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# **Multi-Cultural Implications Of Restorative Justice: *Potential Pitfalls And Dangers***

Prepared for:  
**The Office for Victims of Crime  
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*"The Hell you say. I won't stand for it." Banging the table with his fist, the black store owner shouted, "You're not gonna get off that easy!" The Native American teen shoplifter cowered in silence. She worked hard at keeping her lips from trembling and her stare fixed on an old picture hanging on the wall to the right of the Black man. With churning stomach, the Anglo mediator believed the entire mediation was torpedoed by the store owner's angry outburst. He tried to think of a way of aborting the session with some semblance of civility. Frustrated, the Black man looked with disgust at the two others around the table. He expected, he wanted a response. But neither individual looked hardly alive. How could justice ever come out of this mishmash?*

### **Introduction**

The purpose of this paper is to share with practitioners of restorative justice principles concerns regarding the implementation of such frameworks when working with persons of differing cross-cultural perspectives. World views, perceptions of justice, and communication styles are greatly influenced by one's cultural milieu (Myers and Filner, 1993). Working with persons of different cultures, particularly in attempts at conflict resolution, can be a challenge replete with potential dangers and pitfalls. Even when all parties are well intentioned natural ways of speaking and behaving, when misunderstood, can destroy the best efforts and hopes of restoring and repairing relationships.

We will begin with a brief overview of the concept of restorative justice and a cursory glance at some programs, which to vary degrees, attempt to concretize those principles. That discussion will be followed by considering various pitfalls and dangers that may hamper restorative justice efforts carried out within cross-cultural contexts. Finally, we will look at ways of increasing the likelihood of positive interactions when working with persons of differing cultural backgrounds. We believe firmly that practitioners attempting to adapt restorative justice principles in their work must be clearly aware of their own sensitivities toward cross-cultural differences as well as be encouraged to help those with whom they work deal with theirs.

### **Restorative Justice: Scope And Framework**

Restorative justice has been described in such far reaching terms as: "a revolution in criminal justice," (NIC quoted by Zehr, 1997); "seeks to heal and put right the wrongs," (Zehr & Mika, 1997); fueled by commitment and passion not unlike that of a revival meeting (Bazemore and Pranis, 1997); "an entirely new framework for understanding and responding to crime and victimization within American society," (Umbreit, 1997); "a paradigm shift," (Van Ness, 1997).

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The phrase "restorative justice" implies both process and outcome. It is not a particular program, although programs and practices may be classified by the extent to which they further restorative justice.

Principles shaping the framework of restorative justice can be considered within six clusters: 1) the nature of crime; 2) the goal of justice; 3) the role of victims; 4) the role of offenders; 5) the role of the local community; 6) the role of the formal criminal/juvenile justice system.

- 1) Crime is a human process whereby humans violate social relationships, both personal and those implied relationships with others as a consequence of being members of communities. Crime is not merely an act of breaking laws of the state; it is a tearing of the social or community fabric; it is the violation of one human being by another.
- 2) The proper goal of justice is to repair the damage done and restore relationships, personal and communal, to their original state to the extent possible.
- 3) To have a chance at restoration, victims of crime must have the opportunity to choose to be involved in the process of justice. Such involvement may include: information, dialogue with the offender, mutual resolution of conflict with offender, restitution, reduction of fear, heightened sense of safety, partial ownership of the process, getting the experience resolved and renewing hope.
- 4) To have a chance at restoration, offenders committing criminal acts must have the opportunity to accept their responsibilities and obligations regarding individual victims and the community as a whole. Such opportunity may lead to: participation in defining their obligations, safe face-to-face encounters with victims, understanding the impact of their own actions, creative ways of providing restitution, identifying their own needs, partial ownership of the process, getting the experience resolved and renewing hope.
- 5) To have a chance at restoration, the local community and its resources must be brought to bear on the needs of victims and offenders as well as in prevention of delinquent and criminal acts.
- 6) To have a chance at restoration, the formal criminal/juvenile justice system must continue to work to ensure victim and offender involvement which values genuine engagement of all participants without coercion. It must continue to monitor and follow-up on accountability. It must exhaust least restrictive interventions before moving toward incarceration alternatives as it seeks to promote justice in the community.

### **Restorative Justice: Program Adaptations**

Illustrative program models which reflect these "restorative justice principles" to varying degrees would include: reparative probation, family group conferencing, circle sentencing, and victim-offender mediation (Bazemore and Griffiths, 1997). There are many others.

