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REDESIGNING RESTORATIVE JUSTICE FOR CRIMINAL JUSTICE REFORM

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REDESIGNING RESTORATIVE JUSTICE FOR CRIMINAL JUSTICE REFORM

MATTHEW D. KIM, J.D., PH.D.*

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Considering the racial disparities in the criminal justice system and the pressing need for reform, this article presents the optimal design for restorative justice that is capable of drawing the necessary public support to transform the criminal justice system. Restorative justice is a growing alternative to the criminal justice system designed to allow offenders, victims, and members of the community resolve crimes without resorting to the criminal justice system. Public support

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for restorative justice programs is vital to their success, and many programs fail because of inconsistent public support. As such, proponents of restorative justice emphasize the need to “start small and pure” with the hope that strategic programs will incrementally garner greater public support. However, there is a troubling lack of empirical data on how to “start small and pure.” This article addresses this gap by exploring when the public is more likely to support restorative justice practices. Using a series of original public opinion survey experiments, this article argues that the public is more likely to support restorative justice for (1) juvenile offenders over adult offenders, (2) nonviolent offenders over violent offenders, and (3) first-time offenders over repeat offenders. Furthermore, the article finds that the U.S. public is no less likely to support pre-arraignment diversion programs and pre-sentence probation programs than the traditional criminal justice system. These findings suggest that restorative justice programs that prioritize diverting nonviolent, first-time, juvenile offenders through pre-arraignment restorative justice practices or reducing their sentences through pre-sentence restorative justice practices hold the most promise to reforming the criminal justice system.

INTRODUCTION

Donnell was at home one day when his younger brother Elijah walked into his apartment and collapsed.¹ Elijah's shirt was bloodstained. When Elijah regained consciousness, Elijah told him how a group of young men had attacked him by a bus stop without provocation. Intent on retaliating, Donnell and Elijah headed towards the bus stop with a group of friends. There, they saw Elwin. Elijah mistakenly believed Elwin was among the group of men who had attacked him earlier. They began assaulting Elwin. Almost immediately, Elwin pulled a knife and began swinging it to defend himself.

Elijah did not feel the knife at first.² Then, he saw his shirt turn red. He touched his cheek and realized that Elwin had slashed the side of his face. In the following commotion, someone grabbed Elwin's knife and struck Elwin in the back. A piece of the knife broke off and punctured Elwin's lungs. Eventually, the police arrived and arrested Donnell, Elijah, and Elwin. Then, the paramedics arrived. Luckily,

1. The introductory account of Donnell and Elijah is entirely based on Danielle Sered's seminal work. See DANIELLE SERED, *UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR* 129 (2019) (providing a more detailed account of the case of Donnell and Elijah).

2. *Id.* at 130.

Donnell, Elijah, and Elwin all survived, but not without severe physical and mental trauma from the incident.

Instead of resorting to the traditional criminal justice system, law enforcement officials referred the case to Common Justice, a victim offender mediation program designed to mediate violent incidents.³ Common Justice, which ascribes to a “survivor-centered accountability approach,” offered an opportunity for all parties to reflect on the incident together and move towards an agreement to address the harms they had caused.⁴

All three parties met together and signed an agreement that allowed them to avoid incarceration.⁵ Donnell’s agreement, for instance, involved writing a weekly journal, taking the GED, completing a medical assistant certificate program, completing his résumé, seeking employment, conducting community service, sharing his experience with his peers, and becoming more involved in his children’s lives. In addition, he had to read ten books, a set of articles, and several films designed to give him insight into his actions. He then had to write an apology letter to Elwin and his family. He also had to commit to an anti-violence pledge, create a memorial at the bus stop where the incident took place, and get involved in the Men Opposing Violence Everywhere (MOVE) group at Common Justice. Six years since the incident, Donnell has a steady job and is grateful for his opportunity to avoid incarceration and turn his life around.⁶ Elijah and Elwin are similarly leading productive lives. This powerful story is from Danielle Sered’s seminal work *Until We Reckon*.⁷

It is not too difficult, however, to imagine how their lives would have turned out differently without the victim offender mediation program at Common Justice. They likely would have spent significant time in prison.⁸ Upon release, they would have had difficulty finding employment due to their violent felony convictions, and they may have turned to a life of further violence, cycling in and out of the criminal justice system. Fortunately, the victim offender mediation program was an opportunity to restart their lives.

Their experience with victim offender mediation, also known as

3. *Id.* at 133, 144.

4. *Id.* at 133–34.

5. *Id.* at 144.

6. *Id.* at 147.

7. *Id.*

8. *Id.*

restorative justice, is not unique.⁹ Considering the growing moral imperative to reform the traditional criminal justice system,¹⁰ numerous jurisdictions are increasingly adopting restorative justice programs.¹¹ These programs allow the offender, the victim, and members of the community to negotiate a resolution to the satisfaction of all parties, as opposed to subjecting the offender to the full punitive measure of the traditional criminal justice system.¹²

The key factor that enables restorative justice programs to serve as an alternative to the criminal justice system is the involvement of members of the community.¹³ Members of the offenders' community serve as mediators and volunteer participants.¹⁴ Members of the community must also be willing to welcome the offenders back into their community and guide them through the key phases of their post-arrest life.¹⁵ Too often, however, restorative justice programs do not garner the necessary community support,¹⁶ and without community support, these programs fail to have their intended impact of

9. See, e.g., Amy J. Cohen, *Moral Restorative Justice: A Political Genealogy of Activism and Neoliberalism in the United States*, 104 MINN. L. REV. 889, 893 (2019) (noting how fifteen states passed laws to support restorative justice programs between 2010 and 2015).

10. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 11 (2010); RACHEL BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* 2 (2019); DAVID KENNEDY, *DETERRENCE AND CRIME PREVENTION: RECONSIDERING THE PROSPECT OF SANCTION* 2–8 (2009); MARK KLEIMAN, *WHEN BRUTE FORCE FAILS: HOW TO HAVE LESS CRIME AND LESS PUNISHMENT* 4 (2009); JONATHAN SIMON, *MASS INCARCERATION ON TRIAL: A REMARKABLE CASE AND THE FUTURE OF IMPRISONMENT* 3 (2014); FRANKLIN E. ZIMRING ET AL., *PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA* 165 (2001); Desmond S. King & Rogers M. Smith, *Racial Orders in American Political Development*, 99 AM. POL. SCI. REV. 75, 89 (2005); Dorothy E. Roberts, *The Social and Moral Costs of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1300 (2004).

11. See Cohen, *supra* note 9, at 893.

12. See *id.* at 891.

13. See, e.g., DAVID CAYLEY, *THE EXPANDING PRISON: THE CRISIS IN CRIME AND PUNISHMENT AND THE SEARCH FOR ALTERNATIVES* 295 (1998); GERRY JOHNSTONE, *RESTORATIVE JUSTICE: IDEAS, VALUES, AND DEBATES* 12 (2d ed. 2011).

14. See JOHNSTONE, *supra* note 13, at 12.

15. See *id.*

16. See, e.g., John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, 25 CRIME & JUST. 1, 79 (1999); Arlene Gaudreault, *The Limits of Restorative Justice*, ÉCOLE NATIONALE DE LA MAGISTRATURE 2005 at 2; Mark Obbie, *They Knew It Was the Right Thing to Do*, SLATE.COM (Dec. 29, 2015, 8:15 AM), <https://slate.com/news-and-politics/2015/12/restorative-justice-its-rise-and-fall-in-rural-upstate-new-york-county.html>.

diverting offenders away from the criminal justice system.¹⁷ As such, proponents of restorative justice emphasize the need to “start small and pure” with the hope that strategic restorative justice programs will incrementally increase public buy-in so that restorative justice will eventually become the primary response to all types of crime.¹⁸

Yet, there is a troubling lack of empirical data on where to start.¹⁹ Does the public prefer to have particular types of offenders be eligible for restorative justice programs? Is the public less likely to support restorative justice programs than the traditional criminal justice system? Which model of restorative justice is the public more likely to support—pre-charge diversion programs or pre-sentence probation programs? Are there cross-national differences in public support for restorative justice? This article seeks to address this empirical gap and help policymakers and practitioners design restorative justice programs that will more effectively garner public support.

This study designed and fielded a series of original public opinion survey experiments in the U.S. and South Korea. The survey experiments find that the U.S. and the South Korean public are more willing to support restorative justice for (1) juvenile offenders over adult offenders, (2) nonviolent offenders over violent offenders, and (3) first-time offenders over repeat offenders. These findings suggest that restorative justice programs designed for nonviolent, first-time, juvenile offenders are more likely to garner the necessary public support. Furthermore, the article finds that the U.S. public is no less likely to support pre-arraignment or pre-sentence restorative justice

17. See JOHN BRAITHWAITE, *RESTORATIVE JUSTICE & RESPONSIVE REGULATION* 94–95 (2002); DANIEL W. VAN NESS & KAREN H. STRONG, *RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE* 76 (2014).

18. See, e.g., James Dignan, *Towards a Systemic Model of Restorative Justice*, in *RESTORATIVE JUSTICE: COMPETING OR RECONCILABLE PARADIGMS?* 135, 138 (Andrew von Hirsch et al. eds., 2003); Margarita Zernova & Martin Wright, *Alternative Visions of Restorative Justice*, in *HANDBOOK OF RESTORATIVE JUSTICE* 91, 91–92 (Gerry Johnstone & Daniel W. Van Ness eds., 2007); Paul McCold, *Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model*, 3 *CONTEMP. JUST. REV.* 357, 387 (2000); see also Adriaan Lanni, *Taking Restorative Justice Seriously*, 69 *BUFF. L. REV.* 635, 681 (2021) (arguing for the need to proceed with restorative justice “thoughtfully and gradually”).

19. To the author’s knowledge, no rigorous empirical study examines public support for restorative justice programs by using a randomized controlled experiment. One of the very few studies that use randomized controlled experiments in the context of restorative justice programs is Heather Strang et al., *Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction*, *CAMPBELL SYSTEMATIC REV.*, Nov. 2013, which examines the effectiveness of restorative justice programs in terms of recidivism rates and participant satisfaction.

programs relative to the traditional criminal justice system, thereby suggesting that restorative justice practices can elicit the necessary public support to help reform the criminal justice system.

This article proceeds as follows: Part I provides an overview of public support for restorative justice programs; Part II introduces the research design; Part III discusses the results and ramifications; Part IV analyzes causal mechanisms; and Part V concludes.

I. THEORETICAL FOUNDATION

A. *The Definition of Restorative Justice*

Commentators generally agree that the American criminal justice system perpetuates mass incarceration by discriminating against racial minorities and levying disproportionate prison sentences.²⁰ There is a strong moral imperative, therefore, to overhaul the criminal justice system.²¹ Yet, many scholars also recognize the need for criminal sanctions of some sort to maintain civil order.²² Examples of recent societies operating without a criminal justice system highlight the need for a degree of general deterrence through criminal sanctions.²³ For instance, post-war Iraq devolved into lawlessness after U.S. forces overthrew the Baathist regime and dismantled the

20. See ALEXANDER, *supra* note 10, at 2; BARKOW, *supra* note 10, at 2; KENNEDY, *supra* note 10, at 2–8; KLEIMAN, *supra* note 10, at 111; SIMON, *supra* note 10, at 3; ZIMRING ET AL., *supra* note 10, at 57; King & Smith, *supra* note 10, at 83; Roberts, *supra* note 10, at 1272–73.

21. See ALEXANDER, *supra* note 10, at 11; BARKOW, *supra* note 10, at 2; KENNEDY, *supra* note 10, at 8; KLEIMAN, *supra* note 10, at 4; SIMON, *supra* note 10, at 3; ZIMRING ET AL., *supra* note 10, at 165; King & Smith, *supra* note 10, at 89; Roberts, *supra* note 10, at 1300.

22. See, e.g., ANDREW VON HIRSCH ET AL., CRIMINAL DETERRENCE AND SENTENCE SEVERITY: AN ANALYSIS OF RECENT RESEARCH 47 (1999); Daniel S. Nagin, *Deterrence in the Twenty-First Century: A Review of the Evidence*, in CRIME AND JUSTICE IN AMERICA: 1975–2025, at 199, 206 (Michael Tonry ed., 2013); Steven N. Dulauf & Daniel S. Nagin, *Imprisonment and Crime: Can Both be Reduced?*, 10 CRIMINOLOGY & PUB. POL'Y 13, 41 (2011).

23. See, e.g., Johannes Andenaes, *The General Preventive Effects of Punishment*, 114 U. PA. L. REV. 949, 962 (1966) (reporting that, during the German occupation of Denmark, when there was no police force, the frequency of street crimes increased dramatically); John F. Burns, *Pillagers Strip Iraqi Museum of Its Treasure*, N.Y. TIMES (Apr. 12, 2003), <http://www.nytimes.com/2003/04/12/international/worldspecial/pillagers-strip-iraqi-museum-of-its-treasure.html> (reporting lawlessness after the demise of the Baathist government); Lola Mosanya, 'Crazy Violence' in Brazilian State During Police Strike, BBC NEWS (Feb. 11, 2017), <http://www.bbc.co.uk/newsbeat/article/38942911/crazy-violence-in-brazilian-state-during-police-strike> (reporting lawlessness after the police strike in Espirito Santa).

police force in 2003.²⁴ The Brazilian province of Espirito Santo saw mass violence spike after the police force went on strike in 2017.²⁵ As such, some scholars argue that restorative justice programs are a viable solution to tackle the problem of mass incarceration by diverting offenders away from the criminal justice system while providing general deterrence by fashioning individualized plans for offenders to remedy their past crimes.²⁶

In the United States, major restorative justice programs began in the 1970s as victim offender mediation programs.²⁷ Because restorative justice programs have been implemented on a piecemeal basis since then, restorative justice now takes a variety of forms, including victim offender mediation,²⁸ family group conferencing,²⁹ community peacemaking circles,³⁰ and pre-sentence probation measures.³¹ Restorative justice is thus difficult to define as it encompasses a wide range of ideas to address crime outside, or sometimes within, the traditional criminal justice system.³² For the purposes of this article, restorative justice is defined according to Howard Zehr's flexible definition that includes all four major forms of restorative justice in the U.S.: "Restorative justice is an approach to achieving justice that involves, to the extent possible, those who have a stake in the specific offense or harm and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible."³³ Under this definition, restorative justice is an

24. See Burns, *supra* note 23.

25. See Mosanya, *supra* note 23.

26. See, e.g., CAYLEY, *supra* note 13, at 12; JOHNSTONE, *supra* note 13, at 77; SERED, *supra* note 1, at 129; Braithwaite, *supra* note 16, at 17.

27. Carolyn Boyes-Watson, *Looking at the Past of Restorative Justice: Normative Reflections on Its Future*, in ROUTLEDGE INTERNATIONAL HANDBOOK OF RESTORATIVE JUSTICE 1, 9 (Theo Gavrielides ed., 2019); Mark S. Umbreit et al., *Restorative Justice: An Empirically Grounded Movement Facing Many Opportunities and Pitfalls*, 8 CARDOZO J. CONFLICT RESOL. 511, 519 (2007).

