

Developing Restorative Practices in Latin America
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Restorative practices offer new opportunities for governments and communities to address the needs of those affected by crime, while also generating opportunities for positive changes throughout society. For this reason, processes incorporating restorative values have developed in several Latin American countries. Introduced either by governments or civil society organizations, these processes attempt to resolve micro-level issues related to individual crimes, while providing opportunities for macro-level changes to address corruption, access to justice, and generalized violence.

The values of restorative justice-encounter, inclusion, amends, and reintegration- stress healing the harms caused by crime, taking responsibility for one's own actions, and working to create a more positive future for both victim and offender. **Encounter** allows the victim and offender to share, either directly or indirectly, their stories and to develop a means for repairing harms. **Inclusion** gives each participant a voice in the proceedings and outcomes. Through **amends**, offenders attempt to repair the harm caused by their actions. **Reintegration** enables both victim and offender to become contributing members of society (Van Ness and Strong 2002).

The restorative nature of a program or process is evaluated by measuring the existence of certain characteristics. **Because** all parties affected by a crime are included, restorative processes are balanced in scope. **Voluntary** as opposed to coerced participation is sought. **With** their problem-solving orientation, restorative practices look toward building healthier relationships in the future instead of concentrating on the

punitive consequences of a past event. Combined with the values of encounter, inclusion, amends, and reintegration, these characteristics allow participants to discover the whole truth about an incident; who was responsible; how the parties perceive each other; and the impact of the crime on the victim, offender, and community. The degree to which a practice or program incorporates these characteristics and values determines its level of restorativeness.

In the last decade, several Latin American countries have developed processes and programs that have introduced restorative responses to crime to this continent. *(As I will mention later, indigenous practices are often restorative in nature, and I do not mean to suggest that restorative justice represents something new in relation to those. But it is only recently that elements of the modern international movement called restorative justice have been introduced.)* Among these are encounter processes that include victims and offenders in constructing solutions that emphasize reparations and that redefine the roles of state and community in addressing the needs of both victims and offenders.

Common Practices in Latin America

Penal Mediation, or victim offender mediation, brings the victim and the offender together with a neutral third party in an interactive process to understand the crime and to develop a plan for responding to its impact (Caram ND:1). Non-governmental organizations and universities in Argentina, Mexico, Brazil, and Costa Rica developed pilot projects and pushed for enabling legislation during the 1990s. Let me give you a few examples.

In **1998**, the University of Buenos Aires Law School and the National Ministry of Justice joined forces to implement a **pilot** project known as Proyecto RAC. This project allows either the victim or the offender to request mediation. After a criminal complaint is filed, the project staff contacts the other parties involved to ask if they would like to participate in the process. After this initial step, the staff evaluates the conflict in light of criteria such as the complexity of the matter and the power relationship between the parties. From this evaluation, the project staff decides which of three processes should be used. The options are mediation, conciliation and moderated conciliation conferences.

Mediation, the simplest of the three options, offers a great deal of flexibility to the involved parties. The mediator, a neutral third party, creates an open space for communication between the victim and offender. The process consists of four meetings, including two preparatory meetings. Cases referred to mediation are characterized by a low level of conflict; a predisposition of the parties to communicate; and an openness to an economic settlement on the part of the victim.

Conciliation, the second alternative, gives the mediator more authority to expose aspects of the conflict and to suggest possible methods for resolution. This process is used in cases of

- Apparent social inequalities
- A poor climate for communication
- Many layers of conflict
- Multiple parties on each side

The third alternative, *conferencia de conciliación con moderador* (CCM), is used when the victim and offender disagree on the facts of the case. Although it serves as a tool to uncover the truth, CCM does not decide guilt. The parties present their cases to a panel of three advisors. One of these is affiliated with the Proyecto RAC and has a good understanding of the legal system. The others are trusted community members chosen by the participants. In a series of meetings, each side presents witnesses and evidence to support its own recounting of events. In seeking the truth, the panel members are able to question the witnesses. When both sides are satisfied that their entire story has been told, the panel members retire to discuss the evidence. In individual meetings with the victim and the offender, the panel members discuss the merits of the individual's case based on the strength the case would have in the formal legal system. After these meetings, the two parties decide whether to proceed with the alternative system or to return to the formal. In this way, the CCM is seen as an intermediate step between the formal and alternative systems (Lerner, Maidana, and Rodriguez Fernandez 2000).

Often, the term **Penal conciliation** is instead of penal mediation. According to Gonzalez Alvarez, **Colombia** pioneered the use of penal conciliation in Latin America. Article 38 of theCodigo Procesal Penal provides for the use of conciliation with adult offenders in cases such as simple assault and in property crimes with a value equal to less than 200 times the monthly minimum wage and where violence was not used (ND:14-15). Used throughout Latin America, penal conciliation focuses on healing for the victim through including his/her voice in the process and resocialization for the offender. **The process** has antecedents in indigenous traditions. Indigenous conciliators serve as judges or justices of the peace to help peacefully resolve conflicts so that social cohesion is not lost. Legislation in Colombia, Ecuador, Bolivia, Peru, and Guatemala recognizes the use of these indigenous practices in criminal matters (Gonzalez Alvarez, ND:8; Ungar

2002:214).