Reparation boards as practiced in Vermont encourage strong victim involvement; the extent of actual participation is quite variable. Reparation boards have responsibility for monitoring contract compliance either when offenders have worked out with victims appropriate restitution

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or after such has been established by the board or some other judicially empowered authority. These boards often refer victims and offenders to mediation; such suggestions are not, however, mandated.

The balance of focus within the Family Group Conferences being developed in Australia and New Zealand and replicated elsewhere is heavily on the needs of the offender, i.e., to shame and reintegrate the offender. While there is importance in meeting with victims (not necessarily the specific victims of the offender's actions) and representatives of the larger community, the emphasis appears to be on educating the offender. The more the victim perspective is developed as a counterbalance, that is, the more attention is added to reparation, empowerment and support, the more strongly it will inculcate the restorative framework.

Circle Sentencing places considerable emphasis on victim needs. The impetus for the program comes from the community. Victims, representatives of the community, and elders meet with the offender. Victims are encouraged to tell their stories to their neighbors in the context of the circle. Offenders are present and may also have friends and relatives present. Maintaining some balance between offender and victim needs is a continuing struggle.

Victim-Offender Mediation strives to balance victim and offender needs yet it is practiced in a variety of ways in many states, provinces and countries. In these programs, victim meets with the offender after preparatory work with each of the participants. Emphasis is on sharing the stories of the victim and offender experience and working out some way for the offender to repair damages to the victim/community.

Each of these programs, along with many others, pursues restorative justice frameworks in real world settings. Because of constraints by the existing formal justice system, expectations of key participants, and inertia when it comes to accepting change, the implementation of restorative justice principles while making considerable progress remains an uphill undertaking.

### **Potential Cross-Cultural Pitfalls And Dangers**

The continuing movement toward adaptation of restorative justice frameworks can only be enhanced if practitioners, advocates, and policymakers become increasingly sensitive to and knowledgeable about cross-cultural issues and dynamics which impinge upon the practice of such programs and upon the very notion of justice. Often the cultural background of victim, offender and program staff member are different, sometimes leading to miscommunication, feeling misunderstood or worse, being re-victimized.

The opening narrative to this piece demonstrates one brief exchange between people of differing cultural backgrounds which left each person feeling dissatisfied and used. Each would walk away from such an experience turned off to efforts to "humanize" the justice system.

A great danger when speaking of things cross-cultural is that of over generalization. There are likely as many differences within cultures as between cultures. For example, significant customs, communication styles, and shared values distinguish the rural White from the urban White; the upper class Black and the lower class Black; the Mexican Latino from the Puerto Rican Latino; the reservation Native American and the non-reservation Native American. We will return to this question of within culture differences later. It is sufficient for the moment, to note that such

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differences do exist as we begin to consider variations across cultures.

Differences between persons raised/living in varying cultures will likely be reflected in communication styles. Those differences will typically be as evident in the way points of view are communicated as in the message being relayed. Let us take a moment to consider some possible pitfalls in understanding one another's non-verbal statements. The following section draws considerably from research based findings reported by D.W. Sue and D. Sue in Counseling the Culturally Different, 1990.

### **Proximity**

Depending upon one's cultural experience one may be most comfortable talking face to face or at a distance. Generally, Latin Americans, Africans, Black Americans, Indonesians, Arabs, South Americans, and French are more comfortable speaking with less distance between conversants than are Anglos. In mediation or conversation, the Anglo staff person is often seen backing away possibly feeling confronted or attacked. The Latin-American victim will appear to be chasing the mediator across the room believing the mediator to be aloof, thinking "he believes he's too good for me." Both participants are misreading cues and taking actions which will only re-enforce misunderstandings. Another example of the use of space, if you will, is the frequent desire by many White Americans to keep a desk between themselves and the person they are trying to help. In contrast, some Eskimos prefer to sit side by side when talking of intimate matters rather than across from each other.

### **Body Movements**

Body movements often speak louder than words. Posture, smiling, eye contact, laughing, gestures and many other movements communicate. How we interpret that which we hear and see may vary greatly from culture to culture. Asians may be puzzled and offended by a the White mediator who wants to express herself C her likes and her dislikes C with facial grimaces and smiles. The White mediator may interpret the Asian who has been taught to control tightly his feelings to have no feelings. It is likely inappropriate to expect an individual raised to value control of emotions to shed tears as signs of remorse for having burgled a home, yet that person may be feeling very remorseful.

