

## **Restorative Justice and Transformative Justice: Alternative Responses to addressing Sexual Violence**

The criminal justice system's response to sexual violence is fraught with severe limitations and complex problems. Advocates for victims and offenders<sup>1</sup> alike argue that criminal justice processes can cause further harm to victims while dehumanizing offenders and doing little to support their rehabilitation. In communities historically targeted by the criminal justice system, the reliance on incarceration as a response to sexual violence also adds to harm experienced by entire communities, potentially forcing victims to collude in mass incarceration in their own communities when cooperating with criminal justice entities. Clearly, the solutions found within the criminal justice response are problematic at best; and yet, victims of sexual violence who seek support outside of the criminal justice system find themselves with few meaningful alternatives.

In recent years a variety of alternative approaches have emerged, offering methods to address sexual violence from a restorative, rather than a punitive, perspective. Restorative justice practices frame violence as a disconnection between two people—the person doing harm and the person experiencing harm—and restorative practices work to restore this connection while seeking action that serves the needs of both the person doing and experiencing harm. Restorative justice practices may occur within or outside of the criminal justice system, though the more institutionalized methods (especially those addressing sexual violence) occur within the criminal justice system.

Critics of restorative justice have argued that meaningful approaches to addressing sexual violence must take a wider lens, including entire communities as those who cause and experience harm. Contending that interpersonal violence occurs within the context of larger systems of oppression and domination, a variety of scholars and activists have called for transformative justice, an approach that would address interpersonal violence by transforming the relationships of impacted individuals, communities, and the larger systems of domination in which they exist. In contrast with restorative justice, transformative justice approaches always operate outside of the criminal justice system, as they view such institutions as among those causing harm. A closer look at several restorative and transformative justice models clarifies the advantages and disadvantages of each of these approaches.

### *Restorative Justice: Victim/Offender Mediation*

The victim-offender mediation method is a restorative method closely connected with criminal justice institutions. These types of processes are typically administered by victim service units of criminal justice institutions and take place within a criminal justice context, typically during the offender's incarceration. The process is usually initiated by the victim, and

---

<sup>1</sup> Note: Various scholars and advocates promote the usage of terms other than "victim" and "offender" to describe those who have experienced and caused sexual violence. Alternatives to "victim" may include "survivor" or "victim-survivor," emphasizing the agency and power of the individual to whom harm was done. Alternatives to "offender" may include "actor," "person who caused harm," or other terms that emphasize the action rather than the person, allowing for the possibility of change. A variety of terms is used interchangeably here to reflect differing perspectives.

continues if the offender can be contacted and agrees to participate. A trained facilitator will typically meet with both the victim and the offender ahead of time to prepare both parties for the encounter, and then facilitate a meeting between victim and offender in which the victim expresses the impact the offense has had on their life and the offender expresses remorse and may offer additional reparations beyond those mandated by the criminal justice system. Though the process occurs within the criminal justice system, it has no impact on the offender's sentence and is purely intended for healing purposes for both parties, especially the victim.

### *Restorative Justice: Peacemaking Circles*

The restorative practice of peacemaking circles provides yet another alternative to traditional criminal justice responses—and one that takes place outside of the criminal justice system. Peacemaking circles may be convened in any community and are typically comprised of a combination of community members, directly-impacted individuals (such as the victim and the offender), and criminal justice and other professionals. Though peacemaking circles may include criminal justice professionals for the purpose of obtaining referrals and connecting victims and offenders to existing resources, circles do not necessarily happen in collaboration with criminal justice processes. Peacemaking circles are typically overseen by an established community justice committee, to whom applications for a circle may be made by a victim, offender, or other concerned community member. The process of convening a circle takes place over an extended period of time, including: an application circle to determine whether the case is a good fit; determining which community members will be invited to the sentencing circle and who will play key roles such as the circle keeper; preparing victim and offender alike by creating preparatory support circles; holding the sentencing circle; and engaging in follow up and accountability after the sentencing circle. The sentencing circle itself is guided by a circle keeper but is co-created by participants and is focused on sharing, through an intentional process, the harm experienced by all participants. The sentencing circle also strives to arrive at a collectively determined agreement about the actions that will be taken to address the harm done.

### *Transformative Justice: Community Accountability Processes*

Transformative justice models are beginning to emerge through the groundbreaking work of various groups throughout the U.S., such as Creative Interventions, INCITE!, Generation Five, Communities Against Rape and Abuse (CARA), and Philly Stands Up, among others. Community accountability processes in these groups have taken different shapes; some groups, such as Philly Stands Up and Creative Interventions, have offered facilitation of community accountability groups, while others, such as CARA, have played more of a consulting and technical support role. In general, transformative justice principles hold that community accountability processes should be facilitated and led by people from the impacted community itself, rather than relying on professional facilitators or outside experts.

Though community accountability processes differ according to the communities in which they occur, they hold several themes in common. Community accountability processes strive to recognize the humanity and prioritize the safety of all involved—the person causing harm, the person experiencing harm, and other community members—while taking steps to hold the person causing harm accountable in such a way that serves the healing and practical needs of all parties. Community accountability processes emphasize collective action as well as the cultivation of a politicized, shared understanding of sexual violence as contextualized within systems of domination. Community accountability circles tend to include some combination of

the following stages: (1) organizing a collective, comprised of the person experiencing harm and a range of other community members, to address the violence that has occurred (2) building capacity within the collective, which can include education about the dynamics and social context of sexual violence; (3) establishing goals for accountability, based on the input of the person experiencing harm but with or without their leadership depending on their desired level of involvement; (3) engaging in healing practices that prioritize the safety of the person experiencing harm and draw upon the cultural background of the collective's community and heritage; (4) taking actions to hold the person causing harm and the community accountable, which typically prioritizes the relationship with the person causing harm and creating a plan for accountability goals to be reached; and (5) engaging in an ongoing evaluation process to ensure that the collective stays on track in reaching its goals.

Each of the restorative justice and transformative justice approaches discussed above holds its own unique challenges and opportunities for those wishing to address sexual violence outside of traditional criminal justice processes. Victim offender mediation models offer a restorative approach that is becoming more institutionalized, and therefore potentially more accessible, for those without the energy or community resources to organize community accountability models; the drawback of these models, of course, is that they operate within the confines of the criminal justice system. Peacemaking circles offer both an approach outside of the criminal justice system and one that involves a range of community members, though they tend to lack the political perspective and social transformation goals of transformative justice approaches. Transformative justice's community accountability models offer both a community-led response outside of the criminal justice system and a political analysis of the violence's social implications, yet their emphasis on de-institutionalized community leadership may pose logistical barriers to communities that lack the time, energy, leadership, or resources to establish a collective and follow these processes.

Though neither restorative justice nor transformative justice models offers a perfect response to sexual violence, each presents an important alternative for those who wish to respond to sexual violence outside of the criminal justice system. Given that different individuals and different communities have varying needs and resources in responding to sexual violence, a wide range of options is perhaps most supportive of survivors' and communities' self-determination. The further development of both restorative and transformative justice models in coming years will offer important contributions to our society's ability to support the healing of those experiencing harm, the accountability and restoration of those causing harm, and the transformation of entire communities and social institutions.