

A CALL FOR RESTORATIVE JUSTICE IN HIGHER EDUCATION JUDICIAL AFFAIRS

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This paper aims to provide support for post-secondary institutions' exploring and implementing restorative justice in their judicial practices. Although restorative principles have been employed successfully across the globe in criminal proceedings and K-12 education, most colleges and universities have not yet embraced this practice. By exploring the limited literature and research on restorative justice, this paper demonstrates the benefits of restorative discipline to the campus community, to the hegemonic male culture, and to student development. It will also present general strategies for implementing restorative justice on college campuses. There are very few articles exploring the benefits of restorative justice in higher education. This paper fills that gap.

Keywords: restorative justice, restorative discipline, higher education, hegemonic male culture, judicial affairs

In *The Little Book of Restorative Justice for Colleges and Universities*, Karp (2013) commenced his treatise by describing "The Story of Spirit Horse" (p. 3). In the narrative, he described an actual situation in which a Skidmore College student, where Dr. Karp served as Associate Dean of Student Affairs, stole a statue, "Spirit Horse," from a local antique shop. Although the crime easily fit into local law enforcement's judicial processes, the campus procedure was to initiate its own disciplinary action. Dr. Karp advocated for restorative justice proceedings.

The restorative process began with the story-telling phase. Through the shopkeeper's, the art director's, and the statue's artist's stories, the perpetrator was surprised to learn of the impact of his behavior. As a result of his deepened understanding, the student agreed to perform deeds that reflected genuine remorse and a commitment to regain trust of the community. Impressed with Skidmore's handling

of the situation, the local district attorney did not pursue the matter and removed the occurrence from the student's permanent record. This situation is a poignant example of the far-reaching impact of restorative justice in higher education.

Historically, most campuses have employed a legal system of justice in their disciplinary proceedings. This tends to be adversarial. Its win-lose atmosphere often leads to resentment, alienation, and even isolation for the students involved (Gehring, 2001; Karp, 2005). Unfortunately, it has not made a dent in the unruly behavior that plagues many campuses.

The major challenges involving students on our campuses appear to be getting worse: high-risk alcohol and drug use persists at dangerous levels. Student mental-health issues have never been more prominent. Cheating and a lack of respect for academic integrity are epidemic (Lake, 2009, para. 1).

Exploring diverse approaches to supplement these ubiquitous traditional systems of justice seems prudent. Karp (2013) is a contemporary voice calling for this search.

Just as criminal justice officials have learned they cannot incarcerate their way out of the crime problem, campus conduct officers know they cannot suspend their way out of their student conduct problems. Restorative justice offers a different approach that is educational for the student offender while also meeting the needs of the harmed parties and the institution (p. 8).

Unlike traditional judicial approaches that focus on punishment, restorative justice aims to repair the harm caused by the crime while holding offenders accountable to active measures of restitution (Karp, 2013; Zehr, 2002). Having been successfully implemented in the court system, its novel ideas have also been applied in K-12 education communities. Higher education, on the other hand, has been reluctant to embrace its practices. In one of the rare pieces of research on restorative justice in higher education, Meagher (2009) noted that only 8% of colleges and universities had any kind of restorative program on their campuses. Although the numbers are growing, it's been a slow process (Lipka, 2009).

This article argues that restorative justice is a valid disciplinary scheme for higher education judicial affairs. First, this discourse describes restorative justice while comparing it to traditional systems. Next, it explores the rationale for restorative discipline being a perfect fit in light of the mission of most institutions. A part of this will be elaborating on the efficacy of a restorative justice model in addressing hegemonic male attitudes. From there, it will strategize practical implications for higher education.

Restorative proponents admit that it is not the panacea for all disciplinary situations.

Admittedly, "Some offenders are simply too self-consumed to care about the impact of their behavior on others" (Karp, 2013, p. 19). However, it is a viable addition to the discipline process. It would behoove college officials to explore its value.

Basic Principles of Restorative Justice

The turbulence of the 1960s ushered in the reform forces of the 1970s. Out of the initiatives of these reforms arose the restorative justice movement. Critical of conventional methods of detention and punishment, its promoters advocated for more effective avenues of rehabilitation and restoration for offenders. They also sought more salient approaches for promoting healing to the victims (Calhoun, 2013).

