

VIEWING THE MAGNOLIA STATE THROUGH THE LENS OF RESTORATIVE JUSTICE: DOES RESTORATIVE JUSTICE OFFER A SOLUTION TO MASS INCARCERATION IN MISSISSIPPI?

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INTRODUCTION

You were raised in a household once ridden with physical and emotional abuse, alcoholism, and murder.¹ Yes, murder. Well, much like what may or may not have been your childhood experience, this is the experience of nineteen-year-old Christine. Christine's mother and stepfather, Martin, had quite a fiery relationship.² Martin was an alcoholic.³ And while Mother may not have been categorized as an alcoholic, she did succumb to the enticement of alcohol; she and Martin would engage in a chaotic cycle of fueling and taunting each other.⁴ This behavior was the norm in the household Christine and her younger brothers were raised in.⁵ One day, Martin visited Mother at the local pub where she worked, drank quite a lot (Mother might have had a couple of drinks herself), and engaged in an argument with Mother that continued when they made it home at the end of the night.⁶ At some point during the altercation, things took a turning point. Martin strangled Mother to death, leaving Christine to raise her younger siblings on her own.⁷

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1. See Restorative Justice Council, *Christine's Story*, <https://restorativejustice.org.uk/resources/christines-story> (last visited Dec. 19, 2015).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

After Martin served the minimum 12 years of his life sentence, Christine learned that he was eligible for parole.⁸ By then, Christine had birthed two children of her own. She was consumed by the idea that she would run into Martin by happenstance while in public, leaving her uncertain as to what her reaction would be if she actually did see him.⁹ It was not until she met with Victim Support Liaison Officer Charlotte Calkin that she realized that there was an alternative approach to acknowledging her pain and her regaining control over the tragedy that haunted her over the last decade.¹⁰ Restorative justice became her out.¹¹

Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future.¹² Howard Zehr—famously known as “the grandfather of restorative justice”¹³—defines restorative justice as an approach aimed at helping offenders recognize the harm they have caused and encouraging them to repair the harm, to the extent it is possible.¹⁴ Zehr is of the ideology that rather than obsessing about whether offenders get what they “deserve,” restorative justice focuses on repairing the harm of crime and engaging individuals and community members in the process.¹⁵

When Christine met with Martin, not only did she seek closure on the events that led to her mother’s death, but she also expressed to Martin what he had taken from her and her younger siblings.¹⁶ She explained to him the emotions she felt toward Mother’s absence at her wedding and the birth of her children.¹⁷ Specifically, she told Martin that his offense was not just about what he did, *but also about everything that followed after*.¹⁸

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Michael Wenzel et al., *Retributive and Restorative Justice*, 32 LAW AND HUMAN BEHAV. 375, 377 (2008).

13. *Faculty/Staff Directory: Howard Zehr*, E. MENNONITE UNIV., <https://emu.edu/faculty-staff/?show=zehrh> (last visited Dec. 20, 2022).

14. *Restorative Justice: What’s That?*, ZEHR INST. FOR RESTORATIVE J., <https://zehr-institute.org/what-is-rj/> (last visited Dec. 20, 2022).

15. *Id.*

16. *See* Restorative Justice Council, *supra* note 1.

17. *See id.*

18. *See id.*

Christine no longer felt fear toward Martin, but instead developed a realization that her dialogue with him made her feel stronger than she previously had.¹⁹ For Christine, restorative justice turned the tables and encouraged her to regain a sense of power and control.²⁰

There is a plethora of case studies that recount what restorative justice has done for harmed individuals like Christine. Ideally, restorative justice is an effective means of addressing wrongs, restoring relationships, and providing the victim with a newfound sense of empowerment. Thus, the needs of those most affected by a crime come first, and wherever possible, opportunities for direct engagement in the process of doing justice through various forms of dialogue are central to the practice of restorative justice.²¹

This article will take a dive into the origin, history, and many interpretations of restorative justice as well as its importance in our criminal justice system, Section II will answer three important questions: (1) what is restorative justice; (2) does it work; and (3) do we need it? Section II will also briefly discuss the situations in which restorative justice is not suitable, such as in circumstances that involve domestic-violence cases or cases that were extremely violent. It will then present the issue of mass incarceration in the State of Mississippi, followed by a proposal that restorative justice serve as a viable solution to the state's high incarceration crisis.

