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A policy report on the global trends of convergence between restorative justice and mediation.

For

The Restorative Justice Centre, Pretoria, South Africa/ J.J Harder/ U.S Embassy Pretoria

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Executive Summary

Restorative Justice, defined as “a theory of justice that emphasizes repairing the harm caused by criminal behavior” (Centre for Justice & Reconciliation, 2020), has emerged as a useful tool in criminal justice systems across the world. Focusing on repairing harm, a key aspect of restorative justice is mediation.

The goal of this research is to support the efforts of the Restorative Justice Centre in South Africa, a nonprofit organization advocating for successful adoption of restorative justice practices in the South African legislature. By highlighting the successes and failures of restorative justice and transformative mediation initiatives in different regions of the world, this writing seeks to aid in creating an effective blueprint for adoption of similar practices geared to the unique challenges South Africa faces. To accomplish this, this writing focuses on one question: how are restorative justice and mediation initiatives implemented worldwide in various sectors such as the courts, community, and education? The regions examined are the European Union, the United States, New Zealand, Canada, and South Africa.

As evidenced by the findings from each region, restorative justice takes on many forms. Each region assessed in this report operates at a different stage in the path to integration and implementation. Each case documents the current research trends and changes in policy for that country or region through the use of scholarly journals, program databases, newspapers, and interviews with experts in the field. The policy successes and limitations in these countries are then applied to the present-day situation in South Africa. These recommendations fall into three categories: education, community relations, and the criminal justice system.

Education

The United States, EU, New Zealand, and Canada demonstrate the importance of teaching restorative justice principles in schools. Incorporating restorative justice strategies in the classroom is an effective form of crime prevention. School officials trained in these concepts can teach lifelong skills which mitigate crime later in adulthood.

Community Relations

Garnering awareness is a chief obstacle to increasing participation in and support for restorative justice programs. Even in countries with a long history of restorative justice use such as Canada, public knowledge on the practice still remains low. Social media campaigns promoting the benefits of restorative justice would help address this issue. Another pathway to boosting public engagement is to collaborate directly with community leaders. Establishing programs specific to certain communities would increase community involvement by utilizing the best restorative justice methods for that culture.

Criminal Justice System

In some of the countries analyzed in this report, restorative justice serves as an alternative in the criminal justice system. These governments adopt principles of restorative justice as a means to reduce recidivism and better address the harm done to victims. The forms in which these programs take vary country to country, but they share many of the same challenges including the level of funding and government responsiveness. Many governments are slow to change their viewpoint on the purpose of the legal system from one based on punishment to base on rehabilitation. Another major difficulty is building better relations between law enforcement and the community. Including restorative justice principles and practices in police officer training is one solution gaining momentum in two of the countries studied.

The knowledge gleaned from the research in this report highlights the notable restorative justice policies and programs in the world to date. Each country has a unique relationship with restorative justice, of which the recommendations are derived from. The implementation of these recommendations should take into consideration the cultural and societal differences, to receive the most benefit from these policies.

Introduction

Across the world, restorative justice emerged as a useful tool in criminal justice systems. With mediation as a key aspect of effective restorative justice, this research discusses restorative justice practices across regions in order to shed light on transferable implementation processes that can aid in the development of restorative justice in South Africa.

In the first section, the evolution and current state of restorative justice in South Africa is examined. As key aspects of restorative justice practices in this region are discussed, the authors further look into areas of concern and identify ways to address them.

The next few sections look into restorative justice practices in the European Union, the United States, New Zealand, and Canada. In the European Union, the authors focus on specific countries that have been affected by human rights abuse such as Belgium, Germany, Sweden, and Ukraine and identify successes and areas for improvement in each country's restorative justice practices. In the United States, the authors look into the incorporation of restorative justice into legislation and how the practices spread out in communities and public schools through government programs. Similarly, communities, legislation, and public schools were examined in New Zealand as the authors hone into how restorative justice is practiced by the police, adopted into the criminal justice system, and incorporated into the education system. Lastly, the longstanding and successful implementation of restorative justice in Canada will be discussed. The authors look into a number of restorative justice programs in the region and explain how networks, strategies, and outreach for restorative justice can be improved.

Conclusion

Restorative justice practices are implemented in different ways and have progressed at different stages as shown in the discussions of each region. However, a few overarching themes can be observed. First is the focus on youth. As evidenced by each region's effort to create and improve restorative justice programs in education systems, it is apparent that restorative justice programs and mediation is most effective and impactful for them. Second is community, in the discussions above, particularly in the United States and New Zealand, developing programs and partnerships within the community has shown success in reducing recidivism. Lastly, the need to ensure effective incorporation of restorative justice practices in the criminal justice system. While many countries in the regions discussed above have already adopted restorative justice into their criminal justice systems, it is important to make sure that challenges such as building community relations, establishing support for victims, and developing effective strategies are addressed.

On the other hand, each country is unique. While common themes and practices can be observed from the regions discussed, cultural and societal differences must be considered when adopting restorative justice and mediation practices.

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Restorative Justice in South Africa

Introduction

Over the past few decades, restorative justice (RJ) has emerged as a salient theme in criminal justice research across the world. Intended to address the injustices of South Africa's apartheid past, restorative justice promotes the dignity of victims and offenders. Despite its strong influence on legal principles, evidence shows that South Africa's criminal justice system suffers from overcrowding in prisons, inequality, harsh sentences and a failure to meet victims' needs. The following memo focuses on analyzing the role of RJ in South Africa and acknowledging efforts of other regions in the world: Israel, Afghanistan and the United States. Resources and data collections for the report were done through newspapers, case studies, journal articles, blogs and higher institutions dating back to the past five years.

Findings

Interestingly, there is limited research in the field of restorative justice and mediation in South Africa. However, the thread of restorative justice research in other parts of the world credits South Africa as a key example. There is still more work to be done. The principles of restorative justice are part of South Africa's traditional way of solving and resolving conflicts of the past and present. Henkeman stated that the South African Department of Justice sees the philosophy of restorative justice as foreign to Roman-Dutch Law but an integral part of the Africa indigenous justice system (2016). The African indigenous justice approach sees crime as an issue between the victim and the offender instead of a crime against the state. The vestiges of Apartheid are slowly eroding but still present through the generations, and restorative justice appears to possess the best approach to repair, restore, rehabilitate, and integrate the South African societies through working with victims, offenders and the communities. Unimaginably, there is a deeper systemic issue through the criminal justice system, limiting the full implementation of restorative justice. These limitations further stagnate the progress intended for personal and social development.

The Truth and Reconciliation Commission (TRC) set the stage for healing the harm of the past through the restorative justice approach. Alongside the successes of the TRC and RJ approach in South Africa, there is also ample criticism and controversy (Henkeman, 2016).

Henkeman explains how the focus on repairing relationships undermined broader historical and growing inequality, which is arguably true (2016). The TRC's peacebuilding intervention paves the way for healing and restoration for victims and offenders— the notion of reparation, restoration, and reconciliation should prevent past mistakes from happening again. Henkeman and Whande insinuated how the TRC's peacebuilding intervention fell short of fully repairing and restoring historical trauma— "offenders went back to privilege and victims back to poverty" (Henkeman, 2017). This is where RJ could look into reparation, restoration, and reconciliation.

The philosophy of Ubuntu has become an integral part of the constitutional values and principles that interpret South African law. As South Africa's democracy continues to mature, incorporating indigenous legal practices are necessary to reflect the cultural diversity of the nation. Mangena argues that restorative justice cannot be wholly understood outside the ubuntuism engagement process because it represents understanding instead of vengeance (2015). The 2006 civil claims case *Dikoko v. Mokhatla*, is one example where Ubuntu and commitment to dignity were used to determine the case outcome (Himonga et al., 2017). The victim not only received monetary restitution but a formal apology from the offender as well.

The South African National Institute for Crime Prevention and the Reintegration of Offenders (NICRO), is South Africa's main provider of youth diversion programmes. NICRO has a very high success rate in preventing recidivism and reintegrating children with their families and communities (Western Cape Government, n.d.). Young offenders are given a chance to turn their lives around and take accountability of their actions through programs that focus on victim offender mediation, pre-trial community service and youth empowerment. NICRO plays a significant role in the juvenile justice system by easing the burden of court case loads.

Looking globally, specifically in Israel, RJ has proved positive results in several aspects of Israeli law. Using restorative justice (RJ) to supplement the traditional criminal justice system in Israel indicates the greater benefits across social and financial facets. The approach of RJ was implemented in juvenile offences and then later extended to adult court as it is efficient and saves time and money. Especially in the cases of juvenile offences, RJ teaches repair strategies as opposed to wasting resources to perpetuate a cycle of incarceration. The process allows both victims and offenders to repair harm mutually (Yanay, 2017). The effectiveness of RJ is also seen in Afghanistan since the country provides a platform for both parties to resolve their issues.

