

Implementing Restorative Justice Programs in the Cal Poly Community

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Abstract

This paper is the result of a year long senior project for the Liberal Arts and Engineering program at California Polytechnic State University. This paper attempts to educate the reader on what Restorative Justice is, why it faces challenges in the United States, and how it has been implemented, both in the United States and outside of it. In addition, this paper describes my own experience with implementing Restorative Justice Programs with both the city of San Luis Obispo and California Polytechnic State University. This experience includes the challenges that I faced along the way, and how these challenges are indicative of challenges faced throughout the state of California and the United States. To conclude, this paper touches on future work to be accomplished by the end of a two year graduate program.

Justice is often executed in an easy, expected way: fines. Be it ticket fees, court fees, or other legal obligations, fines are a common way to serve justice. However, fines often do not deal proportional justice when it comes to the poorest in the nation. As NPR reported in 2014, rising court fees are felt most by the poor.¹ And, unfortunately, as explained in the article, the poor are those most likely to go through the court systems. Some courts, but not all, allow those who cannot pay fines right away to use payment plans, but even these payment plans come with fees, sometimes in the way of interest or even a fee for setting up the plan in the first place.² Even being assigned a public defender, a right guaranteed to American citizens, can cost money.

With these realities in mind, many have searched for alternatives to simply citing and arresting those who cannot pay fines. As mentioned, some courts allow payment plans, though those can come with heavy interest, and others allow convicted individuals to reduce the fine levied on them.³ These solutions, however, do not get to the root of the issue, and uphold an idea about justice that does not mesh with a “rehabilitative” ideal. There are some ideas and programs that do promote rehabilitative justice, and chief among them is Restorative Justice.

This paper will provide a literary review of restorative justice programs, such as restorative cooperations between large parties and groups, as well as ways that these programs have been implemented, from the small group therapy level to the city level. In addition, this argument will discuss my own attempts to implement these programs, as well as the struggles faced in doing so. These attempts, including at the university level as city level, have been met with their own unique challenges, and my argument will attempt to describe how to deal with and overcome them. Finally, my argument will describe continuing work on program implementation and research.

¹ Joe Shapiro, “As Court Fees Rise, The Poor Are Paying The Price” *National Public Radio* (May 19, 2014)

² Ibid.

³ Ibid.

Background

What is Restorative Justice?

Restorative Justice, as defined, is “a theory and method in criminal justice in which it is arranged that the victim and community receive restitution from the offender.”⁴ Restorative Justice is often attributed to Howard Zehr, who wrote the book “Changing Lenses”. He had a different idea on what justice should be. The western ideal, he said, was often to punish the offender, rather than help them work through the issues that they must be facing in order to commit a crime.⁵ He says the “Offenders have many needs...” and goes on to describe that “They need to have their stereotypes and rationalizations ... about the victim and the event challenged.”⁶ This idea challenges the conventional justice system, which often refuses to acknowledge failings in the offenders thoughts, but rather acknowledges the failings of their actions. Zehr explains that for every action that goes against the ideals of society, there exists a failure of thought and idea. For example, a man who assaults another man for the color of his must rationalize his action through false thought. It is the ideal for restorative justice to help the offender work through these faults and understand their shortcomings. In his chart of understanding of accountability, Zehr states the differences between “retribution” and “restoration”. Here, he states the difference between reparations paid to society by offenders given the two systems they exist in. For example, in a retribution system, a debt is paid to society through punishment.⁷ This could be through jail time or

⁴ “Restorative Justice” Dictionary.com

<http://www.dictionary.com/browse/restorative-justice?s=t>

⁵ Howard Zehr, “Changing Lenses”, *Herald Press*, Scottdale, PA, 1990

⁶ *Ibid.*

⁷ *Ibid.*

finances. However, in a restoration system, debt is paid by making right. This could include vandals repainting buildings they graffitied on, litterers cleaning highways, and so on. In a restorative system, offenders help right the wrong that they themselves create.

All of these ideals seem rather “pie in the sky”. To some, it would make sense for it to be the case that restorative justice simply lets offenders off the hook by letting them off easy. This is, however, an American sentiment, that is often not shared with the rest of the world. The American way of giving justice is often through punishment. In the United States, eighty billion dollars was spent on prisons in 2010, coming in over the budget for food stamps.⁸ Rehabilitation was deemed to be unsuccessful in reducing recidivism, and so it was abandoned as a program. The study that suggested this, as well as rising crime rates in the 60’s and 70’s, led to the massive prison systems that exist in the United States today. This was compounded by the fact that politicians wanted to appear tough on crime, and therefore did not encourage prisons to take on programs that might appear too friendly for the prisoner.⁹ However, as it turns out, this was a massive failure for the United States.