28. See Boyes-Watson, *supra* note 27, at 9.

29. ALLAN MACRAE & HOWARD ZEHR, *THE LITTLE BOOK OF FAMILY GROUP CONFERENCES*: NEW ZEALAND STYLE 214, 218 (2015).

30. See *id.* at 252.

31. See generally U.S. DIST. CT., DIST. OF MASS., RISE PROGRAM STATEMENT (2017) [hereinafter RISE].

32. GERRY JOHNSTONE, *RESTORATIVE JUSTICE READER: TEXTS, SOURCES, CONTEXT* xi (2003).

33. See HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 50 (2015). For similar definitions, see John Braithwaite, *Restorative Justice and De-Professionalization*, 13 THE GOOD SOC. 28, 28 (2004) ("Restorative justice is a process where all the stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair

alternative dispute resolution model in which the victim, the offender, and members of the wider community all participate in the resolution of a past offense.³⁴ Together, they agree on a resolution that satisfies all parties and thereby empower all parties involved.³⁵

In terms of eligible participants, U.S. restorative justice programs are often reserved for nonviolent, first-time, juvenile offenders, as opposed to violent, repeat, adult offenders.³⁶ Additionally, U.S. restorative justice programs tend to be pre-arraignment diversion programs, rather than pre-sentence probation programs.³⁷ The objective of pre-arraignment programs is to divert offenders away from the criminal justice system entirely.³⁸ Such programs have the benefit of preventing a criminal complaint or arrest from being filed in the offender's criminal record.³⁹ The tradeoff is that because this type of restorative justice process takes place before a criminal complaint is filed, offenders are not entitled to the right to counsel and indigent offenders may have to navigate the restorative justice process without counsel.⁴⁰ Moreover, most diversion programs are referral-based programs, meaning the police and prosecutors can exercise their discretion to refer cases that they find appropriate for restorative justice, which grants prosecutors and police officers significant leeway and may culminate in unequal access to these programs.⁴¹ Given the informality of restorative justice programs, the fact that there is such a large degree of prosecutorial and police discretion is a cause for concern as it may exacerbate existing

the harm.") and Andrew Ashworth, *Responsibilities, Rights and Restorative Justice*, 42 BRIT. J. CRIMINOLOGY 578, 578 (2002) ("[A] commonly accepted definition of restorative justice would be: 'a process whereby parties with a stake in a specific offense collectively resolve how to deal with the aftermath of the offense and its implications for the future.'") (citations omitted).

34. See ZEHR, *supra* note 33, at 50.

35. See *id.* It should be noted that this article focuses on restorative justice programs in the local criminal justice context, as opposed to restorative justice programs in the national context, such as South Africa's Truth and Reconciliation ("TNR") designed to address the harms of the Apartheid.

36. See Mary Frampton, *Finding Common Ground in Restorative Justice: Transforming our Juvenile Justice Systems*, 22 U.C. DAVIS J. JUV. L. & POL'Y 101, 104-05 (2018); David Karp & Beau Breslin, *Restorative Justice in School Communities*, 33 YOUTH & SOC. 249, 259-61 (2001).

37. See Frampton, *supra* note 36, at 104-05.

38. See *id.*

39. See Ashworth, *supra* note 33, at 578.

40. See *id.*

41. See Bruce Archibald & Jennifer Llewellyn, *The Challenges of Institutionalizing Comprehensive Restorative Justice: Theory and Practice in Nova Scotia*, 29 DALHOUSIE L.J. 297, 302, 314 (2006) (providing an example of a referral-based program).

inequities in the traditional criminal justice system.⁴²

In contrast, some restorative justice programs in the U.S. are pre-sentence probation programs.⁴³ Eligible participants are typically offenders who been found guilty and are on pre-sentence release.⁴⁴ The objective of such restorative justice programs are not to divert offenders away from the criminal justice system, but rather to have offenders who have already been found guilty to make amends through restorative justice practices, which the sentencing judge may look upon favorably when determining the offenders' sentence.⁴⁵ This form of restorative justice, however, is not without its disadvantages. Critics of this form of restorative justice question whether the underlying principles of restorative justice, such as forgiveness and reconciliation, are compatible with the principles of the traditional criminal justice system, such as retribution, deterrence, and incapacitation.⁴⁶ Moreover, the strong incentive to avoid a lengthy prison sentence may force offenders to participate in the program without the necessary sincerity required for true reconciliation and rehabilitation.⁴⁷ As such, restorative justice purists may prefer pre-arraignment restorative justice programs that bypass the traditional criminal justice system entirely.

Looking beyond restorative justice practices in the U.S., it is evident that restorative justice can take on many different forms.⁴⁸ As mentioned before, U.S. restorative justice programs are often referral-based programs, especially the pre-arraignment diversion programs, but New Zealand's restorative justice programs are not referral-based programs.⁴⁹ All serious juvenile offenses, except homicides, are automatically referred to a restorative justice program in New

42. See ALEXANDER, *supra* note 10, at 10; BARKOW, *supra* note 10, at 10; KLEIMAN, *supra* note 10, at 108–09; SIMON, *supra* note 10, at 4; ZIMRING ET AL., *supra* note 10, at 26–27; King & Smith, *supra* note 10, at 83; Roberts, *supra* note 10, at 1278–80.

43. See generally RISE, *supra* note 31 (providing an example of a pre-sentence restorative justice program).

44. *Id.* at 1.

45. *Id.*

46. See GERRY JOHNSTONE, REPORT FOR THE EUROPEAN COMMISSION ON CRIME PROBLEMS: RESTORATIVE JUSTICE IN PRISONS: METHODS, APPROACHES, AND EFFECTIVENESS 5 (2014); Odillo Vidoni Guidoni, *The Ambivalences of Restorative Justice: Some Reflections on an Italian Prison Project*, 6 CONTEMP. JUST. REV. 55, 58 (2003).

47. See generally CAROL BOYES-WATSON, PEACEMAKING CIRCLES AND URBAN YOUTH: BRINGING JUSTICE HOME (2008) (describing the limitations of a pre-sentence restorative justice program).

48. See generally HANDBOOK OF RESTORATIVE JUSTICE, *supra* note 18.

49. See generally MACRAE & ZEHR, *supra* note 29, at 218.

Zealand.⁵⁰ In Northern Ireland, juvenile offenses that would not result in a life sentence if committed by an adult are also automatically diverted to restorative justice programs.⁵¹

Despite the differences in eligible offenders and timing of restorative justice programs, restorative justice programs generally appear to be more effective than the traditional criminal justice system.⁵² Proponents of restorative justice argue that, compared to the traditional criminal justice system, restorative justice programs are more effective at rehabilitating offenders, increasing victim satisfaction, and empowering the community.⁵³ More recent empirical studies, using randomized controlled trials, find that restorative justice programs do modestly better than the criminal justice system in reducing recidivism rates.⁵⁴ It appears that restorative justice practices are better able to rehabilitate offenders and reduce recidivism rates partly because of the emotional experience of confronting victims and apologizing for past misconduct.⁵⁵

B. Public Support for Restorative Justice

Even the most effective restorative justice programs, however, need public support to remain viable in the long-term.

As a starting point, all criminal justice policies need to reflect community views.⁵⁶ A discrepancy between the criminal code and public attitudes undercuts the moral credibility of the criminal justice

50. *Id.*

51. Carolyn Hoyle, *The Case for Restorative Justice*, in DEBATING RESTORATIVE JUSTICE 1, 29 (Chris Cunneen & Carolyn Hoyle eds., 2010).

52. Ellie Piggott & William Wood, *Does Restorative Justice Reduce Recidivism?*, in ROUTLEDGE INTERNATIONAL HANDBOOK OF RESTORATIVE JUSTICE, *supra* note 27, at 359, 363–70.

53. See JOHN BRAITHWAITE, CRIME, SHAME, AND REINTEGRATION 81–84 (1989); HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE 192–95, 200–01 (1990).

54. See DAVID O'MAHONEY & JONATHAN DOAK, REIMAGINING RESTORATIVE JUSTICE 44, 175–95 (2017); *Restorative Justice Conferencing*, *supra* note 19, at 2; Piggott & Wood, *supra* note 52, at 359–76; Lawrence W. Sherman et al., *Are Restorative Justice Conferences Effective in Reducing Repeat Offending?*, 31 J. QUANTITATIVE CRIMINOLOGY 1, 1 (2015).

55. See Sherman et al., *supra* note 54, at 10–11.

56. See, e.g., SAUL KASSIN & LAWRENCE WRIGHTSMAN, THE AMERICAN JURY ON TRIAL: PSYCHOLOGICAL PERSPECTIVES 158–59 (1988); Alan Schefflin & Jon Van Dyke, *Jury Nullification: The Contours of a Controversy*, L. & CONTEMP. PROBS., Autumn 1980, at 51, 51 (1980).

system and can cause resistance or subversion.⁵⁷ The reasons underlying the need for public support are straightforward whether one examines the need for public support under a just desert or a utilitarian theory of crime and punishment.⁵⁸ Desert theorists argue that criminal law should be designed to punish offenders and the distribution of punishment should be proportional to the degree of the offender's blameworthiness.⁵⁹ If just desert is to be the governing principle, then public attitudes are relevant because disagreement between the criminal code and the public would suggest that the code is not accurate in assessing a person's blameworthiness and levying the morally appropriate punishment.⁶⁰ Utilitarians, on the other hand, argue that criminal law should be designed to efficiently deter future violations.⁶¹ If utilitarian goals of efficient crime prevention are to be the governing principle, then again public attitudes are relevant because disagreement would suggest that the code does not have the moral credibility to punish.⁶² With moral credibility, the code does not bring with it its most effective form of deterrence, namely the community's expression of disapproval and condemnation.⁶³ In other words, when the criminal code does not have moral credibility, it will not be able to morally condemn and thereby deter future crimes without less effective forms of punishment.⁶⁴ Restorative justice programs, because they are an alternative to the criminal code, must similarly have public support under either theory of crime and punishment.

For the purposes of this article, however, restorative justice programs are unique in that they are even more reliant on public support in practice because (1) the public bears the risk of re-offense; (2) public involvement reduces administrative costs; and (3) one of the underlying purposes of restorative justice is community empowerment.

First, public support is important because members of the community, including the victims themselves, bear the risk of re-offense when offenders are allowed to avoid prison sentences and re-enter their communities. In contrast to many other government

57. See KASSIN & WRIGHTSMAN, *supra* note 56, at 158–59; Schefflin & Van Dyke, *supra* note 56, at 51.

58. See PAUL H. ROBINSON & JOHN M. DARLEY, JUSTICE, LIABILITY, AND BLAME: COMMUNITY VIEWS AND THE CRIMINAL LAW 5–7 (1995).

59. See *id.* at 5.

60. See *id.* at 5–6.

61. See *id.*

62. See *id.* at 6.

63. See *id.*

64. See *id.*

programs, with restorative justice programs, members of the public pay the direct consequences of failed policies. That is, the public bears the cost of failed rehabilitation as the targets of future criminal activity.⁶⁵ The public must cope with the risks of recidivism and the fears of re-victimization.⁶⁶ This concern is especially pertinent for crimes that have far-reaching implications for the community, such as major drug trafficking crimes.⁶⁷ Moreover, members of the community have an electoral mechanism to avert the potential risks of restorative justice programs, if they wish, by voting against prosecutors and legislators who implement such programs.⁶⁸

Second, public support is important because many restorative justice programs rely on public involvement to reduce administrative costs.⁶⁹ Members of the community are the mediators, counselors, mentors, therapists, and tutors who volunteer their time and resources to lead the restorative justice sessions and make rehabilitation more effective.⁷⁰ Without such community involvement, many restorative justice programs do not have the infrastructure to succeed long-term.⁷¹ Proponents of restorative justice have similarly noted the failures of more ambitious restorative justice programs due to their inability to attract the necessary level of public buy-in to reduce administrative costs and sustain themselves in the long-term.⁷²

Third, public support is important because one of the core purposes of restorative justice programs is to give members of the community more agency in addressing communal harms.⁷³ David Cayley, for instance, writes:

Community . . . is made from conflict as much as from

65. See Braithwaite, *supra* note 16, at 81–82.

66. See *id.*

67. ZEHR, *supra* note 53, at 208.

68. See, e.g., Catherine Elton, *The Law According to Rachael Rollins*, BOS. MAG. (Aug. 6, 2019, 9:47 AM), <https://www.bostonmagazine.com/news/2019/08/06/rachael-rollins/> (describing the backlash against Suffolk County District Attorney Rachael Rollins for her criminal justice reform measures which include diversion restorative justice programs).

69. See generally Robert Coates et al., *Restorative Justice Circles: An Exploratory Study*, 6 CONTEMP. JUST. REV. 265 (2003).

70. See *id.*

71. See TONY MARSHALL, RESTORATIVE JUSTICE: AN OVERVIEW 28–29 (1998).

72. See *id.*

73. See CAYLEY, *supra* note 13, at 168. See generally Thalia González, *Socializing Schools: Addressing Racial Disparities in Discipline Through Restorative Justice*, in CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION (Daniel J. Losen ed., 2014).

cooperation; the capacity to resolve conflict is what gives social relations their sinew. Professionalizing justice “steals the conflicts,” robbing the community of the ability to face trouble and restore peace. Communities lose their confidence, their capacity, and finally their inclination to preserve their own order. They become instead consumers of police and court “services,” with the consequence that they largely cease to be communities.⁷⁴

The lack of public support for any particular restorative justice program may indicate that the program is failing one of its central objectives of empowering the community. For all three reasons, restorative justice programs depend on public support, and scholars have likewise noted the need for greater public support to ensure the longevity of restorative justice programs.⁷⁵

Restorative justice programs, however, do not always garner the necessary public support, despite the documented effectiveness of restorative justice programs in rehabilitating offenders.⁷⁶ As a result, restorative justice programs have had varying degrees of success depending on the extent of public support for each program.⁷⁷ The fact that some restorative justice programs are not able to garner consistent public support may not be surprising considering the reasons to be skeptical of restorative justice.⁷⁸ Some critics, for instance, argue that the restorative justice process may re-traumatize victims and fail to meaningfully resolve their distress.⁷⁹ Others argue that restorative justice is not appropriate for certain types of crimes.⁸⁰ In practice, restorative justice programs tend to have less public support in jurisdictions where constituents are more focused on the retributive goals of the criminal justice system and prefer officials who

74. CAYLEY, *supra* note 13, at 168.

75. See generally David Karp & Olivia Frank, *Anxiously Awaiting the Future of Restorative Justice in the United States*, 11 VICTIMS & OFFENDERS 50 (2016) (discussing the recent growth of restorative justice programs in the U.S. and emphasizing the need for greater public awareness of restorative justice programs).

76. See, e.g., Braithwaite, *supra* note 16, at 79–104; Obbie, *supra* note 16.

77. See Braithwaite, *supra* note 16, at 79–104.

78. See generally Kathleen Daly, *The Limits of Restorative Justice*, in HANDBOOK OF RESTORATIVE JUSTICE: A GLOBAL PERSPECTIVE 134 (Dennis Sullivan & Larry Tift eds., 2006).

