

Circle Sentencing as a Shaming Sanction

When one thinks of the sanction of shaming, one may conjure up an image of Hester Prynne, the young adulteress in Nathaniel Hawthorne's *The Scarlet Letter* who was judicially ordered to perennially don a scarlet "A."¹ Others may think of individuals convicted of driving while under the influence being made to wear T-shirts that say "drunk driver"², persons convicted of soliciting prostitutes having their names and photographs published in the local paper, and people convicted of public urination being required to clean the city streets.³

In each of these settings, the sanction of shaming is used to stigmatize the offender with a deviant label. This pejorative label will exist long after the formal shaming sanction has been lifted. For example, individuals forced to sport a "drunk driver" T-shirt may find themselves alienated from their peers who wish to avoid being branded alongside them.⁴ Persons who see their names published in the local paper in connection with prostitution may remove themselves from their social support network in an attempt to avoid the potential embarrassment of being discovered.⁵ In short, the giver of the shaming sanction makes no effort to reintegrate the offender back into mainstream society once the period of formal shaming has ended.

This is not so among Native American communities throughout the northern United States and Canada, many of whom utilize a practice known as circle sentencing.

¹ Nathaniel Hawthorne, *The Scarlet Letter* (Harry Levin ed., Houghton Mifflin Co. 1960) (1850).

² Christina L. Anderson, *Double Jeopardy: The Modern Dilemma for Juvenile Justice*, 152 U. Pa. L. Rev. 1811, 1814 (2004).

³ Todd R. Overman, *Shame on You: Campaign Finance Reform through Social Norms*, 55 Vand. L. Rev. 1243, 1293 (2002).

⁴ Notes, *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116 Harv. L. Rev. 2186, 2220 (2003).

⁵ *Id.* at 2199.

Circle sentencing is a holistic approach to criminal justice which allows victims and offenders to interact and heal in a neutral place and gives the community the ultimate say in sentencing the offender.⁶ By emphasizing the healing of victims, providing the opportunity for those most directly affected by the crime to participate in the sentencing process, and taking steps to repair the harm which has been done, circle sentencing can be considered a form of restorative justice.⁷ Circle sentencing, because of its uncanny ability to address the underlying causes of criminal behavior and empower its participants, has been called “the biggest revolution in Aboriginal justice” in Canadian history.⁸

Circle sentencing is not a complicated procedure. The process often begins with a shared prayer. Following the prayer, a moderator instructs the participants that each of them, while holding a small “talking stone”, will have the chance to speak uninterrupted. Circle sentencing is divided into several rounds and, in each round, speaking is completely optional. Each round gives the participants the opportunity to address a particular topic such as why they are present in the circle, what they like to say to the victim or the offender, and what punishment do they ultimately recommend. The circle is frequently closed with a second shared prayer.⁹

Because circle sentencing seeks to heal the intimate community bonds and human dignity which a wrongful act destroyed, some commentators argue that the process works

⁶ Mille Lacs Band of Ojibwe, *The Restorative Justice Program* <www.millelacsojibwe.org/culture> (accessed Sept. 26, 2004).

⁷ National Crime Prevention Council, *Feature: Restoring Victims, Offenders, and the Community* <www.ncpc.org> (accessed Sept. 29, 2004).

⁸ Brooke Jacobson, *Daily Liberal News, Circle Sentencing a ‘Revolution’ in Aboriginal Justice* <www.dubbo.yourguide.com> (August 11, 2003).