Reparative agreements are negotiated settlements between a victim and offender with approval from the presiding judge. The process allows both victim and offender to have a voice in the resolution of the crime, while meeting the victim's need for reparation and requiring the offender to take responsibility for his/her actions. At the same time, the reparative agreement avoids the negative social and economic impact of incarceration for the offender and his/her family, thereby aiding reintegration. An agreement can include a payment to the victim, symbolic reparation through community service or gifts to local institutions, or both (Zarate Campos 2001: 1-3, 23-24). In **Chile**, the reparative agreement was included in the NuevoCodigoProceso Penal and is used in some property crimes, fraud, or minor assaults (Ortega Sandoval 2000: 118).

Conferencing brings together victims, offenders, their families, and supporters to discuss the issues related to a crime. Community members, social workers, police, and attorneys may also participate. Throughout the world conferencing is being used in different contexts including schools and the criminal justice system.

Some Brazilian initiatives have experimented with conferencing in schools and in the juvenile justice system. **In 2000**, the Jundiaí school system in the State of São Paulo implemented a conferencing pilot project to deal with school violence, to respond to violations of school regulations and to resolve conflicts between students. The conferences provide a safe place to bring together everyone impacted by a crime or negative behavior. They discuss conflicting points of view, how to resolve the problem peacefully, and how to engage community members in addressing community problems (Scuro Neto 2000a: 18-19).

In Porto Alegre, conferencing has been introduced under the Children and Adolescent Act of 1990, which opened the door to alternatives to court for first time young offenders of less serious crimes. Although not specified in the legislation, conferences are being used to implement the agreed upon outcomes: reparation, community service, or specified school attendance (Tiffer, Mazera, Carranza 2002: 5).

Many countries are also experimenting with programs that **transform** the relationship between government and society by **including** community members in addressing the needs of victims and offenders. Three examples include an innovative prison management system, victim assistance committees, and houses of justice. These programs seek peace, healing, and restoration for those affected by crime.

The first example is Chile's Assistance Units for Victims of Violent Crimes. **These** units provide psychological, legal, and material support such as counseling and trauma intervention. Services are extended to family members when necessary. **Support** networks are organized to prevent isolation. **Legal** advice helps the victim understand the justice process. A part of the "Access to Justice" movement, the units provide legal assistance to victims as well. This assistance can include representing the victim in and out of court in seeking reparation. **Finally**, the units conduct community awareness programs to sensitize community members to the needs of crime victims (Ortega Sandoval 2000: 118; Chia et. al. n.d.).

The second example, the *Casa de Justicia* was established in Colombia in 1995. Also a part of the Access to Justice movement, **these** Houses of Justice combine social, legal, medical, conciliation, and welfare services in one building that is easily accessible by

poorer communities. **By** addressing the emotional, physical, and legal needs of victims, the House of Justice helps pave the way for healing. **Victims** and offenders are able to participate in the resolution of the conflict without the stigmas that are usually associated with either victims and offenders, while avoiding revenge and the continuous spiral of violence (Daza, 1999; Procesodepaz.com, 2001).

Brazil is home to the third example, a **unique** prison management system that is spreading to a number of countries throughout the world. Developed by the Association for Protection and Assistance to the Convicted (APAC), the Prison Fellowship affiliate in Brazil, the APAC methodology transforms the typical government/community relationship by using community members in administrating the prison and working with offenders. **It** creates a strong community environment among prisoners and community volunteers that fosters spiritual, behavioral and lifestyle changes. The underlying principles of the methodology are highly restorative and reintegrative in working with offenders. The APAC methodology creates an ethos of unconditional love, a love based upon God's sacrificial love for each individual. **It** seeks what it calls human valorization, a process that helps the person become fully aware of his or her innate human dignity and empowered to develop all of his or her capabilities. Volunteers address prisoners' physical, legal, and spiritual needs by providing medical care, legal aid, social work, and employment assistance, as well as Mass and other religious services. **APAC** offers participants every opportunity to journey from spiritual crisis to renewal. Finally this methodology gives priority to restoring and strengthening family relationships and in other ways of integrating prisoners positively into society with the help of godparents, mentors, and other PF volunteers (Parker 2001).

APAC's focus is on offenders. However, steps have been taken to help offenders

provide services to crime victims, and a new program is being explored that would bring victims into prison to talk about how they have been affected in the aftermath of crime. The program is called the Sycamore Tree Project. It brings unrelated victims and offenders together over a 5-8 week period to discuss issues of responsibility, confession repentance, forgiveness, amends and reconciliation. The program or variations of it have been successfully implemented in Great Britain, New Zealand, the US, South Africa, Korea, Singapore, and Rwanda. Within Latin America, Prison Fellowship NGOs in Colombia, Costa Rica, Panama, have implemented this programme as well.

