

A Beautiful Fork in the Familiar Road: Restorative Justice as Diverting the Path of Schools to Prisons

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In Pursuit of a Smuggler

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I. Introduction

If you could travel back one hundred odd years, what would you imagine criminal justice in the future to look like? Villemard's *Vision, En L'an 2000* ("in the year 2000"), is a series of French works from 1910 depicting the imagined scientific advancements of the year 2000.¹ "In Pursuit of a Smuggler," as pictured above, portrays law enforcement with webbed wings and pointed revolvers in hot pursuit of a flying felon.² Alas, at the head of 2019, short of taking to the skies to expand our legal horizons, we find ourselves still in the epoch of humans in cramped cages under guise of criminal justice.³

As humans, we have a tendency to over inflate our capacity for change. We believe that tomorrow promises an end to school shootings, an answer to mass incarceration, and a female president. This is not to say that, at a macrocosmic level, we do not possess the faculty for meaningful change, but rather, our ability to embrace that faculty is frustrated by the zeitgeist—the spirit of the time. In the hollow chambers of our antiquated courtrooms, the spirit is, and always has been, characterized by a fear of the unfamiliar. Sticking to "what works" has been the hallmark of the 19th century and beyond,⁴ but only insofar as what works—locking up delinquents with sentences disproportionate to the crime⁵—is what has worked for the privileged, while demonstratively hampering both indigents and ethnic minorities.⁶ And yet, the system continues to exercise an

¹ *A 19th century Vision of the Year 2000*, THE PUB. DOMAIN REV., <https://publicdomainreview.org/collections/france-in-the-year-2000-1899-1910> (last visited Feb. 19, 2019). These works are attributed to French artists such as Jean-Marc Coté as well as Villemard. See Tom, *Villemard's Vision: 1910 Postcards Depict the Year 2000*, URBAN GHOSTS (Mar. 28, 2011) <https://www.urbanghostsmidia.com/2011/03/1910-vintage-postcards-depict-year-2000/>.

² See *id.*

³ See Paul T. Shoemaker, *The Time has Come to End Mass Incarceration*, THE N.Y. J. (Jan. 11, 2019) ("The statistics are grim. The United States has a prison population of 2.2 million, more than any other country. Our rate of incarceration is the highest in the world and falls with severe disproportionality on African Americans.").

⁴ To illustrate this historical apathy toward change, it is noteworthy that it took a civil war, and not some moral cognizance, to put an end to slavery. See Civil War, HISTORY, <https://www.history.com/topics/american-civil-war/american-civil-war-history> (last visited Feb. 20, 2019).

⁵ See Bill Quigley, *40 Reasons Why Our Jails are Full of Black and Poor People*, HUFFPOST (June 2, 2016) https://www.huffingtonpost.com/bill-quigley/40-reasons-why-our-jails-are-full-of-black-and-poor-people_b_7492902.html ("Average prison sentences are much longer than they used to be, especially for people of color.")

⁶ *Id.* ("Most of the people [in jail] are poor and Black").

overhaul-inertia.⁷ Indeed, Congress admits that the Federal Rules of Evidence, for example, are rooted “more in history and experience than in logic.”⁸ This means that, in terms of realizing social, political, and judicial advancements over the next one hundred years, we are, quite simply, getting in our own way.

So, what does this mean for the future of juvenile detainees in the realm of reformist criminal justice? The “school-to-prison pipeline” [STPP] is a term of art that characterizes the systematic tendency of students of color to leave schools and enter detention facilities at an alarmingly disproportionate rate.⁹ While the reasons for this are not easily attributable to one factor, pipeline theorists typically identify classism, infrastructure, and—primarily—harsh, “zero-tolerance” policies that criminalize childhood behavior as paving the intersection between education and the criminal justice system.¹⁰ As a result of attacking the symptoms and not the causes, students prematurely ferreted out of the education system—particularly students of color—are “three times more likely to be suspended or expelled.”¹¹ Now, with a growing collective consciousness, and with eighteen states operating at over 100% prison capacity, is America ready for a rebirth of criminal justice jurisprudence at last?¹²

⁷ See Denise Lee & Lewis Webb, Jr., *Time for Transformation in our Criminal Justice System*, AFSC (May 24, 2019) <https://www.afsc.org/blogs/news-and-commentary/time-transformation-our-criminal-justice-system> (discussing the need for change in the criminal justice system, and how the recent “FIRST STEP” prison reform bill falls short of addressing sentencing reform).