According to Zehr (2002), a pioneer in the restorative justice movement, this practice is grounded in three principles: repairing harm, holding offenders accountable, and restoring the community. He defined restorative justice as a "process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible" (Zehr, 2002, p. 37). Unlike traditional forms of justice, restorative justice does not deal with offenses by myopically determining punishment. Instead, the restorative system views crime in a broader context. A crime is not a simple violation of the law. It is a violation toward a community (Zehr, 2002). Therefore, the objective is not to punish the breaking of the law. Instead, its objective is to repair the community harmed by the crime (Waltman-Spreha, 2012).

The Restorative Process

In conventional judicial systems, offenders remain passive as court officials deliberate over the situation. In comparison, restorative discipline focuses on "active accountability"

(Karp, 2013, p. 11). Its entire process challenges the passive position. With the help of a trained third person, a face-to-face conversation occurs between all those touched by the crime and the perpetrators. The perpetrators hear the emotional, physical, and relational impact of their behavior on the community because there is a wider community affected. This community deserves avenues to healing and understanding. Such conversations are a catalyst to the healing process (Zehr, 2002).

From there, the group agrees upon steps of retribution. It is a contract that outlines specific requirements, for the perpetrators, that demonstrates remorse, an acceptance of responsibility, and a demonstration of accountability. If all actions on the contract are fulfilled within the stated amount of time, the offenders are slowly and safely reintegrated back into the community.

None of this process is easy for anyone. However, it often yields more positive outcomes for the victim(s), the community, and the offender than does the conventional treatment of crime (Calhoun, 2013; Karp, 2013). One important caveat is that, throughout the process, victims are not expected to forgive their offender, although that is sometimes an outcome. It is simply an opportunity for their experiences and needs to be validated (Zehr, 2002).

Retributive Justice and Restorative Justice Comparison

Higher education has modeled its judicial affairs systems after the legal system which is ensconced in retributive justice (Gehring, 2001). Here, the judiciary assesses the extent of the crime and then dispenses punishment. While certainly beneficial in some cases, there are situations in which the offender and even the victim are unnecessarily harmed by the practice. Restorative discipline purposes to ameliorate some of these painful consequences. According to Calhoun (2013), both victims and offenders deemed restorative

conferencing fairer and were more satisfied than those who participated in the traditional model of justice. Karp's (2013) latest research confirmed these findings. In order to understand this difference, this section will compare the two approaches.

Philosophical Differences

The ubiquitous retributive justice system in campus judicial affairs is concerned with the broken campus code of conduct. Its main questions are: What laws were broken? Who did it? What does the offender deserve (Karp, 2013)? Its success is measured by the extent of the punishment. This style of discipline is certainly appropriate for certain crimes. However, in other situations, it leaves many feeling unnecessarily harmed and isolated. The needs of the victims, the offenders, and the community are not addressed. As a result, it often deepens societal wounds while limiting its effect on the healing process (Zehr, 2002).

In comparison, restorative justice asks: Who has been hurt? What are their needs? Whose obligations are these? Who else has a stake in this situation? How can we make things right for all involved (Zehr, 2002)? Restorative justice proposes that crime is not as simple as a broken law. People, relationships, and the community-at-large are harmed. That harm needs to be addressed. Being grounded in the principle of repairing harm, restorative justice is a viable alternative. It also promotes holding offenders accountable and restoring the community (Allena, 2004; Karp, 2004).

Victims and Offenders Differences

The traditional retributive process promotes passive participation of both the victim and offender. A third party hierarchal system imposes sanctions. Accountability is merely taking one's punishment (Allena, 2004; Zehr, 2002). A consequence of this approach is that no one's needs are genuinely considered. The inescapable truth is, however, victims crave

real answers: Why did this happen? Why me? How can I be sure it will not happen again? Restorative discipline attempts to address those answers through the restorative conversations between victims and offenders (Karp, 2013; Zehr, 2002).