79. *Id.* at 140–42.

80. See Zvi Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White-Collar Crime*, 8 CARDOZO J. CONFLICT RESOL. 421, 422–23 (2007).

are not “soft on crime.”⁸¹ In those jurisdictions, elected law enforcement officials who choose to implement restorative justice programs that appear to be more lenient than the traditional criminal justice system may hurt their re-election prospects.⁸²

C. The Importance of “Starting Small”

Proponents of restorative justice argue that, in light of varying public support for restorative justice programs, advocating for a maximalist approach to restorative justice, in which most types of offenders are diverted into restorative justice, is unlikely to garner the necessary public support.⁸³ Proponents instead emphasize the need to “start small and pure” with the hope that strategic restorative justice programs will incrementally increase public buy-in so that restorative justice will eventually become the primary response to all types of crime, as in New Zealand and Northern Ireland.⁸⁴ Professor Adriaan Lanni, for instance, writes that restorative justice practices should be implemented “thoughtfully and gradually” after weighing the associated risks and tradeoffs.⁸⁵ Given the need for public support, “thoughtfully and gradually” designing restorative justice programs entails prioritizing specific types of offenders who will draw the most public support. Unfortunately, there is a serious lack of empirical data on which types of offenders are most likely to draw public support.

Therefore, this article seeks to address this empirical gap by beginning to develop a more nuanced understanding of public support for various restorative justice programs using a series of public opinion surveys. To be clear, the objective of this article is not to take a normative stance on restorative justice itself. This article does not discuss the efficacy of restorative justice in achieving the goals of criminal law. The article does not compare the effectiveness of restorative justice to that of the traditional criminal justice system. Rather, the objective of this article is to explore what determines public support for and opposition to particular restorative justice programs, which is especially pertinent given the unique role of public support in ensuring the longevity of such programs and the need to

81. See, e.g., Eileen M. Ahlin et al., *Support for Restorative Justice in a Sample of U.S. University Students*, 61 INT'L J. OFFENDER THERAPY & COMPAR. CRIMINOLOGY 229, 230 (2017).

82. See, e.g., Elton, *supra* note 68; Obbie, *supra* note 16.

83. See *id.*

84. See Dignan, *supra* note 18, at 138; Zernova & Wright, *supra* note 18, at 91–92; McCold, *supra* note 18, at 387.

85. Lanni, *supra* note 18, at 681.

“start small” to maximize public buy-in.

D. The Design of Restorative Justice Programs

More specifically, the article explores two overarching questions based on the design of existing restorative justice programs and the ongoing debate in the field about the optimal model for restorative justice. First, the article discusses three offender characteristics to determine which type of offender to prioritize over others when designing restorative justice programs in order to garner greater public support. Second, the article also explores whether the public is more likely to support the traditional criminal justice system than a pre-charge diversion restorative justice program or a pre-sentence probation restorative justice program.

In terms of the first overarching question, this article asks if the public is more likely to support restorative justice for a juvenile offender or adult offender. Second, the article asks if the public is more likely to support restorative justice for a nonviolent offender or violent offender. Third, the article asks if the public is more likely to support restorative justice for a first-time offender or repeat offender. These three offender characteristics are relevant factors for the design of restorative justice programs for several reasons. First, U.S. sentencing law focuses on the age of the offender, the use of violence, and prior offenses during sentencing.⁸⁶ The same factors also comprise the main factors for the sentencing guidelines of other countries, such as South Korea.⁸⁷ These three factors are, therefore, a natural starting point when designing restorative justice practices to serve as an alternative to the traditional criminal justice system.⁸⁸

In addition, although restorative justice programs in the U.S. are mostly directed at juveniles rather than adults, at least one rigorous empirical study of existing programs suggests that restorative justice programs are more effective at reducing recidivism for adults than juveniles.⁸⁹ Moreover, although restorative justice programs in the U.S. are often reserved for nonviolent offenses, restorative justice programs are more effective at reducing recidivism for violent crimes than property crimes.⁹⁰ These findings suggest that the current focus

86. See generally U.S. SENT'G COMM'N, GUIDELINES MANUAL (2018).

87. See Hyungkwan Park, *The Basic Features of the First Korean Sentencing Guidelines*, 22 FED. SENT'G REP. 262, 264–68 (2010).

88. See generally ROBINSON & DARLEY, *supra* note 58 (noting that sentencing laws often reflects community preferences to maximize legitimacy but not always).

89. Strang et al., *supra* note 19, at 26–27.

90. See *id.*

of most restorative justice programs on nonviolent juvenile offenders is inefficient, at least in terms of reducing recidivism. Therefore, in the context of this article—a study that seeks to improve the design of restorative justice programs—there is a strong efficiency reason to ask whether the public supports restorative justice for adult offenders and violent offenders over nonviolent juvenile offenders. If there is stronger, or at least similar, public support for restorative justice programs directed at adult offenders and violent offenders relative to nonviolent juvenile offenders, this article would provide another reason for restorative justice programs to recalibrate and prioritize such offenders.

Also, whether the public is more supportive of restorative justice measures for a repeat offender than for a first-time offender is another important issue to consider because, despite the focus of many restorative justice programs on first-time offenders, a repeat offender may be more suited for restorative justice than a first-time offender. To elaborate, repeat offenders embody the failure of the traditional criminal justice system to rehabilitate offenders, and they underscore the need for an alternative. The public, therefore, may view repeat offenders as prime candidates for an alternative rehabilitative model such as restorative justice. Furthermore, first-time offenders have a lower incentive to participate in restorative justice because first-time offenses are often not subject to heavy criminal penalties in the criminal justice system.⁹¹ On the other hand, repeat offenses are subject to much more severe penalties, which means repeat offenders may have a greater incentive to participate in restorative justice programs, if eligible.⁹² Finally, studies show that restorative justice programs are more effective for repeat offenders than for first-time offenders.⁹³ Thus, if the public is more receptive to restorative justice programs for repeat offenders than for first-time offenders, then policymakers and practitioners will have another reason for designing restorative justice programs that prioritize repeat offenders over first-time offenders.

In terms of the second overarching question, this article asks

91. See generally U.S. SENT'G COMM'N, *supra* note 86 (The Federal Sentencing Guidelines assign offenders to one of six criminal history categories based on the offenders' past misconduct. Offenders assigned to lower categories have a lower sentencing guideline range.).

92. See *id.*

93. See Deborah Forgays & Lisa DeMilio, *Is Teen Court Effective for Repeat Offenders? A Test of the Restorative Justice Approach*, 49 INT. J. OFFENDER THERAPY COMPAR. & CRIMINOLOGY 107, 116–17 (2005) (“The results are noteworthy because they cut against the grain of prior research that found that second-time offenders are more likely to reoffend than first-time offenders.”) (citation omitted).

whether a pre-arraignment diversion program or a pre-sentence probation program is less likely to draw public support than the traditional criminal justice system. In addition, the article asks whether the level of public support for the two types of restorative justice programs differ from each other. As noted earlier there are trade-offs to each approach and whether the public is more likely to support one model of restorative justice over the other would provide a strong argument in favor of one model of the other given the necessity of public support for the longevity of either model.

Finally, it is important to note that whether public attitudes should dictate the form of restorative justice is unclear. Normatively speaking, there are other considerations to be made, such as the proper role of the criminal justice system in retribution, incapacitation, and deterrence, despite public attitudes to the contrary. Moreover, there are aforementioned matters of efficiency to take into consideration when determining policy. Nonetheless, given the unique reliance on public support for restorative justice, it is clear that public attitudes should play at least a role in guiding policy.

E. Restorative Justice Outside of the U.S.

Given the variety of restorative justice programs outside the U.S., this article also considers whether there are cross-cultural differences in public support for restorative justice. Are there universal patterns in public support for restorative justice, or are there significant divergences among different countries?

Examining public support for restorative justice only in the U.S. poses a generalizability concern, especially in non-Western countries that may have different cultural views towards crime and punishment. For instance, one problematic cultural difference from the standpoint of this study's generalizability is the fact that Eastern cultures tend to be less forgiving than Western cultures due to Confucian virtues of personal responsibility and "toughness."⁹⁴ Therefore, the degree to which Eastern polities similarly support or oppose restorative justice for particular types of offenders is an important issue for advocates of restorative justice.

In order to address questions of generalizability, this article examines the South Korean public in addition to the U.S. public. South Korea provides an ideal "hard case" comparison because South

94. See, e.g., Joshua N. Hook et al., *A China-New Zealand Comparison of Forgiveness*, 16 *ASIAN J. SOC. PSYCH.* 286, 290–91 (2013); Lazar Stankov, *Unforgiving Confucian Culture: A Breeding Ground for High Academic Achievement, Test Anxiety and Self-Doubt?*, 20 *LEARNING & INDIVIDUAL DIFFERENCES* 555, 561 (2010).

Korean culture is steeped in Confucian values and may feel differently about certain types of criminal offenders. Anecdotal evidence also suggests that South Koreans are particularly unforgiving towards juvenile offenders. High profile cases, including the *Miryang* case in which South Korean courts granted high-profile juvenile defendants a degree of clemency in return for admitting guilt, drew intense public backlash.⁹⁵ The fact that these defendants were youthful offenders increased, rather than alleviated, the public outcry.⁹⁶ South Korea is a hard case also because South Korea does not regularly implement restorative justice programs.⁹⁷ The very limited use of restorative justice measures has been confined to select school disciplinary settings.⁹⁸ Finally, unlike the U.S., South Korea has an overwhelmingly homogenous racial makeup. Because race plays a large role in the U.S. criminal justice context, the lack of racial differences in South Korea adds yet another potential variable that could produce conflicting results between the U.S. and South Korea. Therefore, consistent findings between the U.S. and South Korea—despite different cultural proclivities towards forgiveness, despite differing levels of familiarity with restorative justice, and despite distinct racial dynamics—would support the generalizability of this study's findings.

In sum, to the author's knowledge, this article is the first to examine empirically which characteristics of the criminal offender are associated with increased public support for restorative justice as an alternative dispute resolution model in both the U.S. and abroad. As a result, this article's findings have the potential to guide policymakers and advocates of restorative justice design long-lasting restorative justice programs.

II. RESEARCH DESIGN

A. Survey Methodology

The study conducted four experiments. The first three experiments explored the three aforementioned offender

95. See, e.g., Kim Rahn, *Sexual Assault Case Provokes Uproar*, KOREA TIMES (Dec. 12, 2004), <https://web.archive.org/web/20050419130038/http://times.hankooki.com/lpage/200412/kt2004121217002910230.htm>.

96. See *id.*

97. See Webinar: *RJ Work in Korea and NE Asia - Case Study in Implementation, Innovation and Adaptation*, ZEHR INST. FOR RESTORATIVE JUST. (Feb. 20, 2019), <https://zehr-institute.org/webinars/rj-in-korea-and-NE%20asia.html>.

98. See *id.*

characteristics to determine whether offender characteristics made a difference in public support for restorative justice. The fourth experiment explored whether the traditional criminal justice system was more likely to garner public support than either model of restorative justice.

In terms of administering the experiments, this study conducted the four experiments across five surveys: the first survey administering the first and second experiments to 798 U.S. respondents, the second survey administering the first and second experiments to 577 South Korean respondents, the third survey administering the third experiment to 817 U.S. respondents, the fourth survey administering the third experiment to 750 South Korean respondents, and the fifth survey administering the fifth experiment to 794 U.S. respondents. The first and second surveys were direct translations of the other, and the third and fourth surveys were also direct translations of the other. Therefore, the two pairs of surveys—the first and second surveys as well as the third and fourth surveys—provided a direct comparison between the U.S. and South Korean public. The final fifth survey was only conducted in the U.S. and not South Korea. The surveys were administered across five waves to prevent questions from any survey from influencing the other surveys.⁹⁹

Table 1: Overview of the Experiments and Surveys

	<i>United States</i>	<i>South Korea</i>
Experiment 1	Survey 1	Survey 2
Experiment 2	Survey 1	Survey 2
Experiment 3	Survey 3	Survey 4
Experiment 4	Survey 5	N/A

To elaborate, the first and second surveys each involved the same two experiments, and all respondents participated in both experiments. The first experiment (Experiment 1) explored whether the public was more supportive of providing a restorative justice measure for a juvenile or an adult. The surveys randomly assigned respondents to one of two possible treatments for Experiment 1: the

99. Due to resource constraints, the first two experiments were both administered in one survey for each country. As such, demographic questions were asked between the first two experiments to prevent the experiments from influencing each other to the extent possible.

juvenile offender treatment or the adult offender treatment. Respondents in the juvenile offender treatment read that a juvenile committed a crime. Respondents in the adult offender treatment read that an adult committed the same exact crime. Both treatment groups otherwise read the same information about a restorative justice measure being considered for the offender. Afterward, the surveys asked respondents in both treatment groups whether they approved of the restorative justice measure for the offender outlined in the article. The response variable was measured on a 6-point Likert scale and later converted to percentage points for statistical analysis.¹⁰⁰ The survey text and figures for this experiment are reproduced below.¹⁰¹

[Juvenile Offender Treatment] Last September, John Doe, a 15-year-old juvenile, robbed a liquor store on Park Street on four separate occasions, causing serious damage each time. Instead of going to trial, prosecutors decided to give John Doe a second chance. Under the new Victim-Offender Mediation Program created by the Marietta D.A.'s office, John Doe will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and get probation instead of going to prison. Do you approve or disapprove of sending John Doe to the Victim-Offender Mediation Program?

[Adult Offender Treatment] Last September, John Doe, a 35-year-old man, robbed a liquor store on Park Street on four separate occasions, causing serious damage each time. Instead of going to trial, prosecutors decided to give John Doe a second chance. Under the new Victim-Offender Mediation Program created by the Marietta D.A.'s office, John Doe will meet the liquor storeowner, apologize for his actions, pay the liquor

100. The response variable was converted from the original 6-point Likert scale to percentage points, where "strong disapprove" on the Likert scale was converted to 0%, "disapprove" to 20%, "somewhat disapprove" to 40%, "somewhat approve" to 60%, "approve" to 80%, and "strongly approve" to 100%. This transformation allowed the study to use a quantitative measure that accounted for differences among the responses, rather than collapsing the variable into a binary variable or using a categorical variable. The methodological choice, however, required the assumption that differences on the 6-point Likert scale are equivalent to the quantitative distance of 20%.

101. See *infra* Figure 1.

storeowner for the damage he caused, and get probation instead of going to prison. Do you approve or disapprove of sending John Doe to the Victim-Offender Mediation Program?

