Restorative Justice as an Ancient and Appropriate Response to Juvenile Crime

A thesis submitted to the Miami University Honors Program in partial fulfillment of the requirements for University Honors with Distinction

by

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December 2006
Miami University
Oxford, Ohio
ABSTRACT

RESTORATIVE JUSTICE AS AN ANCIENT AND APPROPRIATE RESPONSE TO JUVENILE CRIME

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The principles of restorative justice, which include community involvement, victim participation and reparation by the offender to the victim and community, continue to gain influence in judicial circles internationally. Study of the strengths and weaknesses of the many distinct and diverse forms of restorative justice in practice today proves essential in finding restorative justice principles manifested into successful model. Successful restorative justice programs could potentially provide the foundation for reform of the problematic United States juvenile justice system. By examining a decade-old restorative justice program based out of the west side of Chicago called the Community Panels for Youth (CPY), this thesis illustrates the origins of restorative justice through historical and cultural examples from Native American communities, applies these principles to the processes of CPY, compares the strengths and weakness of this particular model against other restorative justice initiatives, addresses the most prevalent criticisms of restorative justice and illuminates some of the most important and difficult questions restorative justice faces on its path to nationwide acceptance.

Analysis of the works from some of the most influential restorative justice academics, such as Howard Zehr, Lode Walgrave, Elmar Weitekamp, and Heather Strang, establishes standards necessary for effective restorative justice practices which are then compared to the CPY model. The comparison between the historical application, the theoretical ideal and the practiced reality exposes attributes and limitations to this particular model’s processes and philosophy. Elements imperative to this comparative analysis, including procedures and credo of CPY, are collected through interviews with the directors and facilitators of the program as well as information available in the CPY training manual, pilot video and guide to local action.

Through this analysis, it becomes clear that Chicago’s CPY is an appropriate model on which to base further experimental programs. The flaws identified prove to be procedural issues that do not compromise the integrity of underlying restorative justice principles. Thus, solutions necessary for continued use of this restorative justice model are easily obtained. This process of analyzing and identifying quality examples of restorative justice in practice presents an opportunity for recreating and improving on existing justice programs.
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ACKNOWLEDGEMENTS

I would like to thank my advisor, Dr. Allan M. Winkler, for his encouragement and
tireless review of early drafts. I would also like to express my gratitude to Dr. Carolyn
Haynes for her support when I first decided to undertake the thesis writing process and
Dr. Mary Frederickson for promoting further development through focus on the
significance of the piece. I would also like to acknowledge Dr. Daniel Cobb for his
guidance in regard to Native American examples of restorative justice.

Additionally, this project would not have been possible without Ms. Katie Egart.
Ms. Egart not only acted as a reader for this thesis, but through the Urban Leadership
Internship Program connected me with the internships in Chicago that inspired the topic.
I am grateful for the time the staff members at my internship sites, Northwestern
University’s Bluhm Legal Clinic and the Community Justice for Youth Institute, took to
introduce me to the topic of restorative justice which prompted this extended study. The
passion these dedicated individuals evoked for true justice through their daily work
provided inspiration for my future career goals.

I appreciate my friends’ constant support and willingness to occasionally entertain
discussions about thesis arguments. I would like to thank Kevin for talking me through
the final stages of the thesis, right down to the very last mouse click. Finally, I would
like to express gratitude for my mother, Sally, who willingly listened whenever I called
and provided encouragement throughout the process. I am grateful for my father, Gerald,
who always finds time to help me brainstorm and work through arguments. Finally I
would like to thank my brother, David, for his empathy and willingness to escape for
dinner uptown Oxford whenever the writing process became tiresome. I am certain that
my family’s support and continual interest in all of my endeavors is grounded in love, for
which I am fortunate.
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Introduction

Marvin, a former drug dealer and gang member from Chicago, had considerable experience with incarceration. He had moved in and out of the juvenile corrections facility frequently in the past, and had strong feelings about what it was like. The center “is really boring,” he said. “I think it’s supposed to be, so you have time to think about what you did. There’s a big steel door that clicks, and then you’re locked up, man. The rooms are tiny. But what do you need space for? There’s nothing to do.”

The structured environment of the corrections facility did not even attempt to address the problems Marvin faced at home, such as his mother’s drug-addiction, lack of organization within the home and past trauma suffered in his childhood. Marvin says, the court instead

denied me the right to go home. I was a menace to society, they said, because I could cause bodily harm to others and probably would. I was a risk. My mom and dad never even came, not even when they were supposed to for a court date. That was hard for me to understand.

Without the support of his parents and with past involvement in many undesirable activities, Marvin may have been labeled as a hopeless case.

A stroke of good luck brought Marvin a unique opportunity to attend the Second Chance Ranch, a program that not only removes youth from the detention facility, but also relocates them away from the city and their home environments. Marvin describes his impressions of his new environment at a mostly white high school in the suburbs:

Coming from an all black school, or at least mostly black, there were some things to get used to. And I could have gotten in the situation where I could have gone back to the city and done that again. But I didn’t want to. And it’s not that I needed a white school; I needed a place that was different, where nobody’s expecting me to be a certain way.

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2 Ibid., 94.
3 Ibid., 100-101.
By relocating away from a possibly toxic environment and gaining the support he needed from the staff at the ranch, Marvin succeeded in overcoming the personal obstacles that weighed him down in the previous years. He noted the powerful change:

I was really getting established [at Second Chance Ranch]… I was getting all A’s in school, doing well. I mean–me--getting a 4.0! It was something I never thought I could do or even wanted to do… I really started liking myself. I mean, I didn’t have good feelings before; my mom always put us kids down, told us how worthless we were… But when I’d been at the ranch a while, I don’t know, I felt like I was somebody.4

For Marvin the keys to his success seemed simple; a change in environment and support from adults. These simple tools allowed him to tap his inner strength to conduct his own transformation to gain peace of mind and focus in life. Marvin explained his success, “There aren’t any other distractions in my life, so that helps… I know that I’m going to college. I’d go even if I didn’t have the possibility of scholarships for sports.”5 Through the late 1990s, Marvin stayed with a mentor who worked with him at the Second Chance Ranch and continued with his development in an altered environment. Taking Marvin’s story as a starting point, the question becomes how the justice system can provide tools such as environment change and adult support to other youth without the radical measures employed by Second Chance Ranch’s relocation principle.

In reality, not every child can be relocated, nor should children be separated from their parents and their communities in most situations. Community Panels for Youth (CPY), a program operated by the Community Justice for Youth Institute located in Chicago, provides the tools Marvin gained at Second Hand Ranch without relocation. Ellen Garza, a community advocate and advisory committee member of CPY, states:

Once a kid gets in the system, it’s hard to get out. It follows them. When a kid does something stupid or immature, we can handle it in a community environment. This way youth learn

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4 Ibid., 100.
5 Ibid., 102.
Based on the principles of restorative justice, CPY represents a unique diversion program from juvenile court. This thesis will explore how restorative justice differs from other criminal processes, how the principles of restorative justice function within the CPY program, how the community panel model differs from other restorative justice programs and how CPY addresses common issues plaguing restorative justice in America. This examination will provide insight into a more sufficient way to deal with youth crime away from the largely discredited juvenile court.

As seen in Marvin’s case, transforming troubled youth on a consistent basis to productive law-abiding citizens outfitted to bestow their natural talents on a grateful community remains simply a pipe-dream for the juvenile court system in Chicago, Illinois. Established in 1899 with the Juvenile Court Act (Illinois Juvenile Court Act, 1899 Ill Laws 131), Chicago’s Juvenile Court claimed the honor as the first of many juvenile court systems that would materialize across America around the start of the 20th century. With the purpose of rehabilitation, the state assumed the role of the “parens patriae,” a role on behalf of the youth to ensure proper treatment in reaction to the law breaking that occurred. Although the motives of the court proved well-intentioned, the recidivism data collected at mid-century indicate that not only did the courts fail to rehabilitate youth offenders but increasingly they applied a more punitive approach by increasing the harshness of sentences. This harshness peaked with the case of In re Gault, when the juvenile court sentenced a fifteen-year-old boy to detention until the

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age of twenty-one without informing his parents and without a trial for the crime of making an obscene phone call. In the adult courts, the same crime would have resulted in a fine. After *Gault*, the pendulum of juvenile justice dipped back towards the middle, providing more safeguards for the youth, such as the right to an attorney and due process. Such reforms, however, do not guarantee the best result for those that the court adjudicates delinquent. The original intentions of the court to steer the youth back onto a straight and narrow path seem to have been abandoned, and the children who come in contact with the court system suffer for its incompetence. Those aware of the flaws of the retributive juvenile court system look to alternatives such as restorative justice for a solution.