All actors, including the judges, restorative justice advocates/personnel, policy-makers, social workers, community leaders, religious leaders, and the community, play a vital role in the process. As stated in many criminal justice systems and communities that implement RJ, the notions of peacemaking, peacekeeping, and peacebuilding are the main objectives (Gohar, 2012). The stakeholders in the process of RJ limit the role of the legal system as the goal is to rehabilitate, not punish. Moreover, stakeholders within communities where RJ is highly considered over the legal system respect and value RJ as a means of resolution, meanwhile others outside these communities attempt to discredit its effectiveness. Considering the case of South Africa, further integration of the legal system with RJ improves personal and social development, given the nature of inequality at all levels.

Limitations surrounding Restorative Justice in South Africa

Some argue that mediation practitioners or personnel in RJ need special training when it comes to dealing with cases from different crime levels (Henkeman, 2016). It may be acknowledged that RJ may not be appropriate for *all* crime levels and must be used with discretion to be successful to its greatest potential. That being said, adequate resources are necessary for the success of RJ. The educational sector needs RJ as it is critical for both the youth and the community. RJ training should be required for educators and administrators since the problem is systemic. Mediation is vital to the RJ approach in schools, communities, and nationally, though the ministry of education, the department of education, and the education system of Pretoria all have lacked RJ training. Another limitation of RJ is the lack of awareness both from the individual and societal levels (Henkeman, 2016). Thus far, the restorative justice approach to conflict resolution is proven to be effective with proper and unbiased mediation—the ultimate goal is to redress the wrongs and harms for a better future. A more significant limitation comes from the state and the criminal justice system, which seems to compete with the restorative justice approach (McLeod, 2015).

Another debate is whether restorative justice programs adequately address victims' needs. Findings from the Murhula et al. case study indicate that once a crime has been reported to the police, most victims are unaware of the options available to them (2020). Victims are oftentimes undermined by South African law because justice is seen as adversarial, with the prosecutor on one side and the offender on the other. Additionally, South Africa has one of the highest crime rates in the world so there is very little time and resources devoted to serving

victims' needs. The South African criminal justice system developed a document termed the Minimum Standards on Services for Victims of Crime, which is intended to provide guidance related to improving service delivery for victims of crime (Murhula et al., 2020). However, it has failed to be implemented.

Areas to Pursue & Recommendations

Reflecting on the experiences of women educational leaders in rural South African communities, spiritual leadership is cited as being a catalyst for social justice (Edwards et al., 2017). In many South African classrooms, there has been a shift away from traditional forms of punishment to methods where learners seek to hear the other's point of view. Since family violence is rampant in many South African households, allowing children to solve problems through forgiveness, understanding and mutual respect is imperative (2017). Restorative justice is an enactment of spiritual leadership, regardless of religious affiliation. Since faith plays a big role in many South African communities, the educational sector can serve as a vehicle through which RJ can be more developed.

Another area of concern is determining what stage restorative justice should be introduced. Even in severe offenses, restorative justice can be effective under the direction of a well-trained practitioner as a supplement to traditional criminal justice. Victim-offender mediation is reported to have a high satisfaction rate because it allows closure for the victims and the chance for symbolic reparation. Too much emphasis has been placed on material restitution, however, evidence shows that victims are more satisfied with a sincere expression of remorse from their offenders (Murhula et al., 2020). Efforts to bring awareness to restorative justice is an area that could use further examination. The general public cannot fully understand the concept of alternative justice if it's not properly explained. In order to change the criminal justice system, it will involve collaboration between willing prosecutors, legislators, researchers and civic leaders. Devising a concrete plan will require listening to the needs of all stakeholders. Normore et al., suggests creating a "public relations collaboration between the media, criminologists and law enforcement officials, who act as mediums to promote community involvement" (2015). Social media is also a powerful and cost-effective way of spreading restorative justice awareness to the masses.

Building partnerships between law enforcement and the community is another way to improve RJ in South Africa. One example of a successful police partnership organization in the

U.S. is the Longmont Justice Community Project in Colorado. “A growing number of police departments are exploring how to utilize community restorative justice as an alternative to ticketing and arrests” (Longmont Community Justice Partnership, n.d.). LCJP is committed to strengthening police partnerships within the community by having law enforcement become active participants in the restorative justice process. Victim-offender conference circles often include two facilitators, the officer, and members of the community. LCJP’s hope is to have every police officer in the nation gain access to this model in the future and are working hard to spread awareness. Lastly, the thought of many judges, prosecutors and magistrates seems to be at odds with restorative justice principles. Lawmakers can ensure that all court personnel receive training that incorporates RJ principles to change perspectives. As observed in other places, restorative justice is instrumental to a positive and restorative future— maybe this could help slow and decrease the level of crime in South Africa.

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Restorative Justice in the European Union

INTRODUCTION

From its conception, restorative justice within the criminal justice system emerged as a tool to combat retributive punishment through its focus on forgiveness, reconciliation, and victim-offender mediation. Across the European Union, the use of restorative justice has steadily become more popular. Countries like Germany and Belgium pioneered distinct yet similar mediation forms in their prison or criminal codes. These measures allow for justice to be distributed with respect for victims' lives, property, and mental health.

While restorative justice remains in its infancy within the European Union, efforts are being made by government, non-governmental organizations, and community actors across the region. Policies aimed to mediate and restore have slowly spread since ‘the 1999 Recommendation.’ Given the diverse nature of victim-offender mediation across the European Union, it is not easy to paint a clear picture of a complex system. By assessing the impact of restorative justice practices across the European Union, it is equally essential to note historical events that have had transformative impacts on each nation's criminal justice system. Below is a timeline of these critical dates and events:

- 1990** Victim Support Europe was founded
- 1992** Foundation for Polish-German Reconciliation
- 1998** Crime and Disorder Act of England
- 2000** European Forum for Restorative Justice
- 2000** Minister of Justice used in Prisons (Flemish Region, Belgium)
- 2002** Swedish Code of Statutes (Mediation Act)
- 2002** U.N. Basic Principles on the use of the Restorative Justice Program
- 2009** E.U. Victim Right Directives
- 2012** Council of Europe Recommendations
- 2018** Council of Europe Recommendations regarding children in conflict

Furthermore, the E.U.'s vastness has led us to divide this report into Western E.U., Eastern E.U., and nations not yet in the E.U. in order to refine our recommendations. We have analyzed restorative justice trends within the European Union and how these actors intersect or diverge.

CONTEXT

A predominant trend across the European Union is the complexity of each nation's historically violent human rights abuses. A violent past and human rights violations have bled into each nation's criminal justice system. Several nations are attempting to right the wrongs of the past through restorative justice practices that view imprisonment as a last resort. The European Union comprises 27 nations, each with a unique criminal justice and political system as well as a complex history plagued by the violence of wars and imperialism. The E.U.'s objective is to offer freedom, justice, and security to all, promote peace, and safeguard its citizens' well-being. The E.U. strives to combat social exclusion and discrimination while upholding territorial economic and social cohesion among E.U. countries. It is imperative to note that the E.U. is contingent on the rule of law. Member countries have delegated the European Court of Justice to have final jurisdiction, but law and justice are distributed independently. Below are some key dates highlighting just how recently some nations in Eastern Europe joined the European Union in contrast to their Western counterparts:

January 1958 - Germany joined E.U.

January 1958 - Belgium joined E.U.

January 1995 - Sweden joined E.U.

May 2004 - Czechia joined E.U.

May 2004 - Poland joined E.U.

January 2007 - Romania joined E.U.

The European Union has successfully established a peaceful coalition of nations who have warred and bickered for centuries. The E.U has ended wars and brought peace and stability to neighboring countries. From 1945 to 1959, the founding nations of Belgium, Germany, France, Italy, Luxembourg, and the Netherlands formed the European Union (European Union, 2020). In later years the E.U. contributed to the economic growth seen between 1960-1969. Once the United Kingdom, Denmark, and Ireland joined the E.U. on 1 January 1973, the community expanded, creating new jobs and implementing new infrastructure in more impoverished areas. Greece joined in 1981 followed by Portugal and Spain. As nations hurried to join the European Union, historical events were quickly unfolding. In 1989, the Berlin Wall fell in Germany unifying the eastern and western regions a year later. Six years later, Finland, Austria, and Sweden decided to join the E.U. With its continuous expansion, the E.U. established the Euro as the standardized currency for its members, which led to increased efficiency and collaboration

between members. In 2013, the E.U. totaled 28 members by accepting Croatia. The wars within various Eastern nations led to the migration of people seeking asylum in Europe. An increase of securitization in immigration policy, due to the annexation of Crimea by Russia, put pressure on properly safeguarding the welfare of those within the E.U. and surrounding nations.

The E.U. now consists of 27 nations due to the withdrawal of the United Kingdom this past January 2020. Bosnia and Herzegovina and Kosovo are the next potential candidates to join the European Union (European Commission, 2020). While the E.U. has made significant advancements with the inclusion of women within the European government, gender inequality is still prevalent and there are issues with a lack of diversity within E.U. leadership. This lack of diversity does not reflect Europe's current multicultural societies.

