

Restorative Justice in Rural Alaska

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Abstract

A new wave of justice is finding its way into rural Alaska creating a climate of cooperation between State court Magistrates (local judges) and Native people in the remote villages. This community form of justice allows for more local participation using restorative justice principles and models that include input from victims, offenders and members of the community. This paper will introduce a profile of three restorative justice processes in rural Alaska and a working relationship between the western justice system of magistrates and the communities. Included are some challenges and limitations facing advocates of the process. In addition, this paper will include two restorative justice models in Canada that have influenced Alaska; the Restorative Community Conferencing (RCC) for young offenders in Yukon, Canada and Sentence Circles used in Carcross Yukon. The restorative justice process strives for more community and family based involvement using traditional and cultural values that strive for peaceful balance. Restorative justice can be seen as a healing process because it addresses all relationships and it offers a way in which "broken relationships can be repaired" (Van Ness & Strong, 1997, 2002, 2006).

Introduction

The restorative justice process differs from the criminal justice system in how it views crime. Restorative justice considers the impact of the crime, and seeks ways of restitution that include victim, offender and community. In contrast, the criminal justice system views crime as a crime against the State. It is an adversarial process and seeks punishment as retribution for a crime. For indigenous people of Alaska, restorative justice is a traditional and cultural practice of dealing with conflict in the community. This form of community approach is returning to rural Alaska through the commitment of local tribal people in partnership with magistrates for both adult and juvenile offenders.

According to juvenile justice researchers Bazemore & Schiff (2001), there is much that is interesting and exciting about restorative justice. It seems to be "in the air" (p. 25) in creative community planning and visioning session. The policies and practices are clearly "on the ground" (p.25) in local communities, states, provinces, and even entire countries.

I. The Restorative Justice System as a Compass Guided by Principles and Values

There is no one definition that describes restorative justice and there are many models practiced around the world, but all share similar principles and values (Bazemore & Schiff, 2001, Van Ness & Strong, 1997, 2002, 2006). Howard Zehr, considered one of the founders in the field of restorative justice best describes restorative justice as a compass and not a map, guided by principles. The three questions that are asked in any restorative justice process are: 1) Who has been hurt by this crime? 2) What are their needs? and 3) What are the obligations? (Zehr, 2002). The three principles of restorative justice are focused on the harm done and how to restore balance to the community.

Principle 1. Restorative justice requires that we work to heal victims, offenders, and communities injured by crime. The focus is to repair the harm(s) to individual victims. (Van Ness & Strong, 2007). Of special concern to restorative justice are the needs of crime victims that are not being adequately met by the criminal justice system. Victims often feel ignored, neglected, or even abused by the justice system (Zehr, 2002).

Principle 2. Victims, offenders, and communities should have the opportunity for active involvement in the justice process as early and as fully as they wish (Van Ness & Strong, 2007). Often victims of crime feel left out of the criminal system. The crime becomes a crime against the State thus leaving the victim with a sense of isolation, fear and no restitution for the harm done. (Bazemore & Schiff, 2001). In a restorative justice setting, the victim has a voice and can feel empowered by the process of amends and restitution made by the offender.

Principle 3. We must rethink the relative roles and responsibilities of government and community in promoting justice. The government is responsible for preserving a just order and the community for establishing a just peace (Van Ness & Strong, 2001). This suggests that the community can decide the level of peace in their village and work together to ensure it. The government is responsible for enforcing the law and order.

Along with the three principles of restorative justice is a set of guidelines as listed by Van Ness & Strong as follows in Figure 1.