⁹ Native Law Centre of Canada, *A Healing Circle in the Innu Community of Sheshashit* (Summer 1997) as cited in *Sentencing Law and Policy* 13-16 (Nora V. Demleitner, Douglas A. Berman, Marc L. Miller & Ronald F. Wright (Aspen 2004)).

only if a human victim is easily identifiable. Thus, assaults in general and sexual assaults in particular are the best candidates for circle sentencing.¹⁰ Crimes in which the victim is either deceased or unidentifiable, such as murder, manslaughter, or drug offenses, are poor candidates for circle sentencing under this paradigm. Other commentators conclude that almost all minor crimes can be effectively resolved through circle sentencing since, despite the absence of a human victim, such acts still involve fractured community bonds which require healing. Thus, underage drinking and prostitution are also viable candidates for circle sentencing.¹¹ Although these two camps of commentators agree on little, they do share the opinion that more empirical studies are needed before circle sentencing can be applied to every crime punishable under a state or province's criminal code.¹²

At its heart, circle sentencing is a form of shaming. In the presence of the victim of her crime, her peers, and the community at large, an offender must own up to the wrongful conduct in which she engaged. By personally publicizing her criminal act, an offender can expect to feel markedly embarrassed, decidedly shaken, and wholeheartedly regretful. Thus, instilling shame upon the offender is a major purpose of circle sentencing. At the same time, however, the shame instilled upon the offender lasts no longer than the length of that particular circle sentencing episode. By virtue of the personalized nature of the sentence, the legitimacy of the sentence giver, and the atmosphere conducive to apology, the offender is reincorporated back into the community without any lingering badge of dishonor. Simply put, the shame placed upon

¹⁰ Mark S. Umbriet, Robert B. Coates, and Betty Vos, *The Impact of Restorative Justice Conferencing: A review of 63 Empirical Studies in 5 Countries*, Center for Restorative Justice & Peacemaking (2002).

¹¹ Leena Kurki, *Restorative and Community Justice in the United States*, 27 *Crime & Just.* 235, 282 (2000).

¹² *Id.*

the offender, while great, is also finite and is ultimately lifted in favor of community reintegration.

I. *CIRCLE SENTENCING AS A SHAMING SANCTION*

A shaming sanction is defined as a punishment that is directed primarily at publicizing an offender's illegal conduct in a way meant to "induce an unpleasant emotional experience in the offender."¹³ Because of the dramatic and often spectacular manner in which shaming sanctions express moral condemnation of an act, they place the offender in such a negative light that other members of the community are deterred from undertaking such an activity.¹⁴

Circle sentencing fits the definition of a shaming sanction. By being compelled to physically face both the victim of her crime and the community whose sense of security she destroyed, an offender must undergo an "unpleasant emotional experience" which is frequently coupled with sobbing, remorse, and embarrassment. Furthermore, the offender is presented to the community as an example of the shame one must endure if one engages in criminal behavior. In short, shame plays a formidable role in the circle sentencing process.

A. Victim Participation as a Source of Shame

In early 2001, two Canadian police officers pled guilty to abusing an individual in their custody. In place of a formal sentencing hearing, each defendant, perhaps hoping to avoid serving time in jail, requested his punishment be determined via circle sentencing.¹⁵

¹³ Notes, 116 Harv. L. Rev. at 2187.

¹⁴ *Id.* at 2191.

¹⁵ CBC News, *Convicted Saskatoon Cops ask for Sentencing Circle* <www.cbc.ca/cgi-bin/templates/view.cgi/news/2001/10/30/sask_police> (Oct. 31, 2001).

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The judge denied this request upon learning that the victim of the crime refused to participate in the circle sentencing process.¹⁶

This event highlights the general need to have the crime victim present at circle sentencing. Through their presence, victims can create the proper level of remorse, embarrassment, and regret in the hearts of their aggressors.¹⁷ By publicly letting the offender know how her criminal behavior affected them, victims ensure that an offender remains acutely aware of the devastating pain and anguish that her crime has caused another human being.¹⁸ An offender is thus prevented from internally denying or neutralizing the harmfulness of her crime. Furthermore, the offender cannot simply rationalize her criminal act as being minor or of secondary importance when a real person stands in front of her and describes the physical and emotional hardships flowing directly from her behavior.¹⁹ Through the victim's presence, the true wrongfulness of the offender's conduct is brought home to her in living, breathing form.