19. See *id.*

20. See *id.*

21. Mark S. Umbreit et al., *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARQ. L. REV. 251, 256 (2005).

WHAT IS RESTORATIVE JUSTICE, DOES IT WORK, DO WE
NEED IT, AND WHEN IS IT NOT APPROPRIATE?

What Is Restorative Justice?

Restorative justice initially emerged during the 1970s as an alternative approach to the court process²² with roots in indigenous and preindustrial traditions of conflict resolution.²³ It is grounded in the belief that those most affected by crime should have the opportunity to become actively involved in resolving the conflict.²⁴ The most widely used approaches to restorative justice include victim-offender mediation²⁵, family group conferencing²⁶, victim-offender dialogue²⁷, and community-based circles.²⁸ Nearly each of these approaches allow for a direct, face-to-face dialogue between the victim and offender,²⁹ thereby maximizing the opportunity for remorse and empathy. There are several working definitions for restorative justice: a process in which all the stakeholders affected by an injustice have the opportunity to discuss the consequences of the injustice and what might be done to put them right;³⁰ the repair of justice through reaffirming a shared value-consensus in a bilateral process;³¹ or a process in which the victim and offender, and, where appropriate, any other individuals or community members affected by a crime,

22. Marilyn Armour, *Restorative Justice: Some Facts and History*, CHARTER FOR COMPASSION, <https://charterforcompassion.org/restorative-justice/restorative-justice-some-facts-and-history> (last visited Dec. 20, 2022).

23. Heather Strang, *Experiments in Restorative Justice*, in REGULATORY THEORY: FOUNDATIONS AND APPLICATIONS 483, 484 (Peter Drahos ed., 2017).

24. Umbreit et al., *supra* note 21, at 255.

25. Armour, *supra* note 22.

26. *Id.*

27. *Id.*

28. Thalia González, *The Legalization of Restorative Justice: A Fifty-State Empirical Analysis*, 2019 UTAH L. REV. 1027, 1030 (2020).

29. Armour, *supra* note 22.

30. John Braithwaite, *The Fundamentals of Restorative Justice*, in A KIND OF MENDING: RESTORATIVE JUSTICE IN THE PACIFIC ISLANDS 35, 35 (Sinclair Dinnen ed., 2010).

31. Wenzel et al., *supra* note 12, at 375.

participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.³² Though there are a multitude of ways restorative justice can be interpreted, the common consensus shared by each interpretation is that there is value in creating spaces where those who have wronged us, in addition to those who are wronged, are listened to.³³ From a restorative justice perspective, there are three primary questions that capture the essence of the practice: (1) who has been hurt; (2) what are their needs; and (3) whose obligations are these?³⁴ When restorative justice emerged as an approach to dealing with offending behavior, it was based on the understanding that restorative processes would be used as an alternative to retributive justice rather than a replacement,³⁵ rendering punishment a secondary function of the justice system.³⁶ All in all, restorative justice requires a radically different way of viewing, understanding, and responding to the presence of crime within our communities, as posited by Umbreit, Vos, Coates, and Lightfoot.³⁷

Does It Work?

The punitive response to crime, referenced as retributive justice, refers to the repair of justice through the imposition of punishment.³⁸ It asks three primary questions: (1) what law was broken; (2) who broke that law; and (3) how should they be punished?³⁹ Retributive justice suggests that as a result of violating a rule or law, an offender deserves to be punished and, for justice to be reestablished, must be punished in proportion to

32. Strang, *supra* note 23, at 485.

33. See Braithwaite, *supra* note 30, at 26.

34. Umbreit et al., *supra* note 21, at 258.

35. Razaan Bailey & Thelma Ekiyor, *Retributive Justice v. Restorative Justice*, in PROMOTING JUSTICE IN SOUTH AFRICA'S CORRECTIONAL SERVICES: PRISON TRANSFORMATION PROJECT 10, 11 (Centre for Conflict Resolution 2005).

36. Shannon M. Sliva & Carolyn G. Lambert, *Restorative Justice Legislation in the American States: A Statutory Analysis of Emerging Legal Doctrine*, 14 J. POL'Y PRAC. 77, 79 (2015).