⁸ FED. R. EVID. 404 Notes of Advisory Committee on Proposed Rules.

⁹ Statistics have shown that, overall, “black juveniles are about four times as likely as their white peers to be incarcerated.” See Chauncey D. Smith, *Deconstructing The Pipeline: Evaluating School-To-Prison pipeline Equal Protection Cases Through A Structural Racism Framework*, 36 Fordham URB. L.J. 1009, 1012 (2009); See *School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> (Last visited Feb. 20, 2019) (“Many of these children have learning disabilities or histories of poverty, abuse, or neglect.”).

¹⁰ See *id.*; *4 Things You Need to Know About the Cradle-to-Prison Pipeline*, TEX. INST. FOR CHILD & FAM. WELLBEING, <https://txicfw.socialwork.utexas.edu/4-things-you-need-to-know-about-the-cradle-to-prison-pipeline/> (last visited Feb. 19, 2019).

¹¹ See Libby Nelson & Dara Lind, *The School-to-Prison Pipeline Explained*, VOX (Oct. 27, 2015), <https://www.vox.com/2015/2/24/8101289/school-discipline-race>.

¹² See Niall McCarthy, *The World’s Most Overcrowded Prison Systems*, FORBES (Jan. 26, 2018) <https://www.forbes.com/sites/niallmccarthy/2018/01/26/the-worlds-most-overcrowded-prison-systems-infographic/#2f329db11372>.

The restorative justice model (RJM) is an initiative that is aimed at repairing the harm caused by crime. In school contexts, RJM can be used to temper crime and diminish the probability of juvenile incarceration. This article will address whether implementing RJM in schools can divert STPP, thereby serving as a welcome fork in the familiar road. Part II of this article explores the background of STPP, Part III fleshes out RJM, Part IV incorporates this model as a proposed solution to the school-to-prison epidemic, and Part V concludes by proposing RJM as a meaningful remedy.

II. The Genealogy of School to Prison: From Cradle, to School, to Jailhouse

To contemplate a remedy for STPP, it is first necessary to explore its genealogy. STPP is a metaphor commonly used to describe modern schools as having become a conduit to correctional facilities.¹³ As previously mentioned, STPP disproportionality affects students of colour in impoverished areas.¹⁴ A historical overview of these neighbourhoods elucidates the reasons behind this.

a. *The Writings on the Cradle Wall*

Mass incarceration in the U.S. today is a descendent of its jilted ancestor, slavery. Even after enacted legislation abolished slavery in the 1800's, African-Americans (AA's) were still deprived of the benefits of citizenship, or even personhood.¹⁵ While abolitionists fought to end slavery, they failed to advocate for the full integration of AA's into society.¹⁶ Segregationist laws continued through the Jim Crow era into the 1960's, and as a result, AA's were streamlined into impoverished

¹³ See Kayla Crawley & Paul Hirschfield, *Examining the School to Prison Pipeline Metaphor*, Oxford Res. Encyclopedias, <http://oxfordre.com/criminology/abstract/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-346> (last visited Feb. 23, 2019).

¹⁴ See Artika R. Tyner, *The Emergence of the School to Prison Pipeline*, AM. BAR ASS'N (Aug. 15, 2017), https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2014/june_2014/the_emergence_of_the_school-to-prison_pipeline/ (“Although black students made up only 18 percent of students in public schools in 2009–2010, they accounted for 40 percent of students who received one or more out-of-school suspensions Moreover, students of color are more likely to be referred to law enforcement for school-related disciplinary matters. Seventy percent of students referred to “in-school” arrests or law enforcement are African-American or Latino.”).

¹⁵ See Jennifer Loubriel, *10 Things You Need to Understand About How Poor Black Neighbourhoods Were Created*, EVERYDAY FEMINISM (Jan. 23, 2015), <https://everydayfeminism.com/2015/09/slavery-to-mass-incarceration/>.