Ultimately, circle sentencing allows an offender not only to put a human face on the harm she caused, but also to internalize that harm. In some instances, an offender may be so deeply moved by the victim's story that the offender vicariously experiences the same emotional pain she originally dealt. In other instances, an offender may feel deep remorse and regret for having created so much disquiet in the life of another. In a final instance, an offender may simply feel embarrassed or foolish for having embarked upon such a pointless, asinine course of behavior. The main goal is that the offender

¹⁶ CNEWS Home, *Victim won't Join Sentencing Circle* <www.canoe.com/CNEWSLaw0111/20_circle-cp.html> (Nov. 30, 2001).

¹⁷ Jim Adams, *Minneapolis Star Tribune* <www.freenet.mspp.mn.us/~fholson/circles-mn/circ-stb.htm> (Aug. 18, 1998).

¹⁸ Melanie Spiteri, *Sentencing Circles for Aboriginal Offenders in Canada: Furthering the Idea of Aboriginal Justice within a Western Justice Framework* <<http://sfu.ca.crj/fulltext/spiteri.pdf>> (2001).

¹⁹ Erik Luna, *Punishment Theory, Holism, and the Procedural Conception of Restorative Justice*, 2003 Utah L. Rev. 205, 300 (2003).

undergoes some sort of “unpleasant emotional experience” as a result of her interaction with the victim of her criminal behavior.

An “unpleasant emotional experience” is exactly what a twenty-three year-old Native American from Saskatchewan went through during his circle sentencing episode. After being convicted of causing injury to a bystander while driving impaired, the offender found himself face to face with the injured bystander.²⁰ During this encounter, which took place within the context of circle sentencing, the offender “suffered severely” from the guilt of having caused injury to a another person.²¹ In the words of the offender, facing the victim of his criminal act was “a very difficult time.”²²

Because it is designed to foster interaction between an offender and the victim of her crime which ultimately prove to be unpleasant for the offender, circle sentencing requires victim participation and transforms it into a mechanism for shaming the offender.

B. Community Participation as a Source of Shame

One of the unique characteristics of circle sentencing is the paramount belief that all of the participants in the circle are equal.²³ In circle sentencing, nobody possesses any special powers or privileges.²⁴ Everyone, including the victim’s family, the offender’s family, the community elders, and the community at large, is given a voice in

²⁰ Spiteri <<http://sfu.ca.crj/fulltext/spiteri.pdf> >

²¹ *Id.*

²² *Id.*

²³ Mille Lacs Band of Ojibwe <www.millelacsobjibwe.org/culture> (accessed Sept. 28, 2004).

²⁴ Native Studies, Saskatchewan Education <www.sasked.gov.ca> (accessed Sept. 26, 2004).

the proceedings.²⁵ While the victim's presence is key, she is, in many ways, just another member of the community.²⁶

Because all of the participants in the sentencing circle are thought to be on equal footing, each is free to express her moral outrage at the offender. Some participants may discuss how the offender's criminal conduct negatively affected their own lives while others may lecture on how the offender's behavior shattered the sense of security that previously existed within the walls of the community. Thus, the equality bestowed upon each member of the circle has the effect of transforming some participants into a de facto victim of the offender's crime. Furthermore, these attendees are provided with an opportunity to offer an emotional account of their de facto victimization. Because circle sentencing gives everyone in the community an equal voice, individuals who are at most tangential victims of the offender's criminal behavior are suddenly catapulted into the role of empowered victims who are eager to publicly castigate the person who did them wrong.

By virtue of the expanded victimization created by circle sentencing's spirit of equality, the offender is placed in an "almost powerless position."²⁷ She must not only admit that the action she undertook was wrong and offer a public apology, she must also listen to some members of the sentencing circle describe the personal anguish her criminal act caused and accept the shame associated with inflicting such hardships upon others.²⁸

²⁵ Lynette Parker, *Prison Fellowship International* <www.restorativejustice.org> (accessed Sept. 27, 2004).

²⁶ Mary Crnkovich, *The Role of the Victim in the Criminal Justice System- Circle Sentencing in Inuit Communities* <www.casac.ca/issues/mary_crnkovich.htm> (Oct. 11-14, 1995).

²⁷ Luna, 2003 Utah L. Rev. at 235.

