

Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime

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Although juvenile courts have always administered punishment to youthful offenders, parens patriae and the individual treatment mission have historically assigned an ambivalent role to sanctioning. In the absence of a coherent sanctioning framework, a punitive model has recently gained dominance over dispositional decision making in juvenile court. This article examines the limitations of sanctioning choices presented by both the individual treatment mission and what some have referred to as a "retributive justice" paradigm. We then consider the implications of an alternative model—restorative justice—as a framework for a new approach to sanctioning consistent with a revitalized juvenile justice mandate.

INTRODUCTION

The juvenile court is under the most severe attack it has experienced in the 95 years since its birth in 1899. For example, recent legislative changes mandating fixed sentences in adult prisons for youths meeting minimum age requirements (or no age requirements) in Georgia, Florida, Tennessee, and Oregon (Lemov 1994) challenge the viability of a separate court and justice system for young persons. Such changes represent only the most recent and extreme round of legislative assault on the jurisdiction of the juvenile court in more than a decade of transformation in policy and procedure. Although policymakers in some states have been more cautious in moves to abolish or

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dismantle their juvenile justice systems, what remains today in most jurisdictions can best be described as a “criminalized” or “punitive juvenile court” (Feld 1990) that has moved further away from its original goal of providing treatment in the “best interests” of youth.

In response, some have argued that the best hope for preserving the juvenile justice system is by “reaffirming” or “revitalizing” the individual treatment mission (Krisberg 1988; McHardy 1990; McAllair 1993). Others have argued that even a revitalized treatment mission is insufficient to sustain, or regain, public support for a separate and distinct juvenile justice system (Feld 1993). Whereas much of this debate has focused on the relative effectiveness of treatment, the need to improve assessment and classification, and the need for greater attention to due process in the juvenile court, other public and policymaker concerns have been largely ignored. Prominent among these concerns has been the absence of a clear and coherent sanctioning framework for juvenile offenders.

As coercive measures taken to enforce societal standards, criminal justice *sanctions*, depending on intent, may be directed toward rehabilitative, educative, regulatory, and/or compensatory ends—as well as retribution or deterrence (Packer 1968; Garland 1990). In the absence of a framework that incorporates and gives priority to such nonpunitive objectives, however, juvenile justice policymakers have adopted a one-dimensional approach to sanctioning based on what some have referred to as a *retributive justice* paradigm (Zehr 1990; Umbreit 1994). In this article, retributive justice refers to a broad ideological framework that gives priority to punishment and lesser emphasis to rehabilitative goals, places central focus on “desert” as the primary rationale for decision making, and expands the role of formal, adversarial, adjudicatory, and dispositional processes (Feld 1990, 1993).¹ Although this perspective is incompatible with the rationale for a separate and distinct justice system for juveniles based on their special developmental status and a concern with rehabilitative objectives (Feld 1990), the retributive approach to sanctioning has gained popularity because, in the minds of policymakers and the public, punitive sanctions serve to affirm community disapproval of proscribed behavior, denounce crime, and provide consequences to the lawbreaker.

In contrast, the traditional individual treatment mission clearly fails to accomplish these functions. Rather, treatment appears to be unrelated to the offense, to be related solely to the needs of juvenile lawbreakers, and to require nothing of offenders beyond participation in counseling or remedial services. It is difficult to convince most citizens that treatment programs provide anything other than benefits to offenders (e.g., services, recreational

activities), and there is little in the message of the treatment response that attempts to communicate to an offender that he or she has harmed someone and should take action to repair damages wreaked upon the victim(s).

Should we give up entirely on the juvenile court? We stand with those who believe that abolition or dismemberment of the juvenile court, as well as the continued expansion of retributive sanctioning policies, represent extreme response to the internal contradictions that have been the source of much criticism leveled at the juvenile justice system. However, the punitive model and the traditional treatment model are not the only options for the juvenile court. Because neither provides an appropriate means of meeting the needs of communities to sanction youth crime, it is important to broaden the debate to consider alternative frameworks.

This article outlines the principles of one such alternative framework that could expand the limited range of available options, prioritize new objectives for sanctioning, and ensure that the use of sanctions is also consistent with other goals of juvenile justice intervention (e.g., rehabilitation and public safety). Drawing on recent theoretical developments that emphasize the importance of sanctioning in the control of criminal behavior (Braithwaite 1989; Garland 1990), the *restorative justice* perspective offers a blueprint to policymakers and juvenile justice professionals for developing an alternative to the retributive model. A restorative model would expand less punitive, less costly, and less stigmatizing sanctioning methods by involving the community and victims in sanctioning processes, thereby elevating the role of victims and victimized communities and giving priority to reparation, direct offender accountability to victims, and conflict resolution (Zehr 1990; Van Ness 1993; Umbreit 1994).

