

# An Overview of Restorative Justice Programs

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## Abstract

*In this article the author reviews a variety of local, regional and, national Restorative Justice programs and restorative practices currently taking place at different sites around the world. It is the author's hope that that others will be encouraged to support efforts to improve the availability of fair and equitable justice including the protection of human rights accorded to all citizens of the world through international law, the UN charter, and by treaty. Within the countries most affected by the problems that restorative justice addresses, we may expect many more revisions and adaptations of the various models of Restorative Justice. This may involve the development of hybrid models as we learn from the experiences of diverse nations and communities. This will require the cooperation of a variety of organizations to carry out restorative practices and restorative justice in the future.*

## Introduction

This article synthesizes some of the history and development of the field from the author' viewpoint as a conflict resolution, mediation, facilitation and restorative practices researcher and practitioner based at University of Hawai'i. Most of my research and practice has focused on the Asia Pacific, the Island Pacific, and countries of the Pacific Basin. This work has included an emphasis on the impact and contributions of the indigenous peoples of the countries that have played roles in the early and contemporary development of restorative justice. Also representative programs in countries in Africa, Latin America and East Asia are included in references, signifying the broad recent expansion of this field.

### I. Definition of Restorative Justice

Restorative justice is moving into its third decade of existence. A recent book on the general topic of restorative justice (RJ) points out, "There is no definition of restorative justice that everyone agrees with" (Van Wormer and Walker, 2013). The U.N. provides a definitional starting point in the search for a definition for Restorative Justice. It states:

Restorative justice is a way of responding to criminal behavior by balancing the needs of the community, the victims and the offenders. It is an evolving concept that has given rise to different interpretations in different countries, one around which there is not always a perfect consensus (United Nations, 2006).

Theo. Gavrielides, a London-based human rights academic and lawyer, conducted an extensive research project seeking restorative justice definitions from 40 international RJ practitioners, resulting in a sizeable book : *Restorative Justice Theory and Practice: Addressing the Discrepancy*. His conclusion was that "the only agreement that exists in the literature regarding RJ's concept is that there is no consensus as to its exact meaning (Gavrielides, 2011)."

Other terms that have evolved along with restorative justice include:

- \* restorative living -when we think of being guided by restorative values
- \* restorative practices - the more limited numbers of occasions when we use collaborative encounters, and restorative justice “when those values and practices are carried out in the context of the criminal justice system” (Van Ness, 2011).

## II. New Zealand’s Initiatives in Restorative Justice

New Zealanders, in the interaction between the country’s two largest ethnic groups, “*Pakeha*” (Anglo-European descent) and *Maori* (indigenous people) encountered inequities in the treatment of different groups in the courts. The Maori were early leaders among Pacific indigenous peoples to grasp the importance of the need for change in the criminal justice system, and to take action. With massive increases in the use of imprisonment for addressing criminal behavior, and growing numbers of troubled Maori youth being placed in foster homes when their parents were having difficulties with substance abuse and alcohol problems, the Maori leaders led efforts to change the reality of the justice system as it impacted Maori youth from troubled backgrounds. Helen Bowen and Jim Considine (who was then the national coordinator of the Restorative Justice Network of New Zealand) in their 1999 book *Restorative Justice: Contemporary Themes and Practices* spelled out the ominous consequences to the U.S., Canada, Australia and New Zealand of the rising trends towards incarceration. In that book, Vivian Stern, Secretary General for Penal Reform International pointed out the following:

In 1980 there were half a million people in US prisons. By the end of 1997, there were 1.7 million....Estimates suggest that by the year 2000 the US would be locking up 2 million of its people, that is, more than half the population of New Zealand... Countries such as U.S., Canada, Australia and New Zealand lock up minorities disproportionately. For certain groups of people, for example black men in the U.S., there is more likelihood that they will grow up to be prisoners than that they will grow up to be graduates. U.S. government figures show that the lifetime likelihood of an American male born in 1991 going to prison (excluding imprisonment pre-trial or for a short sentence) is one in 23 for white men, one in six for men of Hispanic origin and more than one in every four for black men. (Bowen and Considine, 1999).

Stern discussed further the situation of indigenous peoples in Canada and New Zealand:

In Australia the disproportion is even more striking. At the end of 1995 Aboriginals accounted for 1.7 per cent of Australia’s population and 19% of those in prison. Native Canadians (First Nations citizens) make up only 2 % of the population in Canada. Yet, in federal prisons, where all those serving sentences of two years or more are sent, 12 % of the men are Native Canadians (First Nations) and 15 per cent of the women are native Canadians. (First Nations) In New Zealand, just over one-half of all the men and two-thirds of the women sent to prison in 1995 were Maori. Yet only 12 out of every 100 New Zealanders are Maori (Bowen and Considine 1999).

In 1969 some 29 per cent of the prison inmates were Maori and by 1991 this had increased to 51 percent. Considering that the prison population doubled in the mid-1980’s, the dominance of Maori in the criminal justice system was evident. In 1995 77,000 Maori were arrested. (Rangahika cited in Bowen and Considine, 1999).

It is noteworthy that in all the four countries named above, indigenous populations are considerably over-represented in the prisons system. In Hawai'i, native Hawaiians (*Kanaka Maoli*) are over-represented in the Hawai'i prison population as well. Recent statistics show that Native Hawaiians make up 24% of the state's population yet they make up 40% of those imprisoned by the state. (Star Advertiser, 12/28/2012). Native Hawaiian leaders are very aware of the parallel circumstances and challenges affecting their fellow Polynesians. Kanaka Maoli, Maori, Tongans, Samoans, Tahitians, Cook Islanders and Marquesans make up the bulk of the Polynesian population of the Pacific.

### **A. New Zealand Maori Initiative**

As noted by Gabrielle Maxwell in her book *Restorative Justice Today*, the New Zealand Maori were the moving force in the passage of the Children, Young Persons, and Their Families Act of 1989. Maxwell stated:

The legislation sets out a number of principles for the future, including that practice in child welfare and juvenile justice must involve parents, extended family and *whanau, hapu, and iwi* (family groups, clans and tribes) in developing solutions to problem situations and provide support to them in caring for their children. These principles emphasized diverting children and young people from court and keeping them within their family and community groups. They require that responses should respect cultural values, adopt culturally appropriate procedures, and cease using intrusive and disempowering interventions. (Van Wormer and Walker, 2013).

