

RESTORATIVE JUSTICE: IN PURSUIT OF SOCIAL JUSTICE

ERHAN EFE ARICAN

BOĞAZİÇİ UNIVERSITY

2022

RESTORATIVE JUSTICE: IN PURSUIT OF SOCIAL JUSTICE

Thesis submitted to the  
Institute for Graduate Studies in Social Sciences  
in partial fulfillment of the requirements for the degree of

Master of Arts

in

Philosophy

by

Erhan Efe Arıcan

Boğaziçi University

2022

## DECLARATION OF ORIGINALITY

I, Erhan Efe Arıcan, certify that

- I am the sole author of this thesis and that I have fully acknowledged and documented in my thesis all sources of ideas and words, including digital resources, which have been produced or published by another person or institution;
- this thesis contains no material that has been submitted or accepted for a degree or diploma in any other educational institution;
- this is a true copy of the thesis approved by my advisor and thesis committee at Boğaziçi University, including final revisions required by them.

Signature.....

Date .....

## ABSTRACT

### Restorative Justice: In Pursuit of Social Justice

In 2020, there were 1.8 million incarcerated people in the United States. This means that the United States has the highest prisoner rate in the world. This is a civil rights issue. Wicked individuals with ill intentions are not responsible for this phenomenon. In the first part of my thesis, the reasons behind the mentioned high incarceration rates will be explained, and it will be argued that these people, especially people of color, are being imprisoned as a result of a highly unjust process. To understand the reasons behind the high incarceration rates in the United States is important to find ways of lowering these rates. In the second part of the thesis, restorative justice programs, which is one possible way of lowering these rates, will be defined, it will be argued that restorative justice programs will fail unless other significant structural changes take place and that restorative justice programs can be beneficial to victims, offenders, and communities only if it is applied together with other structural changes in the case of United States. In the last part of my thesis, it will be argued that imprisoning poor people of color plays two important functions, for the neoliberal governments of the United States, legitimizing their political power and relocating those poor people, who do not have a place in modern, liquid societies, to outside of the society and that important structural changes cannot be applied without understanding this relationship between neoliberalism and current high incarceration rates.

## ÖZET

### Sosyal Adalet Peşinde: Onarıcı Adalet

2020'de Amerika Birleşik Devletleri'nde 1,8 milyon hapsedilmiş insan vardı. Bu, Amerika Birleşik Devletleri'nin dünyadaki en yüksek mahkum oranına sahip olduğu anlamına gelir. Bu bir sivil haklar sorunudur. Bu sorunun sebebi kötü niyetli, suçlu bireyler değildir. Tezimin ilk bölümünde bahsi geçen yüksek tutukluluk oranlarının nedenlerini açıklayacağım ve bu kişilerin özellikle de beyaz olmayan insanların son derece adaletsiz bir süreç sonucunda hapsedildikleri iddia edeceğim. Amerika Birleşik Devletleri'ndeki yüksek hapsedme oranlarının arkasındaki nedenleri anlamak, bu oranları düşürmenin yollarını bulmak açısından önemlidir. Tezin ikinci bölümünde, bu oranları düşürmenin olası yollarından biri olan onarıcı adalet programlarını tanımlayacağım, diğer önemli yapısal değişiklikler hayata geçirilmedikçe onarıcı adalet programlarının başarısız olacağını iddia edeceğim ve onarıcı adalet programlarının yalnızca hayata geçirilmesi gereken diğer yapısal değişikliklerle birlikte uygulandığı takdirde Amerika Birleşik Devletleri'ndeki mağdurlar, suçlular ve topluluklar için faydalı olacağını iddia edeceğim. Tezimin son bölümünde, beyaz olmayan yoksul insanları hapsedmenin Amerika Birleşik Devletleri'nin neoliberal hükümetleri için iki önemli işlevi olduğunu iddia edeceğim: sahip oldukları siyasi gücü meşrulaştırmak ve modern, akışkan toplumlarda yer bulamayan insanları hapsederek bu insanları toplumun dışına çıkartmak. Bu bağlamda neoliberalizm ve yüksek hapsedilme oranları arasındaki ilişkiyi anlamadan hapsedilme oranlarını düşürmek için gereken yapısal değişikliklerin hayata geçirilemeyeceğini iddia ediyorum.

## ACKNOWLEDGMENTS

I would like to thank my thesis advisor, Assist. Prof. Yıldız Silier, for her immense support in this thesis. It would not be possible for me to complete this thesis without her guidance. I also would like to thank the members of my thesis committee, Prof. Berna Kılınç, and Prof. Zeynep Direk, who contributed to this work with their valuable comments.

I thank to my friends, Ahmet Efe, Arda, Atıl, Cem, Erdem, İbrahim, Mark, Monur, Mustafa, Ozmo, Ömer, Pırıl, Rengim, Salih, Şafak, Yaşar, and Yusuf. They have played a very important part in my personal and intellectual development.

A very special gratitude goes out to Elif for her support at every step of my life and for standing me despite my laziness in the last three years. Even when she lost faith in me, she never stopped supporting and encouraging me.

Last, but not least, I cannot thank my family enough for their lifelong support. My aunt, Aybükem; my uncle, Bülent; and my cousins, Canberk and Ertunç, accepted me as the fifth member of their family as soon as I settled in Istanbul. I am grateful to them. My brother, Mert, has always been a role model for me and convinced me when I had doubts about studying at Boğaziçi University. I would not be making one of the best decisions of my life without his guidance. My father, Hayri, always encouraged and supported me to find what I want to do, and pursue my goals. He has always been a very understanding father and I would not be here without his support. My mother, Neşe, gave me all the love and effort a mother can give to her child. Everything that I have today, I owe to her. There isn't a day that goes by without remembering her.

## TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION .....	1
CHAPTER 2: MASS INCARCERATION IN THE US.....	4
CHAPTER 3: RESTORATIVE JUSTICE: CAN IT BE A SOLUTION? .....	25
CHAPTER 4: FROM WELFARE STATE TO PENAL STATE .....	40
CHAPTER 5: CONCLUSION.....	50
REFERENCES.....	56

## CHAPTER 1

### INTRODUCTION

In 2020, there were 1,8 million incarcerated people in the United States. This incomprehensible number was even higher in 2019 when the total number of inmates were exceeding 2.1 million (Kang-Brown, Montagnet, & Heiss, 2021). Despite the decrease, the US still has the highest prisoner rate. 639 people are imprisoned per 100.000 people (“Incarceration Rates by Country 2021”, 2021). The decrease was partly triggered by the COVID-19 pandemic and partly caused by the pressure of activists to reduce the number of incarcerated people. Although it is important to lower the number of incarcerated people from 2.1 million to 1.8 million, that kind of decrease in the number of incarcerated people is not even comparable to the change that is needed. The problem that is faced is much bigger. Millions of people are imprisoned in unjust ways. The current economic, social, and political structures put these people at a huge disadvantage in the first place. And this is only the beginning. From the first moment that these people interact with the law enforcement officials to the moment they are imprisoned, they experience an extremely unjust process, which causes their imprisonment. Unsurprisingly, people of color are suffering disproportionately because of these injustices. In 2018, black people’s incarceration rate was 3.2 times higher compared to white people’s incarceration rate (Kang-Brown, Montagnet, & Heiss, 2021). Lack of educational opportunities, lack of jobs, private prisons that protect their interests by working to keep their facilities full, the War on Drugs, and a criminal justice system, which is racially biased and is working



in some very unjust ways, are the primary reasons of the current high incarceration rates in the US, Brian Barry, Angela Davis, and Michelle Alexander argue.

This is a civil rights issue. One of the proposed solutions is changing the current institutions of punishment with restorative justice programs. It is argued that restorative justice is capable of repairing the harm caused by the crime, rehabilitating offenders, reducing recidivism rates, and helping victims, offenders, and the community to play more active roles in the process. Restorative justice has great potential. That being said, there are many conditions responsible for the current high incarceration rates in the US. Restorative justice programs cannot be successful without identifying and changing these conditions by implementing the necessary structural changes such as ending the War on Drugs, creating educational and job opportunities.

These necessary changes cannot be implemented if we do not understand the relationship between the neoliberal governments of the US and current high incarceration rates. Neoliberal governments of the US see poor people of color, who do not have opportunities to find jobs, only in financial terms. In a neoliberal framework, it is not an option to help these people to be productive members of society by giving assistance to them and creating job opportunities for them. Therefore, it is a sound solution for these governments to relocate, incapacitate and demonize these poor people of color by redefining them as criminals.

Racism is a fundamental part of this unjust process, which causes millions of people, especially people of color, to end up in prison. It is an intrinsic part of the political, economic, and social structures of the United States. According to Mills (1999), racism can even be defined as a political system by itself:

What is needed, in other words, is a recognition that racism (or, as I will argue, global white supremacy) is itself a political system, a particular power

structure of formal or informal rule, socioeconomic privilege, and norms for the differential distribution of material wealth and opportunities, benefits and burdens, rights and duties. (p.3)

The process that causes millions of people, especially people of color, to end up in prison in an unjust way can be seen as a strong reason to support the definition of Mills. In this thesis, the definition of Mills will be supported by explaining the role racism plays in that process in a detailed way. To achieve this goal, many empirical data, taken especially from the works of Brian Barry, Angela Davis, and Michelle Alexander, will be used.

In the second chapter, the reasons behind the mentioned high incarceration rates will be explained, and it will be argued that these people, especially people of color, are being imprisoned as a result of a highly unjust process.

In the third chapter, restorative justice will be defined, it will be argued that restorative justice programs will fail unless other significant structural changes take place and that restorative justice programs can be beneficial to victims, offenders, and communities if it is applied together with other structural changes.

In the fourth chapter, it will be argued that imprisoning poor people of color plays two important functions, for the neoliberal governments of the United States, legitimizing their political power and relocating those poor people, who do not have a place in modern, liquid societies, and that important structural changes cannot be applied without understanding this relationship between neoliberalism and current high incarceration rates.

## CHAPTER 2

### MASS INCARCERATION IN THE US

In his *Why Social Justice Matters* (2005/2017), Brian Barry explains how accumulations of inequalities, racism, profit-driven private companies cause African American people to suffer from higher rates of incarceration in the USA.

