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History of the Police State

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Involuntary Justice

The prison abolition movement in the United States advocates for dismantling the entire prison industrial complex: police, prisons, courts, and all carceral systems and logic that enable the prison system. But prison abolition begs the larger question of what comes instead of the prison, the police, and the courts. Many prison abolition activists advocate for restorative justice and transformative justice solutions to incarceration. For example, in the fight against the Los Angeles county jail plan, the JusticeLA coalition and organizers advocated for increased *voluntary* mental health treatment as a primary focus to decarcerate and meet the needs of the community. Similarly, in substance use recovery and advocacy communities, I frequently witness the importance of willingness in recovery: if a person does not want to stop using, their path to recovery will be more difficult than someone who is willing and voluntarily making a decision of sobriety. Both of these examples of crime and harm reduction indicate the need for a particular focus: the funneling of resources to encourage voluntary change. In the prison abolition movement, what does this mean? What role does voluntary change play? Is voluntarism necessary for the transformative change needed to abolish prisons? If not, what would involuntary transformative or restorative justice look like, and are either of these strategies, if involuntary, able to address the failures of the United States incarceration system? In this essay, I will be discussing the meaning of restorative justice through real world examples, and investigating the necessity of voluntarism in these systems. This history will add to the conversation of how and if force and involuntary change can be carried forward into a world towards abolition, and if this change is practical for a world without harm and crime.

Several countries all over the world integrate restorative justice into their justice and legal systems as a realistic diversion technique from incarceration. Restorative justice is a form of justice that seeks to repair the damage done by a crime by engaging the person or people harmed by a crime, the person who committed harm, and other community members. According to the Centre For Justice & Reconciliation at Prison Fellowship International, restorative justice focuses on the goals of “offender accountability, reparation to the victim and full participation by the victim, offender and community.” (Centre For Justice & Reconciliation) While restorative justice practices can be used in a multitude of ways and are different worldwide, there are a few unifying principles of what these processes should prioritize. The Restorative Justice Council (RJC), a worldwide coalition for the field of restorative justice, created a statement on the principles of restorative justice. These principles include “respecting victims’ personal experiences, needs, and feelings; acknowledging the harm or loss the victims have suffered; recognizing victims’ claim for amends; providing an opportunity to communicate with the person who caused the harm or loss, if that person is willing; and recognizing that victims are the primary beneficiaries entitled to reparations” (Choi et. al). The restorative justice principles of the RJC emphasize the aspect of voluntarism for all parties involved, and further highlight the necessity of victim choice and agency. The Statement of Restorative Justice Principles includes “it is imperative that participants come to a restorative intervention of their own free will, having understood the reasons for and methodology of, the process. It is the duty of the practitioner to ensure that everyone taking part understands why they are there and their responsibilities in relation to the process” (RJC).

In 1989, New Zealand implemented restorative justice practices for youth offenders using the family group conferencing (FGC) model. New Zealand is the only country in the world that has mandated restorative justice legally, but only for youth offenders in the most serious and/or persistent situations. Allison Morris responds to the critiques of restorative justice, stating that restorative justice conferences “are held for about 15-20 per cent of youth offenders” and the rest of offenders are “simply warned or diverted by police.” Thus, restorative justice cannot be to blame the failings of the justice system in New Zealand, but rather the “legacy of oppression against women, people of colour, and impoverished people” that the restorative justice system is up against (Morris 602, 611). Due to difficulties in tracking the results of restorative justice that Morris discusses, it is hard to truly measure the changes in the system following its implementation. Since the restorative justice mandate, however, the youth offender program in New Zealand displayed outstanding results in the ways that it can. In a 2001 survey of all youth justice coordinators in New Zealand, surveys found that “more than 92% of coordinators believed that FGCs were effective overall. About 8% of coordinators believed that FGCs were only sometimes effective. No coordinators believed that FGCs were not effective at all” (Schmid 14). Additionally, The Ministry of Justice evaluation of restorative justice in New Zealand found that between 2008 and 2013, “the reoffending rate for offenders who participated in restorative justice was 15% lower over the following 12-month period; Offenders who participated in restorative justice committed 26% fewer offences per offender within the following 12-month period than comparable offenders; Restorative justice appeared to help reduce reoffending across many offence types including violence, property abuse/damage and dishonesty; Māori offenders who participated in restorative justice committed 37% fewer offences per offender within the next 12 month period than comparable Māori offenders; [and] young offenders who participated in restorative justice committed 30% fewer offences per offender than comparable young offenders” (New Zealand Ministry of Justice).