Figure 1
Restorative Justice Set of Guidelines

1. *Amends:* Those responsible for the harm resulting from the offense are also responsible for repairing it to the extent possible.
2. *Assistance:* Affected parties are helped as needed in becoming members of their communities in the aftermath of the offense.
3. *Collaboration:* Affected parties are invited to find solutions through mutual, consensual decision-making in the aftermath of the offense.
4. *Empowerment:* Affected parties have genuine opportunity to participate in and effectively influence the response to the offense.
5. *Encounter:* Affected parties are given the opportunity to meet the other parties in a safe environment to discuss the offense, harms, and the appropriate responses.
6. *Inclusion:* Affected parties are invited to directly shape and engage in restorative processes.
7. *Moral education:* Community standards are reinforced as values and norms are considered in determining how to respond to particular offenses.
8. *Protection:* The parties' physical and emotional safety is primary.
9. *Reintegration:* The parties are given the means and opportunity to rejoin their communities as whole, contributing members.
10. *Resolution:* The issues surrounding the offense and its aftermath are addressed, and the people affected are supported, as completely as possible (Van Ness & Strong, 2006)

II. The Criminal Justice System Seeks Punishment

In contrast to restorative justice, the criminal justice system focuses on the crime that was committed and seeks punishment as restitution. In a criminal justice system paradigm the three questions asked are: 1) What laws were broken? 2) Who did it? and 3) What punishment do they deserve? (Zehr, 2002). In a criminal justice system paradigm the three principles are in Figure 2. 1

Figure 2
Criminal Justice System Retributive Principles

1. Crime is a violation of the law and the State is the victim.
2. The aim of justice is to establish blame (guilt) and administer sanctions.
3. The offender is in an adversarial relationship with the State; defense and prosecuting attorney, judge and jury (Zehr, 2002).

III. A Profile of Restorative Justice in Alaska Native Communities

There are 229 federally recognized tribes in Alaska and one reservation (U.S. Department of the Interior, Indian Affairs). Most of the Alaska Native people live in remote villages in rural Alaskaⁱ that can be reached only by airplane and/or boat. According to the 2011 Alaska Department of Corrections statistics, Alaska Natives make up 36% of Alaska's prison population in Alaska, though they comprise of 14.9% of the Alaska population. In Alaska the State magistrates, meeting with local people in villages have initiated the shift to restorative justice practice in Alaska. The three models of restorative justice all involve community members.

A. Peacemaking Circle – Kake, Alaska

One of the first sparks of restorative justice in Alaska was ignited in 1999 when Canada First Nations T'lingit Harold Gatensby and a team of other practitioners traveled to Alaska to share their success practicing community-based Circle Sentencing in Carcross, Yukon. Culture and stories were part of the circle process. This was not a new idea to Kake, Alaska Magistrate Mike Jackson, a T'lingit, who remembered, in his youth, the leaders meeting in community circles to resolve local disputes (*Healing our Community, The Kake Peacemaking Circle, 2010*).

Kake, Alaska, a small southeast Tlingit village, was in the throes of teen drinking and suicide when 15 young people took their lives in a period of two years in 1980s (*It Takes a Village to Prevent Youth Suicide, 2012*). The village, accessible only by water or air, is located less than 100 miles south of Juneau, the capital of Alaska. For years, the residents of Kake had witnessed their youth resort to drinking, substance abuse, and suicide. The justice system was not available to address their problems. A juvenile probation officer only traveled to their village when there was a serious offense.

In 1998, Magistrate Jackson and a group of concerned residents of Kake organized the Healing Heart Council and Circle Peacemaking, a reconciliation and sentencing process embedded in T'lingit traditions. The Circle Peacemaking involved the participation of local people and groups who rarely come together under the criminal justice system. These people are comprised of victims, offenders, families, friends, church representation, community members and concerned or affected people of the community. The Circle Peacemaking process allowed a group of people to respond to a particular crime or incident. They create a place where the

members work together to bring accountability, restoration, and healing back to their village after a harm was committed.

The Circle Peacemaking process intervenes in State Court cases in violations such as underage drinking, and domestic violence, and it enforces accountability. This has led to the healing of the Kake community and an end to suicide. The Circle Peacemaking works where the criminal justice system has failed. The evidence is in the success rate of the Circle. In 2001, all 24 youth with violations of underage drinking completed the terms of their sentences. Out of 80 who were referred to the circle, only two chose to return back to the criminal justice system. The Circle Peacemaking is not an impersonal, but a deeply personal justice system that depends upon and promotes the interconnectedness of a compact and culturally whole village. The successes of Kake Circle Peacemaking rely on the village's determination to understand and utilize its most salient characteristics as strengths (*Kake Circle Peacemaking*, 2005).