Firstly, African American people do not receive a decent education because most of the schools in ghettos are in bad shape. For example, 67% of students, who live in the ghettos of Chicago, do not graduate from high school, and students, who graduate from high school, are not qualified as much as their peers (Barry, 2005/2017). When this disadvantage is combined with the fact that blue-collar jobs have disappeared in ghettos, most African American people, who live in these ghettos, are not able to find decent jobs, which meet their basic needs (Barry, 2005/2017). Therefore, unemployment rates are high among these people. The ones who are lucky enough to find jobs usually work without having any social security such as medical insurance, or they work for wages, which do not provide enough resources to live in decent homes or to have balanced and adequate nutrition.

When these disadvantages accumulate, people are more likely to commit crimes. But these disadvantages are not enough to explain the high incarceration rates of black people. Although 75% of people, who use drugs in the USA, are white, and only 15% are black, 74% of people, who are being arrested based on crimes related to drugs, are black (Barry, 2005/2017). This phenomenon has several reasons. Firstly, there is an intensive tracking of African American people by law enforcement officials in these ghettos. Their tracking of African American people is

supported by networks of informants. In ghettos, it is harder for African American people to conduct their activities in their private spheres because such private spheres mostly do not exist. For example, while drug-related crimes such as selling drugs take place in pubs, or gyms in middle-class, white neighborhoods, these activities take place in the street in the ghettos (Barry, 2005/2017).

Secondly, the definition of criminal activity is also racially biased and may change according to the location that activity takes place. Selling drugs might be categorized as crime everywhere, but “to hang around in front of apartments and having arguments with passersby” may be perceived as criminal conduct in a ghetto, while it is not perceived as criminal conduct when it is done by white teenagers in a middle-class, white neighborhood. As a result, more people get arrested in ghettos.

Unfortunately, the location of the crime is not the only thing that makes the definition of crime racially biased. Some kinds of crimes are much more commonly committed by white, rich people, and are evaluated accordingly. For example, senior executives, who are responsible for financial corruption, are predominantly white. These crimes are much more harmful compared to low-level robberies. Financial corruption may cause thousands of people to lose their life savings. The magnitude is much bigger. Moreover, these senior executives already have great fortunes. They do not experience any problems to meet their needs. They are well educated and are highly aware of the consequences of their actions. Therefore, it might be said that they are highly responsible for their criminal conduct compared with offenders, who are poor and do not have many options other than committing crimes to meet their basic needs. (Barry, 2005/2017). For these reasons, it can be said that these senior executives should be punished more seriously. Unsurprisingly, this is not the case.

High-level executives do not even end up in jail in many cases for their criminal conduct while poor people spend many years behind bars.

Another important example is the difference between the sentences given to crimes related to crack cocaine and powder cocaine. Crack cocaine is used predominantly among blacks while powder cocaine is used predominantly among whites. While there is no scientific evidence, which shows that crack cocaine is more harmful than powder cocaine, the possession, and selling of crack cocaine cause offenders to spend ten times more time behind bars compared to crimes related to powder cocaine. It is truly shocking that an offender, who sell two grams of crack cocaine, and an offender convicted of murder can be punished in the same way (Barry, 2005/2017).

Thirdly, African American people have also huge disadvantages during the prosecution process. For a start, jury members are predominantly white in most of the cases and white jurors are more likely to believe police officers than African American people because their experiences with police officers are much better than the experiences of African American people (Barry, 2005/2017, p.106). Their explicit or implicit biases can play a role in decision-making processes. As a result, innocent African American people may be put behind bars or African American offenders may get punished more severely in a disproportionate way.

Moreover, most African American people do not have the necessary financial resources to hire a good lawyer (Barry, 2005/2017). In theory, it is true that everyone has a right to get legal assistance in the prosecution process. However, this is not the reality of most African American people in the USA. Most states do not spare enough financial resources to provide a lawyer to poor people, who cannot afford to hire a lawyer. As a result, the number of public defenders is too low in many states.

These public defenders cannot provide satisfactory services to their defendants. Most of the time, the first time they meet with their defendants is in the courtroom (Barry, 2005/2017). It also does not matter if these lawyers are drunk or fall asleep during the trials. As long as they participate, the defendant's right to hire a lawyer is seen as not violated. Therefore, many poor African American defendants are not properly defended in trials that will change their lives forever.

Last, but not least prosecutors often act in racially biased ways. In the USA, it makes a huge difference for a defendant if his case is seen in a federal court or state court because the punishments given in federal courts are much harsher compared to punishments given in state courts (Barry, 2005/2017). Unsurprisingly, prosecutors are more likely to decide that the trial should take place in a federal court when the defendants are African American.

As a result of these disadvantages, it is not surprising that there is a huge disparity between the number of African American inmates and white inmates compared with the crime rates of these groups. Unfortunately, African American people's disadvantages only increase after they end up in prison. One hopes that the criminal justice system would help inmates to increase their education level, their opportunities for rehabilitation, and their chances of finding jobs once they are released. This is not the case in the USA. Inmates do not find any programs that will help them to increase their educational level or chances of finding jobs once they are released (Barry, 2005/2017).

Once these people are released from prison, discrimination against them is common and perfectly legal. It is extremely hard for convicted people to find jobs because all employers can easily access their criminal records. If ex-inmates find an

opportunity to set up their own business, which is not likely, some jobs, such as having barber shops, are forbidden for them (Barry, 2005/2017).

Moreover, they are not allowed to stay in official residences. That means that ex-inmates, whose relatives live in these residences, do not have the opportunity to stay with their relatives. When the impossibility of finding jobs for a convicted person is considered, it is very hard for these people to have enough financial resources to rent a home. Even if they are lucky to have that kind of financial resources, it is common for landowners not to rent out their homes to ex-inmates once they find out about their criminal record. As a result, committing a crime is the only option left for many ex-inmates because they have no jobs to earn money or nowhere to stay (Barry, 2005/2017).

Even when ex-inmates achieve to find jobs and a home to live in, it is still very hard for them not to return to prison if they are on parole. On parole, ex-inmates can go to prison if they do not return their homes after 10 pm, if they hang out with someone with a criminal record, or if they miss their appointment with their probation officer for some reason. There are many rules that ex-inmates cannot violate, and it is very hard to live according to all of them in a long period.

Even worse, the USA is the worst country for a group of people to have high recidivism rates. “Three strikes and you are out” laws condemn people with three crimes to a lifetime sentence in prison. These laws can be as low profile as stealing a pizza or a few drinks (Barry, 2005/2017). As a result of all these extremely unjust practices, there are currently hundreds of thousands of African American people in American prisons.

Yet not everybody is unhappy with this phenomenon. With the privatization of prisons, higher incarceration rates mean more profits for private companies that

are in the prison sector. Therefore, higher incarceration rates are in their interest, and they have the tools to protect their interest. Politicians need financing for their political campaigns and private companies can provide this financing. In return, they expect politicians to protect their own interests. The problem is that none of these companies represent the interest of poor, marginalized minorities (Barry, 2005/2017). As a result, both private companies that are in the prison sector, and some politicians, who are being financed by these companies, have an interest in keeping the incarceration rates high. Two studies show how dangerous such cooperation between private companies and politicians can be. The first study shows that for every dollar spent for drug treatment, the taxpayers save seven dollars while the second study shows that providing financial incentives to teenagers to finish high school is much more effective to reduce crime rates compared with the “three strikes and you are out” law in California (Barry, 2005/2017). The cooperation between private companies that are in the prison sector and politicians is very dangerous because it makes such studies meaningless. When the aim is to keep prisons full, knowing how to reduce recidivism rates has no importance. This might partly explain why recidivism rates are high in the USA. Although in theory, one main aim of the current institutions of punishment is rehabilitation, prisons are not ideal places that rehabilitate offenders. The main aim is retribution and incapacitating offenders. When this phenomenon is combined with the other mentioned unjust practices, most convicted people do not have many options other than committing crimes to survive after they get out of prison.

In her *Are Prisons Obsolete?* (2003), Angela Davis claims that there is more to think about punishment than the direct link between crime and punishment. Instead of focusing on individual criminal conduct, economic and political structures



should be taken into account to have a better understanding of punishment (Davis, 2003). According to her, there are several reasons for the high incarceration rates, especially in poor communities of color, in the USA. One main reason is related to education. Poor communities of color attend schools that replicate the structures and regimes of the prison (Davis, 2003). These schools, which place a higher value on discipline and security than on knowledge and intellectual development prepare children for prison (Davis, 2003). Another main reason is related to economics. Migrating corporations roam the world in search of cheap labor. This causes a huge number of people to lose their jobs and future job prospects (Davis, 2003). Another main reason is related to profit-driven private companies. In the USA, federal, state, and country governments pay a fee for each inmate. Therefore, private companies have an interest in keeping their prison facilities filled (Davis, 2003). And a very important main reason for the high incarceration rates in poor communities of color is of course racism. According to Davis (2003), racism plays an important ideological role:

Because of the persistent power of racism, “criminals” and “evildoers” are, in the collective imagination, fantasized as people of color. The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers. (p. 16)

According to Davis, the problems with retributive justice are not limited to what is mentioned above. The conditions of prisons are extremely repressive. Inmates have no access to their families, to their communities, to educational opportunities, to productive and creative work (Davis, 2003). There is the infliction of violence to inmates in prison. Convicted women are vulnerable to sexual coercion carried out by guards (Davis, 2003). Physical and mental health care is insufficient. There are currently millions of people suffering from these conditions.

Davis calls this system the prison industrial complex. This system has several aspects that link corporations, government, correctional communities, and media (Davis, 2003). The term prison industrial complex is used to show what these relationships constitute. Corporations generate profit from this system in several ways. Companies like CoreCivic owns and manages prisons, and CoreCivic gets paid by the government for each inmate they detain in their facilities. Companies like Victoria's Secret use inmates to cut production costs by making them work for very low hourly rates. Companies like Sodexo profit from the system by offering all kinds of services such as food catering. Many different corporations generate profits in different ways from this system, and these corporations have a huge interest to keep the number of incarcerated people high to protect and increase their profits.

