CIRCLE JUSTICE: AN ETHNOGRAPHIC STUDY

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Dedicated to

Creator

who has taught me how to love myself through living out the first commandment.

A circle of love.

There is no other. Love the Lord your God with all your heart, with all your soul, with all your mind and with all your strength. Love your neighbour as yourself.
From Mark 12: 29-31

Abstract

This thesis examines the presence of community in Blackfoot Justice Circles

through ethnographic, qualitative methods. Five Blackfoot Justice Circles, observed in

1996-1997, and an Innu Healing Justice Circle, are compared in structure, roles and

content. The Innu circle data is found as a report and recorded as an appendix to R. v.

Sellon (1996). Seven in depth interviews held with circle leaders and prominant circle

participants generated data used to describe and define current perceptions of traditional

concepts among circle leaders on a Blackfoot reserve.

Theoretically the work arrives at a principle of justice according to a concept of

authentic morality expressed through problem-solving and care. The principle is

collectively based on the ideas and works of Menno Boldt, Herman Bianchi, Elliot Studt,

John McKnight, Carol Lepannen Montgomery, John Braithwaite, Howard Zehr, and Ruth

Morris as well as peacemaking concepts. The study explores transformative justice, as

differentiated from restorative and retributive justice.

Preface

The research presented in this thesis is an account of an ethnographic study of justice circles which took place on a Blackfoot reserve between 1996 and 1998. The germination for this investigation occurred through two areas of interest. A book on prison abolition, Ruth Morris' *Crumbling Walls*, (1989) and another which described the destruction of an Aboriginal way of life, A. Shkilnyk's *A Poison Stronger than Love*, (1985), led me to ask how we, as a society, might better handle "crime", "criminals" and wrongdoing in general. As I discovered through newspaper coverage that Canadian prisons and penitentiaries were housing numbers of Aboriginal people significantly disproportionate to their representation in the general population, I questioned both why this is the case and the meaning behind these statistics.

In 1995, a CBC radio interview with a Justice from Saskatchewan caught my attention. His discussion of sentencing circles brought together in my mind the theme of alternatives to mainstream justice methods and the plight of Aboriginal peoples within the criminal justice system, particularly incarceration. Inquiries into circle justice in the prairie region led to conversations with a few people working in the area of Aboriginal youth justice, specifically Blackfoot Youth Justice Circles.

In the autumn of 1995, I had an opportunity to attend one day of a police camp dedicated to cultural awareness for workers in criminal justice: police officers, prosecutors, defence lawyers, judges, and probation officers. The topic for that day was sentencing circles. The chapters which follow describe the ethnographic research project which began several months later and was completed as part of the requirements for a

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master's degree. The experience has been rich, answering many questions and provoking several more.

In the text, I capitalize Aboriginal and Western as I would First Nations or Canadian. Indian does not necessarily refer to people with Indian status. Blackfoot people I met comfortably referred to themselves as Indian people and I came to do the same.

Acknowledgements

My deepest gratitude in regard to this research is extended to the Blackfoot people who have accepted my presence on their reserve and allowed me the honour to listen and learn. In continuing to work with them in support of their quest for justice, I acknowledge the gifts I have received and realized.

My main advisor, Patricia Chuchryk, who has followed me on this journey from the early stages to the finish — providing insight, strength and guidance — has introduced me to compassion even in the rigour and competition of academic struggle. My understanding of human dignity is directly related to the thinking and personal life style of Menno Boldt. His teaching has changed my understanding of what it means to be human. Leroy Little Bear has been encouragement and guide in the stickier moments and when I have started to move away from the circle. For your gentle, honest nature all three, thank-you.

The patience and backing of the graduate studies committee, especially Kathy Schrage, has seen me through to the completion. Thank-you. Finally, and significantly, sincere thanks to my friends and family far and near who have supported me with prayer and encouragement and especially Vincent, Sebastian and Matthew who have tolerated the personal changes and frequent absences such a study demands of an ethnographer thirsting and open to what may be. God bless you all.

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List of Abbreviations

BJC - Blackfoot Justice Circle

CHCH - Community Holistic Circle Healing, Hollow Water

FGC - Family Group Conferencing

HJC - Healing Justice Circle

MCC - Mennonite Central Committee

PI - Principle Investigator

RC - Releasing Circle

RCMP - Royal Canadian Mounted Police

SC - Sentencing Circle

VOM - Victim Offender Mediation

VORP - Victim Offender Reconciliation Program

YJC - Youth Justice Committee

YJCircle - Youth Justice Circle

YOA - Young Offenders Act

Chapter One
Introduction

A small community hall is set up with fifteen to thirty chairs in a circle. People who are sitting around the room range from young to old, both male and female. The mood in the room seems serious, and is not without occasional tearful expressions of sorrow, but the air may also ripple with unexpected laughter.

Initiated by an older person's prayer and a formal statement regarding the situation at hand, the people in the room are speaking one at a time, one after the other, in order around the circle. Sometimes the contribution is only a sentence or two, often the person speaking goes on for five minutes and occasionally an older person may provide the group with an extensive narrative of fifteen to twenty uninterrupted minutes finishing with the words: "That is all I have to say."

When the meeting is over (from one to several hours later), most participants shake hands with each other and/or briefly exchange greetings and good wishes. Tea, coffee, or a light meal may be served if the gathering was not offered hospitality earlier.

In the above scenario, a Blackfoot justice circle has just taken place. It is designed to bring about change in the face of wrongdoing. Circles like this one take place in response to a problem identified through the Canadian justice system. Who are the Blackfoot? Where and why are these justice circles used? This chapter answers these questions before explaining the purpose of this research in the context of contemporary Aboriginal justice.

As northwestern plains Indians, Blackfoot people have maintained an oral culture for passing on history, telling stories and legends, praying, singing and making decisions for thousands of years. Although human habitation of southern Alberta has been estimated to reach back as far as "25,000 to 60,000" years ago (Bancroft-Hunt, 1981: 15), Wright uses archeological evidence to date the beginning of the "continuous" habitation of grasslands where bison existed at 4,000 B.C. (Wright, 1995: 298, emphasis in original). At the time of European contact, Blackfoot people numbered in the tens of thousands, and

had moved westward to occupy a geographical area outlined by the "Yellow Stone River (*Otahkoiitahtayi*) to the south and the Red Deer River (*Ponokasisaahtaawa*) to the north. The Rocky Mountains (*Miistakistsi*) were a natural boundary to the west, and to the east were the Cypress Hills (*Kaayihkimikoyi*)" (Pard, 1986:13). Blackfoot were a nomadic people using dogs as beasts of burden until the introduction of the horse around the late 1600s, early 1700s. Although other animals were hunted, the mainstay of the people was the bison. The introduction of the horse changed the manner of killing bison from drives which forced herds of animals over cliffs to hunting on horseback by running with the herds or surrounding them (Dickason, 1992: 193). With the near extinction of the bison, the decimation of the Blackfoot population to smallpox in the 1800s, starvation and political pressure from Canadian officials, as well as encroaching European settlers on their hunting territory, Blackfoot people conceded to marking out reserve lands and signed Treaty Number 7 in 1877 with two other First Nations.

The Blackfoot confederacy is presently comprised of three nations living in Canada and the United States: the Blood or *Kainai* nation, the Blackfoot or *Siksika* nation and the Peigan or *Pikuni* nation. This latter nation had begun naturally to split into North and South Peigan tribes in the 1800s. The Peigan people were physically separated in 1846 by the formation of the Canada/USA border. The American government chose to call the South Peigan people "Blackfeet" a name which their council eventually accepted. Standoff and Cardston, Blackfoot Crossing, Brocket and Browning respectively are the village sites found on the above mentioned reserves. The move onto reserves marked a dramatic change in the Blackfoot way of life - from hunting bison to farming and ranching

for survival. Changes were also forthcoming in government regulations for schooling, political structure, freedom of movement and basic rights as residents in the newly formed colonial Canada.

Each Canadian reserve is now governed by a Chief and council elected every two years (a political structure first introduced by the Canadian government in 1869) with the Federal government maintaining overall legal power. Blackfoot, an Algonquin language, is still frequently spoken among the older generations on reserves, but seldom among or with the youth. Children learn basic Blackfoot in English based schools. Although many Blackfoot have adopted various Christian religious practices, complex Blackfoot religious ceremonies based on bundles and other articles have been passed on and therefore kept active despite being outlawed for decades in the first half of this century.

The Blackfoot religion among the people involved in this research study has benefited from the distance of this reserve from neighbouring white settlements. The relative isolation of the reserve has enabled bundle owners to continue the practices of their ancestors underground, although many religious articles were confiscated and still remain under the jurisdiction of provincial museums despite attempts by cultural leaders to have them returned to respective owners. As automobiles have taken over from walking and horseback, the influence of western culture has increased and many Blackfoot inhabit nearby towns and cities seeking employment. Unemployment on the reserves is upward of eighty per cent with farming, ranching, some small business and band offices supplying the majority of jobs.

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Alcohol was one cause for loss of life and social upheaval when American whiskey traders exploited Blackfoot people with their illegal trade in the late 1800s. Alcohol abuse has been associated with much violence and bloodshed on reserves since its reintroduction to the lives of Indian peoples in the 1960s. Sobriety, however, is, according to sources from more than one reserve, increasing among the young and old. Agencies, programs and personal commitment established to overcome alcohol and substance abuse have expanded on reserves in the last two decades. These efforts battle the social devastation which began with assimilation policies and the social and sexual catastrophes of residential schooling. To some degree justice circles represent initiatives Blackfoot people have undertaken to address a major fallout of this problem: criminal behaviour and imprisonment.

Fifteen years ago the justice circle process, which consists of a hybrid of an ancient form of Blackfoot dispute resolution and the Canadian criminal justice system process, was unheard-of. Fewer than ten years ago circle justice was in the early stages of research documentation and experimentation. Since 1993 its use in the Canadian justice system has rapidly increased and is extending in several directions according to the need, the philosophy and the understanding of the people using circle structure for justice with the Canadian system.

The purpose of this ethnographic study is to describe and explain Blackfoot circles used for justice, to observe relationships between Elders and youth in justice circles and to answer the question: Can community be identified in circle justice practices? While "circle" may be used to refer loosely to various gatherings of people, the term "sentencing

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circle" has been used in the media and law journals specifically in regard to Aboriginal circle practices with offenders who have plead guilty to criminal charges. This research set out to define "sentencing circles" as they have been constructed among the Blackfoot.

In an age when First Nations cultures struggle to survive (see Boldt, 1993), contact between Elders and youth is seen as a route to maintaining customs and a Blackfoot world view. What is the nature of the contact between youth and Elders in a circle? Of what cultural significance is the practice? If a community model of justice could be identified in the manner in which circles operate, can guidelines, based on a description of community in circle justice, be applied to justice settings in mainstream or other cultures?

Other First Nations in Canada have also used circle structure in matters of justice, usually in co-operation with the judiciary or under the Alternative Measures provisions of the Young Offender's Act (Crnkovich, 1996; Stuart, 1996; Fennel, 1995; Silverman and Nielsen, 1992: 127-8; Regina v. Morin, 1994; Regina v. Rope, 1995; Regina v. Sellon, 1996; Regina v. Taylor, 1996). Innovations within the criminal justice system are not, however, limited to improving the relationship of the justice system with Aboriginal peoples. Non-Natives have also expressed dissatisfaction and promoted reconciliatory techniques as alternative methods of justice. Church groups and others advocate mediation techniques as more humane for the victim, offender and others involved (Kitchener, 1997; McDonald et al. 1996; Zehr, 1990; Bianchi, 1994; Braithwaite, 1989). The Mennonite Central Committee (MCC) as well as members of REAL JUSTICE, an organization founded in the early 1990's, are both proponents of arranging for victims and offenders to meet one another to address the (often painful) circumstances on neutral

territory (usually in regard to minor charges and property crimes). Together, the efforts of Aboriginal peoples and the work of those in the dominant society who seek alternatives to retributive methods, have created a movement which sees and handles criminal lawbreakers differently from the retributive norm. This movement, largely generated through the 1970's and 1980's, has come to be known as restorative justice.

The Canadian federal government coined the word "restorative justice" to describe methods of working with offenders within the national institution of justice in ways which differ from the retributive norm. The term "restorative" first appeared in the 1988 Canadian Parliament's Committee on Justice and the Solicitor General's report, "Taking Responsibility".

> The proponents of the concept of restorative justice have long recognized the importance to both the victim and the offender (and thereby, ultimately, to the community) of offenders accepting responsibility for their actions and taking steps to repair the harm done (cited in Zehr, 1995: 168-9).

For purposes of clarity in future discussion, a distinction will be made here between restorative justice and alternative justice. While both terms represent justice practices which are not mainstream criminal justice practices, "alternative" justice signifies all such programs and "restorative" justice implies that certain characteristics and philosophies are present. A third term, "transformative" justice will be used to distinguish alternative programs and philosophies from their restorative counterparts.

Although the year 1974 has been designated in North America as the start of Victim Offender Mediation, a program set up by the MCC for victims and offenders to meet and come to agreements of restitution and/or apology (see Zehr, 1988: 158-60; CBC Ideas,

1996: 59-60), Hugh and Schneider (1990) report that the first attempts at having offenders meet their victims were instigated by probation officers a decade or so earlier. "A total of thirty-four programs involving victim-offender mediation in the juvenile justice system were begun between 1965 and 1979" (Hugh and Schneider, 1990 cited in Umbreit, 1995a: 265). The year 1974 is significant in Canada, because of an unprecedented sentence handed down to two young offenders convicted of twenty-two acts of vandalism in a small community north of Kitchener, Ontario. The surprise sentencing resulted in face to face encounters between the victims and perpetrators supervised by the probation officer who had recommended such action be taken. Mediation techniques in Kitchener have since been formalized into several Community Justice Initiatives (CJI) programs: Victim Offender Reconciliation Program (VORP) - a landmark program, Community Mediation Service (CMS) - working with neighbourhood and other disputes, and the Sexual Abuse Treatment Program (SATP) - set up "to restore dignity and to achieve control from past hurts" (Kitchener, 1997: pamphlet). Funding for a Pre release Mediation Program for inmates and victims to meet was insufficient and the program was terminated in 1996.

It was during the same time period that large numbers of Aboriginal peoples in trouble with the law came to the attention of social scientists. According to Silverman and Nielsen (1992), sociologists at the University of Alberta, interest among social scientists regarding the plight of Indian people began in the late 1960's with the Canadian Corrections report *Indians and the Law* (1967). As government intervention is justified and prompted by studies and statistical representation of social inequality, investigations and formal literature are seen by Silverman and Nielsen to have initiated the steps toward

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change. Approximately twenty-five government reports followed between 1967 and 1990 (Silverman and Nielsen, 1992: 3). In 1991, the publication of two in depth investigations in Western Canada provided hundreds of recommendations for restructuring all aspects of the system in regard to attending to the justice needs of Aboriginal peoples in Canada.

Justice Hamilton's (federal jurisdiction) and Judge Sinclair's (provincial jurisdiction) *Report of the Aboriginal Justice Inquiry of Manitoba* (1991) begins with an admission of failure.

> The justice system has failed Manitoba's Aboriginal people on a massive scale. It has been insensitive and inaccessible, and has arrested and imprisoned Aboriginal people in grossly disproportionate numbers. Aboriginal people who are arrested are more likely than non-Aboriginal people to be denied bail, spend more time in pre-trial detention and spend less time with their lawyers, and, if convicted, are more likely to be incarcerated.
> It is not merely that the justice system has failed Aboriginal people, justice also has been denied to them. For more than a century the rights of Aboriginal people have been ignored and eroded. The result of this denial has been injustice of the most profound kind. Poverty and powerlessness have been the Canadian legacy to a people who once governed their own affairs in full self-sufficiency (Hamilton and Sinclair, 1991: 1).

Justice Cawsey's report (1991), *Justice on Trial*, makes a similar if less direct statement regarding the injustice done to Aboriginal peoples in Alberta. This document, known as the "Cawsey Report", points out that a "philosophy which applies to all of its components [policing, courts, corrections]" is lacking in the criminal justice system presently in place (Cawsey, 1991: 1.5).

> We do not perceive the criminal justice system as attaining its objectives of deterrence, rehabilitation, restitution, and protection of the public. If a philosophy does exist, its effect in Alberta is that more people are charged and that a higher rate of incarceration occurs than in nearly any other province or territory in Canada. The

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over-representation of Aboriginal people in the system and the
over-incarceration of Aboriginal people in the federal and provincial
correctional institutions in Alberta is proof that the criminal justice
system is failing Aboriginal people (Cawsey, 1991: 1.5).

Carol La Prairie, government researcher of issues regarding Aboriginal peoples and

the justice system, agrees that incarceration rates for Aboriginal peoples, specifically, are

higher in the western provinces, and that Canadian rates of incarceration are higher in

general when compared to other countries (La Prairie, 1996: 32, 48). While the latter may

be a consequence of the system in place and how it works, La Prairie argues that the

failure of the system is not specific to Aboriginal people as much as it represents a

correlation between people with poor socio-economic status and those in conflict with the

law. She suggests that the over-representation of Aboriginal peoples in all the categories

of criminal statistics corresponds to high numbers of Aboriginal people suffering from the

effects of poverty, alcoholism and violence (La Prairie, 1996: ii, 20).

The Cawsey Report (1991) also identifies socio-economic conditions as the root

cause of Aboriginal involvement with the criminal justice system.

> The criminal justice system is not equipped to be the ultimate
> repository of all social problems. Yet, this is currently one of the roles it
> fills.
> The social problems experienced by Aboriginal people are a result of
> the socio-economic conditions of impoverishment they face.
> Alcoholism, poor health, poor education, dangerous and unsanitary
> housing and unemployment are symptoms of powerlessness. They are
> not the causes of it.
> The criminal justice system can be made more sensitive to the needs
> of Aboriginal people. However, no meaningful and lasting change can
> be made to the involvement of Aboriginal people with the criminal
> justice system *without an integrated and comprehensive approach to
> improve the socio-economic factors which contribute to the problems*
> (Cawsey, 1991: 1.2, emphasis added).

Recommendations in all the above reports address economic issues. For instance, in response to the high numbers of Aboriginal males (78%) and females (35%)[1] who have criminal records which impede or prohibit employment, the Cawsey Report suggests that

> the criminal justice system . . . view individuals who have been
> "through the system" and who have a criminal record as valuable
> resource persons in appropriate circumstances. The existence of a
> criminal record alone should not immediately disqualify a person from
> employment, volunteering, visiting, or acting as a resource person
> (Cawsey, 1991: 6.38).

Hamilton and Sinclair suggest changes be made to the distribution of resources to alter the economic climate for First Nations (1991: 757). Most of the recommendations, however, relate to the system itself - increasing training and employment for Aboriginals to work in the system, addressing court concerns for people in northern or remote areas, creating cultural programs for probation and correction purposes as well as urgings for Aboriginal self-government in regard to criminal justice practises. The success of carrying out these recommendations, according to Silverman and Nielsen is "a matter for debate" (1992: 3).

The above concerns can be seen as integral to stimulating the legal workforce and eventually the mainstream population's way of thinking about and working with Aboriginal peoples (and other peoples at socio-economic risk for criminal lifestyles) to change the system. The recommendations go hand in hand with the experimentation and eventual common use of circle sentencing in the Yukon (Stuart, 1997). The first sentencing circle set up according to a Blackfoot seating arrangement was held in a federal court in Saskatchewan in June of 1993 (see R. v. Morin). In his case report, Justice

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[1] Statistics cited in Cawsey (1991): 6.37. Originally from "John Yerxa Research Inc., "Research on the Survey of the First Nations of Alberta," June 1990. p3" (Cawsey, 1991: 6.51, Footnote No. 74).

J. Milliken likens the sentencing circle to a pre-sentencing report, and stipulates reasons

for choosing a sentencing circle approach. He indicates that support of the Metis

community in helping the offender to change is a "kind of situation [which] has not

existed before" (R. v. Morin, 1994: 158). Sentencing circles, then, represent one of many

re-interpretations of law designed to accommodate Aboriginal interests. They are part of a

general movement of reform which is in its early stages of development.

The investigation of Blackfoot circle justice presented in this thesis, used a

qualitative research approach. The study consisted of two years of visits to and several

telephone conversations with people on a Southern Alberta Indian Reserve from January

1996 to September 1998. While the generic description which began this chapter is

common to circles used for justice among the Blackfoot today, I have witnessed

differences in the participant roles, as well as the structure and the purpose of several

circles. Sentencing circles, healing circles, youth justice circles (YJC's) and releasing

circles each describe different models Blackfoot people have developed or followed when

gathering to resolve cases of illegal or socially intolerable actions within their

confederacy. In addition to the observation, I interviewed several people who have played

key roles in the development and the process of the circle approach to justice issues.

Once I had begun observing circles, I had hoped to sit in on ten to fifteen youth

justice circles and interview five to ten people regarding their regular experience as circle

participants. At the completion of the observation period, rife with weeks of uncertainty

and changing faces (yet simultaneously a steady progression in my understanding of

Blackfoot justice and its current development), I had witnessed a mock sentencing circle,

two healing circles, two youth justice circles and one releasing circle. In addition, I had

sent for and received one transcript of a circle which took place in northern Canada in

1996 and was featured, in part, in the Summer 1997 issue of the periodical *Justice as*

Healing.

I held in depth interviews with four people (and met regularly with a couple of

them) who have taken the role of mediator/co-ordinator in circle gatherings (three men

and one woman). Their varied responsibilities also included historical and theoretical

research, the formation of circle models and implementing new programs for youth and

adults. In addition to interviewing these four, I conducted four other research interviews

with one man and three women involved in traditional peacemaking and/or the methods

of circle justice listed above. As part of the required course work, I conducted several

information-gathering interviews by telephone or in person, with two judges experienced

with circle proceedings, a representative of victim-offender reconciliation programs in

Kitchener, Ontario and an Aboriginal police officer also familiar with justice circles.

As mentioned in the preface, I was partly driven to this work by a desire to

understand actions and attitudes which foster and/or break human bonding and

cooperation. An assumption that I held was that these forces operated on emotional,

intellectual, physical planes. In working with First Nations people, I soon added

"spiritual" to those dimensions. In the literature search, Montgomery's research (1993) on

care provided documentation of the spiritual aspect of humanity. This term, along with

authentic morality and community are defined in chapter two laying the foundation for a

theory of transformative justice.

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Care introduces an alternative philosophy to punishment through several concepts, shame, reconciliation, community, and forgiveness. Theorists important in this area of justice are Braithwaite, a criminologist with an argument for the value of reintegrative shame, Zehr, who redefines justice according to reconciliatory principles, McKnight, who deconstructs professionalism in favour of 'community' and 'care' and Bianchi, a Dutch criminologist who writes from a historical perspective in regard to sanctuary for offenders through principles of Jewish justice or *tsedeka*. Bianchi's practical suggestions are in regard to creating opportunities and granting time for wrongdoers to feel remorse which, in turn could lead to meaningful compensation to, reconciliation with the victim and/or society and eventual forgiveness.

Unpacking the term community was crucial to understanding alternative justice. According to the RCMP officer I spoke to in the summer of 1995, early results from the fifteen youth justice circles which had been held among the Blackfoot showed a near zero rate of recidivism of offenders. Could the participation of Elders, family members and others be described as community, an influencing factor in stopping further offences?

The concept of 'community' as a means to achieving justice can be located in non-Aboriginal alternative justice philosophies and methods as well as a very few accounts of Aboriginal circle practices. This literature is largely theoretical, and anecdotal, but small scale studies, and larger quantitative studies are beginning to appear. The second half of chapter two examines alternative justice practices according to three justice styles: retributive, restorative and transformative.

The methods which are discussed in chapter three include a narrative of the research experience and a justification for the qualitative methods which guided the research. Chapter four consists of a presentation of the interview and observation data. Peacemaking concepts and the explanation of the Blackfoot ceremonialist model, as I understand it, are the background for the explanation of three types of justice circle. Interview data is descriptive narrative, broadly thematic.

The data analysis follows in chapter five. Two key categories, Elder and respect, emerged from the in depth interviews. I have characterized and interpreted the circle observation data in three ways: by structure, roles and content. Chapter six begins with a thesis overview in light of the theoretical assumptions and concludes with suggestions regarding the potential for circle within and outside of the criminal justice system.

Chapter Two
Theoretical Literature Review

Grounded in relevant literature, this chapter defines retributive justice, introduces restorative justice as a challenge to the retributive norm and delineates transformative justice as the manifestation of principles of community. Justice as a concept must be clarified first. From the immense body of work written on justice, the areas which pertain to the research interest are: 1) philosophical and practical histories which have informed present-day Western criminal justice systems and underpin retributive justice, and 2) alternative routes of Western justice which give credence to restorative justice arguments and practices.

Establishing principles of community is a requisite task as the English language is presently awash with references to "community" without a consistent understanding of its meaning. This discussion will explore terms such as morality and care which are essential to an understanding of the concept of community. Further to these definitions, the subsequent sections of this chapter explore connotations of justice and community which include the dimension of place. Transformative justice is based on three elements of human existence—people, place and a combination of the two—and provides a theoretical basis for interpretating Aboriginal justice.

The final segment of the chapter is dedicated to reviewing alternative justice programs according to the three models of justice: retributive, restorative and transformative. Examples of the third model come from very recent alternative programs, a North American study from the 1960's, and contemporary Aboriginal justice work in Northern Canada based on ancient concepts of community principles integral to justice.

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Definitions

Justice

The discussion of justice is divided into four sections which explain the nature of justice and lead to distinguishing retributive justice from restorative justice. Jewish justice provides the historical foundation for a principle of justice which will lead to a definition of transformative justice.

Principles and Practices

A proposition for a system of justice requires first and foremost, a definition of justice (Bianchi, 1994: 1-3). Justice, at its core, is a principle or set of principles (Bianchi, 1994; Eckhoff, 1974). How society forms a system of justice involves the application of these principles to laws which govern behaviour. According to Herman Bianchi, a retired criminologist and former Dean of the Law School of the Free University of Amsterdam, "Justice is a principle serving to assess rules of law and their just operation and eventually to assess whether their promised effect has been realized" (Bianchi, 1994: 5). Changes to systems of justice then, involve changes either to the principles themselves or to their interpretation into law.

Torstein Eckhoff, Norwegian author of *Justice: Its Determinants in Social Interaction* (1970), mentions two principles of justice held commonly in Western societies. The first principle "a wrong should be righted" is one which implies addressing a matter of harm with an action to neutralize or to alleviate that harm. The outcome should be positive. Defining the harm can be seen as the task of the society itself. The

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collective produces norms, laws and interpretations of actions, in part through the experience of the victims (see "authentic morality", pp. 31-35). The second principle Eckhoff mentions, which may be in use with or instead of the first principle, is that "an evil may (or should) be repaid with evil" (Eckhoff, 1974: 141,142). The latter principle creates opportunities for revenge and punishment which "differ from claims for restitution in that harm is inflicted on the wrongdoer, instead of a positive value being demanded" (Eckhoff, 1974:148).

