

*From the USA*

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## **BUILDING TRANSFORMATIVE JUSTICE ON A FOUNDATION OF DEMOCRACY, CARING AND MUTUAL RESPONSIBILITY**

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by **Kay Pranis**

I now have had seven years of experience working full time to promote and support movement toward a restorative vision in the criminal justice system and in communities. I have been on a steep learning curve in that time regarding the possibilities and inevitabilities of the values and principles of restorative justice. My conceptualization of my work has broadened and deepened over time. I now view my work as built on the pillars of democracy, caring and mutual responsibility but on a new understanding of democracy and an expanded capacity for caring for all aspects of creation.

I have had many teachers in this process, but the most profound lessons have been from Aboriginal people from Canada and Native Americans from the U.S. From native people I have learned about the courage to speak openly about caring and forgiving, about the courage to speak from the heart and open the heart to others and about a sense of interdependence and connectedness to all creation at a soul level. From the example of native people of Canada and the U.S, I have gained a deeper awareness of the meaning of respect and acceptance of all others. These teachings have shaped my current conceptualization of restorative justice, a justice built on right relationships and mutual responsibility.

As a result of those lessons my work has been evolving from a primarily intellectual, cognitive approach to an intuitive approach, integrating my heart and soul knowledge with my head knowledge and connecting to others on emotional and spiritual levels as well as on an intellectual level.

The teachings from native people and other pioneers in this movement and my experience working with communities to explore processes which fit the principles of restorative justice have uncovered for me several key ideas about who we are and who we might be as a society. I believe the seeds for a new vision of justice exist in the following:

1. the potential of new forms of democracy in communities to address difficult problems and conflicts,
2. the wisdom of ordinary citizens who understand what is needed to create safe communities based on peacemaking,
3. the power of storytelling to move hearts and minds and
4. the untapped reservoir of good will and commitment to the common good which exists in our communities.

### **A new understanding of democracy**

In the United States we are educated to think of ourselves as the ultimate democracy. We assume that we have already arrived at and understand the full implications of the concept of democracy and that democracy is defined as majority rule with protection for individual rights. We have been taught that ours is a democratic process superior to all others. That belief is embedded in us so early and so deeply that I did not initially understand the implications of what I was learning in consensus processes.

When democracy is defined as majority rule, the interests of minority groups may not be addressed at all. Their rights may be protected, but their interests may be completely ignored. Majority rule allows the majority to be cavalier about minority interests. Power becomes a numbers game. If you want your interests met you must bring more people to the decision making process. If your position has the larger numbers, there is little incentive to seek common ground or ways that the interests of all might be served. In fact, if you can outvote the other position you don't even need to understand that position.

But to have strong, cohesive communities it is important for all legitimate interests to be understood and addressed and for those to be addressed in a voluntary, collaborative process, not through an adversarial legal rights process. To gain commitment for the hard work of devising and implementing solutions to difficult problems everyone must feel included, respected and served by the process and the solution. Someone whose interests were not addressed in the solution will feel no obligation to make the solution work.

The problem of crime is generating opportunities to understand and practise democracy in the community in new ways. It has become clear that creating safe communities requires active citizen involvement. It calls for a reengagement of all citizens in the process of determining shared norms, holding one another accountable to those norms and determining how best to resolve breaches of the norms in a way which does not increase risk in the community.

Several processes emerging from tribal cultures and embraced by the restorative justice movement use consensus decision making and allow all interested parties to have a voice in decisions. Those two characteristics:

1. inclusion of all parties who claim a stake in the outcome and
2. consensus-based decision making push our concept of democracy to a new frontier. Consensus based processes give power to everyone.

Achieving consensus requires the group to pay attention to the interests of those who are normally powerless. Decisions must ultimately represent everyone involved or consensus will not be achieved. Consensus processes hold the potential for more fundamentally democratic results because all interests must be taken into account.

