

# Overview of Mediation, Conferencing and Circles

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## Typology of Restorative Justice Practices

Restorative justice practices are those which directly engage the victim and offender of crimes. Some programs have historically focused on the needs of crime victims for reparation of the damage caused by the crime (victim support services, victim compensation/indemnification programs, and a variety of victim services). Other programs have historically focused on the needs of offenders for development of responsibility by helping offenders understand the harmful consequences of their behavior (victim sensitivity training), or seek to have offenders make reparation for their behavior (e.g., related community service sentences, youth aid panels).

Ideally, restorative practices bring victims and offenders together to address responsibility and reparation concerns simultaneously. Victim-offender mediation is perhaps the archetypal restorative justice program, by holding offenders accountable to their victims meets both victim and offenders needs restoration. Other programs simultaneously addressing need for victim reparation and offender responsibility include victim restitution, truth and reconciliation commissions, and victim offender panels.

Restorative justice theory always included a concern for victims, offenders, and community, and the needs crime creates for all three. Victim and offender both need to be reconciled into their communities of care (Zehr 1990). Prior to the 1990's, the role of 'community' in restorative justice practices was either very limited or overlooked. If we include these needs for reconciliation of the communities-of-care of victims and offenders, a more complete typology of restorative justice practices becomes evident (see figure).

This tripartite typology reveals the logical possibility of restorative practices which engage the offender's communities of care to address the needs for accountability, for example therapeutic communities, informal restorative practices, victimless conferences, and aspects of positive discipline programs. Restorative justice practices which engage the victim's communities of care to address the needs for reparation, for example, victim healing circles (Bushie 1999).

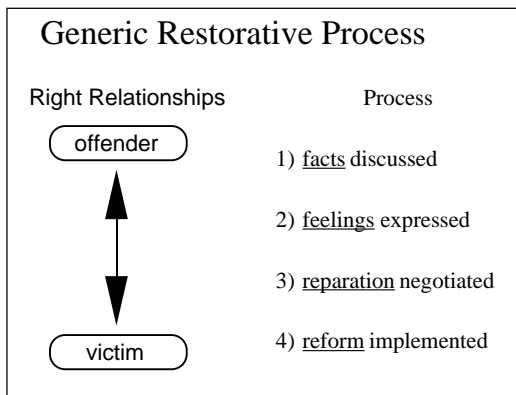


Among the myriad of programs now operating which claim to be models of restorative justice, only three models of practice simultaneously meet the needs of victims, offenders, and their communities of support. Only family group conferencing, community justice conferencing, and peacemaking circles meet the criteria as holistic restorative justice models. We now turn to a consideration of these programs in more detail.

### Core Model of Restorative Justice

In an ideal society where people behave with integrity and mutual respect, when wrongdoing occurs, the injured person confronts the wrongdoer about the offensive behavior. The offending person listens respectfully to gain a clear understanding of the nature of the wrong and its consequences so he/she can accept responsibility for the behavior, apologize and make amends, including a plan to prevent a reoccurrence. The offender is then forgiven, trust is restored and the relationship is repaired.

This ideal interaction illustrates the core restorative justice process, where only victim and offender are involved. No third-party intervention is necessary since both parties want to be responsible and maintain right relationship with the other. The core restorative process of right relationships has four sequential steps:



1. Acknowledgment of the wrong (facts discussed)
2. Sharing and understanding of the harmful effects (feelings expressed)
3. Agreement on terms of reparation (reparation agreed)
4. Reaching an understanding about future behavior (reform implemented).

Traditional Navajo custom to resolve conflict involves the idea of Hozhooji. If one person believes they've been wronged by another they first make a demand for the perpetrator to put things right. The term for it is nalyeesh, which is a demand for compensation. It is also a demand to readjust the relationship so that the proper thing is done. If this is unsuccessful, the wronged person may turn to a respected community leader to facilitate and organize a peacemaking process. The process is not confrontational but involves family and clan members of victims and perpetrators talking through matters to arrive at a solution.

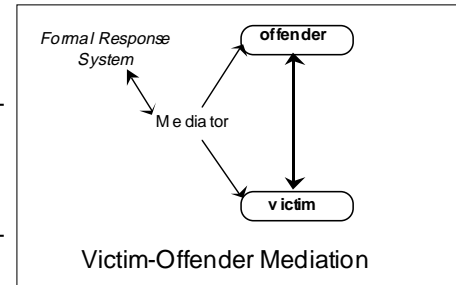
All pure restorative justice processes seek to have the victim and offender move through these four steps. The models differ in the structure each use to enable the process who facilitates, how participation is encouraged, who is involved in the process, and the scope of the issues to be addressed.

