Solidarity community "exists when people share a common identity as members of a relatively stable group with a common ethos" (Robinson, 2010, p. 83), such as family relations. Distribution according to need is most relevant with this mode. Needs, whether implicit or explicit, will be understood in terms of the general "ethos of the community... and the much-contested distinction between needs...and mere wants is drawn" (Robinson, 2010, p. 84). Under this principle, Miller believes punishing people for trying to satisfy basic needs will interfere with their ability to actually satisfy these basic needs.

Instrumental associations exist when "people relate to one another in a utilitarian manner; each has aims and purposes that can be realized by collaboration with others" (Robinson, 2010, p. 84), such as economic relations. Distribution according to desert is most relevant with this mode. Justice is done when one "receives back by way of reward an equivalent to the contribution one makes...Deserts are fixed by the aims and purposes of the association to which one belongs; these provide the measuring rod in terms of which relative contributions can be judged" (Robinson, 2013). Desert is measured on actual performance and lies at the heart of a meritocratic system.

Citizenship refers to "members of a political society in modern liberal democracies who are related not just through their communities and their instrumental associations, but also as fellow citizens" (Robinson, 2010, p. 84). The principle of distribution according to equality is relevant because everyone in the society is deemed equal in terms of certain rights. This mode

leads to Miller's robust view of basic rights of citizens and of a sphere of basic liberty is a part of the "requirements of Social Justice itself" (Robinson, 2013).

Miller's theory of Social Justice where need, desert and equality are equal and "the social context in which the distribution has to be made, or more precisely how context is perceived by those making the judgment, will determine which principle stands out as the relevant principle of justice" (Robinson, 2013). Miller believes all citizens should be treated equally in the eyes of the law and in its application by agencies of Criminal Justice.

Human rights are of main importance to both Rawls and Miller. Human rights are expansive and include rights in specific areas: general freedom; dignity; life; equality before the law; fair and public hearings by independent and impartial tribunals; presumption of innocence until proven guilty; freedom of movement and residence; right to seek and gain asylum from persecution; right to own property; right to education; right to participate in the community and "freedom from slavery or servitude; torture or cruel, inhuman or degrading treatment or punishment; discrimination; arbitrary arrest, detention or exile; arbitrary interference with privacy; among others" (Robinson, 2013).

Responsive Regulation theory

Margolin (1997) looked at the Social Work profession's deceptive side, which dates back to early twentieth century casework. Maschi, Bear, and Turner (2011) posit Margolin believed at this time, under "counterfeit shroud of good intentions and friendliness lurked harsh judgments and devious intentions designed to intrude into private lives of the poor. Social control and coercion techniques would be used to handle resistant clients" (p.235). In 2008, CSWE underwent a major shift from a content-based to a competency-based curriculum, which directly specifies Social Justice aims.

Presently, Social Workers are seen as agents of Social Justice and agents of social control. There is a strong duality between the concerns of both the individual and community. An example of this duality involves formal and informal "helping between care and control, or empowerment and coercion" (Burford & Adams, 2004, p.7). Responsive Regulation theory is about "restorative, dialogue-based, empowering approaches at one level, and in gradual degrees escalates to more coercive, deterrent strategies" (Gumz & Grant, 2009, p. 121). John Braithwaite pioneered this theory and describes how "Social Work practice is about empowerment to coax and caress the socially responsible self to the fore" (Gumz & Grant, 2009, p. 121). Similarly, Burford & Adams (2004) state, "this theory helps to reconcile empowerment practice with the context of coercion in which much Social Work takes place" (p. 10).