37. González, *supra* note 28, at 1035.

38. Wenzel et al., *supra* note 12.

39. Amber Massey, *An Eye for an Eye Will Make the Whole World Blind: How Restorative Justice Will Help Florida See Again*, 43 NOVA L. REV. 79, 80 (2018).

the severity of the violation.⁴⁰ These violations come in many forms, whether it be mass killings or the refusal to treat someone with politeness.⁴¹ Whatever the form, the victims are not only deprived of what is considered due to them, but there remains the fact that an agreed-on rule has been violated.⁴²

In the criminal justice system, courts impose punishment on offenders, and once that punishment has been imposed, justice is often considered served.⁴³ However, what is often forgotten in the process of imposing punishment is the reality that long after justice has been served, there remains a victim or victims who have been left entirely out of the process. One intellectual basis of restorative justice is the view that offenses are to be considered as conflicts that belong to offenders *and* victims, and that these parties should participate in its resolution.⁴⁴ The criminal justice system and its actors essentially steal this prerogative from the affected parties, subjecting them to the loss of an opportunity, right, and duty to learn and grow through what initially brought them together.⁴⁵ This does not suggest that restorative justice totally excludes punishment; rather, it promotes a more constructive form of punishment as opposed to the usual infliction of suffering, such as incarceration.⁴⁶ This neither suggests that victims suddenly succumb to the old adage of “forgive and forget,” but they are encouraged to overcome their resentment and offer forgiveness as a result of the remorse shown and apology offered by the offender.⁴⁷

There is evidence to support the purported notion that victims feel more satisfied with the criminal justice system when restorative justice is included in the process.⁴⁸ This high level of satisfaction suggests that victims rather be included in the process instead being presumed to be satisfied with the reparation,⁴⁹ or whatever punishment the actors within the criminal justice

40. Wenzel et al., *supra* note 12.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *See id.*

49. *Id.*

system elect to impose on the offender. While that same evidence suggests a showing that a minority of victims are dissatisfied with the restorative justice process⁵⁰, studies to date indicate that satisfaction with restorative processes by victims and offenders is high and that some approaches are successful in lowering recidivism rates among offenders.⁵¹

There is further evidence to suggest that victims of crimes are more satisfied with restorative justice processes than they are with the traditional, punitive process of the criminal justice system.⁵² In *Restorative Justice: The Evidence*, a study by The Smith Institute of the United Kingdom on the effectiveness of restorative justice, there are positive findings about the benefits victims receive from participating in restorative justice facilitations.⁵³ One benefit the evidence in the study suggests is that victims who participate in restorative justice facilitations are more satisfied than their counterparts whose cases process through the formal justice system.⁵⁴

There are other studies that confirm that victim-survivors benefit when they are afforded the opportunity to participate in restorative justice processes.⁵⁵ For example, these studies show that victim-survivors feel more emotionally restored as a result of the restorative justice process.⁵⁶ This emotional restoration was demonstrated when a Canadian research team conducted listening sessions with victim-survivors about their experience with restorative justice facilitations.⁵⁷ In particular, one participant expressed that the meeting with their offender had given them the space to express themselves and be asked the questions that helped the offender realize how deep the impact of his or her actions on the victim-survivor.⁵⁸ Another participant

50. *Id.*

51. Sliva & Lambert, *supra* note 36.

52. Jan Peter Dembinski, *Restorative Justice—Time to Take It Seriously?*, 39 VT. B. J. 20, 20 (2014).

53. *Id.*

54. *Id.*

55. Lynn S. Branham, *The Overlooked Victim Right: According Victim-Survivors A Right of Access to Restorative Justice*, 98 DENV. L. REV. FORUM 1, 15 (2021).

56. *Id.*

57. *Id.* at 9.

58. *Id.*

noted that the most valuable and important takeaway they had from the facilitation was the opportunity to talk to the offender and explain to them what their actions cost the victim-survivor.⁵⁹ This direct encounter between victim and offender allows victim-survivors to see and hear—through facial expressions, body language, and tone of the offender’s verbal responses—the impact of their words.⁶⁰ Thus, restorative justice grants victims the long-awaited confirmation that they are being heard.⁶¹

Do We Need It?