THE SANCTIONING FUNCTION AND JUVENILE JUSTICE

Sanctioning has always been viewed with ambivalence in the juvenile justice system. Although historically juvenile justice decision makers eschewed sanctioning in favor of providing individualized treatment in the "best interests of the child" (e.g., Mack 1909; Melton 1989), juvenile courts have often disguised punishment as treatment (Rothman 1980; Miller 1991) and have not been reluctant to confine offenders for failure to participate in mandated treatment or to comply with other court requirements (Rothman 1980; Bazemore 1994a). Such responses have been viewed as aberrant departures from the court's central mission, however, and juvenile justice

decision makers have typically failed to formally acknowledge the sanctioning function. Rather, viewing sanctioning as an *alternative* to treatment, judges and other juvenile justice professionals often have been inconsistent and extreme in the response to juvenile crime (Thompson and McAnany 1984), foregoing sanctions altogether for many "low-end" or "medium-level" offenders deemed worthy candidates for services or treatment programs. On the other hand, those who have taxed decision makers' patience by repeat offending or noncompliance have often received a clearly punitive response—a response now increasingly likely to be administered in the criminal justice system, where little or no consideration is given to treatment needs (Feld 1990; Butts 1994).

The Rise and Impact of "Retributive Juvenile Justice"

One attempt to bring rationality to the erratic decision making in juvenile court sanctioning was through the application of the "just deserts" philosophy (von Hirsch 1976; Schneider and Schram 1983). Though intended to reduce arbitrary and excessive punitive actions, the "just deserts" policies and practices actually implemented—including mandatory and determinate sentencing, expanded prosecutorial powers, and fewer restrictions on transfer to adult court—resulted instead in an expansion of punishment. Specifically, retributive reforms in various states led to increased incarceration and longer stays in residential and detention facilities (Castellano 1986; McAllair 1993).

In addition, by giving new legitimacy to punishment for its own sake, policymakers sent signals to prosecutors and other decision makers that this was an appropriate and just response to delinquent behavior.² Moreover, as some criminologists have suggested, equating sanctioning with punitive measures aimed solely at causing pain and discomfort to the offender may fuel demand for more severe punishments, especially when it becomes apparent that current levels are not achieving the desired effect (Christie 1982; Wilkins 1991). In the juvenile justice context, this demand appears to have accelerated the sorting process through which an expanding group of offenders judged to require a punitive, adult-like response are increasingly distinguished from those viewed as deserving of treatment. Perhaps the most damaging effect of the retributive paradigm on the juvenile justice system has been its tendency to make nonpunitive "alternative sanctions" appear weak and less adequate than incarceration, thereby closing off consideration of inexpensive and less harmful responses to youth crime (Garland 1990; Wilkins 1991).

*The Limits of Sanctioning Choices:
Beyond Punishment and Treatment*

Although few question the inevitability of some punishment or deny that any sanction may be experienced by the *offender* as punitive, it is possible to consider and give priority to different sanctioning objectives in the response to crime. In recent years a number of scholars have challenged the effectiveness of retributive punishment and argued that sanctions may also serve important expressive, educative, and symbolic functions (Braithwaite 1989; Wilkins 1991; Garland 1990). Quoting Durkheim (1961, pp. 181-2), for example, Braithwaite (1989) highlights the role of sanctioning in moral education and underscored the limitations of punishment aimed only at threats and offender suffering:

Since punishment is reproaching, the best punishment is that which puts the blame . . . in the most expressive but least expensive way possible. . . . It is not a matter of making him suffer . . . or as if the essential thing were to intimidate and terrorize. Rather it is a matter of reaffirming the obligation at the moment when it is violated, to strengthen the sense of duty, both for the guilty party and for those witnessing the offense—those whom the offense tends to demoralize. (p. 178)

From this perspective, expressive sanctioning aimed at communicating value-based messages to offenders and the community and affirming obligations and accountability should be more effective in regulating conduct and more likely to promote community solidarity and peaceful dispute resolution (Griffiths and Belleau 1993; Wilkins 1991). Retributive punishment, on the other hand, may have several counterdeterrent effects on offenders, including stigmatization, humiliation, and isolation, that may minimize prospects for regaining self-respect and the respect of the community (Braithwaite 1989; Makkai and Braithwaite 1994). Punishment may also undermine self-restraint, create adjustment problems by exacerbating risk factors linked to future delinquency (Paternoster and Iovanni 1989), and weaken conventional community bonds by damaging job prospects and peer, family, and other adult relationships (Zhang and Messner 1994). Moreover, as Durkheim and others have argued, punishment may become less effective the more often it is used, by attenuating feelings of shame or moralistic tendencies of offenders (Durkheim 1961; Garland 1990). Ironically, punishment may encourage lawbreakers to focus on themselves rather than on their victims and the community as they learn to “take the punishment” without taking responsibility for their misbehavior (Wright 1991).

