

An Overview of the History and Theory of Transformative Justice

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Abstract

This article is dedicated to the historical overview, political development, and philosophy of transformative justice, with a primary focus on the United States. Core principles of transformative justice are synthesized from various theorists, activists, and institutions. The article begins with critical criminology, a sub-field of criminology, in order to discuss peacemaking criminology, compare restorative and transformative approaches to justice, and draw connections to the field of conflict transformation. Transformative justice is recommended as the best pathway toward a new criminal justice system in the United States, and as an integral part of a wider social justice philosophy for peace.

This article addresses the need for a new criminal justice system within the United States – a criminal justice system that is not grounded in a retributive structure based on punitive discipline such as the death penalty and life prison sentences. Similar to activists today, in the 1960s there was a radical social movement against the establishment. This rebellion included many students who, disgruntled with the government, law enforcement, and social norms, pursued careers as community organizers, politicians, lawyers, and professors who promoted a new system void of punitive punishment and repressive forms of social control and discipline. That system is transformative justice, and this article is dedicated to the historical overview, political development, and philosophy of transformative justice. The article begins with a discussion of critical criminology, a sub-field of criminology, in order to provide a context to discuss peacemaking criminology, compare restorative and transformative approaches to justice, and draw connections to the field of conflict transformation. Transformative justice is recommended as the best pathway toward a new criminal justice system in the US.

A Critical Criminological Perspective

Critical perspectives on social control, discipline, and punishment are studied within the field of critical criminology – a challenge to, as well as subfield of, criminology. Criminology's roots go back to the mid seventeenth century, most notably to Cesare Beccaria, an Italian jurist and author of *On Crimes and Punishments* (Beccaria 2009), and Jeremy Bentham, with assistance from his cousin, who designed the architectural blueprint of the panopticon, a powerful method of surveilling populations of people in prisons or in the public (Foucault, 1995), which was later adopted in the US. In 1958, George B. Vold, a conflict criminologist, wrote *Theoretical Criminology* (Bernard, Vold, Snipes, and Gerould 2009) to explain that crime is an outcome of political conflict between groups that have power versus those that do not and are disenfranchised. He argued that those that have power create laws to defend their interests, thereby maintaining and furthering their access to power. Conflict criminologists entrenched in the economic and social values of Karl Marx understood that conflict was a universal form of interaction among everyone; therefore, conflict is not to be avoided or denied, but rather embraced. They saw that relationships were fused by conflict, which could not be avoided.

Out of conflict criminology, with the aid of Vold, emerged critical criminology, which is now regarded as a subfield in the discipline (DeKeseredy & Perry, 2006). Critical criminology is similar to and is sometimes wrongly interchanged with, radical criminology, which developed in the 1970s (Lynch, Michalowski, & Groves, 2006). Critical criminology began in the late 1960s and early 1970s during the same time as the prison reform movement and was founded on a Marxist critique of social order and power (DeKeseredy & Perry, 2006). Critical criminology came also from the critical theory school of thought, entrenched in the neo-Marxist Frankfurt school. Critical criminology argues that crime is socially located and contingent on particular historical, cultural, and political norms. Further, critical criminology argues against punitive or retributive based justice systems and is for supportive restorative and transformative ones. Today, the field of critical criminology is highly diverse (Lynch, Michalowski, & Groves, 2006; DeKeseredy & Perry, 2006) with sub-fields such as feminist criminology (Renzetti, 2008), green criminology (Beirne & South, 2007), transformative justice (Morris, 2000), restorative justice (Zehr, 1995; Van Ness & Strong, 1997; Claassen & Claassen, 2008), anarchist criminology (Ferrell, 1997; Ferrell, 2002), and, most recently, queer criminology (Ferrell & Clinton, 1995). Critical criminology challenges domination and control of any sort, and therefore concentrates on examining issues of control and discipline (Fernandez, 2008). The first wave of critical criminology focused more on challenging and reacting than being proactive and establishing an alternative to lifelong incarceration.