A national consensus suggests that America should reduce its levels of incarceration.⁶² Since 1970, the United States prison population rose 700 percent, rendering it the world’s leader of jailing its own citizens.⁶³ This is disquieting considering that, though the United States has a contribution of five percent to the world’s total population, it houses approximately twenty-five percent of the world’s prisoners in its cells.⁶⁴ In fact, Louisiana, Oklahoma, Arkansas, and Mississippi are the leading American states with the highest prison population rates per capita.⁶⁵ It is evident that incarceration has become the primary form of punishment in America.⁶⁶

Mass incarceration poses a significant public health and safety threat to society:⁶⁷ the massive amounts of overcrowding coupled with the closeness of living quarters in American prisons have made it easier for infection and diseases to spread.⁶⁸ Furthermore, suicides in prisons kill more incarcerated individuals than do accidents, homicide, and drug overdoses

59. *Id.*

60. *Id.* at 10.

61. *Id.*

62. Bettina Muenster & Jennifer Trone, *Why Is America So Punitive? A Report on the Deliberations of the Interdisciplinary Roundtable on Punitiveness in America (excerpted)*, in 28 FEDERAL SENTENCING REPORTER 340, 340 (2016).

63. *Id.*

64. *Id.*

65. Alana Van Gundy, *American Prisons: Consequences of Mass Incarceration*, in AGENDA FOR SOCIAL JUSTICE: SOLUTIONS FOR 2016, at 103, 103 (Glenn W. Muschert et al. eds., 2016).

66. Muenster & Trone, *supra* note 62, at 341.

67. GUNDY, *supra* note 65, at 104.

68. *Id.*

combined.⁶⁹ Restorative justice provides opportunities for offenders and victims to learn from each other, acknowledge the seriousness of the offenses that have been committed, and participate in a process of repairing damage and restoring relationships;⁷⁰ thus, the tendency of an offender to reoffend significantly decreases.

In turn, the “revolving-door” phenomenon that recycles offenders is an indication that imprisonment as a form of punishment is not effective.⁷¹ So, even while there is evidence to suggest that crime rates have declined since the 1900s, there still exists an alarming rise in incarceration rates in America that suggests that the present criminal justice system does little to create long-lasting, meaningful change in offenders.⁷²

When Restorative Justice Is Not Suitable

While it is true that restorative justice has the power to offer a vast amount of benefits to the victim of a crime, the offender who committed the crime, and the community that, in the grand scheme of things, was affected by the crime, there are several instances in which restorative justice approaches are not suitable.⁷³ One instance lies in circumstances involving violent crimes.⁷⁴ In the case of a violent crime in which the victim and offender knew each other before the offense was committed, the victim may not desire to forgive or be in further contact with the offender.⁷⁵ Another instance lies in circumstances involving interpersonal violence, such as domestic violence. In cases of domestic violence, an attempt to preserve an unhealthy victim-offender relationship may cause more harm than good.⁷⁶ There also exists the possibility of further emotional and psychological

69. *Id.*

70. ACLU MICH., *Using Restorative Justice to Combat Mass Incarceration*, <https://www.aclumich.org/en/cases/using-restorative-justice-combat-mass-incarceration> (last visited Dec. 20, 2022).

71. Bailey & Ekiyor, *supra* note 35, at 10.

72. Sliva & Lambert, *supra* note 36, at 77-78.

73. David Naar, *What Are the Pros and Cons of Restorative Justice?*, REFERENCE (May 11, 2021), <https://www.reference.com/world-view/pros-cons-restorative-justice-a722d3404aa5cb87>.

74. *Id.*

75. *Id.*

76. *Id.*

harm being inflicted upon the victim,⁷⁷ which can lower the likelihood of a successful restorative justice facilitation. It is also important to keep in mind that *only* remorseful offenders have the option of participating in a restorative justice facilitation.⁷⁸ If, for the sake of restoration, advocates of restorative justice require victims to meet with an offender that is not prepared to acknowledge the impact of his or her offense, essentially the entire practice would be futile.