Unfortunately, because it fails to acknowledge the sanctioning function and may even appear to excuse or minimize offender responsibility for crime,

the treatment model offers little guidance to policymakers wishing to develop more meaningful and appropriate sanctioning options. As Byrne (1989) has observed in assessing the weaknesses of control/surveillance and treatment models in community corrections, both punishment and treatment responses are practically and conceptually incomplete. Taking a one-dimensional view of the offender, each model operates from a "closed system" logic (see also, Reiss 1986) that targets only offenders for service, punishment, or both and fails to include other parties critical to the resolution of crime. Specifically, victims can rarely count on reparation, assistance, or acknowledgment and typically do not participate in any meaningful way in the juvenile justice process (Galaway and Hudson 1990), and community members are seldom asked for input or informed of their potentially vital role in meeting sanctioning, rehabilitation, and public safety objectives. Both punitive and therapeutic interventions place offenders in a passive role—as the object of treatment or services on the one hand, and punishment and surveillance on the other (Eglash 1975), and few opportunities are provided for lawbreakers to actively make amends for their crimes or to practice productive behavior that might facilitate habilitation and reintegration. As atomized responses to delinquent behavior, neither treatment nor punishment is capable of uniting offender, community, family, and victim (McElrea 1993; Walgrave 1993).

Ultimately, as Wilkins (1991, p. 312) asserts, "it is now generally accepted that the problem of crime cannot be simplified to the problem of the criminal." The emerging interest in restorative justice as an alternative sanctioning model for juvenile justice is based in part on an increasing recognition of the inadequacy of sanctioning choices offered by the individual treatment mission and the retributive paradigm and frustration with the detachment of these models from the real problems of victims, offenders, and communities (Christie 1982). This interest does not presume immediate, clearly articulated solutions to current sanctioning problems in juvenile justice. Rather, it is based on a perceived need for an alternative "lens" (Zehr 1990) for viewing the problem of crime and a new framework to guide rational movement toward new solutions.

EXPLORING RESTORATIVE JUSTICE

Although it draws on ancient concepts and practices abandoned late in the Middle Ages as formal justice systems emerged and began to define the obligation of offenders as a debt to the king or lord (and later to the state) rather than to victims (Schafer 1970; Davis 1992), modern interest in restorative justice has been influenced by several developments in the 1970s and

1980s. Notably, the reemergence of restorative philosophy and practice grew out of experience with reparative sanctions and processes (e.g., restitution, victim-offender mediation) (Schneider 1985; Galaway and Hudson 1990; Umbreit and Coates 1993), the victims' movement, the rise of informal neighborhood justice and dispute resolution processes (Messmer and Otto 1992), and new thinking on equity and human relationships influenced in part by the women's movement and the peace and social justice movements (Pepinsky and Quinney 1991; Harris 1993).

Whereas retributive justice is focused on determining guilt and delivering appropriate punishment ("just deserts") through an adversarial process, restorative justice is concerned with the broader relationship between offender, victim, and the community (Zehr 1990; Van Ness 1993). Restorative justice differs most clearly from retributive justice (see Table 1) in its view of crime as more than simply lawbreaking—or a violation of government authority. Rather, what is most significant about criminal behavior is the injury to victims, communities, and offenders that is its result.³

According to its proponents, restorative justice seeks to respond to crime at the *micro* level by addressing the harm that results when a specific offense is committed, giving first priority to victim reparation, and at the *macro* level by addressing the need to build safer communities. Government and community should play collaborative and complementary roles in this response, with government/criminal justice assigned the responsibility for *order*, and the community the responsibility for restoring and maintaining peace (Van Ness 1993; Zehr 1990). As Table 1 suggests, restorative justice emphasizes the need for active involvement of victims, the community, and offenders in a process focused on denunciation of the offense, offender acceptance of responsibility (accountability), and reparation, followed by resolution of conflict resulting from the criminal act and offender reintegration.

