

Alternatives to the Traditional Criminal Justice System: An Assessment of Victim-Offender Mediation and Neighborhood Accountability Boards in the United States

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Abstract

Victim-offender mediation programs and neighborhood accountability boards are becoming more widespread in the United States (Bazemore & Umbreit, 2001; Braithwaite, 2002; Choi & Severson, 2009; Karp, 2001; Karp et al., 2004; Umbreit et al., 2005). These programs have often been based on the restorative justice principle which considers crime and delinquency as an act against the individual and the community rather than the state (Bazemore & Umbreit, 1995; Zehr, 1990, 2002). Since the restorative justice approach represents a relatively new paradigm for addressing the social problem of crime and delinquency in the United States, in this paper I review previous attempts to study these two programs. The empirical research so far demonstrates that each program has inherent strengths, as well as weaknesses (Bazemore & Schiff, 2005; Braithwaite, 1994; Clear & Karp, 1999; De Beus & Rodriguez, 2007; Latimer et al., 2005; Rodriguez, 2005; Umbreit, et al., 2005) Most of the research has utilized quantitative methodologies to evaluate outcomes, and found higher satisfaction rates and lower recidivism rates than traditional criminal justice approaches (Choi & Severson, 2009). To date, however, relatively little attention has been given to studying the restorative justice process using qualitative methods (Bazemore & Schiff, 2005; Umbreit et al., 2002). Therefore, I propose that future research should incorporate a qualitative component to better understand the processes involved in these programs, as well as the motivations of victims, offenders, and community members who participate.

Introduction

Victim-offender mediation and neighborhood accountability boards represent the two most popular restorative justice programs in the United States (Bazemore & Schiff, 2005). The first part of this paper reviews the key principles of both models and identifies some common practices and strategies. Specifically, I assess each model, pointing out the similarities and differences of their processes and outcomes. While the implementation of these programs typically follows no single blueprint (Bazemore & Schiff, 2005; Clear & Karp, 1999; Van Ness & Strong, 2001), an assessment of the principles of typical models illustrates common themes in what appears to be a new philosophy of citizen participation in the sanctioning process of crime and delinquency.

The second half of this paper reviews the small, but growing amount of empirical research. To date, the majority of studies have found high client satisfaction, successful completion of restitution agreements, and lower recidivism. However, I also address the criticisms of these findings, as well as criticisms of the programs they report on. Based on these criticisms, I argue that future research designs should add a qualitative component to better identify the factors that lead to successful outcomes from the perspective of the victim, offenders, and community members, as well as the social factors influencing implementation of programs based on victim and citizen participation.

Restorative Justice Principles

Many advocates of restorative justice point out that the movement is best defined not by a specific set of programs, but instead by several key principles that they argue are different from traditional approaches found in the criminal justice system. In particular, advocates argue that traditional criminal justice processes often relegate victims and members of the community to a second-class status (Umbreit, 1994; Zehr, 1990, 1997, 2002), and often fail to take account of the harm suffered by victims and their families (Bazemore & Umbreit,

2001; Umbreit, 1994; Umbreit & Greenwood, 1998; Zehr, 1990, 1997, 2002). As noted by Howard Zehr (1990), when a crime is committed, the traditional criminal justice system has been primarily concerned with three questions: 1) Who did it? 2) What laws were broken? 3) What should be done to punish or treat the offender? In contrast, Zehr notes that restorative justice advocates emphasize three very different questions: 1) What is the nature of the harm resulting from the crime? 2) What needs to be done to "make it right" or repair the harm? 3) Who is responsible for this repair? Hence, rather than defining crime and delinquency simply as lawbreaking against the state, advocates of restorative justice make the point that offenders harm victims and communities as well. In addition, one of the primary aims of restorative justice programs is to make amends for offending, rather than seeking retribution and inflicting pain upon the offender (Van Ness & Strong, 2001).

Advocates of the restorative justice model also envision a collaborative sanctioning process involving all parties with a stake in a particular offense. As Umbreit (2001) notes:

Restorative justice is a victim-centered response to crime that gives the individual most directly affected by the criminal act – the victim, the offender, their families, and representatives from the community – the opportunity to be directly involved in responding to the harm caused by the crime (p. xxxvii).