In the first case, the principle focuses on the act of a wrong and in the second, on an act of evil. Both terms describe situations in which harm has occurred. Methods of countering this harm, however, differ. The reaction in the first case is an action: to be righted. The nature of the compensation lends itself to interpretation and creative resolutions. The second principle is less flexible in that the character of the reaction is predetermined as a punitive measure. Assessing the amount of evil in the crime to determine the reciprocate punishment, may vary the strength of the reaction, but any innovation will not alter the nature of the penalty as "evil" or harming.

These two principles of justice are the underpinnings for the restorative and retributive justice arguments. In the case of restorative justice, solutions between offender and victim (such as restitution) are attempts to right the wrongs which have caused harm. Retributive justice, however, calls for punishment for parties convicted of acts considered evil, illegal or irresponsible. In Canada and the United States retributive justice characterizes the justice system. Hamilton and Sinclair (1991), the judiciary responsible

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for the "Report of the Aboriginal Justice Inquiry of Manitoba" describe retributive justice

in the following words.

> The dominant society tries to control actions it considers potentially
> or actually harmful to society as a whole, to individuals or to the
> wrongdoers themselves by interdiction, enforcement or apprehension, in
> order to prevent or punish harmful or deviant behaviour. The emphasis
> is on the punishment of the deviant as a means of making that person
> conform, or as a means of protecting other members of society
> (Hamilton and Sinclair, 1991: 22).

Restorative justice emphasizes "righting wrongs", not punishment or ostracism of

people as "deviant". Although examples of restorative practises have been historically

present in Western social institutions of justice such as Jewish law (as will be discussed

later), state responses to wrongdoing in Western society presently endorse, as noted

above, the second principle of justice. A push for retributive methods is backed by a

combination of alleged political and societal antagonism toward crime and criminals

(Strange, 1996; Zehr, 1990; Currie, 1998; Morris, 1989; 1995b). This "push" expresses

itself in slogans such as "War on Drugs" and "Tough on Crime". Historical events and

reflection can provide some assistance in understanding the argument for retribution and

how it became a state-imposed and a favoured manner of justice.

Historical Factors

Carolyn Strange, contemporary Canadian historian, claims that "politicians eager to

manipulate public opinion on ... issue[s of] ... law and order" presently use historical

"myths" to back arguments advocating more severe and uncompromising punishment

(Strange, 1996: 14-15). In recent times, these myths have been increasingly challenged. In

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a review of alternative, non-retributive methods, Mark Umbreit points out that social

research is questioning the punitive norm and consequently debunking myths of might

makes right.

> A growing number of studies (Clark, 1985; Hough and Mayhew,
> 1983; Henderson and Gitchoff, 1981; Pranis and Umbreit, 1992;
> Maloney and others, 1982; Maquire, 1980; Public Agenda Foundation,
> 1987; Public Opinion Research, 1986; Shapland, 1984; Thomson and
> Ragona, 1987) are questioning some of the underlying assumptions of
> the retributive justice paradigm. This body of research would suggest
> that the general public, and crime victims specifically, are far less
> vindictive than commonly portrayed. Many victims appear to be quite
> supportive of alternative programs, including mediation, that focus on
> providing a range of social services for offenders and their victims
> within a community-based setting (Umbreit, 1995a: 266).

Fines and imprisonment (and under some authorities, the death sentence) are basic

punishments enforced by the state in Western systems of correction. Strange's edited

collection, *Qualities of Mercy: Justice, Punishment, and Discretion* (1996), provides

historically based arguments for mercy drawn from legal cases in British, Australian and

Canadian law over the last two hundred years. Effectively, the compilation reveals a

recent history not regimented with "fixed penalties, minimal discretion, and capital

punishment [to] ensure social peace and personal security", but rather, documented

decisions which verify that mercy and discretion have been an integral part of legal action

(Strange, 1996: viii). Historical illustrations of non-retributive attitudes are therefore

grounds for "thinking hard about the complexity, irony and wide social resonance of state

punishments" (Strange, 1996: viii). As punishment has evolved from a history in which

mercy and dispute resolution have also been practised, advocates for restorative justice

turn to those roots also in their investigation of alternative methods to retributive social

control. Herman Bianchi is one such advocate and the following explanation draws from his historical account of retributive justice related in *Justice as Sanctuary* (1994).

Formal punishment or state imposed resolutions of "evil for evil", have developed over time in the European and Anglo-Saxon cultures beginning with the Roman era. Bianchi attributes the contemporary distinction of civil law, "the law between and among common citizens", to Roman rule (Bianchi, 1994: 13). However, the nature of today's criminal law for citizens was non-existent then. Much of what is now considered criminal behaviour, accountable to law enforcement, was then categorized as Roman civil law. Common crimes could be resolved through *quaestiones* which Bianchi translates as "court systems" (Bianchi, 1994: 14). The state did not prosecute citizens.

Bianchi's account of Roman law describes punishment as indiscriminately used on slaves and ruthlessly imposed on citizens by the state in cases of treason, but free, non-Roman citizens resolved disputes according to their own traditional methods while Roman citizens engaged a "system for the resolution of conflicts" in which "both plaintiff and defendant could stop the procedure immediately by mutual agreement" (Bianchi, 1994: 14-15). Such a scenario suggests resolutions occurring among and through the laity without official intervention.

It is the first principle of justice, "a wrong should be righted" which seems to have guided dispute resolution in which plaintiffs and defendants reached agreements in Roman times. As reaching an agreement amounted to closing the case, the need for state intervention in taking care of citizens whom present day society categorizes as "criminals", appears to have been minimal.

According to Anthony Giddens in *Modernity and Self-Identity: Self and Society in the Late Modern Age* (1991), crime, although present, was not set aside as a category of deviance until the dawning of the modern era.

> What would later be regarded as 'insanity, 'crime' and 'poverty' were treated, prior to the modern period, as extrinsic features of human existence. Madness, crime and poverty were not yet thought of as 'social problems'. Even as late as the eighteenth century, the presence of these characteristics in individuals who would subsequently find themselves placed into one or other of these categories was not regarded as an indicator of either personal or communal failure (Giddens, 1991: 156).

Although crime may not have been regarded as deviance until later, state-activated prosecution of individual citizens, according to Bianchi, emerged in the Middle Ages.

> The punitive system it is generally assumed, began with the Roman Catholic Inquisition, a system based in Roman slave law. We can deduce this origin from the terminology applied. In ancient Rome *inquisitio* (Latin for "the search for evidence and guilt") could, generally speaking, be used only against slaves, not against free citizens. The Holy Roman Church, a self-appointed keeper and guardian of Roman traditions during the Middle Ages, wanted for political reasons to make the religious life and dogmatic opinions of the faithful an object of inquisitory examination. The idea that one could be an object of examination had until then been alien to free people. ...
> What heresy had become to the Roman Catholic Church, crime became to the state and its rulers. Crime was no longer viewed as a regulable conflict but as a social heresy, the state's business (Bianchi, 1996: 16-17).

Taking on the prosecution of citizens was an early step in the state gaining power over subjects' lives and issues. The effect of this increased jurisdiction over individuals was a weakening of the control of victims, offenders and other citizens (experienced or older people, for instance) who may have formerly had a role to play in resolving wrongdoing (Zehr, 1990).

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The retributive involvement of the state in matters of crime was heightened and modified in the Enlightenment period. A major shift in the interpretation of punishment was stimulated by the intellectual elite's perception of wrongdoing. Actions of crime could be abstracted in terms of pain and pleasure with logical methods of measuring pain and pleasure according to utilitarian philosophy. Howard Zehr (1990), an American lawyer and advocate for change in justice systems from the retributive to a restorative mentality, cites a publication by Beccaria as a landmark in changing the interpretation of wrongdoing and the nature of its punitive aftermath.

> Cesare Beccaria's On Crime and Punishment, first published in 1764 and often cited as the foundation of modern penal law, was in part an expression of this Enlightenment approach. Beccaria assumed that law should be rationally rooted in the will of the entire community. He said it should be equally applied to all, and that it should be administered in a rational way by the state.
>
> Beccaria posited that people decide their behavior on the basis of expectations about the pain and pleasure that will result from their choices. Law should administer rational and limited doses of pain, therefore, taking into account the amount of pain needed to outweigh the pleasure to be derived from the offense. The pain which is administered, however, should be proportionate to the wrong that has been done (Zehr 1990: 117-118).

In the rational exercise of assigning penalties, resolution of the problem became the responsibility of the state. Justice could be equated to measuring the perceived degree of pleasure in committing the crime followed by the determination of a reciprocal amount of pain as punishment. Eckhoff, in a critique of this philosophy, questions the stability of its foundations.

> The value of a utilitarian justification depends, of course, on how reliable the underlying hypothesis on the effects of the punishments are considered to be. It was pointed out in section I that it is difficult to verify these hypotheses. We have relatively little reliable knowledge of

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the effects of punishment on the person who receives it and are even more poorly equipped to judge the general effects of threatened punishment. Assumptions as to the effects of punishment are therefore, as a rule, based on belief rather than on knowledge. This can be both a weakness and a source of strength since it makes the standpoints as difficult to refute as to prove (Eckhoff, 1974: 197).

Zehr (1990) points to utilitarian principles as the motivation for modifications to the legal system such as removing victim participation from justice proceedings and discouraging direct compensation to the victim from the offender. He suggests that legal processes effectively shifted responsibility for resolving problems of crime from the general public to state power. In doing so, everyday skills used to address serious problems diminished (McKnight, 1994). Wrongdoing, once considered an integral aspect of life, was extracted as a single definable deed to be dealt with in an abstract manner, through subjecting the event and offender to measurement according to a formula of balancing pleasure and pain.

Fines and imprisonment terms have provided a numerical scale for punishment to be meted out according to the seriousness of the wrongdoing or contemporary interpretation thereof. Unprecedented numbers of imprisoned North Americans are testament to the relative ease of this retributive sentencing, but the effectiveness of incarceration is statistically inconclusive (Currie, 1998). Imprisonment, many would argue, is non-rehabilitative, acts as a school of crime, and does not deter others or offenders themselves from committing further offenses (Makin, 1999; Currie, 1998; Christie, 1993; Bianchi, 1994; Morris, 1989; 1995b; Tadman, 1998; Mika, 1995a). Rates of imprisonment have increased despite critiques from researchers, historians and

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government-commissioned committees that this trend is ineffective and even detrimental to society's well-being (Currie, 1998; Strange, 1996; Morris, 1995b).

Fines are the most common punishment in Canada (La Prairie, 1996) and also have a tarnished reputation among restorative justice supporters. They are paid to the state which acts on behalf of the general population, and some would argue, do not constitute restitution to the victim or necessarily bring about an awareness of the aftermath of harmful action (Zehr, 1996; Bianchi, 1994; Morris, 1989; Ross, 1996). Restorative alternatives to retributive measures generally seek to avoid incarceration and find meaningful acts of compensation for wrongdoing.

Retributive versus Restorative Justice

Zehr compares restorative justice philosophies and practises to retributive thinking and action in his book *Changing Lenses* (1990). The model Zehr draws on to illustrate restorative justice in action is the Victim Offender Reconciliation Program (VORP) which has developed since the late 1970's in Kitchener, Ontario and is now used in several European countries as well as in the U.S.A. and other locations in Canada (Umbreit, 1995a: 265). Victims meet with offenders in the company of a mediator at a pre-arranged place and time. If guilt has been admitted in the case of a first, or sometimes a second offence, the meeting occurs as a measure which replaces charging and court sentencing.

Zehr's first chart in *Changing Lenses*, reproduced below, reveals how the retributive legal process in effect "strip[s] away the human overtones and the social context that is a part of what goes on around us" in an attempt to isolate facts and apply rules of law

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(McCormick, 1994: 8). Through the "retributive lens" as it is presented here, crime is visualized as an event which is "detached" from the emotional and interpersonal relationships of those involved in the act of harm (see chart.)

Table 1: **Understandings of Crime**

Retributive Lens	*Restorative Lens*
Crime defined by violation of rules	Crime defined by harm to people and relationships (i.e. broken relationships)
Harms defined abstractly	Harms defined concretely
Crime seen as categorically different from other harms	Crime recognized as related to other harms and conflicts
State as victim	People and relationships as victims
State and offender seen as primary parties	Victim and offender seen as primary parties
Victims' needs and rights ignored	Victims' needs and rights central
Interpersonal dimensions irrelevant	Interpersonal dimensions central
Conflictual nature of crime obscured	Conflictual nature of crime recognized
Wounds of offender peripheral	Wounds of offender important
Offense defined in technical, legal terms	Offense understood in full context: moral, social economic, political

(Zehr, 1990: 184-5)

Crime, according to the restorative justice characteristics given above, consists of a condition of "harm". To whom does crime (or the harm) belong? Answers to this question pinpoint the actors in problem-solving and the source of power in justice control. In the chart above (and in his other charts delineating accountability and justice), Zehr infers that

the state has replaced the voice and action of the victim in Western criminal justice systems. In other words "state as victim" in the retributive model shifts ownership of what Zehr describes as the "broken relationship" of crime, *from* victims and offenders, *to* those acting on behalf of the state and representing the defence. Lawyers act on behalf of key players and legal language replaces the vernacular. In the retributive criminal justice system, ownership of the problem and its resolution rests with state powers and to a large degree is in the hands of lawyers and the judiciary.

Methods and interpretations of the term "restorative" are diverse, but two components common to this practice of justice are: 1) the importance of meaningful roles for the offender and victim, and 2) recognition of emotion as a desirable element of decision making. A premise of restorative justice is that there are at least two parties involved in the institution of justice: the offender and the victim. The goal of the proceedings is to resolve the conflict in light of the victims' and families' emotional response and wishes.

According to the *REAL JUSTICE Training Manual*, a book dedicated to instructing restorative justice coordinators in Family Group Conferencing (FGC), "victimless" cases may exist, but "the word 'victim' may be expanded beyond its traditional meaning to include those who have been adversely affected by the incident" (McDonald *et al.*, 1995: 21). Generally, guilt, which has been admitted to or determined prior to the enactment of restorative justice methods, is used to designate the offender of the incident. Emotion and comments expressed in regard to the actions of the perpetrator serve to illustrate a degree of the harm to be addressed by the justice process. Restorative justice, according to Zehr,

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is an attempt to return the jurisdiction of the problem of crime to those directly involved

in the offence. It follows the principle of "a wrong should be righted" with the victim and

offender instrumental in determining the means of compensation.

VORP, or the Victim Offender Reconciliation Program, mentioned earlier, was

initiated to resolve problems of crime in this way and will be discussed in greater depth in

the last section of this chapter. Another, much older model of justice founded in Jewish

law, sets a reconciliatory tone for dispute resolution and is guided by a similar justice

principle. *Tsedeka* supplements the above principle by addressing not only the harm

created by the wrongdoing, but the presence and treatment of guilt in offenders also. As

such, *tsedeka* begins a progression from understanding justice as restorative to perceiving

justice as transformative.

Tsedeka: *Jewish Justice*

Howard Zehr in *Changing Lenses* and Herman Bianchi, in *Justice as Sanctuary*,

explain Jewish principles of justice - *shalom* and *tsedeka.* "Shalom" is a Jewish concept

which means, not simply "peace" as it is often translated, but

> to live in right relationship with one another and with God. ...
> Oppression and injustice are contrary to shalom. ... [and shalom] refers
> to honesty or absence of deceit in dealing with one another, and to a
> condition of blamelessness (i.e., being without guilt or fault). The vision
> of shalom also shapes hopes and promises for the future (Zehr 1990:
> 131-2).

Further to taking responsibility for the crime through restitution, shalom suggests a

"condition of blamelessness" for the future of the offender. Zehr uses the concept of

"shalom" to debunk the eye for an eye argument and to look to the wellness of the greater

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community as a priority in arriving at solutions to wrongdoing. The offender is included in this wellness.

Bianchi also employs ancient principles of Jewish justice to suggest alternatives to present day retributive principles. After providing a historical summary of the derivations of the Western retributive system and its shortcomings as a means of crime control, and disclaiming any intent that the origin of his principle necessarily be religious, Bianchi arrives at the following definition of *tsedeka*.

> We have now gathered sufficient material to give a provisional definition of *tsedeka*: not an intention but the incessant diligence to make people experience the genuine substantiation of confirmed truth, rights, and duties, and the eventual release from guilt, within a system of eunomic law (Bianchi, 1994: 22).

A significant difference regarding treatment of the offender in mandates to punish and *tsedeka* is once again the concept of "release from guilt" rather than affixing blame. A function of the Western court process is to proclaim a defendant "guilty" or "not guilty", to determine punishment or free the accused, but not necessarily to attend directly to the guilt or responsibility associated with his or her actions. In restorative justice, it is possible to link the offender's accepting responsibility, to his or her release from guilt. This association is taken further, however, when it manifests itself in what Bianchi refers to as eunomic law. Eunomic law involves

> participants engaging in a system of rules [and] experiencing the system as supporting their lives and their social interactions. Eunomic rules allow people to resolve their own conflicts, keeping the awful feeling of alienation out of their lives. ... A eunomic system of rules does not automatically lead to guaranteed results. ... Responsibilities are laid on the shoulders of all concerned, with a precept for action. Above all, when setting forth the character of eunomie in this book I am describing formulas and rules facilitating

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> the regulation of crime conflicts without punishment, for punishment
> and eunomie are like fire and water: they don't mix. (Bianchi, 1994:
> 57)

The eunomic "system of rules" does not exist as a separate or "alienated" professional

entity designed to handle crime. Rather, the rules reflect daily life and are an extension, a

"support" for the lives of people seeking guidance with difficulties.

Although successful mending to the fractures in victim-offender relations under

tsedeka and eunomic law does not rely on punishment according to Bianchi, it does

involve repentence and reconciliation. Repentance, as he describes it below, leads to the

responsibility of an offender making restitution appropriate to the victim's needs.

> Repentance is, properly speaking, the sequel to teshuwa [a rabbinic
> tradition which means "turning around, reconnecting to the right
> signal"; ... translated as "conversion"]. Whoever wakes up to the fact
> that he or she is going the wrong way and perpetrating wrong acts
> against fellow beings may be moved to take a next step: an attempt to
> neutralize the negative consequences. (Bianchi, 1994: 43, 45)

Repentance is that which "moves" a person. It is a conscious decision to take

restitutive action. Restitution *is* that action, while the means of determining what that

action will be are exemplified in "eunomic rules [which] allow people to resolve their

own conflicts" (Bianchi, 1994: 57). Eunomic rules, generally speaking, include all

citizens in the resolution of a problem. They are inclusive. Systems of imprisonment of

wrongdoers can be seen as one of exclusion - a removal of those who have wronged

society.

In addition to alienation as punishment, treatment of inmates is also often penal in

nature (Tadman, 1997; Currie, 1996; Vasey, 1996; CBC Radio, 1996; Cawsey, 1991;

Hamilton and Sinclair, 1991). As Bianchi points out in the following statement, criminal

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justice systems, set up as punitive institutions for maintaining order, are incapable of

accommodating *tsedeka* or implementing eunomic law.

> Unfortunately, within the system of punitive justice an offender may
> be ever so repentant but that will not help, unless there is beforehand a
> submission to punishment. Having long ago modified penitence into
> punishment, the punitive model lays an insolvable paradox on the
> offender. As long as the system of punitive justice exists, there is no
> place for this most natural of human acts: repentance, the royal way to
> improve hopeless situations (Bianchi, 1994: 45).

One means of how a person "wakes up to the fact that he or she is going the wrong

way" can be illustrated in the process of shaming (Bianchi, 1994: 45). John Braithwaite,

an Australian criminologist and author of *Crime, Shame and Reintegration* (1989) refers

to shaming of offenders which demonstrates inclusiveness as *reintegrative shame*, and

exclusiveness as *stigmatizing shame*.

After defining shaming as "informing [citizens] of how justifiably resentful their

fellow citizens are toward criminal behavior which harms them" (1989: 10), Braithwaite

distinguishes between "reintegrative" and "stigmatizing":

> Shaming is conceived as a tool to allure and inveigle the citizen to
> attend to the moral claims of the criminal law, to coax and caress
> compliance, to reason and remonstrate with him over the harmfulness of
> his [sic] conduct. ...
> Behavior should never be punished or publicly shamed as criminal if
> it risks no harm to other citizens' and even when it does harm, the
> offender should be shamed or punished with dignity rather than
> stigmatized as a monster or outcast. ...
> Shaming which complies with these two requirements will not be
> oppressive. Shaming which eschews stigmatization, which shames
> within a continuum of human respect, maximizes prospects that
> behavior which is not harmful to others will be tolerated. In a liberal
> society, shaming is needed to sanction those who do harm ...
> A society which neglects the need to shame harmful criminal
> behavior will be a society which encourages its citizens to amoral
> encroachments upon the freedom of others (Braithwaite, 1989: 9,

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11-12).

This distinction between inclusive and exclusive shaming is important in light of the

intention that shaming not leave offenders feeling rejected and unworthy, but accepted

and affirmed in their worthy qualities. Braithwaite is also careful to differentiate between

"shaming" and "punishment".

> Shaming is more pregnant with symbolic content than punishment.
> Punishment is a denial of confidence in the morality of the offender by
> reducing norm compliance to a crude cost-benefit calculation; shaming
> can be a reaffirmation of the morality of the offender by expressing
> personal disappointment that the offender should do something so out of
> character, and, if the shaming is reintegrative, by expressing personal
> satisfaction in seeing the character of the offender restored. Punishment
> erects barriers between the offender and punisher through transforming
> the relationship into one of power assertion and injury; shaming
> produces a greater interconnectedness between the parties, albeit a
> painful one, and interconnectedness which can produce the repulsion of
> stigmatization or the establishment of a potentially more positive
> relationship following reintegration (Braithwaite, 1989: 72).

The above description of reintegrative shaming as "producing a greater

interconnectedness" exemplifies eunomic law. Braithwaite presents crime as a problem

which can engage members of communities in constructive ways. Wrongdoing and

relational difficulties are inevitable aspects of the human condition. How we handle them

can escalate problems as in the case of stigmatizing shame or provide corrective direction

as in reintegrative shaming. Braithwaite therefore argues for moral rather than legal

control.

> Crime is best controlled when members of the community are the
> primary controllers through active participation in shaming offenders,
> and, having shamed them, through concerted participation in ways of
> reintegrating the offender back into the community of law abiding
> citizens. Low crime societies are societies where people do not mind
> their own business, where tolerance of deviance has definite limits,

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where communities prefer to handle their own crime problems rather
than hand them over to professionals. I am not suggesting the
replacement of 'the rule of law' with 'the rule of man'. However, I am
saying that the rule of law will amount to a meaningless set of formal
sanctioning proceedings which will be perceived as arbitrary unless
there is community involvement in moralizing about and helping with
the crime problem (Braithwaite, 1989: 8).

The final statement suggests that the criminal justice system not be given exclusive rights

to the domain of controlling crime legally, but that shaming be incorporated into everyday

life as a lay person's moral prerogative for instigating and maintaining order.

According to Braithwaite, shaming can be used as a tool to develop human

conscience (an inner guide for behaviour which operates within normative rules) and

shaming which is inclusive, can work reintegratively with offenders (with the exception

of psychopaths). Theoretically, within the caring presence of others, offenders who are

shamed will choose to contribute positively and within society's rules. Reintegrative

shaming aims to create feelings of remorse in an offender for his or her unacceptable

actions while under the pressure of disapproval for their actions. However, respect for

their person is upheld and their position in the family, school or community maintained.

Stigmatizing shame labels an individual as an outcast because of his or her

behaviour and results in feelings and processes of exclusion. Ironically, stigmas of

"tough", "cruel" etc., may be welcomed in subcultures where self-respect is gained

through opposing mainstream society's regulatory forces (Braithwaite, 1989: 14). Like

tsedeka, Braithwaite's concept of reintegrative shaming denounces punishment as an

impediment to righting the wrongs of criminal behaviour. Righting a wrong begins with a

welcoming society, one which recognizes the offender as a valued member whose actions

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of wrongdoing are shameful and require repentence. In the welcoming, the caring society does not hold the individual in guilt. The transition from welcoming family to welcoming society is in no way effortless and involves the victim and others in a step of reconciliation and forgiveness.

Bianchi's theoretical explanation of victim/offender association considers reconciliation and forgiveness as important steps following repentence. Should repentance take place within an offender when she or he acknowledges harm done, and restitution follow, the process toward renewed relationships within society according to Bianchi, requires reconciliation. Whereas repentance is initiated by the offender, Bianchi sees the victim in control of reconciliation.

> Reconciliation implies the readiness of victims of crimes, the injured parties and their relatives, to acknowledge the repentance of the offenders, to accept their offers of compensation or indemnification. Such efforts repair damaged human relations (Bianchi, 1989: 45).

While Bianchi provides insight into the process of reconciliation, he acknowledges the necessity, of a nearly unattainable final step in the *tsedeka* model's goal of reaching a guilt free position for the offender: forgiveness.

> Forgiveness means the victim "gives away," remits, those parts of the debts which the culprit, in spite of willingness, is unable to achieve. ... In spite of this matter-of-fact character, forgiveness is not obviously consistent with human nature. It will usually mean a long struggle for the victims and their next of kin. Usually the victims need help and cannot achieve it by themselves. Bitterness and hatred may be the most abominable after effects of crime, and they tend to aggravate the guilt of the culprit. Failure of the victims to consider reconciliation and eventual forgiveness might cause further damage to their own psychic well-being, yet forgiveness can hardly be expected if the criminal has not come to recognize its necessity. I have never heard of a punishment system that promotes forgiveness (Bianchi, 1994: 47).

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Restorative justice as *tsedeka* and reintegrative shaming suggest coaxing relationships into raw and seemingly rare occasions of facing humanity at its worst (in injuring one another) and best (in mutually finding ways to overcome the trauma). Restitutive goals of *tsedeka* are compatible with the Western principle of justice "a wrong should be righted", but further, propose in principle that "guilt should be removed".

The removal of guilt is a determinant in a third model of justice yet to be discussed widely in alternative justice literature, that is, transformative justice. Although the term has been mentioned in theory (Morris, 1995b), and some examples can be found in the literature (Studt et al., 1968; Hollow Water, 1995) this form of justice has not been practically acknowledged as a model for widespread use in alternative justice programs. Transformative justice involves people living according to certain principles of reintegration and forgiveness over time. While morality provides the philosophical basis for comprehending the development of justice among people, the concept of "care" (not unlike eunomic law) pertains to the nature of interactions within relationships necessary for engineering justice as transformative.

Morality

An assumption of this thesis is that morality underpins how people relate to one another. When "community" refers to human interaction, understanding morality is at the heart of determining the nature of the human behaviour involved. Shaming (whether reintegrative or stigmatizing) reflects two types of morality which inform social interaction. The use of the terms "synthetic" and "authentic" morality are largely based on

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the lectures of Menno Boldt in a sociology course he designed entitled "Human Dignity" (1995).