As the field matured in the late-1970s, so did the time to transition from reactive critiques and criticisms of retributive and punishment-based criminal justice tactics and systems to more inclusionary and rehabilitative alternatives. As the 1980s came with President Reagan and left with George H. W. Bush, the war on drugs, with mass arrests and incarceration (aided by 1973's New York's Rockefeller Drug Laws and the like), replaced rehabilitation (Hartnett, 2010). The 1980s in the US began with approximately five hundred thousand adults in prison, with the decade ending with more than a million incarcerated ("The punishing decade," 2000, para. 1). In the 1990s, education was taken out of the prisons as it was too costly, and it was replaced with factory jobs which profited corporations (Burton-Rose & Wright, 1998; Davis, 2003). The substitution of jobs for education became a form of incarcerated slavery, was defended by the 13th Amendment, and reinforced the prison industrial complex with an overcrowded and unmanageable criminal justice system—too many cases dumped onto too few lawyers, judges, juries, and court rooms (Magnani & Wray, 2006). This soon made way for the development of the criminal industrial complex.

The 2000s were marked by George W. Bush as an era of Terrorism (Chomsky, 2002), characterized by war, violence, and economic and ecological crisis (Kahn, 2010). In 2002, under Bush, we saw that the prison population grew for the first time to more than two million in the US, overextending its bed limit (Davis, 2003). Consequently, the US's criminal justice system has become grounded in a retributive punitive process that adopts everything from ankle bracelets, to surveilling convicts to the death penalty.

When prisons do not work, the power of surveillance (Foucault, 1995; Parenti, 2003) and stigmatizing labels are the favored methods of social control used to reinforce normalcy. If a group or individual threatens the dominate social order, they are commonly first surveilled, then questioned, and finally, if they do not align with the social norms as determined by the law, they are punished. The punishment can be as minimal as a fine to pay the government or as severe as the assassination of someone who challenges the government (i.e. Malcolm X). This process of promoting a dominate social order or norm is known in the fields of criminology and sociology as social control.

Peacemaking Criminology

Within the field of critical criminology, which argues against the currently dominant US criminal justice system, there are many subfields, one of which is peacemaking criminology, rooted in a faith-based and holistic approach to addressing crime and justice (Magnani & Wray, 2006). Peacemaking criminology "regards crime as the product of a social structure that puts some groups at a disadvantage, sets people against one another, and generates a desire for revenge" (Conklin, 2007, p. 5.3.2.1). Peacemaking criminology has a long history grounded in social movements and was influenced by such individuals as

Martin L. King Jr., Fred Hampton, Mahatma Gandhi, Dorothy Day, Leo Tolstoy, Malcolm X, and many other peace activists throughout history from, environmentalists to anti-war activists. Even with this long history, it has not been adopted or even accepted by the larger field of criminology or criminal justice: “The problem with the peacemaking perspective’s lack of acceptance by criminal justice practitioners and the general public is the boundaries of peacemaking have not been staked out, and its many facets have not been clearly articulated and fastened by criminologists” (Fuller, 1998, p. 54). Furthermore, it has not been accepted because it challenges the dominant ideology within the field and US society on such basic values as capitalism, retributive justice, and institutionalization.

Peacemaking criminology challenges critical criminology for not relating to the field of peace and conflict studies, which stresses the relationship values such as collaboration, respect, forgiveness, accountability, and responsibility. Morris, Lederach, Zehr, Claassen, American Friends Service Committee (AFSC), and Mennonite Central Committee (MCC), and others involved with the peace churches provide both social services and activism which, while protesting systems and institutions, they work within to reform at the same time.

This mode of action of working as a social service group and an activist group confuses many within the criminal justice system and activist community. Mennonites and Quakers, for example, often work with judges, lawyers, probation officers, politicians, law enforcement officers, and bureaucrats to create reform, while protesting the institutions that they are working in. Because many times the criminal justice system and activists are not sure where AFSC (1971) and MCC locate themselves on a particular policy, these peacemakers are forced to work among themselves as praxis-oriented people writing theory and conducting practice.

