

# **Community Peacemaking Using Restorative Justice Principles**

“When Neighbors are Not Being Neighborly.”

## **INTRODUCTION.**

This paper is about creating sustainable peace in communities which are experiencing the lack of it from heightened criminal activity, racial or cultural prejudice, or merely from its neighbors not being neighborly. It exhibits a new application model for traditional Restorative Justice which has been proven to be a successful tool for municipalities to interrupt disruptive activity, de-escalate unacceptable social behavior, resolve aggravated differences, and preempt potential criminal acts. In other words, “When Neighbors are Not Being Neighborly.”

“Community dissonance” often masks the values of respect, open-mindedness, inclusion, effective communication, and right-relations. The model uses Restorative Justice principles to create Community Peacemaking Conferencing committees. Here, as in traditional Restorative Justice conferencing, dissonant parties can find the root cause of their problem and then together develop a path to harmony and peace between themselves. Achievable goals are reduced calls for police service, fewer distractions for municipal authorities and the cost savings realized from both. Proven results are reduced criminal behavior, arrests and court cases, along with reduced fear of crime and a restored sense of community. Community Peacemaking Conferencing is the new tool for working towards a sustainable peace in communities. This is a proven process which has significant potential, and one which should and can be implemented for creating peace and harmony on a global scale.

To explain the basis of this model, Part One begins with a general review of current crime, incarceration and recidivism statistics. The connection of these statistics to the Restorative Justice philosophy is then made, along with an overriding definition of its principles and techniques.

An explanation is given how Restorative Justice principles came to exist as an alternate method to the currently used criminal justice system.

To explain the application of Restorative Justice in Community Peacemaking, Part Two first reviews the principles of community and the virtues attributed to right-relations. Part Two then explains how the principles and techniques of the Restorative Justice method are applied to neighborhood disruptive situations and potential criminal behaviors. This paper exhibits how this new application model for Restorative Justice conferencing can be installed as Community Peacemaking Conferencing committees through municipal initiatives.

This model was developed by this paper’s author, James A Termotto Sr. of Rochester New York USA. He has successfully achieved its implementation as public-policy in that city.

## PART ONE

Is there a correlation between the numbers of inmates  
and peaceful activity between neighbors ?

### STATISTICS.

Consider the fact that incarcerations worldwide are increasing. This fact alone would suggest that there is criminal behavior within strata reaching down as far as the most basic level of neighborhoods. Consider now that in the United States, prison populations are increasing at least two to three percent each year. 1 In the United States, prisons at all levels are reaching 110 percent capacity. 2 Incarceration figures are being pushed by a rise in overall crime at a rate nearing six percent, with violent crime rising near two percent. 3 Part of the incarceration rise is due to the sentencing structure established by the US Sentencing Commission and the Sentencing Reform Act of 1984. This structure determines preset sentences for specific crimes and criminal histories, to which judges cannot depart. 4 The sentence of incarceration for low level crime is one factor for the prison population increase. Adding to this is the recidivism rate. North American studies have shown that of released low level crime prisoners, between 80 and 90 percent did not have a crime-free period for one year after release. Another figure places sixty-five percent of adult aged prisoners as having at least one youth conviction prior to their current incarceration. 5 There is a long standing philosophical belief by those who study penology, that prisons do not rehabilitate or deter crime - for many levels of crime. Their common statement is, "prison teaches prisoners to become better criminals." A recent visit by this author to a British Youth Offender prison observed "youth" aged 18 to 22 placed together in the same confinement areas. 6 This population included burglars, drug dealers, robbers, rapists, pedophiles and murderers confined with little segregation. This is not uncommon. So, a rhetorical question could be asked of the reader, what does a car thief learn about other crimes while in prison? .

Considering the statistics presented above, one could extrapolate that incarceration is directly related to the lack of peaceful activity in the neighborhoods. If incarceration does not help or benefit communities and their neighborhoods, if incarceration may exacerbate criminal activity, then what else should be done to correct the harm caused by criminal acts? This is the basis of the Restorative Justice philosophy. In essence, those who ascribe to the Restorative Justice concept believe that there are other methods to deal with the harm caused by criminal activity other than incarceration. This harm could be at various levels of crime, although not all levels apply.