- Strongly approve
- Approve
- Somewhat approve
- Somewhat disapprove
- Disapprove
- Strongly disapprove

As shown in the figure below, the surveys presented both hypothetical vignettes in the form of a news headline and a short article in order to mirror how the public comes across such information in reality.¹⁰² For brevity, only the figure for the first U.S. experiment are reproduced below.¹⁰³ All experiments had similar figures. The English and Korean survey text and figures for all of the experiments are reproduced in the Appendix.¹⁰⁴

It should be noted that an alternative formulation to this experiment, and all subsequent experiments, is to have respondents receive both treatments, rather than only one treatment. That is, the respondents could be given both hypothetical vignettes and asked to provide their level of approval for both outcomes.¹⁰⁵ However, the risk of this alternative formulation was that the respondents would feel the researcher's demand effects.¹⁰⁶ Respondents would have assumed that the differences between the hypotheticals were important and shift their approval between the two treatments, even if they did not consider the differences between the treatments to warrant a difference in their approval.¹⁰⁷ By having each respondent instead only receive one treatment assignment, this study design prevents artificially large treatment effects and is able to find a more conservative estimate.

102. *See id.*

103. *See id.*

104. *See* Appendix B.

105. *See* ROBINSON & DARLEY, *supra* note 58, at 9 (noting a similar concern in having respondents read multiple vignettes rather than randomly assigning respondents to one treatment).

106. *See id.*

107. *See id.*

Figure 1: Text of U.S. Survey Experiment 1

*Treatment 1: Juvenile Offender***Local Teen Gets
Second-Chance**

By ALFRED JONES

Last September, John Doe, a 15-year-old juvenile, robbed a liquor store on Park Street on four separate occasions, causing serious damage each time. Instead of going to trial, prosecutors decided to give John Doe a second chance. Under the new Victim-Offender Mediation Program created by the Marietta D.A.'s office, John Doe will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and get probation instead of going to prison.



Reuters

*Treatment 2: Adult Offender***Local Suspect Gets
Second-Chance**

By ALFRED JONES

Last September, John Doe, a 35-year-old man, robbed a liquor store on Park Street on four separate occasions, causing serious damage each time. Instead of going to trial, prosecutors decided to give John Doe a second chance. Under the new Victim-Offender Mediation Program created by the Marietta D.A.'s office, John Doe will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and get probation instead of going to prison.



Reuters

In the second experiment (Experiment 2), the surveys examined whether the violent nature of the criminal offense made a difference in public support for restorative justice. The surveys randomly assigned respondents to one of two treatments: the nonviolent offender treatment or the violent offender treatment. Respondents in the nonviolent offender treatment read that a juvenile offender committed a nonviolent crime. Respondents in the violent offender treatment read that the same juvenile offender committed a violent crime. To be clear, both hypothetical offenders in the second experiment were specified as juveniles to build on the first experiment. The surveys then asked all respondents whether they approved of a restorative justice measure for the offender.

[Nonviolent Offender Treatment] The Savannah D.A.'s Office announced that it will be dropping charges against Jim Hale, a 16-year-old, who was accused of selling cocaine. Instead of pursuing criminal charges,

prosecutors allowed Hale to enter the D.A.'s Drug Market Intervention Program. The Program allows suspected drug dealers to attend a session where they can see the D.A.'s evidence, listen to neighborhood leaders talk about the harmful impact of the suspects' behavior, and get a second-chance to re-enter the community instead of going to trial. Do you approve or disapprove of Jim Hale getting a second-chance?

[Violent Offender Treatment] The Savannah D.A.'s Office announced that it will be dropping charges against Jim Hale, a 16-year-old, who was accused of selling cocaine and violent attacking other people. Instead of pursuing criminal charges, prosecutors allowed Hale to enter the D.A.'s Drug Market Intervention Program. The Program allows suspected drug dealers to attend a session where they can see the D.A.'s evidence, listen to neighborhood leaders talk about the harmful impact of the suspects' behavior, and get a second-chance to re-enter the community instead of going to trial. Do you approve or disapprove of Jim Hale getting a second-chance?

- Strongly approve
- Approve
- Somewhat approve
- Somewhat disapprove
- Disapprove
- Strongly disapprove

The third and fourth surveys each involved one experiment (Experiment 3). In Experiment 3, the surveys examined whether a prior offense made a difference in public support for restorative justice. The surveys randomly assigned respondents to one of two treatments: the first-time offender treatment or the repeat offender treatment. Respondents in the first-time offender treatment read that a juvenile offender committed a first-time offense. Respondents in the repeat offender treatment read that a juvenile offender with a criminal record committed a repeat offense. The surveys then asked all respondents whether they approved of a restorative justice measure for the offender.

[First-time Offender Treatment] Last September, Danny Poe, a 15-year-old juvenile, was arrested for robbing a liquor store on Park Street and causing serious property damage. That was his first time getting arrested, and he has no criminal record. Instead of going to trial, prosecutors decided to give Danny Poe a second chance. In a new Victim-Offender Mediation Program created by the Marietta D.A.'s office, Danny Poe will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and get probation instead of going to prison. Do you approve or disapprove of Danny Poe getting a second-chance?

[Repeat Offender Treatment] Last September, Danny Poe, a 15-year-old juvenile, was arrested for robbing a liquor store on Park Street and causing serious property damage. That was his fourth time getting arrested, and he has a criminal record. Instead of going to trial, prosecutors decided to give Danny Poe a second chance. In a new Victim-Offender Mediation Program created by the Marietta D.A.'s office, Danny Poe will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and get probation instead of going to prison. Do you approve or disapprove of Danny Poe getting a second-chance?

- Strongly approve
- Approve
- Somewhat approve
- Somewhat disapprove
- Disapprove
- Strongly disapprove

It should be noted that in each of the three experiments mentioned above, the hypothetical vignettes that respondents read depicted a pre-arraignment diversion program, as opposed to a pre-sentence probation program. This choice reflected that fact that the predominant model of restorative justice in the U.S. is a pre-arraignment diversion program as noted above.¹⁰⁸

The fifth and final survey involved only one experiment

108. See Frampton, *supra* note 36, at 104–105 and accompanying text.

(Experiment 4). In Experiment 4, the survey examined whether a pre-arraignment diversion program or pre-sentence probation program was less likely to elicit public support than the traditional criminal justice system. The surveys randomly assigned respondents to one of three treatments: the baseline treatment of the traditional criminal justice system treatment, the pre-arraignment diversion program treatment, or the pre-sentence probation program treatment. Respondents in the traditional criminal justice system treatment read that an offender had been sentenced according to the traditional criminal justice system for a criminal offense. Respondents in the pre-arraignment diversion program treatment read that an offender had been referred to a diversion restorative justice program for the same criminal offense. Respondents in the pre-sentence probation program treatment read that an offender had been referred to a probation restorative justice program for the same criminal offense. The surveys then asked all respondents whether they approved of the outcome for the offender.

[Criminal Justice Treatment] Last April, David Peters was arrested for robbing a liquor store on Park Street and causing serious property damage. At trial, David Peters was found guilty. David Peters will have to serve a one-year prison sentence and pay \$2,500 in criminal fines, in accordance with the sentencing guidelines. Afterwards, David Peters will have a permanent criminal record. Do you approve or disapprove of the legal consequences that David Peters must face for his actions?

[Pre-arraignment Diversion Program Treatment] Last April, David Peters was arrested for robbing a liquor store on Park Street and causing serious property damage. Before filing official criminal charges and going to trial, the government decided to give David Peters a second chance. Under the Victim-Offender Mediation Program, David Peters will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and do community service. Afterwards, David Peters will not go to prison and will not have a criminal record. Do you approve or disapprove of the legal consequences that David Peters must face for his actions?

[Pre-sentence Probation Program Treatment] Last April, David Peters was arrested for robbing a liquor store on Park Street and causing serious property damage. At trial, David Peters was found guilty. After the trial but before determining his punishment, the government decided to give David Peters a second chance. Under the Victim-Offender Mediation Program, David Peters will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and do community service. Afterwards, David Peters will get a reduced prison sentence and will have a permanent criminal record. Do you approve or disapprove of the legal consequences that David Peters must face for his actions?

- Strongly approve
- Approve
- Somewhat approve
- Somewhat disapprove
- Disapprove
- Strongly disapprove

Unlike the three experiments before, this final experiment did not involve South Korean respondents. In South Korea, guilty defendants are generally not granted pre-sentence releases, and there are no pre-sentence probation programs in South Korea, in contrast to the U.S. where there are pre-sentence probation programs.¹⁰⁹ As such, asking South Korean respondents to consider a pre-sentence probation program would have required respondents to make an unrealistic suspension of disbelief that would have rendered results with low internal and external validity.¹¹⁰ Therefore, the final experiment was not administered in South Korea.

The survey text was kept as concise as possible to eliminate any impact from the respondents' varying attention spans. The full survey text is reproduced in the Appendix.¹¹¹ In addition, the surveys collected data on the respondents' demographic characteristics, such as age, income, gender, political identification, political involvement, education, and race (for U.S. respondents only, due to the

109. See RISE, *supra* note 31.

110. See generally Jared McDonald, *Avoiding the Hypothetical: Why "Mirror Experiments" are an Essential Part of Survey Research*, 32 INT'L J. PUB. OP. RSCH. 266, 266-67 (2020).

111. See Appendix B.

overwhelmingly homogenous racial makeup of South Koreans). A summary of the demographic characteristics for all five survey samples is included in the Appendix.¹¹²

For respondent recruitment, the study relied on Amazon's Mechanical Turk (MTurk) to recruit all U.S. survey respondents.¹¹³ The U.S. surveys took place on November 17, 2018, January 2, 2020, and October 26, 2020 and were only available for U.S. citizens. As noted earlier, the U.S. surveys were administered across three waves to prevent the experiments from influencing each other.¹¹⁴ To ensure the quality of the survey responses, the U.S. surveys also included two attention-check questions that were presented at the beginning and in the middle of the surveys to flag American respondents who were not paying attention to the survey prompt. Those who failed the first attention-check question were not included in the surveys and not made a part of the final samples of 798, 817, and 794 U.S. respondents.¹¹⁵ Those who failed the second attention-check question were allowed to re-do the second attention-check question and continue with the rest of their respective survey.¹¹⁶ Finally, to correct for non-response bias, the U.S. surveys required completion of the survey for compensation.¹¹⁷

112. See *infra* Table 3.

113. See, e.g., Cass R. Sunstein et al., *How People Update Beliefs about Climate Change; Good News and Bad News*, 102 CORNELL L. REV. 1431, 1434–35 (2017) (using 302 MTurk respondents to run a public opinion survey on climate change).

114. As stated above, due to resource constraints, the first two experiments were both administered in one survey for each country. As such, demographic questions were asked between the first two experiments to prevent the experiments from influencing each other to the extent possible.

115. For the first U.S. survey, of the original pool of 905 respondents, 107 respondents failed the first attention-check question and were not made a part of the final sample of 798 respondents. For the second U.S. survey, of the 917 respondents who originally attempted to participate in the survey, 100 respondents failed the first attention-check question and were not made a part of the final sample of 817 respondents. For the third U.S. survey, of the 971 respondents who originally attempted to participate in the survey, 177 respondents failed the first attention-check question and were not made a part of the final sample of 794 respondents.

116. For the first U.S. survey, of the final sample of 798 respondents, 27 respondents failed the second attention-check question. For the second U.S. survey, of the final sample of 817 respondents, 64 respondents failed the second attention-check question. For the third U.S. survey, of the final sample of 794 respondents, 50 respondents failed the second attention-check question. The following analyses rely on the full samples of 798, 817, and 794 respondents and who successfully completed the first attention-check question. Robustness checks excluding the 27, 64, and 50 respondents who failed the second attention-check question did not yield significantly different results.

117. All 798, 817, and 794 U.S. respondents completed their respective survey.

For South Korean survey respondents, this study employed the services of Macromill Embrain, a professional polling firm headquartered in Seoul, South Korea, to recruit a nationally representative sample of 577 and 750 South Korean respondents. The South Korean surveys took place from January 16 to January 24, 2019, and January 7 to January 9, 2020. Because Macromill Embrain recruited South Korean participants from their own pool of quality-controlled respondents, who were each vetted prior to this study's surveys, the South Korean surveys omitted the aforementioned attention-check questions included in the U.S. surveys.

B. Limitations of the Survey Methodology

Before discussing the survey results, it is important to discuss this study's limitations. Compared to the U.S. adult population, this study's U.S. samples had a higher proportion of whites who appeared to be younger, more educated, and more liberal.¹¹⁸ As such, drawing inferences to U.S. adults may be problematic, and the results may overestimate the effect of the overrepresented demographic groups. Fortunately, weighting the sample to reflect the U.S. population is one possible solution to the overrepresentation of certain demographics, and robustness checks weighting the sample according to the 2016 American National Election Studies (ANES) did, in fact, replicate all of the following results using un-weighted samples.¹¹⁹ Furthermore, scholars suggest that studies using MTurk samples can be replicated on nationally representative samples,¹²⁰ and there is no theoretical reason to expect otherwise for the MTurk samples used in this study. Meanwhile, such problems were not an issue for South Korean respondents because Macromill Embrain drew nationally

118. See 2016 Time Series Study, AM. NAT'L ELECTION STUD. (Jan. 2017), <https://electionstudies.org/project/2016-time-series-study/>.

119. It should be noted that using post-stratification weights (i.e., weights placed after treatment assignment for post-hoc regression analyses) can lead to covariate imbalance across the treatment conditions and also complicate the estimation of the sampling variance of the treatment effects. As such, weighted least squares regression models should only be used as robustness checks, not as the main models for analyses. See, e.g., Annie Franco et al., *Developing Standards for Post-Hoc Weighting in Population-Based Survey Experiments*, 4 J. EXPERIMENTAL POL. SCI. 161, 163 (2017); Andrew Gelman, *Struggles with Survey Weighting and Regression Modeling*, 22 STAT. SCI. 153, 163 (2007).

120. See, e.g., Adam J. Berinsky et al., *Evaluating Online Labor Markets for Experimental Research: Amazon.com's Mechanical Turk*, 20 POL. ANALYSIS 351, 366 (2012) (finding that MTurk respondents are often more representative of the U.S. population than in-person convenience samples and also successfully replicating important published experimental work using MTurk samples).

representative samples of South Korean adults when selecting this study's South Korean samples.

Perhaps more importantly, as with all public opinion studies, an obligatory point must be made about the framing of the survey questions. Word choice is especially important because loading the question with evocative terms can shift responses one way or the other. For instance, in Experiment 1, which compares public support for allowing a juvenile and an adult enter a restorative justice program, evocative terms describing the hypothetical juvenile offender as a teenager who made a mistake but describing the adult offender as a hardened criminal would exaggerate the treatment effects. Those in the juvenile offender treatment would be more supportive of the restorative justice practices while those in the adult offender treatment would be less supportive of restorative justice practices, resulting in an artificially large difference that misleadingly suggests that the public is much more likely to support restorative justice practices for a juvenile than an adult offender than actually is the case in reality. Therefore, in this study, a conscious choice was made to keep the survey text as neutral as possible in order to get a conservative estimate of the treatment effects. By removing all evocative terms and presenting the questions in the most neutral manner possible, the survey is less likely to yield a significant effect. As such, if the experiments nonetheless yield a statistically significant treatment effect, one can be more confident in the results.