²⁸ Because an offender can and often does invite her family and close friends to participate in her circle sentencing proceeding, it would be misleading to imply that *all* participants assume the role of victim. In

An example of a neutral party being suddenly thrust into the role of empowered victim can be seen in the case of a Native American father from Yukon Territory who was convicted of sexually assaulting his eleven year-old daughter. Because the eleven year-old daughter did not attend the circle sentencing proceeding, the judge took it upon himself to play the role of the victim. In doing so, the judge stated:

[t]his attack severely affected her and has continued to haunt her. Her feelings towards her father are confused, fluctuating from love to hate, from wanting to be with him to wanting to stay away. Her anger persists, causing her to lose concentration. The memory of the attack interferes with much of her life.²⁹

The judge made such a statement even though a victim support group was in attendance on the victim's behalf and would have been the logical representative of the victim in this case.³⁰

The shame experienced by an offender is further enhanced for two reasons. Firstly, because circle sentencing is conducted within a community, the offender must face the emotional wrath of her neighbors, not merely unknown individuals as was the case at the trial to determine her guilt. Those expressing their moral outrage during the course of circle sentencing are likely to both know the offender on a personal level and interact with the offender in some future setting.³¹ A circle sentencing moderator from Yukon Territory, for example, commented that individuals subject to circle sentencing “are pretty nervous to face the community (because) this person has to live in this community. Whether they get probation or jail, they’re going to come back and live

reality, the family and friends of the offender often play a supportive, understanding role which is in marked contrast to the role of victim. The intent of the author is not to suggest that each and every circle sentencing participant transforms her status to that of victim; it is merely to recognize that because some do assume the role of victim, the offender may face claims of victimization from more than one front.

²⁹ Spiteri <<http://sfu.ca/crj/fulltext/spiteri.pdf> >

³⁰ *Id.*

³¹ University of Manitoba, *The Development and Impact of Community Sentencing and Mediation Initiatives* www.umanitoba.ca/faculties/law (accessed Sept. 26, 2004).

here.”³² In short, the offender’s shame is augmented because her neighbors are the ones offering the public castigation.

Secondly, the presence of the offender’s family, their personal condemnation of her behavior, and the visible signs of anguish felt by those family members when confronted with the harm caused by their own kin increases the shame felt by the offender.³³ Thus, the offender must deal with shame relating to both the harm she inflicted upon another and the hurt which subsequently embedded in the hearts of her family as a result of that conduct.

In conclusion, because each participant in circle sentencing is given an equal voice, the offender, with her neighbors and family watching, must face a multi-front onslaught of emotional accounts regarding the harm her actions created. This is almost certain to be an “unpleasant emotional experience” for the offender, which is the definition of a shaming sanction.

C. Circle Sentencing as a form of General Deterrence

Circle sentencing is generally not a private event. In most communities where circle sentencing is practiced, anyone who wants to attend the proceeding is welcome to do so. In fact, attendance is encouraged.³⁴ As a result, circle sentencing is sometimes conducted in front of an audience as large as fifty.³⁵

The audience is not aloof to the shame which circle sentencing casts upon an offender. During a typical session, the assembled community is exposed first-hand to the embarrassment, remorse, and overall negative consequences associated with criminal

³² *Id.*

³³ Luna, 2003 Utah L. Rev at 300.

³⁴ Lisa Rieger, *Circle Peacemaking* <www.justice.uaa.alaska.edu> (winter 2001).

³⁵ Ian Bailey, *National Post, Dead Girl’s Mother hugs Bullying B.C. Teenager* <www.saskschools.ca/curr_content/native30/units5/bullying.html> (accessed Sept. 26, 2004).

behavior.³⁶ The shame placed upon the offender will ideally spill over to the audience witnessing the community's messages of wrongdoing and condemnation.³⁷ This, in turn, will put the audience on notice that such behavior is unacceptable and will thus discourage repetition of the sanctioned behavior. Therefore, the shame placed on the offender has a deterrent effect on the community in general and the sentencing circle audience in particular.