In *Changing Lenses: A New Focus for Crime and Justice*, restorative justice advocate Howard Zehr describes retributive justice and its restorative alternative as a dichotomy. Restorative justice focuses on crime as a violation of individuals and relationships that requires involvement by the victim, offender and community to search for solutions. Restorative justice creates an obligation to make things right through actions that promote repair, reconciliation and reassurance. Conversely, retributive justice views crime as a violation against the state characterized by lawbreaking and guilt. Most Western countries today embrace this contest between the offender and the state guided by systematic rules where justice determines blame and administers pain. Some commentators deem such dichotomies as too simplistic, boldly depicting restorative justice as good in comparison to an evil counterpart in retributive justice. Regardless, society faces a choice of how to view lawbreaking. Society can either continue to focus

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exclusively on the rule that was broken or take a restorative approach by looking first at the harm it causes to people and relationships. The perspective society chooses to take will determine the corresponding response and the appropriate form of justice.\textsuperscript{10}

Restorative justice dates back to when humans first started forming communities.\textsuperscript{11} The transformation to retributive society, which is often assumed to be the universal way to respond to common violations, occurred in the beginning of the 13th century. Restorative justice elements, such as the traditional victim’s right to receive compensation directly from the offender or his kinship, disappeared in Europe as compensation rights eventually transferred from victim, to the ruler, to the collective society, where it remains to this day.\textsuperscript{12} The principles of philosopher Immanuel Kant form the ethical basis of the current retributive system, claiming that maintenance of social balance requires punishment of evil by imposing suffering on those who make others suffer.\textsuperscript{13} In the video \textit{Community Panels for Youth: A Community-Based Alternative to Juvenile Court}, Community Panels for Youth director, Cheryl Graves describes the disproportionate suffering retributive justice visits on juveniles:

\begin{quote}
Usually when a juvenile commits a crime their case is referred to juvenile court. It’s heard by a judge, and they end up with a sentence which labels them as a bad kid. And they have a record which can follow them in terms of school or a job.\textsuperscript{14}
\end{quote}


\textsuperscript{12} Ibid., 81; 87-88.


\textsuperscript{14} \textit{Community Panels for Youth: A Community-Based Alternative to Juvenile Court}, (Chicago, Beyondmedia Education/Community Justice for Youth Institute), videocassette: VHS.
Dissatisfaction among citizens, continued insecurity of societies, failure to improve the quality of life of citizens, and inability to maintain peace in communities all show retributive justice’s common forms of handling problems and conflicts as insufficient and outdated. Society now turns back to ancient forms of solving conflicts with the hope of better results using a contemporary form of restorative justice.\textsuperscript{15} Although the historical and anthropological accounts of restorative justice type processes cannot possibly account for the tremendous diversity of restorative justice initiatives today, they provide a foundation for an alternative perspective human society can take when responding to crime.\textsuperscript{16}

A collection of some of these historical and anthropological accounts in the lives of North American Indians illustrates the principles of restorative justice while providing insight into how these principles function within Illinois’ Community Panels for Youth. Then, the various models in which these principles regularly manifest in practice will be depicted and evaluated for their suitability for dealing with juveniles. Finally, the policies and functions of Community Panels for Youth will be set against criticisms of similar programs to evaluate this program’s effectiveness in applying restorative justice concepts.

\textsuperscript{15} Weitekamp, “History of RJ” 94.
The Principles of Restorative Justice

A retributive approach gives the state the power to inflict harm on the offender and the ability to ignore the victim. A rehabilitative approach seeks to help the offender and in the process ignores the victim. Unlike these other forms of justice, restorative justice provides a more holistic approach, a framework within which multiple aims of justice are achieved. Cheryl Graves describes how this framework pans out differently for youth involved in CPY:

Community Panels for Youth is based upon the balanced and restorative justice model. Restorative justice is really a fundamental change in how the justice system works because now it’s not just simply considering what crimes have been committed and what punishment should be given. It’s really about how to repair the harm done, how we restore people in terms of relationships in terms of community building.

By addressing the harm caused to all parties involved, restoring peace within communities and setting the victim as the centerpiece of the whole process, restorative justice strives to provide victim service and support, offender rehabilitation and integration, community safety and crime control, and community empowerment.

Although the principles of restorative justice originated with the formation of human communities, most scholars attribute the creation of the term ‘restorative justice’ to American psychologist and advocate of creative justice Albert Eglash (1977). He used this terminology to differentiate between the restorative, rehabilitative and retributive approach to crime. Common assumptions from historical literature point to retributive punishment as the mainstay of justice. The response to norm violators, in isolated...
societies in particular, included a variety of restorative responses. In fact, restitution and reconciliation to the victim or the victim’s kin regularly took precedence over retributive action against the offender.\(^{23}\) The utilization of restorative practice focused mainly on personal crimes rather than property crimes, since the organization of early civilizations revolved around more communal property arrangements. This fact proves intriguing in the light that restorative justice authors in the 1970s and 1980s focused on restorative justice’s applicability to property crimes exclusively. Some advocates argue that limiting restorative justice initially to property crime has illogically hampered the spread of restorative justice to dealing with personal violations.\(^{24}\) Although scholars disagree on whether restorative justice practices in such societies were necessarily the only or even dominant method of resolving conflict or maintaining order, such a response to offenders suggests that human society’s purpose is to resolve problems and more importantly to demonstrate that this response does not require a form of revenge or retribution.\(^{25}\)

In order to shed the cultural views of retributive justice, society must redefine crime and begin to consider offenses as “conflicts” or “problems” demanding the most advantageous social solution possible, rather than pin guilt and penalties on individual law-breakers. The process of redefining crime and de-penalizing societal response does not trivialize violations, but rather personalizes and empowers those suffering the harms.\(^{26}\) The coordinator of the International Network for Research on Restorative Justice for Juveniles, Lode Walgrave, explains that restorative justice is anything but a soft option for offenders:

\(^{24}\) Ibid., 83.
\(^{26}\) Walgrave, “Diversion?” 235.
In the traditional criminal justice procedures, confrontation is indirect, impersonal and filtered through judicial rituals. Restorative processes, on the contrary, are personal, direct and, often, very emotional. For offenders, being confronted directly with the suffering and harm they have caused and with the disapproval of their family is a deeply touching burden... Through their personal relations with the participants and empathy with other persons, including the victim, offenders are brought to feel intensely a mixture of all kinds of emotions like shame, guilt, remorse, embarrassment, humiliation... These feelings are not just experienced in the restorative justice meeting, but may have an enduring impact on the offender’s future life.27

Despite the deep impact restorative justice may have on the offender, it should not be mistaken as a process of returning to a state before the offense, as the term “restoration” may suggest. Reverting relationships to the state before the offense can be impossibly ambitious for some victims, even if reconciled to their loss, because the bereaved may never again be whole or restored.28 “Restoration” really indicates transformation in the present, by creating a space that strategically encourages empathy on behalf of the pain of victims, the harms to the community and the struggles of the offenders. Through this empathy, society increases its aptitude to feel others’ pain and thus reduce tolerance of others’ suffering.29

A few small experiments conducted in the 1970s utilizing the principles of restorative justice triggered the rise of this justice philosophy internationally. Restorative initiatives spread into the United Kingdom, Canada, Western and Eastern Europe, Australia, Africa and even the United States, which is often associated with the introduction of repressive retributive judicial measures. As examples of restorative justice programs and policies proliferate at remarkable speed around the world, restorative justice continues to gain international respectability and serious consideration.

28 Mika and Zehr, “Restorative Framework for Practice,” 141-142.
within many justice circles.\textsuperscript{30} The spreading influence of restorative justice proves partly a consequence of its demonstrated ability not only to address serious offenses and offenders but to operate within all phases of the justice process. Programs instituted worldwide that explicitly utilize the ideals of restorative justice range from state-controlled initiatives connected to formal justice systems to community-based programs that seek to operate independently of formal justice structures and programs that are a mixture of both.\textsuperscript{31} The growing numbers and popularity of restorative justice programs may promote different policies and procedures, but the underlying principles remain consistent with the five pivotal tenets of restorative justice.

\textit{Inclusive Justice}

Native American communities understood the concept of inclusive settlement to a far greater degree than current society. In a society based on kinship, wrongdoing necessarily affected the community as a whole. The closeness of relations is depicted by an Inuit storyteller:

\begin{quote}
Long ago, people did not live like we do now. You know how something is connected at the center and therefore together. That was how our Yup’ik ancestors were...Our ancestors used to say ella-gguq allamek yuituq [the world is populated by no one else (but relatives)]. They said even if a person saw someone for the first time, it would be better to speak to him openly instead of not talking to him. It would be better not to let him feel uncomfortable and unwelcome. They would get along better, and they would feel more comfortable around each other. They said that the world is populated by no one else (but relatives).\textsuperscript{32}
\end{quote}

As expressed by this Inuit storyteller, when perspectives shift to see the community as a whole, crime against one individual necessarily affects other parts of the whole as well.

\begin{footnotesize}
\textsuperscript{30} Mika and Zehr, “Restorative Framework for Practice,” 135.
\textsuperscript{31} Maxwell et al., “Introducing Restorative Justice,” 4-5.
\end{footnotesize}
Similarly, the Iroquois League ascribed to this concept of unanimity through kinship across matrilineal ties. Establishment of both real and fictitious lineage balances social relations by creating a mutual sense of duty. The perceived obligations between these “familial” members of society promote cooperation, mutual support and assuage of conflicts. A great white pine sometimes symbolizes the league of the Iroquois. The roots of the pine grow in the cardinal directions and five long needles representing the five nations of the Iroquois grow as the confederacy continues. Anyone who hacks at the roots of the great tree of the Iroquois must be addressed as harming all of the nations and all of the communities within the Iroquois confederacy.33 The Great Law, with its cardinal principles of “good word, peace, and power,” recalls the unity and connectedness of the league and the need for harmony to maintain the society.34

Thus in the spirit of this principle of community “oneness,” the first tenet of restorative justice requires the process to open its doors to full participation of those concerned, including the offender, the victim and the community in an effort to reach a consensus.35 With the exception of offenders who may view the process as a route to avoid alternative criminal processes, the restorative justice invites participation on a completely voluntary basis.36 This open invitation and voluntary nature of restorative justice allow all those citizens with a direct interest at stake due to the specific offense an opportunity to strip decision-making away from judges and lawyers and determine the

34 Ibid., 33.
36 Ibid., 4-5 and Mika and Zehr, “Restorative Framework for Practice,” 142-143.
direction of their own lives and the livelihood of their community, as articulated by Paul McCold and Ted Wachtel.\textsuperscript{37}

The state, under the guise of caring for its citizens, steals their conflicts and hands them over to courts. In doing so, government deprives its citizens of direct participation in the resolution of those conflicts, thereby undermining society’s capacity for civility.\textsuperscript{38}

Restorative justice maintains that the level of social peace a society enjoys depends less on its ability to capture and punish those deemed deviant and depends more on its social organization;\textsuperscript{39} it is able to bring together victims, offenders and neighbors who suffered harm by the crime to solve the problem.\textsuperscript{40}

\begin{center}
\textbf{Oath of Confidentiality}
\end{center}

All Community Panels for Youth panel members and observers are required to sign the following oath of confidentiality prior to commencing a community panel proceeding:

\begin{quote}
I solemnly swear or affirm that I will not divulge either by words or signs, any information about the case which comes to my knowledge during a community panel and that I will keep confidential all proceedings which may be held in my presence.