Restorative Justice

In the late 1970s, peacemaking criminology, an alternative to the US retributive criminal system, emerged from peace churches—Mennonites, Quakers, and Brethren. Peacemaking Criminology, co-founded by Hal Pepinsky, is rooted in the area of radical criminology. Pepinsky is the author of *Peacemaking: Reflections of a Radical Criminologist* (2006). The most well-known theory within the field of peacemaking criminology is Restorative Justice (RJ), co-founded by Howard Zehr (1995), a Mennonite who teaches at Eastern Mennonite University and worked for many years prior with the MCC around the world as a mediator, peace educator, and community organizer. Zehr working with others, developed RJ out of aboriginal and Native American practices in North America and New Zealand, which use community circles to bring victims and offenders together to heal, forgive, and take accountability. Ron Claassen, author of *Restorative Justice - Fundamental Principles* (1995), stresses the following points about RJ:

- RJ is grounded on the belief that punishment hurts relationships, the victim(s) and the offender(s).
- RJ views crime as wrong and after it occurs, there exist dangers and opportunities.
- RJ believes that crime should be addressed as soon as possible to make things right again.
- RJ includes the victim and their friends, family, etc. into the process of justice.
- RJ believes that, after everyone is safe, the event should be made a teachable moment and to have the offender learn new ways of acting in the community.
- RJ promotes volunteer involvement in the justice process and not coercive measures.
- RJ promotes a collaborative and cooperative process.
- RJ recognizes that not all offenders are willing to cooperate; therefore, there is a need for outside authority to decide for the offender in a coercive manner.
- RJ considers that, while prison should not be used as a result of the process, prison might need to be used

in situations where the offender is a risk to him/herself and/or others until the time comes where s/he is willing to voluntarily meet with the victim(s).

- RJ stresses following up with those involved in the crime in order to know if all parties are holding to their agreements.

- RJ stresses the role of religious institutions in aiding in justice among people and to promote moral and ethical values within communities. (Claassen 1996a)

Here, Claassen (1996b) explains the difference between restorative justice and retributive justice:

I think that our whole system could be based on the purpose of restoration of victim, community, offender, families, friends, restorative justice officials and any other individuals or relationships that might have been damaged by the crime. In a restorative system, the primary focus would be on the human violations and need for healing and restoration of individuals and relationships. Focusing on the violation of law would be a backup for those unwilling to be cooperative ... A Restorative Justice System would use cooperation as much as possible and coercion as little as possible. A goal of the use of coercion would always be to encourage the offender to decide voluntarily to become cooperative.

Therefore, restorative justice praises nonviolence, cooperation, and only uses coercion in rare situations to encourage the offender to participate in resolving the conflict. RJ was meant to be a peacemaking, cooperative, and voluntary alternative to retributive criminal justice systems void of punishment.

Transformative Justice

In the late 1990s, Ruth Morris, a Quaker in Canada, challenged restorative justice because it did not address issues of oppression, injustices, and social inequities within conflicts. Coker (2002) notes that the terms “transformative” and “restorative” justice have erroneously been seen interchangeable. However, Morris argues that while restorative justice challenges the retributive justice system and brings people together, it fails to recognize the socio-political and economic issues addressed by transformative justice (Coker, 2002).

For instance, if a 14-year old boy who is queer and from a poor neighborhood robbed a store when it was closed at 2:00 a.m., transformative justice would not only look at the crime of burglary, but why the boy did it. Was the boy kicked out of his home by a father who was homophobic? Did the boy need money for food, clothes, and shelter? While restorative justice only addresses the specific conflict between the victim and offender, transformative justice strives to use the conflict as an opportunity to address larger socio-political injustices.