When sociologists and historians look at Social Work, they tend to see a profession in which the essence is social control, influenced by the language of therapy, helping, or even empowerment, which can disguise a coercive core (Burford & Adams, 2004). Braithwaite (2004) contends, historically, Social Work focused too much on micro-solutions "pejoratively referred to as band-aids, to problems of injustice that require structural solutions" (p. 199). Wakefield (1998) and others (Braithwaite, 2004; Burford & Adams, 2004; Simon, 1994) have embraced empowerment as central to good practice, however there is still the challenge of reconciling self-images of empowerment with the reality of the true function of Social Workers being agents of social control when many Social Workers are paid either directly or indirectly by the state.

Braithwaite (2004) examines the role of the Social Worker being the bridge between the democratic impulses of people and the law. Responsive Regulation helped build a mezzo level to merge the micro and macro where the justice of the law filters down into the justice of the people and the justice of the people bubbles up into the justice of the law. Responsive Regulation is seen

as useful for reconciling the tension between empowering democratic deliberation and intervention to protect children and families.

Pennell (2004) describes the doctrine of *parens patriae*, which "obligates the state to substitute as parent when a child's own parents fail to protect because of their personal limitations or those of the wider society" (p. 117). This doctrine leads to an emphasis on the due process and heightened legalism with state's interaction concerning the liability for children's safety. Pennell (2004) contends this combination of due process and heightened legalism obstructs the opportunity for child welfare to join with the family and community in forming partnerships of caring. Burford & Adams (2004) argue formal human services represent "no more than a single strand in the complex web of relationships and services, formal and informal, statutory and non statutory, which together provide care and control in the community" (p. 9). The overall effectiveness of Responsive Regulation depends not on one part of a network alone but on how well the whole is woven together.

Responsive Regulation points to a viable alternative for child welfare and youth incarceration. Braithwaite (2002), in Burford & Adams (2004) proposes a "regulatory pyramid as a framework for checking the abuses and limitations of the use of Restorative Justice while simultaneously counterbalancing the formalized means of achieving justice (punishment proportional to the offense)" (p. 12). This regulatory pyramid combines the possibilities of restorative, dialogue-based, empowering approaches at the base of the pyramid where regulation starts, escalating up the pyramid to more coercive deterrents, and ultimately incapacitating responses if the regulated body proves unwilling or unable to put things right.

Burford & Adams (2004) propose the "pyramid offers the hope and possibility of de-escalation down the pyramid to less coercive responses as those regulated show evidence of their

will and capacity to come into compliance" (p. 13). The pyramid process makes visible the multiple accountabilities that typically go unrecognized in instances of injustice. This is important in organizing as a community to keep bad behavior from happening again and setting out a plan for concrete repair or symbolic reparation and healing.

Braithwaite (2004) argues, "a Responsive Regulatory approach must begin with a clear statement of values and principles and need not be laissez faire" (p. 210). Responsive Regulation grows out of a relationship between the people who are being regulated through the "state's exercise of its simultaneous duties to protect and safeguard and citizens' right both to privacy and protection" (Burford & Adams, 2004, p. 15). Braithwaite (2004) believes the implications of the pyramid "contribute not only to the creation of a more crime-free society but also to a society where our whole legal system works more efficiently and fairly, to a society where we do better at developing the human and social capital of our young and [contribute] to a more peaceful world" (p. 16).

Braithwaite (2004) believes Social Work should have a strong commitment to being a coercive agent of the state's law and a strong commitment to empowering citizens to run their own lives. Social Work's "presumptive strategy should be empowerment and when an empowered citizen uses that power to threaten the safety of vulnerable others, then escalation to more coercive interventions should be inexorable until safety is secured" (p. 213). Once safety is secured, a dialogue about deescalating interventions to reinstate community and family empowerment can occur. Individuals are more likely to take responsibility for securing the rights of vulnerable others when the institutional design shows them that failure to do so is a "slippery slope" (p. 213). When the state is threatening to take over that responsibility "Social Workers should proceed on their routine work of empowerment by [not] making judgments that some

people are fit to accept responsibility and others not" (p. 213). Social Workers are the agents between the social control and social change.

