

Asia Pacific
FORUM
for Restorative
JUSTICE

**UNAFEI
FOR THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS**

Tokyo January 23 to 25 2014 Dr. Brian Steels



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RESTORATIVE AND THERAPEUTIC PRACTICES
FOLLOWING A RANGE OF CONFLICTS:
AN ISSUE FOR FISCALLY PRUDENT
AND SAFER SOCIETIES



Restorative Justice: A solution that supports responsibility taking and reparation

- An approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime – victim[s], offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.
(Cormier 2002)



- + Victims are able to share their hurt and fear as well as seek answers





RJ: The benefits are many

- I am an ardent supporter of the principles of restorative justice. It offers an opportunity not only to assist the rehabilitation of offenders but to give victims a greater stake in the resolution of offences and in the criminal justice system as a whole. Victim-led restorative justice can allow us to make inroads into the re-offending cycle, with the triple benefit of victims avoiding the trauma of future crimes, the tax payer not having to foot the bill of more crime, and a rehabilitated offender making a positive contribution to society.

- *Lord McNally, British Peer and Parliamentarian, Minister of State for Justice (UK), in his 2012 address to the All-Party Parliamentary Penal Affairs Group AGM



+ Victim lead RJ: Personal stories are told

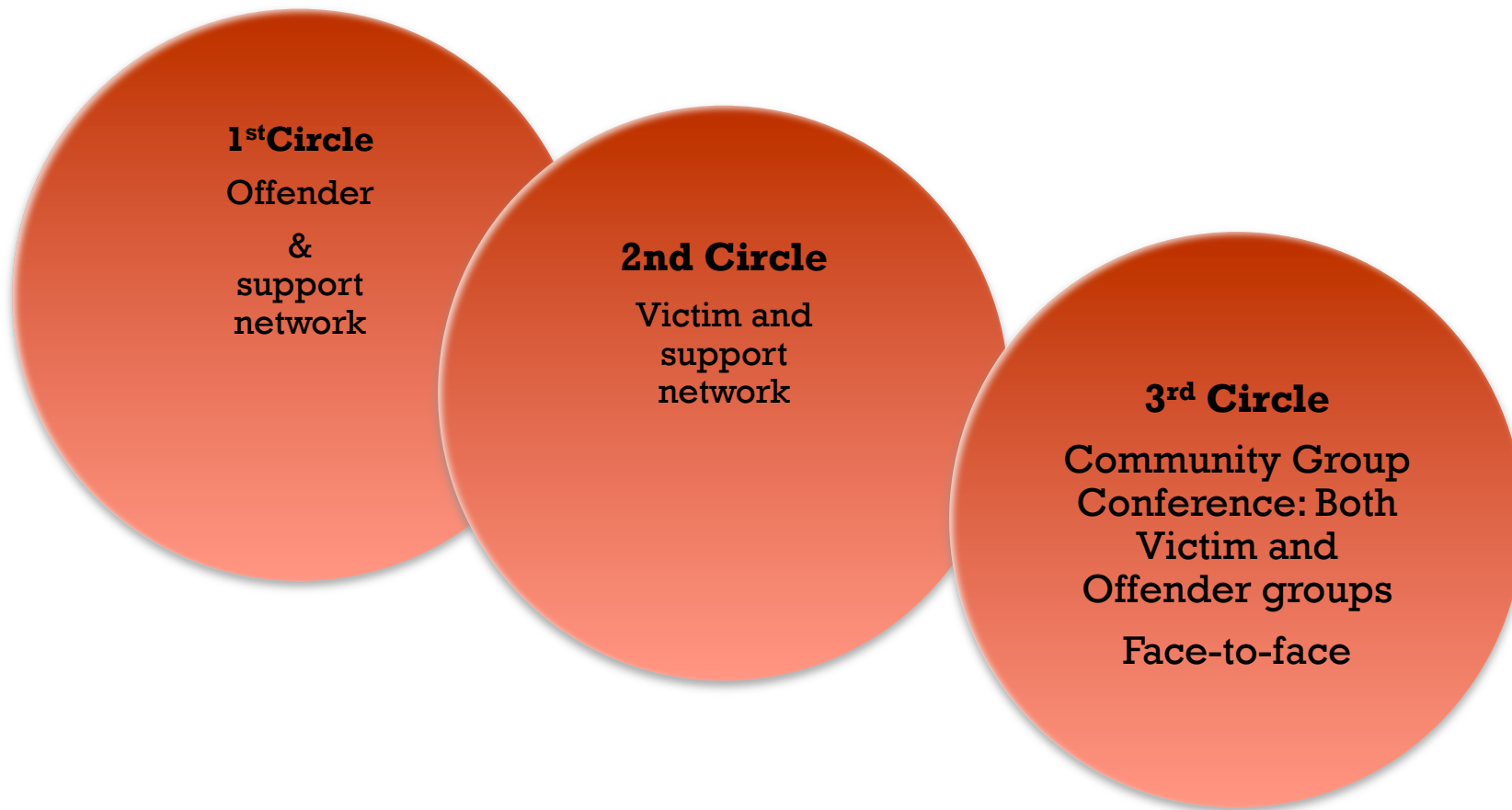


+ RJ: Kittayarak. 2005

- Kittayarak's remarks that we “..have to be mindful that restorative justice is an evolving concept and there is no definite formula of success... Each country has to find its own recipe which properly balances the conventional role of criminal justice with this new concept so as to be able to come up with a better way to ensure justice to all.