Boldt differentiates between two types of morality. "Synthetic morality" involves the imposition of rules or laws shaped by a few people, with much power, on minorities and the less powerful. It is *external* social control. "Authentic morality", on the other hand is a coming together of all interest groups to make decisions which will govern their behaviour. Equal opportunity exists for all parties (minorities and the majority) to contribute to the discussion, relating their experiences in order that eventual decisions and rules represent the well-being and interests of everyone involved. Control is not imposed, but ideally, *through respect for the dignity of others*, an agreement for harmonious social interaction is reached.

In their definition of morality, Studt et al. (1968), designers of a community model of justice for research with corrections in California (known as "C-Unit"), also mention that morality can exist as an imposed state. Their discussion of morality begins with a definition which also distinguishes between authentic and synthetic morality without using terminology to specify these differences. Moral behaviour, as they define it, is the

> ascription of dignity to individuals, respect and concern for the rights and welfare of others in pursuing individual interests, and reliance on positive social controls rather than on force or manipulation to regulate interaction [authentic morality]. *Relationships* that are moral in this sense can andI do vary in behaviors according to cultural prescriptions, but they *lose the basic characteristics of morality if they represent the superimposition of class or ethnic mores by more powerful on less powerful subgroups* [synthetic morality]. Our use of the term "moral" also rejects the narrow meaning of the word as puritanical concern with the suppression of "vice." Under our definition, an act is not immoral simply because its behaviors offend the cultural preferences of a dominant class or because it is deemed evil by some, even though no

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clear harm is intended or perpetuated (Studt et al., 1968: 5, emphasis
added).

The introductory line in the above definition, "ascription of dignity to individuals" can be
taken as the heart of authentic morality. Ascription infers two parties, one ascribing
dignity to another. If it is possible to ascribe dignity to someone, it is also possible to fail
to ascribe dignity to another person.

For the purposes of this research the following assumptions regarding human
dignity have been made. The dignity of a person is not earned. Human dignity is inherent
as a characteristic of one's humanity. It can, however, be violated and weakened as well
as affirmed, acknowledged and restored according to verbal and physical treatment of
people one to another. As the word "authentic" suggests, honesty is a premise for all
interactions which respect human dignity in relationships.

It follows from the above definition of morality that "if clear harm *is* intended or
perpetuated", an act is considered immoral. Immoral acts violate human dignity and as
such provide a mandate for correction. Reintegrative shaming works within an authentic
morality to correct acts which violate others. Behaviour which harms is denounced
through emotional and verbal expressions of hurt and disapproval (shaming), but in a
reintegrative model, respect for an offender as a person is upheld. Authentic morality
should protect and promote behaviour which does not harm and thus provide a means of
correction in the instance of wrongdoing.

A society functioning within an authentic morality works largely through the
self-control of its members. As social control, authentic morality works *internally*, within
individuals, as it is manifested in values and principles which are held in common and

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maintained out of respect for the experience (and often, emotions) of others (Boldt, 1995; Braithwaite, 1989). According to Braithwaite (1989) and Studt et al. (1968), such behaviour should not impose on personal freedom. As a principle of justice, authentic morality can be stated as a collective agreement which in the face of wrongdoing, advances that human dignity must be ascribed to individuals and groups, while the behaviour which violates another must be denounced and corrected.

This principle can be enacted through "respect and concern for the rights and welfare of others in pursuing individual interests" and "a reliance on positive social controls" (Studt et al., 1968: 5). "Positive social controls" are controls which maintain respect for human dignity such as reintegrative shaming and specific mechanics of caring (to be discussed later). According to Studt et al., "respect and concern for the rights and welfare of others" involves honesty, equal participation, taking time for expressing and listening to concerns and points of view, asking (any) questions, and receiving answers (1968: 5). Authentic morality is compatible with Bianchi's definition of eunomic law and therefore, as a principle of justice, it can be seen as rooted Western-Judeo societies.

The C-Unit project effectively used the concept of authentic morality as a principle of justice for working with inmates. The principle of treating one another with dignity determined the nature of how "a wrong must be righted" in a prison, separated from the presence of family. Human dignity, the backbone of justice as a way of being, was upheld through the said rules (e.g. honesty) which encouraged caring for one another as a form of natural regulation, rather than as an imposed state of one morality over another.

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Basically, the C-Unit study was designed to alter aspects of prison life by implementing a change in the distribution of power in decision making from a synthetic to an authentic moral framework. (The study is discussed in more depth in the final section of this chapter). The research team, guards and prisoners contributed to problem-solving meetings with equal status and opportunity. This practical example of implementing a moral model, one which equally distributes power for the sake of justice, is important to the research interest as it illustrates another non-retributive model of justice in Western society.

While the restorative principle that "a wrong should be righted" specifies an action to be taken in response to a certain act, engaging the principle of ascribing dignity to others engages the supposition that *all* actors must contribute to the righting process. Involving all members in society in the responsibility for righting the wrong departs from the restorative justice philosophy. Authentic morality, then, permeates all levels of human interaction and becomes a basis for transformative justice. Implications for change in relationships in the name of justice apply to any situation characterized by inequality.

Studt et al. (1968) therefore describe the practice of justice as "creating conditions under which people change themselves through changing the way they work together on common tasks" (Studt et al., 1968: 280). When working within a moral paradigm and although not stated directly, a context of care, one of these "conditions" can be expressed in the term "mutuality". As it is described below, mutuality (one behavioral aspect of building authentic morality according to Boldt (1995)) can be noted for its altruistic quality and as a foundation for the understanding of care in transformative justice.

Transformative justice not only refers to the removal of guilt of the offender, but a change in how people relate to one other generally.

Mutuality and Reciprocity

Boldt (1995-1997) differentiates between reciprocity and mutuality. Whereas reciprocity refers to an action or favour given with an expectation of something in return, whether as an agreement or as a normative arrangement, mutuality in Boldt's conceptual framework can be likened to the giving of a mother to an infant. The action of care is offered without the expectation of direct reward. As a gesture which provides for basic human needs, the nature of this giving is positive - a starting point for trust. There is no obligation on the part of the receiving party to pay anything in return. The actor contributes, not out of a strict sense of obligation, but freely and necessarily for the well-being of another.

An authentic morality is one which recognizes the human experience as worthy consideration for shaping general rules which respect all concerned parties. Mutuality in the form of reaching out to another lovingly or compassionately ignites a process to be defined as care. Mutuality also works to close gaps of resentment and unforgiveness which separate people. If forgiveness acts as a final step in the removal of guilt as Bianchi suggests, mutuality is a first and necessary step to take for those who seek a way to move beyond the bitterness and pain of damaged(ing) human relationships. As such, behaviour characterized as mutuality can be an attribute of justice workers operating within restorative and transformative paradigms.

Care

For the purposes of this research, care will be considered a human experience. The following explanation of care maintains that professional as well as non-professional relationships can foster care, that it is a holistic concept and that it revolves around four aspects of the human condition: the intellectual, the emotional, the physical and the spiritual. While certain conditions deter or prevent its occurence, care as a practice can be delineated and instigated through five main criteria of beliefs and behaviour.

Two authors who have recently contributed to the knowledge base for the practical application of care in human interaction are John McKnight and Carol Leppanen Montgomery. Community Studies Program director at Northwestern University, coauthor of a guide for community development, and author of *The Careless Society: Community and Its Counterfeits* (1995), McKnight describes care as it exists at various levels of social organization. Montgomery, Associate Professor of nursing at the University of Colorado Health Sciences Center and author of *Healing Through Communication: The Practice of Caring* (1993), attends to the realities of care as one-on-one relationships. Her book is based on qualitative research of "45 health professionals, [who] participated in semistructured interviews in which they were asked to talk about experiences that stood out for them in terms of caring" (Montgomery, 1993: 3).

While Montgomery writes as a professional promoting professional care, McKnight argues against professionalism. Opposed as these two interpretations may seem at first, the basic theories of care complement one another. For Montgomery care is initiated

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through an individual gesture of mutuality and leads to a metaphysical exchange; McKnight expresses care as an attribute of the human collective. Both McKnight and Montgomery identify obstacles to care within society and within the behaviour of individuals. McKnight's exploration of community as an expression of care will be discussed in greater depth later in this chapter.

Montgomery begins with a simple definition of care - "Essentially, caring is a way of being, a state of natural responsiveness to others. ... It is a natural condition of being human." (Montgomery, 1993: 13). "Natural" echoes the mothering sense inferred in the above definition of mutuality. Natural is also a word which supposes that the condition cannot be standardized nor can care be regulated by medical or justice establishments (McKnight, 1995). The body of Montgomery's text goes on to describe this "way of being" according to her analysis of the experiential narrative interview data.

McKnight sees care as a valuable human quality which acts as an intimate, irreplaceable problem-solving medium in situations such as poverty, grief, and family violence. He denounces systems of human service (such as health care, social services and criminal justice) for their marketing of care as a commodity when it is not. One assertion he makes to this end is that:

> Service systems can never be reformed so they will "produce" care. Care is the consenting commitment of citizens to one another. Care cannot be produced, provided, managed, organized, administered, or commodified. Care is the only thing a system cannot produce. Every institutional effort to replace the real thing is a counterfeit (McKnight 1995: x)

As a "consenting commitment of citizens to one another", care involves an exchange at the human level, that is, with a mutual recognition of or unstated appreciation

for offering the self to one another. McKnight takes exception to institutional self-interest

which, he claims, manufactures incompetency in the client. He sees professional

explanations of the situations involving clients as creating false needs for services.

> In spite of the democratic pretense, the disabling function of
> unilateral professional help is the hidden assumption that "you will
> be better because I, the professional, know better" (McKnight, 1995:
> 47).

The implication is that if the professional limits him or herself to intellectualizing a

relationship, holding knowledge over the head of a non-professional, care cannot take

place.

Montgomery also informs the reader that care by its nature, involves an exchange.

"Because caring is an intersubjective experience that is characterized by mutual

participation, the patient will not only shape the communication of caring but will also

affect the caregiver's experience of caring (Montgomery, 1993:123). An initial act of

mutuality may stimulate care, but it does not represent a caring event. Montgomery would

have the professional person open to the experiences and life stories of the patient. With

that exposure she or he risks emotional tugs and turmoil with clients, but these exchanges

become meaningful scenarios in both the caregivers' and the patients' lives. They are

relationships which reverberate at a level of shared humanity.

This point has repercussions for delineating transformative and restorative justice

paradigms. If care works as the transformative medium, the process of reintegrative

shaming under a principle of authentic morality will work mutually between offender and

his or her family, and possibly between offender and victim. Care, in other words, has the

potential to remove the stigma of wrongdoing from the offender by emphasizing what she

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or he has to (positively) offer. In care people see themselves in one another and the sense

of wrongdoing is not isolated with the offender but extends to all as human fallibility

(McKnight, 1995; Morris, 1995b).

The description of justice stated above by Studt et al. calls for justice to be exercised

as personal change in relation to contact or work with others. Care, as an emotional

encounter, can be seen as one way to facilitate people "changing themselves through

changing the way they work together on common tasks" (Studt et al., 1968: 280). Justice

workers, open to caring, who work with offenders for whom caring has usually been a

rare occurrence (Tadman, 1997; Vasey, 1996) have the potential to initiate change and to

change themselves. Mutuality has the potential to create a "condition" for the genesis of

justice according to Studt et al.'s practical definition.

Montgomery, further to McKnight's concern with intellectualizing relationships,

points out another mindset detrimental to sustaining the presence of care. She

acknowledges that institutionalized care for the sick has itself suffered ill effects through

an historical, philosophical fixation on distinguishing ailments from people. (A parallel

exists with crime which has been treated as a section of the criminal code categorized and

separated from the human offender).

> Another reason why caring is so important right now has to do with
> disillusionment with the modern health-care system and the limitations
> of the medical model. The medical model, which is the foundation of
> our current health-care system, is based on a mechanical view of the
> universe and *the separation of mind from body*, ideas that emerged from
> the scientific revolution of the past three centuries. Disease is seen as
> separate from the person and as a self-contained event, independent of
> the environment or culture. Treatment is focused on finding a single
> cause and using aggressive technological methods to attack the causal
> agent (Allan & Hall, 1988 quoted in Montgomery, 1993: 10, emphasis

added).

Rose Laub Coser, critiquing current feminist social theory, likens the separation of

mind and body to a presently popular discussion in qualitative circles: the separation of

reason and emotion. She makes the point that such distinctions be justified by the research

interest.

> The notion that there is unity of body and mind, of emotion and
> reason, should be treated, I believe, in pragmatic fashion. Where we find
> out more or understand better by making some separations and
> distinctions, by all means let's do so. Where our purpose is better served
> by abolishing distinctions, let's do that. Whether we do or not depends
> on the problem and on our data (Coser, 1989: 203).

Investigating care in the health industry as Montgomery has done and submitting

care as a vehicle of justice as this thesis proposes, both suggest the inclusion of the

physical, emotional and intellectual aspects of human perception. As Montgomery and

McKnight both point out, the subject matter of caring is not "matter", but human

interaction. If people's actions and illnesses are not to be isolated legally or medically, but

treated holistically, emotional reactions which traditionally have been excluded from

(positivist) scientific observations in the name of objectivity, are implied in resolving

conflict.

Montgomery's work takes the implications of the word "holistic" one step further.

She delineates the spiritual nature of humankind in the context of care. In resurrecting

spiritual elements of humanity which have generally been dismissed by Western-trained,

non-Aboriginal social scientists, Montgomery's qualitative study challenges the

perspectives which hold that spirituality is non-existent, irrelevant or intangible. John H.

Stanfield II, an Afro-American social scientist, in his article "Ethnic Modeling in

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Qualitative Research" (1994), posits that culturally sensitive methods in research

involving "people of color" fortify the argument for the recognition and acceptance of

spirituality as a human characteristic.

> As so many non-Westerners view the social, the emotional, and the
> spiritual as integral parts of a whole person linked to a physical
> environment, it would also be crucial for such [aboriginally based]
> qualitative methods epistemology to be grounded in holistic rather than
> fragmented and dichotomized notions of human beings. ... This means,
> among other things, that American researchers would have to discard
> their usual dislike of religious topics and realize that many
> Afro-Americans and other people of color (especially aboriginal
> populations) cannot be understood fully unless the central place of
> spirituality in their lives is given serious consideration (Stanfield, 1994:
> 185).

Montgomery's research is not focused on Afro-Americans or Aboriginal

populations, but addresses the human spiritual factor in Western-run medical centres. The

work experiences of interviewees, which for Montgomery "stand out" in regard to care,

have decidedly spiritual characteristics (Montgomery, 1993:3). In the forthcoming

presentation of Montgomery's five characteristics of caring, care is presented as existing

in a medical setting, as successfully uniting emotion and spiritual wholeness, with human

reason and a technologically oriented environment. Locating care in the stories of

caregivers and determining its practical nature serves to define basic characteristics of

human contact which bonds people one to another.

Taking into consideration relevant literature, Montgomery expands on her first,

brief definition of care to provide an explanation of caring based on several aspects of

human interaction.

> Caring ... is a highly complex communication phenomenon that
> occurs at the level of biology, behavior, and metaphysics. The qualities

necessary for caring, according to Mayeroff [1971], are knowing, alternating rhythms, patience, honesty, trust, humility, hope, and courage. According to Watson [1989], the caregiver and client experience a union that allows them access to a greater force or consciousness, that transcends time and space and is a source of healing and self-renewal. The caring relationship is mutual and intersubjective, as both parties fully enter the relationship and experience growth. (Montgomery, 1993: 36).

McKnight condemns professionalism in favour of caring citizens reaching out to one another spontaneously or as a matter of course. Montgomery's work can be seen as documenting circumstances and instances of care which is "mutual and intersubjective" within a professional framework. Although the medical profession is targeted in her work as the general "caregiver" for society, several elements of the practice of care which she describes can be used as guidelines for maintaining respect for human dignity during any social interaction - including the administration of criminal justice.

The following five phenomena from Montgomery's text are selected here and explored as particularly relevant to the role of care in the face of wrongdoing: 1) adopting a certain philosophy, 2) "transcending judgement," 3) emotional honesty, 4) "dialectical flexibility," and 5) participation with others (Montgomery, 1993: 45, 116). As will be seen, these themes are closely linked to five principles identified with non-retributive justice by Philip Selznick in his introduction to a prison study instigated by researchers Studt et al. (1968) in their attempt to employ community as justice.

The philosophy of caring according to Montgomery is twofold: to "recognize the wholeness and integrity of that which is human" and to acknowledge "the fragility of this human factor in the technological environment" (Montgomery, 1993: 43). Montgomery's opening statement, that is, "the wholeness and integrity of that which is human" will be

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referred to in this thesis as human dignity. To "recognize" human dignity in the statement

above implies both the acceptance of the idea that human dignity exists, and the

experience of human dignity as a presence that can be upheld or violated through human

interaction. "Wholeness" for Montgomery, implies that the human is comprised of more

than body and intellect. According to Montgomery's investigation of care, "that which is

human" and vulnerable in a "technological environment" includes a metaphysical element

evinced by the implementation of care.

> Thus caring provides access to a greater force—a primal and
> universal psychic energy, similar to love. This energy creates a sense of
> harmony of mind, body, and spirit, which can actually potentiate the
> self-healing process. ...
> These ideas posit that consciousness exists as a energy field beyond
> the limits of space and time, supporting the idea that a caring
> consciousness does in fact transcend the limits of space and time and
> can in fact create its own healing.
> Many clinicians can recall *moments of total immersion* with a patient,
> during which they lost track of time and later felt that something special
> or magical had occurred. These "caring moments," as Watson calls
> them, are often a turning point in the patient's recovery or response to
> treatment (Montgomery, 1993: 32-33, emphasis added).

A "moment of total immersion" is significant as an indicator of spiritual interaction.

The interaction is a mutual experience and as such, can be taken as a practical

acknowledgment of human dignity in both patient and caregiver. Ongoing contacts of this

nature can be seen as metaphysical manifestations of care. Although a spiritual component

of humanity can be evoked through an initial exchange, according to Montgomery, the

depth of such contact is indicative of care when it becomes a commitment over time. The

interaction then, is an "unfolding" relationship for caregiver and patient.

> Caregivers connect with the person's center or inner spirit. Therefore,
> the impulse to care does not necessarily depend on the participation of

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the patient, but the unfolding of the relationship does (Montgomery, 1993: 83).

In the scenario of caregiver as justice worker - whether engaging in care with offenders or victims - the temporal implication for caring is to initiate contact with the client and remain in contact for a period of time in which the receiving party can respond. The established connection is two-way.

According to Montgomery's research, connecting with a person's centre taps into a force which is able to affirm the dignity of the individuals involved. She associates this with the recovery of an ailing patient. The implication of "healing" in criminal justice is that offenders who themselves have been victims and subject to abuse as children, may begin to address these issues through the establishment of trust at a spiritual and emotional level. (Recent research of offenders documents anecdotally and statistically that the majority of (especially violent) offenders have grown up in abusive and poverty stricken settings as children. See Currie, 1998: 91-101; Cayley, 1998:101-121; La Prairie, 1994; 1996: 35-37; Morris, 1989: 102-106; Vasey, 1996; Tadman, 1997). Care can be established by respect for human dignity and manifested through practical connections between an offender and a justice worker or other significant, concerned citizen in the offender's life. Within Montgomery's parameters of care, caregivers have the opportunity to become catalysts for reaching an offender's "centre".

The goal in restorative justice according to *tsedeka* and reintegrative shaming is to recognize the pain and harm caused by past and present actions as wrong or unacceptable. A correlation can be drawn between the force which is felt and triggers "a turning point in the patient's recovery or response to treatment" (Montgomery, 1993: 33), and what

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Bianchi referred to as repentence, "waking up to the fact that he or she is going the wrong way" (Bianchi, 1994: 45). The suggestion is that the power of a caring relationship has the potential to "wake" an offender up. Self-discovery and altering behaviour for the benefit of oneself and others also appears in a style of Aboriginal justice, known as peacemaking.

Rupert Ross, a crown prosecutor who has spent years with Aboriginal teachers across Canada, explains that antagonistic or violent relationships are seen as broken connections and must be mended beginning with the offender seeing the need to change course.

> In short, a true peacemaking system may on occasion see the particular details of past acts almost fade from view as the participants are directed to concentrate their efforts on coming to understand and acknowledge three things: (1) that they cannot continue in this fashion without life becoming increasingly worse; (2) that the antagonism between them is not a private matter, but is directly affecting others within their wider circles of families and friends; and (3) that for the sake of all concerned they have a responsibility to find ways to put their disputes behind them and to agree to a new way to deal with each other in the future. In some cases that will be enough all by itself, *whether or not the parties agree on who started what and exactly what took place* (Ross, 1996: 97, emphasis in original).

A person must "understand and acknowledge". These two words conjure up intellectual knowledge, but the fact that the second "thing" mentioned is an awareness of the plight of others infers empathy must take place for people to turn and "find ways to put their disputes behind them and to agree to a new way to deal with each other". Connections with others on all levels of being - physical, emotional, intellectual and spiritual - directly relate to the dignity of others through a display of responsible and irresponsible behaviour. Recognition of and acting on this presupposition is the basis for caring.

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To summarize, the philosophy of caring according to Montgomery demands an attentiveness to the whole person including a spiritual component. The "technological environment" of the medical (and legalistic world) throws up philosophical, procedural and verbal barriers to entering metaphysical space with clients (Montgomery, 1993: 43). An outright rejection or denial of the spiritual dimension of humanity also dismisses the possibility of discovering the potential of the human "center or inner spirit" (Stanfield, 1994: 185; Montgomery, 1993: 83). These blocks are social and physical impediments to the development of caring and thus these barriers hinder the social institution's capacity for stirring feelings of remorse and responsibility in offenders. Fragile or trampled as the spiritual and emotional phenomena may be by technological operations and mechanical ways of thinking, care, with its spiritual connotations, can be seen as a basic characteristic of humanity. Adopting philosophies which alleviate such blocks permits the development of a second characteristic of care in practice, "transcending judgment" (Montgomery, 1993: 45).

"Transcending judgment" refers to finding ways to overcome judgment of "clients who challenge [caregivers'] values or are just difficult to like" (Montgomery, 1993: 45). When discarding judgmental attitudes and/or stereotypes, Montgomery states that people must

> develop some sort of philosophical or spiritual understanding that
> enables them to tolerate and accept a wide variety of human experience.
> ...
>   Expert caregivers learn that judgments are simply not meaningful, as
> they interfere with caring. ...
>   While value judgments about clients are usually based on abstract
> principles of what someone believes is right or wrong, in caring, the
> relationship is what is right, and this takes precedence over abstract

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moral principles (Montgomery, 1993: 46).

Together, "abstract [moral] principles" and legally endorsed rules of behaviour based on justice principles such as "evil for evil", may give cause for maltreatment of people apprehended by police, those facing charges and/or the incarcerated. Safety for the caregiver is an obvious requisite to physically ministering care in the midst of clashing values (whether in a medical or justice forum). However, adhering to Montgomery's philosophy of "recogniz[ing] the wholeness and integrity of that which is human" puts the onus on the caregiver to be the first to seek out, in the other, human attributes worthy of respect. To do so is to facilitate the attribute of transcending judgement of another. Montgomery cites an interviewee's story as an example of transcending judgment. This example aptly juxtaposes the criminal justice and medical fields.

> An operating room nurse explained how enriching it has been for her to go outside of the limits of her own life:
>> ... when we do that ["categorize the people we want to spend our lives with"], we limit the opportunity to experience a thousand different life times through someone else's eyes who may not fit into those nice organized little categories.
>
> She went on to describe a situation where a prisoner was brought into the operating room accompanied by the police. He was unconscious and in leg irons. She made the police remove the leg irons and leave the operating room:
>> I mean the guy was a rapist and a murderer ... the worst kind of human being that [anyone] could imagine, but he was a dying human being. ... I honestly don't believe we are there to judge, nor do we of all people have the right. We are in a profession that is supposed to soar above those things, and if you can't soar above them, then you are in the wrong business.
>
> For some, this view of human nature is learned from experience.
> (Montgomery, 1993: 46).

In the above excerpt from Montgomery's data, the nurse speaks from personal and professional points of view. Initially she credits an augmentation of her life's experiences i.e. "the opportunity to experience a thousand different lifetimes", to a feature of her own

personality. She contrasts this aspect of herself to others who limit their interactions with people they find objectionable and thus limit the scope of their lives. The ability of the nurse to gain insight into her own life through relating to many others very different from herself, Montgomery credits to transcending judgment.

In the second passage the nurse justifies her ability to care with a reference to the demands of a medical vocation and makes references to other fields in which such care may not be expected. For example, "we are in a profession that is supposed to soar above those things" indicates that there may be other professions not expected to rise above placing leg irons on an unconscious offender. An inference can be made that social norms and her personal understanding of the role of nurse, also contribute to her tolerance and acceptance of others at a human level.

In the criminal justice industry, where the "clientele" are lawbreakers, some people are considered by police as a threat to society's safety. In these cases, discarding judgment prior to engaging in an offender's "care" may be more than difficult. Further to intellectual determination, such an ability requires adjustments to justice principles society holds for treating criminals. "An evil for an evil" may inform and endorse uncaring, but normative behaviour for justice workers. Leg irons placed on a dying prisoner or on a prisoner giving birth are dramatic examples of rules which minister justice in dehumanizing ways while maintaining retributive principles. Acceptable behaviour for a police officer relating to a suspect or offender may differ dramatically from how a nurse is *expected* to manage a "difficult" (to use Montgomery's adjective) patient. While the patient/offender remains human, his or her handling by others may be

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humane or inhumane. In a synthetic morality inhumane treatment may be justified. In an authentic morality, inhumane treatment of offenders violates the principle of justice.

Administration of care as Montgomery outlines it for the medical field, when applied to treatment of people in conflict with the law, creates expectations not only of individuals, but of society and governments responsible for instituting justice. The exercise of transcending judgment then, extends beyond the micro world of individual actions to the macro world of general assumptions and human communication. Adopting the ability to transcend judgment as a standard of care is thus indicative of a normative change in the way society condones roles and rules. It acts as a safeguard against violations of human dignity. Enacting non-judgmental attitudes at the intellectual and experiential levels through "some sort of philosophical or spiritual understanding" can lead to relationships which require a third component of caring in Montgomery's dissertation, emotional honesty (Montgomery, 1993: 46).

Emotional honesty is a self-explanatory term. As a method of care, expressing feelings such as frustration, anger or disappointment can lead to conflict in relationships. However, "authenticity", as Montgomery refers to it, is a vital tool for establishing trust (Montgomery, 1993: 55). While expressing anger might be seen as a contradiction to holding non-judgmental attitudes, Montgomery's research shows that in practice it is not. Actors in relationships need not endorse one another's "abstract moral principles", but emotional expressions which are consistent with inner feelings provide an opening through which conflict can be acknowledged and resolved. One condition for a healthy outcome in emotional conflict is the balance of power.