Secondly, the media is an important part of these relationships. The public perception of crime is shaped not by the actual crime rates, but by the way the media presents crimes. The media plays its role in this system by making people feel like they are constantly in danger even at times when the official crime rates decline. For example, homicide rates declined 50% in the USA from 1990 to 1998, homicide stories increased by almost four times on the three major networks of the time (Davis, 2013). That way the media justifies the imprisonment of people by arguing that this is the only way to make communities safe from murderers, rapists, and robbers (Davis, 2013).

Thirdly, the government is an essential player in the system. The government played its role by privatizing prisons, by presenting draconian laws that imprison people that commit very low-level crimes for very long times, by "being tough" on crime to gain votes even when the official crime rates were decreasing.

The term prison industrial complex is used to expose this network of relationships between corporations, media, and government. It is used to show that one should not focus myopically on individual criminal conduct, and understand the current incarceration rates by taking economic, social, and political structures into account (Davis, 2003). This is the only way to have an adequate understanding of the current prison system in the US.

In her *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander claims that the War on Drugs is the single most important reason for the current high incarceration rates of African American people. According to her, although joblessness or not being able to get a decent education plays a role in this process, it would be a big mistake to see these facts as the primary reason behind the high incarceration rates of African American people. African American people are behind bars because the system is designed to put them there. Politicians, prosecutors, law enforcement officials, even the U.S Supreme Court are all important components of this system.

The War on Drugs is the single most important reason for the current high incarceration rates in the US, especially in poor communities of color (Alexander, 2010). There are currently more than 1.8 million people behind bars in the USA. More than a quarter of these people are in prison for a drug offense. There are several causes of this phenomenon. Before I explain these reasons, it is important to refute some myths that are commonly seen as explanations of this rise. Firstly, it is not the case that the War on Drugs is aimed at big, powerful, rich dealers. Four out of five arrests related to drug offenses were for possession of illegal drugs, not for sales of illegal drugs. Most inmates in state prisons have no history of selling drugs or violent crimes (Alexander, 2010).

Secondly, it is also not the case that the War on Drugs makes the streets safer by keeping dangerous drugs away. Almost 80% of the growth in drug arrests in the 1990s was related to marijuana possession, a substance less harmful than cigarettes or alcohol. This can partly explain why the USA has the highest number of inmates when it is compared with other developed countries. Possession of illegal drugs or crimes related to marijuana does not usually cause hundreds of thousands of people behind bars in other developed countries (Alexander, 2010). But, to understand the reasons behind this phenomenon as a whole, there are many more things that one should be aware of.

Firstly, the process starts when the police stop and search people, especially people of color, on some very shaky grounds. According to Alexander (2010), US citizens are under the protection of the Fourth Amendment of the U.S Constitution against such unreasonable searches by the police.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the person or things to be seized. (p. 60)

Unfortunately, the Fourth Amendment does not currently prevent the police from searching people on arbitrary grounds. One tactic the police use to search people although they do not have any reasonable suspicion is to ask for consent. It is understood that this tactic will be useful after *Florida v. Bostick* (Alexander, 2010).

This case is about a twenty-eight-year-old African American, named Terrance Bostick. He was going from Miami to Atlanta using a bus. He was sleeping at the back of the bus when two police officers woke him up and displayed their badges and a gun. They were looking for persons who might be carrying drugs. They asked Bostick to show his identification and ticket, which Bostick complied with as

requested. After, the officers asked him whether they can search for his bag. Although there was a pound of cocaine in his bag, Bostick gave consent. Although the officers had no reasons to be suspicious of Bostick, they were lucky and found the cocaine. They arrested him and he was convicted of trafficking cocaine (Alexander, 2010). On appeal, the Florida Supreme court ruled that the police officers violated the Fourth Amendment in Bostick's case because they had no reason to be suspicious of Bostick. However, the U.S Supreme Court reversed this decision by saying that Bostick was free to deny the police officer's request of searching his bag. Since he gave consent for the search, the police officers did not violate the Fourth Amendment, the U.S Supreme Court has decided (Alexander 2010,). Today, this decision allows the police to search people by asking for consent although they have no reason to be suspicious. As expected, they use this tactic mostly to search people of color for drugs. Most U.S citizens have no idea that they have the right to reject the police officer's request to search them. That ignorance makes this tactic useful because otherwise, people, especially people, who commit crimes, would not give consent to be searched by the police. As a result, the police currently exploit people's ignorance to search them although they have no reason to be suspicious of any crime, and the Bostick case ensures that they do not violate the Fourth Amendment.

This is not the only tool that police officers use to search people without violating the Fourth Amendment. Their second tool is pretext stops. According to Alexander (2010), "A classic pretext stop is a traffic stop motivated not by any desire to enforce traffic laws, but instead motivated by a desire to hunt for drugs in the absence of any evidence of illegal drug activity" (p. 66). This way police officers can stop and search motorists although they have no reason to be suspicious of any

illegal drug activity. The U.S Supreme Court has decided that police officers do not violate the Fourth Amendment when they use this tactic. This time, the case involved two African Americans, named Michael Whren and James Brown (Alexander, 2010). In June 1993, the police stopped Whren and Brown because they committed a traffic violation by failing to use a turn signal. When the police stopped them, they saw that the driver had a bag of cocaine on his lap. Afterward, the police officers admitted that their intention was to search them for drugs when they stopped them, and the traffic violation was just an excuse. Although the police officers had no reasonable suspicion, they had a “hunch” that Whren and Brown might be drug criminals (Alexander, 2010). Whren and Brown challenged their conviction by claiming that pretext stops are violations of the Fourth Amendment. They argued that it is impossible to follow all the traffic rules all the time because there are many, and the police can use pretext stops as an excuse to search people almost always even when there is no probable cause. The Supreme Court rejected their appeal by saying that an officer’s motivations to stop and search someone are irrelevant as long as they have a reason to stop them such as a minor traffic violation (Alexander, 2010).

The U.S Supreme Court also allowed the police to use both consent searches and pretext stops together. After Whren and Brown, another case happened called *Ohio v. Robinette*. (Alexander, 2010). In that case, a police officer stopped Robert Robinette because of speeding. He checked Robinette’s license and issued a warning. After that, he asked Robert whether he would consent to a search. Robinette gave consent and the police officer found a small amount of marijuana, and a single methamphetamine pill during the search. On appeal, the Ohio Supreme Court decided that officers must tell motorists that they are free to leave before asking for consent to search their vehicles because the justices were aware that the pretext

stops, and consent searches are being used as tools by the police officers in the War on Drugs (Alexander, 2010). The U.S Supreme Court reversed, again. It decided that this requirement is unrealistic. This way, all barriers were eliminated, and the police officers were free to use both consent searches and pretext stops to fight the War on Drugs in a way that does not violate the Fourth Amendment.

Unfortunately, the police officers did not confine themselves to these tools. There were some cases where some motorists did not give their consent to being searched after they were stopped by the police officers for minor traffic violations. In *Atwater v. City of Lago Vista*, the U.S Supreme Court decided that the police officers may arrest people for minor traffic violations and throw them in jail even when the statutory penalty for the violation is a mere fine (Alexander, 2010). As a result, the police officers had the option to arrest people who do not give their consent to being searched because of a minor traffic violation.

Moreover, police officers had the option to bring a drug-sniffing dog to the scene if the motorists refuse to give consent. This is also available to police officers in other scenes such as airports, buses, or train stations if people refuse to give their consent to being searched. This option is available to police officers because the U.S Supreme Court decided that when a drug-sniffing dog walks around someone, this does not constitute a search and, therefore, does not violate the Fourth Amendment (Alexander, 2010). As a result, when someone refused to be searched by the police, the police officers were able to say that they will bring a drug-sniffing dog to the scene. This was, of course, a successful strategy to convince people to give consent to be searched because it made them realize they have no other option.

Consequently, these four tactics that the police officers use in the War on Drugs made the Fourth Amendment useless for people who need the protection that

the Fourth Amendment provides against arbitrary searches. As might be expected, this caused hundreds of thousands of innocent people to be stopped and searched arbitrarily. But their stories are not necessarily heard. After experiencing these disturbing searches, most people, especially people of color, have reasons to be intimidated and fear police harassment and abuse (Alexander, 2010). Therefore, most people do not file any complaints. That is why most people, who have an interaction with the criminal justice system after these searches, are guilty of some crime. Here, it is important to note that this is not because the police officers are successful to identify criminals when there is no probable cause (Alexander, 2010). It is expected to find some drug offenders after hundreds of thousands of people are stopped and searched arbitrarily. The cost of this so-called success is paid by hundreds of thousands of innocent people, especially people of color, who are being searched and feel harassed by the police in an unjust way.

So far, it should be clear that the police officers have no legal barriers to stop and search whoever they want for drugs. But this does not explain why they choose to do so. Actually, the War on Drugs was first met with some resistance within law enforcement because it was not a top priority for law enforcement officials at the time (Alexander, 2010). The War required significant resources and to provide these resources law enforcement officials had to limit some resources they spend on more serious crimes such as murder, rape, theft, or violent assaults. This problem was solved by the Reagan administration by granting money to law enforcement agencies that prioritize the War on Drugs. (Alexander, 2010). Millions of dollars and equipment that is worth millions of dollars such as helicopters, grenade launchers, night vision goggles, have been granted in this way. Moreover, the Reagan administration provided another huge incentive for law enforcement agencies. It



allowed those agencies to keep most cash and assets that they seize during the war (Alexander, 2010). This allowed law enforcement agencies to increase their budgets by taking the cash, cars, and homes of alleged drug offenders. Of course, these two financial incentives were too strong to ignore and ended all the resistance within law enforcement agencies. After these financial incentives were introduced, competition has started between law enforcement agencies to increase their share of the case by waging the war more intensely.