## PRINCIPLES.

What is Restorative Justice?

The simplest explanation for the Restorative Justice method is this:

Restorative Justice is a worldwide alternative method of criminal justice working alongside traditional justice systems.

Its difference is healing not punishing the harm caused by offenders to victims.

Together the victim, offender, and affected community find a satisfying resolution to the criminal act, which often can be accomplished without incarceration.

Restorative Justice is not an alien concept that has dropped out of the stratosphere. It is being practiced around the globe. It also has been the method of dealing with unacceptable social behavior for millennium by ancient and indigenous cultures. Long before the nation-states took over the status of being the victim, <sup>7</sup> and long before prison was determined to be the most scientific punishment for crime, <sup>8</sup> the concepts upheld by Restorative Justice were being used.

Restorative Justice principles place the harmed party as the victim themselves, not the state. Restorative Justice places the offender into the process of healing the harm, not warehousing them in a prison cell. Restorative Justice brings all affected parties together to find a resolution to the harm caused by the criminal event. As the definition above suggests, the victim has a voice, the offender has an accountable responsibility, and those in the community (secondary victims, either victim's family or other stake holders) also have a voice. Together, they all find an appropriate, agreeable and fair choice in what needs to be done to heal the harm caused to the victim, return the offender to an honorable state, and ultimately find a satisfying justice for all concerned. This method requires the offender to admit their part and voluntarily agree to participate in the system. It also requires the prosecutorial jurisdiction to allow the case to move forward using the process. Using Restorative Justice does not give the offending party a free "get out of jail card," <sup>9</sup> or a soft landing, or an easy way out of the crime. The courts must approve the resolution created as fair, accountable and accomplishable. Once agreed upon, the offender becomes accountable to the elements of the resolution. Should the elements not be accomplished as prescribed, the courts have the discretion to take back the case for further action.

There is no easy out through the Restorative Justice process. The offender must find in themselves the ability to make right the harm they caused. The victim must find through the process a means that satisfies the harm they have received. The stake holders, the community, must find not only a satisfying conclusion to the harm caused, but a means to accept the return of the offender back into the community. This is the basis of the honor-shame value system found in many ancient and indigenous societies. In fact, the honor-shame system appears in many sacred scriptures. When one has shamed themselves, the only course of action is to return to honor. The offender is not the only party which

must find the path to honor. The community must assist the offender to return to honor. Without this assistance, the community will always see that party as shamed. It is a dialectic. The offender and the community do not become one complete whole unless each part is whole.

Along with honor-shame in this moral system is what most call “the golden rule.” The rule also can be found in scripture, both eastern and western. The reader will recognize the golden rule as, “do unto others, etc.” This author tends to use the reverse of this phrasing as a better direction. That is, “do not unto others, as you would not have done to you.” This is the eastern moral concept of “ahimsa - do no harm to any life form.”<sup>10</sup> The connection that ahimsa, or the reverse golden rule, has to honor-shame is the core of many indigenous societies. When one has harmed another, they have shamed themselves. The community comes together to find a means to return that person to honor, just as has been explained above. This system can be found today in the Inuit of the Canadian First Nations.