The result of the passage of this law was the emergence of Family Group Conferencing (FGC), which has become a pillar of restorative justice as a process that is built around the collectivist and family-oriented indigenous cultures of the Pacific basin and North America. I believe that FGC as a tool can work well in most collectivist societies of SE Asia, the Pacific and many other parts of the world.

The influence of family group conferencing (FGC) and the evolution of its adaptations in other countries in the North America, East and Southeast Asia, Oceania and Island Pacific has been a critical component, in RJ and in child welfare practices, promoting social change. We will trace further developments and noteworthy milestones in the conferencing and restorative justice movement in this article.

### **B. Project Restore New Zealand**

A pilot program was initiated in 2005 in New Zealand that provided for referral of sexual assault cases to conferencing providers with special expertise in this area (Julich et al, 2010). This program is based on the U.S. Restore program which facilitates conferencing for both court cases and for self-referred cases (see Koss, Bachar and Hopkins 2003).

## **III. Australia's Restorative Justice Programs**

### **A. School of Criminology and Criminal Justice, Griffith University**

At Griffith University in Queensland, Australia an RJ program addressing 367 sexual offense cases in the period of 1995-2001 reported several major benefits of the use of RJ. Of the total number of cases (367) 227 were handled by courts, 119 by restorative conferences and 41 by formal cautions (Gavrielides 2013).

The program, run for both victims and offenders, noted the following:

- Victims believed they are better off if their case is handled restoratively.
- If a sexual offending case goes to court, the chances of defendant's conviction being proved are half ( 51%) . This can have severe consequences on the victim, including deep psychological and emotional stress, depression and personality disorders.
- It seems that the potential problems of any restorative process may be less victimizing than the formal legal process.
- The traditional criminal justice process has proved to do very little for victims as long as offenders can deny they have done anything wrong.
- Restorative processes can open a window for offenders to admit to what they have done.

### **B. Australia's Adoption of Family Group Conferencing**

Australia borrowed the Family Group Conferencing model and made some significant changes from the original New Zealand model commencing in 1991. Terry O'Connell, an Australian Police Sergeant was instrumental in importing the basic FGC concept while playing a role in adapting it to community policing in schools in Wagga Wagga, New South Wales (Australia). The shift from having a social worker facilitate the conference (in the original New Zealand conferencing model) to the format of having a police officer facilitate the conference represented a change in the dynamic in the conferences. O'Connell also created a written script for the facilitator to follow, which was carefully revised as he and his colleagues gained experience with conferencing. The script made it much easier to conduct conferences, to train facilitators to use the process and it helped insure a reliable result. This "Wagga" model of conferencing also provided a more active role for the victim, the victim's family and friends than existed in the New Zealand conferencing model. As this model became more established and popular in Australia, with positive feedback from young offenders, their families and friends, Australian educators began using this model for incidents of school misconduct in 1994 (Wachtel, 1997). Unfortunately, bureaucratic and political restraints from the Australian government and resistance from justice administrators seriously constrained the practice of police serving as facilitators in the conferencing model created by O'Connell within a few years after its launch.

One of the issues for the RJ movement raised by this eventuality was: what kind of people are best suited to serve as facilitators in family group conferences? Government. Social Workers? Police? Community-based facilitators? Trained volunteers? Within this article we will point out various approaches to selection of facilitators in RJ conferencing and circles. Research thus far does not seem to provide any serious comparative analysis of the different options for facilitator selection processes for various RJ methods, compared by any particular criteria.

## **IV. Restorative Justice in United States**

Tracing the introductions of RJ into the mainstream of U.S., we note that O'Connell and the Aussie group conducted a training in 1995 for the Real Justice program conceived by American Ted Wachtel. He connected with a police lieutenant in Bethlehem Pennsylvania, who wanted to train officers to conduct juvenile cases and applied for grants from the National Institute of Justice in the U.S. A number of Canadian and American police officers were trained at that time, as the Real Justice program began to organize. During this period, Canadians were

also testing the Real Justice model. Then, Canada was experiencing generally a re-arrest rate of about 40% of juvenile offenders. In Sparwood, B.C. where virtually all the juvenile cases had been referred to RJ conferencing and none to the courts, re-arrest rates plummeted to 8.3 per cent in 1995 and 2.9 per cent in 1996, showing a remarkable impact of the Real Justice programs there.

In Bethlehem, Pennsylvania the conferencing program with police facilitators was evaluated. This program showed lower re-arrest rates (recidivism) for those juvenile offenders who chose conferences than for those who did not, making conferencing a good strategy for diverting youth from the criminal justice system. The studies also found about 96-97% of victims and offenders were satisfied with the conferencing process.

Following the Australian pattern, the US went on to test restorative practices in the schools, exploring ways to use conferencing in Arizona, California, Colorado, Michigan, Minnesota and Vermont, among others. (CRE website accessed 2012).

## **V. Canadian First Nations and Restorative Justice**

Canada has been involved directly in the development of RJ in North America. A partial list of communities in Canada involved in RJ includes:

- Hollow Water, Manitoba (Moon, 1995)
- Canim Lake Indian Band Family Violence Program, British Columbia (Griffiths and Hamilton, 1996)
- Yukon (LaPrairie, 1992)
- Yukon (Kwanlin Dun) - Circle Sentencing (Stuart, 1996)
- Bella Bella, British Columbia (Bella Bella – Frank Brown videos)
- Aboriginal Legal Services of Toronto
- Saskatoon Circle Court, Saskatoon, Saskatchewan.

Notice that all the programs above were connected in various ways to First Nation communities, and at their best, were designed to impact positively the justice system's unequal treatment of First Nations people as represented in the statistics cited on the second page of this article. Also take notice of the wide variations between the different practices labeled RJ in the different communities discussed.

