

THE RESTORATIVE JUSTICE WAGER: THE PROMISE AND HOPE OF A VALUE- BASED, DIALOGUE-DRIVEN APPROACH TO CONFLICT RESOLUTION FOR SOCIAL HEALING

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Mitakuyapi Owas'in (All My Relations)
Traditional Dakota greeting¹

We belong to one another
Douglas Sturm on the
Principle of Internal Relations²

INTRODUCTION

Restorative justice is a value-based, dialogue-driven approach to conflict resolution that is rooted in a *wager* about the nature of reality and the human condition, namely that “[e]very human being wants to be connected in a good way” and in a “safe place” we are able to take action through dialogue to build community so that all life might flourish.³ This wager embraces the idea that deep within every human heart there is a restorative impulse to seek social healing that is taking form in the world through the practices of restorative justice. Grounded in this wager, restorative justice offers a refreshingly *different framework* for thinking about

* Professor of Law, Hamline University School of Law. Thanks to my teaching colleague Penelope Harley for proposing that the two of us undertake the experiment we shared in the Spring of 2005 to teach Restorative Justice inside a talking circle in a law school setting. That experience, and the students who participated in the course then, and in our separate offerings in the same format since, have been the source of many fruitful conversations as I have worked on this article. Thanks also to my colleagues Bobbi McAdoo and Jim Coben of the Dispute Resolution Institute at Hamline University School of Law for many helpful conversations along the way. With gratitude for the contribution these three colleagues have made to my understanding of conflict resolution, I hasten to add that the opinions set out here and the errors that remain are mine alone.

¹ WAZIYATAWIN ANGELA WILSON, REMEMBER THIS!: DAKOTA DECOLONIZATION AND THE ELI TAYLOR NARRATIVES 62 (2005).

² Douglas Sturm, *Introduction: Thinking Afresh About Faith and Politics*, in BELONGING TOGETHER: FAITH AND POLITICS IN A RELATIONAL AGE 1 (Douglas Sturm ed., 2003).

³ KAY PRANIS, BARRY STUART & MARK WEDGE, PEACEMAKING CIRCLES: FROM CRIME TO COMMUNITY 9 (2003) [hereinafter PRANIS ET AL.].

crime, wrongdoing, and conflict. It moves beyond the confines of traditional justice systems to embrace social justice principles. Restorative justice acknowledges the *damaged relationships*, as well as the injuries sustained by victims, that result from any wrongdoing and focuses on *healing* for all those involved, including communities and offenders. Applied within the criminal justice system, restorative justice shares with retributive justice the concern with making right the wrong that has been done, but restorative justice takes a broader and deeper approach because there is much more involved in crime and wrongdoing than law breaking. Therein lies its potential for application beyond the concerns of conventional criminal justice approaches to other forms of wrongdoing and conflict. These applications may include civil disputes and other forms of conflict that might not normally be thought of as having the potential for resolution in the judicial system, such as conflicts between groups of people that involve issues of social justice.

The promise of restorative justice is found in the *vision of hope for building community in the midst of conflict* that animates its practice. Inspired by this vision, restorative justice is a distinctive form of conflict resolution that has *transformative possibilities* for moving from the burden of past wrongdoing into the promise of a new future in which new relationships are forged so that all life might flourish. This hope, and the promises and the possibilities it presents, are rooted in the wager of restorative justice.

To speak of the deepest core assumption of the practice of restorative justice dialogue as a “wager” is to speak of it as the starting point for the practice of restorative justice, and to assert its truth as a matter of reason and experience while acknowledging the limits of both reason and experience, as well as embracing an openness to its amendment as future thought and experience might dictate. In a formal sense, a “wager” is something that one makes based on a conviction of the truth of a proposition or likelihood that an event will occur.⁴ In the case of the restorative justice wager, I intend it to mean a commitment to a starting proposition about the possibilities of dialogue rooted in a deep assumption about the nature of reality and the possibilities for transformative

⁴ The RANDOM HOUSE UNABRIDGED DICTIONARY (2136) (2d ed. 1993), defines “wager” as follows: “wager n. 1. Something risked or staked on a certain event. . . 6. Hist. to pledge oneself (to battle) for the decision of a cause.”

conflict resolution present in the face of the human condition.⁵ In a nutshell, the wager of restorative justice says something about who we are as humans and what we together can accomplish to build community through open dialogue. Thus, while humans are limited in many ways and their judgments and actions are always contingent and based on partial knowledge gained through reason, experience or a combination of those two, the commitment to the proposition that “‘every [human being] wants to be connected in a good way’ and that in a ‘safe’ place we are able to take action through dialogue to build community so that all life might flourish”⁶ is a wager about the human possibility to collectively construct and reflect, in a good way, our deep interconnectedness as a matter of the reality we share.

In this article, I explore the deep assumptions and commitments associated with what I have called the restorative justice wager and the way in which they are embodied in restorative justice dialogue, the heart of restorative justice practice, in order to describe the important contribution that restorative justice has to offer to conventional forms of conflict resolution that have emerged in recent years. For this purpose the article is divided into three parts. Part I explores the definition of restorative justice in a criminal context and beyond in order to set up the discussion of the restorative justice wager and the possibilities for healing presented by restorative justice dialogue that are taken up in Part II. In Part II, extended discussion is devoted to peacemaking circles, one of the four major forms of restorative justice, as the quintessential example of the transformative possibilities that restorative justice offers when careful and continuing attention is placed on the quality of the dialogue conducted in its practice. Here emphasis will be placed on the “inner frame”⁷ of restorative justice as understood and practiced within peacemaking circles, as the key to initiating and maintaining careful attention to the quality of the dialogue in order to invite the transforming possibilities of such dialogue to emerge on the road to *social healing* that takes the restorative justice wager seriously as both the starting point, touchstone and purpose of engaging in restorative practices. In Part III, I offer a suggestion for the next step in constructing a relational theory of

⁵ In doing so I am explicitly embracing the transformative possibilities of conflict resolution as described in JOHN PAUL LEDERACH, *THE LITTLE BOOK OF CONFLICT TRANSFORMATION* (2003).

⁶ See PRANIS ET AL., *supra* note 3.

⁷ PRANIS ET AL., *supra* note 3, at 31–80.

restorative justice and conflict resolution with the help of the principle of internal relations. In the Epilogue that follows Part III, I offer a brief personal reflection on the challenges and possibilities that restorative justice sets before us to address the on-going trauma caused by the clash between indigenous peoples and the immigrants who have settled upon their lands in the United States.

I. RESTORATIVE JUSTICE DEFINED: THE CRIMINAL CONTEXT AND BEYOND

To begin our discussion of the restorative justice wager and the potential for its application to conflict resolution beyond the criminal context that restorative justice dialogue offers, it will be helpful to define restorative justice as practiced today. Restorative justice is practiced through four major forms, and the many variations on these forms that have been developed as the result of the experience of practitioners around the world. In North America, victim-offender mediation (VOM) was the first of the four major forms of restorative justice to emerge. It arose out of the experiments of the victim offender reconciliation project (VORP) conducted by Mennonite groups in Kitchener, Ontario in 1974 and Elkhart, Indiana in 1977-78.⁸ The shift in terminology from VORP to VOM signaled a shift in focus, based on experience, from reconciliation to mediation as a defining characteristic of victim offender engagement. VOM provided a focus on achieving a mutually agreed-upon settlement of a dispute reduced to writing by the parties to the mediation. Recently victim offender mediation has been

⁸ For works on VOM, see the extensive work by a leading scholar, practitioner and trainer in this field, Mark Umbreit, Director of the Center of Restorative Justice and Peacemaking (formerly the Center for Restorative Justice and Mediation). See MARK UMBREIT, *THE HANDBOOK OF VICTIM OFFENDER MEDIATION: AN ESSENTIAL GUIDE TO PRACTICE AND RESEARCH* (2001); MARK UMBREIT WITH ROBERT B. COATES & BORIS KALANJ, *VICTIM MEETS OFFENDER: THE IMPACT OF RESTORATIVE JUSTICE AND MEDIATION* (1994). Umbreit is especially well-known for his VOM work in cases of severe violence. See MARK UMBREIT, ROBERT COATES & BETTY VOS, *VICTIM OFFENDER MEDIATION & DIALOGUE IN CRIMES OF SEVERE VIOLENCE* (2001); *GLIMMER OF HOPE* (Films for the Humanities and Sciences 1997) (for a compelling documentary video of Umbreit facilitating a case involving a murder). Under Umbreit's direction, The Center for Restorative Justice and Peacemaking has prepared several helpful short publications that can be used in community discussion and training settings. See, e.g., MARK UMBREIT, *CRIME AND RECONCILIATION: CREATIVE OPTIONS FOR VICTIMS AND OFFENDERS* (1985); MARK UMBREIT & JEAN GREENWOOD, *CRITERIA FOR VICTIM-SENSITIVE MEDIATION & DIALOGUE WITH OFFENDERS* (1997); CENTER FOR RESTORATIVE JUSTICE & PEACE MAKING, *VICTIM OFFENDER MEDIATION CONTINUUM: FROM MOST TO LEAST RESTORATIVE* (1998), available at http://rjp.umn.edu/img/assets/13522/VOM_Continuum.pdf.

renamed victim offender dialogue (VOD) to clarify the nature of the engagement between victim and offender as a *dialogue* rather than a mutual settlement of a dispute that might, in some cases, seek reconciliation. Mutual settlement of a dispute, and even reconciliation, can be a product of VOD, but the redefinition of VOM as VOD represents an effort to acknowledge that the dialogue between victim and offender itself qualifies this practice as restorative.⁹ The next major form to emerge was community conferencing out of the Family Group Conferencing (FGC) initiative in New Zealand in the 1980s. The New Zealand initiative arose out of the tragic experiences of the indigenous Maori children in the New Zealand court system. These children were disproportionately represented in the court system. Critics noted that the court system failed to take Maori culture into account in dealing with juvenile cases, even though within Maori culture there were resources available for more effectively addressing juvenile cases. FGC was developed to explicitly draw on these cultural resources in a creative departure from the conventional court system in dealing with juveniles. The results of the initiative were so successful that they led to the replacement of the entire juvenile justice system in New Zealand with FGC in 1989.¹⁰ In the 1980s, peacemaking circles (Circles) were the third major form to emerge. Circles were started in the Yukon Territory of Canada. They represented an adaptation of the indigenous practice of talking circles for the pur-

⁹ Tim Hansen, Restorative Justice Planner for the State of Minnesota, Department of Corrections, described this recent change among state restorative justice planners, in comments made during his presentation to the summer course in Restorative Justice offered at Hamline University School of Law on July 19, 2007 (notes on file with author).

¹⁰ See ALLAN MACRAE & HOWARD ZEHR, *THE LITTLE BOOK OF FAMILY GROUP CONFERENCING—NEW ZEALAND STYLE* (2004) for a short introduction to its New Zealand origins and current practice. There are a number of works on FGC. See GALE BURFORD & JOE HUDSON, *FAMILY GROUP CONFERENCING: NEW DIRECTIONS IN COMMUNITY CENTERED CHILD AND FAMILY PRACTICE (MODERN APPLICATIONS OF SOCIAL WORK)* (2000); MARK UMBREIT, *FAMILY GROUP CONFERENCING: IMPLICATIONS FOR CRIME VICTIMS* (1998); C. Waites, M. Macgowan, J. Pennell, I. Carlton-LaNey & M. Weil et al., *Increasing the Cultural Responsiveness of Family Group Conferencing: Advancing Child Welfare Practice*, 49 *SOCIAL WORK* 291 (April 2004); Leon Fulcher, *Cultural Origins of the Contemporary Family Group Conference*, 2000 FGDM Roundtable Proceedings, *American Humane Association* 37. Moreover, FGC may be applied to what is sometimes called “community conferencing,” especially in the context of addressing wrongdoing by juveniles. See Dave Hines & Gordon Bazemore, *Restorative Policing, Conferencing and Community*, 4 *POLICE PRAC. & RES.* 411 (2003); GORDON BAZEMORE & LODE WALGRAVE, *RESTORATIVE JUVENILE JUSTICE: REPAIRING THE HARM OF YOUTH CRIME* (1998); *RESTORATIVE JUSTICE FOR JUVENILES: POTENTIALITIES, RISKS AND PROBLEMS* (Lode Walgrave ed., 1998).

pose of determining sentences in criminal cases.¹¹ As in the case of FGC, Circles were intentionally sensitive to the promise of indigenous cultural practices to alter the way in which the court system dealt with crime involving, in this case, the First Nations people of the Yukon Territory of Canada, known as the Tglingit people. Finally, in the 1990s, an older form, truth commissions, received widespread attention with numerous news reports of the dramatic public hearing process that was used by the South African Truth and Reconciliation Commission (TRC) which has become the most well-known example of the many variations of this form.¹²

In each case the news of these initiatives spread through poignant stories of the healing that victims, offenders, and the wider community seemed to experience as a result of these initiatives.¹³ The euphoria that was palpable in the stories of people who had experienced some measure of genuine healing, and the impact that had in opening a new future for them, evoked the em-

¹¹ While many people have written about some form of dialogue practiced in a format that includes a circle, the foundational work in the adaptation of the “talking circles” of indigenous communities for restorative justice purposes as well as beyond the criminal justice system, has come out of the origin of that practice in the Yukon Territory of Canada and its subsequent introduction to the United States and beyond through its use in the state of Minnesota. This adaptation is now known as “peacemaking circles.” See KAY PRANIS, *THE LITTLE BOOK OF CIRCLE PROCESSES: A NEW/OLD APPROACH TO PEACEMAKING* (2005)[hereinafter PRANIS, *THE LITTLE BOOK*] for a short introduction to Circles and their use in a variety of settings within and beyond the criminal justice system. Kay Pranis, Barry Stuart & Mark Wedge offer the only book-length description of Circles. See PRANIS ET AL., *supra* note 3. Barry Stuart, the Canadian judge who played a key role in the adaptation and introduction of peacemaking circles in the Yukon Territory, has also written a very helpful description of the principles that guide its practice. Barry Stuart, *Guiding Principles for Peacemaking Circles*, in *RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES* 219 (Gordon Bazemore & Mara Schiff eds., 2001).