Reasons for Using Alternative Practices

Countries are using these new programs for a variety of reasons. **For** some, they offer a strategy for decongesting the courts and prisons. In the 1980s and 1990s, crime rates, including for violent crimes, increased dramatically across Latin America.

Sensationalized media coverage increased the feelings of insecurity and fueled calls for tougher policies to combat crime. The result was not only a crisis in the court system, but also prison overcrowding that resulted in violations of human rights conventions (Carranza 2001: 17-20). In 1999, 25 of 26 Latin American and Caribbean countries had overcrowded prisons. The 26th was at 100% capacity (Carranza 2001: 9).

Other countries bring more actors into the justice system to address the lack of confidence in the administration of justice as well as issues of corruption. By including the victim and offender in resolving their conflict, restorative processes increase levels of satisfaction with the justice system, more understanding among community members, and stronger relationships between civil society and the government. These alternatives also provide access to justice for populations who are otherwise excluded from the

justice system: the poor, women and indigenous groups.

Many organizations and individuals supporting restorative practices seek to decrease violence and build a culture of peace. An example is the project to introduce conferencing to the schools in Jundiaí, São Paulo, Brazil. Not only did the project researchers and sponsors see this as a means to change the school atmosphere, but also as a way to affect the community culture itself. Because community members unknown to the victim and the offender participate in the conferences, responsibility for change and future support beyond the school halls is extended. Examples include providing resources to allow the offender to complete the agreement as well as general support. Program administrators believe that this will teach community responsibility (Scuro Neto, 2000b: 629).

Another reason to consider restorative processes is out of recognition of the needs and rights of crime victims. Victim compensation and the other forms of care are being written into law codes throughout Latin America. Mexico's revisions to Article 20 of the Constitution granted victims the right to be informed of the progress in a case, to participate in the prosecutorial process, and to receive reparation for the crime (Parra Barbosa. n.d.: 4). In Chile, reparative agreements are considered a way to include the victim in the system and to recognize his/her rights to compensation (Zarate Campos, 2001:6).

Government and Civil Society Partnerships

Not only are there different reasons for introducing restorative practices, there are a

variety of actors doing so. **Civil** society organizations, such as universities, churches and non-governmental organizations, are actively involved. **Examples** include the Law School at the University of Buenos Aires in Argentina and the Catholic University of Temuco.

When Chile implemented the use of reparative agreements and penal mediation in the *Codigo Procesal Penal*, Catholic University of Temuco used the opportunity to create conflict resolution mechanisms in society. In response to society's lack of confidence in the courts, it proposed the *Proyecto CREA* -- Center for Alternative Dispute Resolution. This project aims to:

- advance academic knowledge in the area of alternative dispute resolution
- disseminate information about alternative dispute resolution throughout society
- study international applications and their suitability to the Chilean context
- provide services to the community (Valencia Vazquez and Diaz Gude 2000: 7).

Proyecto CREA offers free mediation services in family, civil, and criminal conflicts.

Facilitators help the parties in conflict resolve the problem and create new relationships.

The eventual goal of this program is to equip Chilean society to resolve conflicts without turning to retribution.

In 2000, another NGO, the *Fundación Paz Ciudadana*, conducted an assessment of the types of conflicts in schools, the background of students involved, and current methods of handling these. The result was the Project for Peaceful Conflict Resolution and School Mediation in three high schools in the Cerro Navia community. The Fundación

Paz has proposed that these types of programs be implemented in all schools (Valenzuela n.d.).

Earlier we described the reasons that governments give for becoming involved in restorative justice. These include the need to lower prison populations, increase transparency in the administration of justice, and ease the overload in the judicial system. These efforts are aided by civil society's values of healing and reintegration, as well as the desire to transform society from a culture of violence to a culture of peace.

This government-community partnership is important in maintaining balance among the multiple interests brought to the justice reform table. For example, concentrating on decongesting the court or prison systems alone could lead to arbitration programs, which negotiate settlements without addressing the needs of participants or enabling the discovery of the whole truth. In this scenario, public and private interests can be lost due to an emphasis on administrative necessity. The lack of voluntary participation would create an adversarial environment concentrating on preparing a settlement to address the past crime, and ignoring the problem-solving or future oriented aspect of restorative justice .

Inclusion of civil society in restorative reform initiatives helps ensure a holistic approach. Furthermore, this partnership has potential for broader societal transformation. **Active** participation by citizens in areas that were once the exclusive domains of government builds confidence in the reforms and in the possibility for future community-government cooperation. For this reason, Pedro Scuro Neto (2000a) describes restorative justice as a middle-range theory to help his country, and maybe his continent, move away from government corruption and toward real governance and

strong communities. In this way, work toward restorative justice holds the promise of a broader transformation of Latin American society.

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