RESTORATIVE JUSTICE IN EASTERN EUROPE

We will discuss the implementation of restorative justice and mediation in Czechia, Romania, and Poland as case studies for Eastern European nations, and then Belgium, Sweden, and Germany as case studies for Western European nations.

Czechia

The case studies for Eastern European nations that implemented restorative justice and mediation in Czechia, Romania, and Poland have a history that consists of eugenics, civil crimes, and forced labor. With the help of several NGOs, Czechia has implemented legislation aimed towards restoration and mediation at the local level. The Association for Development of Social Work in Criminal Justice (SPJ) is one such organization working towards the reformation of the Czechian criminal justice system. The SPJ has introduced restorative justice initiatives by recommending probation and mediation to state organizations by creating training for probation and mediation service programs (Hasmanová, 2002). The SPJ helped establish a legislative framework of *radical constructivism* in which a crime is treated as a social event within the community with its focus on the resolution to involve all parties who were affected by the crime. Despite the work NGOs have done, the Czechian government has failed to take action for victims of human rights abuses within their nation. In terms of restorative justice for the victims, Czechia has not provided any effective reparations or real acknowledgment of their human rights abuses. It concludes that, *inter alia*, an administrative mechanism is needed to provide financial

compensation to victims, since the road to remedy via courts is effectively blocked (Cahn, 2017). We recommend direct compensation and a formal apology to victims from the government for carrying out human rights violations.

Case Study

Forced sterilization ended in 2004 due to ongoing international scrutiny. This eugenic-based movement began in the 1920s and forcibly subjected women to sterilization. Similarly, Czechia performed over 90,000 sterilizations toward minority women. However, it is worth noting that there are claims that women were given monetary compensation for these sterilizations (Cahn, 2017).

Recommendations

We must consider that there is no specific remedy in Czechian law for the forced sterilization of victims that later resulted in the 2012 Civil Code (previously, the 1964 Civil Code) that mandates a person who has undergone an unlawful medical intervention can seek out atonement by claiming a violation of her personality rights. There is an enormous disconnect between E.U. leadership in Czechia and other regions. Within the European Union, some nations fail to redress crime, though they illustrate performative remorse effectively. Czechia, for instance, has failed to grant victims of human rights abuses any semblance of justice.

Romania

In 2001 an NGO called the Community Mediation and Safety Center (CMSC) was set up to offer mediation services in Romania. They focused on Romania in order to respond to the lack of conflict resolution services across Romanian communities. Prior to the introduction of mediation by CMSC, standard disputes in the community and within the family had to be resolved through a slow and costly legal system. In 2003 the CMSC partnered with the Victim Offender Mediation Association (VOMA) in order to establish conflict mediation centers and raise public awareness on the importance of conflict mediation and the formation of restorative justice legislation. VOMA provided training on six conflict mediation courses to 55 participants. They funded and led a media campaign aimed at raising general awareness and benefits of conflict mediation. Representatives from the government, funding agencies, Parliament,

delegates from the criminal justice system, mediation centers, and the national press were present at the launch (Balahur, 2006). Despite the establishment of an initial framework and education provided by NGOs, restorative justice is rarely used in practice in Romania. Mediation is allowed for less serious crimes, while more serious crimes are handled through traditional legal processes.

Case Study

Romania maintains institutionalized discriminatory practices against members of the LGBTQ communities. In 1999, Romania failed to provide legal recourse for members of sexual and gender minorities who were targeted by violent crimes due to their sexual orientation (Accept Association, 2014). When Romania applied for E.U. membership in 1995, they were one of three European countries that criminalized homosexuality. It wasn't until 2000 that Romania felt pressure from the E.U. to create a minority status for members of the LGBTQ communities with legal protections.

Regardless of the establishment of a legal framework to protect members of sexual and gender minorities at the national level, there still exists an undercurrent of institutionalized discrimination (Accept Association, 2014). Romania ranks at the top in regards to countries where sexual minorities feel discriminated against. Within Romanian communities, LGBTQ members who are infected with HIV remain the most discriminated against. Students in medical school are taught anti-LGBT propaganda, and homosexual behavior is pathologized within the Romanian medical communities. This has led to LGBTQ members being underserved in healthcare.

Recommendations

- The EU should work with the UN and monitor discrimination and human rights abuses towards the LGBTQ community.
- The legal system should reform antidiscrimination laws and aim towards incorporating justice for members of sexual and gender minorities.

Poland

Poland's interest in restorative justice and mediation began in the 1990s when NGOs and government employees surveyed German mediation centers. Like many Eastern nations, NGOs

guided policy and legislation in Poland by establishing projects, seminars, and training for their criminal justice system (Czarneck-Dzialuk, & Wojcik, 2000). Critics of the modern Polish restorative justice movement state that there needs to be a separation between mediation and criminal proceedings. Simply, courts can make use of the meditative process without having it interfere with criminal punishments (Platek, 2006).

As for historic restorative justice movements, the Foundation for Polish-German Reconciliation has focused extensively on bringing justice to Polish victims of forced labor by Nazi Germany. The payment portion of the program was very successful in financial and technical terms. However, many victims remained disappointed due to the discursive concepts about the manufacturing of justice. In addition, Germany refused to take responsibility and formally recognize victims and their suffering. Finally, the Foundation for Polish-German Reconciliation party was highly politicized, which many victims saw as inappropriate. As a response, the Polish American Congress funded a video project with interviews of victims to be shared with future generations (Polish American Congress, n.d.).

We recommend the E.U. focus on restorative justice from the perspective of the victims in Poland. Restorative Justice for victims should remain politically neutral, and the German government should offer an apology and allow victims to speak out publicly.

Case Study

The Foundation for Polish-German Reconciliation established a payment program in order to pay reparations to former forced laborers in Poland during the Nazi occupation. In financial and technical terms, the payment program was a success; many victims received payments up to 30% higher than initially stipulated by the German government (Cord Pagenstecher, n.d.). Foundation for Polish-German Reconciliation broke victims into two categories, victims used as slave labor in concentration camps or forced labor in industry. Despite the success of the program *as a process*, many victims were disappointed and even shocked by it. Victims claimed that simply receiving payments was not enough to satisfy personal and collective experiences of historical injustice. In addition, the Polish partner organization was far more politicized than the foundations in other countries, with the chair of the FPNP acting as a political office itself. Finally, the German government pledged 500 million Euro for distribution to the ‘particularly aggrieved victims of Nazi persecution’ as ‘*humanitarian considerations*’, not out of restorative or moral responsibility.

Recommendations

- A focus on restorative justice from the perspective of the victims that allows them be a part of the process.
- RJ for victims should remain politically neutral
- German government needs to approach restorative justice from the perspective of offering truth and closure to victims.

RESTORATIVE JUSTICE IN WESTERN EUROPE

While Western nations within the E.U. have seen some success with the implementation of restorative justice, a lot can be learned from both their success *and* failures. To assess the development and implementation of restorative justice policies in Belgium, Germany, and Sweden, one must look at how their established criminal justice system combats sexual assault and the deep-seated histories of eugenic based policies - from the forced sterilization of women to Nazism.

Belgium

While Belgium is among the first nations within the European Union to implement restorative justice practices, the Belgian penal system is often described as a “bifurcation policy” which “advocates the use of imprisonment as a measure of the last resort and the enlarged application of noncustodial sanctions, while at the same time imposing more pretrial detention and longer prison sentences for specific offenses” (Snacken, 2007, p.128). It is important to note, however, that penal mediation is only an option if the initial crime “does not appear to warrant a principle punishment exceeding two years of imprisonment or more” but offenses punishable for a lengthier period of time could still qualify depending on the circumstances of the case (BursSENS, 2012, p.1). Belgium’s approach to restorative justice is treatment-based with “medical treatment or therapy lasting a maximum of six months” and mandatory community service and an education component requiring the offender to complete a maximum of 120 hours (BursSENS, 2012). While the offender seems to be a priority in the Belgian penal system and though “prosecution is waived in more than 70 percent of cases” only a small portion of these waived cases represent penal mediations (Snacken, 2007). In fact, 83% of petty offenses and misdemeanors are dealt with through fines, with 4% of misdemeanors dealt with through probation and 20% of misdemeanors dealt with through sentencing and conditional imprisonment.

At present, restorative justice is not implemented widely in Belgium, given that mediations represent only a small portion of the total cases. Yet, the use of victim-offender mediation in the Belgian prison system remains a groundbreaking development for restorative justice efforts and the use of Victim-Offender Mediation in the prison system in Belgium could be utilized as a model for other nations looking to implement such practices. Belgium, however, does have an overpopulation issue in its prison system (Snacken, 2007). Extensive and nationwide implementation of restorative justice practices outside of the prison system in Belgium could potentially decrease their incarceration rates.