## Mediation Models

In criminal mediation, a neutral third party provides the bridge for a dialogue between victim and offender. The mediator guides a process where victim and offender:

- 1) talk about how the crime affected them,
- 2) share information,
- 3) develop a mutually satisfactory written restitution agreement, and
- 4) develop a follow-up plan,

thus enabling the victim and offender to complete the core restorative process.



## Conferencing Models

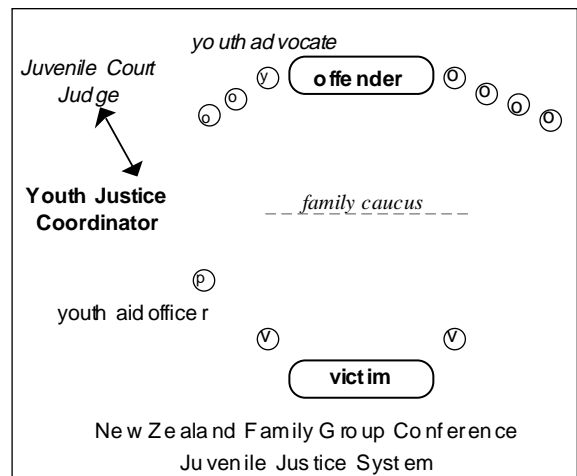
Conferencing is a process in which a group of individuals connected and affected by some past action, come together to discuss issues that have arisen (Warner-Roberts & Masters 1999). Conferencing is similar to mediation in involving offenders and victims directly, but includes others affected as well. Because it is a group process, the dynamics of a conference are very different than a mediated dialogue. Restorative justice conferences vary in the involvement of the victim, victim supporters, and offender supporters, but always include family members and significant others on the restorative process.

### Zealand youth justice conferencing (JFGC).

JFGCs are facilitated by youth justice coordinators, appointed by Social Welfare. In order to safeguard young offenders' rights, a youth legal advocate is provided in cases where an arrest is involved, and the court retains oversight over conference agreements (McElrea 1996). JFGCs convene at a time and place chosen by the family and are attended by the young offender, the family (including extended family), the victim, victim supporters, a police youth aid officer, the youth advocate, and others whom the family wishes to be present. The youth justice coordinator acts as facilitator and mediator between the families and police, although others may act as facilitator if culturally important.

After introductions and greetings, the youth officer describes the offense and the young person admits or denies involvement. If there is no denial, the conference proceeds with the victim describing the impact of the offense. The group shares views about how to set matters right. The family deliberates privately to develop a proposed plan. When the family finishes, the meeting reconvenes with the professionals and victim, who can agree or object to the family's

recommendations and plans (Hudson, et al. 1996; Consedine & Bowen 1999). Agreements often include reparative sanctions such as apologies, restitution and community service.



## Community justice conferencing (CJC).

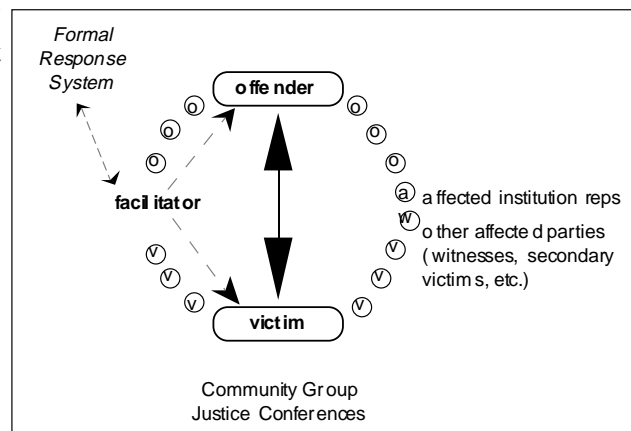
Conferencing was substantially revised and pioneered as a community policing technique in Wagga Wagga, New South Wales, Australia, in 1991 (Moore and McDonald, 1995) by Terry O'Connell, based loosely on the idea of New Zealand's JFGCs (O'Connell 1998; O'Connell, Wachtel & Wachtel 1999). These conferences are facilitated by a police officer, and include the offender, the victims, their respective family and emotional supporters, and any others who were affected by the incident.