After the mentioned legal barriers were eliminated and strong financial incentives were given to law enforcement agencies, a full-scale war on drugs has started. SWAT teams were a huge part of this war. They conducted drug raids thousands of times. According to Alexander (2010), these raids took place in homes, apartment buildings, even in public high schools:

Drug raids conducted by SWAT teams are not polite encounters. In countless situations in which police could easily have arrested someone or conducted a search without a military-style raid, police blast into people's homes, typically in the middle of the night, throwing grenades, shouting, and pointing guns and rifles at anyone inside, often young children. (p. 84)

Inevitably, dozens of people have been killed in these raids and a lot of innocent people were victimized. Alberta Supruill, Scott Bryant, and Donald Scott are only a few of the many. These people have been killed during the war. Alberta Supruill was a fifty-seven-year-old worker from Harlem and her only fault was living in a building where police conducted a raid by using a flash-bang grenade. The target of the raid was in the jail at the time, and if police had bothered to check before they conducted the raid, Alberta would not die from a cardiac arrest. Her death was accepted as homicide, but no one was punished for the crime (Alexander, 2010). Scott Bryant was shot by the police in a raid conducted after police found traces of marijuana in his garbage. He was unarmed and his son watched him die (Alexander, 2010).

Donald Scott had a two-hundred-acre ranch where he was shot and killed by the police. The police conducted the raid to find marijuana plants and found none. Afterward, an investigation took place and it turned out that the primary motivation of the police conducting the raid was to take possession of the ranch by finding drugs in it (Alexander, 2010).

Now that actual war is being waged by the law enforcement officials to catch offenders, the third stage of the War on Drugs is putting people behind bars. There are several things that need to be discussed. Firstly, the drug laws are very harsh. Politicians who try to seem tough on crime support these laws. Drug offenders face very long mandatory prison terms for low-level drug dealing and possession of crack cocaine. There are “three strikes” laws, which mandate a life sentence for people who are convicted of their third crime, and any kind of crime counts. The harshness of these laws can be seen when it is compared with other developed countries, where a first-time drug offense usually does not mean more than six months in jail (Alexander, 2010).

That harshness is being used against defendants. In the USA, most criminal cases do not end up in courts. Most of the time, defendants and prosecutors resolve the case by plea-bargaining. In this process, defendants have the chance of accepting prosecutors’ offer of lower sentences if they plead guilty. Prosecutors use overcharging tactics in this process. They overcharge defendants with very harsh and long sentences if defendants do not plead guilty even when they know that although they have probable cause to overcharge them, they are not likely to win these cases in court. That way, defendants that are afraid of being imprisoned for a lot of years, do not take the risk and accept to be imprisoned for a few years whether they are guilty or not.

Defendants are especially powerless in this process because most of the time, they cannot find any legal representative. Thousands of poor people are being imprisoned without seeing any lawyer. The lucky ones, who find the chance to see a lawyer, usually do not spend more than a few minutes with their lawyers (Alexander, 2010). This is because there are not many good attorneys in this system since the working conditions in the system do not encourage attorneys to sign up for being court-appointed lawyers. As a result, many people are put behind bars because they do not understand their situation. People are being threatened with decades in prison without knowing their chance to win the case because there are no lawyers to help them. One cannot expect them to make rational decisions under these conditions. Accepting the prosecutors' offer or not may be the single most important decision of their lives, yet they make this decision under very stressful conditions without having any tools or resources that can help them (Alexander, 2010).

The process is almost complete. Hundreds of thousands of people are being stopped and searched under the protection of the U.S Supreme Court decisions. Financial incentives are given to law enforcement officials to perform these searches. SWAT teams conduct drug raids with the equipment, which is provided for the War on Drugs, and an actual war is being fought. Once the alleged drug offenders are pulled into the criminal justice system, they cannot find any support from legal professionals to defend themselves. They are threatened with mandatory long sentences when they are not likely to be found guilty of crimes that will cause tens of years behind prison walls. This way they are forced to plead guilty and accept to spend a few years in prison. If they are clear pieces of evidence of their crime, even if these crimes are low-level drug crimes such as selling a few grams of marijuana, they are sentenced to mandatory long prison sentences.

Unfortunately, there is more. The prisoner label is as important as the prison time for these people. According to Alexander (2010), once they are out of prison, they will be kicked out of mainstream society because of several reasons.

Barred from public housing by law, discriminated against by private landlords, ineligible for food stamps, forced to “check the box” indicating a felony conviction on employment applications for nearly every job, and denied licenses for a wide variety of professions, people whose only crime is drug addiction or possession of a small amount of drugs for recreational use find themselves locked out of mainstream society and economy—permanently. (p. 106)

Once convicted, it is extremely challenging for these people to find homes, to find jobs, to get help from the state institutions in hard times. The war against these alleged offenders never stops. The system makes sure that they will experience great troubles after they get out of prison whether they serve a long or short prison sentence. As a result, it is not surprising that a huge number of these former offenders are rearrested within three years after their release (Alexander, 2010).

People of color have been the primary targets of the War on Drugs. This is the case even though people of all races are part of illegal drug activities at similar rates. For example, a report shows that African Americans are 80% to 90% of all drug offenders in 2000, in seven states (Alexander, 2010). There are several explanations for these kinds of disparities. Firstly, law enforcement officials can stop and search anyone without violating the Fourth Amendment. It is not very hard to imagine how their explicit and implicit racial biases play a role in this process. There are many studies that show the explicit and implicit racial biases against people of color in the USA. For example, it is asked to close their eyes and imagine a drug user from participants in a study, conducted in 1995 (Alexander, 2010). Although African American drug users are 15% of all the drug users, ninety-five percent of participants described a black user in the study. Law enforcement officials are not free from these

biases and they are more likely to stop and search people of color in the first place when they decide whom to search on arbitrary grounds.

Secondly, drug-related crimes are different than many other kinds of crimes. The first difference is that when a violent crime or theft occurs, there is usually an offender and a victim. The police are called, and victims expect the police to find the offenders. In drug-related crimes, there are no offenders and victims in this sense. Both dealers and users engage in consensual activity. The second difference is that drugs are sold and used much more frequently compared to violent crimes. As a result, when law enforcement officials react to complaints about other kinds of crimes, they must be proactive in dealing with drug-related crimes. They must choose the places that they control for drug-related crimes, and the people they will go after since they have limited resources. (Alexander, 2010). Unsurprisingly, they chose to go after people of color, especially poor people of color that live in the ghettos. It is hard to imagine SWAT teams conducting raids in white, middle-class neighborhoods to catch people, who possess a few grams of marijuana. That would certainly be seen as unacceptable and create a strong backlash. Therefore, the War on Drugs took place mostly in ghettos, where poor people of color live, and affected people of color at much higher rates.

Thirdly, the U.S Supreme Court played its part to make sure that the racial disparities in sentencing between white people and people of color related to drug-related crimes cannot be eliminated. Normally, the equal treatment of U.S citizens under the laws is guaranteed under the Fourteenth Amendment. In a case called *McCleskey v. Kemp*, the U.S Supreme Court eliminated for defendants the possibility of going to appeal by claiming that their sentencing violates the Fourteenth Amendment. Warren McCleskey, who was black and was facing the death penalty

for killing a police officer, claimed that Georgia's death penalty scheme was infected with racial bias (Alexander, 2010). He challenged his death sentence by saying that such a scheme violates the Fourteenth Amendment. As proof, he offered a study, called the Baldus study. In this study, researchers examined more than 2000 murder cases in Georgia and found that offenders who are charged with killing white victims received the death penalty 11 times more than offenders who are charged with killing black victims (Alexander, 2010). Georgia prosecutors were responsible for the mentioned difference. In 70% of cases, where there are black offenders and white victims, prosecutors sought the death penalty while in only 19% of cases, where there are white offenders and black victims, they sought the death penalty (Alexander, 2010). The U.S Supreme Court accepted the statistical evidence as valid, but they rejected McCleskey's appeal. They said that McCleskey must show that there is a racial bias in his particular case. The statistical evidence, by itself, is not enough and there is no violation of the Fourteenth Amendment in McCleskey's case since there is no proof of any conscious racial bias in his particular case, the U.S Supreme Court reasoned (Alexander, 2010). That decision makes it almost impossible for defendants to show that racial bias plays a role in their sentencing because everyone knows that explicitly showing a racist attitude is currently not accepted. It is not possible to show that racial bias played a role in the decision-making process of prosecutors or judges if one has to present evidence of explicit racial bias to prove his case. It has been 34 years since the U.S Supreme Court rejected McCleskey's appeal based on the mentioned reasoning, and the courts' decisions still rely on *McCleskey v. Kemp* when they evaluate whether there is racial bias in some particular cases.

As a result, Michelle Alexander proves that the system works successfully to put African American people behind bars. Politicians, law enforcement officials, prosecutors, and judges all play their part. African American people are being caught by law enforcement officials in unjust ways; they are being accused by prosecutors in unjust ways; they are put behind prisons by judges in unjust ways, and politicians make sure that the system works properly.

Brian Barry, Angela Davis, and Michelle Alexander all have strong arguments that show the relationship between social injustice and retributive justice. Crime is not simply the result of an individual act but should be perceived in a much broader perspective that includes political, economic, social structures. When this understanding of crime is combined with the inhumane conditions of prisons, which cause millions of inmates to suffer, Brian Barry, Angela Davis, and Michelle Alexander show us how huge the problems current institutions of punishment create. An urgent solution is needed.

## CHAPTER 3

### RESTORATIVE JUSTICE: CAN IT BE A SOLUTION?

As it has been explained, there is no single cause of the current high incarceration rates in the US. Therefore, there is no single solution that can solve all these problems. Many solutions are needed. Angela Davis offers some of these solutions. She calls for the abolition of prisons as the dominant form of punishment. As an alternative, she calls for schools, which place a higher value on knowledge than on discipline and security; a health system, which provides physical and mental health care for poor people; decriminalization of drugs; job and living wage programs... (Davis, 2003). There is no single alternative and the alternatives she offers are not limited to the ones mentioned above. To realize these alternatives is significant to reduce high incarceration rates. It is an important step on the way to abolish prisons as the dominant form of punishment.