Successes: National Programs

In Norway, which naturally does not follow an American ideal, the prison system does not exist merely to punish people, but to assist them in getting past the trappings that led them to commit a crime in the first place. Norway incarcerates only seventy-five people per every 100,000 people, as compared to 707 people per 100,000 in the United States.¹⁰ In addition, Norway has an incredibly low recidivism rate; the rate at which people who are released from prison are placed

⁸ Eduardo Porter, “In the U.S., Punishment Comes Before the Crimes” *The New York Times* (April 29, 2014)

⁹ Ibid.

¹⁰ Christina Sterbenz, “Why Norway’s prison system is so successful”, *Business Insider* (Dec 11, 2014)

back into the system. Norway’s rate is only twenty percent, compared to a rate of fifty-two percent in the United States.¹¹ Norway fully admits to following a “restorative justice” pathway. At Halden Prison, prisoners are given a maximum of twenty-one years regardless of the crime, and are kept on a spacious seventy-five acre plot of land.¹² On this land, prisoners are given small homes to live in, with working kitchens (stocked with knives and other “dangerous” objects), windows without bars, and friendly guards who attempt to build friendships with the “inmates”.¹³ There are even vocational programs, like woodworking, recording studios, and others in order to start a life after prison. For Norwegians, taking a prisoners freedom is punishment enough.¹⁴ While many Americans consider this sort of approach to be too easy on prisoners, the prison director of Halden said this: “Do you want people who are angry, or people who are rehabilitated?”¹⁵

Successes: The Raw Data

Another of the main concerns with restorative justice in the United States is that by “letting offenders off easy”, offenders will be much more likely to commit crimes. The idea is that without harsh punishments there is not a disincentive that criminals would consider before committing crimes again. This lack of disincentive would lead to a higher rate of recidivism. However, metadata analysis of restorative justice programs finds that this is not the case. According to “The Effectiveness of Restorative Justice Practices: A Meta-Analysis”, seventy-two percent of restorative justice programs reduced recidivism when compared to non-restorative justice

¹¹ Carolyn W. Deady, “Incarceration And Recidivism: Lessons From Abroad”, *Pell Center for International Relations and Public Policy* (Mar 2014)

¹² *Op. cit.* fn. 7

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

programs.¹⁶ Offenders who were involved in these programs were significantly more successful during follow-up. In addition, not only were offenders more successful, they were also more satisfied with the programs.¹⁷ These offenders, due to the satisfaction or otherwise, were also more likely to follow through with restitution requirements, meaning that victims would be more likely to receive compensation from the offender rather than offenders in other programs.¹⁸ In terms of creating outcomes that significantly benefit both the offenders and the victims, restorative justice programs are the way to go.

Finances

One of the most important issues for taxpayers is where the money they pay to the government goes. Be it weapons, food stamps, or other discretionary spending, voters are always concerned with the money that the government collects. This is yet another area where restorative justice programs outpace traditional justice programs. McCollister, French, and Fang gave tangible monetary values to crimes, including rape (\$240,776), robbery (\$42,310), and fraud (\$5,032) in their study on crime and cost.¹⁹ Restorative justice programs can directly reduce victim costs not only by reducing crime entirely, but also by helping to provide some sort of compensation, though perhaps not financially, to the victim. In addition, costs for the government are reduced by lowering recidivism rates, meaning that governments will not spend large amounts of money on the same offender multiple times.

¹⁶ Jeff Latimer, Craig Dowden, and Danielle Muise “The Effectiveness of Restorative Justice Practices: a Meta-Analysis” *The Prison Journal* (2005)

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Kathryn McCollister, Michael French, and Hai Fang “The cost of crime to society: new crime-specific estimates for policy and program evaluation” *Drug and Alcohol Dependence* 108 (2010)

Challenges

As noted by O'Neil in her report for the California Senate Office of Research, restorative justice could provide significant cost benefit to society, but there exist a great number of challenges for implementing these programs in the state of California. For example, these sorts of programs often are first suggested for implementation by community organizations (like a University or Non-Profit Organization).²⁰ Due to their lack of knowledge of the current criminal justice system, issues often arise with what they attempt to implement and what the criminal justice system is comfortable with. In addition, some local courts may not be able to develop these programs themselves, and will outsource the work to local organizations. These organizations cannot keep track of recidivism and other essential paperwork, however, and then rely back on the local courts.²¹ This outsourcing can lead to payment issues, paperwork issues, and various value gaps between the courts and community organizations.