¹² Truth commissions have been around for many years and come in vastly different forms from each other. The most notable feature of the South African TRC is its inclusion of “conditional amnesty.” PRISCILLA HAYNER, *UNSPEAKABLE TRUTHS: FACING THE CHALLENGE OF TRUTH COMMISSIONS* 72–85 (2002) (for an important comparative study of truth commissions that includes a helpful chart comparing several truth commissions); see *BURYING THE PAST: MAKING PEACE AND DOING JUSTICE AFTER CIVIL CONFLICT* (Nigel Biggar ed., 2001) (for a wide-ranging anthology of critical commentary on truth commissions). The literature on the South African TRC is enormous. Many of the leading representative works are written by South Africans involved in the process. See ALEX BORAINÉ, *A COUNTRY UNMASKED: INSIDE SOUTH AFRICA’S TRUTH AND RECONCILIATION COMMISSION* (2000); PUMLA GOBODO-MADIKIZELA, *A HUMAN BEING DIED THAT NIGHT: A SOUTH AFRICAN WOMAN CONFRONTS THE LEGACY OF APARTHEID* (2002); *LOOKING BACK, REACHING FORWARD* (Charles Villa-Vicencio & Wilhelm Verwoerd eds., 2000); DESMOND TUTU, *NO FUTURE WITHOUT FORGIVENESS* (1999); Tyrone Savage, Barbara Schmid & Keith A. Vermeulen, *Truth Commissions and Transitional Justice: A Select Bibliography on the South African Truth and Reconciliation Commission Debate*, 16 *J.L. & RELIGION* 73 (2001) (for an extensive bibliography).

¹³ See, e.g., *GLIMMER OF HOPE*, *supra* note 8.

pathic capacity of those who heard these stories and led them to explore how these initiatives might be replicated in their own communities. Previously, they were spread by word of mouth and short articles in journals popular amongst practitioners, but in the last few years the popularity of these initiatives has led to the production of an ever-increasing body of more formal literature.¹⁴

Variations of each of the forms, and combinations of some of them with each other, has led to the flowering of a host of many new initiatives. These variations have emerged because all forms of restorative justice are intentionally context-sensitive. Their implementation and potential for success is closely related to the way in which they are shaped by, and reflective of, the context in which they are practiced so that they may be responsive to the facts specific to the setting in which they are practiced.¹⁵ Thus, restorative justice, observed from the outside, can look quite different from place to place and culture to culture. Many would say that defining restorative justice in a way that embraces the practices in all of these forms, and their many variations, is difficult, if not impossible. This comes in part from the experience of practitioners which counsels them not to try to capture restorative justice lest it stunt its possibilities. This leads many practitioners of restorative justice to shy away from either defining restorative justice or offering a theory behind its practice. In the conferences I have attended, practitioners of restorative justice often spoke at length and in moving terms, telling about their experiences and witnessing the healing powers they had seen in the many forms. But when pressed, these witnesses tended to turn aside questions about the theory and credentialing of the work in which they were engaged.¹⁶ Many referred to it as a way of life that had to be lived rather than a practice that could be captured and explained in theoretical anal-

¹⁴ See, e.g., HANDBOOK OF RESTORATIVE JUSTICE (Gerty Johnstone & Daniel W. Van Ness eds., 2007); DANIEL W. VAN NESS & KAREN HEETDERKS STRONG, RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE (3d. ed. 2006); A RESTORATIVE JUSTICE READER: TEXTS, SOURCES, CONTEXT (Gerty Johnstone, ed., 2003); RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES (Gordon Bazemore & Mara Schiff eds., 2001).

¹⁵ See HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE 279 (3d ed. 2005) [hereinafter ZEHR, CHANGING LENSES]; ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 10 (2002) [hereinafter ZEHR, THE LITTLE BOOK]; see also PRANIS, THE LITTLE BOOK, *supra* note 11, at 14–18 (for discussion on the many uses of Circles).

¹⁶ See, e.g., Dairol Bussler, *Are 98.6 Degrees Enough?: Reflections on Restorative Justice Training and Credentialing*, 25 HAMLINE J. PUB. L. & POL'Y 335 (2004).

yses.¹⁷ It has also been observed that restorative justice can be described as a “movement”¹⁸ that can best be understood from within its practice rather than simply defined by an abstract statement.

In light of the foregoing, we might ultimately conclude that attempting to finally define restorative justice is like trying to capture lightning in a bottle—it escapes the grasp of those who try to define it. Nevertheless, there are some identifiable core characteristics that are shared by the four major forms of restorative justice practice and the variations on those forms that have grown up alongside them. The best place to turn for a description of the core distinguishing characteristics of restorative practice in the quest for a definition is the work of Howard Zehr, a leading American figure whose work is foundational and whose influence spans the globe.¹⁹ Professor Zehr’s global influence comes from his book entitled *Changing Lenses: A New Focus for Crime and Justice*.²⁰ First issued in 1990, it has been reissued twice since then, with the second edition coming in 1995 and the third edition in 2005. In the subsequent editions, the 1990 text has remained intact, but Zehr has offered extended comments in an Afterword, as well as a revised Preface, which have been updated with each reissued edition. In 2002, between his second and third editions, Zehr wrote a compact volume entitled *The Little Book of Restorative Justice*.²¹ In that volume he offers a succinct minimalist definition:

Restorative justice requires, at a minimum, that we address victims’ harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders, and communities in this process.²²

¹⁷ Howard Zehr has, in his most recent writing, come to accept the description of restorative justice as a way of life. ZEHR, *CHANGING LENSES*, *supra* note 15, at 276–78.

¹⁸ Mark S. Umbreit, Betty Vos, Robert B. Coates & Elizabeth Lightfoot, *Restorative Justice in the Twenty First Century: A Social Movement Full of Opportunities and Pitfalls*, 89 MARO. L. REV. 253 (2005).

¹⁹ Professor Zehr is widely recognized for his foundational work in restorative justice. For example, at the annual dinner of the Editorial Board of the Journal of Law and Religion, held in St. Paul, Minn., October 5, 2006, Professor Zehr was honored with the JLR Lifetime Achievement Award for his contributions to the field of law and religion through his work on restorative justice.

²⁰ ZEHR, *CHANGING LENSES*, *supra* note 15.

²¹ ZEHR, *THE LITTLE BOOK*, *supra* note 15.

²² *Id.* at 25. This general formulation, with its focus on “harms and needs,” “obligations,” and “engagement,” has been consistent within restorative justice literature ever since Howard Zehr first wrote about it in 1990 in his highly influential book, *CHANGING LENSES*, *supra* note 15. In addition to his important foundational work, Zehr has also, along with his colleague Barb Toews, been a chronicler of the discussion and debate engendered by the movement. Together Zehr and Toews have edited an illuminating anthology of the discussion and debate. CRITICAL ISSUES

In the new Afterword added to the 2005 third edition of *Changing Lenses* Zehr unpacks this definition as follows:

Restorative justice . . .

1. Focuses on *harms* and consequent *needs*. (Of victims, but also communities and offenders)
2. Addresses *obligations* resulting from those harms. (Offenders' but also communities' and society's)
3. [Through *engagement* that u]ses inclusive, collaborative processes.
4. Involves those with a stake in the situation. (Victims, offenders, community members, society)
5. Seeks to put right the wrongs.²³

By way of providing further insight into what the practice of restorative justice involves when it adheres to the characteristics he sets out in the preceding formulation, Zehr says that there are six “guiding questions of restorative justice:”

1. Who has been *hurt*?
2. What are their *needs*?
3. Whose *obligations* are these?
4. What are the causes?
5. Who has a stake in this situation?
6. What is the appropriate process to *involve stakeholders* in an effort to address causes and put things right?²⁴

These guiding questions have grown from three in 1990 to the six quoted here that now appear in the 2005 Afterword to the third edition of *Changing Lenses*. In addition to these refinements in the

IN RESTORATIVE JUSTICE (Howard Zehr & Barb Toews eds., 2004). Further commentary on the discussion and debate engendered by the emergence and practice of restorative justice may be found in an annotated transcript and commentary on the Biennial Symposium on Dispute Resolution sponsored by the Dispute Resolution Institute of Hamline University School of Law, held in St. Paul, Minnesota in 2003 entitled *Moving to the Next Level: Intentional Conversations about Restorative Justice, Mediation, and the Practice of Law*, November 1-2, 2003, sponsored by the Dispute Resolution Institute at Hamline University School of Law, St. Paul, Minn. (promotional brochure), published as James Coben & Penelope Harley, *Intentional Conversations About Restorative Justice, Mediation and the Practice of Law*, 25 *HAMLIN J. PUB. L. & POL'Y* 235 (2004). There are papers published along with that annotated commentary. See Bussler, *supra* note 16; William Johnson Everett, *Ritual Wisdom and Restorative Justice*, 25 *HAMLIN J. PUB. L. & POL'Y* 347 (2004); Ellen Waldman, *Healing Hearts or Righting Wrongs?: A Meditation on the Goals of “Restorative Justice.”* 25 *HAMLIN J. PUB. L. & POL'Y* 355 (2004).

²³ ZEHR, *CHANGING LENSES*, *supra* note 15, at 270 (emphasis added to show Zehr’s “three pillars of restorative justice”—“harms and needs,” “obligations,” and “engagement,” ZEHR, *THE LITTLE BOOK*, *supra* note 15, at 22–24, operating in his expanded definition.

²⁴ ZEHR, *CHANGING LENSES*, *supra* note 15, at 271 (emphasis added to show the presence of Zehr’s “three pillars,” ZEHR, *THE LITTLE BOOK*, *supra* note 15, at 22–24, in his six guiding questions).

definition of restorative justice, and the questions it asks, Zehr's thoughts on crime and punishment, as well as the restorative justice response to crime, have been refined over the years. Most notably, in his *Little Book of Restorative Justice* of 2002, as well as the new Afterword to the 2005 edition of *Changing Lenses*, Zehr departs from the view set out in his 1990 text that restorative justice and retributive justice are mutually exclusive. Zehr says he now sees that the restorative and retributive forms of justice as responses to crime and wrongdoing, share a purpose to "put things right."²⁵ In light of this he now places restorative and retributive forms of justice on a continuum rather than setting them wholly apart as contradictory ideas.²⁶ He continues to call, however, for maximization of *restorative* justice in contrast to the *retributive* justice of the conventional criminal justice system.

Another notable refinement in Zehr's evolving understanding is his explicit embrace of three values he sees as crucial for the practice of restorative justice. The evidence of this is found in the observations he makes on the core essence of restorative justice in both the new Preface as well as the Afterword to the 2005 edition of *Changing Lenses*. Zehr now embraces the idea that others have offered of restorative justice as a "movement" that involves a "way of life" grounded in a set of core "values:"

[R]estorative justice is above all an introduction to a dialogue and an exploration. . . . surrounded by a rim of values. . . . of which three are most important: respect . . . humility . . . and wonder.²⁷

With these words, as the new 2005 bookends of his 1990 book, Howard Zehr takes a step toward embracing the understanding of restorative justice as a "movement" and a "way of life," with the purpose of pursuing justice understood not simply as *procedural* fairness, but also with social healing as its *substantive* aim. Three years earlier, in his 2002 *Little Book*, Zehr declared that the focus on damaged relationships in restorative justice "implies a concern

²⁵ ZEHR, *THE LITTLE BOOK*, *supra* note 15, at 58–59; ZEHR, *CHANGING LENSES*, *supra* note 15, at 271–73. Noting the change in his view on this point, Zehr acknowledges an intellectual debt to Conrad G. Brunk, *Restorative Justice and Philosophical Theories of Criminal Punishment in THE SPIRITUAL ROOTS OF RESTORATIVE JUSTICE* (Michael L. Hadley ed., 2001). Brunk's work, in turn, is indebted to Wesley Cragg, *THE PRACTICE OF PUNISHMENT: TOWARD A THEORY OF RESTORATIVE JUSTICE* (1992).