 Despite the consistent successes of restorative justice in New Zealand, restorative justice for adults only exists as court-referred adult conferencing for certain sentences. Adult conferences “will be conducted only with the voluntary consent of the offender and of the victim” and with a recommendation from the court (Schmid 17). In an article from the *Journal of Commonwealth Criminal Law*, Judge Fred McElrea, a District Court Judge in New Zealand asks, because of the low usage of restorative justice for adults, will “restorative justice for adults… flourish only if it is compulsory?” (McElrea). To answer his own question, he suggests that compulsory restorative justice could be a solution, but that participants should have the option to practice restorative justice in a non-court setting. Though the judge’s argument is compelling, the majority of people in New Zealand believe that restorative justice must be voluntary. The same 2001 survey of FGC coordinators showed that, “About half of the responding coordinators believed that the victim’s attendance and input at the FGC was what makes the FGC effective… The vast majority of coordinators believed that non-attendance by the victim, whatever the reason, dramatically reduced the impact of the FGC on the offender and hence the FGC’s effectiveness. Most felt that the absence of the victim made it difficult to demonstrate to the offender the harm from the criminal conduct and, as a result, made it easier for the offender to remain detached from and unmoved by the process. Put another way, the victim’s non-attendance undermined the effort to hold the offender accountable.” (Schmid 14)

Though the United Kingdom does not have mandatory restorative justice like New Zealand does, there was recently a dramatic increase of research conducted by the UK’s Ministry of Justice and other Criminal Justice System related groups. In 2001, the UK government funded a research initiative to investigate the outcomes of restorative justice practices. The government commissioned the researchers from University of Sheffield to look into three restorative justice groups: CONNECT, the Justice Research Consortium (JRC) and REMEDI. These organizations all offer restorative justice programming in response to crime and general conflict, primarily services such as face-to-face conferences between victims and offenders.

The Ministry of Justice released a variety of reports on their research from 2004-2010, which all reported significant successes of restorative justice programming. The key findings from these reports include that, “85% of JRC victims were very/quite satisfied with their experience of the RJ conference (80% of offenders in JRC conferences also expressed themselves very/quite satisfied)… 98% of JRC Conferences ended with the participants agreeing an outcome agreement, which was normally focused on what the offender would do next to repair the harm, address their problems and re-orientate their life away from crime… Overall, only 6 offenders (of 152) and 6 victims (of 216) were dissatisfied overall with their experience of face-to-face conferencing… the impact on re-offending was a reduction in frequency of 27%” (Restorative Justice Council 2). In addition to the interpersonal and crime reduction benefits achieved through restorative justice, the research also found significant economic advantages: “the RJ Conferencing demonstrated cost-savings on average of £9 to £1 – through reductions in the frequency of offending RJ saved the CJS 9 times what it cost to deliver” (Restorative Justice Council 3).

These successes though, are largely attributable to the willingness for both sides to participate. Similarly, in Germany’s restorative justice programming, “Conflict mediation is dependent on the willingness of all parties involved, in order to be at least partly able to become engaged in the arguments of the other party… This is a basic requirement, without it no further steps towards victim-offender mediation can be initiated.” (Weitekamp 97-98). Not only is voluntary participation in restorative justice suggested, it is often required for the process to take place. However, there are many instances in which this is not possible. For example, if the victim is unwilling or unable to engage in the process, the process will not happen and the offender will often be directed towards the standard punitive justice system. Or, if an offender is unwilling to participate, the victim may be left without crucial parts of the process in many restorative justice programs. Fortunately, restorative justice organizations and practitioners adapted the practice to include several options for restoration, opening options for varying levels of restorative justice. These levels are classified, for example, as “fully restorative”, “mostly restorative”, or “partially restorative” depending on how much engagement both parties have in the process (Walker). In “Restorative Justice Without Offender Participation: A Pilot Program for Victims” Lorenn Walker discusses her pilot program designed for the purpose of meeting the needs of victims without the presence of the offender. Similarly, projects such as Parallel Justice are attempting to build victim support services that have space to involve the offender but are not dependent on offender participation.