Further, I understand that if I break confidentiality by telling anyone else the names of community participants, except for information pertaining to the community panelists themselves, or any other specific details of the case which may identify the youth, I will no longer be able to serve as a community panel member or observer.
\end{quote}

Signatures:

\begin{center}
CPY Panel Member / Observer \\
\hspace{2cm} Date
\end{center}

\begin{center}
CPY Staff \\
\hspace{2cm} Date
\end{center}

\textbf{Figure 1} CPY requires all staff, panelists and volunteers to keep case information confidential. \textit{Source: Community Panels for Youth Training Manual, section VI.}

\textsuperscript{38} Ibid., 114.
\textsuperscript{39} Weitekamp, “History of RJ,” 81.
\textsuperscript{40} Maxwell et al., “Introducing Restorative Justice,” 5-6.
Community Panels for Youth relies on the strength from the community to facilitate the restorative justice processes that not only solve disputes but also help to stop crime. CPY’s philosophy that “one person [judge] sitting behind a bench or a couple of attorneys don’t have all the answers for a kid,” flies in the face of traditional juvenile proceedings. Instead, CPY emphasizes swift and meaningful responses that traditional methods of crime prevention do not provide. These results not only come from the inclusion of community members, victims and the youth and his/her family in the process but also encourage teamwork with a focus on problem-solving. By journeying through the restorative process together, the group as a whole sometimes comes to the realization that there are ties that bind them. Most importantly, however, the CPY process reconnects youth to their communities and adults to youth in very positive and powerful ways. CPY further protects this trust by requiring panel members to keep all proceedings related to a particular case confidential, even from the State’s Attorney’s Office, if the case is sent back to the court (see figure 1).

In addition, CPY affords victims an active voice in the process with the opportunity for information, input, restitution and protection through the restorative process that may help them gain a sense of control of their lives in the aftermath of a delinquent act. Victims often see themselves as helping the youth develop empathy and understanding of how the youth’s actions harmed the family, community and the victim. Sometimes, however, although the victim agrees to have the case referred to

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41 Community Panels for Youth: A Community-Based Alternative to Juvenile Court, VHS.
43 Ibid., 34.
44 Community Justice for Youth Institute, Community Panels for Youth: Training Manual (Chicago, IL: Community Justice for Youth Institute), section 5.
CPY, victims may choose either not to participate in the process altogether or send a statement expressing their grievances rather than attending the panel. In such cases, the panel reads the letter (if any) and a panelist speaks on behalf of the victim depicting how the youth’s actions may have affected the victim. Although this experience may not be as powerful to the youth, the panel can still function and fulfill its mission.45

Addressing Harm

In August 1881, tensions developing between the Brule Sioux chief named Spotted Tail, and Crow Dog, a sub chief and leader of a traditional faction, resulted in the assassination of Spotted Tail by Crow Dog. Brule law quickly handled the situation by sending peacemakers to both families. The negotiated outcome through traditional Brule Law which evolved over many generations resulted in Crow Dog’s family awarding Spotted Tail’s family $600, eight horses and one blanket. As the Supreme Court later admitted, Brule Law quickly restored peace.46 On the surface, the price of reparation may be interpreted to put a cheap price on Spotted Tail’s life. Yet with the gifts Crow Dog bestowed on Spotted Tail’s family, he symbolically recognized Spotted Tail’s family’s loss and therefore re-established the all-important balance within the Plains Indians Community of the Brule nation. Simple revenge remains an option to the victims or family of the victim when a crime has been committed against them. But by refusing to take revenge and instead settling the dispute upon the appropriate gesture from the

opposing side, the victim raises the prestige of their family through their show of power and generosity.47

The Brule Law recognized the rift generated within the community by Crow Dog’s crime and quickly resolved the tension through the best means possible under the circumstances. The second tenet of restorative justice similarly recognizes rifts generated by crimes and, through the restorative process, seeks to heal what has been broken or harmed by the offense.48 Restorative justice chooses not to punish or even to reeducate, but to repair or compensate for the harm caused to victims, communities and offenders by the offense.49 Restorative justice seeks to repair such harm both concretely and symbolically.50

Identifying harm places the victims’ needs and roles at the center of the process, unlike the retributive role of the victim as a witness with personal restoration as a second priority.51 As exhibited in the Crow Dog example, victims gain a considerable amount of power in choosing to forgive instead of paying back the offender in his or her own coin. Without diminishing the seriousness of the crime or the blameworthiness of the offender, forgiveness generates psychological profit for the victim that makes the victim the psychologically strongest, while being the most noble-minded.52 At the same time, as Howard Zehr points out:

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50 Mika and Zehr, “Restorative Framework for Practice,” 139-140.
51 Ibid., 139.
52 Walgrave, “Diversion?,” 235-236.
Forgiveness has a place, but it should never be imposed, nor should someone feel under the burden to do so... Forgiveness is a gift, and when it happens, it frees people...They talk about being in control of the experience for the first time.\textsuperscript{53}

Victims retain the choice to forgive. Forgiveness may arise during the course of the process, but forgiveness is neither necessary for the process to retain credibility nor even a goal of the methods. Still, a dramatic power shift often accompanies victim-offender mediation processes as the victim holds the power of forgiveness over the offender.\textsuperscript{54}

The strength reaped through freedom of choice by the victim addresses the need expressed by victim’s criticisms of the rehabilitative process that it, in Lode Walgrave’s words, “is understood by many victims as unfair. Offenders are not punished but helped, while they themselves have great difficulty in being recognized as victims.”\textsuperscript{55} Contrary to retributive and rehabilitative processes, restorative justice allows all parties to tell their side of the story. This sharing triggers the healing process for both the victims and offenders. In addition, the “story-telling” or personal narrative process may serve to empower both victims and offenders who traditionally come from disempowered populations. Restorative justice uses personal narratives as the primary source of information and wisdom to understand the harms, needs, pains and capacities of all the participants so that an appropriate new story can be constructed while taking back personal power.\textsuperscript{56} Through face-to-face or separate narrative processes for victims and offenders, or a combination of both, the victim may fulfill the need for information, to express anger or receive reparations in order to heal, recover, and regain a sense of safety. The offenders, in turn, may fulfill their need for release from guilt or fear, resolution of

\textsuperscript{53} Jane Lampman, “A new model to deal with crime and victims” \textit{Christian Science Monitor} (Boston), February 4, 1999. LexisNexis. \\
\textsuperscript{54} Ibid. \\
\textsuperscript{55} Walgrave, “Diversion?,” 234. \\
\textsuperscript{56} Pranis, "Restorative Values," 30.
underlying conflicts or problems that led to the crime, and allowing them an opportunity to make things right in order to heal.\textsuperscript{57} Listening respectfully to others’ stories gives that person not only dignity and worth, but also a positive kind of power. This process can be a powerful teaching tool, showing offenders a new way to gain power without inflicting harm. Personal stories empower those with otherwise unheard voices by allowing people to engage the emotional and spiritual as well as the physical and mental components of their being.\textsuperscript{58}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Figure2.png}
\caption{CPY’s guiding script allows for all participants to present their side of the story. Source: Community Panels for Youth: A Community-Based Alternative to Juvenile Court: A Guide to Local Action, 66-67.}
\end{figure}

The many versions of the story increase understanding; exploring the problem in multiple dimensions allows for a detailed and rich solution. Unlike court processes

\textsuperscript{57} Maxwell et al., “Introducing Restorative Justice,” 5-6.
\textsuperscript{58} Pranis, "Restorative Values," 30-31.
which restrict sources of information and rely on expert opinion outside of the situation, restorative justice welcomes a vast array of perspectives, relying on those most closely affected by the situation to bring the greatest insight into the possible resolutions. Restorative justice seeks to probe the problem with greater depth and broader insight to understand the underlying issues of the problem.\textsuperscript{59}

The CPY process facilitates this dialogue by first asking the youth to tell the panel what happened (see figure 2). Careful not to interrupt, the community panel members may ask open-ended questions to help retrieve the youth’s story. Since the youth already admitted to some involvement in the incident, the process escapes the fact-finding goals of court processes. The victim relates how the event directly affected him/her, and the community panelists relate how the event harmed the community. The restorative process provides opportunities for expression that the fact-finding concerns of traditional court processes make impossible.\textsuperscript{60} According to Ellen Garza, an advocate and advisory board member of CPY, says that this process, “gives the victim the opportunity to really have it out with the offender in a very positive way or… a monitored way.”\textsuperscript{61} As facilitators encourage dialogue between offenders and victims, through this engagement, the victim obtains the information that he/she needs to make sense of the behavior of the youth.\textsuperscript{62}

To facilitate this dialogue, a panel member may ask whether the youth has anything to say, based on reactions from the victim, and whether there is anything the youth thinks can make up for the harm caused to the victim. As panelists pick up on the

\textsuperscript{59} Ibid., 30-31.
\textsuperscript{60} Community Panels for Youth: A Community-Based Alternative to Juvenile Court, VHS.
\textsuperscript{61} Ibid.
emotions of the youth and the victim and encourage the steps towards understanding, there may be a transformative moment where the victim and youth begin to relate to one another.63 On the other hand, sometimes during the course of this dialogue, the process may break down if the youth, victim or a family member becomes extremely argumentative or even threatening. When this occurs, community panelists terminate the panel, but may reschedule if the panelists think another meeting would be appropriate and the parties (the youth in particular) are willing to participate in the CPY process.64 Although many times the result of this dialogue may fall somewhere in the middle, this opportunity to facilitate a constructive dialogue between the two parties signifies a positive step towards repairing the relationship between the victim and the youth.