Case Study: Sexual Violence in Belgium's Criminal Justice System

Belgium's prison population is estimated to be "above the median rate [among] West[ern] European countries" with overcrowding becoming a consistent issue in the prison system (Keenan et al., 2016, p.94). Sexual assault and sexual violence also represent an alarmingly high percentage of crime in Belgium, with the "rate of police recorded sexual offenses [being] 59.7 per 100,000 of population" and "the rate of police recorded rapes was 27.7 per 100,000" in 2013 (p.94). The high occurrence of sexual violence against women in Belgium raises questions on how the country combats sexual assault in the criminal justice system.

In Belgium, the statute of limitations acts as a deterrent to victims of child sexual violence who "disclose child sexual abuse as adults" meaning they are unable to participate in Victim-Offender Mediation (Keenan et al., 2016, p.97). Despite "access to [restorative justice being perceived] as a right" in Belgium, the inaccessibility to any semblance of justice for victims of sexual assault after the expiry of the statute of limitations does little to advance restorative justice efforts to heal and mend the trauma caused by these offenses (p.86).

Recommendations

- It is recommended to establish two forms of restorative justice programs to combat crimes. In Belgium, there is a program titled "Mediation for Redress" meant to target serious crimes and a program titled "Penal Mediation" to combat less serious crimes.
- It is recommended that mediation in cases of sexual violence not be limited to cases only reported to police. At present, only cases when police are notified first are eligible for

mediation services in Belgium; this sets the precedent that the victim carries the burden of proof in sexual assault/violence cases.

Germany

Restorative justice measures in Germany occur in conjunction with their judicial system; meaning, cases are referred to restorative justice practices by the prosecutor and the court as is outlined within Section 46a of the German Criminal Code (Gyokos & Lanyi, 2010). In Germany, restorative justice is recognized as a means for diversion and, like other E.U. nations, with the framework that imprisonment is a last resort. While restorative justice is written into Germany's Criminal Code, there are also non-profit organizations like WAAGE Hanover e.V. that provide conflict consulting and mediation services. Though Germany was the first nation within the European Union to implement restorative justice practice, "history [has since] revealed an increased attention for social prevention" (Department of Juvenile Justice (Italian Ministry of Justice), 2010). This shift in thought – toward a more socially considerate perspective is noticeable in the popularity of social services and welfare in the form of schooling, youth centers, and social workers. Germany is a prime example of the success of restorative justice practices proving that preventative measures are more effective than hard sentences. Crime prevention in Germany extends to their use of law enforcement; German policemen are provided a handbook which "gives a very good overview about all the kind of crime situations [they may face] and the possibility of prevention and also support for victims" (Department of Juvenile Justice (Italian Ministry of Justice), 2010, p.94). This resource, in the form of a handbook, again centers on crime prevention and treatment as the priority as opposed to retributive punishment.

In short, victim-offender mediation has been an integral part of the German criminal justice system since its implementation; with about 5000 cases a year being processed through mediation services organized by the local government (Department of Juvenile Justice (Italian Ministry of Justice), 2010).

Case Study: Transitional Justice Post-Nazi Germany

Germany's post-World War II efforts to repair the aftermath of a period wrecked by xenophobia and eugenic based policies are an example of the transformative impact transitional and restorative justice can have in healing and repairing the wounds left by conflict. As a result of

the push by the Jewish Claims Conference, the West German government “pledged to standardize and extend federal German legislation on the restitution of assets seized during the Nazi era and the compensation of victims of Nazi persecution” (Nietzel, 2017, p.80). In addition, the West German government agreed to fund the hardship fund with DM 500 million to provide humanitarian assistance to compensate Jewish “victims of Nazism who had emigrated to the West from Eastern Europe since the 1960s” (p.80). Eventually, at the hands of the Jewish Claims Conference, Germany assumed responsibility for instances of forced labor and compensated the forgotten victims of Nazism (Mieth, 2018).

While victims of Nazism were compensated, at times, by the push of organizations like the Jewish Claims Conference, its willingness to repair the damages caused by Nazism is commendable and has had clear impacts on present-day German success with restorative justice practices. If there is a lesson to be learned from Germany’s efforts to repair itself following such a dark period, it’s that, “it is important to understand both past and present aspects of injustice, as they are linked in often non-linear ways” (Mieth, 2018, p.18).

Recommendations

The following recommendations were developed base on Germany’s successful implementation of restorative justice practices.

- It is recommended that victims of eugenic based policies or other human rights’ violations be compensated financially and that the atrocities of the past be acknowledged publicly.
- It is recommended that law enforcement be provided with training that reinforces crime prevention and treatment as a cornerstone of criminal justice and law enforcement practices rather than retributive reaction.
- It is recommended that social services/welfare be utilized as a deterrent to crime. This entails the increased funding of schooling, social work, and mental health.

Sweden

Sweden is known to have low imprisonment rates; which is credited to the existence of more penal alternatives and their treatment-oriented approach to criminal justice (Lappi-Seppälä, 2007). In fact, imprisonment is only used for serious offenses, instead in Sweden, the use of Restorative Justice Conferences or Victim-Offender Mediation can be traced back to the 1980s

(Adrian et al., 2018). However, Victim-Offender Mediation solely attempts to target offenders under the age of 21. In spite of the success of mediation services, the use of mediation as a means to curtail imprisonment is steadily decreasing. This means that the concept of restorative justice in Sweden has not quite become the norm, unlike its Nordic counterparts. In Sweden, the “social service authorities and courts share the same goals, but the means differ” (Adrian et al., 2018, p.68) and this becomes evident in the misalignment in policy; meaning, that while there is an emphasis on the interest of a child and their future development, the criminal justice system remains retributive in nature. The difference lies between law and practice.

Case Study: Swedish History of Eugenic Based Practices

While restorative justice practices have been successful in Sweden, its history of population cleansing through eugenic policies has had chilling impacts on their criminal justice system. In 1967, the National Board of Health admitted that their sterilization of patients had developed as a reaction to a fear of genetic decline. Sweden sought out eugenic perfection by attempting to eradicate their societies of “gypsy features, psychopathy, and vagabond lifestyles” (Hyatt, 1998, p. 480). To achieve these eugenic-based goals, women were coerced and encouraged to be sterilized. Not only were women actively persuaded into sterilization by their doctors, but judges and school directors also utilized their power to enforce sterilization laws. Sweden’s Sterilization act went into effect in 1935, making it difficult for victims to seek any sort of justice or restitution.

Sweden’s history of eugenic-based policy has had transformative impacts on their current approach to criminal justice. Through their treatment-oriented approach, Sweden has made an effort in making amends, while coming to terms with their own dark past. The acknowledgment of these past mistakes, through the establishment of task force agencies like UNICEF, Save the Children and International Planned Parenthood Federation have allowed Swedish citizens to heal; and through these organizations, Sweden has compensated for the horrors it caused through eugenic policies by assisting these families with family planning.

Recommendations

The following recommendations were developed based on the issues that arose in Sweden regarding the implementation of restorative justice mediations.

- It is recommended, from a policy perspective, to weed out policies that cause a misalignment between social services and the court system.

- It is recommended to thoroughly define and merge restorative justice to the existing retributive criminal justice system; allowing for the flexibility to deal with “offenders who deny their responsibility” (Jacobsson et al., 2018, p.69).
- It is recommended that restorative justice not operate as a stand-alone process but instead be integrated legislatively, locally, and federally.
- It is recommended that restorative justice practices be utilized for persons under *and* over the age of 21. This should be done on a case by case basis and depending on the severity of the case.
- It is recommended that all levels of government and social services work collaboratively to avoid gaps between law and practice.
- It is recommended that formal requirements and training/education for mediators be outlined extensively.
- It is recommended to address and account for different interpretations of law by parties involved.

RESTORATIVE JUSTICE IN POTENTIAL E.U. NATIONS

Ukraine

Although not formally part of the EU yet, Ukraine’s Former President Petro Poroshenko had promised a Ukrainian application for EU membership in 2024 (Ukrainian Independent Information Agency, 2019). As one of the ten states in Central & Eastern Europe that was a former Soviet Union republic or satellite state, Ukraine ranks third in incarceration rates and second behind the Russian Federation in the prison population. Due to the separation from the Western legal system during the Cold War, Ukraine struggled with divorcing its criminal policy from its historical roots during the socialist regime symbolized by the Soviet’s Gulag labor camp system (Zemlyanska, n.d.). It was only after the dissolution of the Soviet Union and in the 2000’s that Ukraine attempted to incorporate restorative practices influenced by Western legal practices. However, they have in large part failed to do so as indicated by increasing rates of recidivism, failure to reintegrate a majority of offenders into communities, low community participation in offender re-socialization, and, as former Deputy Minister of Justice of the Russia Federation Yuriy Kalinin emphasizes, a continued drive to utilize prison labor as a means of profit as opposed to a tool for offender rehabilitation (Buckley et. al, 2008; Zemlyanska, n.d.).