²⁶ ZEHR, *THE LITTLE BOOK*, *supra* note 15, at 58–60; ZEHR, *CHANGING LENSES*, *supra* note 15, at 271–74.

²⁷ ZEHR, *CHANGING LENSES*, *supra* note 15, at 12, 270; 278–279. *See also* ZEHR, *THE LITTLE BOOK*, *supra* note 15, at 25, 63.

for healing for those involved—victims, but also offenders and communities.”²⁸

Healing, as a term of art, is more often found in the work of others such as Kay Pranis and her colleagues, who emphasize its central place in their discussion of the practice of peacemaking circles, which we shall explore in depth below, than it is in the writings of Howard Zehr. However, his most recent writing has clearly moved in that direction.²⁹ Perhaps it is best to say that over time, Zehr’s critique of justice in its retributive sense, and his call for a paradigm shift to embrace justice in its restorative sense, out a concern for fairness for victims whose needs have been largely neglected in the conventional criminal justice system, has broadened. “Fairness” is now understood to include the social healing that can occur between victims and offenders in some, if not all, cases, including those that involve wrongdoing and conflict between groups of people as well as individuals. This note is present implicitly in his emphasis on a concern for relationship in *The Little Book* of 2002 and the Afterword to the 2005 edition of *Changing Lenses*.³⁰ Moreover, in the 2005 edition, Zehr explicitly embraces the transformative potential of restorative justice to address the systemic dimensions of injustice that are bound up in the structures that order our relationships in society and the metaphors we use to describe and define our experience within those structures.³¹ In doing so he notes that this, for him, expands the meaning of justice as “putting things right”³² and makes the term “transitional justice” more appropriate than “restorative justice.”³³ This, he says, reflects his longstanding concern with “‘re-’ words” that tend to suggest the need to “go back to a previous state of being” when what is actually needed is an effort to “go forward to new or better con-

²⁸ ZEHR, *THE LITTLE BOOK*, supra note 15, at 20.

²⁹ *Id.* See, e.g., Zehr’s criticism of the use of intentional shaming practices in the context of restorative justice. He argues that “[o]ur focus ought to be, rather, on providing ways for shame to be released and, as much as possible, transformed into a sense of self-respect.” ZEHR, *CHANGING LENSES*, supra note 15, at 268. For a collection of essays on “justice as healing” in an indigenous perspective, see *JUSTICE AS HEALING: INDIGENOUS WAYS—WRITINGS ON COMMUNITY PEACEMAKING AND RESTORATIVE JUSTICE FROM THE NATIVE LAW CENTRE* (Wanda D. McCaslin ed., 2005).

³⁰ ZEHR, *THE LITTLE BOOK*, supra note 15, at 19–20; ZEHR, *CHANGING LENSES*, supra note 15, at 278.

³¹ ZEHR, *CHANGING LENSES*, supra note 15, at 270, 274–75.

³² *Id.* at 270.

³³ *Id.* at 274.

ditions . . . [when i]n fact what is necessary in most cases is to find a *new reality*.”³⁴

These important refinements in Zehr’s understanding of the breadth and depth of the call to transformative action that restorative justice practices, at their best, embody, when placed alongside the emphasis on justice as healing in the work of Kay Pranis and her colleagues on Circles discussed below,³⁵ prompt me to call for a broadened definition of restorative justice. This is necessary if we are to take its challenge and promise seriously in the face of the trauma of the past that is so often borne forward over many generations into the present as the result of long-running conflict between groups of people as well as between individuals. The broadened definition of restorative justice needed to address such instances as this, must (1) embrace the possibilities for healing in wrongdoing and conflict beyond that between individuals in the criminal justice system and (2) reach beyond the concern for interpersonal conflict between individuals to include conflict between groups of people. Most centrally, it must, as the experience of the South African TRC teaches, start with the recovery and remembrance of the truth of the past in order that the transformative possibilities of truly open dialogue are experienced in the present effort to move beyond the past to a new future.

The broadened understanding of restorative justice that I am calling for here, and the claim that I am making that such an understanding is a salutary expansion of, rather than in competition with, Howard Zehr’s earliest groundbreaking work, as seen in his own most recent comments on that work borne out of his continuing experience, is well stated in a recent article by my teaching colleague Penelope Harley. In reflecting on her participation in the biennial dispute resolution symposium on Alternative Dispute Resolution (ADR) in a global context held at Hamline University in St. Paul, Minnesota in 2005,³⁶ Harley offers an encompassing description of restorative justice in the following words:

[R]estorative justice seeks to address the harms of conflict, the wounds of relationships, as a matter of priority. Restorative justice recognizes the trauma of conflict presents the opportunity for re-weaving relationships and building a sense of community

³⁴ *Id* at 274. (emphasis added).

³⁵ See *infra* text accompanying notes 60–64.

³⁶ Intentional Conversations about the Globalization of ADR, Oct. 29-30, 2005, sponsored by the Dispute Resolution Institute at Hamline University School of Law, St. Paul, Minn. (promotional brochure).

among all those touched by crime or wrongdoing. Restorative justice is explicit in articulating the importance of the values that lie at its core, values that include: honesty, compassion, respect, and inclusion. The values at the heart of restorative justice drive its various practices. All restorative justice practices seek to create space for deep and respectful listening and complete honesty in expression. Restorative justice practices seek to ensure fair and equal participation of all parties, particularly those more marginalized in society. Restorative justice practices recognize the power of co-creation when addressing the harms of conflict.³⁷

The dialogue process that lies at the “core” of restorative justice, Harley argues, is “by definition highly sensitive to context, emphasizing as it does the values of inclusivity and collaboration.”³⁸ This is very important because the failure to take context seriously runs the risk of destroying or ignoring the reality of the participants in the restorative justice process. Moreover, Harley argues, “priority [is] given to deep, honest ‘truth telling.’”³⁹ For these and other reasons, she concludes that “restorative justice stands in stark contrast to the dominant culture of [the United States] which has infused the mediation field with its emphasis on efficiency, experts, universal approaches and lack of attention to emotions or significant focus on relationship repair.”⁴⁰ It is noteworthy that Harley’s reflections came during her participation in a symposium on conflict resolution that was focused on Alternative Dispute Resolution (ADR) rather than on restorative justice. Thus, in rooting her reflections on an ADR symposium in her understanding of restorative justice, she explicitly suggests that restorative justice has something of value to offer to conflict resolution generally, and ADR in particular.

Harley’s rich and expansive definition of restorative justice clearly envisions its application beyond the realm of criminal justice, the realm in which it was born, and beyond private wrongs between individuals to include public wrongs between groups of people. Its focus on the importance of open dialogue to the work of restorative justice is an appropriate place to start in our consideration of the contribution that restorative justice dialogue, as a

³⁷ Penelope Harley, *Fall 2005 Dispute Resolution Institute Symposium: The Globalization of ADR: Feeling the Way Forward? (Ruminations of a “female, peace-making interested, restorative justice oriented flake”)*, 27 *HAMLIN J. PUB. L. & POL’Y* 283, 291 (2006).

³⁸ *Id.* at 291.

³⁹ *Id.*

⁴⁰ *Id.* at 292.

value-based, dialogue-driven practice, can make to conflict resolution in all of its forms, including ADR. The most recent work of Zehr as well as that of Harley invites me to formulate an expanded definition of restorative justice that more fully expresses the community-building promise and transformative potential of restorative justice dialogue as follows:

Restorative justice is a distinctive approach to conflict resolution that views wrongdoing and conflict as an opportunity for creative, value-based, transformative dialogue that can lead to community in the midst of conflict through social healing born of that dialogue founded on the restorative justice wager that everyone wants to be connected in a good way and that in a safe place we can together engage in dialogue that enables us to act on that desire.

As we shall see below, the creative, value-based, and transformative possibilities of restorative justice dialogue, the living heart of restorative justice, is best nurtured and expressed in the distinctive form of dialogue practiced in peacemaking circles, which are a special form of restorative justice. To explore the contribution made by such an enlarged understanding of restorative justice, as Harley offers and Zehr's most recent work suggests, and what that might in turn offer to conflict resolution between groups of people in a way that can heal the trauma of the past, we turn next to the restorative justice wager itself as the key to understanding the practice of the open dialogue that is central to restorative justice in action.

II. THE RESTORATIVE JUSTICE WAGER: FROM CONFLICT TO COMMUNITY THROUGH THE TRANSFORMATIVE POSSIBILITIES OF RESTORATIVE DIALOGUE ON THE WAY TO SOCIAL HEALING AS PRACTICED IN PEACEMAKING CIRCLES IN THE WILDERNESS OF LIFE

At the heart of the wide range of restorative justice practices is a distinctive form of dialogue often called "restorative justice dialogue."⁴¹ In the extended treatment of this distinctive form of dialogue that follows, it shall simply be referred to as "restorative dialogue." This dialogue is sometimes referred to as "mediation" since that term has been used within VOD/(VOM) to describe the dialogue that is practiced there. But this designation risks misidentification of restorative dialogue with the form of civil mediation

⁴¹ Umbreit et al., *supra* note 18, at 268–70.

known and practiced as a prominent form of ADR. In ADR, many attempts to define mediation embrace some notion of mediation as a facilitated settlement. For example, a leading course book says that mediation is “[a] voluntary and informal process in which the disputing parties select a neutral third-party to assist them in reaching a negotiated settlement.”⁴² As such, it is interest-based and conducted by mediators who “assist the parties in shaping solutions to meet their interests and objectives” but mediators have “no power to impose a solution on the parties.”⁴³ This description of mediation and the role of the mediator embraces *neutrality* and *self-determination* at its core. These two *procedural values* are the “twin-towers” looming over and dominating the study, teaching, and practice of mediation in the field of ADR.⁴⁴ Mediation is primarily focused on conflicts between individuals that are “incident based [while] restorative justice is more holistic to get at the root cause”⁴⁵ Restorative justice carries the potential for, and works actively toward realizing the possibilities of repairing and transforming *relationships* and building community in the midst of conflict. This takes restorative justice practices far beyond the settlement of individual disputes and satisfaction of individual interests.

Furthermore, while ADR tends to be focused on procedural fairness, restorative justice seeks substantive justice, even though securing consensus on the content of substantive justice might be very elusive in any setting involving the differences that inevitably exist between human beings.⁴⁶ This difference between the aim of mediation as practiced in an ADR setting and as practiced in a restorative justice setting is evident in the description of restorative justice as value-based and dialogue-driven.⁴⁷ This is not to say that values are not present in the ADR form of mediation. To the contrary, they are, but they are much more likely to be procedural in

⁴² CARRIE J. MENKEL-MEADOW, LELA PORTER LOVE, ANDREA KUPFER SCHNEIDER & JEAN R. STERNLIGHT, DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL 44 (2005)

⁴³ *Id.*

⁴⁴ Jim Coben employs the phrase “twin towers” in his critique of neutrality and self-determination as the core of mediation in James R. Coben, *Gollum, Meet Smèagol: A Schizophrenic Ruminations on Mediator Values Beyond Self-Determination and Neutrality*, 5 CARDOZO J. CONFLICT RESOL. 65 (2004).

⁴⁵ Gwen Chandler-Rivers, quoted in Coben & Harley, *supra* note 22, at 311.

⁴⁶ Thus, Carrie Menkel-Meadow and her colleagues rightfully acknowledge the elusiveness of a common view of substantive justice, while adhering firmly to the desirability of “procedural fairness” practiced with a “process pluralism” approach to conflict resolution that includes ADR in the lawyer’s repertoire. MENKEL-MEADOW ET AL., *supra* note 42, at 3–4.

⁴⁷ See *supra* text accompanying notes 3–6.

character rather than substantive. Thus even in the “transformative mediation” approach of Robert Bush and Joseph Folger,⁴⁸ the role of the mediator, working in a way that may promote the value of moral growth of the parties to the dispute, does not expand to embrace the larger social context to address the root causes present in many conflicts that are the product of social structures. The foregoing differences between the meaning that mediation takes on in restorative justice practices and the practice of mediation in ADR, is most clearly seen in the *wager* in which restorative dialogue is rooted, as discussed below.

Notwithstanding my foregoing comments about the differences between mediation and restorative justice, scholars in conflict resolution seem to have been drawn to their groundbreaking work by the faith that the twin towers of neutrality and self-determination would provide a safe haven for securing a better quality of substantive justice than that found in the adversarial process.⁴⁹ But now, thirty years after the Pound Conference of 1976, nagging doubts are appearing in the scholarly literature about the possibility of that vision being lost or co-opted. This concern was evident in the comments of many participants during a symposium on ADR and race held at Hamline University School of Law in 2001.⁵⁰ The Benjamin N. Cardozo School of Law *Symposium on Justice in Mediation* published in 2004⁵¹ is another example of this sentiment.

