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NEW PARADIGM FOR DEVELOPMENT AND GOVERNANCE

## From Punitive to Restorative Justice: The Call and Response

by Molly Rowan Leach

Restorative justice is nothing new—global indigenous peoples and those in peripheral societies have practiced it for ages. It is critical to understand the essence of restorative justice as an *opportunity* for all involved, not as a forced system or means to an end. Understanding this also points to the fact that restorative processes and systems bring an equanimity and power back to the people, to the communities, to those directly affected when conflict and harm occur.

Conflict, harm and suffering are basic elements of living within the earthly dimension. There is a great transformation occurring in the Western world, guided by global traditions and practices, that is influencing not only our choice in how we respond to harm and imbalance but also how we see the incredibly important choice we all have in front of us—to reciprocate suffering and harm, or to move in a direction of understanding, respect and peace.

Almost 20 years ago, I became a family member of a violent offender, otherwise known as a ‘stakeholder’ when conflict and harm occur. Stakeholders are not just those who are first and immediately affected. Restorative justice recognizes that the ripple effect of conflict and harm is real: families and communities, loved ones and friends alike feel the effects when harm happens. In my specific role as the daughter of a mother who committed a very violent and disturbing crime in the throes of psychosis, I have witnessed the years pass and compounded pain and suffering of many of the stakeholders, and I have wondered what, if anything, would support any or all of us differently than what the current punitive and isolatory system does?

My own journey in responding to my mother’s crime has evolved from one of great suffering, pain and confusion to empathy and compassion for everyone involved, and *a concern that nobody has gotten what they need*. No question that the idea and playing out of justice is defined differently by many, but I began to feel an impulse to offer something back out of my own experience that might help others. I felt this, and continue to feel it, with the idea that a restorative process may never be directly a part of my mother’s case, but for me as well as millions of stakeholders worldwide, restorative justice simply makes sense. Let me be very clear how important it is to respect that some may never approach a restorative process—and that is just as OK as it is to move towards one—for ultimately we each have free will in this world. We have intimate choices. For me to say that one is right and the other is not, is not what any of this is about.

And although it is not my place to assume I know or have a better sense of what another’s experience is, more than anything I believe the journey of justice offers us all a choice: to suffer and

close, to fear deeply for our entire lives—perhaps even to hate and to go down a very dark, long hole—or to choose to progress towards any semblance of healing and rebalancing and to truly embody the principles of some of our greatest teachers. This does not mean excusing or taking lightly the original actions and harm. Of course, there is deep and unique complexity with every individual and case that can even point to intergenerational wounding and triggers that are uncovered by trauma, but ultimately the choice is ours and ours alone—as individuals as well as community and, ultimately, as humanity.

Today I dedicate my life to the offering of solutions and collaborations, to the deep need for us all to know we count, to our primal desire and basic need to be heard and seen, and the potential of restorative processes to not only support our current conflicts and harms, but also to reach much beyond what we can comprehend in healing capacities that affect our familial lineages and ancestors. I walk this journey with a strident and devoted wish to offer a light amidst the darkness, to light fires of possibility where there seemingly are none in sight. And I am not alone.

### Punitive Systems Fall: Restorative Systems Rise

The model of punishment as coherent response to harm serves to recycle the wounds and proliferate criminals. This is recognized by everyone from officials in the DOJ to Law Enforcement Officials who see day-to-day evidence of this fact, to citizens themselves. In 1973, it was officially recognized that punishment creates criminals, and yet in a strange twist to our recent history, that is when things got worse, not better, in the United States. For forty years, the US grew into the world’s behemoth of punishment and incarceration. At the present moment, this is rapidly changing.

Where the punitive system of justice is failing, a great spectrum of rising wisdom and knowledge is helping pave paths for us to understand why a change is so needed. Ancient wisdoms are coupling with scholarly evidence like never before. Science is showing us—just like good science does—that qualities such as compassion and empathy literally have specific neural pathways that support mental and physical well-being, whereas qualities such as fear, punitive thinking, and hate crimp and close those pathways and circuitry away from holistic human stasis and health. We are moving from ‘me’ to ‘we,’ and from ‘us and them’ to a recognition that there is no ‘other.’ So this powerful transforming of consciousness corresponds very directly to the ways we see justice shifting.