RESTORATIVE SANCTIONING FOR JUVENILE JUSTICE

A restorative sanctioning model could provide clear alternatives to punishment-centered sanctioning approaches now dominant in juvenile justice and could ultimately redefine the sanctioning function. Specifically, by shifting the focus of offender accountability or "debt" from the state to the victim (see Table 1), restorative justice sanctions could meet the need of communities to provide meaningful consequences for crime, confront offenders, denounce delinquent behavior, and relay the message that such behavior is unacceptable—without primary reliance on punishment and incarceration. For this to occur, jurisdictions would need to agree on new

TABLE 1: Current and Restorative Assumptions

<i>Current System</i>	<i>Restorative Justice</i>
Crime is an act against the state, a violation of the law, an abstract idea	Crime is an act against another person and the community
The criminal justice system controls crime	Crime control lies primarily in the community
Offender accountability defined as taking punishment	Accountability defined as assuming responsibility and taking action to repair harm
Crime is an individual act with individual responsibility	Crime has both individual and social dimensions of responsibility
Punishment is effective a. threat of punishment deters crime b. punishment changes behavior	Punishment alone is not effective in changing behavior and is disruptive to community harmony and good relationships
Victims are peripheral to the process	Victims are central to the process of resolving a crime
The offender is defined by deficits	The offender is defined by capacity to make reparation
Focus on establishing blame or guilt, on the past (did he/she do it?)	Focus on problem solving, on liabilities/obligations, on the future (what should be done?)
Emphasis on adversarial relationship	Emphasis on dialogue and negotiation
Imposition of pain to punish and deter/prevent	Restitution as a means of restoring both parties; goal of reconciliation/restoration
Community on sideline, represented abstractly by state	Community as facilitator in restorative process

SOURCE: Adapted from Zehr (1990).

priorities for sanctioning based on restorative values. Implementation, expansion, or both of the new policies and practices would then be undertaken to achieve clearly articulated goals and objectives consistent with a justice process that challenges the adversarial emphasis of retributive justice.

Values and Assumptions

The emphasis on victim needs, victim involvement, and elevation of the victim's role in restorative justice (Zehr 1990; Marshall and Merry 1990;

Davis 1992; Umbreit 1994) is based in part on a reaction to the current state of affairs in which the quality and quantity of victim involvement is low and is driven by other priorities. Although "victims' rights" has become the watchword of many prosecutors and politicians, victim *needs* are not a major concern (Elias 1993). Rather, in most offender-driven juvenile and criminal justice systems, the interests of prosecutors, judges, defense attorneys, and even treatment program directors (e.g., in winning cases, processing offenders, or securing clients) take precedence over the needs and concerns of victims (Wright 1991; Messmer and Otto 1992). Despite frequent complaints about the inability of offenders to pay victim restitution, for example, many jurisdictions that do a poor job at enforcing restitution orders have been highly successful in the collection of offender fines and fees (Hillsman and Greene 1992). Indeed, in many probation and parole agencies, victim compensation and restitution have taken a back seat to the collection of monies used to support criminal justice agency functions (Shapiro 1990). Moreover, whereas prosecutors appear to spare no expense and effort to gain victim input for efforts to increase the probability of conviction and length of sentence, time and resources for providing victim services, mediation, and reparative programs seem always in short supply (Elias 1993).

Restorative justice is *not*, however, a "victims' rights" approach. Motivated by retributive rather than restorative values, some of the more vocal groups advocating victims' rights have often defined these as an *absence of offender rights* in a zero-sum game and have promoted political efforts to "get tough" with offenders through mandatory and determinate sentencing and other retributive policies (McShane and Williams 1992; Elias 1993). In contrast to such policies, restorative justice proponents promote a "victim-centered" approach that does not require that decision makers "choose sides" between victim and offender (Lawrence 1991).⁴ Thus, while it places central emphasis on victim needs and the requirement that offenders are held accountable to victims, the restorative justice paradigm also responds to the "mutual powerlessness" of offenders *and* victims in the current system and assumes the need for communities to provide opportunities for offender repentance and forgiveness following appropriate sanctioning (Wright 1991; Zehr 1990). Therefore, a core value in restorative justice is to balance the needs of offenders, victims, and community as three "customers" of justice systems. A core assumption is that neither public safety, rehabilitative, nor sanctioning goals can be effectively achieved without involvement of each of these parties in the justice process.

Sanctioning Goals and Objectives

As suggested earlier, a retributive justice model gives priority to punishment as a *determining goal* (Robinson 1987) in juvenile court sanctioning. In contrast, the determining goal of sanctioning in restorative justice is to hold offenders accountable for reparation of harm caused to victims by their crimes (Walgrave 1993). Neither punitive nor lenient in its focus, restorative justice gauges success in sanctioning not by how much punishment was inflicted or treatment provided but by how much reparation, resolution, and reintegration was achieved.