Braithwaite (2004) supposes all people have a willingness to take responsibility for securing the rights of vulnerable others with whom they are in close relationships until that presumption is proved wrong. He continues, "by seeing all people as having multiple selves that include socially responsible and irresponsible selves, Social Work practice is about empowerment to coax and caress the socially responsible self to the fore" (p.214). Responsive Regulation is about building democratic problem solving and it is about enforcing the democracy's human rights and freedoms when democratic deliberation fails to honor them.

Summary

Social Justice theory and Responsive Regulation theory support an understanding of an alternative to the problem of youth incarceration. Both are theories that are supported by the NASW Code of Ethics and have been used as an explanation for Social Workers' role in juvenile incarceration and in finding an alternative—Restorative Justice. Social Justice theory, according to Rawls is seeing as "Justice as Fairness." Miller believes Social Justice is distribution of good (advantages) and bad (disadvantages in society). Human rights and human dignity is of central concern to Social Justice. Responsive Regulation theory examines the role Social Workers hold in empowerment and social control/coercion with individuals, families, communities, organizations, and state agencies.

In the next Chapter I will discuss how the previous Criminal Justice theories and the Social Work theories relate to the problem of juvenile incarceration and advocate for more Social Work involvement in Restorative Justice.

CHAPTER V

Discussion

The purpose of this project is to examine “Restorative Justice” from two different theoretical perspectives; Criminal Justice theories, and Social Work theories. The specific questions addressed were: with Restorative Justice programs carrying similar values as the Social Work profession, why are Social Workers not involved in Restorative Justice programs? How can more Social Workers become more involved? How can Restorative Justice be more readily used in the Social Work profession –especially in the area of youth crime and youth incarceration? This chapter discusses the findings and implications for clinical Social Work.

Findings

Restorative Justice

Restorative Justice origins date to ancient times, with restitution being paid to victims and wrongs being righted. It is a systemic response to wrongdoing, stressing the need to heal the wounds of victims, offenders, and communities caused by crime. Restorative Justice seeks to transform the traditional Criminal Justice system's response to crime with the replacement of punishment, such as incarceration, with dialogue and the replacement of state agents of crime control with community agents. The emphasis is on restoring the individual to the community rather than removing him or her from the community.

There are three main practices of Restorative Justice, which have been readily researched and used as an alternative to youth incarceration. Victim-Offender Mediation (VOM) is a

voluntary, dialogue driven process used to obtain answers, repair harms, and make amends in a safe and controlled setting. Family Group Conferencing developed as a family group decision-making model and is used to adjudicate child welfare cases both in and out of the traditional justice system and involve family members, friends, supporters or the victims, along with the victim and offender. Peace Making Circles are a community-based way of resolving conflict. This is a very inclusive process involving numerous people within a community.

Criminal Justice theories

Attribution theory and Deterrence theory explain and justify youth incarceration.

Attribution theory is a social psychology theory Criminal Justice theorist have drawn upon to explain why individuals commit crime and expound upon the reason why sentences are imposed. Attribution theory suggests individuals draw upon a set of rules or inferences when making causal explanations and judgments of causality are premised on both personal and environmental forces. It assumes people seek to make sense of their world by provenance actions to internal and external causes. Internal attributions are characterized as personal choices or individual feelings—psychological perspective—and external attributions are characterized as forces beyond control of the individual—sociological perspective. The defensive component of attribution theory influences ones observations of other unfortunate situations and examines a situation that has affective significance for the perceiver's own wishes. This theory supports the reason why minority youth receive more severe treatment in the Criminal Justice system.

Deterrence theory states human behavior is directed by the twin goals of attainment of pleasure and the avoidance of pain, and believes individuals strive for the balance between utility and disutility. There are three main components to deterrence theory: punishment should be certain; punishment must be severe; and punishment needs celerity or needs to be swift. At the

heart of this theory is the belief or expectation that sanction threats can deter crime. This has led to current 'get tough' policies such as police crack downs, enhanced enforcement and surveillance of high crime spots, mandatory minimum sentences, sentence enhancements, and youth being tried and housed as adults. Deterrence theory supports an explanation of unintended consequences of the exclusion process and long-term incarceration of youth offenders and supports an understanding of the problem of youth incarceration.