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> [I]t is possible that a good, honest spat between a caregiver and
> patient, *providing neither one holds a disproportionate amount of*
> *power*, is preferable to the potential feelings of alienation created by
> being surrounded by dispassionate professionals (Montgomery, 1993:
> 58, emphasis added).

A requisite for authentic morality has been stated as balancing the power - giving

minorities equal opportunity to contribute. It is not the strength of numbers which

determines rules within an authentic morality, but the experience and well-being of those

contributing. In the final phrase of the quote above, it is the well-being of the patient

Montgomery addresses. It can be understood, however, that in a model of care, all parties

are better served by emotional honesty; the caregiver and the patient mutually benefit.

Bianchi was quoted earlier as suggesting that similar situations of "dispassionate

professionals" are generally detrimental to the well-being of society. In exchanges of

emotional magnitude such as those created through an openness to authenticity, a fourth

component is necessary for caring effectively.

"Dialectical flexibility" is the fourth component and involves balance, control and

openness (Montgomery, 1993: 116). In regard to balance, Montgomery advises that

experiences of suffering and hardship for the caregiver be offset with "aspects of reality

which generate life and hope" (Montgomery, 1993: 116). The aim of balancing

care-generated experiences, which may be taxing, with life-giving activities is for the

human mind, body and soul to remain "whole and intact". The suggestion here is that

peaceful, pleasant or joyful undertakings restore energies lost in disruptive, disturbing or

heartbreaking circumstances inherent in medical (and criminal justice) work.

Flexibility is acheived in part, through intellectual management of relationships. If the person is the instrument of care, Montgomery maintains that personal control within the work situation is vital. Care "requires the ability to choose not to care, and to have the wisdom to know what to care about" (Montgomery, 1993:116). It is emotion tempered with reason, and at an intimate level, it is also an ability to know when to control and when to relinquish control.

> The noncontrolling stance that comes from caregivers not imposing their personal needs or agenda onto patients also needs to be balanced by a feeling of control. ...
> The caregivers who are successful with caring are not afraid to take this control, yet at the same time, they know when to let go of control so that they can be responsive to [the other's] more subtle and subjective experience. Caregivers who become fixed in a position of control lose access to the human experience and are at risk for becoming dehumanized themselves. Those who are unable to gain access to their own power and control will be unable to fully express their caring because their technical competence will suffer (Montgomery, 1993: 117).

The third aspect of dialectical flexibility, openness, is the acceptance of "contradictions and incongruities" which arise in situations of human conflict and the mystery of the human condition. In other words expectations for black and white or cut and dried resolutions conjured under the mastery of professional hands must give way to a broader understanding of life. In her analysis, Montgomery commented that seasoned caregivers avoided working themselves into "an overexpansive view of their own obligations and abilities to meet all the unmet needs. [She assessed that] this idealistic overexpansiveness must be balanced with realism and humility" (Montgomery, 1993: 117). According to Montgomery, there is no "set of fixed personality traits" which can be attached to people involved with the practice of care to secure perfectly formulated

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interactions. A combination of balance, control and openness is what Montgomery refers to as dialectical flexibility. Finally, in all of the above four elements of care, Montgomery does not see caring as a solo venture.

Participation of others in decision making is a fifth and essential characteristic of maintaining a continuum of care, according to Montgomery, especially in the difficult circumstances of human tragedy. Andecdotes of situations in which a person's care for a dying person was carried out singlehandedly and unsuccessfully resulted in "despair" and "stark horror" for one medical caregiver because of a lack of compassion and commitment on the part of co-workers. The nurse's impression was that "the team simply didn't care enough to save them" (Montgomery, 1993: 121). A lack of mutual compassion for saving human lives in a medical team is tantamount to crime. The lack of cooperation may occur when the groups acceptance of the basic principle of respect for human dignity falters or is blocked by judgement. (For a similar example of uncaring guards with an inmate's life see Tadman, 1997: 200).

Montgomery's analysis draws from an examination of members of the medical field working together for the well-being of humanity. The above example illustrates one consequence of poor team work in an occupation designed to care. The restorative and transformative approaches to justice also require a group effort. Adopting a principle which protects human dignity provides participants with an underlying common purpose, yet allows for the freedom of multiple and innovative expressions in problem-solving (Boldt, 1995). This formula for social interactions can translate into care for the well-being of victims, offenders, and workers in the area of justice.

To summarize, caring for the purposes of ministering health care or justice requires a personal committment which begins with the adoption of a philosophy respecting human dignity. Such respect appeals not only to the physical, intellectual and emotional capacities of a person, but also calls on a spiritual nature, inherent in humans and existing at the core or centre of their being. Care is a joint venture of non-judgemental, emotionally honest relationships, not molded to suit one perspective or method of operation, but open to the diversity and uncertainty of human nature and life as transition.

Montgomery's analysis of caring outlined above can be favourably compared to a study published in 1968. Philip Selznick, chair of the centre for the Study of Law and Society at the University of California at the time of the C-Unit project, pinpointed five themes in this research which can be found in the introduction to *C-Unit: Search for Community in Prison* (Studt et al., 1968). Recorded as guidelines for implementing community as a model for behaviour in corrections, these principles also articulate a general position for justice as authentic morality. The first half of Montgomery's philosophy, "to recognize the wholeness and integrity of that which is human" resonates throughout these propositions. The practice of care identified here does not emphasize a spiritual nature of people. However, in the formation of and ongoing interactions between people exhibiting an awareness of and attentiveness to one another, respect for human dignity is clear. These five principles identified in the C-Unit study and recognized by Selznick are:

> 1) *The postulate of normality, competence, and worth.* If offenders are
> to be dealt with as human beings, it must be assumed that they are
> basically like everyone else; only their circumstances are special. Every

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administrative device that negates this principle, and any therapy that
ignores it, must be questioned and, if possible, set aside.

2) *Salience of the micro-world.* Men [sic] live out their lives in specific
settings, and it is there, in the crucible of interaction, that potentialities
are sealed off or released. The micro-world is the world of
here-and-now; if an inmates's future is to be affected, that future should
have a dynamic, existential connection with the experienced present.

3) *The poverty of power.* An administration that relies solely on its own
coercive resources can make little contribution to the reconstruction of
prison life or to the creation of environments that encourage autonomy
and self-respect.

4) *Order as tension and achievement.* Quiescent conformity imposed
from above is a parody of social order, not its fulfillment. A system that
validates the humanity of its participants, and engages their full
resources, accepts the risk of disorder and even, from time to time, of
searing confrontations.

5) *Justice as therapy.* A concern for fairness and civic validation should
permeate the entire administration of criminal law, including the daily
life of the prisoner. That treatment will be most effective which does the
most for the inmate's sense of self-worth and responsibility. Nothing
contributes more to these feelings than a social environment whose
constitutive principle is justice, with its corollaries of participation,
giving reasons, and protecting personal dignity (Studt et al., 1968: viii).

These five themes lay out a necessary framework for 'community' as a justice practice as

transformative justice. They fall within the context of care as Montgomery defines it, and

operate as authentic morality by maintaining respect for human dignity above all else.

These themes have sprung from a justice project operating on a Western conceptualization

of community prior to the introduction of restorative justice. As such, their presence is

testament to the existence of alternative methods available to North American minds with

all wrongdoers, Aboriginal and non-Aboriginal in the last thirty years.

Assuming an authentic morality, sustained through caring behaviour (by

professionals or non-professionals or both), daily interactions between people can suggest

justice as respect for human dignity. The second point Selznick makes speaks to the

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importance of relationships. Relationships in restorative justice which ignite repentence may be temporary, but in transformative justice, a model of internal change with people and how they work with others, interactions between people begin to shape the future. To reiterate Selznick's remark: "that future should have a dynamic, existential connection with the experienced present" (Studt et al., 1968: viii).

Important as interactions between people are, justice as community also suggests place, as well as place and people united. The following section explores several relevant dimensions of place.

Community

It is now possible to provisionally define community in light of the behavioural and philosophical delineations in the preceding section. *Community is human relationships forged by mutuality (giving freely without the expectation of direct reward) leading to care fostered by a principle of authentic morality.* However, community as "people" or "people interacting" can be further explored in regard to justice with the consideration of place.

Community as Place

Yukon Judge Barry Stuart, known for his work with sentencing circles, has said that "A community is not a place, it is people" (Stuart, 1997: vi). Kay Pranis, Restorative Justice Planner for the Minnesota Department of Corrections, expresses concern that

place not be left out of a definition of community. She states four reasons why community

of place should be considered in regard to justice issues.

> Community of place, geographic community (neighborhoods,
> villages) is not the only form of community, but it is important around
> the issue of crime for the following reasons:
> (1) Crime generally affects those living in the surrounding
> geographic area, so there is a need to repair harm in that community of
> place. Many people who were physically close to a criminal event are
> affected by that event, even if they have no relationship to any of those
> immediately involved. Generally, the geographic community around a
> criminal event has a stake in the resolution of that incident (Pranis,
> 1998: 43).

This first point implies that justice forums (a form of alternative justice which may

be held publicly to address the aftermath of specific crimes) include concerned citizens

from the immediate neighborhood, village, or city depending on the place and seriousness

of the crime.

> (2) In those communities most impacted by crime, urban
> neighborhoods, many residents do not have a lot of mobility. It is a
> luxury, related largely to income, to be able to choose your community
> in a variety of ways not related to the geography of where you live. So,
> in fact, community of place is still the primary form of community for
> many people, especially vulnerable people — those who are poor, young
> or old (Pranis, 1998: 43-44).

Indian reserves in Canada are an extreme case in point. According to the Royal

Commission on Aboriginal Peoples, sections of land reserved by the Crown for use and

benefit of status Indians are separated from mainstream society and can be likened to

inland islands. Combined with devastating government policies of assimilation, many

reserves have become socio-economic disaster areas where leaving is often not a viable or

comfortable option. Many Indian people know and identify with the reserve land as home

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and their heritage (Royal Commission, 1996: 59-63). Pranis's third point also relates to

reserves and poorer urban areas where children are often subject to violence.

> (3) The process of raising children is heavily influenced by the place
> in which they are raised. The creation of norms and expectations for
> children will be shaped by experience in the community of place even if
> there are strong non-geographic communities in the child's life.
> Community of place can be a significant determinant of delinquent
> behavior. So community of place is very important for prevention of
> crime (Pranis, 1998: 44).

Preventing crime through change to socio-economic conditions is supported by an

in depth Canadian Government investigation of inner city crime and First Nations

peoples. The study *Seen But Not Heard* was completed in 1994 by Carol La Prairie.

> The criminal justice system, particularly police and courts, may be
> responding more harshly to inner-city native people in some cities than
> in others. However, marginalization and alienation resulting from
> unstable and violent childhood experiences, coupled with a lack of
> education, opportunities, options, and a dependency on alcohol, are the
> real culprits in making people vulnerable to the commission of crime
> and involvement in the criminal justice system. To reduce this
> involvement, it is necessary to identify more specifically the needs of
> inner-city native people, and *to alter the physical, spatial and
> emotional/spiritual conditions in which they live both as children and as
> adults* (La Prairie, 1994: xv, emphasis added). ...
> [The researchers] found that inner-city native people are different
> along a number of social and economic dimensions, and that social
> strata exist even within the inner city. This debunks one of the long-held
> assumptions in much of the aboriginal criminal justice discourse and
> literature - that native people are equally at risk for the commission of
> crime and criminal justice processing (La Prairie, 1994: 76).

Where people live then, is a factor in how they relate to one another, and to some degree a

factor in their propensity to engage in activities which bring them into conflict with the

law.

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In her book *Penal Abolition* (1995), Ruth Morris argues that neighbourhoods which

are prone to criminal behaviour not be "restored", as restorative justice connotes. Never

having been socially healthy areas, she proposes they be transformed. She describes crime

as an "opportunity" for making changes to neighborhoods (Morris, 1995b: 71) by

addressing the causes of crime. Such changes can be seen as an answer to La Prairie's call

to "alter the physical, spatial and emotional/spiritual conditions in which [people] live

both as children and as adults" (La Prairie, 1994: xv). Transforming neighborhoods is not

the mandate of restorative justice as it has been presented thus far. According to Zehr

(1990), restorative justice focuses on the participation of victim and offender in resolving

an act of harm through the offenders taking responsibility and making restitution.

Alleviating harm and injustices beyond the criminal case at hand, rather, reflects the

concept of transformative justice.

The final point Pranis makes regarding community of place combines geographical

factors with how people work toward safety in that space.

> (4) For most people the sense of safety is related to place, therefore
> attempts to increase safety need to attend to place. One of the most
> important characteristics of safe places is community cohesion and
> sense of efficacy (Pranis, 1998: 44).

In regard to developing authentic morality, security of place can be seen as a requisite of

trust, promoting emotional honesty and a commitment to caring.

In conclusion, as a phenomenon of justice, Pranis regards community of place as

significant to addressing the impact and influence of crime in a geographical area,

especially where people have few options to relocate and are raising children in

neighborhoods prone to criminal activity. La Prairie's work reveals that place can be

significant in determining the degree of criminal interaction people have with the criminal justice system. Mechanisms of social control influence the perceived safety in a geographical area through their effectiveness and unifying qualities.

Whether affluent or poverty stricken, place can be seen as a possible barrier or facilitator of authentic morality and an influence on how people relate to one another. John McKnight raises the issue of problem-solving and care as aspects of community of place.

Community: Place and People

"A community is more than just a place. It comprises various groups of people who work together on a face-to-face basis in public life, not just in private" (McKnight, 1995: 118, emphasis added). McKnight describes various interactions which take place between people living together especially in regard to problem-solving, but also in regard to place.

McKnight's description of people in 'community' begins with formal associations at an electoral level, and moves to neighborhood or card-playing styles of gatherings where people "solve problems, celebrate together, or enjoy their social compact". Last of all he describes interactions in places of business at a street level (i.e. cafes, barbershops etc.) (McKnight, 1995:118). What defines these interactions as 'community' in McKnight's writing are some characteristics which come from an assessment he credits to a French count, Alexis de Tocqueville.

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De Tocqueville visited the USA in 1831. He observed that former Europeans were solving problems as organizations and McKnight quotes de Tocqueville as noting three characteristics of these groups.

> First, they were groups of citizens who decided they had *the power to decide what was a problem.* Second, they decided they had *the power to decide how to solve the problem.* Third, they often decided that *they would themselves become the key actors in implementing the solution* (McKnight, 1995: 117, emphasis added).

These three rules serve as a basis for building 'community' with the stipulation (in light of the requirements for an authentic morality) that "they" does not exclude minority groups who share the problem or those who will be affected by the solution. Equal ownership arises from determining the problem and finding the solution. This method of decision making correlates with Boldt's and Studt et al.'s description of authentic morality and can therefore be used to assess situations for the presence of community. Who has the power to decide the problem? Who has the power to solve the problem? Who implements the solution? Answers to these questions can establish whether community exists. Also, such inquiries can locate impediments to the presence of community.

Further to mutuality, honesty, equality, and an openness to questions and answers, these three construction tools for community can be considered "conditions" which can be "created" according Studt et al.'s definition of the practice of justice for people working or living together. People forming community can assume the above responsibilities or hierarchical power may be abdicated in favour of community decision making.

McKnight's main concern with the decision making of the justice system relates to prisoners and offenders as labeled people. Their exclusion from contributing to

problem-solving is indicative of their non-involvement in shaping authentic morality. He

suggests three ways of reintegrating excluded people back into 'community': on their

own, through family, or through a community guide who is a trusted individual

well-acquainted with the goings on of the social and geographical layout. This last method

can be seen as McKnight's main hope for the return of outcasts to an active role in the

'community'. It is also a step toward non-specialists exercising care instead of (or in

addition to) professionals' expertise.

McKnight's argument, as with previously discussed models of authentic morality

and care is that community must include all people working together on the same level,

removing barriers such as notions of superior and inferior citizens.

> ... [T]here is no competition here. To be in community is to be an
> active part of associations and self-help groups. To be in community is
> to be a part of ritual, lamentation, and celebration of our fallibility.
>   Knowing community is not an abstract understanding. Rather, it is
> what we each know about all of us (McKnight, 1995: 172).

Non-competitive interactions can be seen as endorsing equal participation. Also falling in

line with standards of an authentic morality, they represent a step in re-humanizing

ex-convicts through a process of reintegration. Community as "what we each know about

all of us" suggests people who exchange information through physical, emotional,

intellectual and spiritual contact (McKnight, 1995: 172). These are four ways of knowing

as a human experience and can reveal a common humanity (Montgomery, 1994). The

philosophy of acceptance of another for the sake of equality may be achieved, in part,

through humility. Acknowledging fallibility collectively as McKnight's description above

mentions, discourages self-righteous attitudes which potentially impede the establishment of authentic morality.

The role of a community guide is to bring about justice according to Studt et al.'s definition of "creating circumstances in which people can change the way they work together on common tasks" (Studt *et al.*, 1968: 280). The guide risks trusting in a gesture of mutuality, then builds on that trust, seeks and determines valid contributions which an offender has to give. After connecting him or her to an appropriate neighborhood contact, the role of justice liaison fades from the scene as the former outcast establishes further trusting relationships (McKnight, 1995: 119-122).

> The goal is not to create independence—except from social service systems. Rather, we are recognizing that every life in community is, by definition, interdependent—filled with trusting relationships and empowered by the collective wisdom of citizens in discourse (McKnight, 1995: 123)

McKnight's idea of embracing human fallibility can be favourably compared to Morris' vision of crime as an opportunity to transform lives and living situations. It also resonates with policies which accept conflict as a signal for citizens to work through a problem risking tension to achieve order (e.g. "order as tension and achievement" Studt et al., 1968 cited on pp. 54-55). The concept is not unlike pain in the physical body which triggers a need for medical attention. McKnight proposes interactive community as the hope for replacing the present day rehabilitation and ostracizing treatment of offenders.

> Working communities both prevent crime and heal criminals. Thus, the *possible* future will reach beyond allopathy, therapy, and even deinstitutionalization to what might be called recommunalization — a recognition that it is in person, place, and peers that possibilities of regenerative community occur (McKnight, 1995: 139, emphasis in

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original).

In summary, interactive community (i.e. community as place and people) combines a geographical setting (e.g. neighbourhood) with face-to-face relationships based on care and joint decision making. Reintegrating ex-inmates (or others considered outcast - see Giddens quote on p. 18) into community can be served by an interactive guide who is an intermediary between an individual and the greater whole. The guide provides a trusting link which, when care is forged with others, is no longer necessary (McKnight, 1995).

A Definition of Community

The initial definition of community can now be revised to include place and McKnight's emphasis on problem-solving and outsiders. *Community is human relationships forged by mutuality (giving freely without the expectation of direct reward) leading to care and fostered by a principle of authentic morality, where problem-solving involves members of groups in a place determining the problems, finding solutions and implementing plans.*

Community: Purely People

Pranis (1998) and McKnight (1995) argued that community of place directly or indirectly influences justice mechanisms (whether restorative or transformative). However, Studt et al. (1968) and Braithwaite and Daly (1994) both give examples within the justice system and alternative programs where the idea of community as "people only" arises. The prison, in addition to unsupportive families and neighborhoods, present

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opportunities for community to develop as solely interaction between people which may

or may not become associated with a particular place.

Studt *et al.*(1968) introduce 'community' as a justice model for running one unit of

a Californian prison (the C-Unit) where the general atmosphere is antagonistic and family

members are absent. The researchers proposed the following concept of "community" as a

model for one residential unit of the prison.

> Fundamentally, the Project conceived of the community in the real
> world as the social institution within which the basic moral code must
> develop in order to regularize the complex interactions among the many
> disparate and potentially conflicting interests that occupy an identifiable
> area. Community is the one form of human association that is both
> sufficiently comprehensive to include the range of roles, activities, and
> processes through which moral orientations are pervasively expressed
> and intimately enough related to individuals to impinge directly on
> patterns of behavior. ... And the community is the natural system that
> generates and shapes the array of socializing processes on which all of
> us depend for support in finding moral solutions to changing life
> problems. ...
> Morality is a reciprocal relationship and cannot be reinstated in the
> relationship between a person and his community after an offense unless
> both parties -the community as well as the offender- participate actively
> in healing the breach of confidence they have suffered (Studt et al.,
> 1968: 7-8, 6).

The terms "social institution", "complex interactions", "human association" and

"natural system" describe community as a working co-operative of people. Who the

people are - their occupations, cultural backgrounds, past behaviour does not determine

"community".This model specified that membership in the community was open, and for

the most part, obligatory (inmates and guards were assigned to the unit). The Project

> conceived of the role of member in a problem-solving community as
> a basic requirement for treating the social maladaptations of every
> imprisoned offender. ... [I]t had no criteria that would differentiate
> inmates who needed to experience acceptable problem-solving within a

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community from those who had no such need" (Studt et al., 1968: 282).
In other words, membership was randomly selected from among the inmates including the recent arrivals who may not have been incarcerated previously. Guards assigned to that block and researchers were among community members in C-Unit.

The prison as "place" lacked freedom in its structured obligatory activities as well as in the sense that the majority of the population could not leave. Researchers pointed out that an advantage of a controlled schedule was an assured attendance at meetings. The people themselves came from various backgrounds, but held a similar goal: release. Coming together as strangers, they created a social environment not necessarily conducive to trusting relationships. Forming community was a research goal, not a common desire for inmates or guards. As "place" for developing community, the prison provided researchers with "members" whose sole qualification was that they reside at C-Unit. The physical environment was similar for everyone.

Problem-solving, described by de Tocqueville as a tri-part exercise, is a process which lends itself for use in prisons (where the administration is open to such an experiment) or in society generally. Studt et al. based their ground rules on moral principles which they considered respectful of human dignity. To establish community, members had to come to accept and abide by the rules set down by the research team. The Project tested techniques of problem-solving which gave all players opportunities to participate in decision making as a part of their daily lives (over which they did have some control). Following a principle of justice based on recognition of human dignity

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invoked stipulations of honesty and listening to others with a goal of establishing trust and respect for fellow human beings.

Although somewhat limited in its flexibility, because of hierarchical levels of prison administration which were not always co-operative, the prison setting was conducive to testing 'community' as a means of changing ways in which people relate to or work with one another, i.e., community as people. (C-Unit results are discussed later under transformative justice programs). In the C-Unit example, community as people is an exchange of ideas, guided by a principle of respect, and developing as order derived through honest communication.

In their discussion of the conferencing technique, Braithwaite and Daly (1994) raise the issue of care as a significant factor in bringing together people as community to address an offender's wrongdoing. Conferencing is an alternative justice practice rooted in Maori philosophies of correction which was adopted by government for working with young offenders in New Zealand and has since spread to policing in Australia and North America. In the conferencing technique, Braithwaite and Daly (1994) identify community as people who care.

> The strategy does not rely on fixed assumptions of where community will be found. It does not assume that there will be meaningful community in the geographical area surrounding an offender's home. Nor does it assume that members of a nuclear family will be a positive basis of care, though it always attempts to nurture caring in families. It does not assume that members of the extended family will be caring and effective problem-solvers. It does assume one thing: if a group who cares about both the offender and the victim cannot be assembled, this means the conference coordinator is incompetent, not that these human beings are devoid of caring relationships.
> The challenge for a conference coordinator is to find the people in an offender's life who really care about him or her. ... The community

conference ... empowers particular communities of citizens who care
about particular people to come up with unique solutions in ways that
seem culturally appropriate to those people and circumstances
(Braithwaite and Daly, 1994: 195).

In the above description of community, Braithwaite and Daly do not acknowledge

place as community. In fact, community is assembled by a coordinator who is skilled at

identifying care - care for the offender and care for the victim. Braithwaite and Daly's

insistence on caring people to be present at an offender's conference under the direction

of a co-ordinator infers that participation drawn from a geographical representation of

society may be questionable as an agent of restorative justice. As rules of authentic

morality may be difficult to implement when family members hold principles conducive

to punishment, place is not always a reliable source for community members.

Care, defined earlier in this chapter, and described by Braithwaite and Daly,

provides a three-fold solution to a geographical absence of community. People who care,

respecting both offender and victim, introduce a means of continuing relationships

respectful of human dignity after a conference session finishes (Braithwaite, 1998). As a

meaningful relationship, care can persist even in the complexity of a multi-faceted social

environment. Where punitive measures and ostracizing mentalities predominate, care has

the potential to act as a pillar of trust in the life of an offender (Morris, 1989; 1995b;

Montgomery, 1993). Care is therefore recognized by restorative justice advocates as an

invaluable strength for reintegrative shaming (Braithwaite, 1989; 1998; McCold et al.,

1998; McDonald, et al., 1995). As was suggested in the review of Montgomery's work,

care can also be seen as an aid to conversion, a useful tool in conferencing where one goal

is creating an atmosphere for offenders to understand crime from a victim's point of view.

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Montgomery's description of human care and Selznick's five elements of justice identified in the C-Unit project (see above pp.35-6), can be considered a foundation for community as people, outside and within institutions respectively. When location is an uncooperative factor in establishing community (i.e. a neighborhood or family household where little care can be found) or when location is highly regulated (e.g. a prison), the Braithwaite and Daly and Studt et al. propositions cited above suggest the possibility of community as purely people. In other words, authentic morality can be developed in two ways among people: first through certain problem-solving rules and second, in the practice of care, that is, caring people instilling the principle of respect for human dignity in others through their words and actions. To reiterate, "community as people", may be achieved in human relationships on a daily basis either through decision making and follow-up where care is present, or in more structured settings through rules and exemplary attitudes which advance authentic morality. Having alluded to transformative justice in the discussions of morality, care and community, it is now time to define the concept as a model of justice.

Transformative Justice

One of the first alternative justice advocates to coin the phrase "transformative justice" is Ruth Morris. She critiques Zehr's argument for restorative justice as "not enough" (1995a). Responding to the challenge for more, she introduces transformative justice, illustrated in part in Table 2.

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Table 2: **Comparison of Three Justice Systems**

Type of System	Sees Crime As	Sees Problems Beginning	Goal
Retributive Justice	A violation of the state	With the crime	Punishment, deterrence, protection and rehabilitation
Restorative Justice	Violation of people and relationships	With the crime	Restore wholeness to victim and responsibility to the offender
Transformative Justice	Violation of people and relationships that offers an opportunity for transformative healing for *all*	With the causes of the crime	Treat crime as an opportunity to find healing for both victim and offender

(Morris, 1995b: 71, emphasis added)

While Zehr's conceptualization (see above pp. 25-26) outlined two ways of

understanding and dealing with crime and people implicated in criminal conficts, Morris

identifies and suggests a third justice form. Differences between restorative and

transformative justice can be discerned by noting what questions are raised in Morris'

explanation.[2] Whereas restorative justice questioned "To whom does the problem

belong?" and "How is a wrong to be righted?", transformative justice looks at the causes

of the crime. In doing so this method extends the ownership of the problem to "*all*".