Another potential issue is the possibility that workload would increase for the agencies that would oversee the implementation of such programs. For example, probation offices, while possibly avoiding more work in the future, could be hit with a large number of offenders attempting to take advantage of a new system.²² And, of course, initial funding could also be an issue. While a restorative justice programs may save money after implementation, initial development requires financial investment. Many local governments may not have the cash on hand to invest, and may require outside help to begin development of the program.²³

²⁰ Caitlin O'Neil "Restorative Justice as Diversion in California's Juvenile and Criminal Justice Systems: Potential Impacts and State Policy" *California Senate Office of Justice* (2016)

²¹ Ibid.

²² Ibid.

²³ Ibid.

The final issue is which offenders to allow to take advantage of restorative justice programs. Most agree that restorative justice programs are most effective with crimes that have an identifiable victim, be it a murder victim and their family, a rape victim, or a victim of robbery.²⁴ Crimes where there is not an identifiable victim, such as public intoxication, public urination, or vandalism of public sites may not be as impacted by restorative justice programs. The hope is, however, that justice could be served in a restorative way for any crime.

College Campuses in the United States

Universities, with their emphasis on education and community housing, are often places where restorative justice programs easily take hold. A number of universities around the nation have implemented such programs, including Brown, University of Colorado Boulder, University of San Diego, University of Denver, Stanford, the University of Michigan, and many others. At Colorado Boulder, Restorative Justice programs include “Alcohol Impact Circles”, wherein students come together to have sit down dialogues with each other. According to their restorative justice program’s website, students “engage in a dialogue focused on storytelling to build community” and “reflect on the impact of alcohol use within their community”.²⁵ On this site, there are also numerous student testimonials, with students describing why they enjoyed the program. One student describes how the program helped them reflect in a non-hostile way, saying “I didn’t feel guilty at all during it.”²⁶ This testimonial describes why restorative justice programs work so well in these communities: they help to develop community bonding while not isolating students

²⁴ Op. cit. fn 16

²⁵ Office of Student Conduct and Conflict Resolution “Alcohol Impact Circles” Colorado.edu <https://www.colorado.edu/osccr/students/conflict-resolution-services/alcohol-impact-circles> (May 24, 2018)

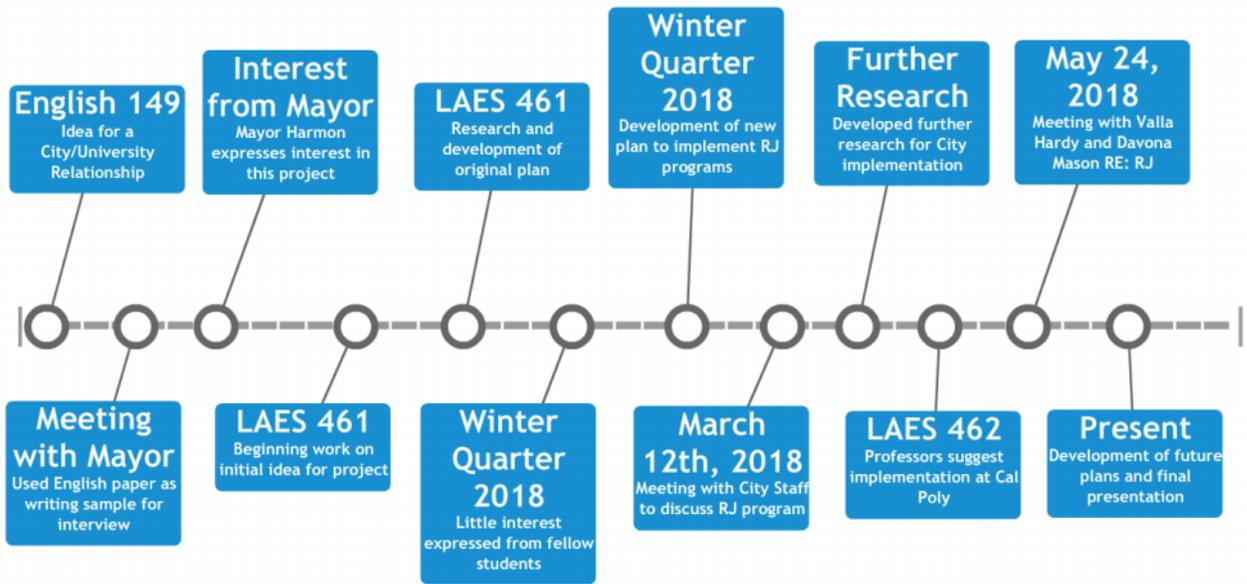
²⁶ Ibid.