The failure of reintegrating offenders into the community is not only attributed to the state's criminal policy but is also mirrored by the attitudes of the populace due to historical trends. When the Soviet Union fell in the 1990s, crime rates throughout former Soviet Union territories exploded, with an exceptional increase in property offenses. The International Crime Victims Surveys indicated that only 46% of residents in former USSR areas felt safe in the streets during those years (Zemlyanska, n.d.). With the support of the public for a tougher response to crime, the Ukrainian legal system continued its prominence in using torture to produce self-incriminating statements and only acquitted less than two percent of criminal cases .

An especially egregious case of lack of reintegration to society emerges upon examination of the Crimean Tatars, an ethnic minority group in Ukraine that was once the dominant indigenous group in the now disputed region of Crimea between Ukraine and Russia (Human Rights Watch, 1991). Within the context of the recent 2014 Russian accession of the former Ukrainian territory, this case study of how both the Ukrainian and Russian Federation administrations have treated the Crimean Tatars is indicative of restorative justice practices in the presence of state and populace that perpetrated human rights abuses (Will, 2014).

Case Study: Crimean Tatars in the Republic of Crimea - Challenge to EU Accession

Crimean Tatars were one of the many ethnic groups deported in 1944 by former Soviet Union leader Joseph Stalin on suspicion of collaboration with Nazi Germany. An estimated range between 18% to 46% believed to have perished, only a third of the population has returned to Crimea after the dissolution of the Soviet Union (Buckley et al., 2008; see also Human Rights Watch, 1991; Rothbart & Korostelina, 2011; Uehling, 2004).

A successful Ukrainian accession into the EU will prove challenging because the Ukrainian administration's treatment of the Crimean Tatars directly conflicts with Article 9 of EU's Council Directive 2012/29 concerning the treatment of victims without discrimination on the grounds of ethnicity (European Union, 2012). Under the Ukrainian administration, Crimean Tatars have been systematically denied reparations, denied the return of their previous land prior to the Soviet Union ethnic deportations, and are consistently targeted by arms of neo-Nazi groups within the Ukrainian military (Unrepresented Nations and People Organization, 2013).

Matters were made worse after the 2014 Russian Annexation of the Crimean Peninsula and instances of Crimean Tatars people being extradited to Russia on charges of terrorism or extremist activities coupled with a denial of legal representation by lawyers from Crimea (Ukrainian Independent Information Agency, 2018). These arrests are in violation of accession criteria for the EU as outlined in “The Copenhagen Criteria,” where it states that institutions must maintain human rights, respect, and protection of minorities (Rezler, 2011, pp. 403-404). Even though the status of Crimea remains disputed, if Crimea is to ever return to Ukraine with unanimous international recognition, the manner of how these arrests against terrorism are carried out need must cease if Ukraine wishes to fulfill the Copenhagen Criteria.

Restorative Justice Progress in Ukraine

Restorative justice efforts need to be accelerated if Ukraine is to become a member of the European Union. The lack of restorative practices and opportunities for victim-offender mediation contradicts Article 46 of the E.U.’s Council Directive 2012/29 mandating states to upkeep safe practices of restorative justice services (Oliynyk, n.d.). However, recently, progress has been made with the Ukrainian Parliament passing a draft law allowing mediation practices to be used in almost all legal cases with the exception of procedures prior to reconciliation agreements in criminal cases (USUBC, 2020).

One flagship effort in Ukrainian restorative justice reform is the work of a coalition of civil society organizations led by the Ukrainian Centre for Common Ground. This coalition consists of restorative justice programs in 14 regions in Ukraine and heavily focuses on coordinating awareness-raising activities to highlight the lack of state and legislative efforts in restorative practices (Zemlyanska, n.d.).

Specific to the case of Crimean Tatars, their strongest advocacy groups come from abroad. Their strongest advocate is the Unrepresented Nations & Peoples Organization evident through their submission of a report to the UN Human Rights Council (Unrepresented Nations and People Organization, 2013). The group has also garnered strong activist voices from the United States and from Ukrainian ambassadors with the formation of the International Committee for Crimea, Inc. (Bowman, 2020). These two groups provide pressure that can push Ukraine and the Russian Federation administrations to treat the Crimean Tatars in a nondiscriminatory manner.

Recommendations

- Establish contact and hold awareness conferences targeting ambassadors of politically sympathetic countries to create pressure to change domestic criminal legislation surrounding the treatment of ethnic minorities.
- Guarantee availability of victim-offender mediation practices throughout the entire case procedure across various categories of crime.
- Adapt prison labor to be used as a tool for community reintegration as opposed to an arm of profit for the state.

SUMMARY CONCLUSION

The countries mentioned within this E.U. report were chosen under the basis of either being proactively progressive or lacking acknowledgment and involvement of retributive and restorative justice practices. By dividing into Eastern and Western countries, we honed in on specific areas affected by human rights abuses. Again, the European Union comprises 27 countries (the United Kingdom Parliament has officially been withdrawn from the E.U.). Although we have not mentioned all countries within the E.U., there have been tremendous milestones beyond the aforementioned countries. For instance, the Restorative Justice and Crime Prevention report highlights restorative justice successes in Portugal, which uses cultural mediation to spread awareness to prevent and protect victims through cultural mediation. Additionally, the Romanian Law No. 217, Preventing and Fighting against Domestic Violence, has provided the National Agency for Family Protection with authorized mediators with the power to provide mediation in cases of domestic violence in Cyprus. Norway is also exemplary in how restorative justice can be practiced. They have successfully reduced the cost of imprisonment, reduced recidivism rates, and reduced crime. Twenty years ago, Norway transitioned from a punitive system to a restorative system. After two years, Norway's recidivism has fallen 20% and after five years, 25% (Kirby, 2019). This success can be attributed to allowing prosecutors to refer to criminal and civil cases to mediation.

Our research indicates that restorative justice policies are implemented unevenly across the European Union and within each nation. This unevenness across the E.U. is an excellent indication that restorative justice practices are likely to be more effective if implemented by statute and federal law.

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Restorative Justice in the United States

Introduction

The expansion of restorative justice for youth in the United States (U.S.) began with the creation of the Office of Juvenile Justice and Delinquency Prevention in 1974 (OJJDP) (Pavelka, 2016). The goal of the OJJDP is to “strengthen the juvenile justice system's efforts to protect public safety, hold justice-involved youth appropriately accountable, and provide services that address the needs of youth and their families” (OJJDP, 2020).

The Balanced and Restorative Justice (BARJ) project, funded by the OJJDP, helped facilitate the dialogue regarding the implementation of restorative justice principles and practices, which led to states adopting these principles into their legislation (Pavelka, 2016). There are now 11 states that emulate restorative justice principles in their statutes, while twenty states articulate balance and restorative justice. Because approaches differ across states, the approaches, impacts, as well as organizations that carry out these principles also vary.

In the next section, different restorative justice organizations as well as varying approaches of restorative justice in states, in public schools, and through social movements will be discussed.

Findings

Restorative Justice Organizations and Programs

The Council of State Governments’ (CSG) Justice Center has had success in working with stakeholders in 30 states to collect data on the drivers of crime, recidivism, and costs. They have also been able to assess statutes, policies, and current practices to provide recommendations on justice reinvestment. The “Justice Reinvestment Initiative” (JRI) has helped implement changes in 25 states and assists with ongoing data monitoring (The CSG Justice Center, 2019). The JRI aims to address upticks in violent crime, the opioid epidemic, people with mental illnesses in the justice system, high rates of recidivism, and the cost of corrections while improving services for victims and increasing opportunities for people returning to communities from jail and prison. The JRI is funded by the U.S. Department of Justice’s Bureau of Justice Assistance with support from The Pew Charitable Trusts. In February 2020, the CSG also released the “Laying the Groundwork” report which established four building blocks necessary

to provide postsecondary education to people who are incarcerated in facilities and after release: use of available funding, a continuum of post-secondary programming, elimination of participation restrictions and incentives and supports to encourage participation and completion (Bacon et al., 2020). Their research across all 50 states showed that not one state met all four of the building blocks, half of the states meet only one of the four criteria, and nine states do not meet any of the criteria.

The Center for Court Innovation, a non-profit organization based in New York that aims to create a fair, effective, and humane justice system, launched a restorative justice initiative called Red Hook Peacemaking Program in Brooklyn, New York (Lambson, 2015). The Red Hook Peacemaking Program is largely based on Peacemaking, a traditional form of justice practiced by Native American tribes. It is accessible to anyone involved in criminal and juvenile delinquency cases and has four goals 1) healing relationships; 2) giving victims a voice; 3) holding participants accountable; and 4) empowering the community. It also involves ‘peacemakers’ that vary in profession and life experience and are assigned to cases based on who could connect to the defendant or offer a useful perspective to the participants. The outcome of the program was considered a success. 28 out of 31 defendants (90 percent) who completed the program received a dismissal of their case while the remaining 10 percent were given adjournments in contemplation of dismissal (ACD), which means their cases would be dismissed if they stayed out of trouble for a certain length of time. Because of this program’s success, similar community-based programs were launched in Syracuse and the Bronx (Center for Court Innovation, 2020).