How many times have mental health professionals interpreted avoidance of eye contact to mean avoidance of an issue, poor self-confidence, submissiveness, or guilt and shame? In many traditional Native American cultures it is disrespectful of authority to look an elder in the eye. In the class room, Native American students often fail to look at the professor when speaking; many prefer not to speak at all. Blacks make more frequent eye contact when speaking than when listening. The lack of eye contact when listening leads some practitioners to describe their Black clients as resistant and disinterested. Whites, on the other hand, tend to hold eye contact more when listening than when speaking. One must wonder how these contrasting ways of eye contact contribute to misunderstandings that may impinge upon the process of justice-making.

### **Paralanguage**

Paralanguage, or other vocal cues, such as hesitations, inflections, silences, loudness of voice and pace of speaking also provide ample opportunity for misinterpretation across cultures. Rural

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Americans tend to talk at a slower pace than their urban counterparts. Put a Northern Minnesota farmer in the same room with a New York City taxi cab driver and they may find it difficult to speak with each other not because they don't share things in common or are not necessarily curious about one another, but because they don't have the patience to work at communicating with each other. The New Yorker would feel that an eternity had gone by before the Minnesotan had completed a thought. The latter would have difficulty straining to listen to the fast paced patter of the former.

In Native American culture silence is valued as sacred. Each person must have the opportunity to reflect, to translate thoughts into words, to shape the words not only before taking a turn at speaking, but while speaking. Anglo Americans often feel uncomfortable with silence. A Frenchman might regard silence as a sign of agreement. To an Asian silence may be considered as a token of respect or politeness.

Related somewhat to pace and silence is hesitation. For persons who speak rapidly and feel uncomfortable with silence, hesitation on the part of another is a cue to begin speaking. To the one who hesitates, such an action might be taken not as an interruption but as an intentional, grievous insult.

Asians are given to speaking softly as if not to be overheard; many find US speakers to be brash and loud. Arabs on the other hand may find US speakers to be soft-spoken. The Arab prefers volume.

Similarly, persons of Asian descent may find U.S. Americans to be too direct, blunt and frank. The former will go to great lengths to not hurt feelings; the latter is often unaware when feelings are hurt.

### **Density of Language**

Density of language also differentiates among speakers from different cultural backgrounds. Blacks tend to be sparse and concise. In exchanges among blacks many shared codes are used requiring little further information. Even the simple "uh, huh" is loaded with meaning when taken in the context of the social situation. To outsiders Blacks may appear terse, disinterested.

Asians and Native Americans will often use many more words to say the same thing as their White colleagues. The poetry of the story may be more important than the content of the story, and may actually be the point of the story. Much patience is required of Blacks and Whites to hear what is being said when conversing with Native Americans or Asians. We can readily see potential problems for doing mediation work across these groupings which possess very contrasting communication patterns.

Looking at these communication styles through a somewhat different lens Sue and Sue (1990) regard Native American, Asian American, and Hispanic manners of expression to be low keyed and indirect. Whites objective and task oriented; Blacks affective, emotional and interpersonal. Blacks will interrupt or take a turn at speaking when they can. Whites will nod to indicate listening or agreement. Native American and Asians seldom provide cues to encourage the speaker; they listen without a lot of non-verbal engagement.

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In addition to these potential pitfalls of misunderstanding based on different communication styles, other meta factors loom over the attempts to build restorative justice which work with persons of differing cultures. For example the emphasis on individualism, competition, taking action, rational linear thinking, "Christian principles and Protestant work ethic," may to a large extent reflect values of the dominant US White culture, but not values particularly share by all Whites, let alone persons of other cultures. Asians, Hispanics and Native Americans are likely to place more emphasis on valuing the community fabric and kinship networks more than reifying the place of the individual. Native Americans and others would take that community value a step further by cherishing the place of the individual within the context of the entire natural world. Without the latter the individual has no value.

Persons from religious perspectives other than Christianity, which emphasizes "individual salvation," may see the individual as equal to all living things, as on a journey toward individual fulfillment, or even as insignificant in the total scheme of things.

We are not suggesting that any one world view is the correct one to have. We are simply noting that differing world views often clash (too often literally in the course of wars) and may very well threaten to undermine attempts at repairing wrongs experienced as a result of crime.