¹⁶ *Id.*

neighbourhoods that lacked the fundamental resources to sustain a surviving economy.¹⁷ They were denied education, the right to vote, and basic human dignity.¹⁸ Thus, the babies born into these communities were, and still are, born with the writings on the cradle wall—a prognosis of unavoidable doom.¹⁹

As these babies grew, crucial points in their development were stymied by a mountain of disadvantages—lack of access to health care and quality childhood education, neglect, child abuse, absent/poorly educated parents—all of which converge to inhibit the path to functional adulthood and facilitate the path to jail.²⁰ The school environment, then, is tasked with counteracting the underwhelming prospects for AA youths. In stark contrast, however, schools in these neighbourhoods have become a laboratory for failed governmental initiatives, creating the breeding grounds for future detainees. A cursory glance at these initiatives explains why.

b. Zero Tolerance Policies and the Criminalization of Childhood Behaviour

Zero-tolerance policies are “‘no nonsense’ rules that call for punitive punishments in school settings.”²¹ Minor infractions of school rules, under zero-tolerance policies, lead to the criminalization of adolescent behaviors without discretion.²² This includes suspension, expulsion, and the intervention of law enforcement for, for example, acts of “willful defiance.”²³ The overuse of these zero-tolerance policies notably increases the odds of juveniles entering the criminal justice

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ “the writing on the wall” is an idiom that portends a destiny of misfortune.

²⁰ See A.K. *infra*, note 31.

²¹ *Id.*

²² See Smith, *supra* note 9 at 1013 (“for instance, at a New York City public school, zero tolerance for age-appropriate behavior led to a five-year-old Latino kindergartener being handcuffed and removed from school for having a temper tantrum in class, despite the fact that he suffered from attention deficit disorder.”).

²³ See A.K. *infra*, note 31; Smith, *supra* note 9 at 1030. The zero-tolerance enterprise developed in the early 90’s, after the implementation of the Guns Free Schools Act (GFSA). *Id.* at 1029. At its onset, the Guns Free Schools Act of 1994 (“GFSA”) was initially implemented to promote safety by advocating zero tolerance for weapons in schools. *Id.* at 1013-12. However, since then, the zero-tolerance policy tool has expanded into areas not contemplated by the initial enactment, criminalizing childish behaviors and minor infractions of school policies. *Id.* at 1012. Police officers who are desensitized to the use of restraining devices, such as Tasers, forget that juvenile delinquents should be treated differently to culpable adults.

system.²⁴ Moreover, suspensions and expulsions are linked with lower academic performance rates, lower overall quality of school environment, and an increased likelihood of dropouts.²⁵ Combined with an inherent presumption of guilt,²⁶ AA youths in particular are therefore devastated by inexorable policies that set them on the path to prison.

c. Educational Facilities as Resembling Jailhouse Infrastructure

Zero-tolerance policies are not exclusively to blame for the criminalization of juveniles. Many of the aforementioned neighbourhoods house educational facilities that are poorly maintained and mirror prison-like infrastructures.²⁷ In this way, students are made to feel like criminals before having ever received a citation. These overcrowded, structurally degenerating facilities resemble “fortresses, complete with barbed-wire . . . fences, bricked up windows, and heavy locks on iron doors.”²⁸ Some schools have gone so far as to have outfitted holding stations for police precincts on their campuses.²⁹ In these predominantly minority schools, standard jailhouse procedures such as video surveillance, searches, seizures, and frisks are frequently administered.³⁰ The use of overly-stringent security protocols prime students for jailhouses.

d. A Community Disenfranchised

STPP additionally serves as an impediment to regional functionality in areas that are already economically frustrated. In economics, the term “human capital” is used to describe “[t]he knowledge

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Mark P. Francher, *Born In Jail: America's Racial History And The Inevitable Emergence Of The School-To-Prison Pipeline*, 13 J. L. SOC'Y 267, 277-78 (2011) (“The perception of African children as criminals (or at least “troublemakers”) accounts in significant part . . . for the school suspensions and expulsions that occur on the front end. Evidence suggests that when given discretion, teachers and administrators are inclined to presume the worst about African students. Studies indicate that actual conduct of white and African students varies little, but perceptions of that conduct lead to very different treatment.”).

²⁷ See Smith, *supra* note 9 at 1029.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* (“A pipeline case filed in the Atlanta Independent School System indicates that students have been required to assume spread-eagled frisking positions, and to raise their shirts so that their stomachs and bras, in the case of females, are exposed.”).

and skills embodied in people [It has] the potential to create value as a source of output and income.”³¹ Because human capital is said to increase individual productivity, by extension, higher levels of collective human capital beget higher levels of regional productivity.³² Of course, the converse is also true. In a study on economic activity in urban areas, Jason Abel and Todd Gabe found that “[u]sing educational attainment as an indicator of human capital . . . a strong positive relationship [exists] between the proportion of residents with a college degree and the level of economic activity.”³³ Since education is a close nexus to human capital, the existence of STPP as impeding on the learning faculty of urban youths demonstratively inhibits individual productivity and, in turn, regional productivity. Not only does ineffective education diminish human capital, but productivity is even more acutely sterilized by the physical confiscation of juveniles from the community and into correctional facilities. In this way, STPP constrains the advancement of the entire community.