Many RJ writers emphasize that that the "western" Anglo-American and Anglo-Canadian criminal justice systems are more oriented towards punishment of individuals, particularly since on Hofstede's cultural scale of nations the United States is number one out of 70+ countries rated on the "individualism" scale. (Barnes, B.E. 2007; Hofstede, Hofstede and Minkov 2010). On a continuum from most individualist to most collectivist national cultures, the US, Australia and the U.K, are #1, #2 and #3 respectively out of the 70+ nations studied by Hofstede - (the 3 MOST individualist national cultures in the world). Most indigenous cultures in the US, Canada, Australia and New Zealand —Maori, Hawaiian, Native American and First Nations tribes and nations—would be clustered more at the "collectivist" end of the continuum if they had been included in the studies by Hofstede. With respect to criminology and justice systems, we would expect that collectivist cultures such as First Nations cultures (Canada) place very high value on their extended family, their connections to the community they live in, and the human relationships they have with the others in their "world."

In my own experience I have been told by First Nations and native Hawaiian practitioners that I have co-facilitated with that they are considerably more comfortable in a circle setting such as is commonly used in conferencing. This implies that indigenous

practitioners are uncomfortable in western style indoor rectangular rooms with rows of chairs in a straight line, like colleges. Western-style courtrooms and formal attire of the lawyers, judges and court staff are seen as intimidating, threatening and discomforting to a First Nations, Polynesian or native offender, whether a youth or an adult, since in the western justice system they are isolated from the support of their extended family, being judged instead as an individual charged with violating criminal laws that the accused often doesn't really understand. Many of the RJ videos in this field present visually the stark contrast between an indigenous offender's experience in the traditional western court and the contemporary circles experienced by participants in conferencing. The strength and diversity of approach of each of several Canadian communities' efforts in structuring their RJ programs will now be briefly highlighted.

#### **A. Hollow Water, Manitoba**

This program was initiated in 1986 by the Hollow Water First Nation, an Ojibwa community in Manitoba province, as a community-based response to high rates of sexual and family abuse. The 13 steps of the Hollow Water community holistic healing process are described in (Griffiths and Hamilton 1996).

#### **B. Canim Lake, B.C.**

This community-based, band controlled family violence program included adult and adolescent sex offenders and victims of sexual abuse. Specific treatment interventions combine modern clinical techniques with traditional aboriginal healing practices that were designed to meet the needs of the offender and the victim within the family and community context (Griffiths and Hamilton 1996)

#### **C. Yukon Territory, Canada/Kake, Alaska**

In 1993, Harold Gatensby, Tl'ingit and Barry Stuart, Judge of the Yukon Territorial Court had a discussion about bringing the traditional circle practices back as a type of involving the community in a type of restorative justice, and they initiates a "circle sentencing" process that followed traditional Tl'ingit circle practices. Mike A. Jackson (also Tl'ingit) serves as both a magistrate judge in Kake, Alaska and also serves as Keeper of the Circle for the Peacemaking Circles in Kake. Gatensby and Jackson are widely known and credited for developing the Peacemaking Circles - also based on traditional Tl'ingit circle processes. In the relatively small community of Kake (about 800 people) Jackson and the "Healing Heart Council" launched their Peacemaking Circles, which have now conducted over 80 restorative justice circles. (Healthy Alaskans, 2010 Vol. II Chapter 1).

Stuart and Gatensby, in Carcross, Yukon helped launch the filming of a video filmed in 1993 that shows the process, which might be called an RJ "hybrid" in that the judge facilitates the circle conference, as the representative of the legal system but in a more informal setting than the traditional courtroom. The cultural protocols of the community are an integral part of these circles. Local leaders can serve as "keepers of the circle" and organizing support groups in some communities, assisting in the facilitation process since they know the local culture and individuals involved better than the visiting judge does. Drunken driving offenses, spouse abuse and other typical types of offenses can be handled with circle sentencing, which can begin with smudging and /or prayer in the local tradition. The crown prosecutor is invited to read the charges against the offender, and all those community members and leaders are invited to speak of what they know of the offender and their role in the community. After all

have spoken, the judge has the option of identifying a support group for the victim and a support group for the offender from among the community members, to see if they can help the offender to mend his/her ways and in effect be “restored” to good standing in the community. The judge in the Circle Sentencing model still retains the right to send the offender back to court and to jail if the community recovery and healing process agreed-to is not followed by the offender as reported by support groups in subsequent community circles (Istchenko, 1993; Stuart, 1966).

#### **D. Bella Bella, BC – Banishment to Island**

This version of Restorative Justice was almost completely conducted within the scope of traditional healing and restorative practices and cultural setting of the First Nations people of Bella Bella, BC. Frank Brown is a member of the Heiltsuk First Nation in Bella Bella. In his troubled youth he was headed for a juvenile detention center after an incident of assault and battery where Frank was implicated as a ringleader of a group of young “ruffians” that carried out the beatings. His aunt and uncle intervened with the court, asking the judge to sentence him to the traditional native punishment of banishment (to an uninhabited island nearby). He spent 7 months isolated on the island and credits the experience with changing his life. The final “washing ceremony” conducted in front of the whole community brought back the traditional ways which had not been used for a very long time. Frank is now a leader in the ecotourism movement, winning several awards for “Best Case” example of sustainable traditional canoe “cultural tourism”. In this case, cultural tourism referred to the revival of traditional canoe construction techniques and combined with developing a new source of income. An economic base was created, bringing income to the Heiltsuk community by taking tourists out in the traditional canoes and cooking salmon dinners over open fires as part of the trip, letting the tourists experience paddling the canoes around the Bella Bella oceanic waterways and surrounding islands guided by Frank and other Bella Bella trained canoe guides. The awards recognized Frank’s leading the of the revival of traditional canoe-building, extending the voyaging capability as far as the Northern US coastal tribes stimulating a renaissance of the other tribes’ voyaging canoes of old. All of these positive results came from his carrying out a vision for Heiltsuk voyaging canoe culture based in Bella Bella (Brown, F. “Voyage of Rediscovery” video 2006)

#### **E. Saskatoon, Saskatchewan**

Another “hybrid” practice is represented by introduction of circle conferencing into Saskatoon Courts. Merry Ellen Turpel-LaFond, a former judge in Saskatoon, was the first ever “Treaty Indian” to be appointed as a judge in Saskatchewan. She is a Muskeg Lakes Cree by birth and her husband is a former Vice-Chief and Tribal Chief of the Saskatoon Tribal Council. She was also a driving force in the establishment of a “Circle Court” process inside the courtrooms of Saskatchewan. Judge Turpel-La Fond won the support of the judges and judicial community in Saskatoon, convincing them to try this new experiment of introducing the “conferencing” model of community and extended families’ involvement in the sentencing portion of judicial process, including input of the judges, the families of the victims, the family of the (juvenile) offender, the Crown prosecutor’s office, defense counsel, case workers from alcohol and/or substance abuse agencies, community members and representatives of other stakeholders in the process. Because of Judge Turpel-LaFond’s interest in “peacemaking within families” and her commitment to making the courts more open and comfortable for First Nations communities, she organized a group of elders in Saskatoon from the Lakota, Cree and Saultaux First Nations to launch a program based on family group conferencing principles.