The conference protocols were basic: have the offenders talk about what happened, what they were thinking and who was affected; followed by the victims and supporters; and finally, the offenders' family and supporters. Discussion then focused on what needed to happen to make things right. Refreshments are provided immediately after the conference to provide an informal opportunity for participants to talk while the facilitator prepared the written agreement (O'Connell 1998:8).

Community conferences evolved out of the Wagga model, but are not necessarily police-based. They may be facilitated by any official with the authority to divert the case from formal processing (e.g., police, probation, teachers, workplace supervisor, etc.) or by trained community volunteers receiving referrals from the authority. CJs encourage the participation of families, friends, by-standers, indirectly affected parties, and anyone else with a direct stake in the issue.

Community justice conferences are incident-focused, limited to repairing the damage caused by a specific offense. Like the Wagga model, CJs are 'scripted', facilitators follow a simple written script during conference. The conference begins with the facilitator reading a preamble that sets the focus of the conference.

The conference has three parts. First, participants answer a specific series of open-ended questions. The offender must describe how she/he became involved in the incident, who they think was affected and how they think others were affected. Victims are then asked



to express their reaction to the incident and describe how they have been affected. Next, the victim supporters and then offender supporters discuss their reactions and are asked what are the main issues involved.

The second part of the conference involves negotiating a reparation agreement. Facilitators ask the victim "What do you want from today's conference?" which provides an open-ended consideration of possibilities. Every suggestion made during this agreement phase must be agreed to by the both victim and offender, but consensus is usually easily reached. The third part of the conference, as in the Wagga model, is an informal social period when refreshments are served. This informal "reintegration" period is an important part of the conference and is one distinguishing feature of conferences growing out of O'Connell's Australian model.

## Aboriginal Peace Circles

I think that when I describe what we call peacemaking in English, I am describing the traditional justice of many aboriginal groups of people. I have been to the South Pacific, Norway and across the U.S. and Canada to talk with aboriginal leaders. Others of the Navajo Nation court system have visited Australia, New Zealand, Bolivia, and South Africa to do the same. Often, when we describe peacemaking, other aboriginal leaders nod their heads with approval and tell us that it is the same as their traditional justice methods. (Yazzie 1998:129)

The recent re-emergence of tribal sovereignty on North American reservations has spawned a series of circle models of restorative practice (Dickson-Gilmore 1992). The restorative justice circle models have evolved along two general paths: a healing paradigm (healing circles) to dispose of situations and a co-judging paradigm (sentencing circles) limited to making recommendations to judicial authority for actual case disposition (Ross, 1994).

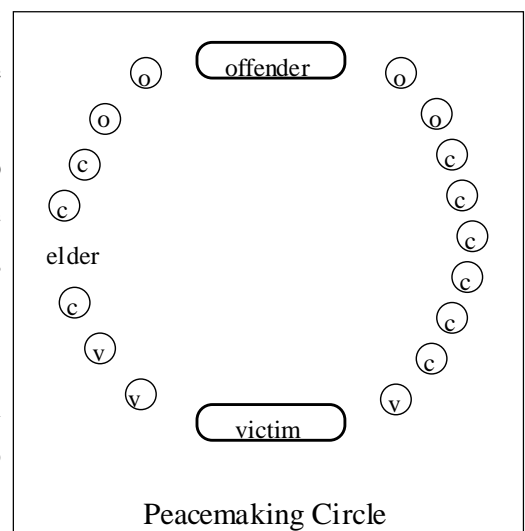
### Navajo justice.

The process opens with a prayer to seek divine assistance. Following prayer, the parties have an opportunity to lay out their grievances. Feelings are vented, the victim has an opportunity to disclose not only the facts, but also their impact. People are given an opportunity to say how they feel about the event and make a strong demand that something be done about it. Relatives also have an opportunity to express their feelings and opinions about the dispute.

The person who is the focus of the discussion is provided an opportunity to explain his or her behavior in full. The people who know the wrongdoer best—his spouse, parents, siblings, other relatives and neighbors, expose denial and excuses. The process is designed to clarify the situation and get to the root of the problem.

The peacemaker will then give reality therapy and do values clarification in a talk to the parties designed to guide them. This talk focuses on the nature of the problem and uses traditional precedent to guide a decision. The peacemaker has persuasive authority and draws on the traditions and stories of the culture to offer practical advice. The parties then return to a discussion of the nature of the problem and what needs to be done to resolve it.