That being said, there will always be lawbreakers as Angela Davis accepts (Davis, 2003). There will always be people, who commit crimes, and we will not be able to explain some of these crimes by referring to social injustices or offenders' serious mental health issues. This is where restorative justice comes into the picture. Restorative justice is seen as being capable of dealing with a crime better than the current institutions of punishment. It is argued that restorative justice has the potential to repair the harm caused by the crime, to rehabilitate offenders, and reduce recidivism rates while it gives the opportunity to the true stakeholders of a crime, victims, offenders, and the community, to play more active roles in the process. It is true that restorative justice has great potential and may bring huge benefits to



victims, offenders, and communities. That being said, restorative justice has its limits, especially when the political, economic, and social structures that cause some people to commit crimes remain intact. Imagine a world where everything is the same, except offenders participating in restorative justice schemes instead of being locked in prison. In this world, the War on Drugs continues on a full scale; there are no job and living wage programs; there are no free physical and mental health care opportunities for poor people; ex-convicted people are being discriminated against after they get released from prison in the same way. The only thing that is changed is that offenders participate in restorative justice programs instead of going to prison after they plead guilty or are found guilty by judges. Restorative justice can achieve very little in such a world. That being said, if restorative justice programs replace prisons in a world where every other alternative, Angela Davis mentions, is implemented, restorative justice programs can achieve great things such as repairing the harms caused by crimes, keeping communities safe by reducing recidivism rates, and convincing people that prisons are not necessary. In this chapter, restorative justice is going to be defined, it will be argued that restorative justice programs can achieve very little even if these programs replace prison times in a world where everything else stays the same, and it will be argued that restorative justice programs, as alternatives to prisons, have great potential to bring very important benefits to victims, offenders, and communities in a world where other important structural changes are implemented.

The restorative justice movement is a global justice movement, which seeks to change the way we see and respond to crime. More specifically, it aims to change the current, professionalized institutions and systems of justice. It aims for important goals such as victims of crime to experience a sense of justice; offenders to take

responsibility for what they did and their integration into society. That being said, there are different views on how to achieve these goals and what are the most important aspects of the restorative justice movement. Therefore, restorative justice has no single, accepted definition. Johnstone and Van Ness define three different conceptions of the restorative justice movement to solve this problem without impoverishing the meaning of the term: the encounter conception of restorative justice, the reparative conception of restorative justice, and the transformative conception of restorative justice (Johnstone & Van Ness, 2007).

In the current systems of punishment, victims, offenders, and the other parties who are affected by the crime are playing a passive role in the process of punishment while the active roles are being played by professionals. The encounter conception of restorative justice prioritizes to change this. It is argued that victims, offenders, and others that are affected by the crime should play an active role in discussion and decision-making by meeting face to face in a safe environment and discussing their problems (Johnstone & Van Ness, 2007).

In the current systems of punishment, the more common answer to correct injustice is to inflict pain on the offender. The reparative conception of justice entirely rejects this way of thinking. It claims that the infliction of pain is neither sufficient nor necessary. What is required is to repair the harm caused by the crime. (Johnstone & Van Ness 2007). For example, one of the important ways a crime can harm a victim is to make them feel that their sense of personal autonomy has been stolen from them (Zehr, 1999). The reparative conception of justice focuses on repairing that harm. One way of repairing that harm is through encounters where victims feel a sense of autonomy since they are active participants whose voices are heard. This is a case where the encounter conception of restorative justice and the

reparative conception of justice intersects. But there are also cases where encounters are not appropriate or possible. In those cases, those, who follow the reparative conception of restorative justice, claim that reparation is still possible. For example, a sentence of restitution repairs harms while a sentence of imprisonment adds to the harm caused by the crime (Johnstone & Van Ness, 2007).

The transformative conception of restorative justice focuses more on changing social responses to crime and wrongdoing. For the adherents of the transformative conception, restorative justice is a way of life we should lead. (Johnstone & Van Ness, 2007). In that sense, the adherents of the transformative conception do not see a very important difference between crimes and harmful conduct. Whether something is a crime or harmful conduct in daily life, one should identify who is hurt, what his needs are, and how things can be put right (Johnstone & Van Ness, 2007).

As we have seen there are important intersections between different conceptions of restorative justice. An encounter between victims, offenders, and other affected parties can be important to repair the harm caused by a crime. Yet there are also some tensions. An encounter conception of justice cannot succeed to repair the harm when the parties involved are not willing to meet. The transformative approach is the most extensive conception of restorative justice because it aims to change the way society responds to crime and harmful behavior as a whole, and this goal cannot be achieved only by the reparation of harms caused by the crime. Although the methods and the goals of each conception of restorative justice may differ to some extent, it can be meaningfully said that each conception is a conception of restorative justice since adherents of each conception works for the aims of restorative justice mentioned above, such as a meaningful experience of

justice for victims of crime, the reintegration of offenders to the society without inflicting unnecessary pain to them in the name of justice, to change how we view and respond the crime.

Unfortunately, restorative justice programs cannot be successful if the political, economic, and social causes of the current high incarceration rates in the US remain the same. The things that make restorative justice programs stand out cannot make much difference for the convicted people in the US since their conviction is the result of an extremely unjust process as it has been shown. There are many reasons that make me doubt that restorative justice programs, by themselves, can be successful in the current situation. Firstly, one of the essential conditions of restorative justice's success is offenders' taking responsibility for their criminal conduct and having an attitude about it. This attitude may be regret, remorse, or shame. It is debated within the global justice movement how this process should be experienced. But the problem starts in the first step of this process in the American case. There are thousands of people in the US, who are convicted, although they are innocent. They plead guilty because they are being threatened with decades behind bars. They plead guilty because they have no chance of getting assistance from a lawyer about whether they can really be put behind bars for decades. The courageous ones, who are determined to prove their innocence, often change their mind after staying in prison for months without seeing a lawyer, waiting for trial. As a result, although pleading guilty and accepting to participate in a restorative justice program is, in theory, a good start for an offender, this is not the case for most convicted people in the US since their action is not honest and they are innocent.

In these cases, it is not only that restorative justice programs, such as mediations between offenders and victims, cannot be successful, but will often result in disasters. In these mediations, offenders, who plead guilty or are found guilty although they are innocent, are expected to take responsibility and apologize to the victim for their criminal conduct. Offenders may choose to do that even when they are innocent. This is problematic for several reasons. Firstly, it is humiliating for an innocent person to look in the eyes of a victim and apologize for something they have not done. Secondly, it is also not likely that victims will feel that the apology of their offender is sincere. It is not easy to be sincere for an offender when she is innocent. Therefore, both offenders and victims won't be happy with the result in most cases in such encounters. If offenders choose not to take responsibility for the action, the encounter is not likely to be a success either since taking responsibility and apologizing for it is one of the most important factors of the success of a restorative justice program.

This argument can be criticized by claiming that this danger is not peculiar to the restorative justice programs in the US. Innocent people may be found guilty anywhere in the world and although it is unfortunate, it is not a strong reason to predict that restorative justice programs will fail since in most cases, offenders will indeed be guilty of a crime.

This is not a legitimate criticism. The point is not only that some people are convicted although they are innocent. The point is also not that these people are 80% of the prison population. The point is that innocent people are being found guilty in a systematic way in the US. They are being threatened just to convince them to plead guilty whether they are innocent or not. They are not provided any legal assistance. Whether these people form the majority of offenders is irrelevant. What matters is

that they are tens of thousands of innocent people, who are convicted, in a systematic way. Unless this system changes, innocent people will continue to be convicted every day and restorative justice programs cannot help these people or victims by expecting innocent people to take responsibility for an action they have not conducted. That expectation will only harm these innocent people and victims even further.

Secondly, another important feature of restorative justice programs is also related to encounters between offenders and victims. In these encounters, whether these are mediations or conferences, offenders find a chance to understand the human cost of their action. Victims tell the story from their perspective. They tell how the crime has affected them. That effect may be psychological, financial, physical. To hear the story of their victim can really help an offender to understand the true, human cost of their criminal conduct and can be a great motivation to stay away from crime in the future.

Again, that power of restorative justice will not change anything for most convicted people in the US. Hundreds of thousands of people are currently behind bars because a war has been fought against them. The War on Drugs is responsible for the conviction of hundreds of thousands of people as we have seen in the second chapter. The problem is that there are no victims of drug-related crimes. These crimes are consensual activities. Drug-sellers and drug-users are happy selling and buying drugs. There is no victim, who will participate in a restorative justice encounter and explain how the criminal conduct affected her life. This is, of course, a huge problem for restorative justice encounters. There is no human cost to be understood. There is no story to listen to. Therefore, there is no victim-related motivation for drug users to stay away from drugs in the future. In most of these

cases, an official will represent the community and communicate with offenders, and I doubt that such an encounter is what restorative justice programs aim for in the first place. As a result, it is highly unlikely that in these cases restorative justice programs will successfully reduce recidivism rates.

Even it is not clear that recidivism rates should be reduced in drug-related crimes. Soft drugs, like marijuana, are less harmful compared to alcohol and tobacco, and these drugs can be a source of pleasure without causing any addiction or destroying any lives. Even if one accepts that it is better for people not to use drugs, it does not follow that war should be waged against it. Drugs are being used as an excuse to wage a war against some people, especially people of color, for political and economic reasons. The War on Drugs has nothing to do to keep communities safe. For politicians, it is a political campaign to gain votes. For law enforcement officials, it is a way to earn more money. For media, it is a way to get higher ratings. The cost of these gains is putting hundreds of thousands of people behind bars. As a result, the solution cannot be within the restorative justice movement or programs. The solution is to end the War.

Thirdly, restorative justice programs cannot achieve much even in cases, which are not related to drugs, and where there are clear offenders and victims. Imagine cases such as burglary. Imagine for the sake of the argument offenders were responsible for the criminal conduct. There is a clear offender, victim, and human cost to be understood. In these cases, restorative justice programs can really help offenders to understand the human cost of their actions. It can really help victims to get a sincere apology from the offenders. In conferences, it can really help both offenders and victims to get the support of their families, or friends. Although these are important gains that one should care about, there are more things one expects

from these encounters. It is essential that this process reduces recidivism rates. It is essential that these offenders do not engage in criminal conduct and do not victimize other people once the encounter is finished. The argument is that this is a goal that can be achieved in restorative justice programs, because these programs will have an important impact on offenders, by making them understand the human cost of their action and getting the support of their families. It is assumed that offenders, who understand the human cost of their actions and are supported by their families, will have a great motivation to stay away from criminal conduct and reintegrate into society.