The name for the process was “sentencing circles for young offenders” in the Saskatoon courts. A 30- foot diameter circle divided into four quadrants with 4 colors denoting the traditional role of North, South, East, and West which are central to First Nations’ cultural world views—was painted in inside the circle as the “new look” for one courtroom in the Saskatoon courts. The circle seats approximately 14-18 participants in the circle process. This author observed demonstrations of the Saskatoon Circle Court, and felt that the design was created to make First Nations youth offenders more comfortable while learning something about their own cultures in the process. Thus the changes in the layout of the court (Barnes 2011).

Judge Turpel-LaFond ’s vision of the Circle Court is that it can also serve all ethnic groups, not just First Nations youth coming to the criminal courts. She would like the circle courts to be universal such that that non-native people can come to the circle court as well as First Nations children. Judge Turpel-La Fonde was interviewed by the author in Vancouver in February 2011. This section is also based on the interviewers’ notes and conversations with the Vancouver legal community. Turpel-La Fonde has excellent credentials and is well-respected in the legal and other communities across Canada as well. She is a mother of 3, serving as an active member of the Cree community as well other Canadian government and service groups. Because of her interest in “peacemaking within families” and her commitment to making the courts more open and comfortable for First Nations communities, she organized a group of elders in Saskatoon from the Lakota, Cree and Saultaux First Nations to launch a program based on “family group conferencing.” In the early meetings with elders of the three First Nations groups, the elders commented that when their people entered the provincial courtrooms it felt very cold, foreign and linear, with very few or perhaps no pictures, graphics or symbolic representations in the courtrooms that they could relate to or that would make them feel like they were in a building that was “homey” or related to their culture at all. The elders were invited to give input on the kind of people selected as judges and were invited to sit in on the circle sentencing processes to lend their judgment and expertise in the ways of the First Nation communities. The program was called “Sentencing Circles for Young Offenders” in the Saskatoon courts.

Turpel-La Fond explained that the elders emphasized the importance of showing respect to all in the process and love for all including the offender. As the participants go through the process, they learn that the circle itself is a leveler and an equalizer. If a judge participates in the conferencing circle, the judge sits in a chair on the same level as everyone else instead of sitting on high in a large authoritarian – looking chair gazing down at the rest of the people in the room. In effect, the circle becomes the problem-solver, not an authoritarian judge sitting in entering the sentence. Either a trained community facilitator or one of the trained judges can facilitate the family conferencing circles as the process is done in Saskatoon. For Saskatchewan, circle courts are located in the Saskatoon courthouse, the Prince Albert courthouse and the Meadow Lake courthouses. Alberta also had a circle courthouse at one time, but apparently that circle courtroom closed when the aboriginal judge posted there retired from the bench. The population breakdown demographics in the two prairie provinces (Saskatchewan and Manitoba) show an interesting trend: the predictions are that by the year 2050 both Saskatchewan and Manitoba will have aboriginal populations that will constitute a majority. The Eastern and Western provinces’ populations, on the other hand are sufficiently polyglot that they may not have an aboriginal majority within the next 40 years (Interview: Mary Ellen Turpel-La Fond 2011).

## **F. The Residential School Legacy**

One of the most striking and culturally destructive movements for indigenous peoples historically in Canada and the United States was the establishment by both governments of a



system of forced commitment of native children of both countries to residential schools during the 1861-1984 period. A video by Rosemary Gibbons (2007) titled "The Residential Experiment: a Century of Genocide" tells the story of the horrific treatment of the native children who were forced to attend the residential schools from kindergarten to age 18. At the peak of the movement, there were 120 residential schools in Canada and 150 residential schools in the U.S. By the year 1930, 75% of all native children were in residential schools. Much of the testimony in Gibbons' video of First Nations "survivors" of the residential schools comes from British Columbia, including interviews with Gary Oleman who had "survived" the Kamloops Residential School. As related in Gibbons video, the Canadian government contracted with the Catholic, Anglican, United Church and Methodist churches to operate the residential schools. The First Nations groups involved in educating the world regarding the insidious effects of the residential schools estimate that 94% to 100% of the children in those schools were physically and sexually abused. The children were punished if they ever tried to speak their own language instead of English. The Canadian institutions including the Government, Indian agents, the RCMP, priests and religious leaders operating the schools were all implicated in carrying out this debilitating impact on two generations of First Nations people. In the recent decade over 8,000 First Nations men and women have been involved in lawsuits against the Canadian Government. These First Nation groups are acutely aware of the statistics showing a very high correlation between adults who were sexually abused in their childhood and their abuse of their own children leading to devastating results for First Nations peoples over two generations (Gibbons, 2007).

### **G. Clergy and Sexual Abuse by Priests**

We next turn to the U.S. attempts to address the underlying problem of clerical sexual abuse using RJ techniques, beginning with the words of Theo. Gavrielides, introduced at the beginning of this paper:

The scale of clergy sexual abuse within the Catholic Church is frightening. In the United States alone, according to the 2004 U.S. National Conference of Bishops report (John Jay College of Criminal Justice 2004) for the period of 1950-2002, there were 4,392 priests who were the subjects of allegations of sexual abuse that were not known to be false (Gavrielides 2013). Clerical sexual abuse was and is by no means restricted to North America, since abuse cases of this type have been reported in Belgium, France, Germany and the Netherlands. In North America, many of the first level of reactions by victims and their families were lawsuits (Gavrielides 2013).