III. RESULTS AND RAMIFICATIONS

A. Juvenile Offender or Adult Offender

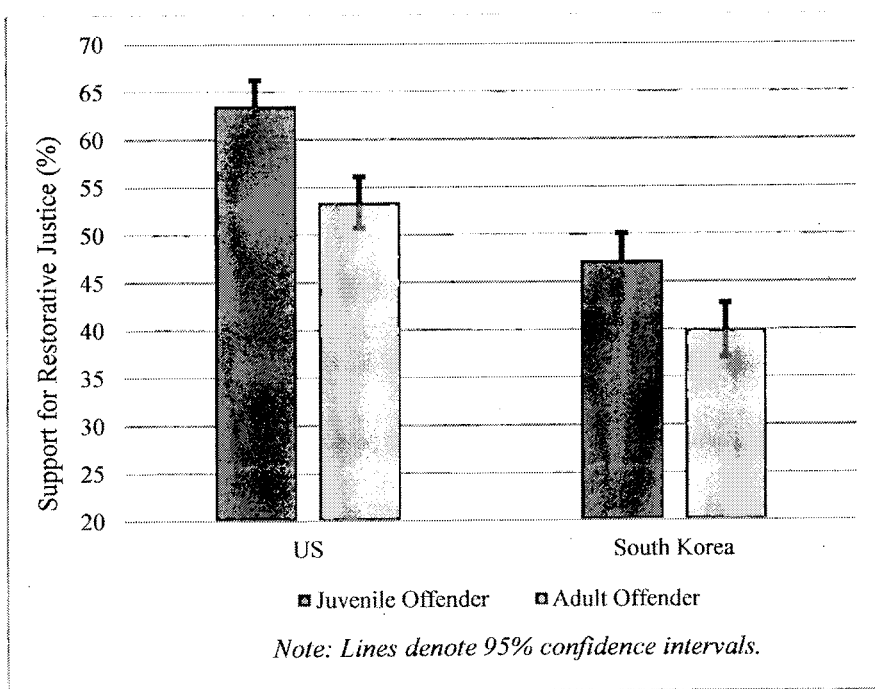
The study first examines whether there was a difference in the average support for restorative justice between the juvenile treatment group and the adult treatment group for each country.¹²¹ As the following figure shows, for U.S. respondents, the point estimate for the difference in public support between the juvenile offender treatment and the adult offender treatment was -10.13% ($p =$

121. Due to the randomization of the treatment assignments, ordinary least squares (OLS) regression models involving covariates are not strictly necessary to estimate unbiased treatment effects. As such, OLS models controlling for covariates are included in the Appendix as robustness checks. See, e.g., Diana Mutz & Robin Permante, *Standards for Experimental Research: Encouraging a Better Understanding of Experimental Methods*, 2 J. EXPERIMENTAL POL. SCI. 192, 200 (2015); Geoffrey P.R. Wallace, *International Law and Public Attitudes toward Torture: An Experimental Study*, 67 INT'L ORG. 105, 122 (2013).

0.0000).¹²² For South Korean respondents, the point estimate for the difference was -7.34% ($p = 0.0000$).¹²³ Therefore, this study finds strong evidence that the age of the offender does make a difference in garnering public support for restorative justice in both the U.S and South Korea. The directions of the effects were negative, meaning restorative justice for adult offenders drew less public support, not more, in both countries.

This finding, combined with existing studies showing that restorative justice programs for adults are more effective than restorative justice programs for juveniles, suggests that proponents of restorative justice may need to incur a "cost" in terms of effectiveness if they wish to design a restorative justice program that will maximize public support.¹²⁴

Figure 2: Average Public Support for Juvenile v. Adult Offender



122. See *infra* Figure 2.

123. See *id.*

124. Strang et al., *supra* note 19, at 27.

B. Nonviolent Offender or Violent Offender

This study next analyzes whether there was a difference in the average support for restorative justice between the nonviolent offender treatment group and the violent offender treatment group for each country. As the following figure shows, in the U.S., the point estimate for the difference in public support between the nonviolent offender treatment and the violent offender treatment was -16.44% ($p = 0.0000$).¹²⁵ In South Korea, the point estimate for the difference was -9.50% ($p = 0.0000$).¹²⁶ Therefore, this study finds strong evidence that violence does make a difference in garnering public support for restorative justice. As before, the directions of the effects were negative, meaning restorative justice for violent offenders drew less public support, not more, in both countries.

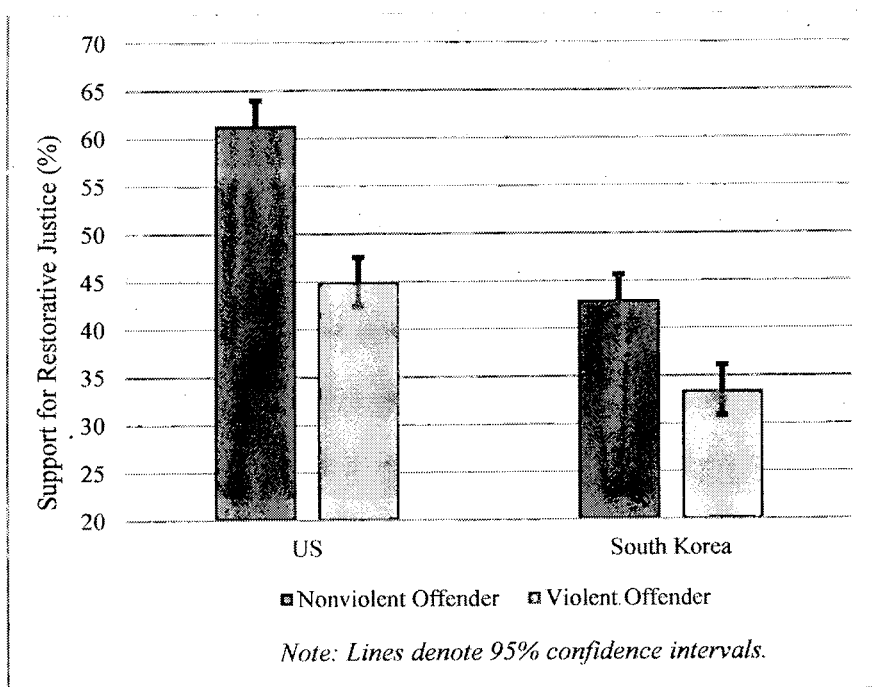
Similar to the previous finding, this result, combined with existing studies showing that restorative justice programs for violent offenses are more effective than restorative justice programs for property offenses, suggests that proponents of restorative justice may again incur a “cost” in terms of effectiveness if they wish to design a restorative justice program that will maximize public support.¹²⁷

125. See *infra* Figure 3.

126. See *id.*

127. Strang et al., *supra* note 19, at 26–27.

Figure 3: Average Public Support for Nonviolent v. Violent Offender



C. First-time Offender or Repeat Offender

This study next analyzes whether there was a difference in the average support for restorative justice between the first-time offender treatment group and the repeat offender treatment group for each country. As the following figure shows, in the U.S., the point estimate for the difference in public support between the first-time offender treatment and the repeat offender treatment was -5.66% ($p = 0.0000$).¹²⁸ In South Korea, the point estimate for the difference was -18.83% ($p = 0.0000$).¹²⁹ Therefore, this study finds strong evidence that prior offenses do make a difference in garnering public support for restorative justice. Once again, the directions of the effects were negative, meaning restorative justice for repeat offenders drew less public support, not more, in both countries.

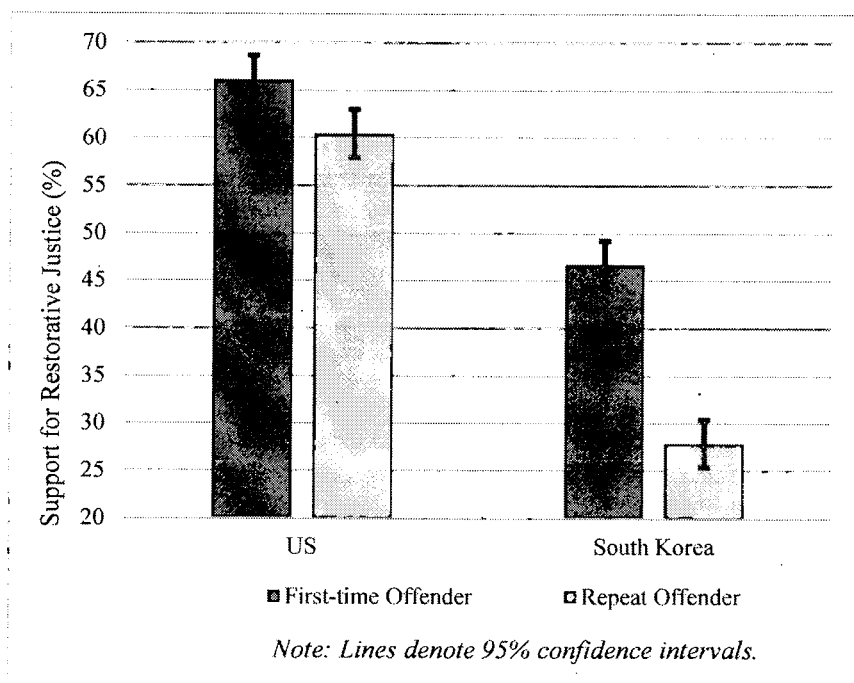
Similar to the previous two findings, this result, combined with existing studies showing that restorative justice programs for repeat

128. See *infra* Figure 4.

129. See *id.*

offenders are more effective than restorative justice programs for first-time offenders, suggests that proponents of restorative justice may again incur a “cost” in terms of effectiveness if they wish to design a restorative justice program that will maximize public support.¹³⁰

Figure 4: Average Public Support for First-time Offender v. Repeat Offender



Overall, the findings from the first three experiments have several implications for policymakers and advocates for restorative justice. Those who seek to garner greater public support for restorative justice programs by starting “small and pure” may do so more effectively by prioritizing restorative justice programs for nonviolent, first-time, juvenile offenders.¹³¹ Designing restorative justice programs for such offenders, however, is inefficient in terms of reducing recidivism rates, since other empirical research finds that adult offenders, violent offenders, and repeat offenders are less likely to re-offend after

130. See Forgays & DeMilio, *supra* note 93, at 107.

131. See Dignan, *supra* note 18, at 138; McCold, *supra* note 18, at 387; Zernova & Wright, *supra* note 18, at 91–92; see also Lanni, *supra* note 18, at 681.

completing a restorative justice program.¹³²

Normatively speaking, however, it is unclear whether proponents of restorative justice should design programs for individuals for whom the restorative justice practices are known to be less effective in order to elicit greater public support in the short-term. Given that the traditional criminal justice system exacts a severe toll on those incarcerated, balancing the need for greater public support and the human cost of an ineffective criminal justice system is a difficult ethical problem. It is also possible that increased efficiency of a restorative justice program designed for violent, repeat, adult offenders may yield greater public support in the long run due to its demonstrated effectiveness, compared to restorative justice programs for nonviolent, first-time, juvenile offenders. Therefore, sacrificing efficiency and designing restorative justice programs for nonviolent, first-time, juvenile offenders may actually be less effective in drawing public support long-term.

The emphasis in this study, however, is that although such normative considerations should certainly be considered, considering other normative concerns does not necessarily mean public support cannot be a factor that is also considered. While public support may not be the determinative factor, it should be an important one, especially given many restorative justice programs' unique reliance on public support and community involvement noted above.¹³³ In short, maximizing public support while starting "small and pure" may be worth the temporary loss of efficiency.¹³⁴

D. Cross-country Comparisons

Because the first three experiments are direct translations of each other, it is possible to compare across the two countries the degree of support in providing restorative justice for various offenders. As shown above, in all three experiments, the difference in public support for nonviolent, first-time, juvenile offenders is statistically significant and consistent across the two countries. These consistent findings across the two countries are particularly notable when considering the many aforementioned reasons for divergence.¹³⁵ In other words, vast cultural differences, varying familiarity with restorative justice, and

132. See Forgas & DeMilio, *supra* note 93, at 107; Strang et al., *supra* note 19, at 26-27.

133. See Part I.B.

134. See Dignan, *supra* note 18, at 138; McCold, *supra* note 18, at 387; Zernova & Wright, *supra* note 18, at 91-92; see also Lanni, *supra* note 18, at 681.

135. See *supra* Part I.E.

racial heterogeneity or homogeneity do not seem to affect the cross-national increase in public support for restorative justice for nonviolent, first-time, juvenile offenders.

At the same time, South Koreans tend to be less supportive of restorative justice practices, regardless of treatment assignment. This may be the result of the aforementioned cultural differences whereby South Koreans emphasize Confucian virtues of personal responsibility and toughness.¹³⁶ This difference between countries, however, should not detract from the consistent findings across the two countries in terms of which type of offender is more likely to draw public support. In sum, while South Koreans are generally less receptive towards restorative justice than Americans, South Koreans are similar to Americans in that they are more likely to support restorative justice for nonviolent, first-time, juvenile offenders than violent, repeat, adult offenders. Designing restorative justice programs for such offenders rather than other types of offenders will consistently draw greater public support in both countries.

E. Pre-arraignment Program or Pre-sentence Program

Having demonstrated that a particular type of offender is more likely to draw public support for restorative justice, this study now analyzes whether restorative justice programs are less likely to draw public support than the traditional criminal justice system.

The point estimate for the difference in public support between the traditional criminal justice system treatment and the pre-arraignment restorative justice program treatment was a statistically insignificant 2.06% ($p = 0.3744$).¹³⁷ The point estimate for the difference in public support between the traditional criminal justice system treatment and the pre-sentence restorative justice program treatment was a statistically insignificant -0.21% ($p = 0.9260$).¹³⁸ Therefore, this study finds no evidence that the traditional criminal justice system is more likely to garner greater public support for restorative justice. Moreover, the point estimate for the difference in public support between the pre-sentence restorative justice program treatment and the pre-arraignment restorative justice program treatment was a statistically insignificant -2.23% ($p = 0.3090$).¹³⁹ As such, it appears that neither pre-sentence diversion programs nor pre-

136. See, e.g., Hook et al., *supra* note 94, at 290–91; Stankov, *supra* note 94, at 561.

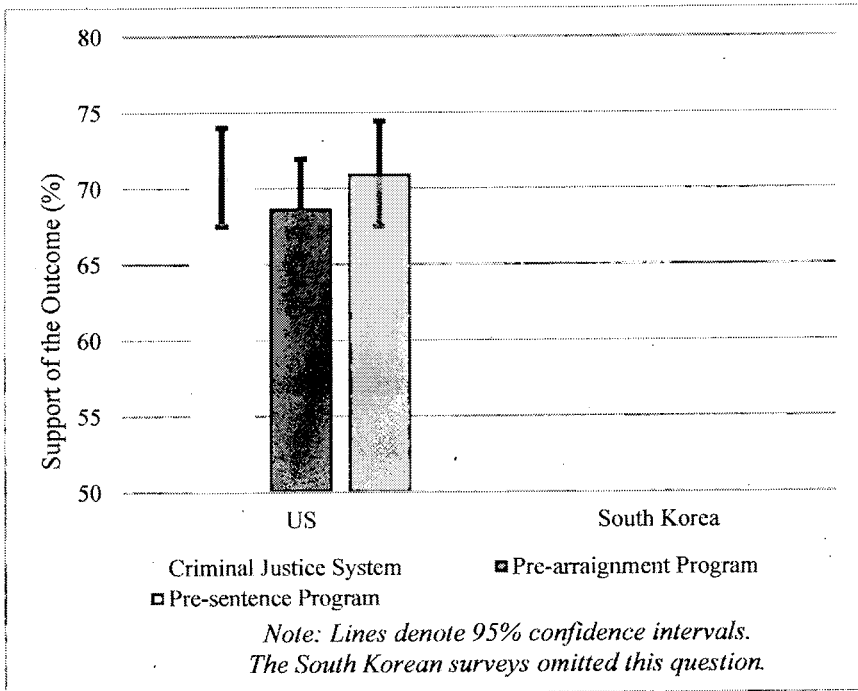
137. See *infra* Figure 5.