Restorative discipline is also more beneficial to offenders. The traditional system discourages responsibility and empathy. It is also isolating (Zehr, 2002). On most campuses, the model is progressive exclusion: probation, suspension, and expulsion (Karp, 2013). In comparison, in restorative justice, offenders are an active part of a process of listening to victims' stories, expressing remorse, accepting responsibility, and being reinstated back into the community. The objective is to begin the healing of the community, which includes, rather than isolates, offenders (Allena, 2004; Karp, 2004; Zehr, 2002).

Overall, the traditional approach is a one-size-fits-all system. In comparison, restorative justice provides unique and creative solutions. Moreover, they have proven track record of fairness. Both victims and offenders acknowledge its effectiveness in meeting their emotional and material needs (Karp, 2005). In one of the first higher education studies comparing restorative justice to traditional models, Karp (2013) found that victims overwhelmingly valued being active participants in the process.

Soft on Crime?

To the critics who contend that restorative justice is soft on crime, its proponents provide convincing arguments. Waltman-Spreha (2012) proposed a moving away from a "soft" or "hard" justice paradigm into recognizing the distinction between accountability and punishment. Traditional crime only offers punishment. Its sole purpose is to inflict pain and isolation with little or no regard for accountability to others. Looking at crime through a different set of lenses, restorative

justice encourages personal responsibility for one's actions along with accountability to the community. The latter response is more beneficial to society and the offender.

Also, in the traditional system, the offenders stand before a judge. Typically, the victim is not present. Restorative justice stands as a stark contrast to this approach. Here, the victims share their experience to the perpetrator. This face-to-face dialogue forces the perpetrators to listen to the effects of their actions. In many ways, this seems more difficult, as well as humbling, than the "hard" approach of the punishment laden justice system. Karp (2013) agreed.

It is much harder to ignore the artist, shopkeeper and arts director who are sharing real experiences and emotions and seeking to make eye contact with the offender, drawing him outside of himself and into a larger, communal understanding of the incident and its consequences (p. 12).

One more defense of the restorative justice framework is that the tough approach to crime is simply not working. Across the board, incidents of serious crimes are on the rise. Prison populations are exploding and campuses are experiencing increasing threats to safety. "The real question is whether or not the continually increasing penalties considerably and effectively reduce the incidence of serious crimes in our society, and the answer is generally 'no'" (Waltman-Spreha, 2012, p. 97).

The supporters of the traditional system are backing failed policies. Even more sobering is that many criminals are repeat offenders. The "tough on crime" approach did nothing to deter their nefarious activities. The strongest argument for restorative discipline, worldwide, is that it has reduced the rate of recidivism (Calhoun, 2013; Walman-Spreha, 2012). The same truth is emerging on college campuses as more research is completed (Karp, 2013).

The success of restorative justice notwithstanding, some crimes are so heinous that nothing but punishment is in order. Some offenders are lacking in any moral character. Prison or suspension is, truly, the only option. The restorative justice community does not deny that. However, its tenets propose more creative solutions to the myriad of other perpetrators (Zehr, 2002).

Restorative Justice in Higher Education Judicial Practices

Higher education seems reticent to embrace restorative discipline. As of 2009, only 8% of all campus communities had any form of restorative procedures as part of their judicial proceedings (Meagher, 2009). Dr. Josh Bacon, Director of Judicial Affairs at James Madison University, in an interview in 2012, elucidated his thoughts on this reluctance. In his opinion, it requires a paradigm-shift. With discipline procedures being steeped in the traditional legal format, the restorative approach necessitate a new mindset. Waltman-Spreha (2012) agreed: "The ability to accept restorative justice as an appropriate response to criminal behavior, especially in serious offenses, is likely to be hampered by an overly punitive orientation" (p. 92). Many campuses seem unable or unwilling to alter their thinking. Unfortunately, this resistance is typically based upon incomplete or wrong information about restorative justice (Karp, 2005).

Another reason, as Bacon explained, is that restorative discipline is a time consuming endeavor that requires more resources. Although some campuses have overcome this barrier by adding it to current job descriptions, others assess that the modification is beyond their current capabilities in manpower and finances (Darling, 2011). Nevertheless there are compelling reasons to try to overcome these barriers and incorporate some level of restorative justice in campus judicial affairs.