The Kake Circle Peacemaking is open to both Natives and non-Natives of the community. In his 1999 report to the state legislator, the Chief Justice of the Alaska Supreme Court referred to the Circle Peacemaking as an example of local initiative for greater community responsibility and effectiveness with local people. (Rieger, 2001).

According to Harold Gatensby, who travels internationally as a practitioner, trainer and advocate of community-based justice, it is about rebuilding the community.

If we're going to get healthier as a people, as a family, as a community, as a nation, then those very institutions that govern us have to take a good look at them and see how they can start to complement our efforts and help us return to the place of spirit. And perhaps we can help them. When people in the communities realize they have something very important to give, a very, very precious gift to give, then maybe the institutions will realize how dysfunctional they are. That's going to be a healing for the communities, for the families and for those who are caught up in the system that has failed us horribly since it's been here," said Harold Gatensby. (Healing our Community, The Kake Peacemaking Circle, 2010)

The Circle Peacemaking in Kake has a strong and working tribal code that ensures Circle Peacemaking process will continue after Magistrate Mike Jackson retires. The paradigm shift needs to move away from the western way of thinking and *fixing* Native people to the one that respects the indigenous worldview of community and kinship. Native scholar Oscar Kawagley defines the Native worldview when he wrote the following.

Alaska Native peoples have traditionally tried to live in harmony with the world around them....This worldview, as demonstrated historically by the Native people of Alaska, contained a highly developed social consciousness and sense of responsibility. As indicated by the writings of outside researchers and observers, Native peoples' myths, rituals, and ceremonies were consistent with their relationship to one another and to their environment. (Kawagley, 1995)

B. Circle Sentencing – Galena

In Interior Alaska, Galena Magistrate Chris McLain began traveling in 2010 to villages along the Yukon River to hold court assisted by Lisa Yaeger, the Tribal Government Specialist for Tanana Chiefs Conference (TCC) who flew from Fairbanks to facilitate the meeting. TCC is a non-profit Native corporation located in Fairbanks that provides technical assistance and service delivery to 37 federally recognized tribes in the Interior of Alaska. She has traveled extensively into the villages of the Interior and other parts of Alaska, assisting tribes in designing tribal

government structures and procedures, drafting constitutions, ordinances, codes and policies, and assisting tribes on land issues and in the development of their tribal courts.

Magistrate McLain lives in Galena, a Koyukon-Athabaskan village along the Yukon river accessible only by air, water or airplane. The courthouse is located in Galena. McLain's jurisdiction covers seven villages; Galena, Nulato, Huslia, Kaltag, Koyukuk, Ruby and Tanana, all inaccessible by road. Fairbanks, the nearest town, is located 270 air miles to the west. He works closely with local community members in an effort to involve communication between community members, offenders and victims (*Reconsidering the Course of Justice*, 2011).

One case involved a young man with four charges: 1) violating conditions of release; 2) repeat minor consuming; 3) contributing to delinquency of a minor (4 counts); and 4) furnishing alcohol to minors (3 counts). These violations could have resulted in six or more years in jail along with some heavy fines. Members of the community, including youth from the school, met in a circle to talk to the young offender. The community members gave their recommendation to the prosecuting and defense attorneys to consider. The attorneys made their recommendation to Magistrate McLain to consider when imposing the sentence. Magistrate McLain granted a Suspended Imposition of Sentence until the offender completed the recommendations imposed by the community and attorneys. This allowed for the offender to remain in the village avoiding jail time hundreds of miles away. Although the village was not named, there were other villages along the Yukon River that were interested in this process, including Galena, Tanana, Nulato and Huslia.

This process is very emotional. I have always heard and believed in this process, but to see it happen with the state's "blessing" in such a way that a young man can actually find his way out and get on a good path; that is priceless! (Gaede, 2011).

Magistrate McLain's efforts received recognition by Chief Justice Walter L. Carpeneti in his annual State of the Judiciary address to the 2012 State Legislature. There is now a training manual in progress. According to Justice Carpeneti, the efforts of Magistrate McLain gives hope that change is possible. (*Alaska Supreme Court Chief Justice Walter Carpeneti delivers his annual State of the Judiciary Address*, 2012).