However, the first decade of the 2000 millennium marked several pilot programs and efforts to employ restorative justice and RJ dialogues to deal with a growing perception that this problem needed to be addressed. Many of these individuals and programs were coming to the realization that much more than just litigation was needed to provide healing, conciliation and other psychological support to the victims. Family and community counseling activities were needed as well. Restorative Justice was turned to as a promising tool to address these complex problems. Here are some examples of these efforts:

Milwaukee (Wisconsin) Archdiocese Restorative Circles: a pilot restorative circle, involving four survivors of clergy sexual abuse, one priest who had admitted abusing a minor, and the Milwaukee Archbishop as described by Geske (2007). Geske reported that the circle was filmed, with the film subsequently used in parishes nationwide to promote the use of restorative justice. This filming of victims of clergy abuse sharing and dialoguing

with the community and clergy as a means of healing past and present wounds became a resource for other restorative justice organizations in Wisconsin. The resulting partnerships between these RJ organizations worked with criminal justice issues, including the provision of victim/offender dialogues for crimes of severe violence through the Wisconsin Department of Corrections (Geske 2007).

### **H. Mount Cashel Orphanage, Newfoundland**

This case spanned a 30 to 60 year period initiated by the sexual abuse of thirty or more boys in the care of Mount Cashel Orphanage in Newfoundland, Canada by 10 members of the Catholic Christian Brothers Order at this orphanage. Also, members of the same order managed St. Joseph's Training School for Boys in Alfred, Ontario and St. John's training School for Boys in Oxbridge, Ontario resulting in criminal charges being filed against them beginning in the 1930s. The unusual nature of the mass abuse, particularly of orphans provoked the direct intervention of the Canadian courts and the legislatures of Ontario and Newfoundland. Only in 2002 did educational institutions legally connected to the Christian brothers reach an out-of-court settlement with the victims in the amount of 19 million Canadian dollars raised from bank loans. Over 700 former St. Joseph's and St. John's training schools' students came forward to allege abuse, and 400 of those students formed a union to pursue their legal options. However, after consideration, they met and chose to enter a restorative justice process (Robinson, B.A. 2002).

In this case, successful outcomes included the following:

- a) facilitation of apologies by those responsible for physical and sexual abuse;
- b) reasonable financial compensation for pain and suffering;
- c) financial advances for medical services, vocational rehabilitation, educational upgrading and literacy training;
- d) provision of counseling services;
- e) payment to ex-students who had not been paid for farm work and menial work while at the schools; and
- f) participant commitment to work towards the eradication of child abuse.

Robinson commented that RJ was the "right procedure" because it avoided the time and excessive costs of litigation, allowed for broader and more creative range of solutions than found in courts, empowered the victims and effectively reduced costs (Robinson 2002).

## **VI. Japan and Restorative Justice**

Our discussion of former Commonwealth and Anglophone countries thus far has unearthed a wide variety of approaches of adjusting or lessening the impact of "western" justice and trying to minimize the emphasis on retribution, revenge, and the burgeoning amount of incarceration in the prisons and jails of these countries. However, it is not just these countries that have utilized restorative practices. A quick look at the number of crimes per capita in all the industrial countries (except Korea) shows that Japan has been uniquely successful in dealing with crime in the last 40 years.

In 1990, Japan only had 1,324 major offenses reported per 100,000 persons while the US had 5,820 per 100,000, the U.K. had 8,630 per 100,000, Germany had 7,108 per 100,000

and France had 6169 per 100,000 in 1992 . Of importance to this article is that Japan's crime rates for the most serious non-traffic offenses —homicide, rape, assault, arson and burglary— have steadily fallen over the last 40 years. (Haley 1996).

One of the most respected American law professors and Japan scholars, John O. Haley has also pointed out that the Japanese have had an effective system of restorative justice. He pointed out the following:

Although the Japanese emphasis on a restorative approach can be explained as a product of Japanese culture, particularly its communitarian orientation as well as the trial-and-error experience of the Japanese criminal justice authorities (Haley 1991), it is neither unique nor exclusive. .... Japanese authorities have discovered a set of responses that tend to work better than what all western industrial societies tend to do in their formal systems of criminal justice.

Haley goes on to describe the elements of restorative justice in any system. He concludes this discussion with the following:

No contemporary criminal justice system in any industrial state is as restorative as the Japanese. The Japanese have institutionalized a process of confession, repentance, and absolution, in which at every stage of the formal criminal justice process, offenders are diverted and restored to the community for corrective support (Haley, 1990,1991, 1995).

He discusses in great detail the "Japanese Model" of criminal justice and how it operates in a restorative mode, and lessons learned by observers and other scholars' work. In his article he reviews the previous restorative justice programs of Canada working with First Nations communities, as well as the programs of New Zealand and Australia.

Reviewing the Australia RJ programs, Haley notes:

The most noteworthy of all is the Australian family conferencing program which was influenced by both the New Zealand example and John Braithwaite's theory of social control, a model based explicitly on Japan Braithwaite 1989, Braithwaite and Mugford, 1994).

Haley concludes his discussion of RJ and the Japanese context as follows:

This is not to say that the Japanese criminal justice system can or should be fully replicated. What we have to learn from Japan is simpler and more basic: that restorative approaches are successful in correcting offenders, empowering and healing victims, and restoring the community. The Japanese experience thus provides insights for other industrial societies seeking to establish a more humane and just system of criminal justice, one free from the human and economic costs of overcrowded prisons, increasing crime and victim alienation. The lesson learned is that restorative justice works (Haley 1996).

## **VII. Hong Kong Restorative Justice**

Dennis Wong, Associate Professor in the Department of Applied Social Studies, City University of Hong Kong is described by the editors of *Restorative Justice Today* as the

“foremost restorative justice organizer in Hong Kong” (Van Wormer and Walker, 2013). He developed his interest in restorative justice for juvenile offenders in Hong Kong as a social work practitioner and academic. In 1989, he developed a theoretical model to explain the onset and continuation of delinquency. Combining this research with Braithwaite’s work on re-integrative shaming, he was able to merge restorative justice ideology with Chinese cultural precepts. Wong wrote:

A restorative justice approach deserves consideration as it emphasizes the concept of Chinese collective responsibility towards crime control (interdependency) and is consistent with the values of forgiveness, interpersonal harmony and the centrality of family which are at the heart of Chinese culture (Wong 2001).