**Offender Accountability**

Louis Hennepin, a French adventurer, witnessed the power of community in the late summer of 1680. A group of Dog Soldiers, a component of the tribal police of Plains Indians, ransacked the home of one of their own tribe members. These kinsmen had killed bison before the great communal hunt organized, causing the herd to run away without the community obtaining the sustenance necessary for the coming year. The actions of one group of individuals had harmed the entire community, leading to the Dog Soldiers’ actions. By putting their own welfare above that of the entire community, the impulsive hunters put the entire community in a vulnerable state. The Plains community heavily depended on each other for survival, and thus the actions of one had a very real

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impact on many community members. In a situation where the hunt was the most important element in Plains Indians life, by necessity the police acted on behalf of the welfare of the community until after the battle or hunt ended. The Dog Soldiers’ form of control can be most accurately perceived as a retributive measure. These retributive tactics were also applied to youth during the hunt. Often the young members of the hunt became very aggressive and deviated from the plan, like the community members that Louis Hennepin witnessed. The police at that point took away possessions from the youth or even shoot the youth’s horse. After the hunt ended, the retributive actions of the Dog Soldiers reverted back to the restorative approach. Those harmed by the offenses of an individual were brought to community members to determine conciliatory measures. When the youth acknowledged the mistake, the police returned the possessions to the youth or provided compensation for the youth’s loss.

Like the Plains Indians hunting example, restorative processes require full and direct accountability on the part of the offender. By telling a personal version of the story, the offender partially takes responsibility for the harm which leads towards fulfillment of this fourth tenet of restorative justice. Although the voluntary component of participation by offenders should be maximized, an element of coercion and exclusion will exist as long as restorative justice operates as a diversion program. Offenders may have an alternative motive other than repairing the harm, such as avoiding traditional criminal judgment. Requiring offenders to fulfill their obligations however, does not necessarily compromise the purpose of restorative justice if the offender does not

voluntarily fulfill the obligation. A more direct confrontation with the consequences of actions that demand an active effort by the offender to restore or compensate the harm may cause them to realize the significance of the harm and the importance of responsible citizenship.

Figure 3 CPY lies within the Alternatives to Court Processing section within the flow chart. *Source: Community Panels for Youth Training Manual.*

Many young people may still view the restorative justice processes and results as punishment, since the obligations required may be difficult, though not intended as pain, vengeance or revenge. Still, by encouraging the offenders to understand that they should take steps to make right the harms their actions caused, the offender must face the reality of how actions damaged others. Accountability requires this realization beyond the acceptance that the actions broke the law. In order to fulfill the obligation of accepting accountability in the restorative justice process, the offender should expect to

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69 Mika and Zehr, “Restorative Framework for Practice,” 143.
70 Walgrave, “Diversion?,” 238-239.
72 Mika and Zehr, “Restorative Framework for Practice,” 140.
not only take steps to repair the harm but to explain the motivations of the crime to the victim and community.\textsuperscript{73}

In some ways, the youths participating in CPY have already acknowledged wrongdoing because in order to participate in the program they must admit some involvement in the crime before they are referred by the State’s Attorney’s Office (see figure 3).\textsuperscript{74} Following the dialogue, the youth has a chance to take further responsibility for actions when CPY provides an opportunity to accept accountability for what happened in front of the victim and community members. CPY asks the youth for reactions to what the victim has said and allows the youth to apologize, but does not force the apology.\textsuperscript{75} CPY also gives youth the opportunity to take accountability for their misdeeds through their reparative actions as part of the processes contract terms. A fourteen year-old arrested for theft describes her experience with a CPY contract:

Through CPY, I learned that I’m not only hurting myself and my family, but other people. I never thought about the victim. At the hearing, I felt so ashamed for putting my family through this. My contract required me to tutor younger children at my church. I didn’t really want to. But now, after my contract is over, I am still doing it. I know there are a lot of things out there that are good and positive that I could be involved with. So, I’ve made a promise to myself to be more involved in my community. I’ll try to make the right choices. The hardest thing is not letting my friends convince me to hang out with them doing nothing. I’ll have to stay strong.\textsuperscript{76}

CPY recognizes the possibility that a youth will refuse to take responsibility despite everyone’s best efforts. In the situation of an uncooperative youth, panelists terminate the panel and refer the case back to the State’s Attorney’s Office.\textsuperscript{77}

\textsuperscript{73} Maxwell et al., “Introducing Restorative Justice,” 6.
\textsuperscript{74} Community Panels for Youth: A Community-Based Alternative to Juvenile Court, VHS.
\textsuperscript{75} Festen and Graves. Community Panels for Youth: A Community-Based Alternative to Juvenile Court: A Guide to Local Action, 38.
\textsuperscript{76} Ibid., 44.
\textsuperscript{77} Ibid., 52.
Reunite the Division

A disoriented small boy trekked home along the beach as dusk settled over the Earth. A Stillaguamish camp set out night guards by the time the boy passed by their village. He hoped the night guards would not see him, but as the light faded, the night guards spotted him and suspected him of trying to steal a canoe. The Stillaguamish held him captive overnight with the intention of selling him into the slave trade. In the morning, a man in the Stillaguamish community recognized the boy as the son of powerful people in a neighboring Skagit camp. The Stillaguamish hurriedly released the boy by the time his family arrived at the Stillaguamish camp. In the Skagit family’s canoe was a load of valuables which they presented to the Stillaguamish with apologies for having a son so foolish to lose his way at night. Of course, in this apology the boy’s family insinuated the Stillaguamish’s guilt for their error. Although the capture of the boy had been for a seemingly legitimate reason, it could be seen as abduction. The Stillaguamish in turn accepted the gifts and gave the boy’s family far more than they had received.  

In this example, the boy’s intentions do not occupy the centerpiece but as much as relations between the powerful Skagit family and the Stillaguamish. The purpose of the interaction was to diffuse a potentially dangerous situation. Without resorting to force, both sides received what they wanted. The Stillaguamish were not punished by force for a grave mistake, and the Skagit family kept its honor by diffusing the accusation laid against a member of the family.

79 Ibid., 64-65.
The exchange in the Coast Salish society healed the discord caused by the Stillaguamish’s error and maintained peace, correlating with the fifth tenet of restorative justice which seeks to reunite what has been divided. After the youth takes accountability for the event and fulfills the obligations set out, the youth should be released from the harm the event caused, just as the victim should no longer be defined by the harm suffered. Restorative approaches deem labels such as victim and offender as temporary. To bolster the transformation away from these roles, mediation, restitution, reconciliation and forgiveness prove infinitely more constructive and communicative as human patterns than displays of power, infliction of harm, refusal or revenge. As such, restorative processes contribute to a harmonious community and the collective emancipation of all involved through mutual accountability and collective responsibility of community members to support and take care of one another. Through this process, the divisions created among people and within communities heal as the victim, offender and others reconcile their differences while simultaneously reintegrating back into the community.

In order to repair the harm caused by the action, CPY requires the youth to fulfill a contract both youth and parent or guardian sign at the panel meeting (see Figure 4). The stipulations of the contract result from taking into account both the needs of the youth and ways the youth can symbolically or actually repair the harm caused to the victim. The process gives the victim’s preferences strong consideration as the tailoring of the contract includes victim repayment directly through personal service or use of

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81 Walgrave, “Diversion;” 236.
community service that makes sense to the context of the crime and contributes to the youth’s development of useful skills and relationships.\textsuperscript{84}

\begin{center}
\begin{tabular}{|c|c|c|}
\hline
\textbf{COMMUNITY PANELS FOR YOUTH} & \textbf{CONTRACT AGREEMENT} & \\
\hline
- I agree to do the following: & \hline
\begin{enumerate}
\item I will attend school every day and attend every class.
\item I will maintain contact with my monitoring panelist.
\item I will not commit any crimes.
\item I will restore the victim and my community by: & \\
\end{enumerate}
\hline
The agreement will be completed by: & \hline
Date & \\
\begin{enumerate}
\item I understand that if I fail to do the above, this matter will not be referred to Juvenile Court and no court record will exist. However, if I fail to do the above, my case will be returned to the Cook County State’s Attorney’s Office. & \\
\end{enumerate}
\hline
Signatures: & \\
Minor & Phone Number & Date \hline
Monitoring Panelist & Phone Number & Date \hline
Parent/Concerned Adult & Phone Number & Date \hline
\end{tabular}
\end{center}

\textbf{Figure 4} A blank CPY contract that panelists fill out at panel meetings. \textit{Source: Community Panels for Youth Training Manual, section VII.}

The contract entails a few mandatory requirements of the youth, including daily attendance at school, no arrests for new offenses, and regular contact with monitoring panel member (see figure 4). The rest of the contract drafted by the panel members includes specific programs and specific days and times the youth must attend the other programs. These terms of the contract may include a letter to the victim, restitution,\textsuperscript{84} Festen and Graves. \textit{Community Panels for Youth: A Community-Based Alternative to Juvenile Court: A Guide to Local Action}, 40.
community service, tutoring or counseling. The terms of the contract may last anywhere from three to six months at the discretion of the panelists.  