Further, “restorative justice processes threaten to create a deeply privatized criminal justice process” (Coker, 2002, p. 129) by constructing a victim vs. offender relationship which makes absent the issues of social oppression. It is for this reason that many prison abolitionists and feminists working with domestic violence issues critique restorative justice for its limitation in addressing oppression (Coker, 2002). Because society oppresses those who are poor and queer, there are (at least) two victims; therefore, the conflict must be addressed using larger community-based approaches rather than interpersonal mediation.

Restorative justice stresses that the system is flawed, overworked, and retributive, but does not address why it exists, how it is racist, sexist, abelist, and classist, whom it benefits, and how it was developed. Transformative justice, on the other hand, is explicitly opposed to helping someone get arrested, imprisoned, fired from their job, repressed, or oppressed. It is about looking for the good within others, while also being aware of complex systems of domination. If the world is to transform, we need everyone to transform and everyone to be voluntarily involved in critical dialogue together.

Theories of transformative justice have their roots in *transforming power*, coined by the internationally-respected Alternative to Violence Project (AVP), a Quaker based organization, established in Green Haven Prison, New York, a project that is now in hundreds of prisons in the US, more than twenty

different countries, and on four continents (AVP/USA, 2005). AVP is dedicated to providing a specialized nonviolence group-building, community building, and conflict transformation workshop oriented for violent communities, regularly in adult male and female prisons. Transforming power is the core philosophy of AVP. Transforming power:

Is the force in the universe which can burn away the crud. And it always begins within. I cannot burn away crud that hides your jewel. What I can do is allow Transforming Power to do its work within me, to burn away the layers of fear and prejudice and pain which hide my shining core, and then let my light shine forth as an invitation for you to do the same.

When I can free my soul of the layers of crud which over it (which I must continually do, day after day – for the business of living in this world, has a tendency to lay down new layers by the hour), and I let the light shine forth, that light stretches out to those around me and reaches for its mirror in their soul: reaches – and with that reaching the jewel in the soul of the other person answers, through all the crud, and reaches back.

Being connected is the true state of being human. Transforming power is that force in the universe which shows us how to do that. (AVP/USA, 2005, p. c-5).

Further, transforming power is about changing a negative or violent situation into a positive and peaceful one. It is about looking for the good within a conflict and searching for peace within oneself and others; “Every person has an inner wisdom that knows what’s right and wants to do what’s right, and it can be called forth, as Martin Luther King, Jr. once said, ‘There are laws of harmony at work in the world’” (AVP/USA, 2005, p. c-6).

AVP has created “four basic principles” (AVP/USA, 2005, p. c-6):

1. Everyone has an inward goodness. Realize that people’s actions and words are sometimes mistaken, wrong or violent. People themselves are good. In your understanding, separate the person from the behavior. There is goodness within. Look for it. Find it. Judaism, Christianity, Islam and other religions all teach this.
2. We can start out realizing a violent reaction is only one way of responding in a conflict. Somewhere in every conflict situation there is the possibility for a nonviolent solution. [...]
3. To change situations in positive ways, start with ourselves, our attitudes, beliefs, manners of speaking, tone of voice and behavior. [...]
4. Non-violent conflict resolution is a skill. [...] There can be a win/win outcome – no one is the loser.

After being an AVP facilitator for seven years at Auburn prison in New York, I decided to begin working with youth in secure detention facilities. With the support of AVP, Syracuse Quaker Meeting, and the men at Auburn prison, I began to do AVP workshops at Hillbrook Youth Detention Facility in 2007. In 2009, at Hillbrook, I, with a few other adults and a group of kids in Hillbrook, created an organization the kids named “Save the Kids.” Save the Kids, an organization dedicated to fostering a national movement to keep kids away from violence and out of incarceration, is grounded in transformative justice. Save the Kids works with children who are targeted by the juvenile justice system and who are incarcerated. Save the Kids works with all youth who are targeted and oppressed including, but not limited to, kids who are LGBTQ, of color, with disabilities, immigrants, and poor. Save the Kids performs its goal by providing education and mentoring programs that address oppression, domination, social justice, healing, accountability, forgiveness, and peacebuilding. Save the Kids’ *Ten Point Principles* are:

1. We believe that all youth need support, love, and skills in order to achieve their goals.
2. We believe that all youth are amazing and wonderful no matter their actions they have committed.
3. We make a clear distinction between actions and kids; actions can be bad, but not kids.
4. We are committed to helping youth because they are our future, and if we do not help them, we will not have one.