Perhaps, broader than the scope of this work, it might be worthwhile to wonder about how the idea of justice may very well vary across cultures. It is not difficult, for example, to imagine that in traditional Native American culture that that which needs to be restored after commission of a crime is not only the personal relationship that has been damaged. Most importantly, the communal or tribal relationship must be repaired, and likely even the relationship of the individual with the universe, for violations within the tribal context are likely regarded as a ripping of the fabric of the whole that holds all together.

We wonder how we can promote restoration of justice without knowing how the various participants within a given conflict understand and value justice.

### **Differences Within Cultures**

As noted above, a significant danger involved in discussing cross-cultural differences is over-generalizing between culture differences and over-looking within cultures differences. Another way of viewing this is to recognize subcultures existing within larger cultures. There may be some cultural characteristics shared by most Whites, yet Whites raised in poor, rural Appalachia may vary considerably as to values, mannerisms, and communication patterns from Whites raised in San Francisco. Likewise, middle and upper class Blacks of Los Angeles will share certain characteristics with blacks raised in the blighted areas of south Los Angeles yet vary considerably regarding values, mannerisms and communication patterns. The same can be said of Asians raised in the dense inner city conclaves versus those who move to small town America. Or of the Ute who is raised on a reservation far from the urban world compared with the Ute raised in the fast pace of a metropolis.

Race, social economic status, ethnicity, gender, religion, sexual orientation, rural urban and many other defining characteristics will shape how an individual views the world and his or her place and chances in that world. Such will color whether there is a propensity to blame the offender, the victim, or the community for crime. Such will color whether participants come to a "justice

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program” seeking revenge or seeking repair; desiring to act or desiring to be acted upon; expecting hope or expecting defeat.

Chances for restoring justice can only be enhanced when those who work in justice programs make the time, expend the energy, and take the risks of coming to understand themselves better regarding cultural understanding and misunderstandings.

### **Racism As A Subset Of Cultural Conflict**

While race and culture are very intertwined, they are not one and the same. As we have indicated above, speech patterns, intensity of communication, interpretation of non-verbals and many other nuances of interaction are influenced by the mix of race and culture. While it would be a mistake, for example, to assume that Blacks from different social classes and different regions of the culture communicate and handle conflict in the same ways, the fact of being Black is likely a, if not the, key determining factor in how they perceive the world and how others perceive them.

The extent to which they are aware of being overtly or covertly subjected to prejudice and discrimination because of the pigmentation of their skin, the more likely this awareness will influence communication and conflict resolution with persons of other races. Being on guard, lack of openness, being passive or aggressive, choosing what role to play in an interaction will be affected by previous experiences of individual or institutional racism.

The impact of racism will be a potential contextual variable in restorative justice programs where participants are of different races. Where there is political power imbalance associated with race, one may expect to find resources for schools, recreation, police and so on to be differentially weighted to the group with the most political clout. In the United States this often means that Whites have more resources as representatives of their racial group are most often in position of political power. However, it would be erroneous to assume that there are not also consequences of racism felt in localities where, for example, Blacks have more political power than Hispanics, or Hispanics have more political power than Native Americans, or Asian Americans have more political power than Whites. Racism is not the prerogative of persons of only one skin color.

Staff C paid or volunteer C will need to analyze closely their own behaviors to determine what residual elements of racism may be subtly apparent in their nonverbal behaviors or assumptions about the worlds of the victim and the offender. For example, do nonverbal actions such as folding of arms, scooting a chair backwards, shuffling papers indicate discomfort and a desire to be somewhere else? Each of these behaviors may simply be acceptable given the on going flow of communication or they may be suggestive of prejudice. Do we assume that the Native American youth offender sitting before us comes from a broken family of alcoholics, is lazy, and has no goals? These descriptors may, in fact, describe a particular youth. But when they are assumed because of the youngster's skin color, then we have a racist attitude. And when actions are taken based on those assumptions, such as withholding educational services because the youth is lazy, or failure to acknowledge the strengths of the existing family structure because “it's not normal,” then we have discrimination resulting from erroneous prejudicial assumptions based on race.

Program staff must not only examine their own beliefs and actions, but also must be alert to the imbedded racial biases of offender and victim. Racism may be a justification used by the offender for committing the crime. Racism may play into why and how the victim wants not an “ounce of

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flesh,” but a “pound of flesh.” Where racist assumptions or accusations are likely between offender and victim, the mediator will need to be prepared to act as interpreter or buffer during pre-meetings and during any actual face-to-face encounters be they in the form of mediation, community boards, or other restorative justice programs.

While race cannot be equated with culture, it can be such a powerful determining factor of communication and interaction patterns that it should not be ignored as we are sorting out cultural differences.

