

1.4: Perspectives On Justice

Crime Control Perspective ^[21]

The crime control model focuses on having an efficient system, with the most important function being to suppress and control crime to ensure that society is safe and there is public order. Under this model, controlling crime is more important to individual freedom. This model is a more conservative perspective. In order to protect society and make sure individuals feel free from the threat of crime, the crime control model would advocate for swift and severe punishment for offenders. Under this model, the justice process may resemble prosecutors charge an ‘assembly-line’: law enforcement suspects apprehend suspects; the courts determine guilt; and guilty people receive appropriate, and severe, punishments through the correctional system. ^[2] The crime control model may be more likely to take a plea bargain because trials may take too much time and slow down the process.



Think About It... Murder in the Gym: Crime Control Model Example by Dr. Sanchez

Imagine working out at the local gym, and a man starts shooting people. This man has no mask on, so he is easy to identify. People call 911 and police promptly respond and can arrest the shooter within minutes. Under the crime control model, the police should not have to worry too much about how evidence gets collected and expanded. Investigative, arrest, and search powers would be considered necessary. A crime control model would see this as a slam dunk and no need to waste time or money by ensuring due process rights. If there were any legal technicalities, such as warrantless searches of the suspects home, it would obstruct the police from effectively controlling crime. Effective use of time would be to immediately punish, especially since the gym had cameras and the man did not attempt to hide his identity. Any risk of violating individual liberties would be considered secondary over the need to protect and ensure the safety of the community in this model. Additionally, the criminal justice system is responsible for ensuring victim’s rights, especially helping provide justice for those murdered at the gym.

The due process model focuses on having a just and fair criminal justice system for all and a system that does not infringe upon constitutional rights. Further, this model would argue that the system should be more like an ‘obstacle course,’ rather than an ‘assembly line.’ The protection of individual rights and freedoms is of utmost importance and has often be aligned more with a liberal perspective. ^[3]

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Think About It... Murder in the Gym Continued...

Back to the gym murder, the due process model would want to see all the formalized legal practices afforded to this case in order to hold him accountable for the shooting. If this man did not receive fair and equitable treatment, then the fear is this can happen to other cases and offenders. Therefore, due process wants the system to move through all the stages to avoid mistakes and ensure the rights of all suspects and defendants. If the man in the gym pled not guilty due to the reason of insanity, then he can ask for a jury trial to determine whether he is legally insane. The courts would then try the case and may present evidence to a jury, ultimately deciding his fate. The goal is not to be quick, but to be thorough. Because the Bill of Rights protects the defendant's rights, the criminal justice system should concentrate on those rights over the victim's rights, which are not listed. Additionally, limiting police power would be seen as positive to prevent oppressing individuals and stepping on rights. The rules, procedures, and guidelines embedded in the Constitution should be the framework of the criminal justice system and controlling crime would be secondary. Guilt would get established on the facts and if the government legally followed the correct procedures. If the police searched the gym shooters home without a warrant and took evidence then that evidence should be inadmissible, even if that means they cannot win the case. [5]

There are several pros and cons to both model; however, there are certain groups and individuals that side with one more often than the other. The notion that these models may fall along political lines is often based on previous court decisions, as well as campaign approaches in the U.S. The crime control model is used when promoting policies that allow the system to get tough, expand police powers, change sentencing practices such as create "Three Strikes," and more. The due process model may promote policies that require the system to focus on individual rights. These rights may include requiring police to inform people under arrest that they do not have to answer questions with an attorney (Miranda v. Arizona), providing all defendants with an attorney (Gideon v. Wainwright), or shutting down private prisons who often abuse the rights of inmates.

To state that crime control is purely conservative and due process if purely liberal would be too simplistic, but to recognize that the policies are a reflection of our current political climate is relevant. If Americans are fearful of crime, and Gallup polls suggest they are, politicians may propose policies that focus on controlling crime. However, if polls suggest police may have too many powers and that can lead to abuse, then politicians may propose policies that limit their powers such as requiring warrants to obtain drugs. [6] Again, this may reflect society, a reflection of a part of society, or the interests of a political party or specific politician.



Act It Out!

Discuss with several of your classmates what the primary goal of the criminal justice system should be: to control crime, ensure due process, or both? Explain how this opinion may get influenced by individual factors, such as age, gender/sex, race/ethnicity, economic situation, a country born in, and more. Could goals change with the more education given about criminal justice? If so, make an argument in favor of education. If not, make an argument against educating the public on criminal justice.