Primary objectives. Restorative sanctioning objectives thus include behavioral, material, emotional, and cognitive outcomes for victims, offenders, and community members. For victims, success in sanctioning is measured by the degree of reparation of damages, the extent of involvement in the justice process, and the level of satisfaction with the process and its outcomes. For offenders, cognitive objectives emphasize gaining an understanding of the consequences of crime for victims, feelings of remorse, recognition that they have been sanctioned, and (ideally) development of empathy with victims. Positive behavioral outcomes include prompt repayment of victims and completion of community service and other reparative requirements (e.g., facing the victim in mediation). For the community, the most important objectives are overall satisfaction that justice has been served, a sense that offenders have been denounced and held accountable to victims, and a sense of peace and community healing and well being (Pepinsky and Quinney 1991; Yazzie 1994).

Finally, a larger educative objective of restorative sanctioning would be to relay a distinctive "message" to victims, offenders, and the community. Compared to the current message of neglect that characterizes both the retributive and the treatment models (Schneider 1985) (see Table 2), the restorative justice message suggests to victims and the community that the system views them as important and values their involvement. It also is intended to assure the community that promoting restoration and community peace is a top priority of the system (Davis 1992). Similarly, as Table 2 suggests, the message to lawbreakers that they are capable of, and responsible for, making amends for the harm caused by their crimes stands in sharp contrast to the message of "sick" or "evil" offenders with nothing to offer but their liberty (Christie 1982).

TABLE 2: The "Messages" of Sanctions

	<i>Individual Treatment</i>	<i>Retributive Punishment</i>	<i>Restorative Accountability</i>
Offender	You are "sick" or disturbed and your behavior is not your fault. We will provide treatment or services in your best interest.	You are a bad person who willfully chose to commit an offense. We will punish you with swiftness and severity proportionate to the seriousness of the crime.	Your actions have consequences; you have wronged someone or the community through your offense. You are responsible for your crime and capable of restoring the victim or repaying the damages.
Victim	Our fundamental concern is the needs of the offender.	The first concern of the juvenile system is to make offenders suffer the consequences of their crime. You will benefit because the offender will be punished.	The juvenile justice system believes you are important and will do its best to ensure that the offender repays the debt incurred to you from the crime.
Community	We will do our best to rehabilitate offenders through providing appropriate treatment and services. Highly trained professionals will solve the problem. Leave it to us.	We will do our best to punish offenders to teach them that crime will not be tolerated. Threats are the best way to control behavior.	Requiring offenders to repay victims and the public for their crimes receives highest priority in the juvenile justice system. We need the help of the community. The community is a key player in holding offenders accountable.

SOURCE: Adapted from Schneider (1985).

Limiting goals. In a restorative justice model, systemic concerns with rehabilitation/reintegration and public safety would receive balanced emphasis with sanctioning goals. Moreover, restorative justice would view rehabilitative and sanctioning goals as mutually compatible in a process in which members of the community reinforce the offender's obligation to redress the harm to victims, but then encourage—and create conditions to facilitate—offender reintegration following the shaming and reparative process (Makkai and Braithwaite 1994; McElrea 1993).

In addition, pursuit of full accountability to victims in sanctioning would be constrained by the *limiting* goals of risk management, fairness, and uniformity. Although restorative justice advocates are concerned that excessive use of secure confinement may limit the ability of offenders to fully repair harm to victims and meet other restorative objectives, all acknowledge that some proportion of the youthful offender population will need to be

removed from the community and confined in secure facilities for public safety reasons. The goals of fairness and equity would likewise limit the pursuit of victim restoration when excessive requirements on specific lawbreakers that result from differences in victim needs and demands result in unfair and inappropriate consequences disproportionate to offender culpability (Van Ness 1993).

Restorative Process and Due Process

According to Braithwaite (1989, p. 8), in "low crime" societies, tolerance of deviance has clear limits and community members prefer to be actively involved in the response to lawbreakers by "shaming offenders, and, having shamed them, through concerted participation in integrating the offender back into the community." But whereas Native Americans and other aboriginal peoples, as well as the Japanese, have developed numerous sanctioning rituals for carrying out this *reintegrative shaming* process (Braithwaite 1989; Griffiths and Belleau 1993; McElrea 1993; Yazzie 1994), some have argued that the lack of institutional supports for such informal processes and the power of the formal adversarial system and Western legal processes have limited application and use of informal sanctioning mechanisms (Haley 1989, p. 274).