In a 1996 opinion, an Albertan judge formally recognized the general deterrent value of circle sentencing. According to Judge Jacobson, through public observation of the circle sentencing process, both participants and onlookers are deterred from committing an act which would put them in the same position as the offender whose proceeding they observed.³⁸ Since that time, a significant handful of judges throughout Canada have commented on the ability of circle sentencing to deter crime.³⁹ A British Columbia judge, for example, told an audience of roughly thirty individuals that she hopes circle sentencing "can help young ones not pick up the negative stuff."⁴⁰

By encouraging community members to attend the proceedings and observe firsthand the shame placed upon one who breaks the law, circle sentencing seeks to deter others from committing such a crime and is thus consistent with the definition of a shaming sanction.

³⁶ Rupert Ross, *Returning to the Teachings: Exploring Aboriginal Justice* 39 (Penguin Books 1996).

³⁷ Anderson, 152 U. Pa. L. Rev. at 1215.

³⁸ Native Law Centre of Canada, *Sentencing Circles*
<<http://www.usask.ca/nativelaw/publications/jah/scircle.html>> (accessed Dec. 4, 2004).

³⁹ Despite this trend, this author has been unable to identify any literature in which a judge specifically cited shame as the reason for the general deterrent effect.

⁴⁰ Greg Joyce, *Canadian Press*, *Girl convicted of bullying attends Sentence Circle*
<www.slam.ca/CNEWSLaw0205/14_bully-cp.html> (May 14, 2002).

D. Conclusion

Circle sentencing is intentionally geared to be a markedly unpleasant experience for a criminal offender. The combined presence of the victim of the crime, those tangentially affected by the crime, the offender's family and neighbors, and the community at large is designed to put the offender in "a state of perfect defenselessness"⁴¹, thus creating an omnipresent feeling of shame within her heart. As this intangible feeling of shame leads to more palpable behavior such as sobbing, apologizing, and seeking forgiveness, those watching the transformation unfold are themselves deterred from engaging in such behavior.

Through this lens, circle sentencing is not a proceeding at which a future shaming sanction is agreed upon and imposed. Instead, circle sentencing *is* the shaming sanction. It is the one point in the life cycle of the crime during which the community unites in an effort to make the offender feel embarrassed, remorseful, regretful, and, most importantly, ashamed. Because this atmosphere is likely to create an "unpleasant emotional experience" for the offender, circle sentencing, in and of itself, can be considered a shaming sanction.

II. *CIRCLE SENTENCING AS A FORM OF REINTEGRATION*

All shaming sanctions subject an offender to a substantial level of humiliation. Most shaming sanctions, however, make no effort to reintegrate the offender back into the community after the formal period of shaming has ended. Thus, an offender suffers from not only the shame associated with the punishment itself, but also from the hurt feelings and misunderstandings on the part of others who misinterpret the offender's

⁴¹ Luna, 2003 Utah L. Rev. at 294.

evasive posture and desire for isolation. Faced with these stresses, the offender is likely to seek the company of those individuals who have experienced similar shame in an attempt to discover “back places where persons of the offender’s kind...find they need not try to conceal their stigma.”⁴² As this search for a new community further exacerbates the offender’s alienation from her former community, the very people whom the offender is trying to avoid – many of whom are unaware of her wrongful conduct – have no way of understanding her seemingly bizarre behavior.⁴³

Consider, for example, a middle-age man convicted of soliciting a prostitute who is sentenced to having his offense published in the local newspaper. While few of his acquaintances will likely read the newspaper’s back page and learn of his conviction, he will nevertheless face the daily possibility that his peers or coworkers will happen to stumble upon news of his criminal act. As a result, he may refrain from opening up to his friends for fear that they have learned of his conviction or he may adopt a more reclusive posture at his place of employment to reduce the possibility of facing an inquisitive colleague. In short, he may remove himself from his social support network to avoid the potential embarrassment of being discovered.⁴⁴

The end result is that an offender subjected to a shaming sanction is likely to continue to feel marginalized by her community.⁴⁵ Thus, instead of reintegrating an offender back into the community, most shaming sanctions have the ultimate effect of driving an offender away from the community in which she once belonged.