III. The Restorative Justice Model

Beginning in the mid-1980s,³⁴ RJM was formulated with three basic principles in mind: (1) *Repairing harm* by working to “heal victims, offenders, and communities injured by crime;”³⁵ (2) *Restoring broken relationships* by providing victims, offenders, and communities the opportunity for active participation in the justice process;³⁶ and (3) *Rebuilding the community* by rethinking relative

³¹ See A.K., *A History of Legal Exclusion: How to Make Sense of the School-to-Prison Pipeline*, MEDIUM (Jul. 16, 2015), <https://medium.com/@Kunguuu/a-history-of-legal-exclusion-how-to-make-sense-of-the-school-to-prison-pipeline-b41082f26384>.

³² *Id.*

³³ See Jaison R. Abel & Todd M. Gabe, *Human Capital and Economic Activity in Urban America*, N.Y. FED (July, 2018), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr332.pdf.

³⁴ Daniel W. Van Ness & Karen Heetderks Strong, *Preface to the Fifth Edition of DANIEL W. VAN NESS, RESTORATIVE JUSTICE*, at xv (5th ed. 2015).

³⁵ See *id.* at 45. Van Ness explains that “[c]rime leaves injured victims, communities, and offenders in its wake, each harmed in different ways and experiencing correspondingly different needs.” *Id.* Victims have a need to regain control over their lives and feel that their rights are vindicated; offenders are alienated as a result of the criminal justice system, and the cycle of crime continues as we fail to investigate the cause of the offense; finally, the sense of safety within the community is threatened by the crime. *Id.* at 45-46.

³⁶ *Id.* at 47. Van Ness describes our current criminal justice system as reducing offenders, victims, and communities to passive participants. *Id.* RJM, on the other hand, encourages direct involvement of its participants, allowing

roles of government and community, and balancing the need for order and peace.³⁷ Often referred to as the “grandfather” of restorative justice, Howard Zehr’s three R’s: respect, responsibility, and relationship, have become particularly influential in educational settings as a means of rebuilding fractured social capital.³⁸

At its core, RJM is a response to two fundamental deficiencies of the criminal justice system: the oversight of victims and the ostracism of prisoners.³⁹ Under our current system, the interests of victims are severely undercut by a preoccupation with the criminal suspect. Moreover, detaining the suspect is hardly a panacea, as our prison system has long been criticized for its failure to rehabilitate.⁴⁰ RJM focuses on eliminating these deficiencies through its four corner posts: inclusion, encounter, amends, and reintegration.

Inclusions means the “opportunity for direct and active involvement of each party in the procedures that follow a crime.”⁴¹ For a victim, the criminal justice system deprives him of agency in his victimhood by substituting the government as victim in his case.⁴² For offenders, legal protections serve to shield the accused from involvement in the case, thereby dispossessing him of true

victims to regain their power, offenders to voluntarily assume accountability, and strengthening communities by reinforcing shared values. *Id.*

³⁷ *Id.* at 47-48. Van Ness explains that, while peace is the community’s responsibility, and order is the government’s responsibility, “each plays a role in achieving peace and order.” *Id.*

³⁸ See Brenda Morrison, *Restorative Justice in Education: Changing Lenses on Education’s Three R’s*, RESTORATIVE JUSTICE, 3:3, 445, 446 (2015),

<https://www.tandfonline.com/doi/abs/10.1080/20504721.2015.1109367> (“punitive disciplinary measures erode social capital; in turn, these measures erode human capital . . . Instead of an emphasis on punishment for the offender, the emphasis turns to addressing needs and obligations that restore relationships.”).

³⁹ *Id.* at 13.

⁴⁰ *Id.* at 13-14. In the school context, this means that disenfranchised youths who are institutionalized out of school fair no better after having served lengthy and needless sentences. For this reason, RJM provides a meaningful substitute.