Again, I seriously doubt that this can be achieved in the US case. This argument assumes that ex-convicted people purposefully choose to commit crimes once they are released. This is not the case for most ex-convicted people. In the US, these people are being discriminated against in every aspect of their lives once they are released. They cannot find jobs because employers can easily access their criminal records. They cannot find homes to stay in because landlords do not want to rent their homes to ex-convicts. They cannot benefit from any government help. They cannot stay with their families if their families live in state housing. As a result, they have no money, nowhere to stay, and no hope. Therefore, the only option left for them to survive is to commit crimes again. In this scenario, I seriously doubt that even if these people experience the best possible restorative justice encounter ever and decide not to commit crimes in a greatly dedicated way, they can achieve their goal. The reason for high recidivism rates in the US is nothing to do with the personal motivations and intentions of ex-offenders. The reason is systematic. Ex-offenders are being systematically discriminated against and given no option but to



commit crimes again. Therefore, the solutions cannot be found within restorative justice. The solution is to end this legal discrimination.

As a result, restorative justice would be a huge failure in a world where it is not supported by other structural changes. If innocent people continue to be convicted in a systematic way; if the War on Drugs continues to be waged against people of color; if the legal discrimination continues against ex-convicted people, there is not much restorative justice can achieve. But this is not to say that restorative justice does not have great potential. Restorative justice has great potential if it is supported by other structural changes. Imagine a world where all the alternatives Angela Davis offers are successfully implemented. In this world, there are job and living wage programs; free physical and mental care is provided for poor people; drugs are decriminalized. Furthermore, imagine that people are provided with legal assistance when they need it; they are not being threatened with decades behind prisons to make them plead guilty; they are not being stopped and searched arbitrarily. These changes alone would mean a great reduction in the number of incarcerated people. In this scenario, restorative justice programs have great potential to replace prisons for several reasons.

Firstly, restorative justice has the potential to convince people that it can be an alternative to the current institutions of punishment. Currently, people may acknowledge that the current institutions of punishment create some injustices, but that being said, these institutions are necessary for several reasons according to this reasoning. Firstly, these institutions are necessary because offenders should not get away with what they have done. They committed some unlawful behavior, and these actions have consequences. Justice requires retribution. Secondly, the current institutions of punishment are necessary to keep communities safe. These institutions

incapacitate offenders and deter people from committing crimes in the first place. Therefore, these institutions have an important function to keep communities safe.

Whether these are legitimate concerns or not is not the point. The point is that a significant number of people have these concerns, and it is necessary to convince these people to some extent to replace the current institutions of punishment. Restorative justice can offer convincing solutions to these concerns.

Restorative justice is often seen as an alternative to retributive justice and for good reason (Zehr, 2002). While retributive justice values punishment not only for it might rehabilitate offenders, but also for its own sake, restorative justice is concerned with the restoration of the harm caused by the crime. That being said, to claim that there is no place for suffering in a restorative justice framework would be inaccurate. In that context, the relationship between retributive and restorative justice has been examined extensively (Daly 2002, 2002; Duff 2004). Firstly, retribution is a part of the restoration for many victims and victims may want to see offenders suffer (Roche, 2007). Secondly, offenders' taking responsibility and rehabilitation are linked with feelings of guilt and shame (Tadros, 2011). Therefore, although this is not intended, the process of taking responsibility and rehabilitation may cause offenders to suffer. This is potentially an aspect of restorative justice that its advocates might find hard to accept. But as I have said, one common concern people have is that offenders might get away with their crimes. They need to get the punishment they deserve. It is not necessarily the case that in restorative justice encounters, offenders "get away" with their crime. If this is the case, restorative justice may provide an answer against a common objection while it brings great benefits to victims, offenders, and society in general.

The second reason people support the current institutions of punishment is that they believe that these institutions keep communities safe by incapacitating offenders and deterring people from crime. Restorative justice has the potential to keep communities safe by making offenders understand the human cost of their actions and motivating them to stay away from criminal conduct. Here, the important point is to implement structural changes that will make the intention of an offender matter. Currently, having an intention to stay away from crimes as an ex-convict cannot make a difference because of the legal discrimination against ex-convicts. If this legal discrimination ends, restorative justice programs can reduce recidivism rates by using the mentioned methods. As a result, restorative justice has the potential to offer a convincing response to the second concern people have, which is to keep communities safe.

In her *Restorative Justice: Ideals and Realities*, Zernova provides some empirical evidence, which shows that people have the mentioned concerns and restorative justice programs have the potential to eliminate these concerns. She refers to an empirical study that has been carried out in one family group conferencing project in England. The intention of the study was to hear the views, concerns, and criticisms of people who participated in the mentioned program (Zernova, 2007). Two important empirical findings of the study support my argument. Firstly, according to Zernova (2007), the study shows that the primary reason the majority of victims chose to participate in the program was the prevention of future offending and keeping offenders out of trouble in the future:

The vast majority of victims thought that the purpose of the conference was to make the offender realize the consequences of their criminal behaviour and the wrongfulness of their actions. Many hoped that this realization, combined with a supportive attitude on the part of conference participants, would work toward stopping offending behaviour. The following quote from an interview

with a victim summarizes this general assumption about the rationale for conferencing:

I think that was the whole point of it: to stop the boy from doing another crime. I think what the purpose was – for him to be remorseful, to be sad for what he'd done, and to see that he shouldn't be doing what he did, and he wouldn't do it again in the future, you know, and with people being positive and encouraging him. (p. 67)

An important number of participants also believed that the conference has achieved its purpose of rehabilitating offenders and making them understand the human costs of their offences (Zernova, 2007). This is an important empirical finding to show that people highly value the reduction of future offending and restorative justice programs can convince people that it has the potential to achieve this goal.

The second important empirical finding that supports my argument is that, according to Zernova (2007), several victims explained that they felt uncomfortable during conferences because they saw conference facilitators' having a non-blaming approach towards offenders:

To quote one young victim of assault commenting on the conference preparation: 'It did make me feel as though [the offender] hadn't done anything wrong, though. It did. It did feel like [conference organizers] were sticking up for her.' Several victims wished that during the conference, professionals would actively express their disapproval of offenders' actions. Evaluating the approach taken by facilitators during the conference, one such victim said:

I think [the way the conference was conducted was a] too soft approach. I think it could've been a harder and more direct approach, without being offensive. ... I felt [the conference facilitators] were ... almost too accommodating, too sympathetic to the perpetrators, then the victim. It was almost conscious that here we have two young people who might be daunted by this situation, so we'll make them feel as comfortable as we can. (p. 69)

As it can be seen, victims also expect offenders not to feel very comfortable during conferences. They want to see that this is a criminal justice intervention. This is a piece of important empirical evidence that shows that even victims, who chose to participate in restorative justice programs, can be uncomfortable by a "too soft" approach. This empirical finding supports my claim in an important way. Some

people do not want to see offenders getting away with their crimes too easily. In the first instance, this expectation might seem in tension with the expectation of prioritizing reducing future offending, but this is not necessarily the case since seeing other people recognizing and disapproving what offenders has done, and seeing offenders taking responsibility and understanding the human costs of their offences may help victims to feel better while it contributes to keeping offenders out of future trouble although these processes are not likely to be pleasant for offenders. Being an active part of the process, meeting with the offenders and seeing that offenders are not as evil and wicked people as they have imagined, and listening to their apologies help victims to minimize the traumatic effects of being a victim while it gives offenders the chance to apologize. These findings are also supported by many empirical findings. There are many restorative justice programs, which successfully help victims to experience reduced fear and increased emotional restoration while reducing recidivism rates (Braithwaite, 2001).

As a result, if restorative justice is supported by other very important structural changes, it has the potential to achieve what it promises: rehabilitation and reintegration of offenders into the society, to help victims to minimize the traumatic effects of being a victim, to keep societies safe by reducing recidivism and to repair the harms caused by crimes. Restorative justice also has the potential to convince people that offenders will not get away with what they have done, and restorative justice programs will keep communities safe. These are very important achievements. Unfortunately, these achievements are not possible in the US in a world where it is not supported by other important structural changes. The War on Drugs must end, and drugs must be decriminalized; the problems in the prosecution process must be fixed; the discrimination against ex-convicts must end; job and

living wage programs, free physical and mental health care must be provided for poor people. Only then restorative justice can achieve what it promises.

## CHAPTER 4

### FROM WELFARE STATE TO PENAL STATE

In the first three chapters, we have seen that people of color are being imprisoned in unjust ways. Lack of educational opportunities, lack of decent jobs, private prisons, the War on Drugs are some of the reasons behind this injustice. We have also seen that restorative justice programs can only be successful with other structural changes. The vast majority of people currently do not end up in prison because they have vicious intentions in the first place. The recidivism rates are not high because ex-convicts choose to commit crimes when they get out of prison. As it has been explained detailly, it is extremely hard for them to accommodate, to find jobs, or not to violate their parole. The next question is how can the necessary structural changes be achieved. To answer this, we must first answer what made lack of educational opportunities, lack of decent jobs, private prisons, and the War on Drugs the reality of people of color? In this chapter, it will be argued that neoliberal governments of the United States imprison poor people of color to legitimize their political power and to relocate those people, who do not have a place in society in a neoliberal framework, to prison and it is essential for any movement to understand this relationship to reduce current high incarceration rates.

In his *Wasted Lives: Modernity and its Outcasts*, Bauman argues that Generation X, which can be defined by referring to women and men born in developed countries, in the 1970s, live in liquid, modern societies, which have its distinct maladies. There are several features of this liquid, modern society that make its maladies distinct. Firstly, although it is true that all kinds of societies have

unemployment problems, Bauman argues that the way unemployment is viewed in these liquid, modern societies is fundamentally different (Bauman, 2004). In previous societies, unemployment was seen as an anomaly. It was seen as a temporary deviation from the normal that will be fixed at the earliest opportunity. It was agreed that all people should have productive roles that they fulfill by being part of the work-life. In liquid, modern societies that point of view is entirely changed. Cutting labour costs and asset-stripping rather than creating new jobs and building new assets are fundamental ways of raising profits (Bauman, 2004). As a result, people losing their jobs is not defined with the word “unemployment”, but with the word “redundancy”. Redundancy does not imply any anomaly. It does not only refer to a temporary state. People losing their jobs is an ordinary, permanent part of liquid, modern states. These people, who lose their jobs because of cutting labour cost strategies of private companies, are not expected to have any productive role in society. They are no longer seen as reserve army of labor that can be called back into service any time but as disposable beings that are not needed such as waste (Bauman, 2004).