There are a few scholars in mediation who have moved to embrace values that stem from procedural concerns defined by neutrality and self-determination alone. Thus, for example, “transformative mediation,” advocated by Robert Bush and Joseph Folger, takes a modest step toward this possibility by envisioning mediation in which the mediator acts as a catalyst for the moral

⁴⁸ ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: RESPONDING TO CONFLICT THROUGH EMPOWERMENT AND RECOGNITION* (1994).

⁴⁹ See Coben & Harley, *supra* note 22, at 317–18 (for the comments of Bobbi McAdoo, a leading scholar in court-connected mediation). McAdoo and her colleague Nancy Welsh have explored the institutionalization of civil mediation in the courts. See Bobbi McAdoo & Nancy Welsh, *Look Before You Leap and Keep on Looking: Lessons from the Institutionalization of Court-Connected Mediation*, 5 NEV. L. J. REV. 399 (2005); Bobbi McAdoo, *All Rise, the Court is in Session: What Judges Say About Court-Connected Mediation*, 22 OHIO ST. J. ON DISP. RESOL. 377 (2007) (for a detailed examination of how this has occurred in Minnesota).

⁵⁰ Moving to the Next Level: Intentional Conversations about Race, Mediation and Dispute Resolution, October 27 & 28, 2001, sponsored by the Dispute Resolution Institute at Hamline University School of Law, St. Paul, Minn. (promotional brochure).

⁵¹ Coben, *supra* note 44; Lela P. Love, *Preface to the Justice in Mediation Symposium*, 5 CARDOZO J. CONFLICT RESOL. 59 (2004); Nancy A. Welsh, *The Place of Court-Connected Mediation in a Democratic Justice System*, 5 CARDOZO J. CONFLICT RESOL. 117 (2004).

growth of the parties in the hope that it will lead to substantive results in terms of outcomes including attention to the quality of relationships between the parties.⁵² The ground-breaking work of Leah Wing and Janet Rifkin goes further in embracing values in mediation by explicitly rejecting the idea that neutrality of mediators is even possible.⁵³ Wing and Rifkin bring an explicit “social justice approach”⁵⁴ to conflict resolution that marks it as a significant departure from the conventional approach to civil mediation in ADR. The approach of Wing and Rifkin invites conversation between their work and that of restorative justice practitioners such as Kay Pranis, who explicitly emphasize the possibilities of restorative justice in general and Circles in particular,⁵⁵ to engage social structures of injustice for the purpose of “reweaving the fabric of the community”⁵⁶ in a new way so that all may flourish.

The *restorative justice wager* is made up of a set of deep assumptions about human capacity for entering into community, in the very midst of conflict, that are rooted in a particular view of the nature of reality and the human condition. The statement I have offered of that wager—“‘[e]very human being wants to be connected in a good way’ and in a ‘safe place’ we are able to take action through dialogue to build community so that all life might flourish,”⁵⁷—is abstracted from the description of the deep assumptions that are at the foundation of Circle practice discussed below.⁵⁸

If one word were to be chosen to capture the core of the wager, it is that everything is *interconnected*. Restorative dialogue entered into in the truly open spirit made possible in a safe place for dialogue is the living heart of restorative justice. It is grounded in the recognition of the interconnectedness of those involved and that human flourishing best occurs in a community marked by a

⁵² BUSH & FOLGER, *supra* note 48.

⁵³ Leah Wing & Janet Rifkin, *Racial Identity Development and the Mediation of Conflicts in NEW PERSPECTIVES ON RACIAL IDENTITY DEVELOPMENT: A THEORETICAL AND PRACTICAL ANTHOLOGY* 182 (C.L. Wijeyesinghe & B.W. Jackson eds., 2001); Leah Wing, *Whither Neutrality?: Mediation in the 21st Century* in *RECENTERING CULTURE AND KNOWLEDGE IN CONFLICT RESOLUTION* (S.Y. Bowland & B. Roy eds., forthcoming 2008) (copy on file with author).

⁵⁴ Wing & Rifkin, *supra* note 53, at 183. Wing, *supra* note 53.

⁵⁵ Kay Pranis, *Restorative Justice, Social Justice, and the Empowerment of Marginalized Populations* in *RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES* 288 (Gordon Bazemore & Mara Schiff eds., 2001).

⁵⁶ Coben & Harley, *supra* note 22, at 286 (quoting Ronnie Earle).

⁵⁷ See *supra* text accompanying note 3.

⁵⁸ See *infra* text accompanying notes 62-63.

“culture of connectedness” where restorative dialogue is practiced by participants with deep respect for each other.⁵⁹

A. The Wager and its Associated Deep Assumptions: The Human Possibility for Transformative Dialogue in the Wilderness of Life and the Experience of Conflict Growing Out of Our Differences – The Circle Worldview

The restorative justice wager about the possibilities for building community out of conflict through dialogue is called forth by the restorative impulse in the heart of every human being — the taproot from which the deep assumptions, commitments and practices of restorative justice spring. These deep assumptions are most clearly expressed in the description of restorative dialogue found in the only extended book-length discussion of the application of Circles, as a form of restorative justice, to address criminal wrongdoing. It is written by three leading practitioners: Kay Pranis, Barry Stuart, and Mark Wedge and is entitled *Peacemaking Circles: From Crime to Community*.⁶⁰ A compact summary of the foundation, structure, and process of Circles is set out in an Appendix at the end of this article. I have attached that Appendix in full recognition of the danger that readers will look at it as a “tool-box” that can simply be opened and put to use in conflict resolution.⁶¹ To the contrary, the social healing potential of restorative justice practices, especially in addressing systemic structures of injustice, requires deep commitment to multifaceted work over a sustained period of time surrounded by patience to insulate the process from the demands of efficiency that have corrupted mediation in its court-connected context. With that being said, the summary statement on Circles in the Appendix has proved useful as a set of entrance points for moving students in my restorative justice class into the process of using the peacemaking circle process as the way in which we take up the study of restorative justice. It begins to bear fruit after many hours rather than in one fifty minute class period repeated several times a week.⁶² The discussion below may

⁵⁹ See *infra* text accompanying note 95. This theme emerges as a key theme for Zehr in 2005. ZEHR, *CHANGING LENSES*, *supra* note 15, at 277–78; ZEHR, *THE LITTLE BOOK*, *supra* note 15, at 35–36.

⁶⁰ PRANIS ET AL., *supra* note 3.

⁶¹ Coben & Harley, *supra* note 22, at 326–28.

⁶² Because of this recognition, when Penelope Harley and I first experimented in 2005 with teaching the entire course in restorative justice in a peacemaking circle format we organized the

be viewed as something of a further elaboration of the five points I have gleaned from the work of Pranis, Stuart and Wedge set out in the Appendix.

In their description, the authors discuss the application of the indigenous practice of talking circles as a restorative justice practice for addressing criminal wrongdoing. In the opening chapter they set out a claim about the underlying world view and values that inform the practice before turning to what this leads to in the practice of restorative justice through peacemaking circles. They do so in a set of four core assumptions within which is embedded what I have called the restorative justice wager as follows:

Every human being wants to be connected in a good way.

Everybody shares core values that indicate what being connected in a good way means.

Being connected in a good way and acting from our core values are not always easy to do especially when conflicts arise.

In a safe place we can discover our core values, and as we do, we uncover our deep desire to be connected in a good way [and become able to act on that desire in order pursue social healing].⁶³

These four deeply interrelated statements express the core claim of restorative justice about the interconnectedness of life and shape the practice of restorative dialogue as practiced in Circles. In sum they express the audacity of the wager which we have summed up in an operational sense, by saying that restorative justice practices endeavor to actively foster the vision of reality embedded in the restorative justice wager in the midst of conflict. Thus, the promise of restorative justice is rooted in the hope that community and shared life in which all may flourish can emerge through the practice of restorative dialogue carried on in the very midst of conflict rather than in the denial or negation of the existence of such conflict. The hope for shared life together, expressed as an ontological reality and a normative imperative in the wager and the deep assumptions associated with it, point to the need for a paradigm shift from the ideas surrounding the conventional approach to wrongdoing and its redress. This shift offers an alterna-

course around one three-hour session per week, rather than three fifty-minute sessions on three different days each week. The result was that the internal growth of the Circle within each person and among the participants collectively was encouraged and bore much fruit in terms of the level of trust that was developed, the space that was created and the storytelling that is invited by the Circle process.

⁶³ PRANIS ET AL., *supra* note 3, at 9–10.

tive to the conventional understanding of the role of the state and the meaning of justice in the criminal justice system—but it also departs from the understanding of justice in the civil legal system as well. Pranis, Stuart and Wedge describe this paradigm shift as follows:

1. from coercion to healing;
2. from solely individual to individual *and* collective accountability;
3. from primary dependence on the state to greater self-reliance within the community; and
4. from justice as “getting even” to justice as “getting well.”⁶⁴

Addressing crime, wrongdoing, and justice out of the stance indicated by this paradigm shift, through the practice of the distinctive form of restorative dialogue that is the hallmark of Circles, means that Circle practice, conducted in the particular way that we shall describe in more detail below, offers a safe place in which people in conflict with each other may gather and collectively engage each other in order to undertake *dialogic acts of hope in the wilderness of conflict* that can lead to community because of that dialogic engagement in the midst of that conflict. Such dialogic acts of hope are a manifestation of the paradigm shift in action. How that might occur through restorative dialogue requires that we look carefully at what Pranis, Stuart and Wedge refer to as the “inner” and “outer” frames of Circles. It is in the inner frame that we find the wager and the deep assumptions most critically embraced in an operational way. The outer frame is but a structure for ordering the commitments that the inner frame brings to the Circle-style of restorative dialogue. As we shall see, the potential for a community to emerge among participants in Circle, inheres in nurturing the integrity of the “inner frame” of the dialogue in Circles given close attention by Pranis, Stuart and Wedge,⁶⁵ and the way in which this inner frame grows out of the shared work on values that is at the foundation of Circle practice.⁶⁶ This makes the practice of dialogue in Circles the quintessential example of what restorative dialogue might become, and what it might lead to when practiced in other forms of restorative justice, even though the outer frame may differ markedly from one form of restorative justice to another.

⁶⁴ *Id.* at 10.

⁶⁵ *See generally id.*

⁶⁶ *See id.*

B. The Inner Frame of Circles and the Potential for the Transformative Practice of Restorative Dialogue—
The Guidance of the Medicine Wheel

In describing the inner frame of circle practice, Pranis, Stuart and Wedge call upon the guidance of the medicine wheel as an important resource for their task. Their location in Canada and the United States, working often with indigenous peoples as well as others who come in contact with the criminal justice system of these two nation-states, has led them to draw on the medicine wheel's wisdom for guidance in shaping the inner frame of Circles in their practice. Here a further note needs to be made on the dangerous possibility that restorative justice can serve the entrenched structures of domination and oppression that are the marks of systemic injustice by, for example, drawing on the rich tradition of the medicine wheel in a way that undermines indigenous tradition rather than respects that tradition by learning from it.⁶⁷ Edward Valandra, a Sicangu Lakota scholar, raised this danger with a challenge he contributed to the symposium at the Hamline University School of Law in 2003, when in the context of the dispossession of the Lakota from their lands by United States government policy over the years, he said:

The court system is not set up to compensate us for the loss of our spiritual universe. The court system is not set up to allow compensation of [sic] the stolen resources. The court system is not set up to compensate us for the genocide that has occurred to us by white people. The white people said, "Yes, let's have pow-wows. Let's put Indians in feathers. Let's have drumming and singing. And [sic] we'll have some feasts." And the dialogue went on that way and then finally a Lakota got up and said, "The Litmus test for reconciliation is land return." The whole reconciliation movement fell apart.⁶⁸

Commenting on this challenge, and the danger of co-optation, Jim Coben remarked:

When I hear in the RJ movement that prosecutors love it and endorse it; victims' rights groups love it and endorse it; but defense counsel and people representing the rights of the offend-

⁶⁷ For a vivid description of how master stories can dominate or subvert the story of another people see Patricia Ewick & Susan S. Silbey, *Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative*, 29 *LAW & SOC'Y REV.* 197 (1995).