The peacemaking circle process, developed in Yukon, Canada, and adopted with local variations in several Minnesota communities, provides the clearest example of the potential of a new vision of democracy for community problem solving. The peacemaking circle process is used to support victims, to encourage offenders to make amends and change behaviour and to determine how best to address the underlying problems (individual and community) associated with the crime. Circles in which decisions are made are open to all interested parties. Anyone may attend and anyone who attends will be able to speak and is expected to participate in decision making. Opportunity to be heard and responsibility to contribute to a good solution go hand in hand. Because decisions in the circle process are based on consensus, everyone in the process has an equal voice including the judge, the offender, the victim, the prosecutor, the defence attorney, family members of key participants and any community member who attends. Decisions must be acceptable to everyone; therefore they must address the interests of everyone to some degree.

Decisions or plans addressing the interests of all participants have a far greater likelihood of success because every participant has something to gain by successful completion of the agreement. Consequently, every participant has a stake in success. In processes based on majority rule the minority opinion often has a stake in failure of a decision in which they had no voice.

In addition to the use of consensus, several aspects of the circle process reinforce the democratic ideal of equal voice and equal responsibility. Participants are seated in a circle which structurally conveys a message of equality. Titles are not used in the circle process, minimizing positional

authority as a relevant element of decision making. A talking piece is used to structure the discussion. Participants may only speak when holding the talking piece and the talking piece is passed clockwise around the circle providing an opportunity for every participant to speak. The talking piece creates space for the ideas of participants who would find it difficult to insert themselves into the usual dialog process. In the circle process it is assumed that everyone present has something to contribute to the resolution of the problem. The use of the talking piece reduces the responsibility of the facilitator and increases the responsibility of every participant to guide the dialog toward a good end.

Every participant in the circle is encouraged to draw on his/her life experience to add to the understanding of the problem and to generate possible solutions. Every life story has relevance to finding a resolution which facilitates healing for all those affected by the crime. Circle discussions about individual crimes often become discussions about larger problems in the community. Circles provide a forum for problem solving to prevent crimes in the future, a forum operating on core principles of democracy - inclusion, equality and respect.

The western tradition of democracy in the form of majority rule promotes competition whereas a consensus tradition promotes cooperation. Voting encourages the formation of competing subgroups. To gain support one side often demonizes and exaggerates the other position. Differences are emphasized to recruit votes. The dialog about positions becomes more polarized as it pushes toward resolution through majority rule voting. Majority rule voting also encourages private lobbying and secret deal making in order to line up votes.

If, however, decisions are made by consensus, it is counterproductive to demonize the other side or to exaggerate the other position and it will not help to make deals on the side – because you ultimately must bring everyone on board. To reach consensus each position must understand every other position. Consensus requires careful listening in order to devise a solution acceptable to all parties. Every participant must make a commitment to the needs of every other participant. Such a commitment promotes cooperative dialog and action. It encourages a search for common ground rather than separate ground.

Consensus based processes recognize that the actions of any one of us affect every other one. No one is separate or independent. We are all connected. We are interrelated and interdependent. If harm to one is

harm to all, then it is important to make decisions that serve all. We cannot simply run over the needs of another because they are small or powerless. The most effective way to make decisions that serve all is through consensus processes.

Ironically, this new practice of democracy through consensus processes is occurring with the most disempowered populations – victims and offenders. The demographic profile of victims and offenders is essentially the same. They come primarily from poor communities of color – the least powerful communities.

Despite the widespread perception that consensus decision making is too difficult for complex public issues, our experience indicates that parties with extreme differences in emotional situations can develop consensus plans. Peacemaking circles are dealing with some of the most difficult questions in our communities and they nearly always reach consensus on a way forward together.

The energy generated in communities by concern about crime can be channelled into processes that increase democratic participation in creating strong communities which take responsibility for the welfare of all members including victims and offenders. Consensus processes have the potential to reinvigorate western democracies with genuine grassroots participation in the collective decisions that shape the lives of citizens. The very concept of justice calls for inclusion, equal voice and decisions representing all interests. Consensus processes deliver that vision more completely than majority rule. In this new way of responding to crime are the seeds for a better way to practise all of our democratic functions.

### **Common sense in the community**

The knowledge we need for doing justice in a different way exists in the community. Ordinary citizens already possess the basic understandings necessary for a fundamentally different approach to resolving the harm of crime.

In my experience posing the key questions about community safety from a capacity orientation elicits responses from community which could be the foundation of a community based, restorative approach to crime. I have used a two step process in a wide variety of community and professional groups to explore the group's perceptions on these key questions.