138. See *id.*

139. See *id.*

sentence probation programs are more likely to draw public support.

*Figure 5: Average Public Support for
Criminal Justice System v. Pre-arraignment v. Pre-sentence*



This finding has several ramifications. First, it suggests that despite the fears that restorative justice practices will not garner the necessary public support, restorative justice practices, in fact, draw as much public support, if not more public support, than the traditional criminal justice system.¹⁴⁰ Given the documented failures of the status quo criminal justice system and the moral imperative to consider alternatives to mass incarceration, above results provide the empirical evidence to at least consider restorative justice by demonstrating the necessary public support behind the two restorative justice models.¹⁴¹

140. See, e.g., Ahlin et al., *supra* note 81, at 230.

141. See ALEXANDER, *supra* note 10, at 97–108, 208; BARKOW, *supra* note 10, at 116, 158–59; KLEIMAN, *supra* note 10, at 31; SIMON, *supra* note 10, at 111–14, 159;

Second, given that neither the pre-arraignment diversion program nor pre-sentence probation program is more likely to draw public support, proponents can and should consider other normative factors. That is, proponents can consider whether the police and prosecutors should exercise unfettered discretion in deciding which offender is referred to the program as under the pre-arraignment program or whether the offender should have the right to counsel through the process as under the pre-sentence program, when designing restorative justice programs, rather than looking solely to public support.

IV. CAUSAL MECHANISMS

In this penultimate section, as a robustness check for the final experiment, this article explores the causal mechanisms through which the traditional criminal justice system and the two models of restorative justice elicit public support. Given that the final experiment yielded no differences in public confidence among the three different treatment assignments, this section analyzes why respondents supported or opposed the legal outcome at similar levels, despite the widely contrasting outcome for the hypothetical offender. In other words, this section explores whether there was an unforeseen mechanism that was drawing similar levels of public support across the three mechanisms rather than the treatment assignments drawing similar levels of public support through appropriately varying causal mechanisms.

In terms of methodology, for the final experiment, the survey asked all respondents to provide, in their own words, the reason for their support or opposition to the outcome after reading their respective hypothetical vignettes. The study then relied on a descriptive-inductive classification of open-ended responses. That is, the open-ended responses from both treatment groups were coded into five separate mechanisms, which were deduced from reading the responses. These causal mechanisms encapsulated the reasons for why respondents rated their level of approval in the manner that they did. The five mechanisms were: (1) retribution; (2) rehabilitation; (3) administrative efficiency; (4) deterrence; or (5) the catch-all category of "other."

Respondents categorized as belonging in the first mechanism based their reasoning on retribution or just deserts. These respondents approved or disapproved on the basis of their perception

ZIMRING ET AL., *supra* note 10, at 164–65; King & Smith, *supra* note 10, at 79, 84; Roberts, *supra* note 10, at 1300.

of the outcome being fair and proportional. Respondents categorized as belonging in the second mechanism approved or disapproved based on whether they believed hypothetical offender would be rehabilitated. Respondents categorized as belonging in the third mechanism approved or disapproved based on whether they believed the outcome reduced financial costs and was overall a more efficient use of state resources. Respondents categorized as belonging in the fourth mechanism approved or disapproved based on whether they believed the outcome would deter future crimes. Finally, those categorized in the final category of "other" typically gave an evasive reason or a miscellaneous reason. The "other" category also included responses that stated a combination of the aforementioned mechanisms. The following table provides an overview of typical open-ended responses provided for each causal mechanism by treatment assignment.¹⁴²

Given the varying goals of the traditional criminal justice system and restorative justice programs, each treatment, if operating properly, should have elicited public support or opposition based on their respective goals. That is, because one of the primary goals of the traditional criminal justice system is ensuring that offenders receive a fair and proportional punishment for their crimes, respondents in the criminal justice system treatment should have approved or disapproved by giving reasons based on the criminal justice system's retributive goals being met or unmet. Meanwhile, given that one of the primary goals of both restorative justice models is to rehabilitate offenders, as opposed to simply levying retribution, respondents in the two restorative justice program treatments should have more likely than respondents in the criminal justice treatment to give reasons grounded in rehabilitation. Results contrary to these expectations would suggest that respondents were not interpreting the survey text properly or that there was an unforeseen mechanism that was overriding any intended treatment from the survey vignettes.

142. See *infra* Table 2.

Table 2: Examples of Open-ended Responses by Causal Mechanisms and Treatment Assignment

	CJS	PAP	PSP
Retribution (just deserts) mechanism	<p>"[I] think this what this person really deserved."</p> <p>"Robbing a liquor store and causing serious property damage is serious and could have evolved into an even worse situation. I think the sentence is a measured response."</p>	<p>"I think he needs to pay back what he did. It[']s not just a[n] actual sentence [sic], but more."</p>	<p>"At least Mr. Peters will be making restitution to the liquor store owner and do some needed community service. I think it is fair that he will have a permanent criminal record."</p>
Rehabilitation mechanism	<p>"It is fine that he was convicted since he was guilty. It just seems like the punishment will not solve the issue for society. I wish there was a rehabilitation program to [help] him rejoin society instead of just being locked up."</p> <p>"[I] disagree with prison I think it is a place that teaches people to be criminals rather [than] a place to help. [I] believe in reform not in imprisonment."</p>	<p>"I like the approach the government takes in this way rather than a cyclical way of just throwing people into jail, repeating over and over again. I think part of the problem is [] that we need to address rehabilitation as well as making sure the victim in this case can come to an agreement or some type of trust with the offender."</p> <p>"I think that the goal of the criminal justice system should be more to rehabilitate people who commit crimes and prevent new crimes from happening rather than simply punishment."</p>	<p>"I approve because I believe in giving people a second chance to make things right. Hopefully, this leniency will allow him to see he has been given the benefit of the doubt and he will make better choices going forward."</p>

Table 2: Examples of Open-ended Responses by Causal Mechanisms and Treatment Assignment (continued)

	<i>CJS</i>	<i>PAP</i>	<i>PSP</i>
Deterrence mechanism	"I think he should be punished with both a fine and time in jail. This is the type of conduct we want to discourage and this punishment does just that."	"I think that there has to be more of a deterrent to keep him from doing this again. To light of a punishment allows him that second chance to do a more serious crime."	"Reducing prison time may lead to other potential felons think it can happen with them as well and it could increase crime rate."
Administrative efficiency mechanism	"I like the idea of saving the tax payers money by not incarcerating an individual who has not committed a crime in the past."	"Depending on the nature of the crime, it would be much better in the long-run, especially with regards to the country's prison system, if one-time criminals were given the opportunity to atone for their crimes and mistakes in a manner that wouldn't cost the city, state, or country unnecessary money."	<p>"Reducing crowding in jails is a good thing."</p> <p>"It[]s probably good to keep non-violent offenders out of prisons, because it[]s one less person for taxpayer dollars to pay to house and feed. it seems like a good avenue for many, apologizing, paying for damages, giving back to the community seem like good steps for prison reform."</p>

Table 2: Examples of Open-ended Responses by Causal Mechanisms and Treatment Assignment (continued)

	CJS	PAP	PSP
"Other" mechanism	"Seem reasonable for the crime committed. I am staying neutral on the issue."	"Because I feel they could have done better."	"I feel that it is important for criminals to try and make amends for their crimes, and I also feel that there should be an effort made towards rehabilitating prisoners. I feel it is reasonable to reduce their sentence if certain conditions like this are met."

In terms of statistical analysis, after coding the responses, the study regressed the coded responses on treatment assignment and the other demographic control variables using a multinomial logistic regression. Multinomial logistic regression models are the conventional models used to analyze categorically coded dependent variables, such as different causal mechanisms.¹⁴³ The Appendix includes the full results from the multinomial logistic regression model.¹⁴⁴ Due to the difficulty in interpreting the coefficients of a multinomial logistic regression, the figure below shows the predicted probabilities of the median survey respondent mentioning a particular mechanism for his level of approval by treatment condition.¹⁴⁵

The following figure shows that respondents in the traditional

143. See Matthew Kim, *Public and Elite Opinion on International Human Rights Law: Completing the Causal Chain of the Domestic Compliance Mechanism*, 18 J. HUM. RTS. 419, 429 (2019).

144. See *infra* Table 8.

145. The median respondent was a 38-year-old white male, who was college-educated and politically moderate. See *infra* Figure 6.

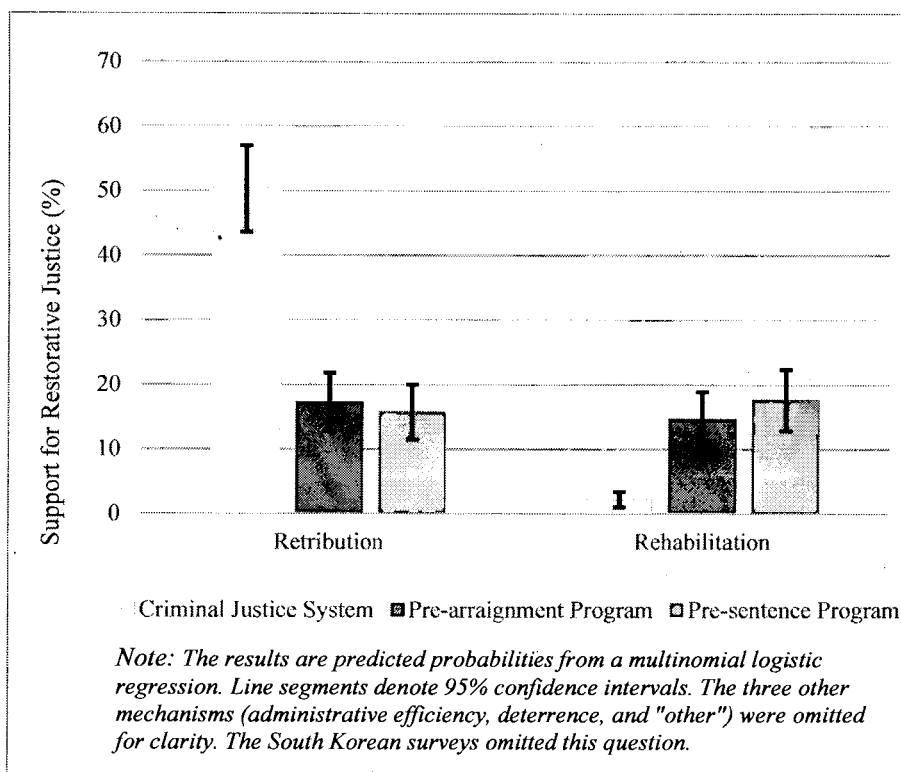
criminal justice system treatment were much more likely to give a rationale based on retributive reasons than respondents in either restorative justice program treatments.¹⁴⁶ Meanwhile, respondents in both of the restorative justice treatments were much more likely to give a reasoning based on rehabilitative reasons than respondents in the traditional criminal justice system treatment.¹⁴⁷ Meanwhile, there is no statistically significant difference between the two restorative justice models. These results, therefore, provide additional evidence confirming that the U.S. respondents were interpreting the survey text correctly and were giving their responses based on appropriate reasons grounded in the respective goals of the traditional criminal justice system or restorative justice programs.

More interestingly, the analysis of causal mechanisms reveals a potential way to effectively frame the debate surrounding restorative justice practices. The difference between the traditional criminal justice system and the two restorative justice treatments suggests that proponents of restorative justice programs should appeal to the public by emphasizing the rehabilitative aspects of restorative justice. When members of the public are confronted with news of a restorative justice practice, they are more likely to focus the rehabilitative aspects of restorative justice, relative to when they are confronted with the traditional justice system, and more likely to approve or disapprove based on whether they believe restorative justice practices will be able to rehabilitate the offender.

146. *See id.*

147. *See id.*

Figure 6: Predicted Proportions of Mechanisms Cited by Treatment Assignment



CONCLUSION

In the words of the late Supreme Court Justice Ruth Bader Ginsburg, "It has to be the people who want the change. Without them, no change will be lasting."¹⁴⁸ Her words ring true especially in the context of criminal justice reform, given that criminal codes are supposed to reflect community views on crime and punishment.¹⁴⁹ In the United States, the recent public outcry over racial disparities in policing and mass incarceration has signaled both the growing disparity between public attitudes and U.S. criminal codes and the

148. Harvard University, *A Conversation with Ruth Bader Ginsburg at Harvard Law School*, YOUTUBE (Feb. 7, 2013), <https://www.youtube.com/watch?v=umvkXhtbbpk>.

149. See ROBINSON & DARLEY, *supra* note 58, at 5–7.

need for criminal justice reform.¹⁵⁰ Many have suggested restorative justice programs as an alternative.¹⁵¹

Yet, empirical evidence surrounding public support for restorative justice is unclear, which is problematic because restorative justice programs are especially reliant on public opinion. With restorative justice programs, the public must bear the risk of criminals re-offending after re-entering their neighborhoods.¹⁵² Members of the public must also be willing to invest their time and resources into the restorative justice process itself by serving as mediators and facilitators.¹⁵³ Moreover, public approval is critical because restorative justice programs are intended to give members of the community more agency in addressing communal harms.¹⁵⁴ Given the lack of clarity regarding the level of public support and the need to "start small and pure" to ensure public buy-in for more expansive restorative justice programs, this article asked whether underlying characteristics of the criminal offender increased public support for restorative justice.¹⁵⁵

Overall, the article finds that U.S. and South Korean adults are strikingly similar in that they are more willing to support restorative justice measures for (1) juvenile offenders than adult offenders, (2) nonviolent offenders than violent offenders, and (3) first-time offenders than repeat offenders. These consistent cross-country findings suggest that public support for restorative justice for nonviolent, first-time, juvenile offenders may be a universal trend, and policymakers in both countries may garner greater public support for restorative justice by designing restorative justice programs for such types of offenders. Prioritizing such offenders, at the expense of violent, repeat, adult offenders, however, may come at a "cost" in terms of efficiency given the demonstrated effectiveness of restorative justice programs in reducing the recidivism rates of more serious, repeat, adult offenders.¹⁵⁶ Normatively speaking, public support alone

150. See ALEXANDER, *supra* note 10, at 97–108, 208; BARKOW, *supra* note 10, at 116, 158–59; KLEIMAN, *supra* note 10, at 31; SIMON, *supra* note 10, at 111; ZIMRING ET AL., *supra* note 10, at 164–65; King & Smith, *supra* note 10, at 79, 84; Roberts, *supra* note 10, at 1300.