⁶⁸ Coben & Harley, *supra* note 22, at 301; see Edward C. Valandra, *Decolonizing "Truth:" Restoring More than Justice*, in *JUSTICE AS HEALING*, *supra* note 29, at 29.

ers in society maybe are more reluctant. [That] just gives me pause. I mean what does that say about who is being served?⁶⁹

The medicine wheel is an important part of the tradition of many of the indigenous peoples of North America. For those who take it seriously within their tradition, it is filled with, and expresses, an enormous store of wisdom that is a guide to understanding the meaning of the cosmos and what humans are called upon to do to maintain the integrity of themselves and the cosmos in relation to each other. The tradition of the medicine wheel includes the truth that to live in a way that is faithful to the many teachings bound up in the wheel is a task so vast that one can spend a lifetime of study and reflection on the medicine wheel without exhausting its capacity for illuminating the understanding of those who do so.⁷⁰

The medicine wheel, in its simplest form of expression, is described as a circle with four equal-sized quadrants inscribed within the circle. The circle is dependent upon the four quadrants and each of the four quadrants is dependent on each other—they are all related in a balanced harmony. The unity of all depends on the diversity of the quadrants and the integrity of each of the quadrants depend upon the unity of all. This image of holistic balance and harmony is thus both a depiction of reality and what the indigenous people who take it seriously are called upon to do—namely to recognize their relations within the universe including the plants, animals and minerals of the land on which they reside and to foster the well-being of all. To live in this way is to foster the well-being of ourselves and our communities.⁷¹ This powerful image of deep interconnectedness of everything in the cosmos is expressed in the traditional greeting of the Dakota people: *Mitakuyupi Owas'in* (All My Relations),⁷² sometimes rendered as “we are all related.”⁷³

⁶⁹ Coben & Harley, *supra* note 22, at 313.

⁷⁰ Interview with Angeliqwe A. EagleWoman (Wambdi WasteWin), Assistant Professor of Law, Hamline University School of Law, in St. Paul, Minn. (Jan. 30, 2007) (notes on file with author). Professor EagleWoman is a member of the Sisseton-Wahpeton Dakota Oyate of the Lake Traverse Reservation. As a Dakota woman, the medicine wheel is an important feature of her tradition.

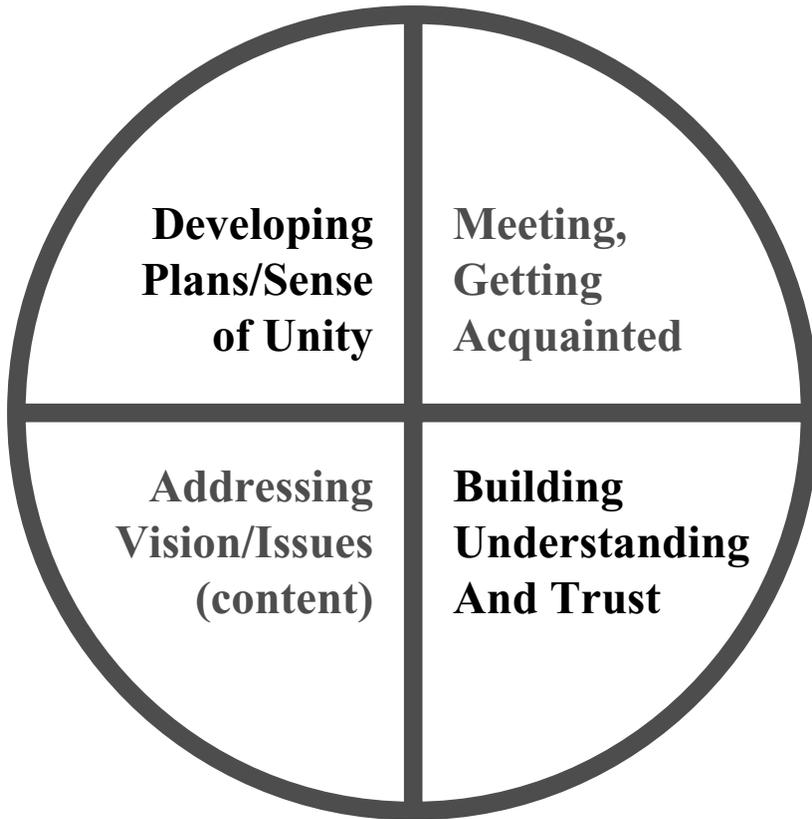
⁷¹ This understanding has been gained from experience in the dialogue on cooperative stewardship with Native people, archaeologists and government officials in Minnesota, who today are seeking to establish a collaborative relationship on how to recover, preserve and protect the thousands of Indian burial sites in Minnesota.

⁷² WAZIYATAWIN ANGELA WILSON, REMEMBER THIS!: DAKOTA DECOLONIZATION AND THE ELI TAYLOR NARRATIVES 62 (2005).

⁷³ ALLEN C. ROSS (EHANAMANI), MITAKUYE OYASIN: “WE ARE ALL RELATED” (rev. ed. 1997).

The image of the medicine wheel is drawn on by Pranis, Stuart and Wedge to describe the distinctive practice of restorative dialogue in Circles. They do so to emphasize that Circles focus on building relationships *before* going on to identify issues and create plans of action. Problem-solving is not minimized—rather, it is grounded in relationships. Therefore, relationship-building is the first task undertaken within Circles. This is done by focusing on building relationships as the first subject of dialogue before addressing plans of action. As such, it is a striking departure from typical problem-solving approaches including many of those associated with the conventional forms of ADR. In Circles, the participants start out simply by meeting one another; and taking time to get acquainted for the purpose of building relationships and trust. Based on this foundational relational work, Circle dialogue can eventually expand to address the questions of individual and shared vision as well as issues that have emerged in a conflict. Only then is the Circle ready to move into developing plans for implementation with a sense of unity. The deep commitment to building relationships is the source of the transformative potential of Circle practice as a form of conflict resolution. This description of Circle practice, with its dynamic inner frame that gives priority and emphasis to building relationships as a prelude to, and foundation for taking action, is portrayed through moving clockwise in the adaptation of the medicine wheel used by Pranis and her colleagues in the following diagram:

**“The Inner Frame of Circle Process: Balancing Relationship
Building And Problem-Solving”⁷⁴**



The guidance of the medicine wheel is carried further by the fact that the inner frame of Circles invites participants to enter the Circle and engage in restorative dialogue as *whole persons* – bringing their *head* with its mental and intellectual processes, their *body* with its physical processes, their *heart* with its emotional processes, and their *soul* with its spiritual processes to the circle. Everyone is invited to enter the Circle as an equal in the fullness of their personhood.⁷⁵ In addressing conflict and the possibility of collabora-

⁷⁴ PRANIS, *THE LITTLE BOOK*, *supra* note 11, at 42 (reprinted here with permission of the author).

⁷⁵ Here again the cautionary point about using descriptions of Circle practice, such as the Appendix to this article, is worth repeating. The compelling experience of being listened to with full attention and respect offered by the listener to the speaker that marks experience in a Circle well-formed cannot be described in a way that captures that experience because it is so particular to the participants of a particular Circle. Various exercises are used in Circle training that serve

tively creating community in the midst of that conflict, as an expression of open dialogue between whole persons in which all are respected, the members of the Circle become capable of facing the truth as whole persons with courage in the company of others, including those with whom one might be in profound conflict or disagreement.

Pranis, Stuart and Wedge observe that while the values and guidelines for Circle dialogue are a collaborative creative product of each Circle in its work, certain values tend to recur in the work of quite disparate groups.⁷⁶ They list ten values that are often expressed in Circle work: “respect, honesty, humility, sharing, courage, inclusivity, empathy, trust, forgiveness, and love.”⁷⁷ These values are the foundation of Circle work. The depth and breadth of values and their central place in Circles marks restorative dialogue as quite different in substance, if not in ultimate intention, from ADR processes. Thus, Circles are built on a shared substantive vision of *justice as healing in community* with concrete features that are identified, embraced, and reaffirmed continuously in circle dialogue. The guidelines for dialogue, one of the five features of the outer frame of Circles discussed below, are constructed on the shared value foundation collectively created by the participants in the Circle. This shared value foundation is, in turn, nurtured and expressed concretely through observance of the guidelines adopted by the Circle participants. In this way the inner and outer frames are integrated in the distinctive Circle practice of restorative dialogue.

To sum up, Pranis, Stuart and Wedge note that the inner frame of Circles is completed by the generation, through dialogue of “shared values” by the Circle participants . . . which “give rise to circle principles” that “form the basis of circle process” . . . “expressed through circle guidelines” developed by the group . . . that “reaffirm the “shared values” of the group to guide its dialogue.”⁷⁸

to invite participants into this experience bit by bit. The concentric circle exercise, in which two circles of chairs are arranged facing each other with one ring asked to speak on a set topic for 3-4 minutes while the occupants in the other circle simply listen after which time period the speaking and listening roles are reversed, following which each occupant of a chair in the outer ring moves one chair to the left to repeat the process with a different topic and different partner serves a compelling introduction to the experience of Circles when practiced for an extended period of time, as for thirty to sixty minutes. This practice has been handed down among Circle trainers.

⁷⁶ Kay Pranis, *Restorative Values in HANDBOOK OF RESTORATIVE JUSTICE* 59 (Gerry Johnstone & Daniel W. Van Ness eds., 2007).

⁷⁷ PRANIS, ET AL., *supra* note 3, at 33-45; *see also* Pranis, *supra* note 76.

⁷⁸ PRANIS, ET AL., *supra* note 3, at 104.

This dynamic flow of energy within the inner frame is the vortex out of which community can emerge through open dialogue in the midst of conflict. What emerges through patient practice, guided by this inner frame of process, is a plan of action in which values-based dialogue is the foundation of practice and addressed at every step in the process.⁷⁹ What also emerges out of this shared work is full investment by the group in any plan of action developed, for such plan is itself an expression of the relationship the members of the Circle have built through dialogue with each other through the process. This is most helpful when it comes to the task of plan implementation.

C. The Outer Frame of Circles-A Structure for Open Dialogue

The outer frame of Circles provides the basic structure within which the inner frame is developed and fostered. It is composed of five features that may be observed from outside Circles; even while the content of the inner frame is obscured from view to the external and uninvolved observers. The five features that establish the outer frame are:

1. Guidelines
2. Talking Piece
3. Keeping/Facilitation
4. Consensus
5. Ceremony

These five features of the outer frame serve as the externally observable container of the deep assumptions and the inner frame that shape the practice of restorative dialogue as a potentially transformative practice, embodied and expressed through Circle practice. Adoption of the trappings of the outer frame, without the deep work of the inner frame is a false appropriation of the Circle process and unlikely to bring the results that depend on building relationships of trust between people who are in conflict. In addition it should also be noted that despite the essential character of the aforementioned five features, each is shaped by the action of the Circle participants. Thus the kind of ceremony, content of the guidelines, identity of the talking piece, role of the keeper who facilitates, and the consensus developed in the Circle are all a product of, and continuously shaped by, the on-going dialogue within

⁷⁹ *Id.*

the Circle. As I have already noted,⁸⁰ description of Circle processes on paper, as I am doing here, does not do justice to the character and quality of these processes. Experience is the true teacher of Circle processes. Nonetheless, it may help to add a few comments on the “guidelines,” “talking piece,” role of the “keeper,” “consensus,” and “ceremony,” the five features of the outer frame listed above, to suggest how the outer frame works to provide a safe place for the practice of restorative dialogue in Circles.

1. **GUIDELINES:** The guidelines for dialogue constructed on the shared foundations of the values embraced by the group tend, like the values themselves that emerge in Circles, to recur from group to group. Pranis, Stuart and Wedge identify six guidelines as essential. They are:

1. Respect for the talking piece.
2. Speaking from the heart.
3. Speaking with respect.
4. Listening with respect.
5. Remaining in the Circle.
6. Honoring confidentiality.⁸¹

If one were to summarize these in one word, they might all be said to be a subset or important detail of the value of “respect” writ large. Thus they bear a close resonance with Howard Zehr’s understanding of restorative justice who notes that if he were to single out one value as a hallmark of restorative justice it would be *respect*.⁸²

The guidelines are constructed on the foundation of shared values developed by the participants of the Circle. Since these values are part of the inner frame, the guidelines play a special role in providing a bridge between the outer frame and the inner frame. When this bridge from the values of the inner frame to the guidelines of the outer frame is well constructed, the spirit of the inner frame infuses the features of the outer frame and helps avoid a hollow mechanical practice of the features.

2. **TALKING PIECE:** The talking piece supports the meeting of participants as equals, each valued for the contribution that only they can bring to the dialogue. The talking piece moves clockwise around the Circle to provide the focus for the listeners’ attention

⁸⁰ See *supra* text accompanying notes 59–62.

⁸¹ PRANIS ET AL., *supra* note 3, at 81–82.