A typical 3 circle model of RJ; respectful of culture and tradition



+ RJ: Regardless of age, crime type or seriousness



+ Victims of Crime: China's mediated process

- Criminal mediation appears to have gained greater awareness throughout the community, among victims of crime and those parties taking responsibility for their actions. China's judiciary and Prosecution, in partnership with other parts of the criminal justice system, have moved towards restorative and mediated cases being conducted in the courts under a specific system established by the state law, which highlights the developing path of China's legislation
- Yan Xiang 2013:254

+ Reshaping lives; rebuilding
community, living justly



+ Judge McElrae: RJ a win-win situation for all

- ...restorative justice offers a quite different view of victims' interests, one that is not necessarily opposed to that of offenders – and can produce “win-win” outcomes. They are actually what is aimed at every time.



- + ‘Restorative’ processes should be voluntary and experienced as fair and just by all participants



+ RJ and Courts: Judge McElrae

- If the Courts could more consistently show that victims' interests can be catered for in meaningful ways (not token ways like victim impact statements), and that their needs are better addressed in this way, much of the pressure for tougher sentences would fall away.

+ RJ Week 2013. Responsibility taking, support and empowerment



+ Facilitated, voluntary and healing



+ Restorative Justice Circles and Stories: Facilitated, flexible and healing conversations

| | | | |
|---------------|------------------------|---------------------|--------------|
| Circle Stages | Getting Acquainted | Storytelling Format | Introduction |
| | Building Relationships | | Incident |
| | Addressing Issues | | Impact |
| | Taking Action | | Reflection |

+ Victim satisfaction rates post trial research (2000)

- control group going through mainstream court system = 15% satisfaction rate (2)
- R&TJ victim group = approximately 90% satisfaction rate
- Victims able to tell offender how the crime impacted on their lives
- Able to be empowered to move from victimhood to survivor
- Better mental health outcomes for victims



+ RJ heals through everyone's voice



+ Seeking fairness and justice, rather than revenge





Gavrielides suggests that we provide flexible processes to suit each situation

- ...if governments are truly committed to promoting restorative justice, then they need to work closer with the communities that create the various models through which this abstract umbrella notion of restorative justice is delivered ... whether it is called mediation, circles, conferencing ... Try to mould and standardise restorative justice and all you will achieve is its McDonaldisation.

- <http://www.iars.org.uk/content/mcdonaldisation-rj>



+ Communal conflicts and civil war



+ Healing and personal transformation after conflicts



+ Post community crime: Help and healing usually follows



+ Post conflict and transitional justice





Rebuilding peace through RJ: Solomon Islands

- Naitoro (2000:12) speaking on the emerging processes following the Solomon Island conflict suggests that to have the desirable outcomes of restorative justice the state has to transform and redefine itself to empower all citizens, regardless of their social grouping or identifying language, making the claim that:
- These restorative practices will depend on a redefinition of the state from a coercive state to a coordinating state. In the area of political organization and practice of democracy, it is important that a better democracy than now exists is established: that is, a democracy that allows for the diversity of social group and identity representation rather than an idealized universal democracy that coerces social groups into becoming homogenized disposed individuals.





+ RJ: Post conflict, peace building and transitional planning





THE MEETING PLACE
Truth and Reconciliation
Toronto 2012
May 31, June 1 and 2, 2012
The Sheraton Centre Hotel
123 Queen Street West, Toronto



An Intergenerational Regional Gathering
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TRUTH AND RECONCILIATION COMMISSION OF CANADA

+ Tyler (2006:307): Fair and just treatment

- ...when people are so treated, they view law and legal authorities as more legitimate and entitled to be obeyed. As a result, people become self-regulating, taking on the personal responsibility for following social rules. This approach has been labelled a process-based model of regulation



+ Post-crime and conflict. A time for healings and sharing



+ Braithwaite's constraining standards

- Braithwaite's (2002b) framework for standards and practices begin with “constraining standards” such as
 - protection of human rights,
 - empowerment of participants,
 - non-domination by any party,
 - honoring legal limits on sanctions, and
 - providing respectful listening





Braithwaite's maximizing standards



- Braithwaite (2002b) further presents the notion of “maximizing standards” such as
- restoring human dignity,
- the recovery of property and restitution
- the healing of damaged human relationships and emotions.



Braithwaite's emergent standards



- Braithwaite's (2002b) third set of standards include
 - the recognition of remorse and apology,
 - censure of the act and
 - forgiveness of the person and
 - the use of mercy.
- This final set presents as the most valuable to the parties but should only be provided by participants without any form of coercion. Thus for example an apology may be accepted or withheld and mercy provided without a demand being made for it.

+ RJ: Beware of the regulator!

- Pelikan concludes; the danger I perceive lurking in the tightly woven web of regulations is that the very special nature of the mediation procedure and its potential for furthering self-activity and democratic participation is set aside, smothered, by a diversionary measure that consists in the establishment of some secondary and second-rate criminal procedure (2002:150)