Unsurprisingly, the problems that *redundant* people experience in these liquid, modern societies are different than the problems of unemployed people of previous societies. Firstly, redundant people are being seen mainly as a financial problem. They need to be fed and sheltered. To feed and shelter these people will be a burden on the taxpayers, and indeed a permanent one. According to Bauman, it is true that unemployed people also needed assistance in previous societies, but they were not treated as objects of benevolence, pity, and charity (Bauman, 2004). However, this is the reality of redundant people. They are not treated with brotherly love but as objects of pity. They are unwelcome at worst and tolerated at best. They



do not lose only their jobs, their goals, the ability to be in control of their lives, but also their dignity as workers who have their own productive, useful, respected place in society. This was not the case for unemployed people in previous societies, because their condition was seen as temporary. It was thought that they will have a productive, useful role in society at the earliest opportunity. Therefore, the way they were perceived in society did not fundamentally change during the times of unemployment (Bauman, 2004).

Secondly, Bauman makes a distinction between the society of producers and the society of consumers to explain the difference between redundant people of liquid, modern societies, and unemployed people in the previous societies. In the society of producers, the place of unemployed people was secure even they were not productive because the need for the reserve army of labour was unquestioned. In the society of consumers, such a need does not exist. Cutting labour costs and asset-stripping rather than creating new jobs and building new assets are fundamental to raising profits (Bauman, 2004). In the society of consumers, people are being perceived as consumers in the first place, and redundant people are flawed, unfulfilled consumers that do not have a secure, unquestionable place in society. They are not happy. They are not able to consume. Therefore, they are not needed.

Thirdly, redundant people do not have a certain return path that they can follow to be productive, useful members of society once they are excluded from these liquid, modern societies (Bauman, 2004). Today, it is not clear how these redundant people can achieve their goal of becoming productive members of society. It is not that it is hard for these people to follow the path they are given to be productive again. No path or option is given to them. There are no reasonable, alternative roads they can consider following.

As a result, redundant people, who have no place and no obvious ways of finding a place in these liquid, modern societies, have become a surplus population that is neither needed nor wanted. However, this is not the only time in the history of modernity that a group of people finds themselves in the position of surplus population. On the contrary, it is one of the essential traits of modernity to create a surplus population that is neither needed nor wanted in the society (Bauman, 2004). More population was always desired by different countries because more people meant bigger power and bigger wealth for them. The world was full of vast and rich lands that are barely populated, and conquering and colonizing these lands meant more resources and less scarcity for these countries. In this modernization process, as the number of people increased, the armies, the industries, and the wealth of nations have got bigger. That being said, these countries did not always have enough space in their native lands to settle all these people in. However, there was a solution to this settlement problem. It was possible for more developed countries to settle their people in undeveloped parts of the world. The cost of this migration was, of course, paid by the native people of undeveloped lands. Native people of undeveloped territories were wiped out, killed, and pushed aside by the armies of more developed countries (Bauman, 2004). Those killings were seen as legitimate by developed, modern countries because their death was unplanned and unintended collateral casualties of economic progress and modernization. Although it is clear that those kinds of actions are enormously evil and cannot be legitimized in the name of economic progress or modernization, that strategy helped more developed countries to solve their surplus population problems by settling them in undeveloped territories. Today, this is not a possible solution. The world is already full. Modern and developed countries already conquered and colonized the undeveloped territories

of the world. These countries cannot use their past methods to relocate their redundant people. Their current methods have changed.

Today, governments relocate redundant people by imprisoning them. It is a common idea that governments are responsible for the well-being of their citizens. Giving assistance and finding productive roles for its citizens are important responsibilities of governments. However, this is not an option for neoliberal governments of the US. There are several reasons. Firstly, inequality is virtuous in a neoliberal framework. Everyone gets what they deserve. If some citizens are poor, it is their fault. It means that they are not capable of earning money. They are lazy and unskillful. On the contrary, rich people are rich because they are wise, hard-working, and virtuous. As a result, it becomes both counterproductive and unjust to provide financial assistance to undeserving, poor people by taxing rich people, who acquired their wealth through merit (Monbiot, 2016). Therefore, tax and regulation should be minimized. Government should interfere with free-market as little as possible. Secondly, citizens are redefined as consumers in neoliberalism. Their worth is based on buying and selling. Their value is based on their success as a player in a competitive market. If these people are not able to consume because they are not successful competitors of the free market, their worth is not much for neoliberal governments. For these reasons, it is neither possible nor wanted for neoliberal governments of the United States to improve the well-being of redundant people and find productive roles for them in liquid, modern societies.

The other alternative is to take poor people outside of society. However, today it is not possible for developed countries to send their redundant people to underdeveloped territories of the world. The developed countries have already colonized and conquered these underdeveloped territories. There are no vast, empty

fields. The world is full now. Therefore, neoliberal governments have to create a place within their home countries to relocate poor people, and prisons are perfectly efficient places for this goal. It is possible for these governments to construct huge prison complexes that can take millions of people. There are many private companies that can willingly complete these constructions in a profitable way. Once poor people are relocated to these prisons, the government is relieved of its responsibility to find a place for them in society. It makes great sense for neoliberal governments to perceive poor people as criminals and imprison them because these governments have no other ways to find a place for these people in a modern, liquid society with a neoliberal framework.

Redundant people are not only wastes that should be relocated but also serve a very important function for liquid, modern states with neoliberal governments. One fundamental thing that legitimizes political power is its promise of security in modern states (Bauman, 2004). The promise of security is a fundamental source of legitimacy because people stagger under the weight of the unknown and uncertainty. They feel anxious when they feel that they are not in control. Feeling uncertain and anxious is extremely common in neoliberal, modern societies. The free play of market forces is not under the control of individual people and it is often not possible for them to foresee the risks and uncertainties of the free market. Therefore, they are also not likely to protect themselves from these risks as individuals. Even when they successfully protect themselves from these risks as individuals, the feelings of anxiety and uncertainty remain the same throughout the process, and this is what matters. These feelings disturb people immensely and being able to give a sense of security against these feelings is, therefore, an important source of legitimacy for political power.

The welfare states of the post-war era served this exact function. It protected its people from the excessive risks and uncertainties of free-market forces. It protected its citizens, especially those in social and financial need, by means of grants, pensions, and other benefits. However, according to Bauman (2004), this is not how states function in liquid, modern states:

Welfare state institutions are being progressively dismantled and phased out, while restraints previously imposed on business activities and on the free play of market competition and its consequences are removed. The protective functions of the state are being tapered to embrace a small minority of the unemployable and invalid, though even that minority tends to be reclassified from the issue of social care into the issue and law and order: an incapacity to participate in the market game tends to be increasingly criminalized. (p. 51)

According to Bauman (2004), it is not only that welfare state institutions are dismantled but also people, who are in need of state protection against the risks and contradictions of free-market forces, are increasingly criminalized.

This is no surprise. The modern states have to legitimize their political power in some ways. When this source of legitimacy cannot be reducing the financial uncertainties and anxieties of its citizens, the second alternative is protecting its citizens by providing their security against possible threats. Here, the problem these neoliberal governments experience is that their citizens are not in constant danger. They are not constantly threatened by criminal people. Therefore, what these governments have to do in the first place is to create an illusion of security and make their citizens feel as if they are in constant danger. In this context, it makes sense for these governments to exaggerate the threat of criminals and to employ tougher rules on crime even at times the official crime rates decline. It makes sense for politicians to base their political campaigns on being tough on crime and deliver speeches as if citizens are in constant danger because they cannot offer solutions to the financial uncertainties and anxieties that citizens experience in their neoliberal framework.

Therefore, it is in the interest of these politicians to make security the top priority of their citizens by manipulating them as if they are in constant danger.

Of course, the danger must have a source even when it is illusionary. Poor people of color are perfect candidates to be that source of danger in the United States. Poor people of color are being perceived as undeserving, dangerous, and ill-minded by many people because racism is a fundamental characteristic of its structures. All institutions regarding politics, media, education, and criminal justice are all affected by racism. Therefore, when the War on Drugs starts and the primary targets of the war becomes poor people of color, this does not create a strong backlash. When the media portrays criminals primarily as people of color, this seems routine. When there are armed cops in schools that are in black neighborhoods, this seems like a regular characteristic of a school. When poor people of color are being imprisoned in much higher numbers because of the systematic racism that the criminal justice system entails, the role racism plays in the process becomes invisible.

Here, the important point is that the War on Drugs, the lack of educational and job opportunities for poor people of color, the privatization of prisons, and a racially biased criminal justice system that systematically imprisons poor people of color, are not distinct and unrelated events. The neoliberal governments of liquid, modern societies purposefully create an illusion as if their citizens are in constant danger, and declare and carry on the War on Drugs to gain votes because they cannot increase the well-being of their citizens. These neoliberal governments do not try to provide a productive role to poor people of color in society because first, there is no way to provide these roles to poor people in a neoliberal framework, and second, they need poor people, who can be seen as sources of danger, to legitimize

themselves. These governments purposefully privatize prisons and accelerate their constructions because they need to relocate the redundant people, who have no place in liquid, modern societies that are governed by neoliberal governments. This way a financial burden of the government becomes a source of profit both for private companies and politicians, who are financed by these companies.