Inadequacies of Traditional System

The most persuasive argument for experimenting with restorative justice in higher education is that the current system is not working. For one, student behavior is not improving (Farzana & MacAlister, 2010; Lake, 2009). Additionally, student development is not maximized by conventional justice proceedings. "The disciplinary process on campuses has been too procedural and mirrors an adversarial proceeding that precludes student development" (Gehring, 2001, p. 466).

Because of its adversarial nature, students often view the campus code of conduct as intrusive control from the administration. The interpretation creates animosity and fear as well as lack of respect for the rules' intentions (Oles, 2004). A restorative justice approach is more educative. Its story telling process reveals to students the negative effect of their misconduct. Within that backdrop, the code of conduct makes more sense because students perceive the rules as a necessary component in maintaining a peaceful campus community. This kind of training could segue way into more support for community standards which could begin to affect student conduct (Oles, 2004).

Student Development

Most colleges are intentional about developing the whole student. Part of maturity is taking responsibility. The restorative justice principles work conjointly with this philosophy (Meagher, 2009). Offenders accept their responsibility to a university code of conduct and to the victims and community (Allena, 2004; Parker, 2005).

Another piece of the student development puzzle is that restorative discipline engages students with real community problems. Both victims and offenders work toward an agreeable sanction rather than awaiting a third party's adjudication. This interaction develops

interpersonal skills as participants listen and genuinely understand another's viewpoint. Likewise, critical thinking and evaluation skills are honed as students wrestle through very ambiguous and unique situations (Oles, 2004).

Furthermore, colleges strive to be educative and forward thinking and strive to challenge students' creative thinking. This goal seems disengaged from their decades old traditional system of punitive justice with its cookie-cutter sanctions. In this situation, restorative justice offers a viable alternative. As explained, it is educative and creative because each situation is handled uniquely. It also represents forward thinking into new ways of handling discipline (Karp, 2005).

Campus Community

Creating a strong sense of campus community is part of the mission statement of most colleges and universities (Farzana & MacAlister, 2010). Contrasting that philosophy is traditional system's sanctions. They typically involve progressive removal of a student from campus life – probation, suspension, and expulsion. The intention of restorative justice, however, is to engage the offenders in the community through conversing with community members, accepting the impact of their actions, and making things right to the community. Ultimately, the goal is reintegration of the offenders back into the campus. Isolating suspension is no longer their only fate (Parker, 2005).

Hegemonic Male Culture

College males disproportionately violate policies when compared to females. This means they are more apt to face disciplinary proceedings (Harper, Harris, & Kenechukwu, 2005; Ludeman, 2011). Many attribute this trend to "the traditional masculine norms of hegemonic masculinity" (Ludeman, 2011, p. 197). The hegemonic male attitude encourages violence, sexual harassment, sexual abuse,

alcohol abuse, and other self-destructive behaviors (Ludeman, 2011). Harper and his colleagues (2005) contended that males with this tendency assume that violating campus policies is simply "what boys do" (p. 3). Some argue that these deviant behaviors are more common in normative male roles than some realize (Ludeman, 2011).

The traditional, more adversarial, model of discipline fails to address this link between these attitudes of masculinity and breaking of campus policies. Its punitive system neglects the potential for developing empathy. In some ways, it only reinforces the need for males to remain tough and insensitive (Harper, Harris, & Kenechukwu, 2005; Ludeman, 2011).

The archetypal image is a young man sinking down in his chair, with his arms crossed against his chest and a baseball cap pulled low over his brow. It is as if his body is saying, "I'm not here. You can't reach me" (Karp, 2013, p.11).

Restorative discipline could potentially minimize some of these failures of the traditional system.

By purposefully designing opportunities for male offenders to examine the effects of their anti-social behavior, restorative discipline is more likely to break through the barriers of hegemonic masculine attitudes. Ludeman (2011) added, "Although judicial programs often reference learning and developing empathy as essential to judicial outcomes, evidence of how the judicial process provides these elements is rarely presented" (p. 203).

Meagher (2009), in his qualitative dissertation, found the process helpful for students' recognizing the effect of their behavior on others. One male student admitted that the calming and accepting process of the restorative conference helped him "open up...and take full responsibility for it (the negative behavior)" (p. 85). Consequently, restorative discipline has the potential of bridging the gap where

the traditional justice has failed to address hegemonic male attitudes by assisting males in developing empathy and taking responsibility.