⁴¹ *Id.* at 66. The key elements of inclusion are: invitation, recognition, acceptance of the interests, and “willingness to adopt alternative approaches that fit the individuals and their situations.” *Id.*

⁴² See *id.* Some ways RJM serves to include victims is through allowing them to speak and be heard, providing them with information, and allowing them to assist and advocate for their case. *Id.* at 71. A report by Murder Victims’ Families for Reconciliation (MVFR) revealed that these are the three key rights that the criminal justice system denies victims who oppose the death penalty for their offenders: (1) The right to speak and be heard; (2) the right to information; (3) the right to assistance and advocacy. *Id.*

ownership of his culpability.⁴³ Because the safety of the community is threatened by crime, RJM recognizes that communities, too, have a stake in the outcome of justice, and therefore deserve a seat at the table.⁴⁴

Encounter comes in several forms, including victim-offender mediation (VOM), conferencing, circles, and impact panels.⁴⁵ In VOMs, victims and offenders meet—with the assistance of a trained mediator—to discuss the crime and steps towards justice.⁴⁶ Conferences have a facilitator present to assist the group. They include the victim/offender’s family and friends (the community of care) and may even include criminal justice representatives, such as the arresting officer.⁴⁷ Circles are “a community-based decision-making approach.”⁴⁸ They allow for the communication of its members’ expectations and norms, in creating shared affirmations.⁴⁹ Victim-offender panels (VOPS) are made up of victim groups and offender groups, who are linked by a common crime—but are situationally unrelated.⁵⁰ That is, VOPS help victims heal by offering offenders of similar crimes an insight into the hurt they have caused in the hopes of effectuating changed behaviors in the offender.⁵¹

⁴³ See *id.* at 76-77. RJM includes offenders by, for example, holding “circles” that involve community members, offenders, victims, and their friends and families. *Id.* at 76. These circles are aimed at communicating the needs of the victim and the community, as well as the obligations and needs of the offender.

⁴⁴ RJM ensures the communities interests are represented through circles and other *encounter* means.

⁴⁵ The elements of encounter are: meeting, narrative, emotion, understanding, and agreement. *Id.* at 88. In the school setting, a continuum approach to RJM appears to have thus far been the most successful. See Gonzalez, *infra* note 62 at 301-02. (“A continuum model allows school communities to adopt restorative practices ranging from the informal to formal . . . [w]ithin the continuum model restorative practices include affective statements, questions, informal conferences, large group circles, and formal conferences.”).

⁴⁶ *Id.* at 82. The meeting permits offenders and victims to pursue three primary objectives: (1) identify the injustice; (2) make things right; and (3) consider future intentions. *Id.* at 83. Unlike arbitration, the onus is on the participants to resolve the dispute together, and unlike the disassociated nature of criminal justice, participants in VOMS are empowered by their active involvement. *Id.* at 82. Moreover, offenders often lack the insight into the type of harm they have caused. VOMs provide them with the opportunity to both realize this harm and repair it.

⁴⁷ *Id.* at 84.

⁴⁸ *Id.* at 85.

⁴⁹ *Id.* at 86-87. Circles are said to offer “renewed community identity and strengthen[] community life for its members through their participation.” *Id.* at 87.

⁵⁰ *Id.* at 86.

⁵¹ See *id.* at 86.

Amends refers to the steps necessary to repair the harm caused. These steps include: (1) apology; (2) changed behaviour; (3) restitution; and (4) generosity. Apology can be described as an “exchange of shame and power between the offender and the victim,” in that the offender, having exerted power over his victim, is divested of his superiority by extending a humbling apology.⁵² Next, meaningful change has two key components: changed values demonstrated in changed behaviours.⁵³ In order to effectuate changed behaviour, workable strategies include changing the environment, learning new behaviours and rewarding positive change.⁵⁴ Restitution requires the offender to compensate the victim for the harm caused.⁵⁵ Finally, generosity means “going beyond the demands of justice and equity,” such as providing services that only tangentially benefit the victim through some community enhancing initiative.⁵⁶

The final corner post of RJM, reintegration, applies to both victims and offenders, and focuses on re-entering those affected by crime into the community.⁵⁷ Victims need to regain a sense of safety, as well as receiving practical and material help for the loss sustained by the crime. Moreover, spiritual and moral guidance is necessary for a disoriented victim who has been traumatized by the crisis. Additionally, the negative self-identity of a victim must be counteracted through a reinstatement of dignity and worth, since the stigmatization of victimhood can encourage a sense of powerlessness and even responsibility for the experience.⁵⁸ On the other hand, offenders are often ostracized by the community due to public mistrust and cynicism.⁵⁹ It behooves the community

⁵² *Id.* at 101. According to Carl D. Schneider, there are three elements to an apology: acknowledgment, affect, and vulnerability. *Id.* Acknowledgement means to admit wrong doing, affect reflects the personal affect the wrongdoing had on the wrongdoer, and vulnerability means to stand without defense. *Id.*

⁵³ *Id.* at 103. Van Ness explains that change is not complete until understanding is transformed into action.