C. Upper Tanana Wellness Committee – Tok

In 2008, along the highway system of the Upper Tanana region of Alaska, former Tok Magistrate Dan Ogg and his court assistant drove to Tetlin, a Native village nearly 40 miles away to hold court addressing the high incidence of underage-drinking arrests in that village. It was the first time in years that a magistrate traveled to a village. He opened his courthouse for monthly meetings and invited tribal and local members to attend. Tok is located on the highway system, 250 miles from Fairbanks, the nearest town. The Tok magistrate's jurisdiction covers five villages: Northway, Tetlin, Tanacross, Eagle, Dot Lake, and Tok; and four non-Native communities; Tok, Alcan, Chicken and Boundary. For nearly four years, community members, tribal members, and members from local agencies that included the Tok Area Counseling Center, Alaska State Troopers, Alaska Gateway School District, Tanana Chiefs Conference and Upper Tanana Head Start, met to discuss options to address underage drinking. In addition, the court phone line was open for people to call the toll-free number. The community members formed a committee called the Upper Tanana Wellness Court Committee otherwise known as "The Wellness Committee." One member knew of the restorative justice process from a training in Minnesota. All other members had never heard of the process.

There are elders who remember when tribal council members used to enforce curfews in the Native village of Northway. They remember when the Chief used a public setting such as a

potlatch ceremony to settle disputes. They remember when saying, "I'm sorry" was not enough. It meant buying a new blanket to give to a person they had harmed at a public setting to make amends. In order to learn more about restorative justice, the Wellness committee began searching for more information about restorative justice. (*Northway Elder Sherri Barnes, Personal Recording, 2010*).

The University of Alaska Fairbanks (UAF) Justice Department sponsored a Restorative Community Conference Workshop in 2009 on campus. Valarie Binder, Coordinator of the Restorative Community Conference Program (RCCP) for the Yukon Government, instructed an intensive workshop at the University of Alaska in Fairbanks. A member of the Upper Tanana Wellness Committee attended the workshop and brought the information back to the other members. The Wellness Committee adopted the Restorative Community Conferencing Model into their mission Statement and received funding to address the underage drinking problems. In addition, Professor Brian Jarrett and other faculty from the UAF Dept. of Justice traveled to Tok to hold a two-day workshop on Restorative Justice and Alternative Dispute Resolution (ADR). One of the committee members traveled to Whitehorse, Canada to attend the Family Group Conferencing training. Soon thereafter, a non-profit was formed called the Upper Tanana Wellness Court, and a manager was hired. In the course of a year, two juvenile cases were diverted from the court to village circles. In one case, the minor was a non-Native member of the village. The current Magistrate David Roghair has continued holding meetings at the Court House and has traveled to villages to participate in community meetings. The Upper Tanana Wellness Court is applying for continued funding and the committee members still meet on a monthly basis.

IV. The Historical Context for Restorative Work in Alaska

Native people of Alaska have had a tough road to walk since the beginning of contact with the Non-Native people. They have suffered immense change and sorrow and loss. Today's problems, are the legacy of more than two centuries of Western contact according to Yupik author Harold Napoleon (1996). People died from diphtheria, Influenza, cholera, smallpox, syphilis, measles, mumps, chickenpox, tuberculosis, and alcohol (Fortuine, 1989).

Napoleon (1996) wrote of an awakening that has started to occur after generations of feeling lost and dazed following the great deaths and all the changes the Native people had to endure. In a short time, people went from living a subsistence way of life close to Nature to one a cash economy. It has not been easy for the people who want to practice both traditional and western ways of living. It is only after great suffering that one has to awaken and take responsibility for life as it should be. He suggests that there needs to come a time when the elders sit down with the community in which they live and begin talking about what happened and begin sharing from the heart. It has been too long since people really talked to one another and generations have been born into the trauma of the Great Death and all that followed.

