

Restorative Justice with Inmates in a Canadian Penitentiary

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Introduction

Beginning in Kitchner Ontario in 1974, Restorative Justice in Canada has grown significantly as an alternative approach to the traditional adversarial method for dealing with offending behaviour and victimization. The Canadian roots of restorative justice can be found in various faith communities, and this has carried on as newer approaches to restorative justice have emerged since 1974. The proposal for restitution and a meeting with the victim that began in 1974 in Kitchner Ontario came from a probation officer with connections to the Mennonite Central Committee. In a similar way, the 1993 initiative that led to the development of Circles of Support and Accountability started with the Mennonite Central Committee in Toronto (MCCOntario 2012). The role of faith-based communities in restorative justice development in Canada and elsewhere has kept a focus on ...restorative justice not as an emerging progression of legal thought and jurisprudence, but rather as a practical way of dealing with community crime and conflict, as well as with human hurt – a sum of processes and practices for which their faiths have both a duty and a calling. (Chiste 2006)

From the perspective of legal thought and jurisprudence, however, there have also been developments in Canada in which restorative principles have, for example, been adopted into sentencing principles contained in the Canadian criminal code. Although it would be difficult to say that restorative justice as a broad concept has become the major focus of the Canadian criminal justice system, it has at least grown to be an accepted set of principles that can be applied in a variety of settings.

A wide range of restorative justice programs and methods have emerged over the years (Cameron 2005), in Canada and elsewhere, and studies have been undertaken to evaluate these programs. A review of evaluative studies of restorative justice programs about ten years ago pointed to methodological challenges to evaluation when outcomes and indeed what is and is not a restorative justice program are not clear (Bonta, et al. 2002). In general though, restorative justice assumes that justice requires attention to the needs of victims, the responsibility of offenders for their actions, and repairing damage to victims and communities. Sometimes described (Miller, 2011) in practice as being either a form of diversion from the criminal justice system, or part of a therapeutic approach to healing and empowerment of victims, widespread use of the term can result in dilution of the concept, but also expansion into areas of justice processes not part of the initial thrust of restorative justice as practiced mainly in community settings.

One of these areas where restorative justice has moved beyond community-based initiatives has been the prison. The emphasis on community in early restorative justice programs has not excluded the possibility of considering restorative justice approaches in prison settings (Toews, 2006). A range of programs has developed in

prisons in different parts of the world with a variety of objectives that are consistent with restorative justice principles. This paper will describe one such program in the Canadian Federal Penitentiary at Stony Mountain, Manitoba. The program consists of a prison and community component. The prison component consists of inmates, ready and willing to explore Restorative Justice to encourage them to be accountable for how they have victimized others, to provide meaningful opportunities to address community and victim concerns through redemptive actions, to increase participant's capacity to respond differently when faced with future conflicts, and to successfully re-engage offenders with the community. The community volunteers relate to the identified group of offenders in the prison for the purpose of encouraging accountability and reparation, promoting healing and safe and peaceful outcomes for all parties. Due to government reductions in financial support for programs that foster community partnerships between federal custody institutions and community groups, this particular initiative has been considerably reduced. The paper thus suffers from some incomplete information and ends on a note of uncertainty about the future.

The Penal Context in Canada

Before moving further into a description and discussion of the program however, it might be helpful to provide some brief introduction to the aspects of the Canadian criminal justice system that are relevant to this program. As well, some context with respect to the current climate of penal policy in Canada, related to both victims and imprisonment policy might be advantageous.

Canada is a federation of 10 provinces and 3 territories, and the powers of each with respect to criminal justice are defined in various constitutional documents from the British North America Act of the British Parliament in 1867 up to the Constitution Act of 1982. At the risk of oversimplification, the Federal Government is responsible for the Criminal Code including sentences for offences, for custody of all convicted offenders who receive a sentence of two years or more, and for release from prison on parole license. The provinces and territories have responsibility for the administration of justice including policing, the courts (except the Supreme Court), prosecution, non-custodial sentences (fines, probation, community service, etc.), remand custody and custody of offenders with sentences of less than two years. For present purposes, it is important to remember that those with lengthy prison terms are in Federal penitentiaries. Canada has generally showed greater restraint in the use of imprisonment than its continental neighbour, the USA, and its primary historical and legal ancestor, the United Kingdom. The work of Webster and Doob (Webster and Doob 2007) provides a thorough discussion of the major issues in Canadian penal policy up to 2005, and in particular spells out the primary reasons why imprisonment rates at least for adult males has not been as high as some other countries. Canada remains somewhere in the middle of the European imprisonment

rate league tables at 116 per 100,000 population. It is less than England and Wales at 154 per 100,000 but significantly greater than places like Sweden at 70 per 100,000 and Finland at 59 (Lappi-Seppälä 2011).