5. We believe in respecting all no matter their gender, ability, race, economic status, sexuality, religion, ethnicity, health, age, or nationality.
6. We hope one day all youth will be placed in community-based programs rather than incarcerated or institutionalized.
7. As a transformative justice based organization, we strive to promote alternatives to incarceration and methods of transformation of incarceration.
8. We believe in peace and nonviolence in resolving and transforming all conflicts.
9. We believe in not labeling, but rather being inclusive in all of our activities.
10. We promote that everyone in the community should work together in making a peaceful world and not to exclude anyone. STK will work with everyone and anyone in-order to achieve that goal.

Only two years old, Save the Kids is now a leading international organization promoting transformative justice as its foundational philosophy.

Generation Five, a transformative justice based organization located in Oakland, California, is dedicated to ending child sexual abuse. Generation Five believes that transformative justice has three core beliefs; they include:

- Individual justice and collective liberation are equally important, mutually supportive, and fundamentally intertwined—the achievement of one is impossible without the achievement of the other.
- The conditions that allow violence to occur must be transformed in order to achieve justice in individual instances of violence. Therefore, Transformative Justice is a both a liberating politic and an approach for securing justice.
- State and systemic responses to violence, including the criminal legal system and child welfare agencies, not only fail to advance individual and collective justice but also condone and perpetuate cycles of violence. (Generation Five 2007).

We can identify common principles among organizations such as AVP, Save the Kids, and Generation Five to emphasize what may be thought of as the core philosophy of transformative justice (TJ):

- TJ is against violence and punishment, institutionalization and imprisonment.
- Crime is a form of community-based conflict, where society and the government are also involved as possible offenders.
- TJ brings issues of identity back into the realm of justice by addressing socio-political injustices toward Women, People of Color, GLBT, Poor, Immigrants, People with Disabilities, and other marginalized groups.
- TJ believes in the value of mediation, negotiation, and community circles to transform conflicts.

When fighting along with the oppressed, social justice activists will often identify the oppressor as the enemy. Transformative justice, while addressing oppression and the role that groups, institutions, and agencies have in creating and maintaining oppression, does not view anyone as an enemy, but rather argues that everyone needs to be involved in a voluntary safe constructive critical dialogue where people take accountability, responsibility, and the initiative to heal. It means that law enforcement, judges, lawyers, prisoners, community members, teachers, politicians, spiritual leaders, and activists, among others, come together.

Conflict Transformation

In resolving interpersonal or group conflicts, conflict transformation, similar to transformative justice, addresses issues of inequities, injustices, oppression, and domination. Conflict transformation, unlike conflict resolution, requires larger socio-political concerns to be addressed, while conflict resolution is only

about addressing the specific incident. John Paul Lederach, the founder of conflict transformation, began using the term after his work with his Latin colleagues in Central America. In *The Little Book of Conflict Transformation* (2003, p. 3), Lederach writes:

I soon found, though, that my Latin colleagues had questions, even suspicions, about what was meant by such concepts [“conflict resolution” and “conflict management”]. For them, *resolution* carried with it a danger of co-optation, an attempt to get rid of the conflict when people were raising important and legitimate issues. It was not clear that *resolution* left room for advocacy. In their experience, quick solutions to deep social-political problems usually meant lots of good words but no real change. ‘Conflicts happen for a reason,’ they would say. ‘Is this *resolution* idea just another way to cover up the changes that are really needed?’