⁵⁴ *Id.* One type of oft-used reward is a follow up meeting after encounters, in which offenders are praised for their efforts to comply with their agreement to, for example, stay away from certain areas. *Id.*

⁵⁵ *Id.* This can be done by replacing or returning property, financial restitution, or performing services for the victim.

⁵⁶ *Id.* at 104.

⁵⁷ *Id.* at 114. The elements of successful reintegration are: safety, respect for dignity and worth, practical and material help, and moral and spiritual guidance and care. *Id.*

⁵⁸ *Id.* at 116.

⁵⁹ *Id.* at 118. Prisons are said to produce “institutionalized mentality,” which can paralyze ex-inmates with fear over the simplest tasks, such as paying electricity bills. *Id.*

to ensure lower recidivism rates by reintegrating offenders after a crime through, for example, services tailored to the needs of the offender.⁶⁰

Unlike the criminal justice system, RJM treats criminality as a problem to be solved rather than scorned, with all the stakeholders—victim, offender, and the community—at the table.⁶¹ In this way, the criminal justice system’s failure to correct the STPP epidemic by a blind reinforcement of time-worn strategy calls for RJM as a potential remedy in schools.

IV. Restorative Justice as diverting the path of schools to prisons

At its inception, the key rationale behind the RJM movement was an “attention on relationships between all members of the school community.”⁶² Since then, the development of RJM in schools has prioritized unity over alienation.⁶³ Since RJM’s focus is on building relationships, stakeholder involvement, and repairing harm, an ideological shift away from retributive control mechanisms is necessary. Because of the flexibility of RJM, the corner posts of inclusion, encounter, amends, and reintegration easily slot into an educational infrastructure.

a. Inclusion and Encounter

In schools, inclusion and encounter represent an alternative to punitive, zero-tolerance policies. For example, instead of suspending a student for violating no-bullying policies, a VOM or conference can be organized, where victim, bully, families, and school personnel are present. At the encounter, the victim has an opportunity to express why the bully’s behaviour was hurtful, and the offender has an opportunity to understand and empathize with the hurt he has caused. The presence of a trauma informed facilitator is crucial to the development of communications, since

⁶⁰ This could include, for example, social welfare assistance, a skilled individual who is able to listen and understand, or a support group.

⁶¹ *Id.*

⁶² The use of restorative justice in schools is not an entirely novel idea, beginning in Australia in the early 1990s. See Thalia Gonzalez, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 299 (2012).

⁶³ Students are alienated through punitive responses to misconduct. *Id.* at 299.

neighbourhoods exposed to poverty, crime, violence, and trauma “can impact the life of a student much like war trauma affects military veterans.”⁶⁴

By meeting, the first element of encounter is satisfied.⁶⁵ Next, narrative—the communication between the parties—allows the victim and bully to express and address their emotions. This can foster a healing environment for both victim and offender, since the offender becomes more sympathetic to the victim, while the victim becomes more understanding of the offenders (perhaps difficult) background. Through meeting and narrative, shared emotions are explored, which allows both parties to develop a feeling of empathy and understanding toward each other, satisfying the third and fourth element of encounter. In this way, the bully grows less nefarious in the eyes of the victim, and the victim becomes personalized in the eyes of the bully. Finally, an agreement can be made as to a resolution, such as the offender’s promise be sensitive and respectful to the victim in the future.⁶⁶

Using meeting, narrative, emotion, understanding, and agreement, the once-adversaries are able nurture a functional co-existence, reinforcing Zehr’s three R’s: respect, responsibility, and relationship. The victim and offender learn to respect each other through sharing their experiences, the offender becomes responsible for his acts through being held accountable by his community, and the fractured relationship between victim and offender is restored. In this way, encounter and inclusion alter the cultural paradigm from one of discipline and control to one of engagement, such

⁶⁴ Students with a background of trauma must be encouraged and supported in the same way as students with disabilities if there is any hope of dismantling the STPP. See Crawley & Hirschfield, *supra* note 14 (“[i]n 2015, [a lawsuit was filed] asserting that students experiencing trauma had been punished and excluded more than supported and provided with a healthy school learning environment. The plaintiffs and their supporters mandated that practices be implemented to support students suffering from emotional trauma, similar to those that assist students with physical and learning disabilities”); Sarak K. Satullo, *How Paying Attention to Trauma is Changing This School*, U.S. NEWS (Nov. 17, 2018), <https://www.usnews.com/news/best-states/pennsylvania/articles/2018-11-17/how-paying-attention-to-trauma-is-changing-this-school> (“We really dug deep and realized it was really a lack of trauma awareness in the staff that was at the root cause of our academic indicators not moving”).