⁴² Notes, 116 Harv. L. Rev. at 2198.

⁴³ *Id.*

⁴⁴ *Id.* at 2199

⁴⁵ Eric W. Nicastro, Student Author, *Confronting the Neighbors: Community Impact Panels in the Realm of Restorative Justice and Punishment Theory*, 9 Roger Williams U. L. Rev. 261, 281 (2003).

Although the shame instilled upon the offender is great, circle sentencing does not ignore the need to reintegrate the offender back into the community once the shaming has culminated. Instead, the shame cast upon the offender is immediately followed by efforts to reincorporate her back into the community free of any lasting badge of dishonor. The catalysts for this immediate reintegration are the personalized nature of the sentence given to the offender, the legitimacy of the sentence giver, and an atmosphere conducive to apology. Through this process, the previously shamed offender is once again embraced by her community and invited to rejoin it with a clean slate.

A. The Personalized Nature of the Sentence as a Form of Reintegration

One of the fundamental tenets of circle sentencing is that “each circle makes its own shape.”⁴⁶ Embodied within this creed is the ability for each circle to be as flexible, and thus as personalized to the needs of the offender, as the situation demands. Rather than being bound by a set of rigid rules, a sentencing circle has the latitude to hand down a punishment which will best help to reform the offender before them. A particular circle can thus focus on the problematic behavior that an individual offender brought to the community and formulate a plan to prevent that same behavior from being repeated.⁴⁷ That plan may call for the offender to hold a job, help a family member, offer an apology to the victim, or abide by a social contract of some sort.⁴⁸ The important thing is that the circle is free to punish the offender in whatever way will most effectively prevent her criminal behavior from reoccurring.

Because the identity and uniqueness of the offender is of paramount importance during circle sentencing, an offender is much more likely to feel as if she was treated as a

⁴⁶ Rieger <www.justice.uaa.alaska.edu>.

⁴⁷ Crnkovich <www.casac.ca/issues/mary_crnkovich.htm>.

⁴⁸ Ann Estis, *When Justice is the Goal* <www.november.org/razorwire/rzold> (Feb.22, 1999).

living, breathing human being instead of a faceless member of an indistinguishable group of criminals standing before a sentencing tribunal. In other words, the personalized nature of the offender's sentence will make her feel more like a person and less like a social deviant. Furthermore, a personalized sentence will demonstrate to the offender in explicit terms that her community anticipates her once again becoming part of it.⁴⁹ The offender will hear firsthand that, while her behavior needs to change, the community does not wish to have her excised. Unlike a sentencing tribunal in which a judge imposes punishment for harm caused to a community, circle sentencing allows a community itself to welcome the offender back into its ranks.

The case of a teenaged girl convicted of bullying a schoolmate shortly before the schoolmate committed suicide highlights this point. Although the sixteen year-old offender was eligible to serve up to six months in jail, the participants in her sentence circle opted to impose probation, community service, telephone restrictions, and a 750-word essay on the topic of bullying instead of a jail sentence.⁵⁰ As the offender embraced the victim's mother and sobbed, the victim's mother told the troubled teen that "if you don't see the inside of a jail, it's because people are fighting to keep you out of there."⁵¹ Through both these words and the actions of the sentencing circle, the message sent to the offender was clear: while the community strongly disapproves of your behavior, it desires that you continue to be a part of it.

⁴⁹ The offender, however, may not be immediately invited to rejoin the community if the sentencing circle decides to impose a term of imprisonment.

⁵⁰ Joyce <www.slam.ca/CNEWSLaw0205/14_bully-cp.html>

⁵¹ *Id.*

In summation, the personalized nature of circle sentencing shows an offender firsthand that her community supports her and is willing to forgive her past wrongdoings which, in turn, greatly expedites the reintegration process.