In contrast to the rule-driven, impersonal procedures of retributive justice focused on defining "winners and losers" and fixing blame (Zehr 1990; Messmer and Otto 1992), the restorative justice process would, however, necessarily rely heavily on informal resolution of underlying problems, conflict reduction through dialogue and mediation, and efforts to achieve mutually satisfactory agreements. Such increased reliance on informal processes seems difficult to envision in a system in which formal rules and procedures are in part intended to protect offenders from the abuses of unrestricted retribution and may be especially troubling to youth advocates concerned about further slippage in current due process protections in juvenile courts (e.g., Feld 1990). Proponents of restorative justice would counter that in most cases the current court process is itself often highly informal rather than truly adversarial (see Eisenstein and Jacob 1991; Hackler 1991), but is based on negotiation and bargaining in the service of the retributive ends of the state (and the professional interests of attorneys) rather than the interests of fairness and due process. Moreover, in contrast to the "individualized" justice of *parens patriae*, restorative justice acknowledges and builds on group and community responsibility for crime (Van Ness 1993; McElrae 1993) rather than simply directing blame—and thus sanctions or treatment—at individual offenders.

Due process protections are also important to restorative justice advocates (e.g., Van Ness 1993; Walgrave 1993), and none has argued that it is necessary or desirable to weaken procedural protections for offenders to ensure restoration of victims or to bring about more rapid implementation of restorative policies (Messmer and Otto 1992). What some restorative justice advocates regard as an "obsession with process" in U.S. criminal and juvenile justice, however, may be due in part to the "high stakes" of being found guilty in a system that punishes with a great deal of severity (Wright 1991; Zehr 1990).⁵ Thus the opposition of restorative justice advocates to the adversarial process is in large part due to opposition to the predominant emphasis on retributive punishment.

Practice, Programs, and Implementation

Current juvenile court sanctioning based on retributive justice is built around use of incarceration in its various forms, as well as an emphasis on surveillance, punishment, and control in probation and community supervision programs (Armstrong 1991). Based on the goals, objectives, and alternative processes outlined above, restorative justice sanctioning practices and programs would deemphasize retributive punishment in favor of restitution (Schneider 1985), victim-offender mediation (Umbreit and Coates 1993), restorative community service (Bazemore and Maloney 1994), victim awareness education (English and Crawford 1989), and other victim-oriented services. In addition to these now-familiar approaches, the shaming and reintegrative aspects of restorative sanctioning could be more specifically addressed and directly operationalized. Such offender interventions as community service crews that work with public employees to build homeless shelters or repair windows, doors, and other damage to homes victimized by break-ins; involving juveniles in community organizations where they can learn from their elders; direct service to victims where appropriate following mediation; and arranging for supervised home visits to victims come to mind (McElrea 1993; Bazemore and Maloney 1994).

Despite the strong potential of these and similar interventions, as well as the positive public acceptance and promising evaluation findings from empirical studies of restitution and victim-offender mediation programs (Schneider 1985, 1986; Butts and Snyder 1991; Umbreit and Coates 1993), there are dangers in a primary reliance on innovative programs and practices as the sole basis for reform. In recent years juvenile justice systems have been vulnerable to panaceas and "quick fix" solutions to complex problems (Finckenauer 1982) (e.g., boot camps, "Scared Straight"). Like Goldstein's (1979) profile of police departments obsessed with *tactics* rather than *out-*

comes and emphasizing means over ends, systems adopting this "program driven" approach to reform typically fail to consider the fit between new programs and existing values, policies, and bureaucratic constraints of criminal justice agencies (McShane and Williams 1992). Programmatic reform, even when based on coherent, theoretical principles, may therefore lead to a dilution of even the most innovative practices to fit existing management protocols. Alternatively, it may simply add a new layer of progressive practices (e.g., based on restorative justice principles) onto a retributive policy core. In a system based on retributive justice values, programs and practices such as restitution and community service may be used as punitive "add-ons" rather than as primary sanctions directed toward restorative ends (Bazemore and Maloney 1994; Shapiro 1990). Similarly, increased involvement in the justice process is of little benefit to victims if the system uses them only to aid in securing convictions or in increasing the length or severity of punishment.

Specific dangers in simply initiating new restorative programs in the absence of wider systemic changes include the possibility that such programs will simply expand and strengthen social control, either by net widening, or by adding to current requirements imposed on offenders under court supervision (Krisberg and Austin 1981); the possibility of staff resistance to change when casework routines built around individual treatment, surveillance protocols, or both are disrupted (Maupin 1993); and the possibility that these programs will be judged by the performance standards of retributive or bureaucratic justice (e.g., increasing the number of cases handled) rather than by restorative justice outcomes (e.g., peace making, meeting victim needs) (Van Ness 1993). Ultimately, competing priorities of retributive justice and individual treatment may limit resources that can be allocated to pursuit of restorative objectives (e.g., involving victims, enabling offenders to pay restitution), and this limitation may quickly set up restorative programs for failure (Shapiro 1990). Moreover, in the absence of values clarification, reparative sanctions may be used primarily for punitive purposes (Bazemore and Maloney 1994) or as an ancillary component of treatment plans. Likewise, purportedly "victim-oriented" practices such as victim impact statements can be easily directed toward retributive ends (Elias 1993; McShane and Williams 1992).