We must do this because we don't know each other anymore; we have become like strangers to each other. The old do not know or understand the young, and the young do not know or understand the old. Parents do not know their children and the children do not know their parents. As a result of this silence, a gulf has grown between those who love and care for one another. It is so very sad. (*Napoleon, 1996:26*)

The Great Death began with the epidemics that afflicted Alaska Natives from the 1770s through the 1940s. The epidemics started in Nome, Alaska, located on the west coast of Alaska, and spread like "wild fire"(p.10) to all corners of Alaska, and killing up to 60 percent of the Native population. The epidemic killed whole families and wiped out villages. Napoleon refers to the survivors being stunned into submission by what is known today as post-traumatic stress

disorder (Napoleon, 1996). This was followed by more fragmentation by the missionaries, the teachers, the agencies, and boarding schools, and by today the television and other modern distractions.

V. The Alaska State Court in Rural Alaska

The State of Alaska criminal justice system is seeking solutions to curb the high number of incarcerated adult and juvenile Natives. There is currently deliberation regarding restorative approaches involving community care and therapeutic courts. According to the 2006 Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission, there remains a great need to expand therapeutic approaches. Alcohol and drug abuse treatment programs should be expanded in rural Alaska, with a system of longer-term residential care in hub communities (including programs for women with children) matched with a network of aftercare services in rural villages. substance abuse, mental health, and dual diagnosis treatment options for youth also need to be strengthened, as well as therapeutic courts, and group homes for children in need of aid who are not appropriate for or unable to access foster care. Changing State regulations to allow close relatives caring for foster children to receive the same level of financial reimbursement that non-relatives now receive the availability of care in rural Alaska could be greatly expanded.

The Native people of Alaska have never lost their inherent right to look after their own people (Case & Voluck, 2002). It is the right of the people to govern their young and to settle disputes within their remote villages along the rivers, and highways and oceans.

The restorative justice process is one way for tribal people to begin to take back the responsibility that has always been theirs to care for the youth and people of their communities. This calls for a commitment for the youth and members of their respective villages. It has worked in Kake using the Circle Peace-Making process.

Interestingly, much of the impetus behind restorative practices in Alaska comes from the early work on restorative conferencing in New Zealand, half way across the globe. While the funding for the pilot project has ceased, the Wellness Court Committee continues to meet and intends to continue the program.

VI. Restorative Practices among the Maori of New Zealand

Restorative Justice had its reawakening in the 1980s with the Maori people of New Zealand. Maori communities were concerned about the increasing over-representation of indigenous people in the criminal system (Van Ness & Strong, 1997, 2002, 2006). In 1984, the Department of Social Welfare in New Zealand published a report calling for a culturally appropriate way to work with Maori youth offenders. This led to the passing in 1989 of the Children, Young Persons and their Families Act. Through this process, the state system began to adopt 'traditional' justice approaches it once prohibited or restricted. Thus, the state incorporated indigenous approaches to social harm within the framework of a state-dominated process (Tauri, 1999). Today, disposition of all delinquency cases (with the exception of murder and rape) are handled in community family group conferences (Bazemore & Schiff, 2001).

Another model that is similar to that of the New Zealand approach to restorative practices is that developed by the Yukon Territorial government in Canada.

VII. Restorative Community Conferencing – Yukon, Canada

The Yukon model, which is also influential in Alaska, is called Restorative Community Conferencing. It has become standardized by the Yukon, Canada government and practiced by

trained facilitators who work with young offenders. In general, this circle is made up of the young person who has committed the offense, members of his or her family and whoever the family invites, the victim(s) or their representative, a support person for the victim(s), a representative of the police, and the mediator or manager of the process. The Youth Justice Coordinator, an employee of the Youth Justice, Health, and Social Services facilitates the circle. Sometimes a social worker and very rarely a lawyer is present. The lawyer is invited as a support person and not in the capacity of a lawyer. The main intent of the process is to repair the harm; give the offender a chance to repair the harm, give the victim a chance to speak about the harm, and for the community to reintegrate both the victim and offender back into the community. The goal of a conference is to formulate a plan about how best to treat the offender.

