Restorative Justice as Emerging Legal Doctrine: A National Analysis of State Legislation

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Justice in the United States

Presentation at the National Association for Community and Restorative Justice 2015 Conference
Dr. Shannon Sliva, Assistant Professor, Graduate School of Social Work, University of Denver

(incarceration rate)
Justice in the United States

“We, as a country, must resolve to do better... That’s why I am proud to announce today that the Justice Dept. will take a series of significant actions to recalibrate America’s federal criminal justice system.

Attorney General Holder
August, 2013
RJ as a Policy Solution

NUMBER OF RJ STATUTES ADOPTED
1988 - 2014

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RJ as a Policy Solution

http://www.rjclearinghouse.org/

Where is RJ Being Offered?
When Are States Using RJ?

- Pre-Trial Diversion (21)
- Interm. Sanctions (19)
- Post-Sentencing (11)

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Who Can Access RJ?

- Juveniles: 9
- General Population: 14
- Schools: 4
- First-Time Offenders: 3
- Non-Violent Offenders: 4
- Surrogates: 2

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RJ Clearinghouse

http://rjclearinghouse.org
Carolyn Lambert, Director

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Some Questions...

What do these states have in common?

How can we get a policy passed?

How can we best organize/advocate?

Can RJ work as a policy?

Can RJ even be used ethically by the state?
CJ Policy Predictors

Problem Environment
- Crime Rates
- Incarceration Rates
- Recidivism Rates

Economic Environment
- State Fiscal Capacity
- Structural Capacity
- Correctional Capacity

Political Environment
- Legislative Characteristics
- State Political Ideology
- Interest Groups Entrepreneurs

Social Environment
- Race
- Gender
- Education

Fitted Model

- % Female Legislators***
- % Democratic Legislators
- % Black Population*
- % Tribal Population
- Victims’ Rights Support
- Incarceration Rates**
- State Revenue
- Crime Rates**

$Exp(\beta) = 1.18$

Chi Square Omnibus Test
$\chi^2(8, n=49) = 17.299, p=.027$

Goodness of Fit Tests
$G^2 (88) = 89.304, p=.441$
$\chi^2(88) = 101.309, p=.157$

Level of RJ Support
0=None
1=Ideological
2=Active

*p<.10
**p<.05
***p<.01

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Recent Legislative History

COLORADO

2007: HB1129 (encourages)
2008: HB1117 (adds specificity)
2011: HB1032 (omnibus)
2013: HB1254 (expands/clarifies, pilot)

TEXAS

2007: HB2750, HB2437
2009: HB2114, HB2270, HB2633, HB2882, HB2139
2011: HB1787, HB2019, HB2065
2013: HB167, HB937, SB1237
Major Qualitative Themes

COLORADO
- Collaboration
- Dynamic Policy
- Entrepreneur
- Crime Victim’s Rights
- Practice Seeds Policy
- Definitional Clarity
- Gradualism

TEXAS
- State Concern for Juvenile Justice
- "No Fiscal Note"
- District Attorney Lobby
- Policy Transfer
- Bi-Partisan
- Conceptual Support

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The Role of Key Actors

**POLICY ENTREPRENEURS**
- Innovates/Defines
- Bears Risk
- Assembles Networks
- Dynamic Figure

**ADVOCACY COALITIONS**
- Shared Beliefs
- Coordinated Action
- Broad-based
- Long-term

**INTEREST GROUPS**
- Professionalized
- Resourced
- Political Capital
- Highly Effective

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Social Factors

BLACK POPULATIONS

• Unexpected effect of larger black populations
• Not explained by targeted advocacy
• Diversification of the U.S. and crime policy

The Changing Face of America

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Percentage Caucasian</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900s - 1970s</td>
<td>87-90%</td>
</tr>
<tr>
<td>25 Years ago</td>
<td>80%</td>
</tr>
<tr>
<td>Now</td>
<td>66%</td>
</tr>
<tr>
<td>25 years ahead</td>
<td>54%</td>
</tr>
</tbody>
</table>
Social Factors

FEMALE LEGISLATORS
- Female legislators and practitioners in key roles
  - Some evidence of a female preference for reciprocal forms of justice
- Closing gender gap and feminization of public policy

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Social Factors

TRIBAL INFLUENCES
- No evidence of a strong tribal influence
- Few U.S. states have large AIAN populations
- Acknowledgement of, but disconnect from, indigenous roots
Political and Economic Factors

PARTY SUPPORT

• Democratic party hypothesis rejected
• Evidence for bipartisan support at conceptual levels
• Republican concern for funding mechanisms and structural components
Political and Economic Factors

FISCAL/PRISON CAPACITY

- Fiscal capacity not predictive nationally
- Financial benefits too long-term, small, limited
- Influence of incarceration rates suggestive, but unclear

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Political and Economic Factors

VICTIMS’ RIGHTS

• This policy preference is not predictive nationally
• In Colorado, victims’ advocates sat on both sides of the issue
• Victims’ role in RJ still generates concern
For Practitioners

This work aids practitioners in understanding how they can use statutory support to bolster their work and vice versa.

Practitioners should:
- Document and organize local practices.
- Track program practices, outcomes, and participant characteristics to contribute to a body of knowledge.
- Ensure equal access to restorative practices.

Social workers have a critical role in the connection of criminal and social justice through the provision of equitable practices which honor the dignity of all people.

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This work assists advocates in identifying effective messages and advocacy strategies, including:

- Finding the “right” sponsor
- Navigating opposition through collaboration
- Embracing gradualism, concession
- Empowering marginalized voices

Policymakers and advocates should develop state practitioner directories and centralize data on restorative practices and their outcomes.
This work introduces the need for **further research on implementation and impact** of statutory support.

The research community should develop model codes and administrative guidelines for restorative justice that incorporate:

- What we know about likelihood of adoption
- Support for best practices
- Ethical guidelines (including attention to eligibility)
- Measurement of system-level indicators
Q & A