for their mistakes. In addition to the Alcohol Impact Circles, Boulder allows officials to designate issues as problems that could be helped through restorative justice, allowing the University to deal with disputes on a student to student basis, empowering the program and making sure that the students who would be benefited the most are.²⁷

Putting the Research into Practice

My own experience with implementing these sorts of programs within the Cal Poly community and within the city of San Luis Obispo has been difficult. I've had one meeting with city officials, and have met with housing officials to discuss implementation of a possible program on campus. In the following paragraphs, I will discuss the differences between the two systems, and how my approaches varied depending upon the two. Below is a timeline of events, showing when research, meetings, presentations, and further research took place.

²⁷ Office of Student Conduct and Conflict Resolution "Student Code of Conduct" *University of Colorado Boulder* (Aug 15, 2017)



The City of San Luis Obispo

Frustration

After meeting with Mayor Harmon and the rest of city staff to discuss implementation of a restorative justice type program, she quipped “I often come into these meetings a liberal, and leave them a libertarian.” What she meant by this of course was not that she truly changes her own political leanings, but that government often comes with a large amount of red tape and opposition. For example, when the idea of the project was first suggested to the police chief, her first reaction was that the current system already worked well at reducing recidivism for petty crimes like being drunk in public, public urination, or noise complaints. In addition to her opposition, the city attorney, Christine Dietrick, lamented at the fact that a variety of paperwork would needed to be created in order to properly keep track of offenders who decided to access the program, as well as the fact that anyone who did decided to access it would need to sign a liability form to release the

city from fault were the offender to be injured doing whatever work they were assigned, be it accidentally hurting their foot with a shovel work with the local land conservancy to being bitten by a dog at the animal shelter. The police chief, it appeared, did not want to appear soft on crime, as mentioned in the paragraph on American ideals on justice. These ideals hold strong in every aspect of government, and are sure to stick around for quite a while.

These two complaints led to the first of many realizations about working in government. This was, naturally, the fact that the majority of those working in government do not agree on what is may be the best solution; while the Mayor and I thought this might be a good program to implement, both the police chief and other city staff clearly did not. Be it the idea that the current system works well enough as it is, or the fact that a new program would require a large amount of work to start up, there will be people who do not want to do what you do. A general naïvaté about the system is common for those on the outside, and as mentioned by O'Neil, is usually a deciding factor on whether or not a new program will be implemented.²⁸ In order to be as successful as possible, scheduling meetings with city officials numerous times is essential, as well as an in depth research review on city protocol. However, insider knowledge will still almost always be better than outsider knowledge.

How would the program work?

Issues arose besides the work that would have to be done and the efficacy of the program. Another, more costly issue came about. Were the city to implement this sort of program at a criminal level, and not just an administrative one, the courts would need to create ways that

²⁸ Op. cit. fn 17

offenders could quickly move through the court system without clogging it with people who aren't suited for the program.²⁹ In addition, for both the administrative side and the criminal side, the city would need to find work for the offenders who decide to take a restorative path. As mentioned earlier, the city could have them work with third party non-profits throughout the city, like the animal shelter or land conservancy, and that could alleviate some of the burden of paperwork, tracking hours worked, as well as coming up with work for the offenders to do. However, these partnerships would need to have benefits for the third parties, and if they can see no benefit they simply will not help the city. And if there is no partnership, the city would carry the burden, which for city staff is simply not possible. The amount of work would be simply insurmountable by current amount of staff.