The criminal justice system is used to keeping human behaviour within certain bounds so that we can live safely with one another. When we consider the hundreds of choices made by each person each day, it is remarkable how much of the time we comply with laws, rules and regulations. To an amazing degree we do follow laws and rules.

When I ask groups, ‘What are the forces shaping our behaviour which cause us to follow the rules and obey the laws?’ they typically generate a list of ten to fifteen items. A sample list follows:

- Values
- Norms of the community
- Fear of legal consequences
- Fear of social disapproval
- Sense of involvement and belonging
- Internal controls
- Desire to avoid embarrassment
- Gender roles and expectations (socialization)
- Feeling of inclusion
- Education
- Laws and policies or regulations
- Peer standards and expectations
- Personal capacities
- Culture
- Socioeconomic needs

When I ask the group which of these forces they think are the most powerful in shaping behaviour, nearly every group identifies two major forces:

1. values or morals (an internal force: how we see ourselves)
2. a sense of belonging and the associated fear of losing those relationships (an external force: how others see us).

When asked which of the forces on the list is used in our attempt to shape behaviour through the criminal justice process, groups conclude that the system relies almost exclusively on ‘fear of legal consequences’ to shape behaviour. It is important to note that this is only one of numerous forces shaping behaviour and it is not perceived to be one of the most powerful forces. Trying to manage behaviour primarily through the use of fear of

legal consequences is like trying to move something heavy with the wrong end of a lever. You exert tremendous amounts of force, but see very little movement at the other end. The public clearly does not see legal threats as the most effective tool to get the behaviour we want from people.

In a discussion about where these other forces operate, where they derive their power, participants note that most of those forces, particularly the most powerful ones (values and sense of belonging), are integral to family and community relationships and function in those contexts. If the response to crime is to tap into the power of those forces, it must operate in the context of family and community relationships.

After exploring the public's perceptions about behaviour motivation, I ask the group to imagine a process or processes in the community to resolve conflict and harm. They are asked to identify what characteristics they would want the process to have. What would they want to be able to say about the process or processes? The lists generated by dozens of different groups have been remarkably similar, regardless of training or background of the participants. A typical list identifies the following criteria as important for these processes.

An effective community process to resolve conflict and harm should:

- Be egalitarian: everyone has an equal voice
- Involve all interested parties: the community, the victim, the offender and the system
- Be safe for participants both physically and emotionally
- Be clear and understandable
- Produce changes in behaviour
- Promote healing
- Include monitoring of agreement and evaluation of outcomes
- Be voluntary for participants
- Use consensus based decision making
- Be achievable
- Condemn the offending behaviour
- Provide opportunities for reintegration
- Focus on repair of the harm
- Provide opportunities for learning
- Provide rewards for positive behaviour
- Hold all participants responsible for their appropriate roles

This exercise is not intended to produce a complete and definitive description of this community based process, but to sketch the outlines of the vision of the group about a good way to resolve conflict and harm.

I then ask, 'How many of these criteria are met by our current process for resolving conflict and harm?' In these discussions participants have concluded that our current process falls far short of these standards for an effective way to resolve conflict and harm in the community.

I have engaged in this dialog with groups across the United States, in rural and urban settings, among lawyers, corrections professionals, civic groups, church groups. The results are amazingly consistent. When I did these exercises with a group of inmates in a high security prison, I got the same lists. My experience in doing this with so many different groups taught me that I had no new wisdom to impart. It changed my understanding of my job. I originally thought of myself as doing community education. I now think of my job as creating spaces for people to be in touch with their own wisdom. There are two critical characteristics of that kind of space. It must be reflective and it must be respectful.

The knowledge we need to create a different way of responding to harm in the community already exists in the community. It is not knowledge about fundamental values and principles or behaviour and process that is needed from the professionals and academics. What communities need from professionals is affirmation and facilitation. The community needs structure and forums that allow it to act on its own knowledge of human behaviour and effective process.

Both of the questions used in this dialog are framed around positive potential. This method focuses the group on capacity and strengths and identifies a positive vision and direction for action. When the issue is framed in this way, community members specify relationships and caring as more powerful forces shaping the behaviour we desire than authoritarian power and fear.