151. See, e.g., JOHNSTONE, *supra* note 13, at 14; SERED, *supra* note 1, at 129; Braithwaite, *supra* note 16, at 3.

152. See Braithwaite, *supra* note 16, at 81–82.

153. See Coates et al., *supra* note 69, at 265.

154. See CAYLEY, *supra* note 13, at 168.

155. See Dignan, *supra* note 18, at 138; McCold, *supra* note 18, at 387; Zernova & Wright, *supra* note 18, at 91–92; see also Lanni, *supra* note 18, at 681.

156. See Forgays & DeMilio, *supra* note 93, at 116–17; Strang, et al., *supra* note 19, at 26–27.

should not necessarily dictate public policy, especially considering the human costs of an ineffective criminal justice policy, but public attitudes should be a consideration in this instance given the unique reliance on public support to ensure the success of restorative justice programs.¹⁵⁷

The article also finds that the traditional criminal justice system is no more likely to draw public support than two existing models of restorative justice in the U.S. Both pre-sentence diversion programs and pre-sentence probation programs draw similar if not greater public support than the traditional criminal justice system. Thus, if a supposed lack of public support has hindered further criminal justice reform in the past, this finding provides an empirical basis to adopt either model of restorative justice and ensure an equal if not greater public support than the traditional criminal justice system. Additionally, given that there is no statistically significant difference between two primary models of restorative justice, other normative considerations should dictate which model is implemented in place of the traditional criminal justice system.

Finally, in terms of framing the debate surrounding the implementation of restorative justice practices in the U.S., it appears that when members of the public are confronted with either model of restorative justice, compared to when they are confronted with the traditional criminal justice system, they are more likely to be concerned with whether or not the restorative justice program will successfully rehabilitate offenders. As such, the focus should be on highlighting the rehabilitative aspects of restorative justice.

In closing, it is important to note that restorative justice may not be the panacea for criminal justice reform. Critics raise meaningful objections to restorative justice that should not be taken lightly.¹⁵⁸ Nevertheless, to not seriously consider restorative justice measures as an alternative dispute resolution model, based on the false assumption that public support for restorative justice is lacking, would be misguided. As this article has shown, there is significant, consistent public support for restorative justice programs designed for nonviolent, first-time, juvenile offenders. Given the moral imperative to reform the criminal justice system, due consideration must be given to restorative justice.

157. See ROBINSON & DARLEY, *supra* note 58, at 7.

158. See generally Daly, *supra* note 78, at 4.

APPENDIX A: TABLES AND REGRESSION MODELS

Table 3: Survey Sample Characteristics

<i>U.S. Survey 1</i>	
Gender	
Male	0.551
Female	0.449
Age	
18-29	0.261
30-44	0.457
45-64	0.226
65 +	0.056
Education	
High school or below	0.102
Some college	0.331
College/university	0.415
Graduate/professional school	0.153
Race/Ethnicity	
Non-Hispanic White	0.753
Hispanic/Latinx	0.066
African American	0.102
Asian	0.044
Other	0.035
Political Ideology	
Liberal	0.550
Neutral	0.154
Conservative	0.296

<i>South Korea Survey 2</i>	
Gender	
Male	0.487
Female	0.513
Age	
18-29	0.386
30-44	0.324
45-64	0.289
65 +	0.000
Education	
High school or below	0.291
Some college	0.022
College/university	0.607
Graduate/professional school	0.080
Political Ideology	
Liberal	0.345
Neutral	0.482
Conservative	0.173

U.S. Survey 3

Gender	
Male	0.580
Female	0.420
Age	
18-29	0.236
30-44	0.510
45-64	0.220
65 +	0.032
Education	
High school or below	0.097
Some college	0.264
College/university	0.459
Graduate/professional school	0.180
Race/Ethnicity	
Non-Hispanic White	0.739
Hispanic/Latinx	0.038
African American	0.156
Asian	0.060
Other	0.006
Political Ideology	
Liberal	0.530
Neutral	0.164
Conservative	0.306

South Korea Survey 4

Gender	
Male	0.504
Female	0.496
Age	
18-29	0.213
30-44	0.323
45-64	0.415
65 +	0.049
Education	
High school or below	0.172
Some college	0.020
College/university	0.676
Graduate/professional school	0.132
Political Ideology	
Liberal	0.187
Neutral	0.505
Conservative	0.308

U.S. Survey 5

Gender	
Male	0.510
Female	0.490
Age	
18-29	0.228
30-44	0.440
45-64	0.276
65 +	0.057
Education	
High school or below	0.068
Some college	0.1889
College/university	0.525
Graduate/professional school	0.218
Race/Ethnicity	
Non-Hispanic White	0.768
Hispanic/Latinx	0.037
African American	0.095
Asian	0.121
Other	0.018
Political Ideology	
Liberal	0.479
Neutral	0.144
Conservative	0.378

Table 4: OLS Regressions for Experiment 1
(Juvenile v. Adult Offender)

	United States:		South Korea:	
	(1)	(2)	(3)	(4)
Adult Offender	-0.101*** (0.020)	-0.104*** (0.019)	-0.073*** (0.020)	-0.071*** (0.019)
Age		-0.001 (0.001)		0.004*** (0.001)
Female		0.028 (0.019)		0.028 (0.020)
Education		-0.031 (0.048)		0.066 (0.041)
Income		-0.00000 (0.00000)		-0.103*** (0.039)
Liberal		0.250*** (0.031)		0.044 (0.060)
Political Involvement		0.060* (0.031)		0.016 (0.065)
General Legal Knowledge		0.049* (0.028)		-0.004 (0.036)
Race: Asian		0.030 (0.054)		
Race: Hispanic/Latinx		0.053 (0.046)		
Race: Other		0.058 (0.058)		
Race: White		-0.034 (0.032)		
Constant	0.636*** (0.014)	0.525*** (0.054)	0.472*** (0.014)	0.313*** (0.048)
Observations	798	798	577	577
R ²	0.033	0.141	0.024	0.075
Adjusted R ²	0.031	0.128	0.022	0.062
Residual Std. Error	0.277 (df = 796)	0.262 (df = 785)	0.237 (df = 575)	0.232 (df = 568)
F Statistic	26.777*** (df = 1; 796)	10.766*** (df = 12; 785)	13.862*** (df = 1; 575)	5.769*** (df = 8; 568)

Note: *p<0.1; **p<0.05; ***p<0.01

The reference group for the treatment is the treatment condition in which respondents were told that a juvenile offender committed a crime, rather than an adult offender. For the U.S. results, the reference group for race is African American. The response variable (i.e., support for restorative justice) was measured on a 6-point Likert scale and converted to percentage points.

Table 5: OLS Regressions for Experiment 2
(Nonviolent v. Violent Offender)

	United States:		South Korea:
	(1)	(2)	(3) (4)
Violent Offender	-0.164*** (0.019)	-0.164*** (0.019)	-0.091*** (0.019)
Age		-0.001 (0.001)	0.003*** (0.001)
Female		-0.034* (0.019)	0.047** (0.020)
Education		0.060 (0.048)	0.045 (0.041)
Income		-0.00000 (0.00000)	-0.035 (0.039)
Liberal		0.164*** (0.051)	0.044 (0.060)
Political Involvement		0.083*** (0.031)	0.052 (0.065)
General Legal Knowledge		0.061** (0.028)	0.017 (0.036)
Race: Asian		-0.012 (0.054)	
Race: Hispanic/Latinx		-0.032 (0.046)	
Race: Other		-0.014 (0.058)	
Race: White		-0.030 (0.032)	
Constant	0.614*** (0.014)	0.516** (0.054)	0.430*** (0.014)
Observations	798	798	577
R ²	0.085	0.149	0.083
Adjusted R ²		0.084	0.037
Residual Std. Error	0.270 (df = 796)	0.262 (df = 785)	0.232 (df = 568)
F Statistic	73.986*** (df = 1, 796)	11.443*** (df = 12, 785)	23.296*** (df = 1, 575)

*p<0.1; **p<0.05; ***p<0.01

The reference group for the treatment is the treatment condition in which respondents were told that a violent offender committed a crime, rather than a nonviolent offender. For the U.S. results, the reference group for race is African American. The response variable (i.e., support for restorative justice) was measured on a 6-point Likert scale and converted to percentage points.

Table 6: OLS Regressions for Experiment 3
(First-time v. Repeat Offender)

	United States:		South Korea:	
	(1)	(2)	(3)	(4)
Repeat Offender	-0.057*** (0.019)	-0.060*** (0.019)	-0.188*** (0.017)	-0.188*** (0.016)
Age		-0.001 (0.001)		0.004*** (0.001)
Female		0.020 (0.019)		0.005 (0.017)
Education		0.054 (0.048)		0.020 (0.038)
Income		-0.058 (0.053)		-0.044 (0.033)
Liberal		0.052 (0.031)		-0.072 (0.050)
Political Involvement		0.055* (0.030)		0.110** (0.049)
General Legal Knowledge		0.071** (0.032)		-0.002 (0.023)
Race: Asian		0.022 (0.046)		
Race: Hispanic/Latinx		0.002 (0.053)		
Race: Other		0.383*** (0.122)		
Race: White		-0.010 (0.027)		
Constant	0.661*** (0.014)	0.574*** (0.056)	0.467*** (0.012)	0.322*** (0.045)
Observations	817	817	750	750
R ²	0.011	0.041	0.142	0.200
Adjusted R ²	0.010	0.027	0.141	0.191
Residual Std. Error	0.267 (df = 815)	0.264 (df = 804)	0.231 (df = 748)	0.225 (df = 741)
F Statistic	9.208*** (df = 1; 815)	2.895*** (df = 12; 804)	124.121*** (df = 1; 748)	23.099*** (df = 8; 741)

Note:

*p<0.1; **p<0.05; ***p<0.01

The reference group for the treatment is the treatment condition in which respondents were told that a repeat offender committed a crime, rather than a first-time offender. For the U.S. results, the reference group for race is African American. The response variable (i.e., support for restorative justice) was measured on a 6-point Likert scale and converted to percentage points.

*Table 7: OLS Regressions for Experiment 4
(Criminal Justice System v. Pre-arraignment Diversion Program
v. Pre-sentence Probation Program)*

	United States:	
	(1)	(2)
Pre-arraignment Program	-0.021 (0.023)	-0.021 (0.023)
Pre-sentence Program	0.002 (0.022)	0.004 (0.023)
Age		0.0004 (0.001)
Female		-0.004 (0.019)
Education		0.025 (0.050)
Income		-0.043 (0.038)
Liberal		0.043 (0.028)
Political Involvement		0.062** (0.028)
General Legal Knowledge		-0.009 (0.030)
Race: Asian		-0.001 (0.048)
Race: Hispanic/Latinx		0.033 (0.056)
Race: Other		-0.104 (0.075)
Race: White		-0.024 (0.029)
Constant	0.708*** (0.016)	0.672*** (0.056)
Observations	794	794
R ²	0.002	0.022
Adjusted R ²	-0.001	0.006
Residual Std. Error	0.261 (df = 791)	0.260 (df = 780)
F Statistic	0.603 (df = 2; 791)	1.374 (df = 13; 780)
Note: *p<0.1; **p<0.05; ***p<0.01		

The reference group for the treatment is the treatment condition in which respondents were told that the offender was sentenced according to the traditional criminal justice system, rather than a restorative justice program. The reference group for race is African American. This experiment was only conducted in the U.S., not South Korea. The response variable (i.e., support for the outcome) was measured on a 6-point Likert scale and converted to percentage points.

*Table 8: Multinomial Logistic Regression Results of Causal Mechanisms from Experiment 4
(Criminal Justice System v. Pre-arraignment Diversion Program v. Pre-sentence Probation Program)*

	Causal Mechanisms:			
	Administrative Efficiency	Deterrence	Retribution	Rehabilitation
	(1)	(2)	(3)	(4)
Pre-arraignment Program	1.827 (1.121)	-0.574 (0.643)	-1.435*** (0.237)	1.536*** (0.439)
Pre-sentence Program	2.091* (1.118)	-0.449 (0.635)	-1.504*** (0.239)	1.745*** (0.437)
Age	0.079*** (0.024)	-0.007 (0.021)	0.0004 (0.008)	-0.013 (0.010)
Female	-1.124* (0.598)	-0.658 (0.542)	0.193 (0.193)	0.132 (0.245)
Education	-0.030 (1.433)	-0.183 (1.414)	0.158 (0.511)	-0.948 (0.624)
Income	2.407** (1.069)	1.211 (1.037)	0.198 (0.391)	0.840* (0.489)
Liberal	-1.325 (0.885)	0.608 (0.826)	-0.225 (0.294)	0.489 (0.395)
Political Involvement	-2.322** (0.964)	-1.253 (0.844)	-1.992*** (0.299)	-2.065*** (0.394)
General Legal Knowledge	3.707*** (1.345)	3.596*** (1.132)	1.542*** (0.317)	1.785*** (0.413)
Race: Asian	18.217*** (0.988)	-14.325*** (0.00000)	0.143 (0.495)	1.114 (0.820)
Race: Hispanic/Latinx	-1.787*** (0.000)	-12.134*** (0.00000)	0.263 (0.617)	2.543*** (0.815)
Race: Other	-2.745*** (0.000)	-10.646*** (0.00001)	1.113 (0.728)	1.605 (0.987)
Race: White	18.313*** (0.880)	0.739 (1.077)	0.337 (0.323)	1.691*** (0.634)
Constant	-28.821*** (1.484)	-5.541*** (1.743)	-0.398 (0.564)	-4.188*** (0.943)
Akaike Inf. Crit.	1,493.078	1,493.078	1,493.078	1,493.078

Note:

*p<0.1; **p<0.05; ***p<0.01

For each 1-unit change in the independent variable, the logit of the dependent variable relative to the reference group will change by its respective coefficient estimate. The coefficient estimate is in log-odds units. The reference group for the dependent variable is the "other" mechanism. The reference group for race is African American. The primary independent variable of interest (i.e., support for the outcome) was measured on a 6-point Likert scale and converted to percentage points. The reference group for the primary independent variable of interest (i.e., treatment assignment) was the traditional criminal justice system treatment.

APPENDIX B: SURVEY TEXT

The following is the survey text of the U.S. survey alongside South Korean translations where appropriate. The questions did not appear in the order reproduced below due to possible ordering effects. Instead, the question order was randomized to some extent, and some of the demographic variables were asked in between the survey experiments. The question numbers were not included in the actual survey. The attention-check questions in the U.S. surveys have been omitted. Question 3, denoted with an asterisk (*), was administered only in the U.S. surveys due to the overwhelmingly homogenous racial makeup of South Koreans. Question 11, denoted with double asterisks (**), was administered only in the second wave of U.S. and South Korean surveys—Surveys 3 and 4. Question 12, denoted with triple asterisks (***), was administered only in the third wave of the U.S. surveys—Survey 5.