⁸² ZEHR, CHANGING LENSES, *supra* note 15, at 278; ZEHR, THE LITTLE BOOK, *supra* note 15, at 36.

and to invite the holder of it to offer whatever he or she might wish to offer to the dialogue. It establishes the Circle as a place where point-by-point exchanges and disputation does not occur. The use of the talking piece is a manifestation of the view that in the Circle the wisdom called forth in dialogue comes out of the collective collaborative work carried out in this way of speaking – most often this occurs through stories that are evoked by the process. This is not done to avoid conflict, but rather to invite all to share what they wish to share in a setting in which all other members of the Circle offer back their undivided attention as they listen. This empowers speakers and it invites storytelling. In doing so, Circle practice with the talking piece honors each participant and empowers them to speak in their own voice in a setting where they experience respect as they do so. It is important to point out that in this setting a pass, without speaking at all, is considered to have equal value with words that might be offered verbally by others when the talking piece comes round to them. Thus, whatever comes from a participant while holding the talking piece is met with the same measure of equal respect given to spoken contributions to the dialogue.⁸³

3. **KEEPER:** The keeper is a role that can be shared by several in the Circle and may change from one person to another over time. The keeper is responsible for calling the participants back to the shared values and the guidelines for the Circle, which members of the Circle have in their work together created, during the early rounds that established the Circle. At the opening of a Circle session, the keeper may offer a question or invite a comment on the process and/or the subject matter that has brought the participants together in the Circle. Thus, the keeper's role is more in the nature of facilitating the Circle in a way that is quite different from various ways in which a mediator in conventional ADR practice operates.⁸⁴ The keeper does not operate in a neutral context. Instead, the keeper, who has participated as an equal with other members of the Circle in establishing the shared values of the Circle and the guidelines for the dialogue based on those values, facilitates circle dialogue in a way that invites and calls participants to dialogue practice that is faithful to, and expresses, those values and guide-

⁸³ See PRANIS ET AL., *supra* note 3, at 93–103 (for further details on the talking piece); PRANIS, *THE LITTLE BOOK*, *supra* note 11, at 35–36.

⁸⁴ See Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7 (1996) (for an oft-cited description of the various ways a mediator may facilitate a mediation).

lines. This is another sense in which the Circle process is *value-based dialogue* in a deep way. The keeper's facilitation is thus shaped by what the Circle has created in its dialogue. As successive rounds are made, the keeper's contributions, through questions and comments, invite the members to address various aspects of the subject matter that has brought the participants together, at the same time doing so in a way that honors the Circle-generated values and guidelines.⁸⁵

4. **CONSENSUS:** In reaching for a sense of unity, the Circle embraces a decision-making model of consensus that is not one of voting by either a majority or in unanimity. Rather than unanimity, Circles work toward *unity* in creating a plan of action. This may mean that some in the Circle do not fully agree with a plan of action but they are nevertheless in unity with the Circle and willing to see it put into practice. Likewise the Circle respects each individual and therefore may delay putting a plan of action into effect over the strong objection of one of its members who is unwilling to stand aside from the Circle taking action.

5. **CEREMONY:** Ceremony is used to open and close a Circle. This may be a reading, a poem, or a ritual, including a check-in around the Circle. It could even include images or music shared in the Circle. Ceremony marks off the Circle from everyday experience. Participants come to the Circle from their everyday lives, and they will return to those lives when the Circle closes for the day. Since Circle practice nurtures and promotes engagement of the participants from their best selves, ceremony can emphasize that as well as serving to acknowledge that in our everyday lives we do not always encounter others from our best selves. Thus, opening ceremonies serve to call participants to dialogue that springs out of their best selves, while the practice of both opening and closing the Circle with ceremonies acknowledges that in our everyday lives we often do not speak or take action out of our best selves.

In light of what I have said here about the five features of the outer frame, it should be clear that ultimately, the shared collaborative work of the participants in the inner frame is what creates the trust that makes any particular Circle a safe place for dialogue about conflict. But the outer frame can set up the beginning parameters in which that inner framework can proceed and bear fruit.

In sum, the practice of restorative dialogue in the distinctive manner found in Circles discloses that the restorative justice wager

⁸⁵ See PRANIS ET AL., *supra* note 3, at 82–93 (for further details on the distinctive form of facilitation practiced by keepers); PRANIS, *THE LITTLE BOOK*, *supra* note 11, at 36–37.

is the animating force behind the vision of hope offered by restorative justice, of the possibility for building community in the midst of conflict, in which individuals are respected both for who they are as well as for their membership within the community. The touchstone of the community waiting to be born, as well as the way toward the birth of that community, is found in the practice of restorative dialogue in a way that faithfully expresses the deep premise of the restorative justice wager that everything is interconnected and that we belong to one another. The practice of dialogue in this way calls forth the restorative impulse in the heart of each member of the Circle, and opens up the possibility for community deeply shared. This vision of hope holds out the possibility that restorative justice, practiced in a contextually-sensitive way, and rooted in a set of shared values among the participants to the dialogue, can be socially transformative of the conflicts that are the occasion for its practice.

Restorative justice is not “the answer” for all wrong doing, nor are Circles “the answer” for addressing all conflicts.⁸⁶ The criticisms that have been launched of restorative justice need to be heard.⁸⁷ But those critics also need to hear from practitioners of restorative justice about how restorative dialogue, practiced with the seriousness that Circles bring to that practice, opens up the possibility of starting the journey toward some measure of healing that can help people to live beyond the burden of the past even if that does not bring about reconciliation. Experiences such as forgiveness and reconciliation can occur in the midst of restorative processes, but whether they do occur or not is not the measure of the efficacy of restorative processes. Rather, the success of restorative justice is better measured by whether a particular instance of its practice has offered an opportunity for the experience of some measure of healing, even in cases where neither forgiveness nor reconciliation are the desire or goal of the participants. This alone

⁸⁶ See Coben & Harley, *supra* note 22, at 303 (In the author’s experience, Kay Pranis is always quick to make this observation when speaking about Circles as she did during the 2003 Hamline Symposium).

⁸⁷ See, e.g., Waldman, *supra* note 22; CRITICAL ISSUES IN RESTORATIVE JUSTICE, *supra* note 22; ANNALISE ACORN, COMPULSORY COMPASSION: A CRITIQUE OF RESTORATIVE JUSTICE (2004); Helena Cobban, AMNESTY AFTER ATROCITY? HEALING NATIONS AFTER GENOCIDE AND WAR CRIMES (2007). For a critical assessment of an extensive but selected bibliography of this literature, in which questions are raised about the availability of empirical evidence for the efficacy of restorative justice practice as well as an important list of challenges posed to restorative justice as a form of conflict resolution, by a leading scholar in the world of ADR, see Carrie Menkel-Meadow, *Restorative Justice: What is it and Does it Work?* 3 ANN’L REV. OF L. & SOC. SCI. 10.1 (2007).

can make Circles worth the effort of creating a safe place in which open dialogue can take place and the truth of the past can be honestly faced.

When restorative dialogue is practiced in this way, it can unleash the transformative power of dialogue. If we are able to experience that power in our practice of restorative dialogue, it can make us all midwives to the birth of the spirit of community in our midst in a way that embraces rather than extinguishes our differences. In Circles the differences between us, and the conflict that so often arises out of those differences, are neither avoided nor suppressed. Rather, these differences, and the conflict they spawn, become the *opportunity* for collaboratively working, through dialogic acts of hope that can give birth to community, in the very midst of the conflict without erasing our differences. So understood, restorative dialogue is an invitation born along on the hope that we can enter into conversation in the midst of conflict in a way that can enable us to both face the truth and trauma of the past as well as becoming open to healing the burden of that past in the present that we share. Restorative dialogue understood in this way demonstrates the far-reaching potential of restorative justice to offer hope for healing not only the wrongdoing between individuals, but also holds out the hope that we, together in dialogue, may lift the heavy burden of human history and open up a future in which all life might flourish. In its practice, restorative dialogue, therefore, is both a means for pursuing that vision, as well as a present realization of it. It discloses that we are embarked on the journey of dialogue that embodies our interconnectedness while it moves toward its fuller embrace of that fact in our work together along the way.

III. CIRCLE PROCESSES & THE PRINCIPLE OF INTERNAL RELATIONS: TOWARD A RELATIONAL THEORY OF RESTORATIVE JUSTICE AND CONFLICT RESOLUTION FOR SOCIAL HEALING – THE NEXT STEP

The promise of restorative justice is warmly embraced by people who have participated in it experientially and found there a measure of justice as social healing. Experience is the key, but theory can also support such activity. Despite the resistance of practi-

tioners to engaging in theory-making noted above,⁸⁸ and building on the expanded definition of restorative justice that I call for in my discussion of Zehr and Harley above,⁸⁹ I venture here to explore how we might take a step toward the development of a theory of restorative justice that begins with the central idea of interconnectedness identified by many of those committed to realizing the promise of restorative practices.

This expression of deep interconnectedness can be found in many cultures, where one encounters a vision of individual human experience as being ultimately an expression of *communal interdependency* in which we, in our being, are part of one another, and need each other if we are to be whole selves. A poignant and powerful example of this relational sensibility and understanding of reality and human identity is found in a phrase central to the culture of the Dakota people indigenous to North America mentioned above in the discussion of interconnectedness:⁹⁰ *Mitakuyapi Owas'in* (All My Relations). Waziyatawin Angela Wilson, a leading contemporary scholar of indigenous history, herself a Wahpetunwan Dakota from the Pezihutazizi Otunwe in southwestern Minnesota, notes that:

while [the phrase] translates easily enough, the worldview associated with this phrase becomes apparent only when used in the context of the extensive network of other kinship terms. This is language that reflects the sacredness and interconnectedness of all creation and is used to encompass all living beings, in essence, all the natural world. It is used in greetings, in prayers, in ceremonies, in speeches, and any other time one wants to call upon all or part of creation. Thus, uttering the phrase in English does not have the same depth of meaning, because in English, other spiritual beings are not referred to with a kinship term in everyday speech, even siblings.⁹¹

Among contemporary public figures of high visibility in restorative justice, Archbishop Desmond Tutu, expresses this sensibility and understanding in his many references to the African idea of *Ubuntu*. An example of Tutu's definition of *Ubuntu* is the following:

My humanity is caught up in your humanity. I am a human being only because you are a human being. There is no such thing

⁸⁸ See *supra* text accompanying notes 15–18.

⁸⁹ See *supra* text accompanying notes 19–41.

⁹⁰ See *supra* text accompanying notes 69–73.

⁹¹ WILSON, *supra* note 72, at 62.

as a solitary human being. . . . And for that reason, the highest value is accorded to harmony, communal harmony, and anger and revenge and bitterness are corrosive of this harmony. And in a sense, it is the best form of self-interest to forgive you, because if I do not, my anger against you, which goes towards dehumanizing you, dehumanizes me in the process. The minute you are diminished, whether I like it or not, I am diminished. And so if I can enhance your humanity, ipso facto, my humanity is enhanced. And when we forgive, it is, in many instance [sic], for our own sakes.⁹²

Both of these expressions, Dakota and African, respectively, contain within them an acknowledgement of the deep interconnectedness of reality that is embraced by what I have called the restorative justice wager in the discussion above.⁹³ Howard Zehr, for example, gives evidence of this in his writing when he lifts up for emphasis, the idea of interconnectedness.⁹⁴

When I had the privilege of participating in the conversations at the 2003 Hamline Symposium I remarked that what I saw in restorative justice is one way to “engage[] in a process of moving [from] what I call a culture of separation [to] a culture of connectedness” that requires us to “to work on [the] foundational principle of what does it mean to think of ourselves as constituted by our internal relations – my identity as a product of my relations.”⁹⁵ In doing so I had in mind the contribution that I believe the principle of internal relations characteristic of Process Thought offers to further thought about acting on the recognition of interconnectedness that appears in many restorative justice commentaries.

Douglas Sturm is a scholar whose work draws deeply on the principle of internal relations as the key to understanding experi-

⁹² *Tutu and Franklin: A Journey Towards Peace* (PBS television broadcast, Feb. 9, 2001) (quoted section available at TEACHER GUIDE 9, <http://www.pbs.org/journeytopeace/teachers/tguide.pdf> (last visited Oct. 20, 2006)). Archbishop Tutu’s words are a succinct statement of *ubuntu*, the African concept of the relational character of individual identity bound up in community. TUTU, *supra* note 12, at 31, 45, 166, 264–65. *Ubuntu* is a prominent feature of Archbishop Tutu’s description of the underlying spirit of the Truth and Reconciliation Commission of South Africa (the “TRC”) which he chaired. *Id.* at 44–46. *See; see also* BORAINÉ, *supra* note 12, at 362, 425–26, (for further description of how *ubuntu* gained legal status and informed the restorative justice approach of the TRC and Tony Freemantle, *Crying for Justice; Searching for Truth; Light Shines at Last into Apartheid’s Darkest Corners*, HOUSTON CHRONICLE, Nov. 18, 1996, at A1, noting that Borainé was the deputy chairman of the TRC).

⁹³ *See supra* text accompanying notes 3–4.

⁹⁴ ZEHR, CHANGING LENSES, *supra* note 15, at 277–78; ZEHR, THE LITTLE BOOK, *supra* note 15, at 35–36.