Presumably "all" refers to society in general, and more specifically, victims, offenders,

their supporters and those who contribute to defining problems, finding solutions and

implementing solutions. Based on this observation, "Why is harm occurring?" can be

seen as a transformative justice question. The offender and victim bring to light the

difficulties which need to be considered. A second transformative justice question, "Who

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[2] Morris describes the importance of what questions are asked in regard to issues of justice in her book *Penal Abolition* (1995): 114-5.

is affected?", inquires into relationships "to find healing for both victim and offender", which is the goal of tranformative justice according to Morris.

Whereas retributive justice has described a punitive state-run system, and restorative justice promotes a principle that "wrongs must be righted" with the victim and offender owning the problem and taking part in its resolution, transformative justice brings together concerned parties to address the causes of the crime and prevention of further wrongdoing. In addition, the offender is seen as one who may also be a victim. Alleviation of guilt through forgiveness becomes a possibility and a desirable step in the process of justice. Even when forgiveness is an unattainable step, the healing of memories in lives with tragic childhood circumstances is an area of consideration.

Rupert Ross describes how offenders, when perceived as victims as well as perpetrators, may require time and/or counselling not only to see differently, i.e. to recognize the harm in past actions, but to reconcile pain or abuse in their own past (Ross, 1996; Morris, 1995b). Ross's observations come from his experience with the people of Hollow Water First Nation. In response to very high numbers of men with sexual assault charges, a local committee of the Hollow Water First Nation developed and established a means of working with men as victims before expecting them to accept responsibility for their wrongdoing as offenders (Ross, 1996: 173-198).

This expression of justice does not remove responsibility from the shoulders of the perpetrator. Making amends and seeking forgiveness remain important goals in transformative justice as they lead to the alleviation of guilt and the possibility of becoming a productive member of society. However, justice "seen as an opportunity for

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transformative healing for all" implicitly calls for modification in relationships (Morris, 1995b: 71). Altering the ways people relate to one another generally, may be a key to addressing "healing for all". Morris asserts that

> [t]ransformative justice is a better approach for all parties involved in the triangle of crime: victims, offenders and community. It prioritizes responding to the challenge of crime creatively in a way that transforms the problem of crime into an opportunity (Morris, 1995b: 70).

The "opportunity" of crime includes the offender in the healing process as well as others who have and may not have been directly implicated in the tragedy or mistake of wrongdoing. To heal, or bring about change in an offender (e.g. from attitudes and actions which harm others to ascribing dignity to others), is to inquire into the life - the people, the place, the history - which led to the formation of a person and eventually to the criminal activity (Ross, 1996). Healing also involves replacing uncaring relationships and behaviours with caring living conditions and interactions.

Transformative justice can be described as a "creative" response to crime. "Creative" connotes a sense of non-standard or non-uniform procedures, and outcomes which cater to the people and places at hand. As noted earlier, Braithwaite and Daly described caring supporters as "com[ing] up with unique solutions in ways that seem culturally appropriate to those people and circumstances" (1994: 195). The phrase "culturally appropriate" speaks to situations in which cultural considerations have formerly been ignored in favour of the rule of a dominant class or culture imposing its standards over others, i.e. synthetic morality.

Creative solutions in transformative justice implicate transition not only for individuals within their own culture, but modification in the principles which inform

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relationships in society generally. With crime proposed as an opportunity, the

relationships which are directly implicated for change are links with justice workers and

the system they represent and bonds with the people present in the life of the offender and

victim on a regular basis. Links with justice workers may have to become grounded in

principles of authentic morality or, in the case of colonial power imposed on First

Nations, rules of synthetic morality relinquished to the control of Aboriginal systems.

Bonds with others, according to Ross's investigations

> are never static. Instead, they are always in the process of changing.
> Where the focus shifts away from static "things" to the relationships that
> flow between them, the world itself becomes a much more fluid place,
> and we have to adapt accordingly (Ross, 1996: 65).

Changing relationships of people whose behaviour has been criminalized can be

done through changing the way we live with others, Ross explains. Relationships based

on non-judgemental care bring about healing through fostering responsibilities to others.

> The assumption [according to First Nations' teaching] is that this is
> the most effective way to teach "lost" people that everything in
> Creation, including them, survives primarily because of mutually
> supportive relationships with everything else. Once that is understood, it
> is a short step to understanding that each being has a responsibility to
> contribute to the health of all those relationships, rather than just taking
> away as they please (Ross, 1996: 95).

Morris likens Aboriginal justice methods she has observed to her definition of

transformative justice (Morris, 1995b). Although she does not refer to a First Nation in

particular, she mentions the eagle feather used as a talking piece (she or he who holds the

feather speaks and then passes it on around the room). Morris does not elaborate on the

sources of these Aboriginal ideas and practices.

Such information is available in several forms. Ross (1992; 1996) and Ryan (1995)

and this research sought out oral teaching from existing peoples who remember or

practice ancient methods. Aboriginal peacemaking as a method and as a teaching is

occasionally articulated into a book form (Ross, 1992; 1996; Crowshoe and

Manneschmidt, 1997), in the periodical literature (Bluehouse and Zion, 1993; Bluehouse,

1996; LeResche, 1993; Harris, Sachs and Broome, 1996; *Justice as Healing* - Newsletter;

Ryan, 1995; Haberfeld and Townsend, 1993), and in formal practice (Stuart, 1997; CBC

Radio, 1996; Hollow Water; 1995; Huber, 1993; R. v. Morin, 1994; R v. Rope, 1995; R.

v. Sellon, 1996).

Insight into how techniques such as circle justice differ in practise from VORP and

other mediation methods can aid in further distinguishing transformative justice from

restorative justice. Transformative justice is a very recent topic of discussion in the

alternative justice field and little has been published regarding its character as a Western

concept. In the first sections of this chapter, *tsedeka* and eunomic law revealed a concern

for the alleviation of guilt and community acceptance of the wrongdoer. Boldt's definition

of authentic morality, the C-Unit project and Montgomery's work contributed to

transformative justice in recognizing human dignity as a standard for treating others or as

a principle of justice in problem-solving.

In a recent presentation in Minniapolis, Kay Pranis, who has worked extensively

with alternatives to the mainstream justice system in Aboriginal and non-Aboriginal

settings, spoke to the question of how she perceived circle justice differing from

conferencing techniques. Her remarks are useful in building a case for transformative

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justice as different from restorative justice. She offered the following distinctions

regarding characteristics of Yukon circle techniques and philosophy when compared to

her observations of conferencing (a now popular North American mediation justice

alternative):

> I. The use of a "talking piece" (an object which is passed to everyone
> and when held, signifies that person has the floor). Its use makes the
> facilitator role in conferencing "less".
> II. More community is involved. VORP focuses on offender, victim and
> mediator, conferencing stresses family members and caring friends
> directly connected to either party and Pranis' experience with circles
> includes anyone willing to participate. Justice Stuart's earlier comment
> that "A community is not a place, it is people" reflects this philosophy.
> III.The discussion may go any place, not just pertain to the incident.
> IV.There is a qualitative difference in that in the circle the person is
> loved first, and out of appropriate loving comes accountability; in
> conferencing, a shift to accountability can occur as a first priority.
> V. Metaphorically speaking, in a circle the problem is in the centre of
> the circle; in conferencing the person making mistakes is in the centre
> (Notes from Pranis lecture,1998b).

Beginning with the first comment and working down through the list of Pranis'

observations, it is possible to articulate characteristics of transformative justice as they

have been raised in previous sections of this chapter. Transformative justice: 1)

establishes equality among members (Boldt, 1995; Studt et al., 1968; McKnight, 1995), 2)

ensures membership and participation for problem-solving is open (Studt et al., 1968), 3)

may indicate socio-economic needs in the community of place as it examines causes of

the crime and issues of importance that may "not just pertain to the incident" (see above

number three) (Pranis, 1998; Morris, 1995b; La Prairie, 1994), 4) recognizes a spiritual

factor present in the caring act that has the potential to correct and bring about change in

offenders' actions (McKnight, 1995; Montgomery, 1993), 5) accepts fallibility as human,

common to all. Focusing the discussion around the problem rather than the offender is a sign of addressing collective ownership of the problem while determining a means for the offender to be free from guilt (McKnight, 1995; Bianchi, 1994).

These five characteristics describe transformative justice as compiled from relevant Western sources. They have not been recognized as the norm in Western practices. Pranis' comments provide a cursory response from a critical eye observing differences between cultures of Aboriginal or Western origins according to her observations. What she has observed reflects a way of being, brought to the justice process. Transformative justice therefore can be seen as community and exists as care executed within authentic morality.

Further insights into Aboriginal philosophy and traditional ways of life (which have not been eradicated by the dominant society in North America) may further corroborate with transformative justice. Aboriginal philosophy is examined in chapter four.

Alternative Justice: Studies and Reports

Among the initiatives which claim "community" as a component of justice, three models of justice are in evidence: the retributive model, the restorative model and the transformative model. Though clear cut models are unlikely, given the complexity of human interaction, programs can be loosely categorized according to characteristics which define the three forms of justice: the underlying principle, who is involved, the manner of decision making and the goals.

A Retributive Example

Occasionally what is declared "restorative" justice takes on a retributive face.

Retributive justice is based on a principle of "an evil may (or should) be repaid with evil"

(Eckhoff, 1974: 142) and sees punishing the offender as payment for the crime. Decision-

making involves the more powerful over the less powerful without equal participation.

The values of the people offering a restorative program may influence the methods used

to work with offenders if the cultural values held by those in charge are not restorative.

For instance, teens may be met with the "wrath" of the community representatives who

have an agenda to punish as a deterrent not unlike the retributive court system (Canadian

Press, 1995). Umbreit explains that a restorative sense of justice is weak in North

American culture where retributive measures are maintained "even at the cost of

addressing the direct interests of the person violated by the offense" (Umbreit, 1995a:

270).

As Pranis points out in her fourth comparative observation regarding Aboriginal

and Western justice alternatives, a cultural slant may affect the outcome of a group

decision. The following program seems to begin with a non-punitive, accountability-first

mandate, but a desire to "teach the offender a lesson" may sometimes result in

antagonistic, punitive decisions.

Youth Justice Committees

In 1996 there were a total of forty-three Youth Justice Committees (YJC) in Alberta

which were instigated by the RCMP beginning in 1993 and have been located, for the

most part in rural areas of the province (Barsch, 1996). Originally conceived of as a circle form of conflict resolution, the Lethbridge YJC process was studied by the Native American Studies Department at the University of Lethbridge under Russell Barsch (1996). This investigation concentrated on Native professionals' and parents' responses to the YJCs in Lethbridge where the program has been in operation since February of 1995. There, a committee of volunteers divided into several panels of four to six persons each work with youth who are selected through the police and approved by the Crown for this Alternative Measure's program. Charges, though merited, are not laid unless the youth unsuccessfully meets the requirements of an agreement drawn up by the panel. Family members of the offender are encouraged to attend and are seen by some committee members as a means of "get[ting] a better picture of the total child and his or her environment" (Gallant, 1996: A3). Police are not present at the sessions unless on a volunteer basis as a community member.

The Barsch study stated that the "procedures and sanctions of the YJC do not appear conciliatory or rehabilitative in Native eyes" even though the program started out as an offshoot of an experience the regional director of Native Counselling Services Association had with a Native YJCs in Slave Lake. The Lethbridge program began in 1995 and is perceived by "Native professionals ... familiar with the Lethbridge YJC" to be "dominated by the paradigm of punishment rather than healing", paying "minimal attention to the victim and ... not involving the family or community sufficiently in decision making or follow-up" (Barsch, 1996: 4).

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Though the tone of justice sessions likely varies according to the panel members present, some newspaper articles indicate that the committees do advocate a restorative component to their work (Gallant, 1996). According to Barsch's representation, however, Youth Justice Committees can be categorized as a retributive style of justice because of a lack of victim participation, the use of punitive measures and directives coming from committee members rather than consensus decisions which involve offenders, victims and their supporters. Also, the selection of candidates (offenders) which occurs at the level of policing and courts (Crown prosecutor) is not an inclusive technique, as some people are chosen and others excluded from the option. According to Studt et al. (1968), a program which sees every offender as a community member functions under a morality which is authentic. In the case of YJCs, panels appear to replace judges in the sentencing of punitive measures.

From Retributive to Restorative Justice

A Policing Option

According to Judge Heino Lilles of the Yukon Territorial Court, in several English speaking countries, namely New Zealand, Australia and Britain, police have implemented a "cautioning" scheme which involves "a senior officer trained in young offender matters" discussing consequences of criminal behaviour with the youth and his or her parent(s)/guardian at the police station (CBC Radio, 1996: 38). In these three countries, apprehended youths who admit to their guilt and receive cautioning comprise fifty to seventy per cent of all young offenders. The remainder are charged. Lilles reports that

over fifteen years of experience with police cautioning techniques in Australia show that only fifteen per cent of cautioned youths faced further apprehensions (CBC Radio, 1996: 38). Although this technique does not involve the victim, it does involve the youth's family.

Diversion programs in Canada were devised to prevent youth from becoming labeled "delinquent" and have been active since the 1970s (Bala *et al.*, 1994: 77). Referring offenders to a program via police or the crown prosecutor saves money and usually removes the youth from the court process (acting like a police cautioning scheme). However, diversion occurs after charges have been laid (setting paperwork in motion) and is used, according to Lilles, with only fifteen per cent of young people apprehended by police (CBC Radio, 1996: 38). The degree and ways in which family is involved in diversion programs is not standardized.

The policing option consists of restorative justice characteristics as well as transformative elements in the form of care. The offender is addressed in direct relation to the crime. However, the family's involvement provides a tie to his or her life beyond the crime. A major influence is the law, represented by the authority and training of the police officer. The family's presence serves as a link from the criminal event to the ongoing accountability of the offender. The success of the Australian program and other findings (see Bala *et al.*, 1994) suggest that the majority of youth crime is not of a life-long serious nature. The single cautioning action from police, which includes the witness of family, seems to operate as a timely and adequate means of deterring young people from further conflict with the law.

The police option does not involve the victim, and so deviates from the restorative

justice model. However, the involvement of family necessarily changes the hierarchical

authoritarian nature of retributive justice to one which leans toward a corrective (i.e. not

laying charges, but training officers to use mediation interventions) and reintegrative style

of justice as the wrongdoer is with family and returns to family life.

Crnkovich

Mary Crnkovich (1996) reports that the first sentencing circle held in Nunavik

Region of Quebec in 1993 was called for by a provincial judge with "no explanation

provided to the community about what this circle was supposed to so [sic], or where the

idea of a sentencing circle originated" (1996: 160). There was little preparation except for

the work of the community's mayor choosing and contacting appropriate participants.

Although the discussion regarding sentencing options was intended for the group, final

decisions regarding the sentencing were "reserved to the judge" (Crnkovich, 1996: 165).

The central question the circle was addressing was the offender's future in regard to

his possible return to the community. This focus suggest a non-retributive intention on the

part of the judge. According to Crnkovich's observations, however, "there was virtually

no discussion about the harm suffered by the offender's wife, children and family

relations because of his actions" (1996: 167). The apparent imbalance of attention toward

the offender and away from the victim calls into question the restorative nature of the

circle. The intention to avoid punishment in favour of addressing the offender's needs

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implies a restorative process. However, two factors in the above account preclude the

presence of restorative justice and community as justice.

Although victim and offender are present, emotion was not freely expressed by the

victims (in this case the offenders wife and children). Second, the attempt of the

non-Aboriginal judge to implement a process which was unprecedented and unfamiliar to

those in the room indicates problem-solving decisions were not a result of a collective

effort resulting from ownership of the problem. According to Crnkovich's report on this

first circle, it cannot be considered more than an attempt at restorative justice.

Restorative Justice Programs

Kay Pranis, restorative justice planner for the Minnesota Department of Corrections,

who works with circles and a technique known as "conferencing" (FGC), explains how

the equality for decision making processes can occur with victims and offenders. The

restorative technique she refers to is reaching agreements through consensus. Victim and

offender participate in the process.

> Consensus decision making requires all participants to pay attention
> to the needs and interests of every other participant so that an agreement
> might be reached. ...
> The experience with both conferencing and circles teaches us that
> ordinary citizens do not need complex training to be able to sort through
> information from a variety of perspectives and pick out the most critical
> issues and craft ingenious solutions. Democracy is undermined by
> dependence upon professional classes to analyze and solve community
> problems. Conferencing moves responsibility and authority back to
> community members, especially the victim and offender and their
> supporters (Pranis, 1998: 55-56).

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The problem of wrongdoing in a restorative "paradigm" (Zehr's descriptor), leads to the inclusion of both offender and victim to directly address and attempt to mend the brokenness of their relationship. Although Pranis mentions supporters, restorative justice techniques necessitate only the representation of the victim (in person or otherwise), the presence of the offender, and participation of a mediator or co-ordinator. The latter figure is guide to the terms and outcome of the agreement.

Victim Offender Mediation

In an article reviewing Victim Offender Mediation (VOM) in the US, Umbreit (1995a: 270) explains how mediation in justice differs from other mediation practices. His insights aid in understanding the general character of VOM. The people concerned have not usually met before. Additionally the conflict is clear-cut often with an admission of guilt from the offender. The roles of victim-offender are defined, though possibly unbalanced by age (offenders are usually youths or young adults) and in the case of young offenders, unevenness may exist in confidence or communication skills. The victim's presence is voluntary and to avoid revictimization, time and place are chosen carefully so as not to "violate their sense of what is safe, appropriate and convenient" (Umbreit, 1995a: 270). Sessions are time limited and oriented toward problem-solving. The emphasis is usually on restitution and sharing information. Though emotions are often a part of the sharing process,

> far less emotional and historical baggage is present [than in other
> mediation conferences]. During the mediation process, the prominent
> dynamic is one of breaking down stereotypes and related fears rather
> than addressing issues of betrayal and mistrust that are rooted in highly

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charged emotions and/or lengthy prior relationships" (Umbreit, 1995a: 270).

However, mediation techniques do not necessarily look at family needs as they may relate to the crime, or social problems in the broader society (Kitchener, 1997).

Mediation as alternative justice now exists in several Western cultures as well as enjoying extensive use in Japan's mainstream justice system (Haley, 1995).[3] Following is a list of countries with the respective numbers of VOM programs running in 1995: USA with 125; Norway with 54; France with 40; Canada with 26; Germany with 25; Finland with 20; England with 18; Austria with 9; Belgium with 8; and Scotland with 1 (Umbreit, 1995a: 265). Limitations placed on VOM, such as meager government funding and restricted referrals (Umbreit, 1995b) impede its growth and effectiveness.

Victim Offender Reconciliation Program

A type of VOM, Victim Offender Reconciliation Programs (VORP), began with an episode in the 1970's in which a judge in Kitchener rather unorthodoxly took a probation officer's suggestion that two youths meet, apologize and repay their victims on a number of vandalism charges (CBC Radio, 1996: 60). Since this first knock-on-the-door style of meeting, the technique has evolved into the Victim Offender Reconciliation Program (VORP) and has been nurtured and expanded by Mennonite Central Committees in Canada and the US.

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[3] In the case of Japanese justice, the cultural attitude toward the criminal as one who is accepted, but has gone astray, creates a situation of justice as community and will be discussed further under transformative, rather than restorative justice.

The Kitchener program has not been the subject of formal research (Kitchener, 1997), although a reflexive account and commentary on the program in book form is forthcoming. In Canada, the Kitchener program has one of the most extensive programs for volunteers, devised through the Mennonite centre, providing one hundred and sixty hours of mediation training (Kitchener, 1997).

In its present format two trained mediators are assigned to a case; they contact the offender and victim by telephone to arrange separate meetings and from there set up a plan to come together in a neutral place. Victims unwilling to personally meet the offender might give a statement or write a letter in order for the mediators to relate their story and arrange restitution. Attendance of family members and supporters is optional. Mediators do not generally share personal stories, but encourage the two sides to hear each other's experience. One outcome of VORP is that victims and offenders are perceived to see each others' lives differently (Kitchener, 1997). The victim is more likely to receive answers to questions about the crime as well as restitution, and for both sides, there is a sense of fairness (Zehr, 1990:167 citing Galaway, 1988; CBC Radio, 1996: 62-65).

Zehr reports that generally 50 percent of all North American cases referred to VORPs meet. Of those, he says, almost 100 percent reach an agreement and more than 80 or 90 percent of the contracts are carried through. According to early studies, victims and offenders generally "find satisfaction in participating" (Zehr, 1990: 164-5). In a small Midwestern study (Coates and Gehm, 1985) and Canadian study in Langley, B.C. (cited as Gibson, 1986) very high percentages of both victims and offenders felt the sessions

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worthwhile (cited in Zehr, 1990: 166-167). The Langley project, which deals with violent crimes, has continued to be favourably received by offenders and victims alike, according to a 1995 submission to the Solicitor General (CBC Radio, 1996: 62).

A recent study entitled "Mediation of Criminal Conflict" (Umbreit, 1995b) examined various mediation programs from 1991-1993 in four Canadian centres: A VORP program serving Langley and Surrey with 851 cases referred, 331 seen; a Youth Advocacy and Mediation Services Program in Calgary dealing with 91 out of 258 referred; of the 2,647 referrals to Mediation Services: A Community Resource for Conflict Resolution in Winnipeg, 1,055 met; and Ottawa's Criminal Court Mediation Program mediated 259 out of 689 referred cases. Winnipeg and Ottawa's accused/offenders were mostly adults while Calgary and Langley were generally youth programs. The largest minority culture for both victims and offenders was Aboriginal. (Umbreit, 1995b: VIII).

Umbreit's findings were not unlike Zehr's figures. Overall, 39 per cent of the cases referred accepted the option of mediation. In each city agreements were reached 90-99 per cent of the time, the Langley project being the most successful. In a comparison of mediated and non-mediated referrals, satisfaction for offenders and victims was higher in the mediated cases. Crimes included assault, vandalism, theft and burglary.

Data collection included: 2 months of post-mediation phone interviews with both the victims and offenders who chose mediation and those who declined (610 in all), direct observation of mediation sessions (24), a review of written reports, as well as interviews with staff and mediators (multiple) and CJS officials (45). Researchers examined several

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topics: referrals, client satisfaction, voluntary participation, perceptions of fairness, fear of revictimization, and concerns.

The report concluded that the high levels of client satisfaction found in this research agreed with previous findings in the US and Europe; that the quality of justice for the concerned parties can be "significantly enhanced through expanded use of mediation in criminal conflicts"; that mediation programs take pressure off courts and are cost saving; that accountability of the offender to the victim is more direct; that when they are active participants, victims gain "a greater sense of closure" and that mediation addresses a "wide range of criminal conflicts" and is deserving of greater government support and public financing especially in the area of property offences and common assaults (Umbreit, 1995b:XXI). Using client satisfaction as a measure of success in restoring wholeness to the victim and responsibility to the offender, VORP appears to be an effective restorative justice tool.

From Restorative to Transformative Justice

Family Group Conferencing

Family Group Conferencing (FGC) originated as a Maori concept of conflict resolution and was adopted in 1989 by the New Zealand government to deal with most young-offender cases (Maxwell and Morris, 1993). With an admission of guilt and for which charges were not "most serious", conferences have become a legislated alternative to retributive proceedings (Ross, 1996: 19; Maxwell and Morris, 1993). With further adaptations in the area of police and mediator training, FGCs are now in operation in

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urban areas (Wagga Wagga, Canberra) in Australia and have recently been spreading to

communities in the United States and Canada (sometimes called "REAL JUSTICE

Conferencing") (McDonald et al., 1995; AJLN, 1997; McCold and Wachtel, 1998).

Recently Braithwaite and Daly (1994) suggested applying this method to more

serious cases such as those involving violent men. A description of the FGC model as they

understand it follows:

> The assembling of people who care about and respect the offender fosters
> reintegration (or healing in Maori terms) of social relationships. In a
> successful conference, the offender is brought to experience remorse for the
> effects of the crime; to understand that he or she can count on the continuing
> support, love, and respect of family and friends; and to agree on a plan of
> action to prevent further harm. All conference participants are given the
> opportunity to explain how the offence affected them and to put forward
> proposals for the plan of action. The offender and his or her family members
> then propose a plan, which is discussed and modified until it is agreeable to
> all FGC participants, including the police (Braithwaite and Daly, 1994: 193).

The family/supporter role in this case is an essential component to the gathering and

reconciliation of the offender because of the feelings of acceptance it can provide the

offender. Braithwaite sees the influence of family and those who care for the offender as a

central force in shaming he associates with a need to repent.

> Shaming is more likely to be heeded when undertaken by a loved one
> whose respect and affection it would be more painful to lose. Thus, the
> more loving the family, the greater the possibilities for shaming to take
> over completely from more explicitly punitive forms of discipline. ...
> There is evidence that delinquents are more likely to have parents
> who never praise them for things that are well done (Chapman, 1985).
> Keys to the art of ensuring that shaming is reintegrative rather than
> stigmatizing are therefore to preserve the continuum of love even in the
> face of the conflict and to leaven shame with praise (Braithwaite, 1989:
> 167).

An overall acceptance of the wrongdoer corresponds to Studt et al.'s position on open community membership, an aspect of transformative justice. However, focussing on the wrongdoer rather than the social circumstances is not consistent with transformative justice. Depending on the nature of the crime and the offender, reintegrative shaming may fall short of determining and addressing the causes of the crime.

Follow-up to the FGC meetings has been reported as somewhat informal with family members or caring friends continuing to unofficially provide positive contact with and if necessary, supervision of the offender (Braithwaite, 1998). Making "care" for the victim and/or offender a prerequisite for choosing participants in the decision making and implementation of solutions, relates to McKnight's argument that (often impersonal) service professionals should be augmented by or replaced with caring people who build 'community' (McKnight, 1995).

> Institutionalising community conferences ... is a route of crime control that is not dependent solely on the courage or tenacity of victims. The proposal is unreservedly for net-widening, except *it is nets of community rather than state control that are widened.* It is important that a court processing option is kept in place ... (Braithwaite and Daly, 1994: 201, emphasis in original).

MacDonald et al., authors of a manual for conferencing, *RealJustice Training Manual: Coordinating Family Group Conferences* (1995), do suggest "further support" following a conference to attend to areas of difficulty aside from the crime itself. Their suggestions are for both professional help (in the case of drug abuse and psychological disorders) and informal/group oriented solutions when problems are related to belonging and self-worth (MacDonald et al., 1995: 86-88). The focus remains on the offender (and possibly the victim). Transformative justice explores the causes of the crime. As Pranis

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(1995b) noted metaphorically, in a circle the problem is in the centre of the circle; in conferencing the person making mistakes is in the centre. The bigger problem in transformative justice is seen as existing with the cause of the wrongdoing.