Today he works with a team of social workers in “juvenile self-strengthening teams” who conduct victim-offender conferences as parts of a Hong Kong NGO. He helped organize the first restorative conference appearing on television there in 1999 and reports that the number of restorative conferences has increased while the general public is now more familiar with terms like “*fuk he*” (restoration). School bullying and school violence is widespread in Hong Kong, even more of a problem than in the US or the United Kingdom, with about half of all H.K. primary students having witnessed school bullying and social exclusion in the previous six months. 24% of the primary students in the study reported that they had bullied another child and 32% of the children reported they had been the victims of physical bullying at some time (Wong, 2004; Wong, Lo, Lo and Ma, 2008).

Wong and a group of teachers tried out the first “whole school restorative approach” in Hong Kong for tackling school bullying problems from 2000 to 2002. The “whole school approach” evolved in Queensland Australia, with its roots in the “Wagga Model”. Margaret Thorsborne, managing director of Transformative Justice Australia (Queensland) was one of the first school counselors there to be challenged by her superiors to develop a “whole of school” approach to divert youthful offenders away from court. She discovered that the “Wagga Model” of FGC did work well for dealing with bullying, theft, violence, vandalism, environmental damage, persistent disruption, and disobedience. However, training a small cadre of school counselors, teachers and community facilitators only influenced outcomes for a very small proportion of the school population. The upshot of this one-year trial of the Wagga Model financed by a modest grant of the education department was the realization the to create cultural change among their schools, an ultra-authoritarian system, what was needed was a whole-scale organizational change-the changing of hearts and minds. Thorsborne’s conclusion was:

First and foremost is the willingness and capacity for the school leadership/administration team to lead the change process and to be walking, talking models of how they want the staff and students to behave... (Blood and Thorsborne 2005, 2006) have suggested that this change process will probably take at least three years for implementation, with ongoing attention beyond this to issues of maintenance” (Thorsborne 2013).

In tracing Wong’s path in search of answers for bullying in Hong Kong, we are able to trace the impact of the internet and the ability of RJ and conflict resolution practitioners to exchange ideas and create “hybrid” versions and models of the basic concepts behind “Restorative Justice”. Dennis Wong has in effect borrowed from New Zealand, Australia, Hawai’i and many other sources to develop a model that seems to work well with Confucian cultural precepts as well as practical techniques evolving in conferencing. The “whole school

restorative approach” obviously has worked well for Hong Kong, with consistent evaluation of training Dennis has built up a Centre for Human Relationships which provides trainings in conferencing throughout Hong King. His center now has a contract with IIRP (International Institute for Restorative Practices) to provide conference facilitator training in Hong Kong, Taiwan, Macau and Mainland China (Wong 2013). Obviously the “whole school approach” is one of the outgrowths of RJ—one of the growing branches of a well-anchored tree that portends well for the future.

## VIII. Hawai'i and Restorative Justice

One of the co-authors of the 2013 book, *Restorative Justice Today*, Loren Walker has been involved in RJ in Hawai'i for a number of years. One of her concepts was developed to provide a restorative practice for victims without offender participation. This project simply “gives victims an opportunity to tell their stories in a small group setting.” Walker utilizes co-facilitators, both of whom were former victims of violence to lead this “restorative conversation”. When this practice includes only the victim and the facilitators it is called a “restorative conversation”. If a victim brings one or more supporters to the meeting it is called a “circle of care” (van Wormer and Walker 2013).

### A. *Huikahi* Circles

Walker and others created a process embracing public health concepts that is a restorative reentry group planning model where incarcerated people apply to meet in a facilitated three-hour process that addresses that individual's need for a successful reentry into the community. *Huikahi* Restorative Circles meet the “five principles of effective reentry” advocated by corrections reentry expert Jeremy Travis (Van Wormer and Walker, 2013).

The five principles are as follows.

1. Prepare for reentry;
2. Build Bridges between prisons and communities;
3. Seize the moment of release;
4. Strengthen the concentric circles of support; and
5. Promote successful reintegration.

Although a total of 52 *Huikahi* Circles were provided to incarcerated persons in Hawai'i between 2005 to 2010, and although 100% of the participants reported the circles to be *very positive* or *positive* experiences, the preliminary research results are inconclusive as to whether the circle processes of *Huikahi* prevent repeat crime. One problem is the data sample was relatively small. Since this project was not given enough resources by the previous state executive office, the project's preliminary recidivism rates remains promising, but the data is inconclusive in showing that the circles prevent repeat crime. In spite of the limited services provided, and the preliminary results being inconclusive, John Braithwaite, internationally known expert in restorative justice has called Hawai'i a “world leader in innovation for reentry planning for prisoners because of its work on restorative circles” (van Wormer and Walker 2013).

## B. *'Ohana* Conferencing: a Restorative Practice in Hawai'i

Recently has the Hawai'i conflict resolution community identified Hawai'i's *'Ohana* Conferencing program as fitting into the category of restorative practices. The term *'ohana* means "family" in Hawaiian. *'Ohana* Conferencing is a very successful program in Hawai'i launched by collaboration between the Hawai'i State Family Courts, the Department of Social Services, and a nonprofit titled EPIC *'Ohana* Inc. The Hawai'i founder and first director of this program was Arlynnna Howell Livingston, a former social worker, mediation trainer and program developer. Representatives of the Maori Family Group Conferencing programs were invited to Hawai'i to share their experiences and help set up the *'Ohana* Conferencing programs.