In April 2020, the U.S. Department of Justice provided a \$3 million grant to the Vermont Law School to establish a National Center on Restorative Justice (Vermont Law School, 2020). The Vermont Law School will work closely with the University of Vermont, the University of San Diego, and other partners to engage “criminal justice professionals, community members, educators, and social service providers to broaden their understanding of the justice system and restorative justice” (Vermont Law School, 2020). The new center hopes to be a generator of workable solutions focusing on restorative justice and a catalyst for change in the criminal justice system in the U.S.

Restorative Practices in Public Schools

There are efforts in research and development of restorative justice practices being implemented in schools across the U.S. In 2014, the U.S. Department of Education released *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*. As one of the Action Steps, it encouraged schools to, “adopt an instructional based approach to discipline that uses interventions or disciplinary consequences to re-teach behavioral expectations and help students develop new behavior skills and positive strategies to avoid conflict, re-direct energy, and re-focus on learning” (U.S. Department of Education, 2014). This includes alternative approaches, such as restorative justice.

The WestEd Justice & Prevention Center issued a research review in restorative justice in U.S. schools, while the Schott Foundation established a guide for educators on using restorative practices in schools (Fronius et al., 2016; Anderson et al., 2014). There are individual teachers and schools where restorative justice proponents are utilized, but the data is not tracked as part of a district-wide initiative. Research shows that the “zero-tolerance” policies that were initiated in the 1980s-1990s, which emphasized suspension or expulsion for offenses, have had negative impacts on both schools and students and was disproportionately used with racial and ethnic minority students and students with disabilities (Fronius et al., 2016). Several large prominent school districts in the U.S., including the Oakland School District in California and Boston Public Schools in Massachusetts, have recognized this and have successfully implemented restorative justice practices (Anderson et al., 2014). Boston Public Schools reported suspending or expelling 743 students in 2010. After a model for restorative justice was built into their Code of Conduct in 2010, this number dropped more than 80%, to 137 in 2011, and then 120 in 2012 (Encarnacao, 2018). This success has encouraged other school districts in the New England area to adopt restorative practices.

In 2005, Oakland Unified School District (OUSD) in California started the Whole School Restorative Justice (WSRJ) program. OUSD tracked data from numerous aspects of the program and released a report almost 10 years later with their findings (Bassey et al., 2014). While many schools in the U.S. have implemented restorative justice practices, there is limited data available that tracks the successes and areas for improvement as found in the OUSD report. In addition to the OUSD WSRJ program, the Restorative Justice Oakland Youth Organization (RJOY) is an Oakland based group made up of community organizations, lawyers, judges, policymakers, educators, elected officials and youths, who work to improve the lives of young people involved

with crimes (Dunlap, 2008). The group advocates for restorative justice practices as a way to address youth issues such as mental health and behavior. The RJOY organization also works towards helping youths under probation to re-enter the community and reduce the school-to-prison pipeline. The group sees restorative justice as a second chance for youth offenders where the youth court is designed to hold youths accountable for their actions in a meaningful and restorative manner, mostly through empowering opportunities.

In a study of restorative justice in schools, Thalia Gonzales described the continuum model, which allows schools to adopt restorative justice practices ranging from informal to formal (2012). This restorative practice includes affective statements, questions, informal conferences, large group circles, and formal conferences (Gonzales, 2012). Virginia is an example of a state that employed the continuum model. The Northern Virginia Mediation Service (NVMS) Restorative Task Force in collaboration with Fairfax County Public Schools (FCPS) created the NVMS-FCPS Program in Fairfax, Virginia, where practices such as circles and formal conferencing as well as two-facilitator approach is utilized. Drops in suspension and low recidivism rate was reported by frequent users of the program. Despite the program's success, funding was uncertain, which has also been the case for many other school districts. Funding has caused schools to discontinue school-based restorative justice programs despite evidence of its positive impacts .

However, funding is not the only issue in the implementation of restorative justice in public schools. In a study by Payne & Welch (2015), it was found that restorative justice practices are less likely to be used in schools with a higher percentage of Black students. In addition, in schools with a larger number of students, peer mediation is more likely to be offered as compared to smaller schools. Given the number of findings proving the positive impact of restorative justice on students, both state and school-level factors need to be examined to ensure better funding and access to resources that would allow restorative justice programs to be implemented and continued on a more wide-scale basis.

Restorative Justice in Oklahoma

State Representative Tammy West recently conducted an interim study on the benefits of restorative justice practices in hopes of showing how mediation might be a viable alternative as part of a larger reform of the criminal justice system (States New Service, 2020). Jason Hicks, a

prosecutor from Oklahoma's Sixth Prosecutorial District, believes mediation restores the victim and community, while educating the offender at the same time. He describes the current conditions of the prison system as being filled with too many people on low-level and non-violent charges. The study discusses how restorative justice is victim-centered, and there are lower recidivism rates for offenders who go through the restorative justice programs.

Oftentimes, the traditional court system in America works like a turnstile where victims get very little say in the punishment for their offender. In such scenarios, the restorative justice program gives the victim a say in the punishment, while also giving them time to heal. It also involves behavioral development among the offenders, while giving community volunteers an opportunity to be a part of the process. Kathryn Brewer with the Oklahoma District Attorneys Council said there are easy statutory fixes that could make a pilot program available as soon as November 2021. The next challenge is securing funding for this pilot program.

Community Restorative Justice in Plattsburg, New York

Over the years, Nancy Monette, a resident of Plattsburgh, New York, had grown frustrated seeing the damage and destruction left behind by students and young adults in her community (VanValkenburg, 2010). Monette knew she had to take a stand. Ever since, she has worked closely with Plattsburgh City Court judges, probation officers, prosecutors and other community members to help develop restorative justice practices in her community. Today, she sees restorative justice as an alternative that has brought many positive changes in her community. The restorative justice program in her community allows students to right their crimes by doing numerous community services activities. In short, this gives them a second chance at life and allows them to see how their actions have had an impact on the community. Surprisingly, the program is said to have had overwhelmingly supportive feedback from the community, as it has helped all parties involved heal from the hurt caused, which often leads to behavioral changes among the offenders.

Confidentiality Laws

Restorative justice through mediation and peace circles requires honest communication between all parties, including the victim(s) and offender(s). To enable honest discussions, confidentiality for all parties is essential. Currently, only 29 states have laws that protect the

confidentiality of peace circle and mediation discussions from being brought into court (Ullman, 2020). “Without the protections of confidentiality, there is no telling how honest and successful [restorative justice] practices can be” (Ullman, 2020).

Social Movement: Black Lives Matter (BLM)

There was little to no research about mediation being conducted upon Black Lives Matter protesters in the United States with respect to the criminal justice framework. According to the New York Times recent reporting, a vast majority of BLM protesters arrested have their felony charges dropped and cases dismissed (Macfarquhar, 2020), preventing cases from ever reaching the mediation process.

Police reform in the U.S. has stagnated for the most part. Perhaps with a new presidential administration and forthcoming criminal justice reform, the efficacy of restorative justice mediation will be an area that will be re-visited and studied further.

Areas to pursue/Recommendations -

School-based restorative justice programs in the U.S. have proven successful, as evidenced by significant drops in suspension rates and recidivism in youth. Teaching youth about emotional literacy and conflict management through meditation will give them the skills needed to utilize restorative justice skills in their adult life. It can also help dismantle the school-to-prison pipeline. Ensuring funding and continued buy-in from stakeholders within school districts is key to continued success for these programs.

From the preliminary research on Black Lives Matter, no pilot programs are currently being conducted. However, after meeting with Ms. Sandson, a legal fellow working for the Civil Rights and Restorative Justice Project at Northeastern University, we learned about a pilot program being conducted with police agencies. The HIPP Project: Historical Injustices and Present Policing Project, is a first-of-its-kind training curriculum for police officers. “HIPP’s trainings’ leverage lessons gleaned from our historical research on police killings of African Americans in the mid-twentieth century, drawing connections between this history and present issues in police practices” (CRRJ, 2020). Following the Civil Rights and Restorative Justice Project’s work as HIPP gains traction across the U.S. is recommended.

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Restorative Justice in New Zealand

Context

The Maori tribe, which is the indigenous people of New Zealand, has traditions and practices that can be associated with the concept of restorative justice (ie. reconciliation, reciprocity and whanau involvement which loosely translates as family).

Before the adaptation of restorative justice by policy makers, its concept and module was put into practice mostly beginning with young people. The first act passed in New Zealand in response to young offenders and the victims was the Children, Young Persons and their Families Act 1989. The motive was to instil a sense of responsibility among children to allow them to own up to their mistakes. It also targeted their families, to encourage the children to obey the law and accept their faults while learning from it.

Similar principles were applied to adult offenders over the 1990s on an ad hoc basis.

Restorative justice systems became recognized in the formal criminal justice system after the passage of the Sentencing Act 2002, Parole Act 2002 and the Victim's Rights Act 2002.