Conflict transformation is about addressing all types of conflicts including interpersonal conflicts which influence socio-political and economic change, while also bringing socio-political and economic change to the dialogue of the specific interpersonal conflict. Conflict transformation is not meant only for social movement interventions or international disputes, but for all conflicts.

In recent years, conflict management and resolution, which are prominent in the liberal arts, have found homes in law schools and business administration departments. Peace and conflict studies, a growing academic field, has in its forty years or so of existence become institutionalized and lacks professors in given departments with direct connections to peace activism. With peace and conflict studies’ more recent departure from activism in the last decade or two, conflict resolution and management has been, as Lederach’s colleagues have noted, co-opted by academics with a lack of connection to the community. Conflict resolution has been a quick method of resolving a dispute with a legal contract; without going to the court system, mediators and arbitrators are the new peacemakers. In the business world, conflict resolution and management have been co-opted as a tool to “deal with others” rather than to develop communication, group-building, and team building skills or to foster accountability, responsibility, forgiveness, and healing.

The goal of the business sector in adopting conflict management and resolution is to have a stable workplace within the professional environment. A stable environment is important within professional settings because it allows everyone to be efficient and effective in meeting the goal of the agency. Therefore, conflict management is not about caring and respecting those with whom you work, but rather having a method to tolerate, deal with, and, most importantly, manage your work relations and environment so you can do your job and make money for corporations.

Conflict resolution is commonly practiced and adopted in professional settings such as nonprofits, businesses, and the government because it addresses the individuals involved in the conflict as parties and not people. Conflict resolution, interchangeable with dispute resolution, has been adopted by the field of law, where contracts and agreements are employed, hence the reason why conflict resolution is result-based (Ury, Brett, & Goldberg, 1988). Conflict resolution has begun to look at conflict not as an opportunity, but as a problem to solve. Conflict management, on the other hand, is more concerned with process than with figuring out how to come to a contract agreement or resolution. Many scholars within the fields of conflict management and conflict resolution are concerned with culture, identity politics, and issues of social and political power (Avruch, 1998; Avruch, Black, and Scimecca, 1998; Castro and Nielsen, 2003) when analyzing a conflict. The largest difference that conflict resolution and conflict management have with conflict transformation is that conflict transformation is rooted in radical social movements and activism dedicated to social justice. This includes activism against prisons, the death penalty, and other retributive and punitive methods.

Transformation is larger than two individuals, stressing that all are connected in a complex relationship of oppressors and oppressed, only able to become free if we address and challenge all systems of domination and violations toward the individual. Transformation is not about destroying and building anew and a

win-lose resolution such as a revolution (Skocpol, 1995; Tilly, 1978), but demands everyone in the world, systems, and structures to change as well.

It is with Morris (2000), Lederach (1995), and hooks (1994) that my work and interests in the fields of justice, peace and conflict studies, and education all come together under the umbrella of transformation. Within criminology, Morris (2000) promotes transformative justice; within peace and conflict studies, Lederach (1995) promotes conflict transformation; and within education, hooks (1994) fosters transformative pedagogy – together they inform and are interdependent on one another so social transformation can be possible. Lederach (1995, p. 19) writes:

I have found it useful to step back and look at the big picture related to Freire's pedagogical framework. In *Pedagogy of the Oppressed* (1970) he uses literacy, learning to read and writing, which seems to be a uniquely individual and personal agenda, as a tool for exploring and promoting social change. He [Freire] refers to this as *conscientization*, awareness of self in context, a concept that simultaneously promotes personal and social transformation.

Conclusion

Transformation, unlike resolution, restoration, management, reform, or revolution addresses very distinctive issues that these other approaches to conflict and justice do not.

Transformative justice challenges all aspects of authoritarianism, domination, and control within society today. For this reason, transformative justice is more than an alternative to a criminal justice system, but a social justice philosophy for peace with tools to achieve such goals. Further, it is a non-dogmatic, process-based philosophy that allows for creative approaches in transforming conflict and addressing issues of brutality, racism, assault, abuse, accountability, responsibility, loss and, most importantly, healing.

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