With the emphasis on creative and realistic terms, the panelists use a proactive way to think about the problems without sweeping kids off the street and installing them in prison. In one case facing CPY, a youth who enjoyed art and had actually won some awards for his talent was given an opportunity to pass on his skills by teaching younger children some of the techniques. The youth was excited to be able to use his gift in a positive way. Other terms in the contract may ask the student to write a letter to the victim explaining what happened, which usually takes the form of the letter of apology. In a process that the youths consider fair and in a manner in which the youths feel respected, CPY gives youths the opportunity to learn from the experience through the contract terms.  

Sometimes complications will arise with fulfillment of the contract terms due to lack of cooperation on the part of the program prescribed or the youth. In these cases, the monitoring panel member along with a CPY advocate and staff can change the contract terms to correct the situation. This flexibility helps the youth succeed in repairing the harm done.

Strengthen the Community

In Coast Salish myth, the salmon occupies the position of a distant ancestor of humans. As such, human relationships with salmon should be respectful. Stories of

85 Ibid., 42.
86 Community Panels for Youth: A Community-Based Alternative to Juvenile Court, VHS.
children hurting the fish as they swim upriver usually resulting in the death or harm to the child by the spiritually powerful salmon convey the importance of this relationship. Each year at the first salmon ceremony, the first salmon caught is shared among the community. Then the salmon bones are ritualistically collected and returned to the river as a tribute agreement between the salmon and the humans. The tribute symbolizes the humans’ commitment to treating the salmon respectfully and in return the salmon will provide the humans with nourishment. Similarly, the Pueblo people regard plants as powerful beings. Thus the Pueblo leaders make arrangements with the plants and determine planting sessions in association with this belief.  

The indigenous conception of justice goes beyond humanism and environmentalism to touch the realm of spirit…there is a sacred relationship not only among human beings, or between human beings and the physical world, but among all creatures and elements…Justice is the achievement of balance in all of these relationships, and the demonstration in both thought and action of respect for the dignity of each element in the circle of interdependency that forms our universe.

The purpose of these rituals marks a difference between Western and indigenous approaches to relationships and thus to conflict resolution. For indigenous people, lack of balance and harmony constitute injustice. Their justice system undertakes restoration of harmony through re-establishing peaceful coexistence between the particular set of relationships in question in the issue.

Perhaps the best example of the idea of community in the form of justice comes from the Navajos. In 1991, the Navajo Peacemaker Courts became a fully restorative justice institution based on traditional values and methods. The traditions guiding this institution include k’e, a complex set of values such as compassion, selflessness, and

90 Alfred, Peace, Power, Righteousness: An Indigenous Manifesto, 43.
cooperation which promotes solidarity among clan and community members; and k’ei, the network of clan members and relatives connected to the individual responsible for hóch (disharmony). By invoking the importance of k’e in maintaining k’ei, the peacemaker lays a solid moral foundation of a strong and pervasive community which the wrongdoer must respect.91

As in the Navajo example, restorative justice recognizes and attempts to address the elements that cause or diminish harmony within any given community. Along with repairing the divisions caused by the crimes, restorative justice also addresses the conditions that beget such crimes, especially by the politically and economically oppressed, in the first place.92 The final tenet of restorative justice veers drastically from the traditional retributive process that deems actions as crimes and people as offenders deserving punitive intervention. Restorative justice chooses not to ignore the pre-existing injustices because restorative justice seeks to strengthen the community in order to prevent further harms. Although these injustices do not excuse the offender from the harms the actions caused, examining the offender’s motives can reveal inequities that need to be addressed to make the community strong, safe and just.93

The success of restorative justice practice necessitates a strong affiliation with and vision of community which proves difficult due to the general trend of US culture evolving towards individualism and fragmentation.94 In neighborhoods, families pretend to exist in isolation without sharing communal interests and values. This situation

92 Mika and Zehr, “A Restorative Framework for Practice,” 141.
94 Mika and Zehr, “A Restorative Framework for Practice,” 149.
challenges restorative justice programs to elect persons acceptable to represent the community concerned through the restorative process. A community’s incentive to participate in restorative justice centers on its need to defend quality of life, common values, solidarity and mutual respect against the domination of fear. Insufficient reconciliation can subject a community to violence in the form of personal vendettas. An offense represents not only a loss to the victim but a threat to the peace and quality of life in a community, which it will lose if nothing happens. The state has much to lose as well since without proper intervention against crime, society will lose belief in public rules and the power of public authorities to preserve order and justice in society.95

The CPY program serves to strengthen the community in a number of indirect and direct ways. Through the process of the panels, youths are more likely to stay out of trouble and take a more positive path in life. Through this unique education they learn not only how their actions can damage the community but how to make a positive impact in their community. By engaging these youths in positive experiences surrounded by the support of caring adults, they become more productive youths contributing to a more secure community.96

Through the inclusion of community members on the panel in the restorative process, the community becomes more aware of the issues and challenges facing the youth in their communities. Many young people do not trust adults when they come to the panel, but after being surrounded by so many adults who care, the trust between the older and younger people in the community can start to regenerate. The panel member who becomes the youth’s monitor often covets the opportunity to make a connection with

95 Walgrave, "Community Service as a Cornerstone," 135-139.
these youths and help them make significant changes in their lives, especially since many of the youths are either very young or first-time offenders. Catching a child before that person becomes a chronic offender and positively affecting a life, forms a powerful bond between the youth and the CPY volunteers and staff. Ellen Garza, an advocate and advisory board member of CPY, expresses the ties communities build through working with their youth:

[Community members] get to own the process here in the neighborhood. We find the resources, we get people involved… we act like adult role models… to solve the problems that they [youths] have and thereby make it a lot nicer to live in the neighborhood. 

Comprehension of these struggles encourages community members not to isolate youths as quickly and to become a part of the solution through involvement in local youth programs.

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97 *Community Panels for Youth: A Community-Based Alternative to Juvenile Court*, VHS.
98 Ibid.
Restorative Justice in Theory

The principles behind the restorative justice process must be transformed into working models on which the state can rely to preserve the execution of justice. Some of the earliest modern reforms primarily involved financial restitution or other forms of reparation to their victims. Although they lack many of the attributes commonly associated with a restorative justice approach, such reforms nevertheless have some affinity with and are closely allied to restorative patterns. These were the first steps towards restorative justice in a modern setting.100 This transformation occurred in the mid-1970s in Canada, with the first victim offender mediation programs. Restorative justice’s modern development originated as an alternative to probation for juvenile offenders. Later restorative approaches expanded into pre-sentencing programs where victim and offender constructed sentencing proposals for judges’ consideration.101 The Canadian transformation proves consistent with most other introductions to restorative justice. Youth justice systems seem to be the choice starting point for experimentation.102 Such was the case in the United States where the Supreme Court said in the 1966 case of Kent v. United States: “The child receives the worst of both worlds… he gets neither the protections accorded to adults nor the solicitous care … postulated for children.”103 Punitive prevention (or deterrence) leaves much to be desired in the justice system especially for juveniles where deterrence seems to yield very little significant effect.104 This fact leaves juvenile justice as a prime candidate for experiments in restorative justice and system reform.

100 Dignan, “Restorative Justice and Victims,” 108.
102 Walgrave, "Community Service as a Cornerstone," 130.
103 Kent v. United States, No. 383 U.S. 541. United States Supreme Court.
104 Walgrave, "Community Service as a Cornerstone," 130.
Through experimentation with restorative justice, authorities hoped that the active role required from the offender as opposed to the passive role offenders assume in the traditional court proceedings. By redirecting participation from the attorney to the youth, attention by the youth to needs of the victims increases and consequently reduces recidivism. Likewise, the victims reported higher satisfaction with the process than with traditional court proceedings because they assumed an active role in shaping the outcome of the proceedings. The following section will describe several models of restorative justice and compare these models to the CPY program in Chicago.

**Victim-Offender Mediation**

Besides being the first model of restorative justice introduced into modern day practice, victim-offender mediation dominates other models of restorative justice, accounting for 51% of all programs. As mentioned previously, victim-offender mediation originated in 1974 in Kitchener, Ontario. Mark Yantzi initiated the first victim-offender mediation case in Canada when he approached the court with the novel idea of asking offenders to apologize for their actions in a face-to-face meeting with the victim. Victim-offender mediation continued to grow with the support of the Christian Mennonite movement. The work of the prominent restorative justice advocate and Christian Mennonite, Howard Zehr, greatly influenced the development of victim-offender mediation, with an emphasis on the value of personal ‘reconciliation’ between

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victims and offenders.\textsuperscript{108} His writings promoted and popularized the practice of mediation as well as restorative principles in the days before influential justice circles seriously considered the application of restorative justice.\textsuperscript{109}

In the victim-offender mediation process, a mediator either brings together or conducts a shuttle negotiation between the victim and the offender. Both the offender and the victim relate their perceptions of the crime. Then the mediator systematically cultivates terms agreeable to both sides. Recent developments in mediation introduced the involvement of more third parties indirectly harmed by the crime such as family and community members.\textsuperscript{110}

The victim-offender mediation model seems more victim-centric than the Community Panels for Youth program because the participation of the victim proves absolutely necessary to facilitate the victim-offender mediation process. CPY assigns a very different role for mediators (panelists) in their program. By encouraging but not requiring victim participation in the process, CPY can support youth while victims retain a completely voluntary role. CPY compensates for victim absence by allowing victims to issue statements that panelists read at the proceedings or a panelist explains to the youth the harms suffered on behalf of the victim. In this way, the presence of the victim can be created at the panel thus allowing the youth the opportunity to partake in the process regardless of whether or not the victim chooses to be present. The flexible role of the panelists allows them to represent the victim in the event that the victim chooses not to be present and advocate on behalf of the youth’s welfare when drawing up contract terms.