It is extremely important to see the connection between neoliberal governments of modern, liquid societies and the War on Drugs, privatization of prisons, and lack of educational and job opportunities for poor people of color. Any movement that aims to lower the current high incarceration rates in the United States first needs to understand the connection between neoliberal governments of modern, liquid societies and imprisonment of poor people of color. Understanding this connection is necessary but not sufficient. Even when one understands this connection, there are many other questions that need to be answered. Understanding this connection is necessary because it helps us to know what is currently wrong and what should be changed. It is clear for the mentioned reasons that current high incarceration rates cannot be lowered significantly in a neoliberal order. Neoliberal governments need to criminalize poor people of color, who cannot find productive and useful roles for themselves in the society, to relocate them. These governments need to create an illusion as if people are in constant danger because of the rising crime rates to receive votes and to win elections by being tough on crime. The alternative way of gaining support, which is protecting their citizens against the vulnerabilities of free-market play, is not available for them. Therefore, it is clear that movements, which aim to lower current incarceration rates, should also aim to change this neoliberal order. That being said, it is not sufficient to understand that neoliberalism plays an essential part in this process because it is still a huge question

of how this neoliberal order can be changed. Nevertheless, defining a problem in the right way seems to be an important step forward to solve it.



## CHAPTER 5

### CONCLUSION

When They See Us, a four-part Netflix drama, tells the story of five African American boys that were found guilty and jailed for the crime of beating and raping a 28-year-old white woman although they never committed the crime. The boys are known as the Central Park Five while the case is known as the case of the Central Park Jogger.

In 1989, a group of around 30 teenagers was spending time in Central Park, New York. Some of these teenagers were disturbing the peace in the park, harassing and even hurting other people. The same night, a 28-year-old white woman was beaten and raped in Central Park. She was in a coma for 12 days and the people of New York City were boiling with rage because of the incident. Therefore, the prosecutor and police felt great pressure to find the criminal. As a result, although there was no evidence pointing to them, four African American teenagers and one Hispanic teenager, who belong to the group that was spending time in Central Park at the same night, were interrogated for several hours without their parents. They were threatened, beaten, and coerced by police. In the end, they confessed that they committed the crime although they had nothing to do with the crime.

There were many reasons not to charge and interrogate these teenagers in the first place. There was a distance between the place they were hanging out in Central Park and the crime scene, and they were unlikely to be at the crime scene during the time the crime is committed. There was no DNA match with the semen found at the crime scene. These facts did not make any difference for the prosecutor and the

police. They wanted to charge these five teenagers. These facts did not make any difference for the judge and jury of the case. Although these teenagers took back their confessions and prosecutors relied solely on the confessions in the first place because there was no other evidence, the Central Park Five were found guilty of murder, and rape, and were convicted to six to 13 years in prison (“Central Park Five”, 2019).

The only ‘crime’ of these teenagers was being African American and Hispanic. Their ethnicity affected how the prosecutor, police, judge, jury, and public perceived them. They have become the target of the prosecutor and police instantly. It made the judge and jury not consider important information that can show the innocence of the Central Park Five. It made these teenagers be locked up in prison under severe conditions for several reasons although they were innocent. Even watching the injustices that these innocent teenagers have experienced only because they were African American, and Hispanic is extremely disturbing. It is extremely hard to watch all four episodes because these episodes are sources of great discomfort for the audience. It is impossible to imagine what it would be like to experience that kind of injustice and to be locked up in prison as an innocent teenager.

After 12 years, the real criminal confessed his crime. He was already in prison on a life sentence and told the police details of the crime that were not publicly known. As a result, the Central Park Five were cleared of all charges although they have almost served their full sentences. After their release, they filed a civil suit against New York City and received around 40 million dollars in the settlement (“Central Park Five”, 2019).

As a matter of fact, these five teenagers were lucky compared with thousands of other convicted people of color in the context of the US. It is true that no money can repair what they have experienced. That being said, thousands of people of color are being imprisoned just because they are not white just like the Central Park Five. They are being searched, threatened, interrogated, charged, and imprisoned by white prosecutors, police, juries, judges, politicians just because they are people of color. The process and reasons for the current high incarceration rates in the United States are, of course, much more, and complex. Neoliberal governments justify themselves by creating an illusion as if the society is in constant danger and these governments ensure the safety of their citizens by being tough on crime because it is not possible for these governments to justify themselves by ensuring that every member of society has his own productive role and place in the society, in a neoliberal framework. As a result, the reality of people of color is a lack of educational opportunities, lack of jobs, private prisons, a racially biased criminal justice system, and the War on Drugs.

There are thousands of convicted people, who are not as lucky as the Central Park Five for two reasons. Firstly, thousands of convicted people can never prove their innocence because they have no legal assistance and the real criminals do not confess their crimes in many cases. Secondly, these convicted people do not have any chance to find a place for themselves in society once their imprisonment ends. They often do not have any money, any opportunity to find a job, any place to stay in. They are legally discriminated against in every aspect of their lives. As a result, they are expected to return to prison and be less of a burden to the society there.

In such a context, restorative justice cannot achieve anything by itself. The current high incarceration rates have nothing to do with the individual responsibility

and intentions of the criminals. Crime should be perceived in a much broader perspective including economic, social, and political structures as Angela Davis argues. These structures currently work together to put people of color behind bars. Politicians, private companies, media, police all have an interest and play their part in keeping incarceration rates high. As a result, it is not possible for restorative justice programs to be successful without ending the War on Drugs, creating educational and job opportunities for poor people of color, abolishing private prisons.

This is only possible if we understand the connection between the neoliberal governments of the United States and the War on Drugs, lack of educational and job opportunities for poor people of color, and private prisons. The current high incarceration rates in the US play two important functions for neoliberal governments. Firstly, these governments create an illusion that society is constantly in danger because of wicked criminals, who are generally imagined as black and gain the support of society by protecting them from these criminals. Secondly, these governments cannot provide a productive, useful role for poor people of color in society because of their neoliberal framework, and relocating these people to prisons becomes a useful solution for them. Therefore, any movement, which aims to lower the incarceration rates in the US, first needs to understand that connection and needs to change that.

Only, in that case, restorative justice has the potential to bring great benefits to victims, offenders, and society such as repairing the harms caused by the crime, rehabilitating and reintegrating offenders into society, keeping communities safe by reducing recidivism rates.

Here, one should be aware that restorative justice, taken together with the other structural changes, is more relevant than ever to the current injustices that

people of color experience in the United States. Millions of people, especially people of color, are not only being discriminated against, but they are also raising their voices against this discrimination. Black Lives Matter, which began as a hashtag, turned into local and national protests after the killings of Trayvon Martin, Breonna Taylor, George Floyd, a few of the many. People of color raise their voices against being imprisoned in unjust ways. They raise their voice against police violence. They raise their voice to change this racist system. Their protests ask for policy change. They ask police officers, who commit violence, to be criminally charged. They call for “defunding” the police.

In that context, restorative justice programs can be demanded and used as a way of acknowledging the injustices that people of color experience. People of color, who are being imprisoned because of their skin color, are not the real offenders, rather the victims. The police, who is using extreme violence; the courts, which are giving extreme punishments; the politicians, who try to increase the number of people in prisons for their own interest, are the real offenders that cause a great amount of suffering, and they should be acknowledged as such. Restorative justice has the potential to help offenders to take responsibility for their actions, to repair the harm caused by the crime at least to some extent, and to transform the way society views and responds to crime in general through restorative justice encounters. It might be the case that there is still a long way to hold police, courts, or politicians responsible for the suffering they have caused, and make the penal state acknowledge the systemic racism the current institutions of punishment entails. However, one thing is obvious at this moment in history. Realizing these ends is extremely important, and hundreds of thousands of people raise their voices and demand

structural changes. Restorative justice programs can and should be a part of these demands.

## REFERENCES

- Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colorblindness*. New York: The New Press.
- Barry, B. (2017). *Sosyal adalet neden önemlidir?*. (Ebru Kılıç, Trans.) İstanbul: Koç Üniversitesi Yayınları. (Original work published 2005)
- Bauman, Z. (2004). *Wasted lives: Modernity and its outcasts*. Cambridge: Polity Press
- Braithwaite, J. (2001). *Restorative justice & responsive regulation*. New York: Oxford University Press
- Central Park Five: The true story behind When They See Us. (2019). BBC  
Retrieved from <https://www.bbc.com/>
- Daly, K. (2000). Revisiting the relationship between retributive and restorative justice. In H. Strang, & J. Braithwaite (Eds.), *Restorative justice: Philosophy to practice* (pp. 33-55). Aldershot: Ashgate.
- Daly, K. (2002). Restorative justice – the real story. *Punishment and Society*, 4, 55–79.
- Davis, A. Y. (2003). *Are prisons obsolete?*. New York: Seven Stories Press.
- Duff, A. (2004). Restoration and retribution. In A. Hirsch, J. V. Roberts, A. E. Bottoms, K. Roach, & M. Schiff (Eds.), *Restorative justice and criminal justice: Competing or reconcilable paradigms* (pp. 43-60). Oxford: Hart Publishing.
- Incarceration rates by country 2021. (2021). Retrieved from <https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country>.
- Johnstone, G., & Van Ness, D. W. (2007). The meaning of restorative justice. In G. Johnstone, & D. W. Van Ness (Eds.), *Handbook of restorative justice* (pp. 5-24). Devon: Willan Publishing.
- Kang-Brown, J., Montagnet C., & Heiss, J. (2021). People in jail and prison in 2020. Retrieved from <https://www.vera.org/publications/people-in-jail-and-prison-in-2020.pdf>

- Mills, W. Charles (1999). *The racial contract*. New York: Cornell University Press.
- Monbiot, G. (2016, April 15). Neoliberalism – the ideology at the root of all our problems. *The Guardian*. Retrieved from <https://www.theguardian.com/>
- Roche, D. (2007). “Retribution and restorative justice.” In G. Johnstone, & D. W. Van Ness (Eds.), *Handbook of restorative justice* (pp. 75-91). Devon: Willan Publishing.
- Tadros, V. (2011). *The ends of harm: The moral foundations of criminal law*. Oxford: Oxford University Press.
- Zehr, H. (1990). *Changing lenses*. Scottdale, PA: Herald Press.
- Zehr, H. (2002). *The little book of restorative justice*. Intercourse, PA: Good Books.
- Zernova, M. (2007). *Restorative justice: Ideals and realities*. Hampshire: Ashgate Publishing