And not a moment too soon as the United States incarcerates at least 1/4 of the world’s prisoners while we comprise a mere fraction of the total global population. As Colorado Representative Pete





Maori Elder and young girl sharing “Ha”

Lee recently stated, “The United States is the Incarceration Nation. We incarcerate 754 people per 100,000; the average in the world is around 160.” Senator Jim Webb of Virginia says, “We are either the most evil people in the world or there is something fundamentally wrong with our criminal justice system.” Adding to the severity of the problem are the corporate interests that have crept into the picture, with NYSE-traded for-profit prison companies Geo Group (GEO) and Corrections Corporations of America (CCA) raking in combined annual profits of over \$5 billion, and with GEO’s CEO offering cash money buyouts to run-down state systems with the stipulation that they keep 90% of the prison beds full. GEO also attempted to buy football stadium naming rights at Florida Atlantic University, but the deal fell through due to student body and national opposition.

At least one out of ten young black males is incarcerated in the United States. About one of every four inmates suffers a serious mental illness. Cells are crowded: can you picture living in a 10’x11’ closet with three other people? This is standard practice at one women’s prison. Pregnant women are still belly chained while giving birth, and many prisons have cut overnight visits for new mothers, claiming lack of funding. Perhaps most importantly, our youth are siphoned into the system by zero tolerance policies, also known as the school-to-prison pipeline, and their still-developing brains become vulnerable to limbic response distortions and re-wirings that inform their self-worth for the rest of their lives and make it much less likely that they will find their potential and value.

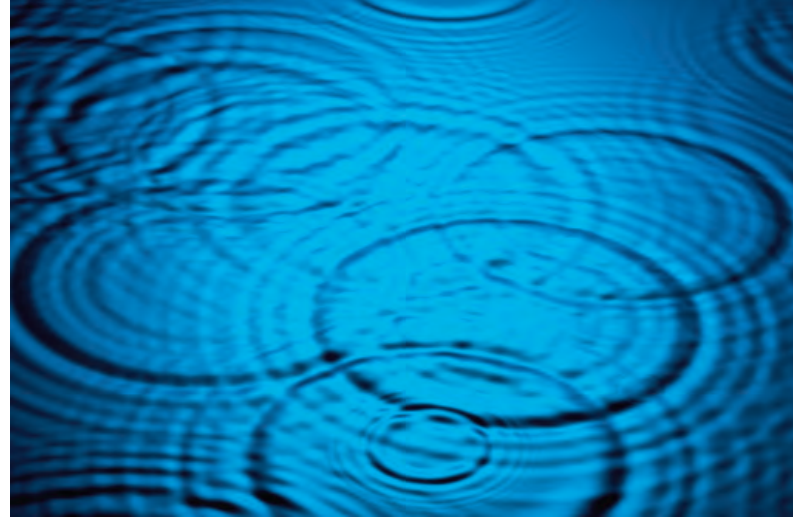
### Global Practices are Informing the Change

New Zealand’s juvenile justice system is one example that has strongly influenced the US. Their system is fully based in restorative principles and incorporates a process that diverts appropriate cases from the typical sentencing and possible incarceration that it entails. Based in the principle of ‘Utu’ (rebalancing, reciprocity), the New Zealand system has been successful in actualizing the diversion and ensuing possible entrapment of youth into the system and has become a role model for bills such as HB 13-1254, *The Restorative Justice Pilot Project*, which was signed into law in spring of 2013 and has just been set into motion in four counties of Colorado.

It involves a ‘Circle Process’ of community conferencing, including the offender and victim, a law enforcement representative, family members and a community representative. Guided by Community Elders and a Judge, they all take part in a process that allows each to speak truthfully about their experience. They hear from those harmed. They realize how to make it right and what type of actions will be involved in rebalance or restitution. This provides the ability to get to the real cause and effect of actions.

As one Maori Elder states in the new PBS Special *Fixing Juvie Justice*, it is in coming into the community building, the *Whareniui*, together as one, and the process of ‘Ha,’ or sharing of breath, that helps bring everyone into equanimity and ready to work through the issues. The importance and emphasis is recognized and practiced—whatever a community can do to equalize all beings is the beginning of healthy ground for reparation. We see these principles in many heritages, from Maori to the Haudenosaunee. And now with this awareness for Western facilitators informing a space, a foundation is set for safe and deep authenticity, and thus a process that creates conditions for possible and surprising healing and transformation. The key underlying all of this again points back to the shift from punishing to truly seeing and hearing. It points to the felt sense of our interconnectivity and mutual responsibility, while separating the act from the one who harmed and acknowledging their rights and potential.