Despite adaptations to the barriers that voluntarism creates in restorative justice, the result of “partially restorative” does not allow for the full potential of change. If only the victim is included in the process, the offender is more likely to reoffend (Campbell). If a victim is not included in the process, the victim may struggle with the healing process and harmful psychological effects. The Restorative Justice Council in the United Kingdom found that, “Although victims tended to opt for indirect RJ when this was offered… indirect processes tended to lead to lower levels of victim satisfaction than face-to-face meetings.” (Restorative Justice Council 2). Many countries have seen shortcomings of their restorative justice practices due to this problem. In Canada, however, a different model may have the answers to this problem.

Canada is often considered the birth place of restorative justice, as it was one of the first countries to develop victim-offender mediation and other restorative justice programming in 1974. The restorative justice system in Canada continues to grow, with a focus of restorative justice in the sentencing principles in the Criminal Code of Canada and the development of over 70 different restorative justice programs across the country (Maimane 41-42). Canada uses several models of restorative justice, such as victim-offender mediation programs (VOMP), circles of support and accountability (COSA), peacemaking circles, healing circles, and sentencing circles. VOMP is very similar to the restorative justice programs found in other countries, requiring both the victim and the offender’s voluntary presence and participation. The other methods, however, are unique. COSAs include one core member, who “is returning to the community after being detained to the end of sentence because of a sexual offence history”, and a group of trained volunteers who offer the core member their support and hold the offender accountable for their restorative process (Maimane 25). In this model, only the offender’s participation is necessary, but is still voluntary. A study on the COSA program found “offenders in COSA had an 83% reduction in sexual recidivism, a 73% reduction in all types of violent recidivism, and an overall reduction of 71% in all types of recidivism in comparison to the matched offenders” (Wilson et al.). Peacemaking, healing, and sentencing circles all exist within Aboriginal and first-Nation communities and all prioritize community involvement in the healing and/or sentencing processes. Peacemaking circles are “based on the idea that the most important thing in addressing the problem lies in the community and not with the victim and offender only… it is important to deal not only with criminal behavior but also to build community and restore balance where possible” and require voluntary participation of the victim, the offender, and community members (Maimane 26). Similarly, healing circles require voluntary participation of the same groups, but instead focus on healing of both parties.

Sentencing circles, however, are a bit different than every other model discussed thus far. Sentencing circles are in partnership with the criminal justice system, involving police, prosecutors, and more. These circles are only used for Aboriginal offenders, and do not require victim participation but require offender and community participation. Because of their partnership with the justice system, offenders are sentenced to a circle instead of or in addition to incarceration. This system of justice is involuntary for the offender, but mostly voluntary for the victim (victims can choose to participate in the process, but the process is not fully dictated by the wishes of the victim). While the use of this system of justice is understudied and too small and dispersed for large analysis, the findings of “suggest that community members, victims, and offenders have begun to act on the understanding that justice is a community responsibility by participating in sentencing circles” leading to a larger focus on community accountability, harm reduction, and healing (Spiteri iii).

Canada’s sentencing circles show that involuntary restorative justice still proves itself successful in terms of community accountability. However, sentencing circles fall short in their cooperation with law enforcement. The cooperation with law enforcement allows for racist and classist biases to influence who is allowed to participate in these restorative programs. The question of how to change this is complicated, however it is clear that restorative justice is an effective model that shows clear evidence in in reducing harm, re-offense, and violence. In terms of voluntarism, both voluntarism and non-voluntarism allow for successful results but are severely understudied in the US and abroad. Investing money and resources into researching and adapting these practices and further experimenting the role of voluntarism would clearly benefit the United States and incorporate harm reduction and diversion into the country with the largest prison population in the world and begin to build resources for accountability, community responsibility, and healing which are all lacking in the criminal justice system. While I discussed the question of voluntarism in restorative justice in this essay and how it functions differently in different systems, this question unfortunately does not yet have enough history or evidence to answer whether involuntary or voluntary restorative justice is more successful. However, it is obvious that both systems improve community and reduce recidivism, both things that the United States desperately needs. The allocation of resources toward researching these systems and their results, as well as the question of voluntarism in these systems, could drastically change the United States incarceration system and the overall conversation and culture surrounding justice. These changes would lead the US on a promising path towards reducing harm and violence, and thus on a path towards prison abolition.

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