\textsuperscript{108} Dignan, “Restorative Justice and Victims,” 111.
\textsuperscript{109} Ibid., 111.
\textsuperscript{110} Maxwell et al., “Introducing Restorative Justice,” 7.
Like Community Panels for Youth, the victim-offender mediation model uses a third party to facilitate the process, but as a wholly neutral party. Through this constraint, mediation loses many of the benefits of the CPY model because utter neutrality limits capability to tailor outcomes to promote the juvenile’s development. CPY’s model uniquely gears the program to working with juveniles with carefully selected community panelists (see figure 5) acting as an advocate for the youth’s future while requiring the youth to complete tasks to restore a relationship with the victim. Assurance of youth success would be difficult in a mediation process because the program would lack the third party support of the youth often integral in the completion of the youth’s commitment.

**Figure 5** CPY engages panelist volunteers in an application process and conducts background checks.

A second model, conferencing, represents a unique form of restorative justice although literature often uses the term as a synonym for the broad spectrum of all restorative justice programs in general.\(^\text{111}\) The conferencing process initiates a discussion through a facilitator between the primary participants joined by family members and/or friends. Each party speaks in turn, sharing the harms suffered by the offenders’ actions. At the end of the process, the group signs a final agreement subsequently sent to the appropriate criminal justice officials. The facilitation of some conferences follows a script while others proceed according to broad philosophical guidelines.\(^\text{112}\) Conferencing follows variants known as ‘family group conferencing’ and ‘police-led community conferencing’.\(^\text{113}\)

Family group conferencing originated in New Zealand with the passage of the Children, Young Persons and their Families Act of 1989. Four philosophical strands—family responsibility, children’s rights including the right to due process, cultural acknowledgement, and partnership between the state and the community—formed the basis of the act.\(^\text{114}\) Three cultural factors triggered initiation of the reform in New Zealand. First, the perceived illegitimate treatment of minority group offenders, notably those from the Maori community but also Pacific Island Polynesians, created tensions that required restructuring of the justice system. Second, a “welfare-based” commitment to empowering families of young people who are referred to professional agencies and the courts either because an offense has been committed or on “child protection” grounds,
created interest in a more family-involved system. Finally, the growing influence of the victim’s movement, which by 1989 had already inspired a number of changes, although not specifically with regard to the youth justice system itself, promoted broad reforms. The act represents a conscious attempt to develop a more culturally sensitive and appropriate way of responding to offending behavior.\(^{115}\) In practice, a family group conference is a relatively informal, loosely structured meeting in which the offender and extended family, together with a legal advocate in some systems, get together with the victim, supporters, and other relative parties to discuss the offense and to negotiate appropriate responses.\(^{116}\)

Another variety of conferencing, police-led community conferencing, originated in Australia in the early 1990s as a community law enforcement project intended to be a police cautioning program.\(^{117}\) Midlevel professionals and law enforcement administrators pioneered police-led community conferencing initially in the small New South Wales town of Wagga Wagga. Unlike family group conferencing, the police led community conferencing model has consciously restructured the court procedure into an informal process drawing on John Brainwaite’s theory of re-integrative shaming. Re-integrative shaming holds that the formal process of shaming and labeling in traditional courts proves impossible to shed after punishment. Shame leads to societal stigmatization that will continue to render the offender delinquent indefinitely after contact with the courts making it nearly impossible to resume a life as a law-abiding citizen. In an informal process, the offender, along with supporters, directly faces the victim; thus one can turn the shaming experience into active restoration. By taking these

\(^{117}\) Ibid., 95.
steps the offender sheds both the shame carried by oneself and the label as a delinquent after completion of one’s obligations. Projects similar to the Wagga Wagga program can also be found in Canada, the United States and England.

Conferencing has distinct advantages and disadvantages when working with youths. With police-led conferencing, the variable of police intimidation comes into play with minorities who traditionally do not trust officers in the United States. Introducing this variable into restorative justice programs may prove to be counter-productive to the goals of restorative justice. Additionally, the loose, informal structure of family conferences would make it difficult to provide outside support for youths, especially if their underlying issues originate in part from lack of parental guidance or family disorganization.

To address these issues, Community Panels for Youth insists on using adult figures unassociated with law enforcement and the court systems in order to make the youth more comfortable in the process and more receptive to terms generated to promote new behavioral patterns. It would be difficult for a conferencing model to diverge from authority involvement since its founding concept relies heavily on an authority centerpiece. The intentional separation from traditional court processes and reliance on community by CPY rather than authorities marks the difference between CPY’s model and conferencing.

120 Community Panels for Youth: A Community-Based Alternative to Juvenile Court, VHS.
Healing or Sentencing Circles

A third model, healing or sentencing circles, results in a process based on restoration that combines psychological and spiritual dimensions that operate at an individual and communal level. \(^{121}\) Although most only associate the indigenous people of Canada with sentencing and healing circles, the Inuit and other native Indians of North and South America practice this form of restorative justice. \(^{122}\) In 1982, the Navajo Nation instituted the Navajo Peacemaker Courts, one of the most significant circle programs. In the peacemaker courts, respected community leaders preside over a traditional non-confrontational Navajo process where the victims, perpetrators, and their families find a solution to resolve disputes. A single elder acting as the facilitator, the Peacemaker, offers practical advice and draws upon traditions and stories of the culture of the Navajos to facilitate the process. \(^{123}\)

As illustrated in the Navajo Peacemaker Courts example, participation in circles commonly includes main participants and their family and friends, and community members who have an interest in the case. Typically, the offender explains what happened and then a talking piece passes from one individual to the next each member of the circle speaks. \(^{124}\) Through the discussion, each member’s perspective and the circumstances underlying the crime become clear. \(^{125}\) Circles aspire to heal the affected parties and invoke and reinforce the community’s values as a means of reintegrating those who have violated those values. \(^{126}\) Circles act as a mechanism for community

\(^{121}\) Dignan, “Restorative Justice and Victims,” 124
\(^{122}\) Weitekamp, “History of RJ,” 93.
\(^{123}\) Ibid., 95.
\(^{125}\) Weitekamp, “History of RJ,” 95.
building and community empowerment that develops a healing power for all involved people.\textsuperscript{127}

The large size of the community coupled with the large amount of time required to complete the circle process acts a distinct disadvantage. Undertaking this process as intended proves unmanageable, especially considering the time constraints of adult volunteers necessary to bolster support for the youth. An expedited version would result in loss of the personal overtones essential to the effectiveness of this process. Community Panels for Youth, however, recognizes the unique impact of this form of restorative justice and taps into the community binding effects of circles during panelist training sessions. Although an unrealistic and inefficient mechanism to deal with youth issues, circles provide an interesting way to generate community bonding that can later be an inspiration in the CPY interaction with the juveniles.

\textit{Citizen Panels or Community Boards}

Community Panels for Youth is based on the final model of restorative justice, citizen panel and community boards. The history of such panels predates the restorative justice movement with programs that began in the 1920s in the United States, although these bodies by no means adhered to all of the restorative justice principles. The panels developed as a means to stimulate community involvement in the sanctioning of young people convicted of minor offenses. The welfare-oriented Children’s Hearings system in Scotland represents a similar model to CPY where panels of lay people drawn from the local community decide how to deal with children who have broken the law as well as

\textsuperscript{127} Weitekamp, “History of RJ,” 98.
those in need of care and protection as an alternative to judicial forms of decision making.\(^{128}\)

In terms of adhering to all the restorative justice principles, one of the earliest and best known programs is the Vermont Community Reparative Board. Such initiatives draw on the philosophy that reparation provides a more constructive response to youth offending especially when combined with the community empowerment element. Despite the reparative ethos, Vermont’s reparative boards place a lower priority on the value of victim participation than most other restorative justice approaches, since the process can persist without victim involvement. Victims possess a much smaller role in the decision-making process than the offenders. The offenders’ role mandates attendance and discussion of the offence as well as its consequences. The board itself typically draws up the sanctions in private and subsequently presents the terms to the offender for consultation as opposed to involving the offender directly in determining the nature of the response. As such, the process sacrifices the participatory and empowering nature possessed by many restorative programs. With the exception of the decision making by the lay tribunal, the process much more closely resembles court ordered reparative sanctions than an actual restorative justice program.\(^{129}\)

Additional panel programs include San Jose’s Neighborhood Accountability Boards and Denver’s Community Accountability Boards. Indeed, reparative boards constitute the second most prevalent type of restorative justice program in the United States, accounting for just under one-third of the total. The prevalence of this model, which is the most unlike the other models, may indicate a certain conduciveness to

\(^{129}\) Ibid., 122.
American society. The differences between the panel programs themselves cover a wide range of variants. For this reason, panel programs as a whole cannot be examined sufficiently as a unit. The criticisms of restorative justice panel programs can be more adequately addressed through a single example of the Community Panels for Youth in Chicago.