Developing the processes that match the vision is not easy, but finding the community wisdom about what the processes should look like has been surprisingly straightforward in my experience. Group conferencing and peacemaking circles demonstrate on a daily basis that there are processes that access the wisdom of ordinary folks. Again and again, without complicated intellectual analyses or assessment tools, victims, offenders, their families and neighbours uncover underlying causes of crime and generate innovative solutions to the problems presented.

We do not need a massive ‘community education’ process to teach communities the ‘right way’. We need a massive effort at creating respectful forums in which meaningful, intelligent questions are posed for genuine community reflection and, ultimately, community decision making within our larger societal values.

### **Storytelling as a tool for change**

Storytelling is critical to the creation of community, of connection and collective action. Quantum physics tells us that it is not the content of matter which defines it, but its relationships to other pieces of matter. We cannot identify a piece of matter by itself - we can only identify something by its relationships to other things - and those relationships are energy. We are defined by our energy connections to others, not by the material of our beings. So the threads of the fabric of the community are those relationships. The shared values of the community and the culture of the community create the framework of the loom for weaving the relationships together.

The spinning wheel is the tool for creating threads and the shuttle is the tool a weaver uses to carry the weft thread through the warp threads to make the fabric out of the individual threads. Storytelling, like the spinning wheel, is a tool for creating relationships (the threads of community) and like the shuttle, is a tool for interweaving those relationships to form community. Both kinds of storytelling occur in restorative justice.

Personal narratives, an integral part of victim offender mediation, conferencing and circles, spin the threads that connect people in relationship. Personal narratives allow others to know the speaker in a different way and allow the speaker to define the self, know the self in a new way and reflect on the self. Personal narratives uncover commonalities between people not otherwise visible, opening the possibility of connection. Personal narratives often shatter assumptions others have made about the speaker because there is always so much hidden about any person’s life. Personal narratives remove some of the masking layers that hold people apart from one another. In the deep sharing of personal narrative bits of the storyteller leave that person and enter the listener. For a moment they hold the same space.

Cultural narratives weave the threads of the individual relationships together to form the fabric. The cultural narratives shape the pattern of how relationships come together. The cultural narratives of restorative justice are the stories we share about personal transformation, about

forgiveness, about changed lives. These stories demonstrate the possibilities in human connection, human transformation and love. They create a culture of hope and offer a template for behavior for others. The cultural narratives attempt to use the personal narrative experience to stimulate more such experiences. We use cultural narratives to paint a picture of desired behavior.

‘The story is the best way of organizing information. It is true for all cultures I know,’ says educator Tom Angelo. Storytelling not only organizes information but it delivers information in a way that opens the listener. When information is presented cognitively or asserted we immediately engage a screening device to determine whether we agree or disagree. The information is screened before entering us. We immediately begin thinking about how we will respond. We are primarily engaged mentally. Storytelling takes us to a different kind of listening. The body relaxes, settles back, is more open and less anxious. We take in the story before screening the content. We are engaged emotionally as well as mentally. This different kind of listening allows information to be exchanged more thoroughly leading to much greater understanding between people.

Storytelling gives the listener more power in making meaning out of a situation and consequently the listener is more likely to engage in the interactive process of learning from an experience. Storytelling gets behind the defences people have against lectures or directives or advice.

Storytelling is one of our most important tools for change at the individual level and the societal level. Change, both individual and societal, is driven more by stories than by data. Effective stories engage the storyteller and the listener at both cognitive and emotional levels intensifying the impact of the information shared.

Storytelling is fundamental for healthy social relationships. To feel connected and respected we need to tell our own stories and have others listen. For others to feel respected and connected to us, they need to tell their stories and have us listen. Having others listen to your story is a function of power in our culture. The more power you have, the more people will listen respectfully to your story. Consequently, listening to someone’s story is a way of empowering them, of validating their intrinsic worth as a human being.

Hearing someone else's story reduces social distance and stereotypes about the other. Personal stories capture the complexity of the individual beyond the one dimensional impressions which might be created by knowing of one single aspect of a person's life.

Many victims of crime experience a loss of personal power and a loss of a sense of efficacy to predict and control their own lives. Victims need opportunities to tell their story in order to regain a sense of worth and value and to bring coherence to their experience. Sharing stories breaks down social isolation and builds bonds. Listening to the story of someone who has been victimized helps to reweave that person back into the social fabric of the community.