RESTORATIVE JUSTICE AS A SOLUTION TO MISSISSIPPI'S INCARCERATION CRISIS

This article now explores restorative justice in Mississippi,⁷⁹ a Southern state that incorporates very little support for restorative justice into its legislation.⁸⁰ Mississippi has a total of three restorative justice statutes and court rules and zero restorative justice regulations.⁸¹

This data is not conflicting on its face considering that, and as mentioned earlier in this article, Mississippi constitutes one of the leading states with the highest prison population rates per capita.⁸² This shines a light on the absence of effective restorative programs to combat the state's incarceration crisis. In fact, and in most cases, high prison populations are linked to high crime rates; but in Mississippi's case, its crime rate fell four times as fast when

77. Maya98, *Restorative Justice*, GET REVISING (Mar. 6, 2017), <https://getrevising.co.uk/grids/restorative-justice>.

78. *Id.*

79. As a Mississippi born and raised native, I am keenly aware of the state's overly harsh criminal justice system. This research is dedicated to Mississippi in hopes of providing an alternative to the state's overreliance on incarceration.

80. González, *supra* note 28, at 1054-55 figs.2 & 3. Figure 1 and Figure 2 indicate the total number of restorative justice statutes, court rules, and regulations adopted in all 50 states; however, specific attention should be directed to Mississippi.

81. *Id.*

82. GUNDY, *supra* note 65.

compared to other states over the last decade,⁸³ yet it remains notoriously known as the most punitive democracy in the world.⁸⁴

In 2020, Mississippi had the third highest prison incarceration rate in the United States, subjecting its taxpayers to spend more than \$300 million per year in supporting those prison costs.⁸⁵ Two years later, however, Mississippi is the world's leader in putting people behind bars.⁸⁶ In Mississippi prisons, more inmates per capita are being held than in any state or nation, including China, Russia, and Iran.⁸⁷ Between 2013 and 2016, the state implemented criminal justice reforms that resulted in a 11% drop in its prison population; however, these reforms only made modest changes to the sentence lengths of some crimes. Then the prison population began to climb again.⁸⁸ According to the Mississippi Department of Corrections, Mississippi's average monthly prison population was 18,193 in August 2022, 18,551 in September 2022, and 18,815 a month later.⁸⁹

This consistent climb in the number of individuals that become confined in Mississippi's prisons and jails indicates an overreliance on incarceration.⁹⁰ The cliché “you do the crime, you do the time” and “an eye for an eye” colloquialisms adopted by Mississippi legislators simply reflect this deeply rooted response

83. *High Cost, Low Return: Mississippi's Ongoing Incarceration Crisis*, FWD.US (Nov. 2, 2022), <https://www.fwd.us/news/mississippi-ongoing-incarceration-crisis/> [hereinafter *High Cost, Low Return*].

84. Shannon M. Sliva, Elizabeth H. Porter-Merrill & Pete Lee, *Fulfilling the Aspirations of Restorative Justice in the Criminal System? The Case of Colorado*, 28 KAN. J. L. & PUB. POL'Y 456, 457 (2019).

85. Lena Mitchell, *Add Restorative Justice to Mississippi Criminal Justice Reform*, DAILY JOURNAL (Jan. 29, 2020), https://www.djournal.com/opinion/lena-mitchell-add-restorative-justice-to-mississippi-criminal-justice-reform/article_da510bf6-d099-5ff0-bc16-9679b1b91c93.html.

86. Jerry Mitchell, *Foolishly Sticking with Failed System': Mississippi Leads the World in Mass Incarceration*, CLARION LEDGER (Aug. 13, 2022, 10:18 AM), <https://www.clarionledger.com/story/news/2022/08/13/mississippi-has-more-inmates-per-capita-than-any-state-nation/10317601002/>.

87. *Id.*

88. *High Cost, Low Return*, *supra* note 83.

89. *Id.* at *Mississippi's Prison Population, 1980-2022*.

90. *High Cost, Low Return*, *supra* note 83.

to crime and punishment.⁹¹ This data and the state's three-year recidivism rate of 33%⁹²—a number that more than doubles in just two years as the state's five-year recidivism rate is 77%⁹³—make clear that this overreliance does little to ameliorate the process in which offenders are successfully rehabilitated. This recidivism rate is the percentage of Mississippi offenders who, after their release, return to prison because they have committed another crime.⁹⁴ Due to a need to offset this escalating rate of incarceration and the desire to implement a system that can truly promote community well-being, a broad alternative-to-incarceration approach is available and has thus far thrived where implemented.⁹⁵ As this article has illustrated, restorative justice is an effective means of not only restoring the community, but rehabilitating offenders as well.