One interesting change introduced in Hawai'i's *'Ohana* Conferencing model was using trained local facilitators from the communities affected, community leaders who were widely respected for their leadership skills as the conferencing facilitators. The original Maori Family Group Conferencing model used primarily government social workers, usually "*pakeha*" (Caucasian) as the facilitators for the FGC conferences. In addition, EPIC paid stipends to the community facilitators for performing the difficult job of facilitating these conferences with sensitivity to the culture of the families and communities involved. *'Ohana* has completed a total of 13,000 cases since EPIC's inception, using the following principles:

Family group conferences are single or serial meetings that highlight family strengths and draw upon the family's wisdom and bonds. Social workers stress the standard of care; the family develops the solution to meet that standard. Personal and community support resources are shared, but the family is given private time to discuss the situation, take ownership of the problem and devise a course of action. Once the group is reconvened, the family, social worker and other service providers agree to, or build on, the family's plan to meet the child's need for safety and security (EPIC web site 2013). Many of the principles derived from the Maori Family Group Conferencing program were incorporated into the *'Ohana* Conferencing model. The "Children, Young Persons, and Their Families Act of 1989" developed by the Maori in New Zealand thus had an impact in the northern corner of the Polynesian triangle - in Hawai'i - as described in the EPIC web site.

The act's shock wave fully hit the shores of the US in 1996 when the *'Ohana* Conferencing Project began in Honolulu, Hawaii. Begun as a collaborative effort by the Family Court of the First Circuit, the Department of Human Services-Social Services Division, and the Wai'anae community on the island of O'ahu, the project was one of four nationwide family group conferencing pilots funded by the Edna McConnell Clark Foundation with support from the National Council of Juvenile and Family Court Judges. The project developed a model for Hawaii that soon became a powerful community-based intervention strategy to divert child abuse and neglect cases from court and assist families involved in the court process.

In 1998, EPIC Inc., a nonprofit 501(c)(3) Hawaii corporation was formed to provide *'Ohana* Conferencing throughout the state. "*'Ohana*" means family in Hawaiian, and like its New Zealand counterpart, an *'Ohana* Conference pulls on existing family ties to "build and strengthen the network of protection of the extended family and the community for the child." (H.R.S. 587-2) Participation is inclusive of any family or community member who may be able to assist in addressing the child's safety and risk factors or transition planning. All requests by an active case participant for an *'Ohana* Conference are honored. The result is a culturally relevant, community-consistent response for children brought into the child welfare services (CWS) system (EPIC web site, 2013).

In the early years of the Hawai'i program, it was widely acknowledged that drug problems related to such drugs as crystal meth were having a widespread and devastating impact on youth and Hawai'i families, especially in lower income areas. The following scenario is offered as an example of how 'Ohana conferencing would interact with a family who had been severely impacted by these problems. Respect for all participants and an emphasis on the needs of the children are at the heart of 'Ohana Conferences. This was true in the recent case of Helen (not her real name), a young mother whose three children were deemed at risk because of Helen's drug use. Helen's mom, the primary caregiver of the children, died in the spring of 2008 and Helen was overwhelmed with grief and the responsibility of single parenthood. CPS became involved after receiving a report of neglect, and an 'Ohana Conference was requested to explore options for the children and their mother. The children's father was in prison and did not want his family involved, but the extended maternal family stepped up to the plate. Two aunts, three uncles, four cousins, along with Helen, her social worker, two child welfare services observers and an EPIC facilitator and recorder were present at the 'Ohana Conference. Family strengths were identified; service options clarified and legal repercussions were explained.

Helen and her family felt the social worker was rooting for them; the social worker saw the resourcefulness and love that existed in Helen's family. An uncle and aunt agreed to take all three children into their home while other family members agreed to supply respite services. Helen, the aunts and uncles cooperated to arrange medical and dental care for the children. Counseling services to help the children and Helen deal with their grief were recommended and accepted. The family, in a supportive tone, expressed their wish for Helen to follow through on substance abuse treatment services so she could be reunited with her children. In the end, a service plan was drawn up that included such treatment. Everyone, including Helen, signed it. To date, Helen and her children are doing very well and reunification is now a viable option.

Since its inception, EPIC has conducted over 8,000 conferences, which have served more than 80,000 participants. In *A Cohort Study of 'Ohana Conferencing in Child Abuse and Neglect (American Humane Association Journal,)* Vol. 19, number 4, 2005, pg. 36), which compared conferenced and non-conferenced CWS cases:

'Ohana Conferences resulted in cases of shorter duration with fewer court hearings, fewer foster home and shelter placements, and fewer ending in permanent custody (a status similar to that resulting from the termination of parental rights). Satisfaction with the CWS system was also rated higher when conferences were utilized. What was once an often tense relationship between the state and families has turned into one of deeper collaboration due to a concerted effort to use 'Ohana Conferences. The result is children in foster care are less displaced, which, in turn, strengthens their sense of identity, security and long-term stability. Lead Juvenile Division Judge Bode Uale observed: "The value of 'Ohana Conferencing is immeasurable. It is the act of getting an extended family together to ask for help for family members and their children who are going to be forever affected by their involvement in the child welfare system. It is reaching for family support when it is most needed. It is giving the opportunity for family to surround their family members and to extend the love by caring for relative children who would otherwise be placed with strangers. It is also giving family members a voice to offer solutions to resolve problems of their own family members. 'Ohana Conferencing takes advantage of family strengths to help their own" (EPIC web site 2013).

## IX. Africa - Transitional Justice

In this section, we will explore restorative interventions for post-war nations. Transitional justice, which relies on the concepts underpinning restorative justice, involves a “range of approaches that nations employ to address past human rights violations. These approaches include trials and prosecution, truth commissions, vetting, reparations, reintegration of ex-combatants and war-affected populations, and institutional reform”(Stauffer 2013). In chapter 21 of the van Wormer and Walker book, Carl Stauffer explores the restorative values and practice of three African nations: South Africa, Rwanda, and Sierra Leone (Stauffer 2013).

### A. South Africa

Stauffer comments that the South African Truth and Reconciliation Commission (hereafter TRC) moved away from blanket amnesty, embracing impunity only on the condition of full disclosure of the truth, it disregarded several critical measures. First the TRC was perceived to be perpetrator-centered as opposed to victim centered, partly because of the amount of time and attention given to the legal rights and procedures due to amnesty applicants. Secondly the South African TRC functioned with a top-down approach, which fostered a vigorous debate on reconciliation at a national level. However, this approach failed to translate the experience to the practical grass-roots community level. By focusing on the top level people who were most responsible for atrocities and killings, there was no formal connection between the TRC and traditional grassroots indigenous practices of justice, healing and reconciliation. Thirdly, an effective transitional justice effort must go beyond confessions, testimony and apology and must enact viable compensation and reparations mechanisms to satisfy the general public (Stauffer 2013).