With respect to victims and their involvement in the criminal justice system, Canada has taken what could be termed a dual approach, providing various levels of support both within and beyond the criminal justice process, and a strong orientation towards the rights of victims. Two authors writing almost 13 years ago identified this second orientation as problematic, since in their view it was part of a punitive trend in criminal justice. 'The focus was on the criminal sanction and its promise of safety and security. A punitive model of victims' rights promoted the power of the traditional agents of crime control - legislatures, police, and prosecutors - while not necessarily empowering crime victims and potential victims.' (Roach and Pascal 1999) Support for victims from the state has been focused on specific categories of victimization, for example support for victims of child abuse and domestic violence has been strong, whereas government support available for victims of crime in other areas has been limited to help with the criminal justice process, and recovery of lost wages and out of pocket expenses. The rights of victims for input into the criminal justice process (from victim impact statements at sentencing to information about offenders in custody and involvement in parole/release decisions) have continued to be strengthened and recent legislative changes in Canada have shown support for a rights-based approach is continuing.

Restorative Justice in Prisons

With this as context, discussion may now turn to the idea of restorative justice in prison settings. There are both pragmatic and philosophical grounds for questioning whether or not restorative justice-based programs are possible in prisons, and indeed whether a successful restorative approach in prison (whatever form that might take) could be interpreted as somehow supportive of imprisonment. If restorative justice is a decidedly different orientation to justice than retribution, then how can this be possible in that most retributive of settings, the prison? Several authors have addressed this question, along with the practical issues of prison based restorative programs. Van Ness (Van Ness 2007) provides an extensive review of both practical and philosophical concerns about restorative justice in prison settings. He suggests, as do others, that restorative justice is not necessarily a polar opposite of retributive justice and in particular that prisons were at one time seen not as a pillar of retribution, but rather as a place for rehabilitation. More broadly, restorative programs that promote victim awareness, provide the possibility for offenders to make amends, for encounters between inmates and the community, as well as other objectives, can work successfully in the prison setting. Liebmann suggests two broad categorizations of prison based restorative programs: those that are oriented to encounters between offender and community, and those

that seek to implement restorative justice (frequently a form of conflict resolution and mediation) within the prison setting (Liebmann 2007).

The authors of a recent review of restorative justice programs in prisons (Dhami, Mantle and Fox 2009) point out that RJ programs in prisons should have one or more of the following objectives:

'helping prisoners take responsibility for their actions, recognize the harm they have caused, develop an awareness of victims' needs, and provide them with an opportunity to make amends to victims and give back to their communities

helping victims, families and communities communicate their needs to the offender, and develop an awareness of how the prison is assisting the offender in rehabilitation;

strengthening mutually beneficial ties between the prison and community, so that the community becomes aware of the prison's work and can aid in the reintegration and resettlement of prisoners, and maintaining the prisoners' family ties;

creating a prison system and culture that humanizes prisoners, gives them a decent standard of living, keeps them safe and secure, provides them with opportunities to transform themselves by using their time productively, promotes positive interactions between staff and prisoners, and resolves conflicts using alternative dispute resolution techniques.' (p. 437-438)

The Paying it Forward program, the focus of this paper, incorporates the first three of these four principles. It is in the second, and possibly last year (at least in its present form) of what was to have been a five year project. Initially funded by the Correctional Service of Canada it is sponsored by the St. Leonard's Society of Manitoba and the Mennonite Central Committee. Both organizations have strong roots in Christian faith communities¹. The program is run at Stony Mountain Penitentiary, a maximum security prison 20km north of the City of Winnipeg. The objectives of the program are as follows:

A response to serious crime that engages offenders in understanding the harm they have caused, while providing opportunities and encouragement for them to find redemption by using their time and their talents for the betterment of their environment and the broader community. Through the community component, victims and other community members will both challenge inmate participants in their understanding of accountability, and also support them in completing redemptive plans & projects.

There are two groups involved in the program, a community group and an inmate group. The objectives of each are detailed below.

The inmate group is intended

1. To provide a context within which the offender can begin to understand and experience accountability for his actions, through interactions with victims and community members;
2. To create a safe environment for inmates and community members to interact;
3. To enable volunteers to participate in crime prevention;
4. To give a voice to victims;
5. To provide a context within which victims and community members can gain an understanding of offender worldviews and challenges to reintegration in society.