The complication of this process harkens back directly to O'Neil's report for the California Senate: an insider knowledge of the criminal justice system would have been invaluable when developing this progress. Because of a lack of knowledge, the scope that was originally conceived needed to be reigned in. This is an issue that number of first comers to government may encounter. For example, while it was thought that this could be an easy program for the city of San Luis Obispo to implement for all possible administrative fines, it quickly became clear through discussion and further research that the possibility for restorative justice would need to be limited to a select few citations, and even then those citations would need to be contemplated on a case by case basis. There is not a fix all solution that can plug every hole in the criminal justice system; every solution must be thoroughly analyzed and inspected for possible failings and limitations.

²⁹ Administrative fines are fines issued directly from the city to people within the city. These fines require no follow up other than payment of the fine, and do not carry criminal weight. Criminal fines are fines that require ticketing or arrest, and carry with them the possibility of trial by jury or jail time. Administrative fines are handled by city hall, while criminal violations are handled by either the city court, which San Luis Obispo does not have, or the county court, located at the county seat, which is located in San Luis Obispo.

California Polytechnic State University

Difference of Culture

Working with universities is an entirely different beast. The culture is fairly different, with a lack of the red tape and restriction of government. The people who work for the university, at least in my own experience, are younger, usually in their late twenties or early thirties. This age group tends to be more “liberal” in viewpoint, and often strays from the political ideologies of the 60’s and 70’s that led to the current justice system.³⁰ They are often eager to meet with students who are trying to give back to the school, as it is an opportunity that does not often come their way. During a meeting with Valla Hardy, an Associate Director of Residential Life at Cal Poly, and Davona Mason, the Learning Community Coordinator, both expressed eagerness and willingness to help with starting a restorative justice type program at Cal Poly. Both of them were familiar with forms of restorative justice on college campuses, and provided assistance with researching some of the existing ones, such as the Alcohol Impact Circles at Colorado Boulder. Both were excited to try something along these lines, and wanted to find a way to mesh the ideas that had been brought to the meeting with existing structures at Cal Poly. Both pushed in the direction of shaping the PULSE alcohol classes into something that is more community impact focuses, rather than simply individual focused. They also provided points of contact at Campus Health and Wellness that could help realize these goals. Throughout the coming weeks and beyond, I’ll be meeting with influential PULSE leaders to help shape the alcohol course into a more community focused class.

³⁰ Jonathan Chait, “New Survey Shows Young People Are Staying Liberal and Conservatives are Dying Off” *New York Magazine* (Mar 1, 2018)

Working with campus members can help facilitate understanding about campus life and how projects work within that community. Universities will likely be more open to change than governments will due to the fact that they don't need a large amount of outside support to create new programs. And, with a focus on education and learning, programs like restorative justice and others will be embraced by those who are in charge of educating large groups of college aged young adults. Throughout my meeting with Valla and Davona, they were eager to see a restorative justice program implemented here, and were very excited that there was an ongoing effort in order to do it. In contrast to city government, university officials were more helpful with ways that we could utilize existing structures to implement such a program, rather than creating a program from the ground up.

Limitations

Although university officials were incredibly helpful in assisting me in creating a restorative justice program on campus, there were of course limits as to what was possible and what was dreamt up. While at first ideas can be broad, focusing them in is always key. For example, while it was believed that a service work type program would be best for those students on campus who had been caught drinking, it became clear through our discussion that it would serve little benefit to those who would take advantage of it. Therefore, the scope of the program needed to be limited in some way, and the possibility of utilizing existing alcohol classes was brought into form. By creating a community aspect within the class itself, the university could employ the restorative aspect of a restorative justice program while using cost effective measures to do so. Due to, again, a lack of insider knowledge, thinking creatively and quickly is a must. Ideas are often conceived

with grand ideas, but due to limitations of existing systems, will often need to be pruned. By being able to think quickly and creatively about solutions to problems that are given is a huge asset, and due to the fact that universities are often more adaptable to change than governments, brainstorming is more likely to churn out possibilities in a short period of time.

Moving Forward

In my continuing work and research, my capstone project will include further research on the successful implementation of restorative justice programs, as well as continuing implementation of restorative, community based punitive measures for students who violate campus rules. This could take the shape of a community based section of the PULSE alcohol classes, including testimonials from students and community members who have been adversely affected by student activity. This could also take the form of service work for some citations that are given out by campus police, such as skating or driving violations. In addition to the more focused goals, I also aim to help educate university and city leaders on the benefits of restorative justice, as well as educate the general populace. By changing the hearts and minds of those who shape our communities, it is my hope that justice in the United States can be used not simply to punish, but to educate, rehabilitate, and reintegrate those who go through the criminal justice system.