Q1). What is your gender?

- ☐ Male
- ☐ Female

Q2). What is your age?

Q3*). Which of the following best describes your race?

- ☐ White
- ☐ African American
- ☐ Hispanic/Latino
- ☐ Asian
- ☐ Other, please indicate _____

Q4). What is the highest level of school you have completed or the highest degree you have received?

- ☐ Less than high school (Grades 1-8 or no formal schooling)
- ☐ High school incomplete (Grades 9-11 or Grade 12 with no diploma)
- ☐ High school diploma
- ☐ Some college, no degree
- ☐ Two year associate degree from a college or university
- ☐ Four year college or university degree
- ☐ Some postgraduate or professional schooling
- ☐ Postgraduate or professional degree

Q5). Last year, that is in 2017 / 2019, what was your total family income from all sources, before taxes?

- ☐ Under \$10,000
- ☐ \$10,000 to under \$20,000
- ☐ \$20,000 to under \$30,000
- ☐ \$30,000 to under \$40,000
- ☐ \$40,000 to under \$50,000
- ☐ \$50,000 to under \$60,000
- ☐ \$60,000 to under \$70,000
- ☐ \$70,000 to under \$80,000
- ☐ \$80,000 to under \$90,000
- ☐ \$90,000 to under \$100,000
- ☐ \$100,000 to under \$150,000
- ☐ \$150,000 or above

Q6). Which best describes your political leanings?

- ☐ Very liberal
- ☐ Liberal
- ☐ Somewhat liberal
- ☐ Neutral
- ☐ Somewhat conservative
- ☐ Conservative
- ☐ Very conservative

Q7a). Have you ever worked for a political campaign?

- ☐ Yes
- ☐ No

Q7b). Have you ever donated money to a campaign?

- ☐ Yes
- ☐ No

Q7c). Have you ever put up a political sign such as a law sign or a bumper sticker?

- ☐ Yes
- ☐ No

Q7d). Have you ever been attended local political meetings?

- ☐ Yes
- ☐ No

Q8a). Which issue was decided in *Roe v. Wade*?

- ☐ Abortion

- Immigration
- Segregation
- Capital punishment
- Don't know

Q8b). Which of the following guarantees due process under the law?

- Articles of Confederation
- Bill of Rights
- Federalist Papers
- Declaration of Independence
- Don't know

Q8c). How many justices sit on the U.S. Supreme Court?

- 5
- 7
- 9
- 11
- Don't know

Q8d). The exclusionary rule allows courts to do what?

- Throw out illegally seized evidence
- Replace jury members who are absent
- Throw out cases that do not have any merit
- Replace disrespectful attorneys
- Don't know

Q8a). 다음 중 한국 정부가 현재 가장 적게 투자하고 있는 분야는 무엇인가요?

- 외교, 통일
- 문화, 체육, 관광
- 국방
- 교육
- 보건, 복지, 고용
- 모름

Q8b). 위헌법률심판에 최종 책임은 누가 갖습니까?

- 대통령
- 국회
- 대법원
- 헌법재판소
- 모름

Q9). U.S. Experiment 1: Juvenile v. Adult Offender

Treatment 1: Juvenile Offender

Local Teen Gets Second-Chance

By ALFRED JONES

Last September, John Doe, a 15 year old juvenile, robbed a liquor store on Park Street on four separate occasions, causing serious damage each time. Instead of going to trial, prosecutors decided to give the John Doe a second chance. In a new Victim-Offender Mediation Program created by the Marietta D.A.'s office, John Doe will meet the liquor store owner, apologize for his actions, pay the liquor store owner for the damage he caused, and get probation instead of going to jail.



Reuters

Treatment 2: Adult Offender

Local Suspect Gets Second-Chance

By ALFRED JONES

Last September, John Doe, a 35 year old man, robbed a liquor store on Park Street on four separate occasions, causing serious damage each time. Instead of going to trial, prosecutors decided to give the John Doe a second chance. In a new Victim-Offender Mediation Program created by the Marietta D.A.'s office, John Doe will meet the liquor store owner, apologize for his actions, pay the liquor store owner for the damage he caused, and get probation instead of going to jail.



Reuters

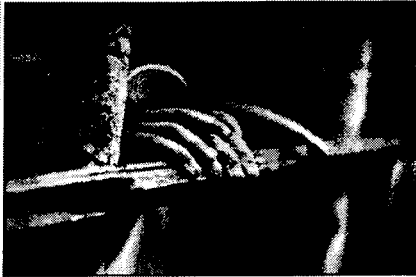
Juvenile Offender: Do you approve or disapprove of sending the 15-year-old John Doe to the Victim-Offender Mediation Program?

Adult Offender: Do you approve or disapprove of sending the 35-year-old John Doe to the Victim-Offender Mediation Program?

- Strongly approve
- Approve
- Somewhat approve
- Somewhat disapprove
- Disapprove
- Strongly disapprove

Q9). South Korean Experiment 1: Juvenile v. Adult Offender

Treatment 1: Juvenile Offender



15살 김모 군 사죄의 기회를 얻다

김재석 수석기자 | 기사입력: 2019-01-03 | 지난 9월, 15살 김모 군은 서울에 위치한 한 유증업소를 4차례 강도질을 하였다. 김장은 김모 군을 기소하는 대신에 사죄의 기회를 주기로 합의하였다. 합의에 의하면 김모 군은 유증업소 주인에게 사과를 하고, 합의금을 지불하고, 사회 봉사활동으로써 감옥행을 피할 수 있다.

Treatment 2: Adult Offender



김모 씨 사죄의 기회를 얻다

김재석 수석기자 | 기사입력: 2019-01-03 | 지난 9월, 35살 김모 씨는 서울에 위치한 한 유증업소를 4차례 강도질을 하였다. 김장은 김모 씨를 범장 소상 대신에 사죄의 기회를 주기로 합의하였다. 합의에 의하면 김모 씨는 유증업소 주인에게 사과를 하고, 합의금을 지불하고, 사회 봉사활동으로써 감옥행을 피할 수 있다.



당신은 15/35 살 김모 군/씨 에게 사죄의 기회를 주는 것에 동의하십니까?

- 매우 동의
- 동의
- 다소 동의
- 다소 반대
- 반대
- 매우 반대

Q10). U.S. Experiment 2: Nonviolent v. Violent Offender

Treatment 1: Nonviolent Offender Treatment 2: Violent Offender

DA Drops Charges Against Teen Suspect

By JOEL DAYSON

The Savannah D.A.'s Office announced that it will be dropping charges against Jim Hale, a 16 year old, who was accused of selling cocaine. Instead of pursuing criminal charges, prosecutors allowed Hale to enter the D.A.'s Drug Market Intervention Program. The Program allows suspected drug dealers to attend a session where they can see the D.A.'s evidence, listen to neighborhood leaders talk about the harmful impact of the suspect's behavior, and get a second-chance to re-enter the community instead of going to trial.



DA Drops Charges Against Violent Teen Suspect

By JOEL DAYSON

The Savannah D.A.'s Office announced that it will be dropping charges against Jim Hale, a 16 year old, who was accused of selling cocaine and violently assaulting other people. Last May, Hale seriously injured 3 local teens in a fist fight. Instead of pursuing criminal charges, prosecutors allowed Hale to enter the D.A.'s Drug Market Intervention Program. The Program allows suspected drug dealers and violent offenders to attend a session where they can see the D.A.'s evidence, listen to neighborhood leaders talk about the harmful impact the suspect's behavior, and get a second-chance to re-enter the community instead of going to trial.



Nonviolent Offender: Do you approve or disapprove of Jim Hale getting a second-chance after he trafficked cocaine?

Violent Offender: Do you approve or disapprove of Jim Hale getting a second-chance after he trafficked cocaine and seriously injured other people?

- Strongly approve
- Approve
- Somewhat approve
- Somewhat disapprove
- Disapprove
- Strongly disapprove

Q10). South Korean Experiment 2: Nonviolent v. Violent Offender

Treatment 1: Nonviolent Offender Treatment 2: Violent Offender



박모 군 사죄의 기회를 얻다

김재석 수석기자 | 기사일락: 2019-01-03 | 지난 9월, 16살 박모 군은 마약 혐의로 구속이 되었다. 박모 군은 여러차례 마약을 거래한 혐의로 검찰 조사를 받게 시작했다. 검찰은 박모 군을 기소하는 대신에 사죄의 기회를 주기로 합의할 여지가 있었다. 합의에 의하면 검찰이 박모 군의 마약 혐의에 관한 모든 증거자료를 마약 주연들에게 공개하고, 마약 주연들의 증언을 받아 박 모군에 공개 사죄를 하면 감옥형을 피할 수 있다.



박모 군 사죄의 기회를 얻다

김재석 수석기자 | 기사일락: 2019-01-03 | 지난 9월, 16살 박모 군은 마약 혐의와 폭행 혐의로 구속이 되었다. 박모 군은 여러차례 마약을 거래하고 여러 명에게 상한 폭행을 한 혐의로 검찰 조사를 받게 시작했다. 검찰은 박모 군을 기소하는 대신에 사죄의 기회를 주기로 합의하였다. 합의에 의하면 검찰이 박모 군의 마약 혐의와 폭행 혐의에 관한 모든 증거자료를 마약 주연들에게 공개하고, 마약 주연들의 증언을 받아 박 모군에 공개 사죄를 하면 감옥형을 피할 수 있다.



박모 군의 마약 혐의/와 폭행 혐의를 고려해볼 때, 당신은 박모 군에게 사죄의 기회를 주는 것에 동의하십니까?

- 매우 동의
- 동의
- 다소 동의
- 다소 반대
- 반대
- 매우 반대

Q11**). U.S. Experiment 3: First-time v. Repeat Offender

Treatment 1: First-time Offender

First-Time Offender Gets Second Chance

By ALFRED JONES

Last September, Danny Poe, a 15-year old juvenile, was arrested for robbing a liquor store on Park Street and causing serious property damage. That was his first time getting arrested, and he has no criminal record. Instead of going to trial, prosecutors decided to give Danny Poe a second chance. In a new Victim-Offender Mediation Program created by the Marietta D.A.'s office, Danny Poe will meet the liquor store owner, apologize for his actions, pay the liquor store owner for the damage he caused, and get probation instead of going to jail.



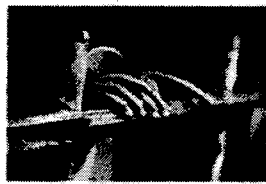
Reuters

Treatment 2: Repeat Offender

Repeat Offender Gets Second Chance

By ALFRED JONES

Last September, Danny Poe, a 15-year old juvenile, was arrested for robbing a liquor store on Park Street and causing serious property damage. That was his fourth time getting arrested, and he has a criminal record. Instead of going to trial, prosecutors decided to give Danny Poe a second chance. In a new Victim-Offender Mediation Program created by the Marietta D.A.'s office, Danny Poe will meet the liquor store owner, apologize for his actions, pay the liquor store owner for the damage he caused, and get probation instead of going to jail.



Reuters

First-time Offender: Do you approve or disapprove of sending the first-time offender Danny Poe to the Victim-Offender Mediation Program?

Repeat Offender: Do you approve or disapprove of sending the repeat offender Danny Poe to the Victim-Offender Mediation Program?

- Strongly approve
- Approve
- Somewhat approve
- Somewhat disapprove
- Disapprove
- Strongly disapprove

Q11**). South Korean Experiment 3: First-time v. Repeat Offender

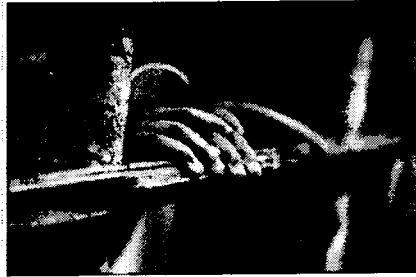
Treatment 1: First-time Offender



초범 정모 군 사죄의 기회를 얻다

이재숙 수석기자 | 기사입력: 2019-11-12 | 지난 10월, 15살 정모 군은 서울에 위치한 한 유흥업소를 강도질 하여 큰 손상을 일으켰다. 정모 군은 처음으로 체포되었고 전과가 없다. 경찰은 정모 군을 가소하는 대신에 사죄의 기회를 주기로 결정했다. 경찰의 결정에 의하면 정모 군은 유흥업소 주인에게 사과하고 보상을 하면 징역형을 피할 수 있다.

Treatment 2: Repeat Offender



상습범 정모 군 사죄의 기회를 얻다

이재숙 수석기자 | 기사입력: 2019-11-12 | 지난 10월, 15살 정모 군은 서울에 위치한 한 유흥업소를 강도질 하여 큰 손상을 일으켰다. 정모 군은 이번 범죄를 포함해 모두 4차례 체포되었고 전과가 있다. 경찰은 정모 군을 가소하는 대신에 사죄의 기회를 주기로 결정했다. 경찰의 결정에 의하면 정모 군은 유흥업소 주인에게 사과하고 보상을 하면 징역형을 피할 수 있다.



당신은 초범/상습범 정모 군에게 사죄의 기회를 주는 것에 동의하십니까 아니면 반대하십니까?

- 매우 동의
- 동의
- 다소 동의
- 다소 반대
- 반대
- 매우 반대

Q12***). U.S. Experiment 4: Criminal Justice System v. Pre-arraignment Diversion Program v. Pre-sentence Probation Program

**Treatment 1: Traditional
Criminal Justice**

**Local Criminal
Suspect Sent to
Prison**

By ALFRED JONES

Last April, David Peters was arrested for robbing a liquor store on Park Street and causing serious property damage. At trial, David Peters was found guilty. David Peters will have to serve a one-year prison sentence and pay \$2,500 in criminal fines, in accordance with the sentencing guidelines. Afterwards, David Peters will have a permanent criminal record.



Reuters

**Treatment 2: Pre-arraignment
Diversion Program**

**Local Criminal
Suspect Avoids
Prison Sentence**

By ALFRED JONES

Last April, David Peters was arrested for robbing a liquor store on Park Street and causing serious property damage. Before filing official criminal charges and going to trial, the government decided to give David Peters a second chance. Under the Victim-Offender Mediation Program, David Peters will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and do community service. Afterwards, David Peters will not go to prison and will not have a criminal record.



Reuters

Treatment 3: Pre-sentence Probation Program

Local Criminal Suspect Gets Reduced Prison Sentence

By ALFRED JONES

Last April, David Peters was arrested for robbing a liquor store on Park Street and causing serious property damage. At trial, David Peters was found guilty. After the trial has before determining his punishment, the government decided to give David Peters a second chance. Under the Victim-Offender Mediation Program, David Peters will meet the liquor storeowner, apologize for his actions, pay the liquor storeowner for the damage he caused, and do community service. Afterwards, David Peters will get a reduced prison sentence and will have a permanent criminal record.



Reuters

Do you approve or disapprove of the legal consequences David Peters must face for his actions?

- Strongly approve
- Approve
- Somewhat approve
- Somewhat disapprove
- Disapprove
- Strongly disapprove