The intent was to recruit inmates from those doing life or long sentences. Release was not a short or medium term possibility for these initial participants. The group is made up of ten offenders: two were convicted of manslaughter, two of first degree murder, four of second degree murder, one of drug trafficking, and one of armed robbery. All have served between 4 and 21 years in prison on the current offence. The inmates were surveyed as to why they had decided to join the group. The following are comments from two of the inmates:

‘I want to give back to the community. I want to show society that not all inmates are horrible people. We all make mistakes and we should have an opportunity to make things right. And being in jail does help us change and realize our wrongs’

‘[I wanted] to better myself, to calm the fears of those who probably do hate and fear me to some extent. Redemption. To improve my self-esteem, to contribute to a realistic release plan, to plan a stable future, faith in reason’

The community group is intended

1. To provide a context within which offender group members can begin to understand and experience accountability for their actions, through interactions with victims and community members;
2. To create a safe environment for inmates and community members to interact;
3. To enable volunteers to participate in crime prevention;
4. To give a voice to victims;
5. To provide a context within which victims and community members can gain an understanding of offender worldviews and challenges to reintegration in society.

Seven community group members agreed to participate, ranging in age from 21 to 70 years old. One was a victim of a serious crime (parent murdered); others not victims of a major crime. In the words of the project facilitator, 'we didn't want a church group, a victim group, an offender group or a focus group of like-minded people. We wanted diversity in thought, lifestyle, values and philosophy, age and gender.' The following are comments from two members of the community group:

'My father was murdered and my mother was involved in Restorative Justice. And I would like to continue the tradition of understanding'

'I want to find out if I can contribute to bring about justice, to help facilitate to meet the needs of people caught up in crime'

There are two facilitators to the group. The male facilitator has over 30 years' experience working in community justice and restorative justice, and in campaigning, advocacy and direct service delivery. The female facilitator has extensive experience working with victims of crime and has been active in victims' organisations and in Restorative Justice, mostly victim-offender programs both in the community and in prison. Her own daughter was abducted and murdered at age 13 twenty-eight years ago. (The perpetrator was eventually charged and convicted just 2 years ago.)

The groups initially met with the facilitators, but not with each other. The community group met twice per month over a ten month period. The inmate group met once every two weeks for nearly a year. Joint sessions were then begun and have continued regularly for nearly a year. The sessions started with an initial dialogue followed by identification of projects, which would provide opportunities for "redemptive action" by the inmate group, but with support from the community group. There was also one joint session with an external speaker, herself a 'victim' in that her husband, on life parole for murder, was arrested and convicted shortly after their marriage of forcible confinement and attempted sexual assault against two strangers.

Reactions by members of both groups after the first meeting between the two provide some insight into what they felt and how things were able to progress. The facilitators commented that the first reaction of the inmate group was their surprise that the community group was not 'entirely raw, angry crime victims'. Offenders had 'psyched themselves up to prepare for a real slap down session.' The leaders of the Community Group were surprised that they felt so comfortable behind the walls. "It was not scary. It was good." One group member said that it had been hard to tell who the inmates were and who the "guests" were.

The result of the groups coming together has been the collaborative development of an initiative which uses the creative talents of some of the inmates and the outside

contacts of the community members to market hand-made craft products. Profits are donated to a charity which will support victims with a 'safe place' in which to obtain information about the criminal justice system, and for organizational space for groups which support crime victims. As well, two new groups have been developed (Inmate and Community) for another minimum security prison close by. In this case, the inmates are more engaged in preparation for release. The new community and inmate groups have begun a collaborative effort to support the hand-made craft project of the first groups. The 'success' of the project, at least for now, would appear to be both the establishment of a collaborative process to use the creative talents of the inmates (crafts, specifically jewellery) and the community group (contacts in the community for marketing, distribution and sale) for a worthy cause (profits donated to a charity to assist victims of crime). The expansion to a second institution and more community involvement would seem to suggest benefits beyond the original groups.

A final note: At the time of writing (March 2013), the main source of funding for the project has been terminated by the Federal government. This has resulted in some uncertainty about the evaluation component of the original project. Follow-up interviews with participants to assess the meaningfulness of the programs for participants have been postponed pending the outcome of funding applications to keep the project going. In the medium term, the Mennonite Central Committee has also agreed to provide a level of support to help keep the project viable.

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ⁱ The St. Leonard's Society, started in 1962 in Windsor Ontario by an Anglican priest, is a network of Canadian provincial societies that operate half-way houses across the country and also engages in other forms of service delivery working for justice. The Mennonite Central Committee in Canada is part of the global service organization of the Anabaptist Churches.