⁹⁵ Coben & Harley, *supra* note 22, at 314–15.

ence.⁹⁶ The audacity of the restorative wager may be expressed in his claim that “*we belong to one another.*”⁹⁷ These words, writes Sturm, are a simple way of speaking about human possibility in the face of human conflict that embraces in practice what is sometimes, in the language of philosophy, called the “*Principle of Internal Relations.*”

That *we belong to one another* is a way of affirming, in the language of philosophy, the principle of internal relations. According to that principle, what we are is made up of a host of entangling and ever-changing relationships, all of which leave their traces on our life from beginning to end. At the same time, we are, within the context of those relationships, creative agents, making a difference, great or small, in the lives of others in the immediate present and in the long range future.⁹⁸

In explaining the principle of internal relations, and its significance for understanding both the reality and possibilities for our life together, Sturm directs our attention to *our* experience in order that we might both see and feel what is true by declaring that we are constituted by our internal relations. In his words:

In times such as these, if we are cognizant—and honest—about the circumstances that make up our common life, we must admit to the thick interdependency of our lives. We cannot be

⁹⁶ DOUGLAS STURM, *COMMUNITY AND ALIENATION: ESSAYS ON PROCESS THOUGHT AND PUBLIC LIFE* (1988) [hereinafter *STURM, COMMUNITY AND ALIENATION*]; DOUGLAS STURM, *SOLIDARITY AND SUFFERING: TOWARD A POLITICS OF RELATIONALITY* (1998) [hereinafter *STURM, SOLIDARITY AND SUFFERING*]. Process thought is most often associated with the metaphysics of Alfred North Whitehead. See ALFRED NORTH WHITEHEAD, *PROCESS AND REALITY: AN ESSAY IN COSMOLOGY* (Corrected ed., David Ray Griffin & Donald W. Sherburne eds., 1978) (1929) (for Whitehead’s fullest statement on his metaphysics). This volume is difficult without some introduction for the nonspecialist. See THOMAS HOSINSKI, *STUBBORN FACT AND CREATIVE ADVANCE: AN INTRODUCTION TO THE METAPHYSICS OF ALFRED NORTH WHITEHEAD* 14 (1993) (for an excellent introduction to Whitehead’s metaphysics); A KEY TO WHITEHEAD’S *Process and Reality* (Donald W. Sherburne ed., 1966) (for a more accessible critical description of Whitehead’s cosmology in linear style to make the web-like style of Whitehead’s own exposition in *PROCESS AND REALITY*); see also ALFRED NORTH WHITEHEAD, *ADVENTURES OF IDEAS* (Macmillan Co., 1967) (1933) (for an accessible work by Whitehead that relates his metaphysics to civilization in human history). See generally RONALD L. FARMER, *BEYOND THE IMPASSE: THE PROMISE OF A PROCESS HERMENEUTIC* 71–82 (1997) (for an excellent discussion of the “process world view”). See Jay Tidmarsh, *A Process Theory of Torts*, 51 WASH. & LEE L. REV. 1313 (1994) and Jay Tidmarsh, *Whitehead’s Metaphysics and the Law: A Dialogue*, 62 ALA. L. REV. 1 (1998) for the most prominent and extended treatments of Process Thought in law which explicitly draw on the work of Alfred North Whitehead.

⁹⁷ Douglas Sturm, *Thinking Afresh About Faith and Politics* in *BELONGING TOGETHER: FAITH AND POLITICS IN A RELATIONAL AGE*, 2 (Douglas Sturm ed., 2003) [hereinafter Sturm, *Thinking Afresh*].

⁹⁸ *Id.*

what we are, we cannot do what we do, we cannot accomplish what we accomplish apart from one another. Perhaps more than we can ever fully discern, our lives are but expressions, albeit creative expressions, of a communal matrix that sustains us, inspires us, and constitutes the origin of our dreams and yearnings, our obligations and our rights. *We are members of each other.* We belong together. That is the source of our joy in life, although that is, as well, the source of the tragedies of life, the dark side of our history, which, on all too many occasions, makes us shudder and anxious about our destiny.⁹⁹

In an extended poignant expression of this view written for a lay audience interested in the application of Process Thought to current issues in public life and politics, Sturm conveys the deep interconnectedness embodied in the principle of internal relations in a compelling way in the following words:

On one level, the declaration that *we belong to one another* is a phrase that often recurs in ordinary life, a phrase we are likely to hear or to say in our everyday interactions. It's the kind of declaration that we toss off in diverse contexts: to lovers, to friends, to kinfolk, to colleagues. It's what we say when we want to give a boost to someone we know. It's the kind of phrase that comes to mind in moments of fear or suffering. It's a sentiment we voice when we are pleading for reconciliation or soliciting a loving response. In all these cases, the declaration is intended seriously enough for the occasion at hand. With an economy of words, the declaration, if uttered honestly, is an effort to solidify relationships, moving us from an uncertain present to a more promising future. As such, it is not insignificant as a verbal means of encouraging a shift toward a more constructive way of living together.

On another level of understanding, however, the declaration that *we belong to one another* is of far deeper and more extensive significance In this profounder sense, belonging together betokens a fundamental characteristic of our life. It tells us something important about who we are and how we ought to live our lives.

[The principle of internal relations is thus, in short, a way of comprehending our most fundamental identity, experience, history and possibilities.]

That *we belong to one another* is a way of affirming, in the language of philosophy, the principle of internal relations. According to that principle, what we are is made up of a host of entangling and ever changing relationships, all of which leave

⁹⁹ STURM, SOLIDARITY AND SUFFERING, *supra* note 96, at 7 (emphasis added).

their traces on our life from its beginning to its end. At the same time, we are, within the context of those relationships, creative agents, making a difference, great or small, in the lives of others in the immediate present and in the long-range future

But the declaration that *we belong together* is more than a way of thinking; it is a way of acting. [Thus], thinking and acting are intimately interconnected

[T]hose who genuinely understand that *we belong to one another* tend to act in distinctive ways

The [principle of internal relations suggests] modes of action . . . which . . . [call us to action], but they are not narrowly personalistic. They mark a pathway that each of us can consider making our own, yet the pathway entails initiating a network of interaction that has implications in all sectors of our common life. The principle of internal relations . . . bristles with institutional implications. In its normative import, it signals a way of reconstructing the patterns of interaction through which we live together, local and global, transforming those structures of alienation and suffering that currently prevail across the world into forms of community through which all of us might flourish.¹⁰⁰

Proceeding from this vision, Sturm argues that the view of reality constituted by the principle of internal relations departs from the *radically individualist* view of human experience that dominates conventional notions of political society, legal theory, and American life.¹⁰¹ In the individualist view, private life is elevated over public life and reality is understood as constituted by a set of *external* relations between self-contained atomistic individuals. The individualist view denies the deeper reality of the principle of *internal* relations that understands human experience as deeply embedded in, and expressive of, the “creative passage of events,”¹⁰² which constitutes all in cosmic community.

The key to understanding Sturm’s claim that “we belong to one another”¹⁰³ is that it embraces a view of reality that is both

¹⁰⁰ Sturm, *Thinking Afresh*, *supra* note 97, at 1–3 (emphasis in original); see STURM, COMMUNITY AND ALIENATION, *supra* note 96, at 1–6, 208–209 (as applied to reframing law); STURM, SOLIDARITY AND SUFFERING, *supra* note 96, at 1–14.

¹⁰¹ STURM, COMMUNITY AND ALIENATION, *supra* note 96, at 1–4, 7.

¹⁰² *Id.* at 96. Sturm uses this phrase when discussing the ideas of theologian Bernard E. Meland. *Id.* (citing BERNARD EUGENE MELAND, *ESSAYS IN CONSTRUCTIVE THEOLOGY: A PROCESS PERSPECTIVE* 129 (Perry LeFevere ed., 1988)).

¹⁰³ Sturm, *Thinking Afresh*, *supra* note 97, at 1.

ontologically and normatively true at one and the same time.¹⁰⁴ Simply stated, it describes who we are and what we are called to do as a reflection of who we are in all of our myriad relations. Looking at restorative justice through this worldview discloses that the practice of restorative dialogue is an expression of the deep claim of the restorative justice wager that in our being and in our acting we truly do belong to one another as Sturm asserts.

What I have offered above is only a suggestion conveyed in broad outline, of what a first step in developing a relational theory of restorative justice and conflict resolution might look like using the categories of Process Thought. The details need to be worked out and applied to the many different settings and forms in which conflict resolution is practiced. That task is beyond the scope of this article.¹⁰⁵ Nevertheless, this brief excursion into one of the core features of Process Thought, the principle of internal relations, discloses the direction of our work if we take up the invitation that Process Thought offers to develop a comprehensive relational theory of conflict resolution that takes the fact of our interconnectedness seriously both as a description of our reality and as the touchstone of what we are called to do. If conflict resolution did that, we would recognize the need to expand our understanding of reality to include the stories that are so often marginalized. Such a stance acknowledges that our own understanding of reality may well be rooted in the marginalization of the stories we rarely hear. Moreover, this calls us to act in a way that opens dialogue in conflict and to invite these stories with a willingness to seriously risk what an encounter with them might entail. Hearing these marginalized stories in our practice of restorative justice might lead us to recognize how our own story has played a role in the marginalization of the other. This, in turn, might call

¹⁰⁴ This idea is expressed by Sturm when he says that “[i]n our move into the new century, we are confronted with a massive decision about the character and quality of our common life. . . . *In this context the question we are compelled to ask of ourselves and of each other is two-sided. It is political and it is religious. On its political side, the questions, simply put, is: How shall we live our lives together? On its religious side, the question, cast most directly, is: Who are we? What is our place and our destiny in the world?*” SOLIDARITY AND SUFFERING, *supra* note 96, at 1–2 (emphasis in original).

¹⁰⁵ For an application of Process Thought to the task of developing theories of human rights and constitutional interpretation, see Howard J. Vogel, *Reframing Rights from the Ground Up: The Contribution of the New UN Law of Self-Determination to Recovering the Principle of Sociability on the Way to a Relational Theory of International Human Rights for the 21st Century*, 20 TEMPLE INT’L & COMP. L.J. 443 (2006) and Howard J. Vogel, *The Possibilities of American Constitutional Law in a Fractured World: A Relational Approach to Legal Hermeneutics*, 83 U. DET. MERCY L. REV. 789 (2006).

forth from us a willingness to engage in the reframing of our own story as an act of solidarity that can lead to a new community not bound by stories of exclusion. The practice of restorative dialogue in a truly open and honest way, suggests where our conversation must start – with the practice of deep respect as a manifestation of the deep interconnectedness of our existence. Circles provide a safe place where we might undertake that task together—sharing stories as we reweave the interconnected stories of domination and victimization that have for too long been at the heart of the history of the land each of us calls home. What such a practice of restorative dialogue in particular, and conflict resolution, in general, invites us to consider is that the principle of internal relations can help support us as we travel further down the road. When viewed from a perspective informed by the relational world view of Process Thought and its principle of internal relations, conflict resolution is illuminated as a movement, as many have claimed, marked more by a distinct process than by a theory – but it is a movement with a discernible pattern that is capable of serving the community so that all life may flourish if our practice is deeply restorative as illustrated by the example of restorative dialogue as practiced in Circles. The development of a theory of conflict resolution along these lines can foster that movement and its practice rather than choke it off through an abstraction which is removed from the life and experience of those who practice restorative justice and have seen its transformative potential,¹⁰⁶ — despite the limits of humans to realize it in many instances. In sum, we are called to a new way of being while in the midst of our journey, because we have the capacity deep inside of us to embody that new way of being—that is the call of the restorative impulse on which the restorative wager is made in the Circle practice of restorative justice. This will require that we meet each other in the midst of conflict, bringing our best selves to the dialogue. Circle practice offers us an opportunity to do that by accepting the wager that such open dialogue is the deepest human possibility, even in the midst of terrible conflict burdened by the trauma of the past.

¹⁰⁶ See *supra* text accompanying note 80.

EPILOGUE:

TAKING RESTORATIVE JUSTICE SERIOUSLY AND SHARING
LIFE TOGETHER BEYOND THE BURDEN OF THE PAST¹⁰⁷

I will close, where restorative justice devotees so often start, with a story. The occasion for writing this article was a symposium on restorative justice held at Cardozo School of Law on November 10, 2006. I came to that gathering having traveled a long distance from my home in Minnesota – but my mind and heart were back there, for on that date, Native Americans were at the mid-way point of the 2006 Dakota Commemorative March through the Minnesota River Valley where I grew up. The Dakota Commemorative Marches of the 21st Century¹⁰⁸ are an initiative undertaken by people of the Dakota Oyate (Nation) who are the descendants of the indigenous people of Minnesota.¹⁰⁹ Waziyatawin Angela Wilson, one of the organizers of the marches writes that the marches are a Dakota effort to recall the forced march of 1862, in order to remember those who walked—*Mani Hena Owas'in Wicunkiksuyapa*.¹¹⁰ Moreover it is an act of *decolonization* taken on by Dakota people who insist that the truth of that first march be remembered and made known to all, Indian and non-Indian alike, despite the pain that facing such truth entails. Ultimately it is one step, she writes, on the long journey of healing among the Dakota for the transgenerational trauma that the events of the past have brought across the years to the descendants of that first march.¹¹¹ In August of 1862, the Dakota people were living on a small reservation five miles wide and 140 miles long running along the south shore of the Minnesota River Valley in southern Minnesota. They came to live there after ceding millions of acres to the United States. Under the terms of the land cessions, the United States had

¹⁰⁷ For an extended treatment of the application of restorative justice to the trauma of the past that stems from the Dakota-U.S. War of 1862 and its aftermath of ethnic cleansing briefly referred to in this Epilogue, see Howard J. Vogel, *Healing the Trauma of America's Past: Restorative Justice, Honest Patriotism, and the Legacy of Ethnic Cleansing*, 55 BUFF. L. REV. 981 (2007) (copy on file with author).