*Fambul Tok (Family Talk)* in Sierra Leone is another practice mirroring a powerful restorative model. In the wake of the rogue warring and violence upon children and villages, upon women and warlords alike, *Fambul Tok* has provided a basic structure and understanding that conflicts can and will be worked through around the fire, literally. It is understood that there is a place that victims and offenders can go to make their needs known—usually a tree near the village, where an elder or representative will hear the initial details and begin working towards a Circle Process around the community fire. The same elements of openly involving elders, community representatives, families and stakeholders are in place. The results of this process have rejoined families separated by murder and chaos, and even when some are resistant, progress is made towards ending the cycles of genocide and violence. Further yet, processes such as *Sulha* in the Middle East, *Gacaca* in



Counting the Days; Ripple Effect

Rwanda, *Hoò pono pono* in the Pacific Islands, *Giving Thanks* of the Haudenosaunee, and the *Truth and Reconciliation* processes in South Africa are all strong examples of the restorative impulse in our world.

### The Rise of Restorative Systems in the US

In the United States, we see programs such as the Community Conferencing Center of Baltimore making huge headway in seemingly impossible zones of violence and crime. In Colorado, Longmont's Police Chief Mike Butler and many of the officers are ambassadors for restorative justice and processes. And evidence backs up why: they have seen a drop to 10% in recidivism compared to the national rate of 60-70%. In Oakland, programs such as Restorative Justice for Oakland Youth employ staff that enter into schools and provide systemic support, training and relationship building with some of our most troubled youth. In Florida, the River Phoenix Center for Peacebuilding is making huge strides implementing restorative processes and linking community systems together towards diversion and prevention. In Seattle, the Mayor's office has just implemented a department for restorative justice. There is also a globally known organization called Restorative Circles, founded by Dominic Barter in the *Favelas* of Rio in the mid-1990s, that has provided some of the most promising and depthful system setups and examples for those in the US and beyond. And the list goes on.

### Moving Forward

For many, the opportunity to understand that restorative justice is a safe space to save all of our lives from further punishment, recycled wounding and victimization is all that is needed for the possibilities to open. For many, it represents a life to be rescued while maintaining locus of control and the values that we all share—common respect, love, safety and true and deep peace. We have an inherent understanding that punishment and recrimination will not get us there.

The seeds of true justice are sown from a sense of trusting one's place in the Kosmos and one's community. When that sense of trust is lost when crime and harm occurs, we are all responsible to make it right. The opportunity and challenge alike for those of us in the Western world is to allow ourselves to open back to this

new, but very much old, way of rebalancing and to discover where and how it might fit into a response to make things right—or at least to head in that direction. We can look around our world at the results of those who've practiced this form of justice, even in harshest of conflicts, and see the bright examples that are evidence that restorative justice works.

There are fearful critics who think that restorative justice is about forgiveness and removing control from victims. We must help them understand the value and sincerity still placed on safety, accountability, victims' needs and restitution. Some are wary of the pain caused by facing conflict. We must support one another in the understanding that even the harshest of conflicts can bring openings beyond what we may see. On some level, we all know that we are here together to resolve not only our own remaining conflicts and wounds, but also on behalf of our ancestors and all humanity. We must together remember the larger story that also points to the understanding that at some point in time and space we have all been both perpetrator and victim.

Thus, what is termed restorative justice is both personal and systemic, individual and global. It is a personal commitment to one's own and others' expression and truth, and an invitation to hear and be heard. It is a putting away of our need to be right. It is a profound life practice that honors all people as unique and valuable. It heeds a sharp awareness of accountability and safety while taking restoration and making right to a whole new level. It provides possibility out of disgrace and suffering, light where there is darkness, liberation and healing for some, possibility and hope for others. It is a ripple effect providing us one of the most critical choices we can make as humanity: to reciprocate harm and suffering, or to move towards balance, peace, and understanding and reciprocate those life-giving qualities instead. It's that simple. And yet so complex.

And the ripples and transformation start with me, and you, my dear friends and fellow humanity.

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