The conference model seems to implement the three steps of problem-solving which McKnight cites from de Tocqueville as descriptive of community, i.e., to define the problem, to determine the solution to the problem and to participate in resolving the problem. When FGCs are used in institutions other than justice, in education, for instance, defining the problem falls within the power of the conference. Conditions exist in the justice system, however, which can prevent FGCs from having the power to determine the problem. Problems in justice begin with the determination of guilt according to a criminal code, not necessarily according to the shape of the problem as it is revealed at the conference. There are other indications in FGCs, however, of the expression of community in ownership of the problem and in the presence of care.

Consider the following characteristics of FGCs as community. FGCs depend on care-centred relationships (initiated by mutuality) in a non-hierarchical setting. The experience of "remorse" for the crime indicates ownership of the problem. The people who contribute to solving the problem and deciding on the solution do so without direct reward. Ideally their offering of "continuing support, love and respect" provides the necessary environment to follow the restitution plan to a successful closure (Braithwaite and Daly, 1994: 193). A difference between VOM and VORP projects and FGCs is the necessary participation of family members or caring supporters in the latter. While it is

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not transformative justice, conferencing illustrates a stronger model of community as justice.

Reintegrative shaming as a justice tactic has been influential with several agencies as well as with policing departments in the U.S.A. and Canada. Training programs lead to adopting conferencing in school and policing settings (MacDonald et al., 1995; McCold and Wachtel, 1998). As with all restorative justice methods, emotion is expressed in conferencing.

> Critics may object that allowing anger and abuse harms a young person's self-esteem. If conferences were characterized only by these emotions, they would be detrimental. Fortunately conferences allow participants to direct their anger and rage toward the actions of the offender, while leaving the offender with a sense of worth (MacDonald et al., 1996: 75).

FGCs have apparently contributed to lower recidivism rates and played a part in reducing youth crime in New Zealand (Maxwell and Morris, 1993). Numbers of youths in custody dropped from 2712 in 1988 to 923 in 1992/93. In addition people aged 17-19 prosecuted by the court was 27 per cent less in 1992 from 1987, an indication that FGCs have an effect on the numbers of youths who go on to adult court (cited in Ross, 1996: 23). However, FGCs do not work in isolation. The drop in incarcerated and prosecuted youths also stemmed from police cautioning. According to Judge Heino Lilles:

> in Australia for over [the course of] 15 years, 85 per cent of those young people cautioned out of the system don't come to the attention of the police again. ... In New Zealand one year after the Family Group Conference system was brought into place, out of every 100 offenders, only 10 appeared in youth court. Seventy-five were warned and diverted by the police or cautioned out of the system. Fifteen went to the Family Group Conference. Of the ten that appeared in youth court, five were subject to youth court orders, and only two were subject to custodial orders. That's two out of the hundred. Again that compares to 34 per

cent in Canada (CBC Radio, 1996: 38).

Other early studies in Western countries employing restorative justice conferences,

are quoted by Braithwaite as generally positive, with compliance

> ranging up from 58 per cent in one New Zealand study (Galaway (1992)
> [sic], from 64 to 100 percent in various U.S., Canadian and British sites
> (Haley & Neugebauer, 1992; Dignan, 1992; Pate, 1990), 76 per cent in
> West Germany (Trenczek, 1990), 85 per cent in Finland (Iivari, 1987,
> 1992) and 91 per cent (Waters, 1993, p. 9) in Australian programs.
> (Braithwaite, 1998: 33).

David Cayley, CBC writer of the ten part *Ideas* radio documentary "Prison and Its

Alternatives", suggests that the influence of family and others from the community

provides the needed supervision over completion of agreements increasing the

successfulness of the program (CBC Radio, 1996: 66; Braithwaite, 1998). While family

members may be a factor in compliance, the nature of the contract may also be a factor.

Braithwaite hypothesizes that "restorative justice conference agreements attain

higher levels of implementation than court orders precisely because they are agreements

rather than orders. ... The voluntary agreement secures superior compliance to the legally

mandated one" (Braithwaite, 1998: 33). The example he uses to explain the power of an

agreement is compatible with Cayley's comment, that is, rather than state enforcement,

family members impose the conditions of the agreement. The drunk driver is kept off the

road, not because of a change in his or her abuse of alcohol, but because family members

keep the car in the garage on the nights the offender drinks (Braithwaite, 1998: 33). In this

example, restorative action has effectively stopped further danger to society from the

drunk driver in question. However, the offender has not necessarily changed.

Transformative measures seek not only to stop the dangerous activity, but to find and address the cause of the behaviour.

A shortfall of restorative measures then, is failing to address serious social problems which cause criminal behaviour. Braithwaite also mentions that in his experience "there is limited linkage of crime prevention follow-through" with restorative justice programs (Braithwaite, 1998: 34). He uses New Zealand as an example of a country which has embraced restorative justice processes, but simultaneously cut "rehabilitative options" (Braithwaite, 1998: 35) when government discontinued social programs. The implication is that it is not enough for the system to deal with the crimes, arrive at a settlement and stop short of addressing ongoing pain and difficulties in the victims' and criminals' lives.

Conferencing has also been attempted by a North American policing unit, primarily with first time young offenders. A model developed in Wagga Wagga, Australia was used for a study/program in a small city in the U.S. Beginning in 1995, twenty police officers trained in conferencing techniques held conferences with 42 per cent of all youths arrested who qualified in Bethlehem, Pennsylvania. (Cases which qualified were offered conferencing as an optional method of handling the charge). Conferencing by police was limited to minor offences such as school yard fights or shoplifting. The chief of police worked with a criminologist to monitor several aspects of the program. Research questions targeted topics such as policing abilities with conferencing, changes among police attitudes due to conferencing, the effects of problem-solving techniques, and comparative dynamics of conferencing with retributive and other restorative measures. Researchers surveyed police officers, parents and offenders through questionnaires.

The findings, based on both direct observation and surveys included that

> officers did a sufficient but not an exemplary job in adhering to
> principles of restorative justice and ensuring due process. ...
> [C]onferencing cannot be said to have had a significant impact on
> changing overall police attitudes toward their activities or the role of
> police [and] the whole effect of conferencing was to cause a few officers
> who were positively disposed to community policing to become more
> supportive of such approaches (McCold and Wachtel, 1998: 94-45).

Participants had lower rearrest rates (20 per cent) than those who opted for the retributive

system (48 per cent), which researchers accounted to a "self-selection effect" rather than a

"treatment effect" (McCold and Wachtel, 1998: 96).

Results of surveys to parents, offenders and victims indicated that the vast majority

(upward from 92 per cent) were satisfied with the tone, process and outcome of

conferences and of these, 81 per cent would recommend conferencing to others. "Parents

of conferenced youth were more likely to report fairness in their child's case than those

deposed by courts" although the majority of parents responded that the cases were

handled fairly (McCold and Wachtel, 1998: 99). A final conclusion of the study indicates

satisfaction of the police and research team with restorative techniques designed for police

use.

> Police-facilitated restorative conferences produced participant
> satisfaction and perceptions of fairness at least as high as other
> restorative justice programs and the courts. Participation rates and
> compliance rates for conferences were also comparable to other
> restorative justice programs (McCold and Wachtel, 1998: 101)

Working with the minor cases of willing participants, offenders and victims, puts

this style of justice in a restorative framework. Conferencing as a policing tool juxtaposes

the authority and control of the dominant society (represented by the police force defining

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the problem) with the family sphere, called on to contribute to solving and implementing solutions.

Transformative Justice

Transformative methods, as mentioned earlier, address the causes of the crime (Morris, 1995b), consider place as well as people in consensus decision making (Pranis, 1998), acknowledge that offenders may also be victims (Morris, 1995b), and see the importance of time in addressing emotional and social behaviour which does not respect human dignity (Ross, 1996; Studt et al., 1968; Montgomery, 1993).

Time is necessary not only in preparation for meetings of victims and offenders, but also for change to take place in offenders and victims before the decision making process takes place (Hollow Water, 1995; Studt et al., 1968). Montgomery's description of caring explained that contact was established over time. In addition, Bianchi's *tsedeka* principle refers to "incessant diligence to make people experience the genuine substantiation of confirmed truth, rights, and duties" in an effort to achieve a "release from guilt" for the offender (Bianchi, 1994: 22). "Incessant diligence" indicates the process of change occurring over time. An aspect of transformative justice which can be seen in the following three studies is change within individuals in the context of a group. More than individual therapy or single session resolutions, behavioural adjustments occur in relations with others over a period of time. Offenders and victims are accepted into situations where the distribution of power is relatively equal.

C- Unit

"C-Unit" was a two-year prison research project carried out in California in the early 1960s (Studt et al., 1968). Victims were not involved in the project design. Peer relationships and inmate interactions with staff were organized so as to "resocialize" offenders (Studt et al., 1968: 18). Inmates and staff were selected randomly from the population in the prison to reside in the C- Unit, one of seven such residential blocks in the prison. The project program was contained within this unit.

Researchers Studt et al. (1968) applied principles of authentic morality to the C-Unit population as a community by running a problem-solving group or "official program" whose membership included all inmates and staff (C-Unit guards, several counsellors, researchers and volunteers). Several smaller groups (e.g. a staff working group; a "bull session" group), based on similar principles of conduct, also evolved within the general membership. The project's focus of influence with offenders was on "the expression of values in social relations" (Studt et al., 1968: 18) and researchers understood the exercise not as one technique applied to a certain behaviour, but as "the management of all the socializing processes available in prison life to achieve a cohesive moral influence" (Studt et al., 1968: 18). The tools for achieving this goal were rules by which the main and the problem-solving groups functioned. These tools were supported by definitions of morality and community (see Studt et al., 1969: 17-18, 44).

> The only ground rules were that staff as well as inmates could ask
> questions and that all participants would be as honest in answering as
> they could. No questions were barred (Studt et al., 1968: 69).

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Techniques for achieving an authentic morality can be identified in the above ground rules. "Staff as well as inmates" indicates *non-hierarchical power*, giving equal opportunity to speak for each person present. "Participants [were] to be as honest in answering as they could" upholds *honesty* as an essential basis for moral communication, a means of building trust. "No questions were barred" designates a *freedom to speak*, to ensure everyone's experience and concerns be addressed in the discourse thus encouraging respect for one another.

After an initial several months of suspicion from inmates (ranging from embarrassment among peers to scepticism of the project's intent) all members began to listen and relate to one another in the joint planning sessions for living together. A community model evolved which, when challenged by ethnic and seniority clashes among inmates, strengthened as the staff group used problem-solving techniques which acknowledged differences. This approach discouraged judgement and intolerance of one another.

> In the first twelve months of operation the staff and inmates of
> C-Unit had learned that to be one community it was necessary not to
> eliminate subgroups, but *to provide for differences in needs and
> interests.* Being different had been legitimated by belonging to a larger
> whole; and belonging involved both obligations *to contribute out of
> difference* and claims to special response from the total community
> (Studt et al., 1968: 86, emphasis added).

"Provisions" for differences included open discussion, formation of committees and the staff using guiding questions when working with individuals to focus "on those aspects of the interaction between an individual and his social environment that determined how values were currently being expressed in his behavior" (Studt et al., 1968: 249-250).

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Transformative justice based on community ideally seeks solutions of inclusion of subgroups whatever the needs, be they cultural or socio-economic. The attitude of acceptance rather than rejection predominates in a communal mentality.

The effects of the community model became apparent in the inmate population. A sense of belonging and harmony developed within the unit. Inmates' comments and comradery revealed a cohesiveness which could be observed when prison wide riots broke out during a period of tension between Mexican and black inmates. C-Unit members did not get involved in the fighting. Members in the unit at the time of the fighting showed signs of concern for those not yet returned to the unit. In the days after the rioting participants expressed a sense of pride in avoiding conflict and standing out from the rest of the population for doing so (Studt et al., 1968: 76-88).

As well, an exchange between staff and inmates took place. Inmates began to turn to staff for certain needs and staff began to learn more about the life of the inmate.

> This experience in assisting the inmate system with one of its important tasks provided the model for the Project's basic strategy for influencing C-Unit's inmate system. In essence it consisted of legitimating the inmate system's tasks and using the official program, in both individual relations and groups, as the means through which inmates could perform these tasks with the help of staff.
> ... During the first year the official program became the means through which both inmates and staff began to work at the tasks of each simultaneously, each influencing the other in the process (Studt et al., 1968: 202-3).

Mutual influence is shared power, or equality. Montgomery's research also illustrated that an aspect of care is that the caregiver receives from or is influenced by the patient and vice versa. In the analysis of the project, researchers commented on changes within individuals which suggested the presence of community values within individuals.

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> Paradoxical as it may seem, the most important sign that an inmate
> was engaging himself in the resocializing process appeared when time
> in the institution became important to him *not* in terms of its ending date
> but in terms of experiences in the here and now. ...
> People grow only when present life is real to them. Making present
> time a matter of real life was the Project's primary means for
> contributing to the futures of the inmates who lived in C-Unit. ...
> [R]ecidivism statistics will never properly reveal what happened for
> C-Unit inmates during their lives in the Unit. ... What the institution
> can do is to offer the inmate an opportunity to be a man [sic] today. If he
> accepts this opportunity, then he receives the priceless gift of time that
> is significant for his personal continuity in life. When this has happened
> for the inmate, the responsibility for offering him continued opportunity
> to be a *person of worth* rests with the free community (Studt et al.,
> 1968: 272, emphasis added).

The above passage speaks to the issues of time, to the qualitative nature of change

in individuals (inadequately captured with statistics) and finally, the importance of

exchange in the affirmation of human dignity. In light of transformative justice, the "here

and now" approach assumes a careful reckoning with the lives of the people at hand. It

has repercussions for those in attendance at circles or justice sessions, to closely assess the

needs which arise in the present moment. But more, changes took place over time. The

future began with the present. Respecting one another's cultural differences, differences in

thinking, differences of opinion, differences in aspirations for the group as a whole

through listening, answering questions honestly and making group decisions based upon

the experiences brought to the meetings, are important components in the process of

building morality and so, transformative justice. Transformative justice emphasizes a

process which is conducive and promotes change in individuals, living conditions and

relationships.

Sometimes decisions which the group unanimously accepted were not implemented because the request was rejected by prison superintendents who were authorized with power higher than the C-unit as a collective effort. Halfway through the project a major and sudden shift in staffing at the custodial officer and higher administrative levels altered the way the unit was run. The result of changes in prison authorities coincided with a situation of tension among certain C-Unit inmates and the end result was a permanent rift between staff and inmates. Ironically, the project came to illustrate the devastating effects of synthetic morality.

> ... [S]taff opinions were now being formed outside the staff work group in private communications that occurred primarily within the three segments of the administrative structure. As a result, staff meetings were no longer used for a free exploration of issues after which the staff could adopt a common position; they tended rather to be forums for the restatement of perspectives already adopted under the leadership of one or another of the authority figures in the Project. ...
> The consequences for staff operation were unfortunate. Instead of having experienced successful problem-solving in a management task, the new staff had learned primarily to be wary of talking with each other or with inmates about real problems (Studt et al., 1968: 178-9).

The two experiences provided an opportunity for comparing the two styles of management. Like Montgomery's work, a final issue the C-Unit research addresses in regard to transformative justice is the need for justice workers to work well together.

> The work of two different staff groups provides impressive evidence that the way the staff are organized as a work group has important consequences for the kind of program they provide and for the nature of inmate participation in the program. ... Thus we propose:
> *The more effectively the staff operates as a problem-solving group the more effective will be the problem-solving processes used by staff members in work with inmates and the more the relationships among inmates will take on the character of socially constructive*

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problem-solving (Studt et al., 1968: 190, emphasis in original).

A group which functions within a model of authentic morality can, by example, extend its membership to include others who do not initially relate to such a model. This is a basic understanding Ross (1996) also describes from his observations of Hollow Water healing circles discussed below.

The C-Unit study illustrated the development of community as justice in a physically controlled environment, a prison. Respect for human dignity, honesty in relationships, openness to the experience of all members in shaping rules and problem-solving, as well as staff team work which was exemplary of these same values, formed the basis of a transformative justice model. The staff team work, relationships which live out an example of authentic morality as they welcome others into their practice is evident in the following Aboriginal example of transformative justice.

Hollow Water

Some Aboriginal peoples developing and practising justice techniques which deal with crime today emphasize the importance of unity rather than taking sides in making decisions regarding serious offences. The Hollow Water First Nation in Manitoba illustrated this concept in the form of healing circles used to address an extremely high level of sexual victimization in their community. In the following paragraph, the team which operates the circles explains the nature of the relationship with the justice system and with the people from the reserve involved in legal cases.

> In our conjunctive relationship with the legal system we see our role
> as one of representing our community. We do not see ourselves as

"being on the side of" the Crown or the Defence. The people they represent are both members of our community, and the pain of both is felt in our community (Hollow Water, 1995: 7).

This group, called the Hollow Water Community Holistic Circle Healing (CHCH), bases its work on four traditional guidelines in dealing with cases of victimization.

The traditional way was for *the community*: (1) to bring it out into the open; (2) to protect the victim so as to minimally disrupt the family and community functioning; (3) to hold the victimizer accountable for his or her behavior; and (4) to offer the opportunity for balance to be restored to all parties of the victimization. ... ((Hollow Water, 1995: 7 ellipses in original)

The Hollow Water program, as described by Rupert Ross, holds both sentencing justice circles which include the participation of a judge, and healing circles in pre-and post sentencing time periods. Over several months, victimizers and victims in sexual assault cases meet in circles separate from one another before meeting and then presenting the community's opinion and recommendations before a judge in a sentencing circle. CHCH lists five rules which govern the circle.

1) only one person may speak at a time
2) the Laws of the Creator shall govern the person speaking. Those laws are honesty, kindness, sharing and respect;
3) a person may only speak in turn. There are to be no interruptions while a person is speaking;
4) if desired, a person may pass when it is his/her turn to speak; and
5) all other participants should be attentive to the person speaking (Hollow Water, 1995: 8).

Several aspects of transformative justice can be noted in the above descriptions of healing circles. Honesty and respect for everyone's contribution are consistent with the requirements for an authentic morality in problem-solving. Prior to finding resolutions time is taken to work with offenders and victims prior to attempting resolutions. The

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justice method presented by CHCH is also non-adversarial. Taking time to listen without interruption, to wait in respectful if uncomfortable silence while someone weeps (R. v. Sellon, 1996) is expected and accepted by members of healing circles. The expression of emotions and holding additional circle meetings over a period of months or years to address painful and complex histories advocate justice as a human, rather than as an abstract event (Ross, 1996).

Power from the authorities of the dominant society is, to some degree, relinquished to the community. Judges may adjourn cases for months to allow the CHCH team time to hold healing circles with those accused or injured. The team has also been involved in handling victims' statements and co-ordinating arrests. Ross (1996) mentions that there are signs that some cases may be handled without the involvement of the criminal justice system, a step which signals Aboriginal definition of the problem as well as its ownership of its resolution through the healing and reconciliation process.

Although the idea of open discussion in a circle format and the words "healing circle" have been used by other cultures to describe various gatherings from new age religion to more formal discussions with various levels of government, the term "healing" for Aboriginal peoples seems to refer specifically to a return to unity in the instance of divisions caused by hurt. Pain from residential school experiences, present or past child and sexual abuse, and matters of family violence are all reasons for holding healing circles. The phrase "healing circle" suggests an opportunity for the restoration of well-being between people when they are hurting, in conflict or facing other difficulties which have maimed a sense of bondedness between people.

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Positive aspects of this program include a low rate of recidivism in sex offenders. Of forty-eight offenders counselled in nine years, five went to jail and two reoffended - one of whom successfully completed the healing program and joined the team (Ross, 1996: 36). An unpublished evaluative study from the Ministry of the Solicitor General (Lajeunesse, 1996) reported that satisfaction of offenders (72 per cent) with the program as a "positive experience" was considerably higher than that of the victims (28 per cent). Forty-seven percent of victims felt that offenders had been dealt with appropriately (cited in La Prairie 1997: 13).

La Prairie raises concerns about the adequacy of the support system in place in small centres for dealing with serious crimes and their victims (La Prairie, 1997: 12-13). It is important to note that an estimated 80 per cent of the population of Hollow Water were directly involved in abuse as victim or victimizer. Some who had moved through a healing process became team members bringing experience and a sense of hope for recovery into the process (Ross, 1996). Although some victims may not have received ideal treatment (33 per cent found the program a "negative" experience), for others (28 · per cent) the outcome has been "positive" (Lajeunesse, 1996 cited in La Prairie, 1997: 13). What constituted a negative or positive experience was not revealed in La Prairie's citation of the study.

Despite the above concerns, Hollow Water justice practices, in these albeit early stages, exemplied characteristics of transformative justice. The approach is one of respecting both victim and victimizer while seeking the root of the problem of wrongdoing and maintaining that victimizers remain responsible for their actions. The

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healing circle philosophically assumes equality of victim and offender through respect of human dignity in the rules of participation (see page 105 above), strives for relationships of care based on honesty, and allows time for the process to unfold in an atmosphere exemplary of community as a mutual exchange.

Conclusion

This chapter has delineated three types of justice: retributive, restorative and

transformative, and the principles which underpin each one. As retributive practices have

been perceived by several commissions and studies as having failed Aboriginal peoples,

and incarceration as having failed in the goals of deterrence and rehabilitation for citizens

generally, alternative justice practices have developed. Restorative justice and

transformative justice can both be located theoretically and practically in twentieth

century justice projects and ways of life, in both Western and non-Western cultures

respectively. These alternative methods are distinct from conditions present in retributive

methods, especially in the distribution of power. Whereas retributive justice works within

a restrictive framework (power of few over many), referred to in this thesis as synthetic

morality (Boldt, 1995), restorative and transformative measures distribute power to all

participants in the process of decision making. In this respect, the restorative and

transformative methods can be likened to authentic morality.

Distinctions between restorative and transformative justice occur in the principles,

goals and processes of justice. Restorative justice can be seen as an exercise of the

principle of "a wrong must be righted." Methods of restorative justice begin with the

inclusion of victim and offender in the determination of the problem and the solution

which meets the victim's needs. In this sense restorative justice can be compared to the

philosophies of Jewish justice known as *tsedeka*. In *tsedeka* as Bianchi presents it,

accountability of the offender and responsibility for the wrongdoing is determined with

the participation of the offender. Reconciliation and forgiveness are encouraged, though

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circumstances may not always permit forgiveness. A goal of *tsedeka* is welcoming the wrongdoer back into the productivity of society within the context of family and neighbours. Family is not necessarily involved in VORP and VOM proceedings where the encounter reviews the wrongful act and arrives at a plan of restitution for that act. *Tsedeka* differs as it promotes harmonious relations after the settlement and emphasises the alleviation of the offender's guilt.

In its inclusion of care and family, FGC provides a bridge to transformative justice, but according to Pranis (1998), has a tendency in the throes of Western society to emphasize the accountability of the offender at the expense of care for the person as a priority. The McCold and Wachtel (1998) study found similar results when police officers were trained to run FCGs with young offenders in a mid-size city in the United States. Transformative justice puts the well-being of people first as it upholds a principle of human dignity. This differs in focus from the principle of "a wrong must be righted".

Authentic morality, in prioritizing respect for human dignity, is the underpinning principle of transformative justice. Relationships which validate honesty, personal experience, a non-judgemental stance and mutuality expressed as care, reveal and build authentic morality. In addition to care, time is an important consideration in establishing justice through authentic morality. A liberal use of time in attending to the needs of victims and bringing offenders (who may also be victims) to a point of reconciliation through repentance and forgiveness may apply to decision making sessions in terms of hours, or the overall process of internal change as taking months or years.

Decision making and problem-solving techniques can be considered transformative in nature when they are used in the face of wrongdoing and function within the above-mentioned relational parameters. The goal of transformative justice is corrective. Whereas restorative measures may seek to prevent further harm through family and community supervision, transformative justice seeks to establish behaviour which is caring and responsible, where someone's behaviour has been harmful and disrespectful of others. The change is internal and is not perceived of as a measure performed in isolation, but carried out in the company of others who have achieved and live out such behaviour.

The process and result of transformative justice is known as community. Community, according to McKnight, infers people coming together with a common fallibility, and a willingness to strive for harmonious relationships through problem-solving and trust. While care is one aspect of community, McKnight also reintroduces de Tocqueville's criteria from the 1820s which provide the means to analyze power within community according to steps in problem-solving, i.e., defining, solving and implementing solutions to problems. These criteria of community serve as practical aids in identifying the degree of community present in justice actions. Transformative justice, as a form of community living has been illustrated in both Western thinking and First Nations teachings in the C-Unit project (Studt et al., 1968) and CHCH work in Hollow Water (Hollow Water, 1995) respectively.

Differentiating justice according to these three forms provides a theoretical background for observing alternative justice techniques. Sentencing circles and Hollow Water healing circles are currently referred to by those working in the justice system as

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restorative justice, an alternative to the retributive system. This thesis suggests

transformative justice as a more appropriate term for Hollow Water healing circles and as

a possible descriptor for other Aboriginal justice practices developed as alternatives to the

mainstream system. Blackfoot Justice Circles are one such alternative. In addition, this

chapter's differentiations between authentic and synthetic morality, its delineation of

elements of care and de Tocqueville's three-part analysis of problem-solving structure

become means for determining community in justice methods. Methodology for the

research inquiry into community in Blackfoot Justice Circles is the topic of chapter three.

Chapter Three
Methodology

The research question for this investigation is: Can aspects of community be identified in justice according to the practice of Blackfoot Justice Circles and if so, of what do they consist?

Interests in the power of community as a vehicle of justice are the motivation for this question. Montgomery (1993) and McKnight (1995) suggested care as an agent of community promoting changes in people while Studt et al. (1968) and McKnight advocated group problem-solving as a means of generating just relationships, i.e. relationships respectful of human dignity. Aspects of community such as care and problem-solving are the mechanics of a justice system which follows a principle of respecting human dignity while changing the way people work together on common tasks. These characteristics of justice may be evident in the circles themselves or in the reactions and perceptions of the people attending circles. Other goals for this research can be expressed as quests for meaning: the meaning of community in justice, the meaning of circles to participants, and the meaning of circle justice to the field of alternative justice.

Methodological Decisions

In the social sciences, there is a paucity of ethnographic study regarding Aboriginal justice and circle justice in particular. La Prairie, a veteran government researcher in Aboriginal affairs, points out the need for more qualitative work in this field (La Prairie, 1996: 146-7). In fact, other than one or two opinion pieces, and two other theses

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concurrent with this one, I am unaware of other ethnographic literature on justice circles.

Sentencing circles are a relatively new phenomenon of alternative justice and

ethnographic and qualitative research is generally time-consuming and expensive.

Establishing positive relationships may be difficult also as reserve populations may not be

interested in co-operating with studies which take and do not give back. First Nations

have been sensitized to Western research and are now wary of government or academic

outsiders who come to observe and gather, but leave little. The above considerations

guided my choice of an ethnographic qualitative research method in examining sentencing

circles as a master's degree studies project. My presence and participation on the reserve

is ongoing.

According to Atkinson and Hammersley (1994) who define ethnography "in

practical terms" this project qualifies as ethnographic research for the following reasons.