Mississippi's carceral and punitive approach to accountability does not work and does little to heal victims or meaningfully prevent crime through rehabilitation or other responses that contribute to the underlying drivers of criminal behavior.⁹⁶ An escalating increase in incarceration erodes communities' trust in the criminal justice system.⁹⁷ Therefore, there exists the need to embrace new approaches to accountability that, taken together, repair the harm caused the victims, hold offenders morally accountable, and reduce recidivism⁹⁸—all of which are alien to traditional retributive processes.⁹⁹

91. Inga N. Laurent, *From Retribution to Restoration: Implementing Nationwide Restorative Justice Initiatives—Lessons from Jamaica*, 42 *FORDHAM INT'L L. J.* 1095, 1099 (2019).

92. *World Population Review*, <https://worldpopulationreview.com/state-rankings/recidivism-rates-by-state> (last visited Dec. 20, 2022).

93. *Id.*

94. Kayode Crown, *A Chance to Live: Engaging Business Community, Restorative Justice to Reduce Incarceration*, *MISSISSIPPI FREE PRESS* (Nov. 4, 2021), <https://www.mississippifreepress.org/17864/a-chance-to-live-engaging-the-business-community-restorative-justice-to-reduce-incarceration>.

95. Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, 87 *UMKC L. REV.* 113, 118 (2018).

96. Miriam Krinsky & Taylor Phares, *Accountability and Repair: The Prosecutor's Case for Restorative Justice*, 64 *N.Y.L. SCH. L. REV.* 31, 33 (2020).

97. *Id.* at 32.

98. *Id.* at 33.

99. Jeremy Dang, *Uprooting Mass Incarceration: From Restoration to Transformation*, 30 *KAN. J. L. & PUB. POL'Y* 234, 237 (2021).

Furthermore, there is little evidence to support the notion that jails and prisons are effective catalysts for rehabilitation or reductions in recidivism.¹⁰⁰ Moreover, the incarceration-driven approaches to criminal behavior do not serve victims or their families well as they are often absent from the criminal prosecution process that is allegedly designed to bring them justice.¹⁰¹ Many reformers now recognize that the unprecedented rise of incarceration can be traced to an overly retributive criminal justice system.¹⁰² Rather than accomplishing the purported goal of community safety, incarceration has actually been shown to be criminogenic—meaning that the likelihood of an offender committing another crime increases as a result of serving time in jail or prison.¹⁰³ Therefore, the need to reconsider an alternative process to incarceration is apparent.

It must be noted, however, that while restorative justice can prove an effective method of alleviating Mississippi's startling prison population, it is not intended to serve as a total replacement to incarceration. As put forth by Cliff Johnson, director of the MacArthur Justice Center at the University of Mississippi School of Law, advocates of restorative programs are firmly against letting dangerous people out of prison; however, at the same time Mississippi is filling up its prisons, the state is lagging in programs that would help ensure that inmates do not return.¹⁰⁴

Restorative justice requires that those who do harm accept responsibility and attempt to rectify the harm they caused.¹⁰⁵ In some cases, confinement is an appropriate means for community safety and for offenders to accept accountability for the harm they created against a victim and the community, but in other cases, restorative justice processes are more suitable methods that achieve those same incarceration-driven goals. Thus, the most promising aspect of restorative justice is the opportunity to divert an individual from the criminal justice system entirely.¹⁰⁶ Restorative justice shows more promise in meaningfully addressing the root causes of crime and reducing recidivism than

100. Krinsky & Phares, *supra* note 96, at 34.

101. *Id.* at 35.