On the other hand, if motivated by restorative values and viewed as primary sanctions rather than add-ons to other punishments and requirements, reparative sanctions can be effective tools for holding offenders accountable to victims and the community. Similarly, victim impact statements and similar mechanisms could be used effectively to determine the nature and type of reparation, increase victim involvement, and provide a

more accurate assessment of victim needs. A restorative value framework could also provide the impetus for integrating now marginal victim-focused and reparative programs into the mainstream juvenile justice process and could provide a conceptual and policy basis for coordinating services of these disparate programs to better serve the needs of victims and communities.

DISCUSSION

Punitive values, goals, and policies will not disappear overnight. Although the juvenile justice system has shown progress in implementing programs consistent with a restorative approach (e.g., Schneider 1985; Umbreit & Coates 1993; Umbreit 1994), only a few juvenile courts have adopted these as prototypes for restructuring the sanctioning process based on a restorative philosophy. For the most part, restorative practices remain on the fringes, and their objectives are viewed as secondary to the concerns of retributive justice, as well as to those of individual treatment. In addition, a dramatic change in policy and management agendas governing juvenile justice systems is implied if these systems are to meet the challenge of restorative justice—for example, to identify and then engage communities and victims in the justice process (Van Ness 1993).

“Seeds” of Restorative Juvenile Justice

Despite these cautions and obstacles, policymakers wishing to move in the direction of a restorative justice approach can build on several inherent strengths of the model and take advantage of several opportunities created by the current crisis in juvenile justice policy. Movement toward increased formalization notwithstanding, juvenile justice in most jurisdictions retains an informal ethic and is more receptive to restorative approaches (Schneider 1985; Umbreit 1994) than criminal justice. In its contextual emphasis on crime as conflict (e.g., Zehr 1990), restorative justice may be highly compatible with this less formal process and situational approach to dispute resolution.

To move forward with the restorative agenda for juvenile court sanctioning, policymakers could exploit the potential for restorative justice to engage and integrate the interests of nontraditional juvenile justice constituencies (e.g., victims, employers) (Bazemore and Maloney 1994), while also building on innovative programs such as comprehensive restitution, restorative community service, and victim-offender mediation that exemplify the restorative process. Such programs could be used specifically to “pilot” practices and policies as models for entire *systems* rather than as “add-ons” to probation

and the formal court process. Promising examples of such restorative sanctioning systems now can be found in several European countries and in Australia and New Zealand (Messmer and Otto 1992; Walgrave 1993; McElrea 1993; Marshall and Merry 1990). In the Australian and New Zealand "family group conference" model, for example, the victim and his/her supporters are given the opportunity to speak about how they have been affected by the crime and to condemn the behavior of young offenders. The offender, his/her family or community surrogates, a trained facilitator/mediator, and the victim then participate in designing appropriate ways for the offender to repair the harm and make amends to the victim and the community. This begins a reintegrative process for the delinquent in which members of the family and community take responsibility for monitoring offender compliance and facilitating victim and community healing (Makkai and Braithwaite 1994; McElrea 1993). U.S. cities are not the same as cities in New Zealand or Europe, and juvenile justice systems are larger, more complex, and more crisis-driven. However, it is possible to implement reforms based on these principles, which similarly challenge the adversarial process as pilot efforts in smaller components of such large systems and, as is most consistent with the restorative model, to do so on a neighborhood basis.⁶

CONCLUSION

As an emerging new paradigm, restorative justice sanctioning does *not* offer complete solutions to all of the complex issues facing juvenile justice policymakers. A meaningful and effective sanctioning model is only one aspect of the comprehensive agenda for reform currently needed in juvenile justice. As a holistic framework focused on a balanced response to the needs of offenders and communities, however, restorative justice also has implications for enhancing and building support for a more empowering, holistic, and effective reintegrative approach to rehabilitation (Bazemore and Maloney 1994) and for defining a new role for juvenile justice professionals in enhancing the safety and security of communities.