It has

- a strong emphasis on exploring the nature of particular social phenomena, rather than setting out to test hypotheses about them
- a tendency to work primarily with "unstructured" data, that is data that have not been coded at the point of data collection in terms of a closed set of analytic categories
- [an] investigation of a small number of cases ... in detail
- [an] analysis of data that involves explicit interpretation of the meanings and functions of human actions, the product of which mainly takes the form of verbal descriptions and explanations, with quantification and statistical analysis playing a subordinate role at most (Atkinson and Hammersley, 1994: 248).

The manner in which the research is conducted is also significant to defining

ethnography. In their *Handbook of Qualitative Research* (1994), Denzin and Lincoln

describe several approaches researchers in the social sciences might take, including "the

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contextualized-consequentialist stance" (Denzin and Lincoln, 1994: 21). This is the

model, which, under the guidance of my main advisor, best describes my investigation

philosophy. It

> builds on four principles ... : mutual respect, noncoercion and
> nonmanipulation, the support of democratic values and institutions, and
> the belief that every research act implies moral and ethical decisions that
> are contextual. Every ethical decision, that is, affects others, with
> immediate and long-range consequences. These consequences involve
> personal values held by the researcher and those studied. The
> consequentialist model requires the researcher to build relationships of
> respect and trust that are noncoercive and that are not based on
> deception (Denzin and Lincoln, 1994: 21-22).

I was aware of listening as a behaviour respected in many Native cultures and made

listening a behavioural precedent. As well, I was sensitive to my roots in the dominant

culture and my role as researcher and was able to question my manner, thinking, and

assumptions in order to see differently and to open myself to changing. My general

approach was a quiet, absorbent disposition rather than an energetic information-seeking

conduct. First contacts with people on the reserve were made in this way and my research

plan was to continue doing so as observer and interviewer. Listening without interruption

was important and I learned mentally to hold onto series of comments or questions for

minutes at a time to prevent interjecting someone else's speech for clarification.

Qualitative methods were chosen to carry out this ethnographic study. Initially I saw

observation and the in depth interview as primary tools for collecting data, along with

field notes as a log of meetings and telephone conversations. Observation of circles by

outsiders was welcomed by the Blackfoot people I had spoken with and they seemed to

me, amenable to interviews. I was aware that my presence as a white person could affect

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the atmosphere and what was said at a circle, but knowing that other outsiders attended justice circles meant that my presence would not be necessarily unusual or suspect. My hope was to tape the circles and the interviews, or keep written notes in the event that permission was not granted for recording.

In regard to the interviews, I planned to use reputational sampling, thereby selecting people well-versed in the circle structure and Blackfoot traditions as well as those who participated on a regular basis. My choice of interviewees purposely excluded any youths under eighteen. Although they were an important part of the justice circles, my interest was not in their lives or their personal reactions to the proceedings. How the circle was conducted was more important to me than the offence or the offender.

From the preliminary work, I learned that the pool of potential interviewees was quite small, thus the sample would be small. Interviewees were to be selected by several criteria.

1)   Knowledge of circle structure and practice

2)   Traditional knowledge

3)   Experience as an observer/participant at circles

4)   Recommendation from circle leaders

5)   Sex

6)   Availability

First encounters in the field were with two males who were both strong in the first three categories. Further interviewees were to be chosen by their recommendation and through my own increasing familiarity with the field.

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The in depth interview is appropriate to use in this research situation because the interviewee is free to speak at length creating detailed or rich data (Jorgensen, 1989: 90-1). The instrument is based on verbal prompts which keep the interview guided, but not rigid (see Appendix A). In this way the interviewer is also free to pursue avenues of interest when they arise. Unanticipated themes can also be uncovered in the interview narrative and then explored further with an unstructured format.

Lofland and Lofland stress the importance of note-taking in field work as the manufacture of data (1995: 66-72). Although the researcher's bias is evident in the choice of words, the visual ingestion of the scene and *what* is remembered, the logging of visits and telephone conversations is a "filtering" of the social reality which becomes research data (Lofland and Lofland, 1995: 68). My plan was to take notes during visits and interviews and write up an ongoing data log. As I was interested in the circle process, the primary sources for data analysis were to be derived from circle observation reports and interview transcripts. In addition to the above collection of data, I considered using a few published records/transcripts which document justice circles taking place elsewhere in Canada.

Field Preparations

Before entering the field, I took steps to begin to understand the culture and to establish rapport. As principle investigator under the direction of three advisors I was aware that the reserve was sensitized to the presence of researchers and others from the dominant culture. Before acceptance into the master's program, I took an introductory

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Blackfoot language course and read-up on Aboriginal justice (e.g. the *Canadian Native Law Reporter* covered sentencing circle cases) and Blackfoot culture (Raczka, 1979; Long Standing Bear Chief, 1992).

My first encounter was with a man who acted as a liaison between cultures having previously lectured on circles to a college law class. He was therefore familiar with and open to speaking with non-Natives about YJCircles. Our telephone conversation led to my first visit to the reserve. Another phone call informed me of the possibility of a one day registration at a sentencing circle workshop which was a feature of a week long police camp. The program was instructional on three levels: cultural, spiritual and intellectual. Driving home that evening I felt moved by the experience. An affinity stirred within me for the land as the evening sun set behind silhouetted mountains and, as they had prayed, spoken, sung, joked, worked, eaten and drummed in the course of the day, I felt nearer to the people gathered in tipis by the river. My place with them, however, was very much the place of an outsider.

From the literature, I was also aware that "many social orders define ascriptive categories—such as sex, age, and ethnicity—as important points of difference among people" and that "'who' the researcher is, in contrast to 'who' the researched are, may throw up barriers to the acquisition of rich data" (Lofland and Lofland, 1995: 23). This piece of information was important for the manner with which I presented myself at the camp, later at circles and perhaps most important for data collection, during the in depth interviews. A first step in my approach to achieve a contextualized-consequentialist stance

was to become aware of who I am and the biases underlying my observation, writing and analysis.

As researcher, I acknowledged my bias in two ways: personal and political. Personally, I defined myself as a white middle-class female, raised in the dominant society of an affluent Western nation, speaking English and embarking on a world culturally and physically dissimilar from my upbringing and current living conditions. A large exposure to ethnically different cultures in travel with my husband and children to countries (including one month visits with families in India, Kenya, Hong Kong and Indonesia) contributed to a respectful, open approach to cultural differences and material poverty to be found on the reserve. Spiritually, I was familiar with various forms of healing prayer from course work and personal practice. I had also been exposed to beliefs and practices of several world religions. Newsletters, newspaper articles, and some books (e.g. *Justice As Healing*; Moon, 1995; J. Bopp *et al.*, 1988: *The Sacred Tree*) emphasized not only the spiritual nature of Native American philosophy, but also justice as a way of being that way including the spiritual world. I planned to open myself and my work to the interests of the people I was researching. To this end, a course in qualitative research had also taught me simple, but crucial lessons - be humble, largely silent and honest.

Personal bias affects what I actually see, my interpretations of what I observe, the words with which I choose to record that data and the final analysis. To compensate for my personal bias I had several indigenous people willing to read samples of my writing as it was produced. All of my advisors are experienced in fieldwork and one is also Blackfoot, providing direction and affirmation for my role as a white researcher on a

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Blackfoot reserve. Reconciling myself to the investigation of Blackfoot justice practices

as a non-Native was a major psychological hurdle to overcome in the first several months

of entering the field.

My second bias is a conviction that there is a need for culturally appropriate means

of justice originating with Aboriginal peoples. I based this conviction on recent literature

in the area (Hamilton and Sinclair, 1991; Cawsey, 1991; Ross, 1992; Silverman and

Nielsen, 1992; Palys, 1993; La Prairie, 1996; 1997). My proposal to Chief and council for

permission was written up mentioning ways in which I anticipated the people benefitting

from the research and my presence on the reserve (see Appendix B). I was honest with the

people I met and upfront with my personal interests and intentions e.g. healing prayer,

finding alternatives to imprisonment and not deserting the reserve upon completion of the

field work. According to Blackfoot custom, I introduced myself to people I met, not only

in regard to my research, but as a person born in Alberta, raising a family, and someone

with ideas and hope for change in the administration and living out of justice.

From the outset I was willing to give of my time and energy in the research process

as a cooperative gesture with the people whose practices I was to investigate. A similar

attitude was demonstrated in anthropological research into Dogrib justice in the North

West Territories. As principle investigator (PI), Joan Ryan chose Participatory Action

Research to explore traditional Aboriginal justice among the Dogrib (see Ryan, 1995:

7-11). Although there is a PI in this method, the research team uses consensus decision

making. In this case, indigenous people from the immediate area were members of the

team, and received additional training in language, translation, interviewing and technical

skills (Ryan, 1995: 13-14). Ryan experienced challenges with language translation in interviews and in transcription, as well as with team members abusing alcohol (leading to their being fired by the Community Advisory Committee). She also lost a team member to a jail term. An element of uncertainty must be accepted when working qualitatively with indigenous peoples especially in co-operative team work in the social sciences (as opposed to controlled laboratory conditions).

I was *not* part of a team which included members from the reserve, but I did take time to discuss my ideas with and take suggestions from Aboriginal leaders. Suggestions included interview topics, interviewee selection, reading material, and events to attend. My intention was that research decisions be compatible with the responses I received from contacts knowledgeable in the area. My early experiences revealed that circles were conducted in English - youth, supporters and Elders all fluent speakers - and language barriers were not expected to be a problem for my comprehension of circles or interviews. Prayers which began sessions were usually spoken in Blackfoot and although seldom translated, were introduced as a form of invitation to Creator to enter the process.

Technically I was equipped with a portable, good quality tape recorder with a lapel microphone. It produced good voice quality recordings even with higher background noise levels. In the event that an outlet was unavailable I carried batteries. I planned to transcribe interviews myself as an aid to analysis, familiarizing myself with the data.

Getting In

My graduate studies program began in January of 1996. In February 1996, I received permission from the ethics committee at the University of Lethbridge for carrying out research involving human subjects. Obtaining official permission for observation and interviews on the reserve seemed straight forward at first, but became increasingly complex. The narrative below explains how and when this task was accomplished according to a time line. The decisions I had to make over the course of several months, and the difficulties which made the process involved and time consuming, served to shape the research as well as me as researcher. I was *slowly* introduced to subtleties of the culture and this permeation of knowledge affected my thinking, emotions, and actions. My heightened cultural awareness sharpened my skills of observation. My gradual adaptation contributed to my formation as a human tool for data collection.

An early fact-finding interview with an Aboriginal RCMP officer on the reserve in the summer of 1995 was helpful on several fronts. In follow-up to a telephone conversation, I made my first visit to the reserve. In addition to a friendly welcome, I was given some of the history of the circle program and its structure. My host informed me that circles were in use in co-operation with the justice system on the reserve and known as Youth Justice Circles (YJCircles). He explained that there was also the future possibility of circles for adult offenders in the event that legislation (permitting adult diversion) was passed.

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I learned that a committee of band members had been formed for organizing YJCircles under the Alternative Measures Section of the Young Offenders Act (YOA). In addition to hearing and reviewing cases to discern which ones could be dealt with with the resources available on the reserve, this committee was also in the process of drafting a constitution for official sanctioning of circles by the justice system. According to my source, this constitution could later be amended to include adults. With the RCMP officer's inconclusive remarks in response to my questions regarding requests for research permission, I understood from the context of our discussion that the YJCircles committee was a figurehead for circles. As I was told that I would have to seek permission from the community, I decided to seek their permission to observe circles. Separate letters of permission for interviewees were planned to be given at the time of the interview.

A second helpful gesture at this meeting was the suggestion that I read Rupert Ross, a notable Canadian author and speaker in the area of Aboriginal justice. His work *Dancing with a Ghost* (1992) and various articles were helpful as cultural bridges and for clarifying two approaches to justice, Aboriginal and Western. Third, I was given another contact name for further information on the origin of circle structure and its use among the Blackfoot. This informant was not only an eventual source of information for my cultural education, but became a friend who introduced me to others on the reserve and to the protocol for interviewing Elders, ceremonialists and people in general. I will refer to him as "Mr. B." (for Black). That autumn, however, my contact with Mr. B. was limited to a brief meeting and a ten minute telephone conversation in which he emphasized the importance of the cultural interpretation of research data.

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In February of 1996, I approached the Youth Justice Committee by telephone and spoke to a co-ordinator. I then sent an informative letter suggesting that I be interviewed to answer any questions which they might have, further to the letter, regarding this research. Bad weather prevented me from attending their monthly meeting in February for this purpose and further meetings were deemed "closed" according to the chairperson I spoke with later. I decided to send two copies of a letter of permission in hopes that they could be approved and signed. In March of 1996, I arranged to meet with the chairperson prior to a scheduled YJCircle.

At this meeting she told me there was an open door policy for observers at YJCircles. I explained that as a researcher, I needed formal written permission. She agreed to sign the letters of permission which included blank lines for the additions of any conditions that were to be put on the research observation. These stipulations were that I arrive on time, take no notes during the sessions, and do not record circle proceedings. I observed the circle held that day, handwriting field notes afterward and converting them to word processed copy soon after. As further details came to me I wrote them into the computer file and updated the printed copy.

Although contact with Youth Justice Committee members by telephone proved to be easy at first, and I did eventually receive the signature from the committee chair on a letter of permission as well as attend one YJCircle in March, 1996, I heard nothing more from them after attending that circle. Several telephone messages were left periodically throughout the springtime at the chairperson's office number and finally in June of 1996 I wrote again explaining the situation. I included some of my writing on circle structure

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with the letter, hoping to improve communications with the committee. This package also went unanswered.

In the summer of 1996, I completed degree course work with another graduate student and in the fall further coursework led me to interviews with judges to better understand their work with circle sentencing. A family illness drew time away from the project that September. In October 1996, I spoke with another researcher in the geographical area who queried the status of the chairperson as authorized to sign letters of permission and suggested that permission for the research on a reserve is only available through Chief and council.

Reasons why I had not been told this earlier by informants, I believe, are twofold. Chief and council were not involved with Youth Justice Circles. The process had been set up without their participation and was organized through the RCMP, and a probation office in conjunction with a Crown prosecutor. The political climate between Chief and council and the YJCircles initiative may have been strained at that time. Second, the people I spoke with may have been unaware of or did not care about the routes (student) researchers must take to secure permission for investigations on a reserve. One person told me when I inquired about requests for approval that the community would have to decide. Inexperienced, I did not take this to mean Chief and council, but understood community as the people gathered at the circles. I sought out those who organized the YJCircles. The above-mentioned researcher also informed me that Blackfoot protocol at Chief and council meetings requires oral introductions of newcomers by a member of the Nation, followed by my own oral presentation of my research proposal.

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I once again assembled a letter of introduction stating my predicament thus far and a sample of my writing in regard to circle structure. Revising the letter somewhat with the recommendations of my advisors, I sent this packet off to Mr. B. in early November. My hope was that he would recognize the potential for some benefits to the reserve in my work and see some usefulness in the research itself. As I knew no-one on the reserve very well, I felt my chances of eventually being introduced to Chief and council would come from our getting to know one another. In December of 1996, he called me and I met with him and a former member of the Youth Justice Committee the following week.

I learned then that once the constitution for YJCircle use had been approved, the committee had disbanded (it seemed, not long after March, although this has not been confirmed). The chairperson eventually moved on to other work. Apparently, the co-ordinator's job had been discontinued due to "funding cuts". This position had been renewed and refilled twice since then. Knowledge of my research was likely lost in the shuffle.

My meeting with Mr. B. seemed positive. He had read my letter and enclosures and was willing to share some of his concerns and hopes for my work in this area. "Awareness" was an key issue for him. He mentioned that in general, people on the reserve were unfamiliar with justice circles and the meaning behind the seating plan and procedure. In addition, he expressed some interest in my monitoring the development of circles as they were used for justice cases on the reserve. His own involvement was considerably less than a year or two previous to our meeting. He was agreeable to

notifying me of the next Chief and council meeting for an in-person introduction and oral presentation of my work.

In February of 1997, although I had had some contact with Mr. B. over the telephone several times (I had recounted my experience of the Montreal conference on the Report of the Royal Commission and he related his own experience of meetings with various boards), I had not yet been notified of a Chief and council meeting. I considered seeking permission to observe circles on another reserve. Phone calls to this Chief's office were not returned and appropriate justice offices informed me of an "open door policy" for observing circles. I abandoned this idea when I was unable to speak directly to the Chief about my proposal.

A secretary from Mr. B.'s office informed me on a day that he was not in, that a Chief and council meeting was to be held on that reserve, later that month, in the third week of March. However further attempts to reach Mr. B. were unsuccessful and March 1997 passed without permission. In early April 1997, however, I was invited by Mr. B. to listen to a presentation on the circle model of decision making and there I met several council members. Later that month, to my relief, I happened to call the day before a council meeting which Mr. B. was attending with a proposal of his own. In conjunction with his presentation, he agreed to orally present my case and to deliver a written submission which I then prepared (anew) and dropped off. I was not invited to this meeting and therefore, did not accompany him.

The outcome of this April 1997 meeting was that, due to time restraints, my submission could not be heard and was handed in to the secretary for consideration at a

later time. I understand that upon consideration, the proposal was passed on to an appropriate department within the reserve administration for a final decision. In late May 1997, I received a call from a worker in this office, Mr. F. (for Foot), and we arranged to meet in his office the following day (May 27) to discuss my research proposal in person.

During this meeting I was introduced to a history of the reserve, some of the politics surrounding justice circles on the reserve and was informed of another circle concept for justice which involved clans[4]. I listened attentively and patiently and at the end of the two hour long meeting permission was still uncertain (the response seemed more negative than positive). I held on to some hope inspired by one statement he made near the end of the visit. When I telephoned him the following day to inquire further into the meaning of his statement, I felt my prospects for permission had strengthened. The following week I learned that Mr. F. was on a short leave and in mid-June 1997 I left on vacation for three weeks.

My attempts to secure permission resumed in mid-July, 1997. By this time I was considering a shift in emphasis to interview-based research and explained my time constraints and situation to Mr. F. He suggested I consider a comparative project by interviewing people familiar with YJCircles and others steeped in the clan method of circle correction. Uncertain as to what the latter was, I was willing to investigate both styles of circle justice. With some minor changes, he approved the letter of permission I had submitted through Chief and council and signed it.

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[4] "Clan" is reproduced in this work from an informant's idiomatic use connoting family ties. This meaning differs from the standard anthropological definition.

Interviews

Interviewing began in August, 1997. Four men and three women were interviewed over a period of eight months from August of 1997 to April of 1998. All in depth interviews were taped. There was usually a place to plug in my recorder, but I used batteries on one occasion, taping an interview outdoors. One interview was redone because of a technical error in the recording. Confidentiality of interviewees was assured through a letter delineating how tapes would be transcribed. The letter was read and signed by each participant at the time of interview (see Appendix C). Included in the letter was mention of the right to withdraw any of the material provided in the interview at any time before my projected completion date. I transcribed all but two interviews myself. After taking an oath of confidentiality, a friend trained in transcription completed two of the transcripts. The tapes which I did not transcribe, I listened to as I drove to and from the reserve to increase my familiarity with the material as it was spoken.

The transcripts vary in length. The two shorter transcripts are seven and nine pages double-spaced and the other five interviews range from thirty to forty-one pages. Pauses are noted with a dash, or the word "pause" or "silence" in parenthesis. Laughter and interruptions are also indicated this way. Names are replaced with underscoring while incomprehensible or inaudible words are marked with an ellipsis followed by a question mark. Where repeated words or fillers such as "like uh, you know" added nothing to the emphasis within the person's remarks and where they were not an indication of thought, they were usually omitted. Occasionally I myself told a short story which I omitted or briefly summarized as I did not consider it as data relevant to the project.

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My comments and questions as interviewer are usually a sentence or two long or are comprised of one or two word interjections. The narrative of the interviewee is often uninterrupted for one to two pages, sometimes longer. When time was limited to one half hour of the interviewees' working time, the transcripts are closer to a question/short answer format and "off topic" stories do not appear, nor are longer answers as rigorously probed.

Contacting interviewees began with Mr. B. and Mr. F. They were asked in turn for their recommendations (they each suggested several males). By then I also knew one woman involved. One man met me in a hotel in Lethbridge for an interview prior to his participation in a conference there, which as explained below, led to a fourth contact.

After attending the conference for the morning session, I arranged to meet my interviewee the following day in my office just prior to the start of the second day's session. However, during a break in the first morning's session, a woman familiar with YJCircles, also attending the conference, approached me for an interview inspired by my brief introduction of myself and my work. We met the following week on the reserve in a quiet room in one of the community buildings there.

Months later, another woman, whose voice I recognized as a former YJCircle committee member answered the phone at an office I telephoned to reach someone else. She was working there for that week and we made arrangements for an interview. Two candidates were unavailable for interviewing for reasons of relocation to another province and a fatal car accident.

Mediators were a natural choice for interviewing because they were knowledgeable about circle structure and traditional ways of living. The three mediators I interviewed were male, two over fifty years of age and one man in his thirties. One older woman also mediated non-justice circles in association with her work. The two younger women had been invited as observers to YJCircles and eventually had become participants in positions known as "co-ordinator" and "technical help." One of the two younger women was also familiar with the traditional process practised in "Releasing Circles" (a term referring to clan involvement in the releasing of inmates back into the community).

Most interviews took place in offices on the reserve. Visits to homes without telephones involved some risk-taking since I could not call ahead to introduce myself and arrange a meeting time. Although I was somewhat unfamiliar with the terrain, I had been given a map and found two residences. Dogs, whose growls were not to be tested, greeted me at the first home one morning. I left a note regarding my interest and phone number in a windshield of a nearby car, but did not approach the house nor did I return when I did not hear back from him. The second experience was less frightening although I inquired at a neighbour's house before finding the correct residence. After waking the interviewee with a knock on the door, I introduced myself and found him willing to proceed with an interview.

Interviews were generally in depth from two to two and a half hours, although because of time restraints in the interviewees' work schedules, two appointments were kept to a half-hour in length and were conducted with open questions in a question-answer fashion with lengthy responses. I began most interviews with an offering

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of a package of tobacco. This is a sign of respect and offered in exchange for the information gathered. I also offered gifts of food and in another case I had brought a book as gift. I prepared people for the interview by explaining that the format was not that of a questionnaire, but an opportunity to describe their experience with circles in a conversation style.

I had hoped to complete the interviews by late September, 1997. Several of the men recommended to me by Mr. B. and others familiar with circle justice were to be present at a cultural camp held then. The camp was cancelled. As many interviewees did not have telephones, arrangements were attempted through their places of work or board offices. Phone call messages were not returned. One female Elder who had been recommended had multiple conversations with me over the telephone, but was unable to keep the appointments we set up for interviews. As this was my final interview and we were unable to meet by the end of April 1998, my data collection terminated with seven interviews.

Observation/Participant Observation

One interviewee suggested that I should observe circles in order to understand better what took place there. With this much welcomed invitation I was given several dates throughout October and November, 1997 for what I understood would be YJCircles.

The five circles I observed took place in the same space. Windows line one side of the large room which is empty except for a couple of tables, a pool table and several stacked chairs. There are two entrances — a southern door with panic bars opening to the outside and a similar door on the north end opening to the hallway of the facility. People

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generally entered via the hallway after coming in the main doors by an office area. Tea, coffee or lunch was served before or after the circle depending on the time of day. Circles were scheduled for morning or the early afternoon and lasted two to three hours.

Most circles began after the appointed time. I usually arrived on time or early. Sometimes the circle had been cancelled or postponed until later in the day in which case I visited contacts on the reserve. The recreational room might be empty or occupied by people playing pool or in the initial stages of set up with one or two people arranging chairs when I came in. I was comfortable helping to set up chairs in a circular fashion. I usually placed three to four chairs outside the circle proper for people like myself who came to observe. The people who set up varied, but the co-ordinator or mediator usually arrived and, if necessary, designated four chairs to be set up in the middle facing the offender, perpendicular to the table.

Participants walked in just prior to or within fifteen minutes of the set time. Latecomers would quietly walk right in and sit in an empty chair, then apologize when their turn came to speak. Seldom did anyone leave early. That act is described as "breaking the circle".

With the observation of circles, my trips to the reserve increased, although the circles did not always take place and the co-ordinator seldom called to confirm dates. After several cancellations, I took on this responsibility by calling the centre where the circles were held prior to leaving home.

During the many months of confusion and waiting, and then later as the frequency of my visits to the reserve increased to observe circles and to interview people, I assumed

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the role of participant observer. Through formal, informal, and impromptu meetings I gained significant knowledge of justice practices as well as cultural traditions and anecdotal histories of life on the reserve. These visits were written up first and then logged onto the computer and printed off as a record of visits. Circles were often cancelled due to deaths on the reserve or other circumstances. In this case I did not return home, but took time to visit various contacts on a regular basis. My contact with Mr. B. was less frequent throughout the fall of 1997 and the year of 1998 while conversations with Mr. F. and his co-worker occurred every week or so. As one benefit of my research presence, I sponsored Mr. F. to accompany me to a conference on alternative justice, a topic of mutual interest.

In the course of interviewing, I also befriended a man who had introduced me to family members and made me welcome on the family land away from the main townsite. (There are two residences there). This was a convenient location for writing up notes or having a sandwich as I sometimes had to wait over the lunch period when a morning circle was moved to the afternoon. In this setting, I also came into closer contact with traditional foods, the Blackfoot language, children, Aboriginal experiences with law enforcement and jail, in addition to clashes between the dominant and Blackfoot cultures. I was later able to return the hospitality by offering meals and childcare to parents when a family member was incarcerated in Lethbridge. Gift giving communicates friendship, respect, reconciliation, retribution, familial attachment and prayer intentions (e.g. in a sweat lodge) in Blackfoot custom. I was giver and recipient on several occasions.

While the observation of circles was underway, because of the circumstances at the time, I also actively participated rather than observing only. Twice the mediator of the circle session specifically asked me to sit within the circle and contribute. I had initially taken a place outside the circle proper, as I understood my place to be and then moved as requested, just prior to the beginning of the proceedings. In the circumstances, I did not feel comfortable refusing his invitation or asserting my position as an outside observer.

At my turn to speak, I was introduced or introduced myself as someone learning from circle justice. Without making judgments or arguments for the cases at hand, I spoke to the matter as it had been presented in the time period of the circle. To avoid as much influence as possible on the proceedings, my contributions were minimal, sincere and based on personal experience. I did not suggest specific actions as recommendations for the wrongdoer.

In both cases above, the circles did not involve possible criminal charges, but were referred to as "healing circles" for youths who were implicated in complaints to the RCMP. When I was asked to join in at a YJCircle, I declined participation because of the legal nature of the proceedings. The matter brought before the circle was more serious, charges could be laid, and a clerk was present to tape record the proceedings. These three conditions served as my justification for sitting out when I was once again instructed to sit within and contribute to the circle with "recommendations".