Rehabilitation Perspective [22]


Although not as old as some of the older ideologies, rehabilitation is not brand new. Additionally, it is the only one of the four main ideologies that most accurately attempts to address all three goals of corrections, which are:

1. Punish the offender
2. Protect Society
3. Rehabilitate the offender.

Certainly, all four ideologies address the first two goals, punishment, and societal protection. However, the goal of rehabilitating the offender is either silent, or not addressed in retribution, deterrence, or incapacitation. This does come as a cost. As we will talk about in more detail when covering prisons and jails, there is a great paradox that is happening in our society when we heavily rely on jails and prisons. Most offenders will come out of institutions (roughly 95% of all people who enter prisons are released), and little is done to change them while they are there. This is mostly due to our attitudes towards offenders, the policies that are necessarily placed on individuals while they are locked up, and the institutions themselves. And yet, there is the expectation that these individual leaving prisons will not commit crimes in the future.

The question here is this: what have we done to change them so that they are not reoffending? Without the incorporation of some form of rehabilitation, the answer is fairly clear... Nothing. Yet, we expect it.

Rehabilitation has taken on different forms through its history in the United States. We have considered individuals out of touch with God, and so offenders needed to be penitent, in order to get right with God. One of America's earliest prisons was designed with this in mind. The Eastern State Penitentiary, opening in 1829, included outside reflection yards; so that offenders could look up to God for penance.



Pin It! Eastern State Penitentiary

To see more of this prison, visit <https://www.easternstate.org/>

Reformatories were another example of how rehabilitation was viewed in the past. The reform movement tried to rehabilitate the offender through more humane treatment, to include basic education, religious services, work experience, and general reform efforts. This was done in an effort to reform individuals, thus allowing them to come back to society. The Elmira Reformatory was one of the earliest efforts of the reform ideal, and many prisons built in the United States were based on this prison. Below is a picture of Elmira.



Figure 1.15 Elmira Reformatory ^[23]

Other attempts at rehabilitation included more medical approaches. In the past, offenders were viewed as sick, and in need of medical cures. This medical approach, while greatly reduced, is still used in some areas today. For example, the chemical castration of certain offenders does still occur. For example, HB 2543, in Oklahoma, in September of 2018, focuses on the mandated use of medroxyprogesterone acetate as a treatment, and is required before appropriate release of convicted sex offenders.

Rehabilitation, as an ideology has had critics. This is in large part due to how it is perceived. Many have voiced an objection, as it is seen as being “soft” on offenders. This is also how it has been discounted when coupled with the fear of crime. Several examples are presented as to its ineffectiveness, and weakness to the problem of crime. Probably the most notable example of the ineffectiveness of rehabilitation came in the 1970s. In 1974, Robert Martinson provided support for many that were clamoring to demonstrate that the ideas of rehabilitation were ineffective. In a review of over 230 programs, Martinson concluded that “With few and isolated exceptions, the rehabilitative efforts that have been undertaken so far have had no appreciative effect on

recidivism” (Martinson, 1974, p. 25). [1] This was the spark that many needed to turn toward the more punitive ideologies that we have so far discussed. However, it did help some to ask more detailed questions about why rehabilitation was not working. Additionally, it helped researchers to ask more critical questions about measurement, how to more properly evaluate rehabilitation and to understand the difference of what does not work versus what does work for offenders. These principles of effective intervention become the cornerstone of modern rehabilitation.

Understanding Risk and Needs in Rehabilitation

Today’s rehabilitative efforts do still carry punishment and societal protection as goals, but the focus of rehabilitation is on the changing of offenders’ behaviors so that they are not committing crimes in the future. This is done by understanding what are the items that make offenders at risk for offending. Additionally, based on the levels of risk items, some offenders are at higher risk for offending than other offenders. This includes items like prior criminal history, antisocial attitudes, antisocial (pro-criminal) friends, a lack of education, family or marital problems, a lack of job stability, substance abuse, and personality characteristics (mental health and antisocial personality). Collectively these are considered as risk factors for offending (re-offending). While we can change the number of priors someone already has, all of these other items can be addressed. These are considered as criminogenic needs. Criminogenic needs are items that when changed, can lower an individual’s risk of offending. This is a core component of Paul Gendreau’s (1996) principles of effective intervention, and are at the heart of most modern effective rehabilitation programs. [2] Additionally, thousands of offenders have been assessed on these items, which has helped to develop evidence-based rehabilitation practices. These are efforts that are based on empirical data about offenders. When these criminogenic needs are addressed, higher-risk offenders demonstrate positive reductions in their risk to offend.