Many offenders are socially isolated from positive connections in the community. Opportunities to tell their personal story and be listened to respectfully can build bonds to other community members and create social forces which constrain harmful behaviour. Listening to the story of the offender does not mean condoning the behaviour, but it does mean acknowledging that person as a whole encompassing much more than the offending behaviour.

Stories create a way to share joy or pain. Ronnie Earle, District Attorney of Travis County, Texas, defines community as 'shared joy and pain.' Stories, then, become a way of building community, of strengthening our connections to one another and our commitments to one another. If we truly hear the story of another, it is difficult to maintain distance from that person.

Storytelling is also a powerful teaching tool at the societal level. Through stories we express our societal values, our fears, our expectations of life and of one another. The stories we choose to tell and listen to create the culture we live in and the lens through which we view the world.

The stories of Willie Horton, a furloughed inmate who committed murder, and Polly Klass, a young girl murdered by a parolee, drive criminal justice policy in the U.S., though they are not typical stories. Policy driven by those stories is indifferent to data or rational analysis. These stories dominate the public sense of what is possible or probable, but this mythology about our potential as human beings is a destructive mythology. It drives us apart and increases the fear and isolation which contribute to the genesis of such stories.

Stories can be used to generate hope as well as fear. It is important to tell the stories which breathe life into a vision of justice based on healing. When we tell stories about personal transformation from victim to survivor and from offender to contributing citizen, we are painting a vision of a world in which there is hope, a world in which the human capacity for renewal and change can overcome enormous pain and difficulty. Stories of human lives reclaimed create a constructive mythology which reinforces strength and resiliency.

### **Commitment to the common good**

For two decades the climate of public discourse has been one of intimidation and ridicule of voices speaking for compassion or for collective responsibility for the welfare of all. The airwaves have been so dominated by the voices of hate, intolerance and selfish interests that it has appeared that there is scant interest in becoming involved in the problems of others in a helpful way.

Contrary to that perception, our experience in developing restorative processes in communities indicates the existence of a deep untapped reservoir of care and concern and willingness to help others for the good of all.

The peacemaking circle process is demonstrating not only that a more democratic form of decision making is possible, but that a more caring form of decision making is also possible. Many citizens are willing to devote time and provide support and caring to victims and offenders who need help. In half a dozen communities in Minnesota the circle process has been introduced as a possible option for dealing with certain criminal offences. The typical approach is to hold a series of open community meetings to explain the process and answer questions. At these meetings those attending are asked why they are present. The responses to that question have been very moving. Many people express a desire to help others and to build a healthy community and a willingness to give time and resources to achieve that. Those experiences led me to conclude that the circle process is providing a safe place for citizens to express values of compassion and caring for marginalized people. I sense an eagerness in communities for that opportunity because there have been few possibilities in the past twenty years to express values of caring in public and not be ridiculed.

After several informational meetings those attending are asked whether there is interest in developing the circle process in that particular community. In every community there has been an affirmative answer by a group committed to spending time on developing and implementing the process. Circles require

significant community volunteer time. The hard work of circles is done by community members, many of whom had no connection to the victim or the offender before becoming involved in the process.

Much of the power of circles to turn around highly destructive life patterns for offenders appears to come from community support. Again and again offenders who stop their criminal behaviour through the circle process say that before circle they never thought that the community cared, and that the demonstration of caring by the community is what gave them the courage to change their lives.

In the circle process community members who had no previous connection may become part of the victim or offender support group. It is not unusual for community members to make commitments to assist in certain parts of the sentencing agreement for offenders. A neighbour may offer to go to AA with an offender once a week because it is very difficult to go alone. A community member may offer to help with transportation to a community service site or may offer to help the offender explore educational opportunities.

Citizen willingness to be involved in helping is also evident in several other processes which fit the values of restorative justice. Across the country there are legions of volunteer victim advocates who work with non-profit organizations and churches to answer twenty-four hour a day help lines, lead support groups, provide emergency shelter, or sit with the victim and listen to the story.