Practical Strategies for Higher Education

Dr. Josh Bacon, Director of Judicial Affairs at James Madison University, is a strong supporter of restorative justice. During a personal interview with the author, he described specific campus discipline issues that dove tail nicely into restorative discipline: noise violations, theft, disruptive behavior that results from alcohol abuse, sexual and racial harassment, and cheating. More violent crimes, such as rape and physical assault, would need to be viewed in a case-by-case basis.

Admittedly, more research is needed to determine the success of restorative justice in higher education. However, the schools that have implemented this program feel it has been effective for both victim and offender in a variety of cases (Lipka, 2009). The recent research of Dr. Karp (2013) confirmed this theory.

All proponents concede that making the shift to a restorative model would require planning and increased manpower. It would probably require three to five years to effectively implement a full scale campus restorative justice program (Darling, 2011). Still, even on a smaller scale, restorative justice is a worthwhile endeavor. As institutions embark on this mission, there are specific strategies to consider. This section will explore these practical suggestions.

Participation

Dr. Bacon noted that victim participation is always voluntary. Officials must be careful not to add any more harm to an already vulnerable student by requiring participation. As for the offender, the judicial officer maximizes voluntary participation. For example, the individual is given a choice between suspension and cooperation with the restorative system. That individual can choose to avoid the restorative plan (Karp, 2013).

Allena (2004) offered other guidelines. First, if either the victim or the offender decline participation, then the judiciary resorts to traditional sanctions. Furthermore, if the roles between victim and offender are blurred, it is unwise to pursue restorative justice. A third requirement is that if there is any likelihood the victim will be re-victimized, then this approach is ill-advised. Lastly, it is wise to avoid the process if the offenders will merely face retaliation. Restorative justice is about healing and restoring community. With it being a potentially delicate process, care is necessary to ensure the experience is beneficial and healing for all parties (Allena, 2004).

Follow-up to Restorative Conversations

The outcome of an effective meeting is a restorative agreement between all parties. In it are outlined tasks for the offender to repair harm and become safely reintegrated into the community (Meagher, 2009). Fines are often part of these agreements. Unlike retributive justice, however, they are no longer arbitrary. Instead, they are directed specifically at making monetary amends for the cost of the damage, where applicable (Karp, 2004). Additionally, apology letters are always part of the restorative agreement. These letters must contain: acknowledgement of responsibility, explanation of how the behavior was harmful, expression of remorse, commitment to make amends, and commitment to future behavior that is socially responsible (Karp, 2004). Although difficult, it is necessary that the agreement includes all of these elements. Upon its completion, the offender cannot register for the following semester until meeting all the agreement's obligations (Karp, 2005).

There are violent crimes or dangerous situations where suspension or expulsion is still the only alternative. This is often the case where students remain a threat to the campus community. Restorative justice advocates do not deny that these situations exist (Karp, 2005, 2013).

Conclusion

The traditional system of justice that prevails at most college campuses is adversarial. Because of its nature, participating students often feel alienated and resentful. Restorative justice presents a viable alternative to the punitive nature of the traditional system. It is been successfully incorporated into many criminal proceedings. However, higher education is still reluctant to apply restorative principles to its judicial proceedings.

Although restorative justice cannot and should not occur with every violation of campus rules, it has been shown to be a very effective alternative to the traditional system of justice in some situations. A common misconception is that restorative justice is the easy way out. However, a Resident Director at Fresno Pacific University summed it up beautifully.

My initial skepticism to Restorative Discipline was that I thought it was going to be soft and let people who had really done something wrong off the hook. What I have seen is that in most cases, dealing with situations in a restorative way, leads to greater ownership, accountability, and change as an offender. I now look forward to discipline situations knowing that there is great potential to come out with improved relationships and both victims and offenders who have grown (Abebe & Claason, 2007, p.5).

Restorative justice requires great patience and effort. The neat and easy approach is punishment. However, the mission of higher education is to educate and develop mature citizens. Therefore, campuses have a responsibility to consider anything that will attempt to do just that (Oles 2004). "Restorative justice offers a hopeful and empowering response to misconduct and a chance to rethink the overly legalistic approaches that now dominate the field of student conduct administration" (Karp, 2013, p. 82).

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