Social Work theories

Social Justice theory is defined as promoting a just society by challenging injustice and valuing diversity. John Rawls believes Social Justice is about assuring the protection of equal access to liberties, rights, and opportunities, as well as taking care of the least advantaged members of society. This perspective is commonly referred to as 'justice as fairness' and is developed around the idea of a social contract. David Miller believes Social Justice deals with the distribution of good and bad in society, and more specifically with how these things should be distributed within society. His view is considered pluralistic or circumstantial and it cannot be grounded in rationalizations of self-interest. Human rights and human dignity is of central concern to Social Justice.

Responsive Regulation theory is about restorative, dialogue-based, empowering approaches at one level, and in gradual degrees escalates to more coercive, deterrent strategies. This theory is about empowerment to coax and caress the socially responsible self to the fore. The role of the Social Worker is to bridge the democratic impulses of people and the law. Responsive Regulation helped build a mezzo level to merge the micro and macro where the justice of the law filters down into the justice of the people and the justice of the people bubbles up into the justice of the law. A regulatory pyramid is used as a framework for checking the

abuses and limitations of individuals and the greater society. The implications of the pyramid contribute not only to the creation of a more-crime free society but also to a society where our whole legal system works more efficiently and fairly, to a society where we do better at developing the human and social capital of our young and contribute to a more peaceful world.

Discussion of Findings

Very little research has been conducted on Social Workers involvement in Restorative Justice programs. For the past 40 plus years, there has been a declining presence of Social Work in corrections. During this time, there was a shift in the courts away from a rehabilitation model to a more justice and corrections model. However, the tenets of Social Work practice—the innate dignity of the individual, self-determination of the client, confidentiality, moral neutrality, and social justice—were, and are, challenged by a Criminal Justice system that values order, control, and punishment.

In examining the declining role of Social Workers in corrections, Social Workers have concerns about working with involuntary clients, the need for self-determination, and working in an oppressive system of social control, overshadowing parallel needs for the Social Work profession to be engaged in the debate about Criminal Justice policies, programs and services (Hairston, 1997). Concluding, while the nation builds more prisons to house more of a population that is predominately poor and nonWhite, the Social Work profession has remained remarkably silent.

Along with the decline of Social Workers being directly involved with the Criminal Justice system, there is a marked decline in Social Work education that prepares future Social Workers to practice in corrections. Similarly, there is a decline in research being published by Social Work educators, which addresses issues of correction in Social Work and Social Work

education. Conversely, there has been an increase in Social Workers providing psychotherapy with the accompanying emphasis on individual functioning. Many schools began to offer increasing areas of specialization in aging, family and children's services, and health—mental health. These areas offer the possibility of private practice, third-party payments, higher status, and working in settings that are distant from the client's own environment.

Even with Social Workers decreased direct involvement with the Criminal Justice system, Social Workers continue to have contact with persons affected by crime and the Criminal Justice system. Social Work can invigorate its presence in corrections by affirming its traditional commitment to Social Justice—one of the primary tenets of the profession. Restorative Justice is closely linked to Social Justice in its emphasis on fair play for all participants. Implementing and sustaining a paradigm shift, wherein Restorative Justice is valued over and above punitive justice is important.

Social Work and Social Workers have long been concerned with finding ways to make bureaucracies, policies, and procedures responsive to the simultaneous promotion of the autonomy of individuals and the well-being of communities. This dual focus supports Social Workers in bridging the gap between what formal organizations require through their policies and procedures and the needs of the people they work with. Social Work as a profession needs to affirm the concept of Restorative Justice, which offers a holistic approach toward work in corrections in which justice for the victim, offender, and the community are all relevant. Social Workers are in a unique position to assist crime victims, offenders, communities and families impacted by crime to deal with the biopsychosocial and spiritual impact of crime and the potential for healing by way of offering in-depth, humanistic and professional exploration of the meaning of wrongdoing.