In the northern provinces of Canada, the crown court has jurisdiction, but not a permanent presence. In absence of an onsite sitting magistrate, the community elders use peacemaking circles, or sentencing circles, as a criminal justice system between visits of the territorial magistrate. Use of these elder circles, et al., was brought into focus by Yukon Territorial Judge Barry Stuart<sup>11</sup> The neutral elders bring into the circle the offending party, the victimized party, and the entire community. The problem between the two direct parties is then considered a problem for the community. The reader may recognize this same ideal expressed in the African phrase, “it takes a whole village to raise a child.” The concepts are the same. The use of circles in territorial justice is an accepted criminal justice system, alongside the standing crown court. A wider use of the First Nation’s form of justice, alongside the traditional system, is being promoted by Magistrate Marsha Erb, Province of Alberta Canada. Her system connects that province’s court and prosecutors to the aboriginal community by the “First Nation Peacemaker Court.”<sup>12</sup> This proposal places a First Nation Judge into the crown court system. Her method provides a direct relationship between the two distinct cultures present in that province. This methodology mirrors the concept being offered by this paper’s Community Peacemaking Conferencing model. The idea of merging cultures through a justice system is the essence of these committees. That is, the culture and relative shared values of the community in which disruptive behavior is occurring is merged with the legal codes of the municipality and its methods of justice. This model is explained in Part Two.

## PART TWO

### Getting In Front of Community Dissonance.

The discussion, so far, of Restorative Justice applications has been in the aftermath of criminal activity, or specific criminal events. This paper promised a new model for applying Restorative Justice principles and techniques as a method of Community Peacemaking, getting in front of a community's dissonant activity. Community Peacemaking Conferencing is presented by this paper as a tool for municipalities to interrupt disruptive activity, de-escalate unacceptable social behavior, resolve aggravated differences, and preempt potential criminal acts - the community dissonance. Its use has been implemented and has proven successful. The structure of Community Peacemaking Conferencing committees, and the means to develop them will be addressed shortly.

### DEVELOPING COMMUNITY.

How were the elders of indigenous cultures able to maintain harmony in their societies? They were working with members of that society who shared a common vision and culture. They were working inside a recognized and accepted community. Understanding how Community Peacemaking Conferencing can be applied requires a brief discussion of what it means to be a community, as well as how the nature of community fits into a peacemaking process. To begin, here is a quote from noted American communitarian scholar Amitai Etzioni. His general definition of community shows up in his numerous books. 13

Community is a combination of two elements:

- a) A web of affect-laden relationships among a group of individuals, relationships that often crisscross and reinforce one another ( rather than one-on-one or chain like individual relationships );
- b) A measure of commitment to a set of shared values, norms, and meanings, and a shared history and identity - in short to a particular culture.

Many neighborhoods recognize that they share a commitment, and have shared values and norms. They recognize there is a shared history and identity. Visitors to neighborhoods often hear the history of that neighborhood, and how the residents there interpret their neighborhood fitting into the community. This identity may be based on culture - either societal or immigrant or religious - on class or level of affluence, or on many other factors.

Difficulties arise when residents do not agree that certain newcomers fit the identity of their neighborhood. Established residents may not accept the cultural aspects of newcomers.

Even so, newcomers are expected to live by the values and norms that have been historically adopted and accepted in that neighborhood - regardless of whether the newcomers had any previous say. This is a step off point for potential disturbance. Individuals are, well, individuals. They possess characteristics and beliefs that are often independent of those around them. Independence is liberty, one that allows the individual to pursue their desires. This is the door to differences between the historical residents' culture and the newcomers' independence. It sets a scenario for community dissonance.

Exclusion is another area to consider. Difficulties arise when historic residents exclude newcomers because of their lack of history with the neighborhood, or their perceived lack of complementary fit to the neighborhood. This type of exclusion may stem from cultural factors like religion, national origin, language, or race. That is, factors which are not part of the neighborhood's historical identity (this is prejudice). Exclusion brings a barrier to any level of consensus on needed changes to the norms, based on a change in the neighborhood's population profile. This author likes to relate this barrier to an image of the picket fence. One can see through the slats, but cannot reach through to touch the other side. Seeking consensus is a necessity when ambient factors are in flux.

Labeling creates barriers. It is the source of the "them and us" syndrome. It also sets up exclusion, and the frustration that may be derived from that exclusion. If a neighborhood can avoid labels based on social and cultural differences, old or newcomer histories, or any other factor which creates a "them and us" dichotomy, then inclusion may be achieved. This leads to consensus, which leads to relationships that reinforce one another. It is a measure of commitment to those factors which create "community." Just as Etzioni suggests.