B. The Legitimacy of the Sentence Giver as a Form of Reintegration

Primarily because of their Native American heritage, most communities which utilize circle sentencing feel greatly alienated from the traditional justice system. To these communities, such systems appear foreign and inaccessible, and reflect both overt and systemic racism.⁵² In contrast, circle sentencing allows an offender to be judged by both her peers and the elders in her community. These are likely to be individuals with whom the offender shares a common heritage, native language, and belief system.⁵³ These are also likely to be individuals that the offender respects.

Because the offender is likely to respect the individuals handing down her sentence, the offender is also likely to respect the sentence itself.⁵⁴ The offender will understand that the sentence given to her is that of her people, not of a judge with whom she does *not* share a common heritage, native language, or belief system.

An offender who respects both the giver of her sentence and the sentence itself is more likely to abide by the terms of the sentence than an offender who respects neither. Thus, an offender subject to circle sentencing is more likely to abide by the terms of the community-imposed sentence than an offender sentenced by a judge.⁵⁵ Recognizing this concept, a Canadian judge commented that because the Inuk offender before him

⁵² CCJA, *Part IV: Aboriginal People and the Justice System* <www.ccja-acjp.ca/en/abori4.html> (Sept. 9, 2004).

⁵³ Jacobson <www.dubbo.yourguide.com>.

⁵⁴ Judicial Commission of New South Wales, *Circle Sentencing in New South Wales* <www.jc.nsw.gov.au/monograph22/media_release.php> (accessed Sept. 28, 2004).

⁵⁵ Crnkovich <www.casac.ca/issues/mary_crnkovich.htm>.

“understands that the sentence passed on him is that of his people, he will no doubt be better disposed to mend his ways.”⁵⁶

Because circle sentencing seeks to repair the harm that has been done to a community, the sentence given to an offender is designed to reintegrate the offender back into that particular community. The end result is that an offender subjected to circle sentencing is likely to abide by the terms of her sentence which, in turn, expedites her reintegration into the community.⁵⁷

C. The Atmosphere Conducive to Apology as a Form of Reintegration

Restorative justice is unique in that it places a large emphasis on facilitating victim healing by taking great pains to compensate the victim for the harm she was forced to endure. Thus, under the paradigm of restorative justice, an offender may be required to recompense the victim of her crime in both material and symbolic ways.⁵⁸ Among these varieties of compensation, the offer of a sincere apology by the offender and the acceptance of that same apology by the victim are “the most natural things imaginable and almost always vital to the successful resolution of the offense and the restoration of the participants.”⁵⁹

Although the offer and acceptance of a sincere apology is instrumental to the restoration of *both* participants, traditional justice systems provide a poor atmosphere for such compensation. Formal sentencing proceedings rarely, if ever, provide a forum in which the victim of a crime is permitted to directly address her aggressor or the aggressor

⁵⁶ *Id.*

⁵⁷ Although circle sentencing has significantly reduced the rate of recidivism, repeat offenders still exist. Thus, it would be incorrect to state that *all* offenders subjected to circle sentencing will abide by the terms of their sentence.

⁵⁸ Paul Roberts, *Reintegrative Shaming*, 1 J. Int'l. Crim. Just. 315, 334 (2003).

⁵⁹ Erik Luna, *Introduction: The Utah Restorative Justice Conference*, 2003 Utah L. Rev. 1, 23 (2003).

is allowed to openly communicate with the victim.⁶⁰ In circle sentencing, however, such direct forms of communications are not only permissible, they are encouraged.

Circle sentencing provides opportunities for participants to address both the victim and the offender.⁶¹ During these exchanges, offenders often offer a sincere, heartfelt apology to those they have wronged and victims often accept this much desired apology.⁶² For example, after pleading guilty to sexual assault, Gavin Sellon elected to have his punishment determined via circle sentencing. At the proceeding, the victim found that she had “no problems or difficulties talking with Gavin” and once the circle was closed, the victim and Gavin embraced one another.⁶³ In a separate circle sentencing episode, the mother of a bullied teenaged girl who committed suicide kissed and hugged the girl convicted of criminally harassing her daughter. During this emotional display, the offender offered a sincere apology to the victim’s mother and this apology was immediately accepted.⁶⁴ Without the face to face interactions that constitute circle sentencing, such exchanges would not be possible.⁶⁵

To the victim, an apology from the offender provides much-needed emotional repair.⁶⁶ To the offender, an apology acceptance also carries favorable consequences.