⁶⁵ See Van Ness, *supra* note 46 at 88 (the elements of encounter are: meeting, narrative, emotion, understanding, and agreement).

⁶⁶ This could range from keeping the students apart, or encouraging time spent together to foster a healthy relationship if this is feasible.

that students understand their place in the social web as reflecting relational and behavioral standards.⁶⁷

b. Amends

Making amends is fundamental to restoring damaged relationships in heavily tangled social webs, such as schools. If, for example, a student would otherwise be expelled for stealing from another student, *amends* can provide a means for the offender to rectify the harm caused and return to the community.

During the encounter, the student administers an apology directly to the affected student.⁶⁸ In that apology, the offender firstly *acknowledges* that stealing is wrong, and that in stealing, she violated a social norm as well as violating the person she stole from. Secondly, because remorse is said to be “the most powerful factor in an offender’s decision to stop offending,”⁶⁹ the student’s admission that her behaviour *affected* her, through feelings of shame and guilt, increases likelihood that she will not offend again. Finally, if the offender attempts to exonerate herself through excused behaviours, the apology cannot accomplish its retributive affect. Thus, the offender’s *vulnerability*—the admission that she is without defense—makes the wrongdoer powerless, so that the “exchange of shame and power between the offender and the offended is recognized.”⁷⁰ Once a meaningful apology is issued, the next step is changed behaviour, which requires a change of environment, learning new behaviors, and rewarding positive change.

As discussed in Section II.C, students in impoverished neighbourhoods are often subjected to educational facilities that resemble jailhouse infrastructure. For that reason, renovation of the

⁶⁷ The success of this method can be demonstrated by collation of field study statistics. For example, an experimental implementation of RJM in Denver public schools, which included VOMS and large group circles, saw a reduction in suspensions by 29%, and a reduction in expulsions by 43-100%. *See* Gonzalez, *supra* note 62 at 323-24. Through “nurturing motivational bonds of belonging . . . [RJM supports] individual development and social responsibility. This is distinct from formal institutional responses that rely on systems of institutional sanctions to leverage compliance.” *See* Morrison, *supra* note 39.

⁶⁸ And, if necessary, others present in the encounter.

⁶⁹ *See* Van Ness, *supra* note 35 at 101.

⁷⁰ *See id.*

schoolhouse through federally approved grants is the primary catalyst for a changed environment.⁷¹ More to the point, the overly punitive climate that is typical of zero-tolerance culture must be softened to effectuate change. These policies reflect an austere institutional stance on misconduct, and there are myriad reasons why this is harmful. For example, the student's history of "good" behaviour is overlooked; he has no opportunity to cure; and he loses incentive to do better due to the dauntingly high behavioural bar imposed on him.⁷² A proposed alternative to this unforgiving educational milieu is the "tough as necessary" [TN] approach, which "punishes according to the motivations and circumstances surrounding the infraction."⁷³ The TN approaches eschews automatic punishment in favour of administrative scrutiny of policy infractions.⁷⁴ This includes peer mediations, conferences, VOMS, and other encounter means discussed above, before deciding whether to respond with discipline or grace. In this new environment, the substitution of judgment for compassion allows space for the child's moral development using social conditioning as a behavioural tool. That is, through a diplomatic response to adolescent conduct, the student learns that her "good" behaviour will be positively rewarded, and her "bad" behaviour will be constructively approached but will not threaten her security. Then, by rewarding the new behaviour through acceptance, acknowledgment, and praise, pro-social behaviour is reinforced.

Restitution and generosity are the final steps for making amends, and as mentioned above, include compensating the victim for the harm caused, as well as going above and beyond to rectify that harm. A promise of restitution may arise out of an agreement from a VOM encounter and has the

⁷¹ See generally Gonzalez, *supra* note 62. In her research, Gonzalez lists a number of states where successful restorative justice models were initiated in schools as a result of federal or state approved grants.

⁷² See Peter Lowe, *The Downsides of Zero-tolerance Policies*, 19 NO. 9 ME. EMP. L. LETTER 1 (2014) (discussing the effects of zero-tolerance policies inside the work place).