#### PREEMPTIVE vs REACTIVE.

How can Restorative Justice work to preempt community dissonance? It starts with the Restorative Justice principle: healing the harm caused needs all parties to find a satisfying resolution. Preempting dissonance needs all parties to agree to the shared principles of that community. Criminal Restorative Justice brings into the circle the offending party and the victimized party. Community Peacemaking Restorative Justice brings into the circle the parties who are at odds with each other. It may also be used to bring in one party whose unacceptable behavior is at odds with the community in general, and is spiraling downwards toward criminal activity. Both situations present parties going beyond the shared values and norms of the community. In the one case, the two parties are neither victim nor offender, they are both. In the other case, the one party may be perceived as the offender, call it wrongdoing party, and the victimized party actually becomes the community. The reader is sure to recall situations from their own experience which resemble either or both of these scenarios. In either case, the Community Peacemaking Conferencing model becomes the elder circle. It brings into the

circle the concerned primary parties, secondary parties, and community stake holders. The circle is facilitated by a neutral party who takes on the elder role. As in criminal Restorative Justice, the involved parties must together find a satisfying resolution to the disruptive activity. They must find in themselves the ability to make right the harm they have caused. The stake holders, the community, must find not only a satisfying conclusion to the harm caused, but a means to return the disruptive parties “back into” the community with honor. The concept is simple: move the Restorative Justice process to the front of the problem. It is a preemptive role rather than a reactive role.

## CREATING COMMITTEES.

There is a difference in how a Community Peacemaking Restorative Justice circle conference is structured versus a criminal justice one. The criminal justice conference is usually established by an adjunct facilitation service to the court system. It operates with affirmation of both the courts and the prosecutorial jurisdiction. The process is initiated either just before an arrest or appearance ticket (some call this a warning) by the police, or by the prosecution, or by the sitting judge. The case is taken out of the system and the Restorative Justice process begins. Whichever direction the entry into criminal Restorative Justice has taken, it often begins with some form of police service.

Police services may be the initiator of a Community Peacemaking Restorative Justice conference, as well. A patrol or neighborhood policing officer may identify a situation which needs defusing or course altering. This initiation may also come from a municipal authority assigned to the zone in which the community is located. It may come from a neighborhood association, or business association, faith group, or the neighborhood school. There are plenty of eyes and ears in neighborhoods that know what is happening and who is involved. Community Peacemaking Conferencing can be initiated on an ad hoc basis. That is, a trained person or group can form a conferencing circle for one particular situation. They may enlist the support of the municipal leaders responsible in the area. They may rely on the police service to bring into the circle the disruptive party/parties. The conference circle then must include a wide variety of affected participants. Supporters for each party of the situation are encouraged. Members of the affected community should also be included. These may be those directly affected, or those knowledgeable of the parties and the situation, like clergy, school administrators, local service organizations, etc. . Conferences should be held in a neutral place, at a time convenient to all parties concerned. Pre-conferencing is important. The facts are important. They are the seeds for growing a solid, fair and agreeable resolution.

The conference is a safe, respectful, and confidential place. Parties are expected to speak calmly, clearly, and respectfully. The facilitator keeps the speaking in an orderly manner. The completely neutral facilitator works through a line of questioning that allows all parties to have their say, bring forth their concerns, and their desires for

a successful conclusion. As in criminal Restorative Justice, a resolution is sought. In this case, the resolution is not a contract that resolves a crime, needing approval of the court. This resolution is a neighborly contract that allows each party to understand what is expected of the other. After the elements of the resolution are accomplished, or during the achieving of the elements, all parties will hopefully be at peace with one another - a return to honor. There is one factor that may enter into this type of conference. That involves the police. If the problem was approaching a criminal state, the disruptive party/parties must be made to realize that if the resolution is not accomplished as agreed, further action may be taken by the police. This caveat means that someone is monitoring the progress of, or lack of, accountability. As in criminal Restorative Justice, consequences are the "strong arm" of understanding that this is not a fluffy technique to get out of a troubled situation.