Research shows offenders who participated in a Restorative Justice conference were more likely to perceive others as being more disapproving of what they had done, more socially reintegrative and more likely to acknowledge feeling bad about their actions, without feeling angry and unjustly treated. Conversely, victims who have participated in Restorative Justice processes express positive experiences with high satisfaction rates. van Wormer (2002), showed Restorative Justice has its roots in indigenous rituals of New Zealand and its concepts historically have been favored more in minority communities—African American, Latino, Canadian, Mennonite, and Native American—where the emphasis is on the collective rather than the individual. Restorative Justice practice offers the Social Work profession an opportunity to return to its historical roots in supporting and promoting conditions that encourage respect for cultural and social diversity.

Restorative Justice has been researched globally and has been used extensively in child welfare and in the Juvenile Justice system. New Zealand was the first country to introduce Restorative Justice into its youth justice system in 1989. The goal was to maximize: diversion from courts and custodial institutions; participation of you people, families, and victims in the decision-making; and accountability for wrongdoing. This program has set an example for other juvenile courts around the county. Pennell (2004) discusses the use of Restorative Justice in Family Group Conference in North America, where the aim is to eliminate or reduce violence against children and family members together with promoting well-being for families and communities.

Contribution to Social Work Practice

According to the NASW Code of Ethics, the mission of the Social Work profession is ingrained in a set of core values. The foundation of Social Workers purposes and perspective

includes Social Justice, Dignity and worth of the person, and the importance of human relationships. The value of Social Justice is based on the ethical principle of Social Workers challenging social injustice. Social Workers pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people. This value is focused on issues of social injustice and Social Workers strive to ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people. The value of dignity and worth of the person is grounded in Social Workers respecting the inherent dignity and worth of individuals. Social Workers are to promote clients socially responsible self-determination and seek to enhance clients capacity and opportunity to change and address their own needs. There is a dual responsibility to clients and broader society.

Youth incarceration greatly impacts individuals, families, and communities. This research brought information about programs and practice models that can be incorporated in Social Work practice to prevent youth incarceration and strengthen families and communities. It shed light on how Restorative Justice and Social Work are important, independently and conjointly. It lends the opportunity for the field of Social Work to look deeper and understand the impact of crime on individuals, families, and communities. The language used and the principles of Restorative Justice can be applied in both the micro, clinical setting through a strengths perspective and feminist lens, the mezzo setting through work with families, communities and education, and on the macro level through systems perspective and policy change in the criminal justice system.

Limitations of this Study

Limitations of this study first have to do with the limited timeframe in which this research was completed. There is also little to no Social Work research published and available

on this topic. My personal biases on this research include volunteer work facilitating and participating in various Restorative Justice process and a strong personal interest in Restorative Justice as an alternative to youth incarceration.

Recommendations for Future Research

Social Workers need to know how the correctional experience shapes issues of self-esteem, one's relationship with family and children, and issues of work and productivity. As Restorative Justice programs have evolved and grown at a systemic and grassroots level, theoretical and evidence-based research has fallen behind. This research is important for the realization of the holistic power of transformative justice. Braithwaite (2004) argues Restorative Justice is about seizing injustice as an opportunity to rebuild civil society, through nurturing emotional intelligence. Additional research needs to be conducted examining how youth incarceration can be transformed through the increased use of Restorative Justice programs and Social Workers continued commitment to empowering individuals and communities, and promoting socially responsible levels of interpersonal, intragroup, and intergroup activity. Increased involvement, commitment, education, training, and research participating of Social Workers in Restorative Justice practices are greatly needed.

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