102. Dang, *supra* note 99, at 236.

103. Krinsky & Phares, *supra* note 96, at 36.

104. Mitchell, *supra* note 86.

105. Krinsky & Phares, *supra* note 96, at 39.

106. *Id.*

the traditional criminal justice system¹⁰⁷ as restorative justice programs lower the rates of re-offense among those who participate in the programs.¹⁰⁸ While success rates vary among programs and states, some have seen re-offense rates within a year of completing a restorative justice program as low as 10 percent, compared with estimated recidivism rates in the traditional criminal justice system of up to 80 percent.¹⁰⁹

In fact, Trina Davidson-Brooks, 16th Circuit Assistant District Attorney of Mississippi, became a renowned believer in restorative justice in 2016 after the district significantly changed the way it prosecuted crimes—through the implementation of a restorative justice program.¹¹⁰ In a statement to the Mississippi Free Press, Davidson-Brooks recounted the 97 percent success rate that arose from 11 restorative justice circles that had taken place in the later months of 2020.¹¹¹ While the district is selective of the individuals it allows to participate in the program,¹¹² it is witnessing the purported benefits of restorative justice.

In addition to requiring offenders to accept responsibility for the harm they caused, restorative justice requires the offender to examine how their conduct has harmed other people or their community, thereby strengthening the relationship between the offender and their community.¹¹³ It is important to add that stronger community ties tend to reduce crime;¹¹⁴ thus, the funneling of individuals through the prison system is expected to lessen. The American Civil Liberties Union (“ACLU”), an organization whose mission is to defend and preserve the individual rights and liberties of Americans,¹¹⁵ is also an avid supporter of restorative justice reform.¹¹⁶ In 2018, the ACLU proposed alternatives to incarceration, namely restorative

107. *Id.*

108. Krinsky & Phares, *supra* note 96, at 45.

109. *Id.*

110. Crown, *supra* note 94.

111. *Id.*

112. *Id.*

113. Krinsky & Phares, *supra* note 96, at 45.

114. *Id.*

115. ACLU, *FAQS*, <https://www.aclu.org/faqs> (last visited Dec. 20, 2022).

116. Mitchell, *supra* note 85.

justice.¹¹⁷ While there is little evidence to suggest the propositions have taken effect, the Mississippi ACLU has re-emphasized its commitment to reforms within the state, including strategizing restorative justice to the mix.¹¹⁸

Over the years, strong criminological evidence arose that suggests that lengthy prison sentences also contribute to the mass expansion of the incarcerated population and are counterproductive as they divert resources from promising crime and recidivism reduction initiatives.¹¹⁹ Between the 1980s and 1990s, federal financing incentives became available to encourage states to adopt “truth in sentencing” policies.¹²⁰ These policies set the requirement that in order for an offender to be eligible for parole, he or she must have served 85 percent of their prison sentence.¹²¹ Mississippi, during the 1990s, adopted this policy, but went one step further so as to expand this minimum to all offenses.¹²² As a result, Mississippi’s prison population had “ballooned.”¹²³

In a practical sense, however, restorative justice can essentially “undo” this air balloon-effect as some restorative practices primarily focus on preventing crime in the first place or on altering social circumstances that may motivate criminal behavior.¹²⁴ Either way, a growing body of evidence implicates restorative justice as a mechanism to decrease repeat offending while simultaneously increasing victim satisfaction in the justice process.¹²⁵ Furthermore, restorative justice offers a response to interpersonal harm that can avoid over-reliance on prisons and jails while holding responsible parties accountable.¹²⁶ Where traditional systems of crime response are too cumbersome,

117. *Id.*

118. *Id.*

119. Mauer, *supra* note 95, at 118-19.

120. *Id.* at 125.

121. *Id.*

122. *Id.*

123. *Id.*

124. Dang, *supra* note 99, at 242.

125. *Id.* at 241.

126. Katherine Beckett & Martina Kartman, *Violence, Mass Incarceration and Restorative Justice: Promising Possibilities* 1 (June 20, 2016), https://jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2017/02/Restorative_Justice_Report_Beckett_Kartman_2016.pdf.

restorative practices are flexible and seek to address the needs of all affected parties, which the traditional punitive system often fail to properly assess.¹²⁷

There is a growing body of evidence that programs informed by restorative principles hold a great deal of promise.¹²⁸ During a restorative justice mediation, the victim and the responsible party report similar levels of satisfaction, regardless of the type of offense.¹²⁹ Moreover, the efficacy of restorative justice is measured in terms of its capacity to reduce recidivism.¹³⁰ Many studies have found that restorative justice programs drastically reduce recidivism by reducing the frequency of repeat offending by the offender directed to participate in the program.¹³¹ Additionally, studies have found that in instances when a former offender-participant did re-offend, the offense was less serious than the offense that originally led to the participation in the restorative justice process.¹³²