⁷³ See Sheena Molsbee, *Zeroing Out Zero Tolerance: Eliminating Zero Tolerance Polices in Texas Schools*, 40 Tex Tech. L. Rev. 325, 356 (2008).

⁷⁴ See *id.*

potential to “repair the financial and . . . relational harms that crime has left in its aftermath.”⁷⁵ For example, after stealing a student’s backpack, the offender can repair the harm by returning or replacing the item. The obvious difficulty that lies herewith is that the impoverished student who resorts to theft often does so because of a lack of fundamental resources at her disposal. One solution is for the school to temporarily employ the offending student to complete acts of community service until the amount owed is accrued. Then, the earnings are turned over to the victim. As a means of relational reconstruction, a depersonalized school-to-student compensation is eschewed in favour of a direct student-to-student handover. In this way, the agreement from the VOM is realized in a physical, symbolic exchange.⁷⁶ Thus, the victim is *directly* “made whole” after the crime,⁷⁷ the offender is deterred from reoffending, and a respect for possessory interests is established.⁷⁸

The final step in making amends is generosity, which can be referred to as “creative restitution.”⁷⁹ In education settings, going the “second mile” can be achieved through community contribution, such as painting over graffiti walls or lending a hand at school initiatives.

c. Reintegration

If encounter and amends are successful, the next step is shifting the student towards reintegration. For effective reintegration, both the needs of the school and the condemned student must be accounted for. Firstly, other students must feel secure in the knowledge that the offender is rehabilitated. While there is no single prophylactic for juvenile delinquency, there are certain tools that facilitate reformation. For example, trauma-informed schools like Broughal Middle School in

⁷⁵ See *Restitution*, CTR FOR JUST. & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/restitution/#sthash.9wmwCetD.dpbs> (last visited Mar. 2, 2019).

⁷⁶ The symbolic exchange restores the power dynamic between victim and offender.

⁷⁷ For some victims, financial restoration is not sufficient to heal the emotional harm of the crime. For these victims, a symbolic token is necessary to recalibrate the disrupted power balance.

⁷⁸ In discussing the difficulties related to restitution, Van Ness brings to light the issue of public harms and secondary/co-victims. See Van Ness, *supra* note 35 at 104-06. While the issue of quantifying injury to society is still an open question in restorative justice theory, Van Ness suggests that, as a general principle, “those who have suffered the most direct and specific injuries” should be prioritized in compensatory determinations. *Id.* at 106.

⁷⁹ See Van Ness, *supra* note 35 at 104.

Pennsylvania are acting on research that demonstrates how living in survival mode as a result of abuse, family dysfunction, and neglect causes a child's stress hormone to shut off the part of the brain responsible for learning.⁸⁰ In implementing a "school-wide culture transformation" with "an army of community supports," Broughal has initiatives such as "peace zones" where students can take ten minutes to calm down. When dealing with major upheaval, "red zones" allow students to engage in mindful meditation. In this way, students can be safely reintegrated into the school environment with measures that promote a rehabilitative effect. While Van Ness discusses respect for dignity and worthy, practical and material help, and moral and spiritual guidance as protections reserved for reintegrating victims,⁸¹ in this context, it would seem that those protections shift to the offender who is in need of practical and moral support in returning to a beloved, trauma-informed community.

V. Conclusion

The RJM framework in educational settings stands in stark contrast to the traditional allopathic school framework that (misguidedly) targets symptoms and ignores the cause. Just as an integrative approach is necessary to heal the body, so, too, is this true for healing fractured communities. The existence of exclusionary, unforgiving, zero-tolerance policies serves to exacerbate rather than mitigate student misbehavior, through increased suspensions, declining academics, and social mistrust. Thus, students in these educational settings find themselves more and more likely to be expelled and eventually incarcerated. In turn, increased incarceration of youths undermines social and human capital, which contributes to declining regional productivity and stymies the growth of the community. RJM acts as a proactive and compassionate alternative that emphasizes the importance of relationships, accountability, and community. Seemingly, then, Martin Luther King's theory that "the beloved community is the framework of the future" was prophetically

⁸⁰ See Satullo, *supra* note 65.

⁸¹ See Van Ness, *supra* note 34 at 114.

telling. Within the beloved community, collective values and norms for pro-social conduct are reinforced through conflict resolution, trauma-informed educators, and loving support. As the school-to-prison pipeline despairingly grows, the time has come for America to open its eyes to what *provably* works. In this way, RJM provides a meaningful remedy to the STPP epidemic, and serves as a beautiful fork in the familiar, criminally punitive road.