⁶⁰ Bailey <www.saskschools.ca/curr_content/native30/units5/bullying.html>.

⁶¹ The Osgood File, *CBS Radio Network, Circle Sentencing* <www.acfnewsresource.org/religion/circle_sentencing.html> (July 4, 2000).

⁶² Luna, 2003 Utah L. Rev. at 22.

⁶³ Native Law Centre of Canada, *A Healing Circle in the Innu Community of Sheshashit* as cited in *Sentencing Law and Policy* 13-18 (Demleitner, Berman, Miller, & Wright).

⁶⁴ Bailey <www.saskschools.ca/curr_content/native30/units5/bullying.html>.

⁶⁵ Some commentators argue that frequently victims, especially victims of domestic violence, decide to “reconcile” with the offender only because such reconciliation is expected by the community. By unwillingly accepting the offender’s apology, the victim is placing the interests of the community ahead of her own. These same commentators theorize that circle sentencing is not the panacea that some make it out to be if most victims are accepting their aggressor’s apology only out of peer pressure. See Rashmi Goel, *No Women at the Center: The Use of the Canadian Sentencing Circle in Domestic Violence Cases*, 15 Wis. Women’s L. J. 292, 327 (2000).

⁶⁶ Bailey <www.saskschools.ca/curr_content/native30/units5/bullying.html>.

Firstly, when the victim accepts the offender's apology, it signifies the end of an assuredly traumatic chapter in the offender's life. This forgiveness has the effect of putting the offender on notice that, while the community strongly disapproves of her past conduct, it supports the offender as a person.⁶⁷ Secondly, an apology acceptance demonstrates respect for the offender by validating the feelings of genuine remorse she possesses and recognizing her as an individual capable of taking responsibility for her misconduct.⁶⁸ This show of respect for the offender will signify to her that all badges of dishonor once placed upon her have now been removed, thus furthering her reintegration into the community.

By producing an atmosphere which is conducive to the offer and acceptance of a sincere apology, circle sentencing provides an offender with a feeling of being forgiven and a show of respect, both of which promote reintegration.

D. Conclusion

Unlike most shaming sanctions which, after shaming an offender, do nothing to remove the stigma imposed, circle sentencing involves a perfect overlap between those individuals who invoke shame upon the offender and those individuals who are willing to accept the offender back into their community. In other words, those who create the shame are also the ones who absolve the offender of the shame they created.⁶⁹ Because this overlap makes the transition from invoking shame to expediting reintegration quite clear, an offender is likely to both recognize and accept the community's offer to welcome her back into it.

⁶⁷ Luna, 2003 Utah L. Rev. at 231.

⁶⁸ *Id.* at 294.

⁶⁹ Notes, 116 Harv. L. Rev. at 2200.

Thus, through the use of a personalized sentence, a legitimate sentence giver, and an atmosphere conducive to apology, circle sentencing is able to achieve an outcome which is both rare and laudable among shaming sanctions: circle sentencing allows an offender to be reintegrated into her community free of any lasting badge of dishonor.

III. *CONCLUSION*

Although it comes in different shapes and sizes, shame is an integral part of circle sentencing. It takes the form of crime victims who, by virtue of their presence, create feelings of remorse and embarrassment in the offender. It also takes the shape of community members, each of whom has an emotional tale about how the offender's actions caused them harm. An additional level of shame appears as the offender's conduct is used as an example of what behavior the community will not tolerate. While the forms of shame thrust upon the offender are indeed many, they are also finite in that they do not outlive a particular circle sentencing episode. Because the sentences handed down are personalized and legitimate and the atmosphere is conducive to apology, circle sentencing also serves as a means of reintegration. Based upon its ability to both effectively shame an offender and reincorporate that same offender back into her community, circle sentencing is unique among criminal sentencing procedures.