There are three principal components to this process:

- ascertaining whether or not the young person admits the offense - conferences only proceed if the young person does so or if the offense has been proved in the Youth Court;
- sharing information among all the parties at the conference about the nature of the offense, the effects of the offense on the victims, the reasons for the offending, any prior offending by the young person, and so on;
- deciding the outcome or recommendation (Morris & Maxwell 1998).

The participants are invited to attend the circle. They serve as the supporters for the victims or offenders. One of the facilitator's main responsibilities is to ensure that the circle is a safe place. Most of the facilitator's work is calling and meeting with the victim, offender, supporters and participants before the conference meeting. Most of the people understand their role in the circle. The number of support persons present can often range from 2-10 persons. Some group conferences can be quite large (Umbreit, Vos, B. & Coates 2006).

VIII. Limitations and Challenges in Rural Alaska of Restorative Justice

Restorative justice is not for everyone. This process does not work for offenders who will not accept responsibility for their wrongdoing. In addition, the restorative justice process is not a replacement for the legal system as it is not an answer to all situations. (Zehr, 2002.) Moreover, not all rural villages and communities may want to work with a model of restorative justice. Restorative Justice relies in large part upon community involvement and commitment. The people who sit in the circle must be committed to community healing. Criminal justice forms will remain to deal with cases where restorative justice is inapplicable because of the circumstances, or fails through lack of cooperation or through failure to come to a mutually acceptable resolution (Marshall, 1999).

In the Western justice system, there is greater emphasis on individual privacy and autonomy, and major social divides occur between cultures and age groups (Marshall, 1999). Furthermore, there are communities who are indifferent and actually do not invite change or inclusiveness and may consider that taking responsibility for community members inconceivable and repulsive (Bazemore & Schiff, 2001),

Other challenges in rural Alaska include lack of knowledge, training and resources regarding restorative justice practices. There is an Occupations Endorsement Certificate program made available online through the Interior-Aleutians Campus that teaches a class on restorative justice processes. But, the real change will need to come from within the communities and tribal court leaders to strengthen their tribal court codes.

IX. The Future

There is work to be done to ensure that villages of rural Alaska have the option of practicing Restorative Justice in their communities. This is a return to indigenous ways of knowing and living and dealing with conflict. As Van Ness and Strong have noted, there have been studies and reflections on what are called customary, traditional or indigenous approaches to justice. Several approaches, including Family Group Conferencing (FGC) models have their roots in indigenous practices (Van Ness & Strong, 1997). What is ahead for restorative justice models in rural Alaska depends on the leadership of rural people, and the willingness of the State Courts to engage in community-based restorative justice process.

People in other parts of the world who have worked to ensure the safety, well being and healing of their communities have already done so much of the work that can benefit Alaska. True healing comes from within the rural communities by the people who live there. The social service agencies serving rural Alaska could increase their effectiveness by asking the people what they want, instead of trying to fix the problems using the top-down approach. They only need to look to their neighbors and see how successful the models of restorative justice are working in Yukon, Canada and the Peacemaking Circle in Kake, Alaska.

Conclusion

Tribal people in rural Alaska and the magistrates are working together to practice restorative justice processes that work to keep the offenders at home, instead of going to jail hundreds of miles away leaving family, friends and culture. Each tribe demonstrates different levels of commitment to healing in their communities. There is a big need to return to the traditional and cultural ways of resolving disputes at a community-based approach. The three models of restorative justice in Alaska are at different stages of growth. The Kake Circle Peacemaking process has proven the most sustainable because of a strong tribal code and community commitment. True healing must come from within the community, and the restorative justice model must be chosen by the tribe and not given to them by an outside agency. Restorative justice models are growing throughout the world and have become standardized by the government system in New Zealand and in Canada when working with juveniles. It can become a part of the system in Alaska.

End Notes

- ¹ Rural Alaska: Alaska statutes define "rural" as meaning a community with a population of 5500 or less, and not connected by road or rail to Anchorage or Fairbanks, or with a population of 1,500 or less and still connected by road or rail (AS 14.43.600-14.43.700). The vast majority of the state of Alaska meets this definition.

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