

Juvenile justice within the aboriginal concept essay sample

[Law](#), [Criminology](#)



Restorative justice is a framework for juvenile justice reform that seeks to engage victims, offenders and their families, other citizens, and community groups both as clients of juvenile justice services and as resources in an effective response to youth crime. It focuses on the needs of the victims and the offenders, as well as the involved community, instead of satisfying abstract legal principles or punishing the offender. Victims take an active role in the process, while offenders are encouraged to take responsibility for their actions, “ to repair the harm they’ve done” (Webber, 2009). Restorative justice involves both victim and offender and focuses on their personal needs. In addition, it provides help for the offender in order to avoid future offences. It is based on a theory of justice that considers crime and wrongdoing to be an offence against an individual or community, rather than the state. Restorative justice is strongly related to Aboriginal justice, both concepts emphasize healing, forgiveness and active community involvement.

Aboriginal concepts of restorative justice tend to be strongly focused on the community, with an emphasis on collective well-being rather than individual rights (Department of Justice Canada, 2001). They stress the need to heal relationships between clans or family groupings as well as between the offender and the victim, so that balance may be restored to the community as a whole. In other words Aboriginal communities try to look at all of the factors leading to an incident, in order to understand the offender as a person and to uncover the causes of their behavior.

Restorative Justice practices are becoming increasingly more popular as the guideposts to effective corrections policy, both inside prisons and within the wider community. However, a closer look reveals that the Aboriginal concept of restorative justice challenges traditional Canadian/ European conceptions about justice. In what follows, I explore these two perspectives on the issue by stating and examining the key differences between both approaches to the judicial process. In the remainder of this paper I will also argue on which approach is more desirable as restorative justice projects the differences with respect to such elemental issues as the substantive content of justice and the process of achieving justice.

Restorative Justice principles are based on the understanding of compassion, that no one is an island, and that everyone is an equal member of society and has a contribution to make to the greater good. Therefore, when a person becomes alienated or disconnected from that society, it is the responsibility of everyone in that society to bring the person back into a harmonious relationship with him/her "self", as well as with the rest of the community. This may mean that the society itself needs to take a long hard look at its own practices and systems, which may be "contributing factors" to the person's alienation from it. The society may need to heal itself. When a crime is committed it results in the creation of an inequality between the victim and the offender. Unlike the vertical structures of European/ Canadian Justice systems where crime is a violation of the law of the state, all matters in an Aboriginal society are private (James, 1999).

Aboriginal societies do not make the distinction between criminal and civil law that is found in the Euro- American tradition. In an Aboriginal society, when a crime is committed the debt that is created is owed to the victim, not the state. The victim has been placed in a lowered status by the victimizer. It becomes the obligation of the victimizer to raise the victim to the status previously held; that being equal with all others within the society. Whilst the inclusive nature of Aboriginal justice widens the scope to include concern for the victim, the criminal justice system often ignores the plight of the victim. Aboriginal justice system recognizes the fact that although the victim did not " do" anything, their experience can cause a ripple effect within the community. This cascading effect can result in cycles of abuse, self-abuse, etc. In other words, the victim may find him or herself moving towards disharmony as a result of the harm done to him or her. This is the very essence of the goal in helping the victim.

In the traditional European/Canadian justice system, the victim resides in an ambiguous spot. The victim has no say in the legal process and is shunted to the side. In the view of the Canadian justice system the victim does not fit into the categories of good or bad. Any problems resulting from the crime maybe considered the sole domain of the victim. The victim within the criminal justice system may be reviled because they have been tainted by the crime. The larger society leaves the victim as it found them, in a different position of equality within society; alone, to individually deal with the aftermath of their victimization. The crime is viewed as an individual act

upon an individual person with the larger community interests being embodied in the democratic state.

The net result of the judicial process is punishment for the offender and isolation for the victim. Other notable differences between the Aboriginal concept of restorative justice and Canadian justice system include the fact that while Aboriginal restorative justice placed emphasis on learning the norms of society is done through modeling, with all members of the communities serving as teachers and self-worth, dignity, hope and healing of offenders and community were paramount in the administration of justice while the traditional European/Canadian system codified and/ or common law as well as deterrence as a goal of sentencing. Inherently Aboriginal restorative justice centers on reparation in order to regain the balance that was lost by the execution of the crime and Canadian justice system focuses on retribution so as to deter future offenders. As one approaches a greater bipolar worldview, does one become more intolerant?

If so, then do persons living with this view have a higher rate of conflict as their worldview increasingly becomes separated from reality? It is the loss of one's self in society or a view that one is becoming further and further disconnected from society that is a cause of social ills such as suicide or crime. Anonymity or the feeling of being disconnected with the community is a cause of crime. People who do not feel connected can be likened to those persons who do not have consciousness. It is the two tenets, teaching and respect, that prevent crime. Connecting a person to their community by helping a person see and "empathize with the victim" may be the greatest

tool in crime prevention. Those who do not feel a connection with the community must be helped and taught to build one.

The view that a further intensification of the legal system will solve the problems within the criminal justice system is based on the premise that punishment reduces crime through specific and general deterrence.

However, if one assumes that criminals either never stop to think that they might be caught, or those that have contemplated being caught have probably weighed the pros and cons of their enterprise and have come to a rational decision that the potential profits outweigh the risks, then the use of punishment as a general and specific deterrence falls upon deaf ears.

Restorative Justice practices look for ways to enable offenders to take responsibility for the harm they've done, and to correct their behavior on a deeper and more meaningful level. It is based on the belief that offending is not the "decision of choice" if one is meaningfully connected to the society in which one lives. Therefore Restorative Justice is a way of creating a criminal justice system that restores the offender to himself, and thereby empowers him/her to make better choices in the future. In this way we are creating a dynamic within the society that restores the health of individuals while maintaining law and order, for the security of the community.

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