130 Ibid., 122.
Restorative Justice in Practice

Restorative justice represents a continuum of possibilities, as shown earlier with the vast array of programs and policies. As these programs tailor their policies to meet their community’s specific needs, the restorative basis of the program may erode, leaving models in four categories: fully restorative programs that meet all essential criteria, partially restorative programs that hold restorative values and work positively in a larger restorative framework, programs that could be redesigned to fit within restorative principles although they are not inherently restorative in nature, and programs that are incompatible with restorative principles. Critics of restorative justice programs have disapproved of models similar to Community Panels for Youth for sanctions that could be conceived as punishment, detrimental state and professional influence, victim marginalization, and reliance on an “imaginary” community. These flaws prove to be either non-applicable to the CPY model, or the are simply procedural issues that do not compromise the integrity of underlying restorative justice principles. Through the following discussion, it will become clear that CPY stands up to these criticisms in most cases; and in those criticisms that remain, solutions to the issues can be easily obtained.

Appropriate Assignment and Use of Community Service

When using community service as a method to address offenses, the fine line between punishment, rehabilitation and restoration often seems unclear (see table 1). In retributive justice, community service transforms into forced labor meant to degrade and inflict suffering on the offender with the purpose to deter the offender from re-offending.

\[131\] Mika and Zehr, “A Restorative Framework for Practice,” 138.
and satisfy the victim’s feelings of revenge. Community service is also used in rehabilitative justice for the purpose of re-education. The program and duration of the service depends on the offender’s specific treatment needs with the purpose to influence the offender’s attitudes, competencies, and social network. Neither of these forms of community service focuses on restoration of victims or communities affected by the crime. Although they may be the same activity, it is not the same kind of disposition.  

<table>
<thead>
<tr>
<th>Objective of service</th>
<th>Punitive</th>
<th>Rehabilitative</th>
<th>Restorative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Deterrence</td>
<td>Adequate treatment</td>
<td>Reasonable restoration</td>
</tr>
<tr>
<td>Content of service</td>
<td>Painful for offenders</td>
<td>Adapted to needs of offenders</td>
<td>Symbolic for harm to community</td>
</tr>
<tr>
<td>Duration of service depends on…</td>
<td>Seriousness of crime</td>
<td>Treatment needs</td>
<td>Seriousness of harm</td>
</tr>
<tr>
<td>Evaluation of service according to…</td>
<td>Just desert</td>
<td>Conform behavior</td>
<td>Restored Peace in community</td>
</tr>
</tbody>
</table>

Table 1 Approaches to community service through the three forms of justice determine the particulars of the community service requirement. Ideally, these details affect the overall experience by the offender.  

Source: “Community Service as a Cornerstone” 141.

Restorative justice must successfully administer similar sentences to the retributive court system in a careful way in order to achieve the goals of restorative justice when working with juveniles. This can easily be seen with the disposition of community service and the way it is used in both systems. Community service when used as a restorative element is defined as unpaid work done by the offender for the benefit of a community or its institutions as compensation. Community service is especially useful in restorative justice when there is no feasible way for the offender to compensate the victim directly. In the United States, there is such a vast variety of community service projects that it proves realistic to find a project with a symbolic aspect

132 Walgrave, "Community Service as a Cornerstone," 140.
through which all parties can be restored by both the material service rendered and the peace-gesture by the offender.  

As alluded to earlier, retributive justice uses community service, and perhaps the same community service projects as restorative models, to inflict punishment. The difference between the uses of these community service projects is the intention of its use. Understanding the difficult elements of community service and taking those elements into account remains fundamentally different from intentionally inflicting suffering. Restorative measures may reduce difficult community service to limit pain, unlike retributive justice that augments the community service to inflict pain in proportion to the crime. This relationship is explained in Lode Walgrave’s own words,

The procedure to determine punishment often interferes with the attention to the harm and suffering caused; the threat of punishment makes genuine communication about harm and reparation impossible; and the penalty itself seriously hampers the offender’s effort to repair and compensate… Punishment is a means. Restoration is a goal. Punishment can be used to enforce any legal or political system, in the most truly democratic societies as well as the most dictatorial regimes. It is an act of power to express disapproval, possibly enforce compliance, but is neutral about the value system it enforces. Restoration, on the contrary, is a potential outcome.  

Restorative justice programs require community service in a restorative manner by gearing service toward the restorations of the harm, reintegration of the offender, and cultivation of peace in the community. The explicit motivation for the service, the content and duration of the service and the way it is carried out must comply with these restorative objectives. Designing projects ensuring that community service is soundly based in restorative justice concepts requires a specific approach. First the community service should ensure that the service meets a clearly defined need and that this need is

133 Ibid., 139.
135 Ibid., 49.
136 Walgrave, "Community Service as a Cornerstone." 140.
obvious to offenders. CPY gears community service in its program to projects with specific purposes and clear beginnings and endings rather than repetitive unending service. This makes the purpose of the work and the contribution obvious to the youth. Secondly, the service required by CPY always occurs in the youth’s neighborhood (see figure 6) and is at least symbolically linked to the offense. Third, the community service should bring the offender and conventional adults together. CPY focuses on building relationships and reconnecting youth to positive youth and adults in their community to strengthen relationships and improve community safety. 137 Next, probation staff and community service supervisors should view offenders as resources and focus on outcomes. CPY’s focus on purpose driven projects guarantees this element. Then restorative community service should involve offenders in planning and executing the service projects. In addition, CPY tries to incorporate community service that will provide skills that the youth can utilize later. Lastly, restorative community service should provide for a sense of accomplishment, closure and community recognition which CPY provides through a completion of contract celebration. 138

Despite all of these guidelines in CPY, in practice, the disposition decisions are handed over to the community panel members and victims who, in trend with American culture, may favor punishment over restorative dispositions. 139 The empowerment of these individuals may present a problem if they do not abide by the restorative ethos that

137 Community Justice for Youth Institute, Community Panels for Youth: Training Manual, section 7.
only implements predominantly deterrent dispositions as a last resort.\textsuperscript{140} While proponents of restorative justice can hope that the process will lead to many people seeing the merits of a restorative rather than a punitive disposition, there can be no guarantee that the majority of people will be so persuaded.\textsuperscript{141}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{SampleForm.png}
\caption{(left) Sample form for local service organizations that wish to participate in CPY and (right) An agenda for two-day CPY panelist training. Source: Community Panels for Youth: A Community-Based Alternative to Juvenile Court: A Guide to Local Action, 60-61.}
\end{figure}

CPY avoids this sticky situation by assigning multiple panelists to each case; thus, any ideas that do not correlate with restorative justice would be weeded out through peer review. Each panelist has undergone an intensive two-day training to help ensure

\textsuperscript{140} Mika and Zehr, “A Restorative Framework for Practice,” 145.
understanding of restorative principles (see figure 6). Secondly, a staff member from CPY sits in on each panel meeting to observe rather than participate. This practice ensures the administration of the correct form of justice.

**Victim Marginalization**

Criticisms of victim marginalization may stem from the strength of the focus in community panel on offender needs. The focus on the mental and physical obstacles youth offenders face may seem to impinge on victim needs. This focus, however, in the end may help get what the victim desired. Studies indicate that offenders often have experienced physical, sexual or verbal abuse in their young lives, leading to an inability to see through the pain of their own emotional scars to develop empathy for the victim. Supporting the offender in a process that may encourage forgiveness for those that hurt them in the past may help the offender develop the empathy that a victim seeks. Community panels under law must report any abuse that the youths participating in the program may be subjected to. CPY seems to strike a balance of focusing resources on the youth’s issues and difficulties while respecting the choices and preferences of the victim. In part, this respect is a necessary and unavoidable result of re-establishing people as victims, thus, ousting the state as the primary victim.

Under restorative justice the state retains some of its justice roles, such as investigation, facilitating processes and ensuring safety, but the state is no longer a primary victim. The popular United States nomenclature today of “balanced and restorative justice” seems to promote victim needs and interests in accordance with a widely held North American perception that conventional justice is skewed towards

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142 Lampman, “A new model to deal with crime and victims.”
offenders, a perception supported by the fact that expenditures of public resources for victim support are miniscule compared to investments in corrections.\textsuperscript{143}

Since most restorative justice programs must function within this criminal justice framework, they are easily distorted into offender-oriented programs. Such programs come to be used primarily to help reform offenders, to keep them from incarceration or, on the other hand, to punish them by forcing them to pay for their crimes or take verbal abuse from the victims. Either way, victims may be used for others’ purposes; empowering and interpersonal potentials for victims are muted or lost.\textsuperscript{144}

Voluntary victim involvement remains the cornerstone of restorative justice, allowing victims either to contribute to the panel meeting through attendance or a written statement, or not to participate at all. Such decisions by the victim can be guided by a variety of completely understandable and legitimate reasons and thus must be respected. Nevertheless, through documentation and discussion that provide victims with information, such encouragement to consider victim panel attendance or some lesser form of participation can make a significant contribution to the process.\textsuperscript{145} Statistical evidence from at least three continents reveals that victims want a less formal process where their views count, participation in their case, more information about the processing and outcome of their case, respectful and fair treatment, material restoration, and most important of all, emotional restoration.\textsuperscript{146} CPY provides all of these benefits to victims while ensuring a fail-safe system where, if the offender does not fulfill obligations, the