There is a higher level of Community Peacemaking Conferencing establishment. This level is the development of permanent committees in various neighborhoods. This falls under a public-policy implementation. Such committees will have the specific underpinning and support of the municipality in which the neighborhood is a part. In this case, the municipality supports the committees with either a liaison or a dedicated staff to service functions, such as coordination of convening the committees, appointments for pre-conferencing, identification and invitation of secondary parties and stake holders, and the clerical services necessary for resolution recording and accountability monitoring. It also should supply a level of funding for professional Restorative Justice facilitators. A permanent presence may also involve training of Restorative Justice facilitators in groups within neighborhoods. This advances the Restorative Justice concept and understanding of the principles. Added to this should be peacemaking circle training. The value of this effort allows consensus building among the diverse members of a neighborhood. Here, norms and shared values can be revisited, revised, and revered.

## CONCLUSION.

Restorative Justice is a means to heal, not punish, the harm caused by one person to another. It is a process which allows the harmed party to participate in the decisions which are made to heal the harm caused them. At the same time the party doing the harm takes direct responsibility for their harming actions, is present, and takes part in the healing. The method also includes those who surround the parties directly involved. Their part in the process is to help in deciding a fair, acceptable and accomplishable healing of the harm, as well as what would be logical to help the harming party return to full acceptance by the community. The idea that Restorative Justice is geared solely as an alternative to the standing criminal justice system - in the aftermath of criminal acts - is now obsolete. Usage of Restorative Justice principles and techniques is possible for preempting and defusing behaviors and activities that lead to criminal acts. Community Peacemaking Restorative Justice has its place in finding solutions to redirecting the

turmoil, the dissonance, that resounds in many neighborhoods across many communities. Community Peacemaking Conferencing is the new tool to work for peace in communities. This is a proven process which has significant potential, and one which should and can be implemented.

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This model was first formulated in:

Community Peacemaking Using Restorative Conferencing Principles.

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Author - James A Termotto Sr M.A. M.T.S. B.S. C.R.J.P.  
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## NOTES

### PART ONE

#### Statistics.

1. Source: Bureau of Justice Statistics, US Department of Justice. Census of Federal and State Correctional Facilities, 2006; and, Pew Research Center 2008.
2. *ibid.*
3. Reuters. May 21, 2007.
4. The Sentencing Tables in the US Sentencing Commission Sentencing Guide have been challenged in the US Supreme Court. As of that court's decision December 10, 2007, justices returned discretionary altering of the tables to judges. This decision was based on contests to the disparity of harshness of sentences for certain crimes. Source: The New York Times, December 11, 2007.
5. Source: extrapolation of Canadian statistics, Census of Canada, 2001.
6. Her Majesty's Youthful Offender Facility, Glen Parva, Wigston England. November 2007.

#### Principles.

7. The court of English King Henry II. Source: Howard Zehr, Changing Lenses: A New Focus for Crime and Justice.

8. Jeremy Bentham. The Proportions Between Crimes and Punishments.
9. Reference to the Monopoly board game piece (©Milton Bradley Co.) which allows players to avoid the prison penalty of the game.
10. Ahimsa can be found in the Vedic religions, Hinduism, Buddhism, as well as Confucianism. It is the premise behind the Karmic principle: one becomes good by good actions, one becomes bad by bad actions. The term, “any life form” goes beyond the human form.
11. Barry D Stuart, Building Community Partnerships. Aboriginal Peacemaking Sentencing Circles. Yukon Territorial Judge, Canada.
12. Marsha Erb, Crown Magistrate, General Counsel Tsuu T’ina First Nations, Alberta Canada.

## PART TWO

### Developing Community.

13. Amitai Etzioni is a professor at George Washington University. This reference source is Monochrome Society, Chapter VII, originally from Etzioni’s The New Golden Rule: Community and Morality in a Democratic Society.