Thus, restorative justice processes are ideally designed to provide a supportive atmosphere in which victims, offenders, and community members are given a voice in the sanctioning process.

Finally, in contrast to the retributive model, the restorative justice response to crime is designed to reintegrate the offender back into the community (Braithwaite, 1989). Instead of a prison sentence, the outcome of restorative justice processes typically involves some type of apology and a restitution plan in which the offender will perform some type of service for the benefit of the victim or the community (Bazemore & Griffiths, 2003). Furthermore, by including family members, and other supporters of the offender in the collaborative sanctioning process, the hope is that the restitution

agreement is more likely to be completed because the offender can be monitored and supported by members of his family and community (Bazemore & Maloney, 1994; Karp, 2001). Thus, restorative justice processes rely more heavily on informal forms of control, with the full power of the criminal justice system invoked only as a last resort (Braithwaite, 2002).

Restorative Justice Programs

Although the principles of restorative justice have a long lineage, restorative justice programs began to emerge in North America in the 1970s (Braithwaite, 2002; Johnstone, 2003; Latimer, et al., 2005). These programs entered the mainstream in the United States in the mid-1990s when local and state jurisdictions began to revise their statutes and codes to reflect restorative justice principles (Bazemore et al., 2000; Umbreit, et al., 2005). According to Umbreit et al., (2005: 261), "Restorative justice policies and programs are known today to be developing in nearly every state and range from small and quite marginal programs in many communities to a growing number of state and county justice systems undergoing major systemic change." A recent national survey identified 773 programs in the United States with 94% of states offering at least one program (Bazemore & Schiff, 2005).

Among the most common restorative justice programs in the United States are victim-offender mediation programs (i.e. VOMP), which some communities refer to as "victim-offender reconciliation programs" or "victim-offender dialog programs (Bazemore, 2005; Bazemore & Umbreit, 2001; Bazemore & Schiff, 2005; Choi & Severson, 2009; Umbreit et al., 2001). Also gaining in popularity are neighborhood accountability boards (i.e. NABS), or "community reparative boards" which are a recent version of a much older community sanctioning response to crime and delinquency (Bazemore & Umbreit, 2001; Bazemore & Schiff, 2005; Karp, 2001; Karp, et al., 2004; Umbreit, et al., 2005). Since VOMP and NABS are becoming more widespread, in

the next section I will describe the similarities and differences of the processes and goals of these two programs.

Victim-Offender Mediation Programs

Victim-offender mediation programs are the most widely used restorative justice program in the United States, accounting for over half of all U.S. programs (Choi & Severson, 2009; Umbreit, et al., 2005). These programs are increasingly used in response to cases involving less serious offenses committed by young people (Bazemore & Umbreit, 2001). In these cases, participation in the program is considered voluntary for both victims and offenders (Umbreit & Greenwood, 1998). However, in some jurisdictions, victims and offenders are sometimes less than willing participants (Choi & Severson, 2009). As a result, both victims and offenders are typically screened for their readiness to meet before the meeting itself (Bazemore & Umbreit, 2001).

In the victim-offender mediation sessions, the mediator manages the dialogue by encouraging victims to explain how the crime affected them (Choi & Severson, 2009). During mediation sessions, offenders are also given the opportunity to tell their side of the story (Bazemore & Umbreit, 2001; Umbreit, 1994; Umbreit, et al., 2001), and at the end of the process, the mediator assists the victim and the offender in working out an agreement for restitution (Van Ness & Strong, 2001). This process is somewhat different from mediation practiced in civil disputes because the involved parties are in agreement about their role as either victim or offender (Bazemore & Umbreit, 2001).

Neighborhood Accountability Boards

In contrast to victim-offender mediational programs, a neighborhood accountability board is typically comprised of a group of three to eight persons, usually volunteers, who meet with offenders to discuss the impact of the offense on the community (Bazemore & Umbreit, 2001; Karp, 2001; Karp, et al., 2004). Part of the reasoning for referring a case to a NAB is that, in some instances, the

offense may have no direct victim but may impact the members of the community (i.e. graffiti, or arson of a vacant building). The citizens on the board may represent the victim or residents in the community.