The three Acts:

- Give greater recognition and legitimacy to restorative justice processes.
- Encourage the use of restorative justice processes wherever appropriate.
- Allow (and require) restorative justice processes to be taken into account in the sentencing and parole of offenders, where these processes have occurred.

Restorative Justice in Police

In the 1980s New Zealand Police (NZP) started focusing on community by developing local partnerships, utilizing local resources, identifying and addressing underlying causes and expanding community-based programs such as rehabilitation, education and support groups (Winfree, 2004). Since the enactment of the Children, Young Persons, and Their Families Act (CYPF Act) in 1989, New Zealand has been using restorative justice (RJ) practices within the youth justice system by using diversion techniques that try to avoid court proceedings when there is a beneficial alternative. The New Zealand Police has a special division, Youth Aid that focuses solely on youth offenders and developing specialized plans to respond to the offence (O'Driscoll, 2008). Family Group conferences (FGCs) are also used in the context of reintegrative shaming, rather than disintegrative shaming, allowing the community to play a role in the decision making

(Winfree, 2004). FGCs seek to bring in the offender's family and community to discuss the best response to the offence. The offender and victim, if in attendance, are both given the opportunity to talk. Youth Justice Coordinators facilitate the discussion and ensure that the FGC is protecting the rights of the child (O'Driscoll, 2008). By the end of the conference, the actors develop a plan for the young offender, which usually involves an apology, reparations and sometimes participation in community programs. If the youth is arrested, the Youth Court will take the plan into consideration when deciding on a sentence. As of 2000, FGCs are mandatory for youth who have committed an offence aside from murder or manslaughter (Schmid, 2003).

Even though restorative justice has been a part of the youth justice system for many years, the idea did not cross into adult justice until the 21st century. Similar to youth offences, the arresting officer also has the ability to suggest an alternative to court if the crime is a low-level offence (Walton et al., 2020). The diversion scheme typically involves a meeting between victim and offender, facilitated by a Police Diversion Officer, in order to make a written agreement (New Zealand Police, 2013). This concept is based on Victim-Offender mediation, in which the mediator is the police officer.

In both the diversion scheme and VOM, the victim and offender may not meet in person (Strang et al., 2013). Aside from the meeting, other alternatives could involve an apology letter, counseling, community service, education programs or reparations to the victim (New Zealand Police, 2013). Gehm explains that in this scenario, the police officer's job is essential as it enables the victim to participate in the process (Winfree, 2004). In some cities, Iwi panels are available to any offender over 17 years of age who has accepted responsibility for the offence. They were initially started in 2010 in Christchurch, and in 2017, they officially became a part of the NZP Prevention First model (Walton et al., 2020). Even though Prevention First does not directly utilize restorative justice practices, it focuses on finding solutions that work for both the victim and offender. The program also has similar themes to RJ, such as building relationships within the community, providing responsibility to the victims, preventing revictimization, developing offender management (New Zealand Police, 2017).

In both the youth and adult diversion policies, studies have shown a decrease in recidivism, and even in cases of further crime, the harm caused by the crime is lessened (Schmid, 2003; Walton et al., 2020). Victim satisfaction has proven high in some studies, however not across the board (Schmid, 2003). Also, in the youth system, the victims are underrepresented and

both victims and offenders report a lack of inclusion within the process; this is especially the case if they are in a low socioeconomic bracket and have difficulty getting to the FGC (Lynch, 2008; O'Driscoll, 2008; Pakura, 2005). Another critique of the system is the lack of support, financial and otherwise, given to families which in turn prevents them from attending FGC's.

The Ministry of Justice (2004) lays out eight "Principles of Best Practice for Restorative Justice Processes in Criminal Cases" (p. 12). The first and most essential principle is the concept of consent. Both the victim and the offender must give their consent to participate in the restorative justice process. In order for the process to be effective, both parties must voluntarily participate. Secondly, the process should support the participation of both primary actors, especially that of the victim. The victim should guide their level of participation throughout the process and should not be coerced in any way. Both the victim and offender must be prepared and informed prior to the start of the process which is outlined in principle three. Within a pre-conference, counsel or the police officer should explain the procedures, expectations, potential outcomes, benefits and risks, as well as their rights throughout the process. Another important aspect to cover is the limits to confidentiality. The court and participants must ensure that the victim's private information is protected and the report is only accessed by necessary participants. However, due to the number of participants in the process, the actors must be aware that complete confidentiality is limited. The remaining principles address accountability, the physical and emotional well-being of the participants, the effectiveness of the process and finally the applicability and use of the restorative justice process.

New Zealand's policies show success in developing a dialogue within the community and preventing future crime, demonstrating that restorative justice policies should be implemented within the police and criminal justice system. While implementing these, there should be an added emphasis on victim inclusion and satisfaction as well as community resources for the offenders, victims and families.

Restorative Justice and the Criminal Justice System

The restorative justice process in New Zealand has proven to be successful in their criminal justice system. Community policing and police problem-solving look to restorative justice programs to better understand the community they are serving. These programs have been proven to be effective in reducing crime rates. In the restorative justice process, not only are

victims given a voice but the offender and community representatives are allowed to contribute to the resolution of a crime (Schmid, 2001). New Zealand's criminal justice system recently adopted provisions made to the New Trusts Act in 2019. These provisions focus on alternative dispute resolution (ADR) including mediation and arbitration; "which allows for arbitration of internal trust disputes, meaning those involving beneficiaries, through a provision in the trust itself" (Strong, 2019). The two most important provisions to this Act are section 145; allowing a court to enforce an arbitration provision in a trust, and section 144; which deals with unborn or unascertained beneficiaries. With the adoption of these provisions, New Zealand takes another step towards the acceptance and successful implementation of ADR.

The restorative justice process begins with the offender pleading guilty and the judge deciding whether or not restorative justice would be beneficial for the case. The offender or the offender's lawyer is allowed to ask the judge to consider restorative justice. If the restorative justice conference is permitted, a facilitator will meet separately with the victim and the offender. The conference will take place before the sentencing and is a safe space to have an open and honest discussion about what happened. Moving forward, the victim and the offender may agree on a plan of action for the offender to attempt to make things right. After the conference, but before sentencing, the facilitator will give the judge the report. The judge will then decide to include any agreements made at the restorative justice conference as part of the sentencing. These restorative justice services are run by community-based groups approved by the Ministry of Justice. (New Zealand Ministry of Justice, 2020).

While the main goal of the restorative justice process is to consider the victim and the effect the crime committed had on them, little effort is made to support the victim after the conference. To best prevent revictimization in certain situations, Schmid (2001) outlines guidelines that were issued in 2001. These steps include but are not limited to: ensuring the physical safety of the victim, conducting careful and extensive victim preparation, using victim-sensitive language that avoids implying judgment or pressuring the victim in any way, following up after the mediation session and the training of facilitators in victim sensitivity (pp. 51-52).

Restorative Justice within Education

Research and organizations in New Zealand shows there are impactful ways to extend restorative justice beyond one classroom or one school. Curriculum supported restorative justice

programs use the principles of restorative justice to create a culture. Cooperative methods, funding and communities are all ways of transitioning restorative justice into a wide practice.

School Culture

The root of successful restorative justice practices in schools has been creating a community; throughout this process a difficulty that education systems face is moving away from traditional hierarchical relationships between students and teachers (Wearmouth et al., 2007). Creating a community where the values are those of restorative justice which includes the students, faculty and families has been found to be most effective when parents and educators are communicating about progress in both environments. The ministry of education developed a curriculum specifically addressing the social relationships that are desirable in a school system.

The focus is on positive behavior for learning (PB4L) and respectful relationships. This allows for the entire school culture to be shaped in a way that includes communication and language useful for restorative justice.

Proactive Versus Reactive

The restorative justice process in schools was focused on minimizing suspensions, as the Maori male population was twice as likely to receive suspension than their counterparts. It was found that the restorative justice process aligned with many Maori values. At one point there was also a program for educators allowing them to become culturally aware of Maori culture and interact successfully with students (Drewery, 2016). This notion was to address that building relationships and understanding values allow for restorative justice to become part of everyday life versus a reactive solution. Several analyses of restorative justice cases took statistics into consideration, finding many of the offenders were socially excluded. This demonstrated that the restorative justice practices are more impactful when the whole student is taken into account not only the incident at hand. In successful instances, meetings take the form of restorative justice in classrooms before any problem occurs, which has achieved a change of climate in schools (Drewery, n.d.). The key to a successful restorative justice system in schools includes proactive inclusion before problems arise. This helps create innate student communication in efforts to encourage students to solve disagreements among themselves in a restorative circle or meeting.

Restorative justice needs to fit the culture in a school for successful outcomes (Wearmouth et al., 2007). Through fundamentally applying restorative justice values at a young age there is likelihood they will then transition into adulthood. Thus, restorative justice should shift to a proactive process rather than a reactive process in order to approach disagreements and wrong doings in a society.