In addition, we have suggested that rethinking the way juvenile courts carry out the sanctioning function may be a prerequisite for more comprehensive reform aimed at preserving the juvenile court and a rehabilitative focus for juvenile offenders. The blueprint presented here, based on the principles of restorative justice, prescribes a comprehensive redesign of sanctioning policy. Such redesign would begin with change in values; acknowledgment of new "customers" of the system (i.e., victims and the community); the development of new goals and objectives; change in the

justice process; and change in the priority assigned to various practices and programs.

From the vantage point of a retributive system steeped in supportive legal traditions and institutional frameworks, the goals and values of restorative justice are idealistic and utopian. At the same time, however, in the current climate of chaos and reaction in juvenile justice, such idealistic goals may be critical to ensure that balanced reform proceeds in a positive direction:

Giving priority to reparation rather than retribution calls for a change in social ethics and a different ideology of society. That means a society governed with the aims of individual and collective emancipation, in which autonomy and solidarity are not seen as diametrically opposed, but viewed as mutually reinforcing principles. A society doing its utmost to avoid exclusion of its members, because it is a society which draws its strength not from fear but from the high social ethics by which it is governed. . . . Is this Utopia? Yes, but we need a utopia to motivate us and provide guidance for our actions in society. There is nothing more *practical* than a good utopia. (Walgrave 1993, p. 9)

NOTES

1. The retributive/punitive paradigm that emerged in the juvenile justice system in the 1980s was in no way a pure "just deserts" approach (Thompson and McAnany 1984). Rather, retributive juvenile justice as implemented combines the emphasis on the primacy of punishment philosophy and certain policy trappings (e.g., determinate sentencing guidelines) of "just deserts" with a general concern with deterrence, incapacitation, and more traditional punitive objectives supported by Reagan administration policymakers as part of a more general attack on "leniency" in juvenile court sanctioning (e.g., Regnery 1985). The increased formality and adversarial emphasis has generally *not* meant an increase in due-process protections or better representation for juvenile offenders (Feld 1993).

2. Whereas the pursuit of multiple justice goals characterizes most historical eras, by the late 1980s retributive punishment was well on its way toward becoming a *determining goal* (Robinson 1987) in juvenile court dispositions. Determining goals, which set the overall priority for sanctioning, require that certain presumptive components are always included in a disposition. *Limiting goals* define what must be excluded and restrict the overall intensity of sanctioning; for example, goals such as deterrence have often limited the pursuit of rehabilitative ends in juvenile justice.

3. Van Ness (1993) suggested that the term *restorative justice* was first coined by Albert Eglash (1975) in a paper in which he distinguished between retributive justice based on punishment, distributive justice based on therapeutic treatment, and restorative justice based on restitution. Though still unfamiliar in the United States, the term is widely used in Europe, and restorative justice has been on the agenda of policymakers and researchers for approximately a decade (Davis 1992; Messmer and Otto 1992). Whereas retributive and restorative justice are compatible in their common focus on the *offense act* (Davis 1992) and may be contrasted with the utilitarian focus on the offender, they differ in the emphasis on punishment versus reparation, obligation to the victim versus the state, and the emphasis (in restorative justice) on the future rather than the past (Zehr 1990; Davis 1992).

4. Elias (1993) has distinguished between this "official" retributive victims' movement and a "hidden" victims' movement that has often opposed the status quo—and therefore frequently been marginalized (e.g., Zehr 1990; Pepinsky and Quinney 1991). As McShane and Williams (1992) noted, victims and victims' advocacy groups were to a large extent coopted in various "get tough" prison expansion and mandatory sentencing initiatives in the 1980s.

5. This overemphasis on due process may have a number of unintended consequences according to these observers. For example, juveniles may be detained for longer periods or cases adjourned more frequently for continuances to accommodate the needs of attorneys (Hackler 1991). Whereas the parameters of offender and victim process rights and uniformity in restorative justice have yet to be completely defined (Messmer and Otto 1992), the restorative process should not be judged against an ideal adversarial process that rarely occurs in retributive justice (Elias 1993). In countries where restorative processes are more widely used in juvenile justice, a variety of mechanisms have been devised to protect offender rights and maximize access to nonadversarial options (Messmer and Otto 1992; Davis 1992).

6. The Minnesota Department of Corrections has recently adopted restorative justice as its mission, and other states and local jurisdictions are including restorative principles in their codes, mission, and purpose statements. Several U.S. juvenile systems are experimenting with restorative justice policies and practices by initiating small pilot projects as part of an "action research" demonstration effort funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) (Bazemore 1994b). Points of view or opinions expressed in this document are, of course, those of the authors and do not necessarily represent the official position of OJJDP or the U.S. Department of Justice.

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