The process of managing dialogue also varies significantly from the victim-offender mediation programs (Karp, et al., 2004). Typically, a chairperson or facilitator guides members through the process which begins with the offender describing the incident. After a thorough discussion of the impact of the behavior on those present, the members of the board attempt to shape an agreement, either in private or with the offender present. The process ends with an agreement outlining their expectations and commitments of the offender. Offenders are usually required to periodically check in with the board to provide a progress report in order to have the case dismissed; however, failure to complete the agreement typically results in the case being referred back to court (Braithwaite & Mugford, 1994).

Measuring Success

With regards to the success of these programs, most of the research in the United States has been focused on victim-offender mediation programs largely because they remain the most common type of restorative justice program (Bazemore, 2005; Bazemore & Schiff, 2005; Choi & Severson, 2009; De Beus & Rodriguez, 2007; Latimer, et al., 2005; Umbreit, et al., 2005). Most research studies report that victim satisfaction with victim-offender mediation has been uniformly high when compared to those going through traditional court prosecution (Braithwaite, 2002; Braithwaite & Mugford, 1994; Rodriguez, 2005; Umbreit, 1994; Umbreit, et al., 2001; Umbreit, et al., 2005). As for the offenders, they also overwhelmingly express satisfaction with restorative justice processes and have lower recidivism rates as compared to traditional criminal justice approaches (Latimer, et al., 2005).

In contrast to victim-offender mediation, much of the evidence on the satisfaction of participants in neighborhood accountability boards is based on

anecdotal information (Bazemore & Umbreit, 2001; Karp et al., 2002; Karp, 2001; Karp, et al., 2004). The limited empirical research shows that participants also report evidence of high satisfaction (Karp, 2001; Karp, et al., 2004). For example, Karp (2001) evaluated programs in Vermont found that although victim participation rates were low, 82% of the victim participants were satisfied. However, a recent meta-analysis of restorative justice programs found that satisfaction rates were somewhat higher in victim-offender mediation than in programs, like neighborhood accountability boards, which have a larger number of participants in the process of creating a restitution agreement (Latimer, et al., 2005). The authors speculated that having more citizen participation in the decision-making process may lower the levels of satisfaction with an agreement.

With regards to the effectiveness of neighborhood accountability boards on recidivism rates, little is known (Springer & Roberts, 2010). Bonta et al. (1998) found that juveniles who participated in a NAB program had lower recidivism rates than for either of the two comparison groups. In addition, Karp (2002) found that, in cases in which a material harm was identified, two-thirds of the victims indicated that their losses were addressed. As an explanation, Rodriguez (2005) argues that restorative justice programs, like NABs, may work because they offer a "reintegrative process" that is missing from the traditional criminal justice comparison group. As a result, it could be that community service is more likely to be completed because the offender can be monitored and supported by members of their family and citizens within the community (Bazemore & Maloney, 1994; Braithwaite, 1989, 2002; Braithwaite & Mugford, 1994).

However, one problem with drawing a definitive conclusion of the success of these two restorative justice programs is that they often target low-risk, nonviolent, juvenile offenders for participation (Bazemore & Umbreit, 2001). As a result, the positive results of previous studies may be mitigated by a selection bias since it is not possible to randomly assign participants to treatment and control groups. In addition, since restorative justice is a "voluntary" program,

this may create a treatment group of participants who are more highly motivated than the control group in the traditional criminal justice system (Latimer, et al., 2005).

Some critics have also raised concerns about the so-called “voluntary” nature of the participation. Although both programs are designed to be a voluntary process, offenders have much to lose in not “agreeing” to participate, and might feel coerced as part of a plea bargaining agreement into meeting with the offender. As Arrigo and Schehr (1998) argue, restorative justice programs can also be perceived as coercive to victims as well. They point out that the highly structured sessions may place restrictions that prevent victims from fully articulating their emotions. In fact, since victims go through a screening process, those with strong feelings may be weeded out of the process, which also may affect success rates. Victims may also be concerned about meeting the offender and have fears or concerns about a potential “re-victimization” (Choi & Severson, 2009). As a result, we still know very little about the types of offenders and victims who either do or do not participate in these programs.