\textsuperscript{143} Mika and Zehr, “A Restorative Framework for Practice,” 142.
\textsuperscript{144} Ibid., 137.
An offender is redirected back to the court system (see figure 7). As the number of success stories grow, the need for the retributive court fall-back may not be necessary to ensure victim confidence in the system.\footnote{Cheryl Frank and Ann Skelton, “How Does Restorative Justice Address Human Rights and Due Process Issues?” in Howard Zehr and Barb Toews, eds., \textit{Critical Issues in Restorative Justice} (Monsey, New York: Criminal Justice P, Inc., 2004), 204.}

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{contract_followup_form}
\caption{Youth keep in regular contact with their monitoring CPY panelist, and the monitor documents progress on this follow-up form to ensure completion. \textit{Source: Community Panels for Youth: A Community-Based Alternative to Juvenile Court: A Guide to Local Action}, 69.}
\end{figure}

Victim advocates argue that restorative justice practitioners must take eight crucial steps in the victim and consultation process. These steps include identifying victims, contacting victims, providing victims with choices, securing victims’ consent, assessing victims’ suitability to attend a panel meeting, facilitating victim attendance.
through practical measures, victim input at initial panel meetings and follow-up- keeping
the victim informed of progress.\textsuperscript{148}

<table>
<thead>
<tr>
<th>Victim Impact Statement</th>
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</thead>
<tbody>
<tr>
<td>Name:</td>
</tr>
<tr>
<td>Phone:</td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>1.) Did you receive any information about your case from the State's Attorney's Office?</td>
</tr>
<tr>
<td>2.) How did this incident affect you? Your family? Your neighbors? Your Community?</td>
</tr>
<tr>
<td>3.) Did this incident harm you physically/emotionally? What was the impact of this incident?</td>
</tr>
<tr>
<td>4.) Was there any financial loss associated with the incident? (repairs, replaced property, etc.)</td>
</tr>
<tr>
<td>5.) Do you have any input into what the youth can do to make amends for the offense?</td>
</tr>
<tr>
<td>6.) Is there anything you would like the youth to know? Do you have any questions for him/her?</td>
</tr>
<tr>
<td>7.) Would you be willing to meet with the youth to tell him/her how you feel and to work out a plan so he/she can be held accountable for their actions? If not, would you be willing to accept a letter from the youth addressing these issues?</td>
</tr>
<tr>
<td>8.) Is there any additional information or assistance you would like?</td>
</tr>
</tbody>
</table>

\textbf{Figure 8} CPY addresses each of the above questions with victims upon receiving a case.

\textit{Source: Community Panels fro Youth Training Manual, section V.}

Through personal communication between CPY and the victim, the victim obtains information about the process and then decides how to participate in the program, and arrangements are made to facilitate participation to the degree desired by the victim (see figure 8). CPY provides a variety of channels for the victim to be heard in the process without actually appearing at the panel meeting. Although CPY does not directly evaluate the victim’s fitness to attend the panel, the victim can engage in self-reflection on the effect of the process, since the initial explanation of the process includes many

\textsuperscript{148} Crawford and Burden, \textit{Integrating Victims in Restorative Youth Justice}, 37-38.
details about the actual procedure. This process will be mapped out again at the start of the panel meeting granting an opportunity for the victim to ask questions. Victim input is always weighed heavily in the determination of contract terms. As for follow-up, if the youth does not fulfill the contract, the case will be sent back to the court and the victim will be informed of the case transfer.

Consequences of State and Professional Influence

CPY’s program depends on relationships with the Cook County State’s Attorney’s Office to refer youths to the program. Many complain that the consequent restriction of access to the program by the state for the benefit of program development and credibility may sacrifice the growth of the program.149 In addition, state political interest in crime control and subsequent “ownership” of both the meaning and process of crime and justice may taint the effectiveness of restorative justice programs associated with the state.150 In the words of Lode Walgrave, for the state,

The most important function of the criminal justice is to express social disapproval. The focus on punishment in criminal justice, however, interferes with effective and constructive communication. The sentence may communicate a clear disapproval to the public at large, but fails to communicate adequately to the other key actors in the crime— the victim and the offender. Good communication needs adequate settings. This is not the case in court, where confrontation prevails over communication, in front of a judge who will at the end decide upon the kind and degree of hard treatment. The offender does not listen to the moralizing message but tries to get away with as lenient a punishment as possible. He does not hear the invitation but experiences the threat.151

In addition, the role of professionals in the state’s system in restorative justice presents a problem. A frequent concern of professionals is that the human element of restorative justice is “inappropriate,” “unprofessional,” or “dangerous.” Such human reciprocity,

149 Mika and Zehr, “A Restorative Framework for Practice,” 127.
151 Walgrave, “Has RJ Appropriately Responded to Retributive Theory?” 50.
however, mainly threatens the status differential between professional and client not the integrity of a process that requires mutual trust. One social worker observed, when asked personal questions by clients, “We are trained to say, ‘we’re not here to talk about me, we’re here to talk about you.’ But we ask our clients to reveal the most intimate details of their lives at a most vulnerable time in their lives. Would you do that with someone who wouldn’t tell you what they did over the weekend?”152

Young adults may be not only angry and pained by the situations they encounter in their young lives, but these disadvantages may result in distrust towards adults. Without the ability to gain trust through interaction and cooperative sharing, this barrier will remain unyielding, thus deeming lay people not only welcome but more often necessary.

Often youths going through the criminal justice system are unsure who works for them and who works for the state. The blurring of these roles illustrates the need for support for the youth motivated by compassion and concern, not a paycheck. The realization that the individuals surrounding the youth do so by choice can be a positive experience. By using the natural resources of the community in the form of respected adults who have experience with youth and wish to assume a mentorship role, CPY provides the necessary support without the use of professionals that may be confusing to the youth. Most important, after the contract has been fulfilled, the youth can continue to contact the monitoring panelist and the monitoring panelist is free to provide a more regular influence on the youth’s life in the form of mentoring.

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152 Watson, “Implications of the Growing State Involvement?” 221.
Role of the So-Called “Community”

As noted in the principles of restorative justice, the community assumes certain responsibilities in the restoration process. The community should support efforts to reintegrate offenders, assume a role in the formulation of offender obligations and ensure opportunities for offenders to make amends.\(^{153}\) The community panel member fulfills these responsibilities in the CPY program as a representative of the community. As a form of extended-family, a caring community provides an effective social institution to regulate misbehavior and promote “family values,” where the traditional justice system does not recognize family value in response to crime. Community as an underlying structure of civil society represents the potential for informal social control that diminishes as professionals make decisions without openly consulting those directly affected by those decisions.\(^{154}\)

In order for restorative justice to succeed, the micro-community needs to reclaim direct involvement in the justice processes hijacked by the macro-community. In opposition to restorative values, the macro-community dehumanizes the process by depriving primary stakeholders of open expression and collective identification of harms, needs and appropriate responses.\(^{155}\) Restoration of public confidence, while ensuring safety, demands action on the part of the macro-community to develop and support micro-community restorative processes which involve all primary stakeholders. Restorative justice practices, facilitated by local organizations and supported by

\(^{153}\) Mika and Zehr, “Restorative Framework for Practice,” 144.
\(^{155}\) Ibid., 169.
government, empower micro-communities to conduct the restorative justice process to achieve resolution.\textsuperscript{156}

These micro-communities may not seem immediately apparent, but on behalf of youth, concerned members inevitably step out of the woodwork on behalf of youth. Each community brings different needs and encounters different obstacles, requiring those on the inside of the community to address these issues. Community within restorative justice ensures a sense of belonging and accountability to one another. A community naturally distinguishes those from inside the community from those outside of the community; thus those within the community understand some of the dynamics at work that others might overlook. Between the years 1997 and 2006, CPY has trained over 350 concerned community members as volunteer panelists. With these panelists’ support

\textsuperscript{156} Ibid., 170.
over 600 youths have gone through the CPY process successfully. By employing those who live alongside the youth committing unacceptable behavior, CPY provides a link between adults who grew up under often similar situations to the youth, thus allowing for more insight into how to best deal with the issue. A youth is more likely to feel accountable to someone within the community, than someone perceived to be oblivious to the conditions faced everyday.

An important factor in retaining the integrity of restorative justice includes oversight by staff, as well as peer and self review, especially since non-professional community members assume an integral role in the process. In addition, CPY collects feedback from all the primary participants in the process (see figure 9). Regardless of skill, motivation and good intentions, justice practitioners’ aspirations can remain elusive. Willingness to remain open to reflection enhances viability, sustainability and performance of restorative justice programs.

159 Mika and Zehr, “A Restorative Framework for Practice,” 146.
Conclusion

In conclusion, restorative justice represents a tradition of restoration meant to resolve conflict that has persisted since human communities formed in a wide variety of cultures from the hunters of the Great Plains Indians to the Coast Salish societies. An analysis of how restorative justice fundamentally differs from other forms of justice offers insight into the unique advantages of this form of justice, including ability to focus on more than one primary stakeholder and offer restoration to the harmed social fabric of society that is often ignored. Through comprehensive application of restorative principles to Community Panels for Youth, this specific program illustrates how each of these principles plays out in a significant and distinctive manner. Comparison of Community Panels for Youth to other restorative justice programs presents this program as a distinct alternative for juveniles and a viable model to practice justice. In addition, Community Panels for Youth does not falter under the common criticisms of similar programs, as its unique application firmly adheres to community roots based on sound theory and practice. As such, Community Panels for Youth and the broader restorative justice concept provide a strong alternative for American justice based on a long origin of practice and a sound perspective of community and community harmony.
WORKS CITED


Community Panels for Youth: A Community-Based Alternative to Juvenile Court,” VHS, Beyondmedia Education.