Closing Segment

The restorative justice practices in New Zealand have proven to be well received by citizens and have had positive outcomes in several sectors but it is still not completely integrated in all matters. The next steps for New Zealand involve further funding, creating awareness of availability of programs, and finding and promoting advocates. Doing so will enhance the effectiveness of restorative justice. Using a similar approach, countries that are familiar with restorative justice should seek to gain greater support in sectors like police, criminal justice, and education.

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Restorative Justice in Canada

Introduction:

Even though Restorative Justice (RJ) has only recently gained significant attention within the field of Criminal Justice, Canada has long shown success in its implementation. While elements of RJ have been used to examine human rights abuses in the past, it has evolved to inspire a process of truth, healing, and reconciliation for all Canadians to better understand and solve conflict.

The analysis of the convergence in RJ and Mediation (hereafter referred to as RJM) fields in Canada was conducted by researching programs across the country. Particularly, a database of programs in Alberta, British Columbia, Quebec, and Ontario was created using the [“Directory of Restorative Justice.”](#) This [database](#) was considered holistically by noting significant trends and studying each program within. Additional information and academic resources were found by using Scholar OneSearch through the Northeastern University Library. The dedicated fields researched were criminal justice, education, and community initiatives. The findings from each are outlined below.

Findings:

RJ measures have been part of Canada’s criminal justice system for over 40 years and are supported through federal legislation and program and policy initiatives. While RJ programs have traditionally been seen as a diversion from the traditional court system, in Canada, RJ has increasingly been used alongside the current criminal justice system. During the last 20 years, the [Criminal Code](#) has been amended to include the Youth Criminal Justice Act and Alternative Measures, which allow RJ programs to occur through four specific entry points (pre-charge, post-charge, post-conviction, and post-sentence). It is important to note that although the prevalence of RJM has increased in Canada, there is still a significant knowledge gap (Department of Justice Canada, 2018). In a survey conducted by the Canadian Department of Justice, 52% of those surveyed had little knowledge of RJ. However, when participants were informed about RJ approaches, 64% of them agreed that it should be available to all offenders and victims.

Confidentiality. Section 717(3) of Canada's [Criminal Code](#) addresses confidentiality in alternative measures: "No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offense as a condition of the person being dealt with by alternative measures is admissible in evidence against that person in any civil or criminal proceedings" (Justice Laws Website, 2020).

However, the protection of under-aged individuals supersedes confidentiality across many fields in Canada. The most extensive legislation pertaining to mandated reporting and breach of confidentiality is the Child, Family, and Community Service Act (CFCSA). The CFCSA states that mandated reporters, like counselors, are required to report anything that makes them believe that an individual under the age of 19 "has been, or is likely to be physically harmed, sexually abused or sexually exploited, or is otherwise in need of protection" (British Columbia Association of Certified Counsellors, 2015). Though this is a national policy that only pertains to children and youths, regional and local jurisdictions have separate laws that pertain to reporting abuse on other vulnerable groups, like the elderly, or any other crime. The [Guide for Developing RJ Programs in Alberta](#) discusses that there are limits to confidentiality in RJ programs, which may include "the potential obligation to report any unprosecuted criminal acts revealed during the process to the appropriate authorities." The guide also states, "for criminal cases, the limitations of confidentiality may need to be discussed by the parties with their legal counsel prior to beginning the RJ process" (Alberta Restorative Justice Association, 2015, p.32).

Restorative Justice Approach. While the use of RJ varies in Canada, the use of Circles is the most known and is widely accepted. Circles is a process based on First Nations' practices, which is perhaps one of the most inclusive restorative processes globally (Van Ness, 2005). Sentencing circles began in 1992, with the Circles of Support and Accountability starting in 1994. The Circles of Support and Accountability created opportunities for RJ processes to be replicated and built upon (Tompsonski, 2014). Though these initially did not have much institutional support, today, the number and variety of RJ programs in Canada are immense. Other basic RJ programs include Victim-Offender Mediation, Conferences, and Community Committees (Milward, 2008).

Rehabilitative Programs. While many of the RJ programs work in conjunction with the traditional court system, community wellness courts were introduced in the last decade. The Yukon Community Wellness Court (CWC) is a therapeutic court designed to build a safer community

through crime reduction. The CWC works with offenders in the criminal justice system on the root causes of their criminal behavior. The success of this approach is significant. Before the use of CWC, 70% of the inmate population in Yukon was indigenous, but with the introduction of community wellness courts, the incarceration rate of this group has gone down by over 30% (Hornick et al., 2011).

Preventative Programs. In Canadian schools, long-term crime prevention is partly tackled through programs that teach students basic mediation skills and other RJ principles (CERA Society, n.d.; Reimer, 2020). Organizations like the CERA Society (n.d.) in British Columbia have developed programs in both middle school and high school with the goal of providing healthy ways of resolving interpersonal conflicts. In Grades 4-8, students with leadership skills are selected to learn RJ techniques and are encouraged to practice them by resolving disputes amongst their peers. High school programs consist of a life skills course or senior seminar which focuses on conflict resolution skills.

Victim Considerations. Currently, there is a significant push in Canada to focus on the needs of victims and repairing the harm caused. Advocates claim that victims should especially be considered in cases of sexual violence due to the nuances and complexities associated with the topic (power dynamics, etc.). Programs are using multi-perspective approaches and context-dependent strategies as well as clear guidelines and training on gender violence, intimate partner violence, and specialized trauma for facilitators (Bourgon & Coady, 2019). Thus, the strengths of RJM in sexual violence consider the victim's needs as a tool of empowerment, providing options to the victim, and minimizing secondary victimization.

Restorative Justice Networks. Provincial organizations, such as the Alberta Restorative Justice Association (ARJA), oversee the cooperation of RJ programs, advocate for government funding on behalf of the member groups, and ensure best practices among all members (Llewellyn, 2018). ARJA also promotes the collection and sharing of data and research by conducting regional and national conferences. Created in conjunction with the Canadian government, this "provincial umbrella organization" is one example that demonstrates the potential gains from a centrally coordinated approach.

Recommendations

Networks. As seen in Canada, South Africa must develop a strong and extensive network of RJM programs and organizations.

- At the organizational level, regional development of a coordinated approach would facilitate more efficient usage of resources, a broader outreach, [streamline approaches](#), and improve individual programs' overall effectiveness.
- The Restorative Justice Centre should also cultivate a vast secondary resource network. As with any human-centered endeavor, RJM programs are sometimes not enough to change the behavior of individuals. The Centre should have a list of readily available entities that are capable of providing additional help and support. For instance, non-profit organizations, community-driven parental classes, or group therapy may reinforce the RJM principles previously learned.
- International networking might fill the resource gap in South Africa by providing online conferences, events, therapies, study sessions, and other secondary resources to the people of South Africa.

Mediation Strategy. As Irene Vanderspek, CERA Society mediator, mentioned, not all RJM strategies are the same, and as a consequence, not all results are successful. The common theme for all strategies is a person-centric approach to conflict resolution and skill development. It is important to keep in mind that evidence shows that positive reinforcement of good behavior is more effective for change than negative reinforcement.

- Canadian programs account for this by emphasizing the commonalities between the identity of mediators and participants. For instance, there is a large number of RJ programs in Canada that are run by indigenous communities only for their members. This strategy utilizes the power of existing social bonds and channels them for successful RJ outcomes.
- The RJC should conduct informative sessions for school teachers in order to promote using RJM practices routinely and consistently from an early age and beyond. Although implementing distinctive RJM programs in all South African schools is infeasible, this approach would serve as a long-term initiative for shifting group behavior and criminal outcomes.

Outreach. Even though Canada has made great strides in the Criminal Justice System with RJM alternatives, programs still struggle with visibility. One way that Canadian programs have been able to resolve this is by educating vested partners and implementing formal legislation.

- The RJC can implement a similar approach by communicating the merits and successes of RJM to law enforcement leaders, community leaders, and court actors. This can be accomplished through short ‘awareness’ presentations and informational documents.
- The RJC should also expand its social media presence by creating an account on Instagram. All accounts should be regularly updated with short and digestible pieces of information. This low-cost option is an excellent source of information for interested parties to refer to. It acts as living documentation of RJM successes for criminal justice system actors to refer to.
- The RJC can incorporate methods such as surveys, town halls, or public forums to receive feedback and determine community needs (ARJA, 2020).
- To remove systematic barriers to access, RJC should create a targeted outreach plan for legislators that encourages the significant expansion of diversion programs within South Africa’s Criminal Law.

Cultural Considerations. As literature from a variety of fields has concluded, social bonds are extremely important, as they influence individuals and can greatly contribute to them becoming productive members of the society, they live in.

- The collective nature of the South African cultures already plays an important role in the RJC mediation practices. Once the center has established relationships with community leaders, they may be more receptive to utilizing RJM practices for conflict resolution between communities or groups. Though national reconciliation efforts are complex, this would be a good first step towards a less conflictive future.

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