Over the last 40 years, efforts to change these characteristics, in order to reduce offending have been varied. One of the most useful approaches to changing the antisocial attitudes and behaviors of offenders has come in the form of behavioral and cognitive behavioral change efforts. Cognitive behavioral change for offenders is based on the concepts that the behaviors that one exhibit can be changed by changing the thinking patterns behind (before) the behaviors are exhibited. That is (criminal) behavior is based on cognition, values, and beliefs that are learned vicariously through the interactions and observations of others. It is especially relevant since we are receiving individuals from prison, where these ideas, peers, values, and beliefs may dominate the institution. For a more detailed explanation, please see <https://www.apa.org/ptsd-guideline/patients-and-families/cognitive-behavioral.pdf> .

Today, evidence-based rehabilitative efforts are now used as benchmarks when establishing programs that are seen as effective, versus ones that show little to no (or even negative) results. Rehabilitation programs that follow these principles of effective intervention are showing that they can achieve these three goals of corrections (punishment, societal protection, and offender change). In fact, the U.S. Federal Government has a section of the National Institute of Justice devoted to these evidence-based practices, and what programs are seen as effective, promising, and not effective. This site is called “CrimeSolutions,” and can be visited at <https://www.crimesolutions.gov/> . This resource provides invaluable information for individuals making decisions on what works for offenders and is based on empirical studies of hundreds of different approaches.

Restorative Justice Perspective [24]

The process of restorative justice programs is often linked with community justice organizations and is normally carried out within the community. Therefore, RJ is discussed here in the community corrections section. Restorative justice is a community based and trauma-informed practice used to build relationships, strengthen communities, encourage accountability, repair harm, and restore relationships when wrongdoings occur. As an intervention following wrongdoing, restorative justice works for the people who have caused harm, and the victim(s), and community members impacted. Working with a restorative justice facilitator, participants identify harms, needs, and obligations, then make a plan to repair the harm and put things as right as possible. This process, restorative justice conferencing, can also be called victim-offender dialogues. It is within this process that multiple items can occur. First, the victim can be heard within the scope of both the community and within the scope of the offense discussed. This provides the victim(s) an opportunity to express the impact on them, but also to understand what was happening from the perspective of the transgressor. At the same time, it allows the person committing the action to potentially take responsibility for the acts committed, directly to the victim(s) and to the community as a whole. This restorative process provides a level of healing that is often unique to the RJC. Pictured, the different processes that can occur during the different types of dialogues within RJC.

Restorative Justice Processes

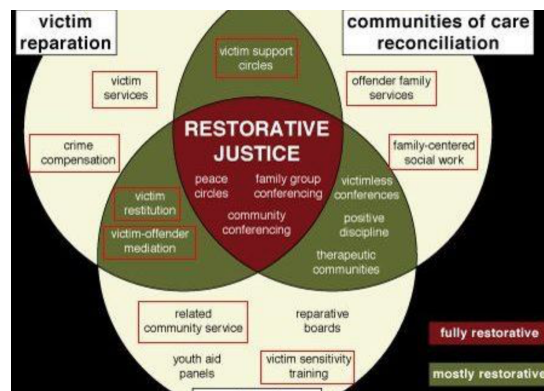


Figure 1.16 Restorative Justice [25]

Restorative Justice Success

For over a quarter century, restorative justice has been demonstrated to show positive outcomes in accountability of harm, and satisfaction in the restorative justice process for both offenders and victims. This is true for adult offenders, as well as juveniles, who go through the restorative justice process. Recently, there have been questions whether there is a cognitive change that occurs in the thought process of the individuals completing a restorative justice program. There is a growing body of research that demonstrates that change in cognitive distortions that may occur through successful completion of restorative justice conferencing (RJC). This will be an area of increasing interest for practitioners, as restorative justice continues to be included in the toolkit of actions within community justice and community corrections.

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