### **Cultural Skills For The Restorative Justice Practitioner**

In their work on *Counseling the Culturally Different*, Sue and Sue identify five characteristics of the culturally skilled counselor. We offer them to the reader as necessary cultural skills for the restorative justice practitioner. They are:

1. “The culturally skilled counseling psychologist is one who has moved from being culturally unaware to being aware and sensitive to his/her own cultural heritage and to valuing and respecting differences.”
2. “The culturally skilled counselor is aware of his/her own values and biases.”
3. “Culturally skilled counselors are comfortable with differences that exist between themselves and their clients in terms of race and beliefs.”
4. “The culturally skilled counselor is sensitive to circumstances (personal biases, stage of ethnic identity, sociopolitical influences, etc.) That may dictate referral of the minority client to a member of his/her own race/culture or to another counselor.”
5. “The culturally skilled counselor acknowledges and is aware of his/her own racist attitudes, beliefs, and feelings.” (Sue and Sue, 1990, pp. 167-168)

### **Avoiding Dangers And Pitfalls**

It is likely that whatever we do to reduce the consequences of cross cultural misunderstandings, be they subtle snubs and miscommunications or explicit prejudicial actions, we will not be able to remove all such misunderstandings and consequences. These attempts to id the pitfalls and dangers of cross-cultural differences that impinge upon restorative justice efforts may serve at best to only reduce the probability of further conflict or disrepair because of these differences. In human interaction, even where awareness is increased and behavior modified, there is plenty of room for matters to go awry. For example, in situations where the antagonists are embittered by age old conflicts passed on from generation to generation it is likely that our short-term at understanding and amelioration will succumb to such insurmountable odds. Such extreme cases, however, should not deter us from taking steps to learn, to inform, to model, and to seek supportive roles in helping others restore themselves to more harmonious relationships.

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We believe, particularly those of us who work in the “justice” field, must take every step possible to us to reduce the likelihood of such bias and discrimination. The following is a simple list of suggested steps. These are not meant to be exhaustive. Each reader should add freely to the list.

### **Know Thy Self**

We begin with ourselves. Reflect upon, study our own behaviors and communication styles. Are we comfortable with silence? Do we interrupt frequently? Can we stand closer to someone or further away than we usually do when speaking? And can we do this comfortably? Do we over interpret straying eye contact? Can we talk to someone without staring them directly in the eye if it appears to be offensive? Do we carry imbedded, learned prejudices toward persons of different skin color than our own? Or toward persons of the same skin color, but who are less educated or better educated than ourselves? Do we expect persons who live in certain parts of the city to be law violators?

It might be helpful to keep a journal of our interactions with persons, recording our speech patterns and theirs, those things which make us uncomfortable and those that make us comfortable, our use of and response to gestures, to intensity of conversation, and our overall assessment of the extent to which clear, mutual communication was had. Do patterns vary overtime depending on whether we are speaking with someone of our own culture or of a different culture.

We might consider taking pencil and paper inventories designed to identify biases of which the holder is often unaware. Bias is part of human life and will likely always be so. Some people like rock and roll music, some like blues, some like rap, some like classical, some like country and so on. Having biases or likes and dislikes is not the problem, per se (Duryea, 1994). The problem is when those biases, intentionally or unintentionally, lead to discriminatory practices. It behooves each of us to be open to discovering our own biases so these won't wind up hurting others or ourselves.

### **Getting To Know The Participants**

Don't make quick assumptions about others. It is difficult to know ourselves; it is likely impossible to fully know another person. A tatter clad, young woman with bright pink, spiked hair shows up for a mediation session to meet with an elderly conservatively dressed couple about theft of property from an unlocked car. As mediator, do we say, “Oh no, why didn't I stay home today.” Or do we move ahead assuming that we can help these folks, who appear very different and who have already experienced conflict due to the stolen property, find some common ground from which to communicate and possibly even reach understanding, receive restitution and restore some semblance of justice.

If we were to take this case cold without talking to the participants previously, we might be surprised by any number of possibilities. The young woman may be quite cooperative. After all, she is likely somewhat aware of how her appearance may affect others. Perhaps it is the elderly woman who is turned off by someone of her gender “not caring how she looks.” Or perhaps the elder man finds the young woman attractive and flirts with her. Or perhaps things just progress quite smoothly ( it does happen occasionally). In any case, to make assumptions based on appearances without any previous information or contact with a person will likely result in