### B. Rwanda and the *Gacaca* Courts

Rwanda elected to conduct its transitional process one step closer to a local, community-based process. The *Gacaca* process involved the community electing nine community leaders to function as third-party judges/arbitrators. These nine are tasked with fact-finding, gathering all the information possible about the genocide activity in their local village. Truth-telling is essential to the process, such that witnesses should corroborate the findings of the arbitrators. As Stauffer comments: “The benefits of *Gacaca* are myriad, and the world is watching with bated breath to see the potential long term success of this effort for reconciliation and healing in Rwanda” (Wolters, 2005). Many possible pitfalls await the application of full *Gacaca* process, as noted by observers (Tiemessen, 2004; Mamdani (2001) and Lemarchand (1994).

### C. Sierra Leone and *Fambul Tok*

In Sierra Leone a brutal and terrorizing war lasted twelve years. The country initiated a Truth and Reconciliation Commission (TRC) to promote healing and restoration. A promising response to the apparent lack of community-instituted healing processes is the *Fambul Tok*, which, translated from *Kriol* (a local language) meaning “Family Talk.” Two NGOs led by a Sierra Leone human rights group launched this initiative aiming to foster “sustainable peace in Sierra Leone through reviving our communities’ traditions and values of confession, forgiveness and reconciliation”(Stauffer, 2013). This model is based on traditional conflict resolution practices in the family network, integrating innovative dialogue and healing



measures. The ceremonies comprising the heart of the program are called “truth-telling bonfires” and are facilitated by local leaders/elders providing “wisdom, moral structure and social capital.” Following the ceremonies, radio-listening clubs, football games and communal farming projects furthered healing and reconciliation. In the earliest stages, 161 *Fambul Tok* ceremonies were planned at the chief level all around the country, but the *Fambul Tok*’s popularity has generated a huge demand for these truth-telling bonfires and ceremonies at all levels of the society. Now, thousands of the ceremonies are planned across the nation. According to Stauffer, “*Fambul Tok* illustrates the energy spark and creative genius of civil society and community-based innovation when allowed to dream and act out a better future” (Androff, 2013).

## X. Timor Leste (East Timor)

Timor Leste is the newest nation in Asia which occupies the eastern half of a small island on the edge of the Indonesian archipelago. Portugal concluded centuries of colonial rule in 1975, and after only nine days of Timorese independence, Indonesia invaded and forcibly annexed the small country.

The Indonesian occupation “lasted until 1999 and was characterized by mass killings, rapes, displaced population and famine” (Nevins 2005). Even after an overwhelming vote by the Timorese for independence, many Timorese were massacred while thousands were forced into Indonesia and into the cities plus their infrastructures were destroyed. United Nations peacekeepers deployed, allowing a transitional government to be seated. The Democratic Republic of Timor-Leste assumed authority in 2002 and launched a TRC to examine the consequences of the occupation and promote reconciliation. The Timor TRC was called the Commission for the Reception, Truth and Reconciliation (CAVR). CAVR was charged with facilitating the return of 220,000 Timorese refugees from Indonesia, fact-finding about human rights violations during the Portuguese decolonization and Indonesian occupation while contributing to healing and reconciliation. Funded by the UN and international donors, CAVR was staffed by Timorese and international personnel, and led by seven Timorese commissioners.

The main reconciliation effort of the CAVR was to conduct a local and culturally-based restorative justice process to effect the reintegration of former pro-Indonesian Timorese militia members into communities. (Androff, 2008). The Community Reconciliation Process (CRP) “was unique in its focus on the less serious crimes committed by militia members who were unable to face their victims and return home to their villages. The CRP built on a traditional system of conflict resolution that was a village-based participatory process involving local leaders and elders, perpetrators, victims, community members, the courts and CAVR representatives.” (Babo-Soares, 2004; Ximenes, 2004). As restorative justice interventions, the ceremonies of CRP allowed perpetrators to admit responsibility for their crimes, publicly apologize and face their communities, and listen to the anger, frustrations and experiences of their victims. The ceremonies included drumming, spiritual rituals summoning ancestors, and use of symbolic woven mats to bind disputing parties together while solidifying the final agreements.

The CRP ceremonies aided thousands of former militia members to reintegrate into their villages and prevented renewed violence by settling residual anger through accountability. The CRP component of CAVR is a powerful example of how a TRC can be adapted to the local cultural context to engage in reconciliation and social recovery from violence” (Androff, 2013). Since Androff’s comparative chapter on transitional justice was probably written in 2012, and published in

2013 we can assume that indeed, the CRP ceremonies obviously did greatly reduce the violence of the militia as they were reintegrated into communities.

## Conclusion

I believe this discussion has only scratched the surface of the many possible applications of different local, regional and national versions of restorative justice programs and restorative practices around the world. Through this introduction to the evolution of existing applications and programs, it is our hope others will be encouraged to support efforts to improve the availability of fair and equitable justice plus universal protection of human rights that are theoretically accorded to all citizens of the world through international law, the UN charter and treaties. Within the countries most affected by the problems addressed by restorative justice, we may expect many more revisions and adaptations of the various models of RJ. We may discover hybridizing between diverse nations and communities' experiences in launching all these different models. We can anticipate the enlisting and building of a wider variety of organizations to carry out restorative practices and restorative justice in the future. Our grateful thanks to all the pioneers of RJ, some mentioned here and in our shared postings and conversations at the 2013 Cyber-Symposium. We recognize that we haven't provided a comprehensive list of global RJ leaders, RJ programs or researchers due to space and time limitations, but we hope this modest contribution will serve to add to the awareness and utilization of RJ around the globe.

## Endnote

- i. Grateful thanks to the US / Canadian Fulbright Programs for the support of my research on conflict resolution and restorative justice in Western Canada in 2010-2011.

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