In a process used state-wide in Vermont and in scattered communities in other states, community members participate in panels which meet with offenders to emphasize the impact of the offence on the community and to help connect the offender back to the community. Repeatedly, organizers of these programs have found that there are many people willing to volunteer time to help their community. They also find that the volunteers reach out in individual ways to meet the needs of the offenders they meet.

In a community conferencing program in downtown Minneapolis, community members who met with an offender charged with driving with a suspended licence offered to help the offender practise for the driver's test in Minnesota so that he could become a legal driver.

Drawn by a sense of mutual responsibility and shared fate, citizens are committing themselves to helping others in large and small ways. Restorative processes in community are providing fertile ground for the blossoming of that impulse to reach out and make a difference in the lives of those in pain.

## **Matching the external journey with an internal journey**

Those elements discussed above hold the potential for reinventing ourselves as a caring, inclusive, democratic society. The work of initiating that transformation and opening those possibilities is done by individuals who must at the same time live in the world as it is. I have found that the work of promoting restorative justice leads inevitably to self-exploration – a deep journey within. Living the values of restorative justice is a continuing challenge. Respect, acceptance of others, and a non-judging attitude are difficult to maintain when we face those who disagree with what we are trying to achieve.

Working toward a restorative vision requires a different kind of leadership.

- Leadership through being present with people as they find their own solution.
- Leadership through walking with people in their moment of uncertainty – not showing the way, but showing confidence that they have the capacity to find the way.
- Leadership not by answering questions for people, but by helping them ask themselves good questions.
- Leadership through opening spaces for others to act in their best wisdom and inclination.
- Leadership through providing inspiration, hope, affirmation for people's own possibilities.

Leadership of this kind requires personal centering, humility and an ability to let go of control. The state of the inner self is critically important. Time for self reflection is essential. Ultimately, the values of restorative justice – respect, love, honesty, sharing and forgiveness – must be applied to the self as well as to others. That is sometimes the hardest journey.

Implications for our relationship to the natural world

Indigenous people throughout the world understand the fundamental relationships of life to apply to the natural world as well as the human community. All forms of life are seen to have value and are to be treated with dignity and respect. The modern environmental movement is based on a similar world view. Every part of the universe is connected to and affects every other part.

Our interconnectedness is not just as humans. We are interdependent with all other aspects of the world we live in – the animals, plants, water and rocks. Our relationships with other forms of life and the elements also shape our lives and for those relationships as well, harm to one is harm to all. How can we apply these same concepts to those relationships? What does it mean to include Mother Earth in consensus decisions about activities that affect the earth? What is the wisdom in the animals, plants, water and rocks? How do we create respectful, reflective spaces to access the wisdom of the animals and elements? How do we hear the story of Mother Earth and tell her our story? What does ‘common good’ mean if we include all forms of life and the elements?

The values of restorative justice lead us as well to exploration of our relationships to all that is around us. The framework of democracy, caring and mutual responsibility has enormous implications for those relationships. We may not yet have answers to the questions raised but the journey requires that we begin to ask them.

### **Conclusion**

We have a greater capacity, as individuals and communities, to take responsibility for the welfare of everyone than we have assumed for ourselves. We have the capacity to practise democracy in new ways which will produce results meeting the needs of more people and therefore creating more lasting resolutions to problems in the community. We understand the fundamental issues related to managing behaviour in the community and we know what is needed for effective resolution of misbehaviour. We know how to use stories to teach and to inspire: to paint the vision of how we want people to act toward one another. We have within our communities many citizens who are searching for ways to make a difference in the lives of others.

The essential pieces necessary to change the way we think about and practise justice are already present in our communities. Leadership and commitment are needed to nurture these possibilities. Citizens generally cannot by themselves identify a pathway to use their own knowledge and resources in a way which connects with the knowledge and resources of others for the common good. The formal systems of government have the resources and visibility to create those pathways with communities and to assist in the creation of the community infrastructure necessary

to sustain those processes. Leadership is needed from both citizens and professionals to call out the capacity in communities to solve problems in ways which honour the dignity and value of every human being and which strengthen relationships of caring and support. Justice based on democracy, caring and mutual responsibility can transform our society from a collection of individual separate citizens living in fear, isolation and disinterest to overlapping communities of people interwoven, connected and committed to one another's well-being.

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