¹⁰⁸ WAZIYATAWIN ANGELA WILSON, IN THE FOOTSTEPS OF OUR ANCESTORS: THE DAKOTA COMMEMORATIVE MARCHES OF THE 21ST CENTURY (Waziyatawin Angela Wilson ed., 2006).

¹⁰⁹ WAZIYATAWIN ANGELA WILSON, *Manipi Hena Owas'in Wicunkiksuyapi [We Remember All Those Who Walked]* in IN THE FOOTSTEPS OF OUR ANCESTORS: THE DAKOTA COMMEMORATIVE MARCHES OF THE 21ST CENTURY 1 (Waziyatawin Angela Wilson ed., 2006).

¹¹⁰ *Id.* at 2 & 6–7.

¹¹¹ Waziyatawin Angela Wilson, *Decolonizing the 1862 Dakota Death March*, in THE FOOTSTEPS OF OUR ANCESTORS: THE DAKOTA COMMEMORATIVE MARCHES OF THE 21ST CENTURY 43, 62–64 (Waziyatawin Angela Wilson ed., 2006).

promised to supply food and other goods, along with money payments on a regular basis to the Dakota people to provide for their well-being. In late August 1862 the failure of the United States to live up to its promises posed dire consequences to the Dakota people in the face of the oncoming winter. Promised funds from St. Paul had not arrived and anxiety among the Dakota had reached a high point in the face of the oncoming winter.

In the face of these events, a small band of Dakota warriors rose up and declared war on the United States.¹¹² In a brief five-and-one-half-week military campaign, the Dakota forces led by Taoyateduta (Little Crow) were defeated. Two-thousand Dakota people were rounded up and taken into custody – women, children, elderly and combatants were all rounded up. The captured warriors were subjected to summary proceedings held before a military tribunal, lasting in many cases no more than five minutes, with much of the “evidence” consisting of the affidavits of terrified European immigrants¹¹³ who had settled on Dakota land.

Following these proceedings, in November, two forced marches under military escort, took place in the Minnesota River Valley. One, composed largely of Dakota women and children numbering 1,658, traveled down the River Valley 120 miles to Fort Snelling in what is now St. Paul, Minnesota. The other, composed of over 392 men, was sent to Mankato where they were imprisoned to await determination of whether they would be condemned to death or prison. The members of the larger group were interred for the winter of 1862-63 in a concentration camp on the river flats immediately below Fort Snelling at the confluence of the Minnesota and Mississippi rivers near the heart of the present-day Minneapolis-St. Paul metropolitan area. During the winter of 1862-63, over 100 people died in the concentration camp, and in the spring, the remaining people, along with the warriors who had been im-

¹¹² See KENNETH CARLEY, *THE DAKOTA WAR OF 1862: MINNESOTA'S OTHER CIVIL WAR* (rev. ed. 1976); *THROUGH DAKOTA EYES: NARRATIVE ACCOUNTS OF THE EVENTS OF THE MINNESOTA INDIAN WAR OF 1862* (Gary Clayton Anderson & Alan R. Woolworth eds., 1988); GARY CLAYTON ANDERSON, *LITTLE CROW: SPOKESMAN FOR THE SIOUX* (1986); *THE DAKOTA INDIAN INTERNMENT AT FORT SNELLING, 1862-1864* (Corinne L. Monjeau-Marz ed., 2005); ROY W. MEYER, *HISTORY OF THE SANTEE SIOUX: UNITED STATES INDIAN POLICY ON TRIAL* (rev. ed. 1993); WILLIAM WATTS FOLWELL, *A HISTORY OF MINNESOTA, VOL. 2* (1922); RHODA R. GILMAN, *HENRY HASTINGS SIBLEY: DIVIDED HEART* (2004). Two documentary videos have been made on the Dakota-U.S. War of 1862 and the dispersal of the Dakota people: *THE DAKOTA CONFLICT* (KTCA – Twin Cities Public Television 1992) & *DAKOTA EXILE* (KTCA – Twin Cities Public Television 1995).

¹¹³ Carol Chomsky, *The United States-Dakota War Trials: A Study in Military Injustice*, 43 *STAN. L. REV.* 13 (1990).

prisoned at the fort, were herded onto steamboats that traveled down the Mississippi and up the Missouri rivers. The convicted warriors were imprisoned in Davenport, Iowa, while the rest were dispersed to reservations across the prairies stretching from Nebraska to Alberta.

Before the dispersal of the Dakota came about in the spring of 1863, thirty-eight of the warriors who had been convicted and sentenced to death at the *ersatz* military trials, were executed in one pull of the hangman's rope on December 26, 1862 in the town of Mankato, Minnesota. It stands today as the largest mass execution in United States history.

At the outbreak of the war in 1862, Governor Alexander Ramsey called a special session of the Minnesota State Legislature and declared in his opening speech that "[t]he Sioux Indians of Minnesota must be exterminated or driven forever beyond the borders of the State"¹¹⁴ The following spring and summer this call for ethnic cleansing was carried out by two large military columns that drove the Dakota people out of Minnesota to the west.

Growing up, as I did, in New Ulm, Minnesota, site of two pitched battles in the 1862 war, and as a fifth generation descendant of the immigrant-settlers who settled on Dakota land after the treaties of 1851, I first heard this story at a very young age. In the earliest telling it was told as a tale of triumph on the prairie. In more recent years, as I have sought to recover details of the story I have learned that two of my great-great grandfathers, and one of my great-grandfathers were deeply involved in the war during the defense of New Ulm. One of them, my great-grandfather Joseph P. Vogel, became a member of a mounted ranger military unit, and was present at the mass execution in December 1862. In the Spring and Summer of 1863 he was part of one of the two military columns that drove the Dakota out of Minnesota to the West. His obituary records that his experiences in those days were ones that he never tired of retelling over the years.¹¹⁵ With the inauguration

¹¹⁴ Alexander Ramsey, Governor, State of Minn., Message to the Legislature of Minn., delivered at the Extra Sess. 19 (Sept. 9, 1862) (William R. Marshall, State Printer, Press Printing Co. 1862).

¹¹⁵ *Todesfälle: Joseph P. Vogel* New Ulm Post, Apr. 12 1918, at unnumbered page 12 (obituary of Joseph P. Vogel in German language newspaper); *Deaths of a Week: Jos. P. Vogel*, NEW ULM J., Apr. 13, 1918 at 12 (obituary of Joseph P. Vogel in English language newspaper) (copy on file with author). There are a number of general works that include detail on the Battles of New Ulm. See CHARLES E. FLANDRAU AND THE DEFENSE OF NEW ULM (Russell Fridley, Leota M. Kellett & June D. Holmquist eds., 1962); THE MATTER LIES DEEPER – CEMETERY SYMBOLISM, PIONEER HARDSHIPS/BURIAL LOCATIONS, GENEALOGY, HISTORY OF NEW ULM, MINNESOTA

of the Dakota Commemorative Marches, the full horror of the war and its aftermath in the lives of the Dakota people that I have briefly recounted here, finally became known to me.

In the opening paragraph of this *Epilogue* I took note of Waziyatawin Angela Wilson's comment that beyond the act of remembering, the marches are an occasion in which the marchers have taken on the task of fostering healing among the Dakota for the transgenerational trauma that has been carried forward from the first march of 1862. But Waziyatawin also notes that the marches are a call to non-Indians to face the full truth of United States history and consider what, in light of that history and its burden, we should do today. This is one of many ways in which those of us who are drawn to restorative justice are challenged to apply its practices and principles to conflicts between groups in an effort to heal the continuing burden of the trauma of the past. On November 10, 2006, the day of our gathering in New York City to reflect on restorative justice, I was keenly aware that the 2006 marchers, some known to me, had reached the half-way point in their 120 mile journey. They were near the site of Traverse des Sioux where one of the two treaties of 1851, characterized by historians as a "monstrous conspiracy"¹¹⁶ was concluded. I have traveled past this tranquil and infamous site in the valley perhaps a thousand times as both a child and an adult. So on that day, as I sought to reflect on the possibilities of restorative justice, rooted, as I understood it, in the hope embodied in what I have called the restorative justice wager, the past was very much with me. And the parts of the past that were pressing insistently upon my mind as I spoke were the consequences that flowed from the treaty concluded at Traverse des Sioux in 1851. Most particularly, the images of the commemorative marchers called forth in my mind the challenge we face to recover the truth of the trauma of America's past in dealing with the indigenous people of this land so that it may be known and addressed in the hope of constructing a more hopeful future.

Restorative justice offers us an opportunity to face the burdens of the past with the courage and compassion that enables peo-

(Elroy E. Ubl ed., 2004); *NEW ULM AREA DEFENDERS OF AUGUST 1862 – DAKOTA INDIANS & PIONEER SETTLERS* (Elroy E. Ubl ed., 1992).

¹¹⁶ Treaty of Traverse des Sioux, July 23, 1851, in *INDIAN AFFAIRS, LAWS AND TREATIES* 588–89 (Charles J. Kappler, ed., 1904); Treaty of Mendota, August 5, 1851, in *INDIAN AFFAIRS, LAW AND TREATIES* 591–93. See MEYER, *supra* note 112, at 87 (quoting NEWTON H. WINCHELL, *ABORIGINES OF MINNESOTA* 554 (1911)) for the characterization of these treaties negotiations as a "monstrous conspiracy."

ple to stand together, in a safe place for dialogue, to face the truth of the trauma the past so often bears forward into the present. Restorative justice processes, at their best, embrace the wager that everyone wants to be connected in a good way and that in a safe place through open dialogue we who are the heirs of the past, are empowered to act on that desire in a way that can build a community out of the trauma of the past so that we might walk together into a transformed future.

APPENDIX - PEACEMAKING CIRCLES:
A PRACTICAL PROCESS FOR DIALOGUE THAT
BUILDS COMMUNITY*

1. Peacemaking Circles are *a way of bringing people together – of creating community* — in a setting and through a structure in which
 - “everyone is respected”
 - “everyone gets a chance to talk without interruption”
 - “we explain ourselves by telling our stories”
 - “everyone is equal – no person is more important [expert] than anyone else”
 - “spiritual and emotional aspects of individual experience are welcomed”

2. Peacemaking Circles are *based on a deep assumption that everything is connected in an interdependent way* and, as a corollary, that we have “*a deep desire to be connected to each other in a good way.*” This supports the view that collective decision making comes through the collective wisdom of shared storytelling rather than through point-by-point disputation and the mental sifting of arguments.

3. Peacemaking Circles use *a structure grounded on a foundation of shared values embraced by the Circle participants* to create a safe space for dialogue. (*Ten core shared values* often appear in Circle groups: “respect, honesty, humility, sharing, courage, inclusivity, empathy, trust, forgiveness, and love.”) The *five structural elements* of Circles are
 - “Ceremony”
 - “Guidelines” adopted by the Circle participants (*Six essential guidelines*: “respect for the talking piece, speaking from the heart, speaking with respect, listening with respect, remaining in the Circle; and honoring confidentiality” PLUS other Guidelines agreed on by the Circle)
 - “Talking Piece”
 - “Keeping/Facilitation” by a participant to promote integrity of the space and its process
 - “Consensus” – when decisions/actions are called for

* Howard J. Vogel. All Rights Reserved. hvogel@hamline.edu. This summary is adapted from KAY PRANIS, *THE LITTLE BOOK OF CIRCLE PROCESSES: A NEW/OLD APPROACH TO PEACEMAKING* (Good Books 2005), as more fully elaborated and discussed in KAY PRANIS, BARRY STUART & MARK WEDGE, *PEACEMAKING CIRCLES: FROM CRIME TO COMMUNITY* (Living Justice Press 2003).

4. Peacemaking Circles *focus on relationships before issues*. Circles embrace the “importance of spending time on connecting as human beings beyond mere introductions before trying to work out issues or move to action.” They invite participants to bring their best selves to dialogue with others about important and difficult issues. They do this by going beyond acquaintance to building understanding through telling our stories to each other within the distinctive way the Circle process is framed.

5. Peacemaking Circles *embrace storytelling* because of its power to build understanding and trust which permits participants to engage each other and the issues to be addressed “in a more profound way.” Listening to the stories of others is a means of according respect and power to the storyteller.