Often, the action taken is in the form of nalyeeh, which also translates as restitution or reparation. Payments can be in the form of money, horses, jewelry, or other goods. The payment can be symbolic only. The focus is not upon adequate compensation, but upon a holistic kind of remedy. It is the feelings and relationships of the parties that are most important. The process ends in an action plan to solve the problem.



A person who agrees to pay nalyeeh may not have the personal means, so it is traditional for family and clan members to help make payment on their relative’s behalf. The tradition isn’t simply that relatives assume obligations for others, but when an individual commits a wrong against another, it shames the person’s relatives—“He acts as if he had no relatives.” The family agrees to keep an eye on the offender to assure there will be no future transgressions. “Peacemaking is designed to resolve problems among people and is not concerned about imposing punishment” (Yazzie & Zion 1996).

### Sentencing Circles.

A sentencing circle is a community directed process, in partnership with the criminal justice system, for developing consensus on an appropriate sentencing plan which addresses the concerns of all interested parties.

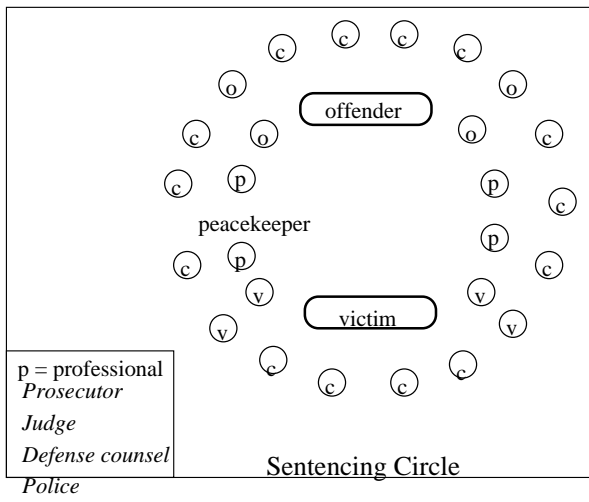
Sentencing circles use traditional circle ritual and structure to create a respectful space in which all interested community members can speak from the heart. The purpose is to shared a search for understanding of the event and to identify the steps necessary to assist in healing all affected parties and prevent future occurrences (Pranis 1997). Sentencing circles not only involve all the players found in traditional court—they are often held in a courtroom. Present are victim, victim supporters, offender, offender supporters, judge, prosecutor, defense counsel, police, court workers and any interested community members. Everyone may not participate, but it is important for everyone to know they can and are encouraged to do so.

These circles may be organized in one large circle or split into an inner and outer circle. The inner circle is composed of the victim, the offender, supporters or members of their respective families, and justice professionals normally involved in court. The outer circle includes professionals who may be called upon for specific information and interested members of the community.

Opening the circle with a prayer, the keepers of the circle welcome everyone to the circle and then discuss

the teachings of the circle and explain the guidelines extracted from the teachings. Everyone introduces themselves and tells why they are present, as an eagle feather or other sacred object is passed around the circle. During the first round many express concern for victims, offenders and their families, and speak of their hope for the circle to find a way to heal all who share in the circle.

The sacred eagle feather travels around the circle five times during the session. The first circle is people stating why they’re there. The second circle is people speaking to the victim, absolving the victim of guilt and shame. The third circle is to speak about how important the offender is to the family, the kinship system, and the community. The third round is people speaking directly to the offender, saying how it’s made them feel and what their expectations are for that person. The fourth circle is to give recommendations to the judge saying what should happen to this person.



The closing rituals include summarizing what has or has not been agreed, outlining next steps, thanking everyone for their participation, passing the feather for closing comments by all participants, and a closing prayer.

## **CONCLUSION**

Restorative justice programs attempt to address the harm crime creates for victims, offenders, and their communities. Family group conferencing, community justice conferencing, peacemaking circles and healing circles are holistic because they simultaneously address the restorative needs of all three. This ideal approach is not always possible.

For example, where the identity of the offender is unknown, victims still have a need for reparation which could be met by their community of care or by victim service programs. In cases where offenders refuse to cooperate, programs holding offenders accountable respectfully, especially those which engage or create a community of care in the process.

A healthy society would be one in which all types of restorative justice programs operate simultaneously, supporting choice and providing a flexibility of restorative response.