The draconian-like conditions of Mississippi prisons are proof that incarceration does not transform the behavior of offenders nor promote safety. If, as alleged, imprisonment is essential for the safety and wellbeing of the community, then it is justifiable to wonder how much our policymakers care about the wellbeing and safety of the incarcerated. As a result of a prison riot that began on December 31, 2019, 10 inmates were killed and 12 died by suicide.¹³³ Assistant Attorney General Kristen Clark recalled major staffing shortages and uncontrollable violence at Mississippi State Penitentiary at Parchman, the state's oldest prison, and concluded that Parchman severely and systematically neglected the wellbeing of those confined at the prison.¹³⁴ One year ago, Mississippi Governor Tate Reeves called for the closure of Unit 29 at Parchman due to the unsafe and failing infrastructure

127. Laurent, *supra* note 91, at 1106.

128. Beckett & Kartman, *supra* note 126, at 6.

129. *Id.* at 7.

130. *Id.*

131. *Id.*

132. *Id.*

133. David Nakamura, *Justice Dept. Says Mississippi Allowed Unsafe Prison Conditions*, WASH. POST (Apr. 20, 2022, 9:47 PM), <https://www.washingtonpost.com/national-security/2022/04/20/mississippi-prison-justice-parchman/>.

134. *See id.*

of the cell block amid a spate of deaths that occurred in the state prison system.¹³⁵ By removing offenders from the “streets” in the name of community safety, and placing them in a system that has continuously failed to acknowledge and confront the reasoning behind their criminal impulses, the purported notions of “safety for all” become contradicted. The failure of Mississippi’s current criminal justice system requires questioning the foundation and maintenance of its retributive justice policies and considering alternative responses to criminal behavior that produce better outcomes for victim, offenders, and communities.¹³⁶

While the reality is that offenders must be held accountable for their actions, the returns on incarceration are diminished when it is used as the primary form of conflict resolution. The philosophy of restorative justice has come to the forefront globally during the time when many are realizing the systemic failures of the dominant model of crime control.¹³⁷ By seeking those who are harmed, wrongdoers, and their affected communities to collectively share the responsibility of responding to violence,¹³⁸ restorative justice promotes repair in ways beyond the capabilities of incarceration.

CONCLUSION

In short, Mississippi’s current penal policy does little to deter crime, often fails at addressing victim needs and cycles of harm in communities, and is costly and unsuitable.¹³⁹ While restorative justice is a successful and sustainable solution reducing crime, recidivism, and mass incarceration, it is important to remember that the process of seeing its results is a marathon, not a sprint. The number of decades of policy and decision-making that led to the sobering current state of Mississippi’s criminal justice system are the same number of decades it will take for restorative justice to effectuate impactful change within the system. Even in our leisure activities, we can find the philosophy

135. Victoria Albert, *Mississippi Governor Calls for Parchman Unit 29 Cell Block to Close: “I’ve Seen Enough,”* CBS NEWS (Jan. 27, 2020, 11:39 PM), <https://www.cbsnews.com/news/parchman-prison-mississippi-governor-calls-for-unit-29-cellblock-to-close-ive-seen-enough-today-2020-01-27/>.

136. Laurent, *supra* note 91, at 1097.

137. Armour, *supra* note 22.

138. *Id.*

139. Sliva, Porter-Merrill & Lee, *supra* note 84, at 458-59.

of restorative justice as the approach hit the television screens in the CBS drama, *All Rise*. It remarkably portrayed restorative justice as an alternative that does not magically solve all the problems but is one worth considering.¹⁴⁰ By seeking public policy solutions that reduce reliance on incarceration and are more responsive to victim and community needs,¹⁴¹ Mississippi is sure to become a model state in criminal justice reform.

140. Brittany Frederick, *All Rise Season 2, Episode 7: Restoration or Retribution?*, FANSIDED, <https://precincttv.com/2021/01/26/all-rise-season-2-episode-7/> (last visited on Dec. 20, 2022).

141. Sliva, Porter-Merrill & Lee, *supra* note 84, at 459.