Finally, other critics have argued that the implementation of restorative justice programs may be interpreted, not as an alternative system or as a diminishment of state power (Pavlich, 2005), but as a displacement from formal to informal techniques of governance and with the appearance of new actors on the scene of governance of crime and delinquency (Garland, 2001; Simon, 2007). As a result, the implementation of restorative justice programs can be viewed as representing a new form of neo-liberal governance (Miller & Rose, 1990; Rose & Miller, 1992), embodying a new constellation of power relations and raising the possibility of an expansion of state power through both informal and formal processes of social control (Cohen, 1985).

Based on these criticisms, more theoretical work and research is needed to examine the factors influencing participation and outcomes of restorative justice programs in the United States. In particular, I argue that future research should utilize qualitative methods to develop grounded propositions for guiding

future research, as well as improving existing practices. As Choi & Severson (2009) point out:

Most importantly, even though restorative justice is both a process and an outcome, existing studies focus primarily on the latter, using quantitative methods to evaluate certain restorative outcomes such as recidivism and restitution rates...Therefore, what actually happens in the restoration process remains to be studied, as relatively little attention has been given to studying the restorative justice process using qualitative methods. In other words, although its quantitatively derived outcomes are important to consider, the quality of the restorative justice process is of equal importance to understand (p. 813).

More theoretical work and research is also needed to understand the social processes influencing the implementation of restorative justice processes throughout the world. A fruitful line of theoretical inquiry for understanding the growth of this movement lies in the Foucauldian literature on governmentality (Garland, 2001; Miller & Rose, 1990; Pavlich, 2005; Rose & Miller, 1992; Simon, 2007). These scholars have noted a wider trend within Western democracies toward emphasizing the self-responsibility of individuals, families, and communities (Lemke, 2007; Simon, 2007). These writers have also examined how governments around the world are increasingly relying on individual citizens to define and classify who is, and what is considered to be, deviant (Garland, 2001; Hunt, 1999). Thus, the strength of the Foucauldian governmentality literature lies in its recognition of the complex linkages of state and non-state authorities found in the restorative justice movement.

Conclusion

In sum, victim-offender mediation programs and neighborhood accountability boards are becoming more widespread in the United States, both as an alternative to the traditional criminal justice system and as a part of the system (Bazemore & Umbreit, 2001; Braithwaite, 2002; Choi & Severson, 2009; Karp, 2001; Karp, et al., 2004; Umbreit, et al., 2005). Since their inception, these programs have often been based on the restorative justice model, which considers crime as an act against the individual and the community, rather than the state (Bazemore & Umbreit, 1995; Zehr, 1990, 2002). Although there are

differences between the two programs, the majority of studies have found that victims and offenders may benefit from the process of meeting each other and talking about the offense. Specifically, studies show high client satisfaction and lower recidivism rates for both approaches, but particularly for victim-offender mediation programs (Braithwaite, 2002; Braithwaite & Mugford, 1994; Rodriguez, 2005; Umbreit, 1994; Umbreit, et al., 2001; Umbreit, et al., 2005). However, there have been a number of issues and criticisms raised about the studies which make it difficult to draw a definitive conclusion about their claims.

Despite the criticisms, restorative justice programs – such as victim-offender mediation and neighborhood accountability boards – will most likely expand in the coming years as criminal and juvenile courts in the United States continue to struggle with high case loads and stagnant resources. As a result, researchers should evaluate the outcomes of these programs and continue to study the social processes influencing their implementation. Specifically, I argue that qualitative research designs are needed to examine the motivations and perceptions of victims, offenders, and community members who participate in restorative justice programs. More research that examines the reasons behind this growing trend of victim and citizen participation within criminal justice systems throughout the world is also necessary.

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