In November of 1997 I observed a "Releasing Circle". This circle was scheduled in advance and written up as such on a large board behind the main desk in the centre. As this circle was to be co-ordinated by Mr. F., I called him for permission to sit in. Although

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I sat within the circle, my only participation was an introduction of myself. Mr. F. had directed me on this point over the telephone. Due to another commitment, I was unable to stay for the last half an hour which extended into the mid-afternoon. The circle began in the morning, hours later than scheduled due to a snow storm, broke for lunch and then resumed in the early afternoon. During the morning wait, the informant who had suggested I attend circles approached me and suggested that I had seen enough. His remark that day signalled the termination of my visits to observe circles.

I had the opportunity to observe the first half and part of the second half of the Releasing Circle. One Releasing Circle had been held several months prior to the session I observed. Releasing Circles involve offenders, but not necessarily victims. They are held in response to inmates with chances for parole on the reserve. Agencies on the reserve are present as well as an emotional and spiritual backing of family and Elders. The Releasing Circle extended over the lunch hour and was therefore divided into two sessions.

While the general format was similar there were significant differences in the purpose and structure of a Releasing Circle. The name "releasing" refers to someone who may be released on parole from a penitentiary and comes to the circle accompanied by probation officers to be greeted by family, concerned members from his home town and agencies invited to be present.

Due to bad weather, organizers, observers and family members (no victim was present in this case) waited for approximately one and a half hours for the group (the inmate, two probation officers and two Elders) to come from the penitentiary. Everyone was in place when they arrived. After greeting the family, the arrivals took their places

beside the father of the inmate (also known as the clan Elder) and the organizers or facilitators of the circle. The clan Elder requested prayer from the penitentiary Elder. Each person around the circle was then invited to briefly introduce him or herself. Beginning with the co-ordinator, lengthier introductions of people important to the administration of justice and their work ensued. The facilitator called on them to describe their work. After the clan Elder asked someone to pray for a blessing on the food, there was a one hour break to eat the lunch (soup, bannock and berry soup) which was provided on a back table of the room.

The second half of the circle began with a facilitator speaking and then calling on the father for his suggestions for his son's care upon release. The mother was then asked to speak and following her comments others were invited to comment around the circle one by one and to pass if they did not wish to contribute. As with sentencing and healing circles there were no interruptions when someone spoke. Occasionally people responded with tears before speaking.

After one and a half hours I had to leave and telephoned one of the organizers the following day to hear her account of the finish of the circle. One younger woman had tearfully expressed gratitude that such a process could take place. Nothing had been there for her brother and he had killed himself. My contact also recalled that the probation officers spoke favorably of the support shown through agencies and other participants present. However, from the suggestions and recommendations made that day no firm plan could be made because the welfare of the offender rested with the power of the corrections system. The offender returned to the penitentiary following the circle.

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At this circle and the previous four circles, my attendance and recording of data was a fairly standard process. After several circles, I began to arrive exactly on time rather than ten minutes early as the sessions tended to get underway later rather promptly. Sitting just outside the circle or within it, my first task was to memorize the number and order of people seated. Preparatory knowledge of the structure of the circle which I gained from various conversations with several people in 1995-1996 was a good memory aid. I memorized people's positions in the circle and then their sex, names (if possible), work descriptions and finally the subject content of their narratives.

As the circle is orderly, each person speaking once, one after another and as several people were familiar to me, memory work was simplified. I kept a fairly low profile by not looking at any one person for a prolonged period and by consciously maintaining an attitude of acceptance rather than judgement. The tone with which they spoke was also helpful in recalling their statements. Occasionally I remembered near verbatim sentences and often, mannerisms and actions (as I perceived them), were clear in my mind. A taped session would have provided more detailed and accurate verbal data. However, the general unfolding of events according to my interpretation is, I think, accurately captured in my notes.

Twice I had to recall an order of speakers not in keeping with this formula. A mediator interjected several times in one case and on the second occasion, participants and seating plan of the Releasing Circle were different. In this latter circle the facilitator called on specific people - to pray, or provide background regarding justice initiatives on the reserve. He then requested that people around the circle make general comments. My

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recollection of the order of speakers is less certain in these two cases, but the general content of the circle is intact.

Data and Analysis

The observation data is primary, derived from first hand research experiences of circles which took place from March, 1996 to November, 1997 (20 months), and secondary (a circle transcript from the eastern arctic). Comparisons can be drawn between Blackfoot and the Innu circle because the latter is recorded as a detailed report of the circle events as they unfolded. Two factors open up the possibility for noting changes in the development of the Blackfoot justice circles themselves. A gap of more than one year lapsed between the observation of the first circle and a cluster of four others. Because of this time lapse, the contrast between first and later observations may be greater than witnessing gradual changes over time.

Second, in the course of that year, after the approval of the YJCircle constitution under Alternative Measures, I was told that nearly one hundred justice circles had been held on several Blackfoot reserves under one mediator. As the first circle was relatively early in the development of circles (prior to the approval of the constitution) the data may be significant in answering the following questions: What changes in the format, participant roles and/or the procedure of the circles changed? What changes if any in YJCircle structure might be attributed the mediator? Another form of circle I witnessed, the "healing justice circle," had developed in co-operation with social services during this time period. Can predictions be made regarding possibilities for the development of youth

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circle justice or others? The data also includes a Releasing Circle (the second of its kind to take place). How does this justice circle contrast or complement the first four Blackfoot circles observed? From the primary observations what are the characteristics of Blackfoot justice circle decision making and do they correlate with the principle of authentic morality? Finally, what principle(s) underpin justice circle decision making and do these principles correlate with the data analysis of the in depth interviews?

The interview data broadens the analysis base and presents an opportunity to answer different kinds of questions. The question: Who is an Elder? was asked directly providing data on how Elders are presently perceived by those most involved with circles. Interviewee narrative generated data which might answer questions such as: What conceptions of "respect" as a traditional value exist among the Blackfoot? Can other commonly held traditional Aboriginal values such as sharing, strength, and honesty be defined from or detected in the experiences related in the data? How are circles, youth, retribution, and/or prayer perceived by interviewees?

The verbal transcripts can be coded by categories i.e. key words or short phrases chosen by the researcher which represent concepts of meaning. Categories emerge as themes in the data. Coding is a step in producing theory which is accessible not only to social theorists, but to the people they study as well. As Glaser and Strauss explain, grounded theory is derived through ongoing analysis while in the field and manifested in the coding.

> Grounded theory can be presented either as a well codified set of
> propositions, or in a running theoretical discussion, using conceptual
> categories and their properties. ...

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Theory as process, we believe, renders quite well the reality of social interaction and its structural context (1967: 31, 32).

Categories provide the basis for an analysis of meaning, for relating emerging substantive theory to existing theories. As a mechanism for synthesizing the interview data, coding provides the wherewithal for an interpretation of Blackfoot perceptions of circle justice.

Interview transcripts also contain anecdotes of other (earlier) circles I did not attend as well as outcomes, concerns with and critiques of the process and anticipation of and suggestions for further development of circle justice. This data is not useful as primary circle description, but may inform the questions: How do interviewees perceive justice circles? Do their comments inform predictions for future use or recommendations for changes?

In summary, the research question lent itself to the investigation of meaning using qualitative methods (namely in depth interviewing, observation and participant observation) in an ethnographic study. After difficulties entering the field which coupled as preparation time for the field, seven in depth interviews took place and five Blackfoot justice circles were observed. The data is comprised of interview transcripts and written observations of justice circles as well as field notes from informal visits. Field notes and observation data may be useful for describing the circle processes, for determining elements of community in the structure, for understanding the meaning of oral decision making in a group and for commenting on the incorporation of Blackfoot custom and the possible influence of mediators on circle structure. Using analytical methods of grounded theory, the meaning of justice and justice circles to the Blackfoot contemporary society may become clearer as substantive theory in the area of alternative justice.

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The following chapter describes the data and introduces concepts of Native

peacemaking. These concepts along with the theoretical preparation of chapter two

underpin the analysis in chapter five.

Chapter Four
Presentation of Data

The layout of this chapter is in three parts, an introduction and two sections. The introduction begins with a brief description of Native American peacemaking systems (to which circles for justice belong) and defines terms such as "healing circle" and "sentencing circle". Clarifying these popular references readies the ground for the presentation of the research data.

After the introduction, the first section presents data from field notes and circle observation reports. This section begins with a description of a Blackfoot Justice Circle (BJC) model, based on many conversations and presentations witnessed in the field and recorded as field notes. This BJC design is distinguished for the purposes of this thesis as the "ceremonialist" model. In practice, I witnessed two types of justice circle based on the ceremonialist model, the Youth Justice Circle (YJCircle) and (what I have called) the Healing Justice Circle (HJC). I observed one other BJC referred to on the reserve as a Releasing Circle (RC) and also examined a report on an Innu HJC which is found in Regina v. Sellon as an appendix. Although the latter is not Blackfoot, the report is relevant as a record of another Aboriginal HJC in Canada.

The second section is dedicated to a description of in depth interview transcripts. This data is presented in sections which are broadly thematic. The data was stimulated directly from instrument questions as well as indirectly from interviewee narratives taking a course unprompted by the interviewer.

The data then, is based on three sources: field notes of visits to the reserve, observation reports and in depth interview transcripts. The field notes were instrumental

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in defining the BJC ceremonialist model and understanding Releasing Circles.

Observation reports and field notes informed definitions of specific BJCs and an

observation account of the circles observed. Interview transcripts offered an opportunity

to explore meaning according to the interviewees' perceptions. A short discussion of

peacemaking and related terms precedes the presentation of data.

Introduction: Peacemaking/Healing Circles

Certain behavioural characteristics have been noted by authors describing Native

American peacemaking processes. Specifically, people who come together are respected

as equals, they listen without interrupting each other, refrain from shouting or making

accusations at one another and emphasize honest participation (Bluehouse, 1996: 54;

Regina v. Sellon, 1996; LeResche, 1993). Diane LeResche, editor of a peacemaking issue

of *The Mediation Quarterly*, makes reference to peacemaking behaviour and lists certain

values commonly attributed to North American Indian peoples.

> Native Americans have had the strength and wisdom necessary to
> withstand many storms, and many Native Americans are concerned with
> nourishing their roots so they can withstand the storms they continue to
> face. They recognize the importance of surviving with values and
> practices intact, including those that address handling serious
> disagreements. Native Americans are proud to be the minority with
> seniority, having much to share with others. These values and
> capabilities include respect for different points of view, deep listening
> skills, an emphasis on generosity, patience (not being bound by "White
> man's handcuffs" — the wristwatch), an understanding of the need to
> heal broken relationships, acknowledgment of the interdependence of
> all, recognition of the importance of the whole person in a context
> beyond the immediate dilemma, and the ability to serve others with
> humility and modesty—all of which are evident in Native peacemaking
> systems (LeResche, 1993: 324).

According to LeResche people with the above "values and practices intact" have

been informed by their "roots ". The word "capabilities" suggests qualities and

mannerisms within people which have been instilled through culture, training and/or

spiritual traditions. If these attributes are ingrained in people as survival mechanisms, then

their presence brings to problem-solving what they would bring to any social institution -

a manner of relating one to another. The means of peacemaking therefore, is largely

determined by how the people involved conduct the process and conduct themselves in

relating to one another.

Haberfeld and Townsend (1993) describe this behaviour in an attempt to link

mediation principles and acts of Indian peacemaking:

> In both settings, negotiators have to be given a safe and
> predictable setting. There often has to be a cooling-off period in
> which people can calm down before serious discussions can begin.
> Problems have to be talked through. Each person's point of view has
> to be listened to without prejudgment. Each person has to be
> accorded full respect and dignity. The emotional and spiritual
> dimensions of the people and their relationship have to be addressed
> in the negotiation process and in the resolution. To get beyond both
> the substantive and the emotional differences, disputants have to
> acknowledge the importance of something higher, some transcending
> and more universally binding principles and values. To Indians, this
> includes acknowledging the inherent value of all living things,
> including one's adversary, and the importance of the greater common
> good. The disputants have to work from the general, more lofty and
> unifying principles backward to settling their own specific concerns
> (Haberfeld and Townsend, 1993: 419).

A basic seating formation which facilitates peacemaking processes is the circle. As

one Blackfoot Elder pointed out to me, the shape derives, in a practical sense, from sitting

within a tipi. Another Elder, Leroy Little Bear mentions its association with the sun and

moon and a "holistic view" according to "cosmological phases [which] manifest

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themselves as cycles" (Cawsey, 1991: back cover). The arrangement of people in a circular fashion is reported as working in both practical and spiritual dimensions.

The term, "healing circle" refers to a formalized group effort used to mend hurts inflicted in the past, recent or distant. People working through experiences of physical and sexual abuse, victimizers taking responsibility for their actions, adolescents and others dealing with suicide tendencies, men and women working through addictive behaviour and victims subjected to trauma and abuse in residential schools (or combinations of the above), are some painful reasons Aboriginal people may enter or hold healing circles. People may solve everyday or serious problems by listening and learning from each other in a circle format. They can be considered a type of peacemaking (Huber, 1993). What is shared may be painful, frustrating, or reflect anger, but may not suggest necessarily, a dichotomy of victim and offender.

While the above mentioned circle experiences may not be related to breaking the law, healing circles used in conjunction with the justice system involve wrongdoing connected with illegal actions. For the purposes of this thesis, I have inserted the word "justice" in "healing circle" to create Healing Justice Circle (HJC). The term signifies healing circles used for correcting wrongdoing. In these cases the justice system's involvement is limited. Charges may be laid against someone by police or complaints made to police about a person and in turn, that person begins to take responsibility through entering into the circle process.

HJCs are used in Manitoba by the Hollow Water First Nation. They are held during an interim period after an offender pleads guilty, but prior to his or her sentencing. Rupert

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Ross's 1996 publication *Returning to the Teachings: Exploring Aboriginal Justice* spends

some time reflecting on the process as he witnessed and understands it. Honest, respectful

relationships of people forming the circle "team" are described as the basis for bringing

about positive behaviour in those seeking correction. (Positive behaviour in this case

refers to assuming and living out the values and capabilities LeResche lists above).

> Many of Hollow Water's strengths flow from the fact that the
> team members have built respectful, honest and intimate
> relationships amongst themselves. That is what they show people
> who have known only the opposite and that is where they get the
> strength to be able to welcome and work with the horribly diminished
> and fearful people who come to them. If they had not built those
> relationships, they would not be able to send the messages that such
> people need to hear. Instead, their own unresolved anger, guilt and
> shame would simply be stirred into the already flammable lives of
> their "clients," adding an explosive trigger to an already unstable mix
> (Ross, 1996: 155).

According to Ross's assessment, the success of HJCs in working with (in this case)

sex offenders seems to be dependent on the values and the relationships of the core

participants. If respect for the whole person, careful listening, and patience are to be

influential changes in the behaviour of wrongdoers who come to the process, these

qualities must be manifest in the everyday lives of the people who are instrumental in

running that process. "[T]here remains something that cannot be "imported," something

that must be home grown in every community: a team whose members trust each other

with their emotional, spiritual, mental and physical lives" (Ross, 1996: 155). According to

the Hollow Water example, HJCs involve a group of people already living in respect and

trust of one another welcoming others to learn by their example. These healing circles are

reportedly run with patience and a general attitude of acceptance of the wrongdoer.

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Circles may run regularly for months until victimizers show signs of trusting and respecting others as well as accepting responsibility for their actions.

Hollow Water HJCs eventually suggest recommendations for sentencing which are submitted to judges for consideration at the time of sentencing. In Hollow Water, people admitting to offences come to accept ownership of the recommendations of the team before being sentenced by the judge. Similarly, in R. v. Sellon, Sellon reported himself, admitting guilt in order to take responsibility for his actions according to circle decisions (R. v. Sellon, 1994: 1). Hollow Water healing circles and a healing circle cited in R. v. Sellon are described here as HJCs because they have been used in conjunction with justice system. The fact that judges, defence lawyers and crown prosecutors were not participants at these circles is significant. The significance is in the interpretation of justice and the nature of the matter to be addressed.

HJCs and healing circles potentially interpret justice differently from the Western system. An Aboriginal concept of justice is not necessarily considered a separate issue from the mechanics and outcome of healing in healing circles. As Drummond states in her social work/law thesis which examines healing circles and law in northeastern Canada: "Crudely put, for the court, healing is presumed to come from justice. For the healing circle, justice comes from healing" (1995: 122). The process of healing, as it relates to a healthy community and insights into one Blackfoot philosophy of healing the individual, are discussed in chapter six.

When the Canadian justice system (unofficially) unites with traditional Aboriginal circle practices, specifically in the western provinces and northern Canada, to solve *legal*

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matters, "healing circle" or HJC no longer applies. The term "sentencing circle" refers to a justice circle where a judge and lawyers *are* included with Aboriginal people for the purpose of determining a guilty party's sentence. Guidelines for sentencing circles are stated in early cases such as Justice Milliken's comments in R. v. Morin (R. v. Morin, 1994: 150).

A sentencing circle is characterized by several factors: the presence of a judge who maintains his or her position of authority, Western influences of law (e.g. lawyers), and methods of decision making which deviate to some degree from methods commonly accepted in Canadian courts, i.e. receiving recommended sentences or background information on the case from Aboriginal justice committees or circle participants. The sentencing circle may arrive at a consensus (often excepting the Crown prosecutor). However, the justice system, though represented in the circle and participating, is not an equal participant and the consensus decision can be undermined by unilateral decisions. Judges maintain a status superior status to the people gathered, not equality with the others in decision making. "It is the sole responsibility of the judge to determine what sentence is to be handed down. Any consensus developed by the sentencing circle will be reviewed by the judge to see if it is a suitable alternative sentence" (R. v. Morin, 1993: 150-151).

Sentencing circles are, in their "broader spectrum of interests", very different from the Canadian court system (Stuart, 1997: 89). They incorporate physical and philosophical aspects of conflict resolution which make them distinct. Characteristics such as circular seating plans, rules for proceeding (beginning with traditional prayer or a smudge),

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speaking in a particular order and arriving at a consensus on a fit sentence for the accused (who usually pleads guilty - see R. v. Taylor for an exception) are rooted in various Aboriginal traditional methods. While judges may work closely with circle members to arrive at an appropriate plan for the offender, the final decision in the form of a sentence is handed *down* (significantly), by the presiding judge. Judges then write up *their* decisions and explanations of proceedings for legal records and law journals.

The above quote regarding the judge having the "sole responsibility" (see R. v. Morin, 1993: 150-151) is testament to the fact that despite attempts to work in conjunction with or respect traditional Native philosophies of justice (see Stuart, 1997; Hamilton and Sinclair, 1991; Cawsey, 1991), exercising judicial power which is external to the Aboriginal gathering disrupts the basic premise of equality. Even when consensus decisions are accepted and employed, the system may challenge the judiciary and revoke the decision. According to two members of the judiciary, one working in northern Canada, and a second presiding in Alberta courtrooms, should a judge choose to follow the recommendations of the sentencing circle in his or her decision, with those recommendations not following the mandate of Canadian law, she or he meets not only consternation from peers, pressure from the public, and appeals from the Crown (R. v. Taylor, 1995: "Addendum"), but the real possibility of verbal reprimand from higher courts. The following reprimand is such an example: "Based on case authority in granting [the banishment and not a jail term] the trial judge exceeded his powers and is taken to have failed to exercise his sentencing jurisdiction" (R. v. Taylor, 1997: 209).

Structurally, then, the sentencing circle undermines Aboriginal philosophies of justice which recognize equality under Creator. Equality is also expressed as respect for a consensus decision and one's adversary. While maintaining several characteristics of healing (emotional expression, listening, family involvement, respect for silence (R. v. Morin, 1994; Stuart, 1997: 86-8)), sentencing circles perform the task of sentencing in accordance with the protocol set by a Western hierarchical legal system.

As seen above, the goal of healing in a sentencing circle may be set aside in favour of following customary or required judicial practices. In the same way that suggestions of banishment and community-oriented correction go contrary to the imprisonment policies of Canadian law, mandatory jail terms and fines go contrary to Aboriginal understandings of justice and what is best for healing the people in conflict with the law (Hamilton and Sinclair, 1991). Also, the presence of a dissatisfied Crown prosecutor may leave a sense of division as well as a win-lose atmosphere in the sentencing circle courtroom (e.g. R. v. Morin, 1994: 156; See also R. v. Rope; Stuart, 1997: 89). Sentencing circles may ultimately cause more pain than participatory healing if decisions are appealed and revoked by higher courts.

The data presented here do not include sentencing circles. They are, however, concerned with healing circles used for justice purposes and circle resolutions of legal matters which are not the "sole responsibility" of a judge (R. v. Morin, 1994: 150). The latter can take place free from the threat of consensual decisions being overruled by the authority of a judge or court of appeals at a later date. Also, healing circles for justice (HJCs) can avoid the adversarial presence created between criminal lawyers and Crown

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prosecutors. To some degree, the data does cover healing and other circles (such as working circles) mentioned by interviewees. Perceptions of these practices which people bring with them to justice circles are relevant to understanding YJCircles, HJCs, and RCs.

Blackfoot Circle Justice: The Ceremonialist Model

The following description of the ceremonialist model evolved in 1995 from explanations I received from founders and practitioners of Blackfoot YJCircles both in informal conversations and at workshops. The account has been revised since the publication of *Akak'stiman: A Blackfoot Framework for Decision Making About Health Administration and Services* (Crowshoe and Manneschmidt, 1997). This recently published text delineates Blackfoot circle structure as it relates to health services, but is also significant for its contribution to written historical records of Blackfoot ceremonies, the practice on which the first BJCs are based. According to one informant, the model can be seen as a tool for communicating values to youth, introducing the structure of decision making without the sacred elements of the ceremony. As background to the model, a brief explanation of a ceremony is in order.

A Blackfoot sacred ceremony is an expression of the spiritual world in balance with the physical world and provides a means of making decisions integral to survival. A ceremonialist who is the present bundle owner conducts the ceremony with a bundle or leather pouch of holy objects. The bundle is opened and prayed with in song and with drumming. The items in the bundle each have a purpose or meaning and their use has been determined through spiritual visions or other prayer. According to one Blackfoot

Elder, the bundle is like a "shadow" and the people represent the "body". This explanation is related to the Blackfoot understanding of human as created by Creator both as spirit, or shadow, and as a physical body.

In the course of the singing and drumming which accompany the presence of the objects, the intentions or needs brought to the ceremony can be spiritually considered. Decisions regarding hunting, or the well-being of the people in general, can be made through the opening of the bundle. Different bundles will be used for various purposes and at different times of the year.

A sacred ceremony then, is a decision making process which is centred in ritual prayer with a bundle. Ceremonies continue to be a way of life for Blackfoot people who practice a Blackfoot world view and belief system passed on from their ancestors. Researchers working with both Blackfoot historical data and present day ceremonialists have extracted the structure or the process of the Blackfoot sacred ceremony from the spiritual content to arrive at a model of decision making. Adapting the ceremonialist model for *purposes of justice* took place in co-operation with a Western-trained Crown prosecutor.

The RCMP adopted this model for use in conjunction with the Alternative Measures Act in 1993 to deal with several first time young offenders in the criminal justice system. The opening of the bundle was formerly shared between a man and a woman, but Indian Act legislation resulted in the confiscation of many bundles which effectively stripped women of their role in handling the contents. In the following outline of the ceremonialist

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circle structure, the mediator is referred to in the masculine because all three mediators I observed were men. However, I was informed that a woman can also hold this position.

"The Blackfoot Circle Structure is a specific model in the physical format following a tipi (circle) floor plan and a process which is based on traditional Blackfoot ceremonies" (Crowshoe and Manneschmidt, 1997: 35). The seating formation is made up of two semi-circles which are open at one end for a doorway (actual, or sometimes a space open to the east) and joined opposite the entrance way by a position for the smudge. "Smudging is the placing of hot coals on an altar and burning sweet pine needles or pieces of sweetgrass on the hot coals" (Crowshoe and Manneschmidt, 1997: 38). Indoors, this position may be a table with a small, fireproof altar. In a tipi, a small fire pit with a hot coal will be used for the smudge. The latter is a position of respect where a bundle would be opened and in the context of legal proceedings, a copy of the Criminal Code of Canada or other symbol of law is usually placed nearby.

The mediator sits to one side of the smudge and beside him to the north, the "host" or person who admits to committing an unlawful act. This practice and terminology stems from ceremonies having "two leaders and two hosts (a man and a woman who were former bundle keepers and a man and a woman who were present stewards of a bundle)" (Crowshoe, 1997: 35). Seated next to him or her are supporters and next to them, Elders. The opposite side of the circle is composed of a representative who will read the charge and facts of the case, for example, a police officer or sentencing circle co-ordinator, the victim (if present) with his or her supporters and Elders. Within the circle, away from the door, facing the host are four linear positions reserved for technical support, i.e., people

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from various local counselling services, schools, or care organizations relevant to the victim's or host's possible needs. Drummers take these places in a sacred ceremony. Opposite these four seats is a place for one person designated to record the proceedings. He or she makes no comments during the time circle participants contribute.

Proceedings begin with the smudge (a cleansing prayer accompanied by the burning of sweet grass and hand gestures sweeping the smoke toward oneself). The smudge is followed by a spontaneous prayer in Blackfoot prayed by an Elder. The mediator welcomes everyone and asks for a reading of the "official" account of the offense, or police report. This account may be read by a police officer, if present, or other person designated co-ordinator. (In a mock sentencing circle at a police camp I observed the "court reporter" read the charge).

After an opportunity for questions regarding the report, the mediator invites the others to speak one by one beginning with the host who describes his or her actions, followed by the comments and stories of supporters and Elders. As the speaking moves around the circle the supporters of the victim each speak in turn and finally the victim. During the proceedings, the mediator may confirm the end of one person's contribution with a nod of his or her head and silently signal, if necessary, the start for another participant. In a second round, everyone, including the host and victim, has an opportunity to recommend actions which they see as important to the offender and/or the victim.

"Technical help" are the last to offer suggestions one by one and the mediator sums up the counsel as he or she has heard it, briefly recounting what has been said. The mediator advances a sentence/plan of action to the group based on the collective

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comments and personal recommendations. He or she welcomes comments regarding this concluding statement. There may be a third round of observations and/or suggestions in order to reach a consensus. After any changes have been added, the decision is spoken aloud (and recorded) or read aloud and each person in the circle verbally, individually, assents.

A sign of reconciliation (handshake) may take place between the host and victim. While the host is obligated to follow his or her sentence with the support of one or more mentors, suggestions for the victim are optional. In a final gesture, the mediator moves around the room to shake each person's hand. Anyone else may follow suit. Traditionally, a ceremonial circle ends with the passing and smoking of the pipe. "This was either a secondary pipe which was part of a bundle or special pipe which the bundle keeper used for these occasions" (Crowshoe and Manneschmidt, 1997: 38).

Participants in the justice circle can speak openly and freely, uninterrupted and at length. The circle has a defined, but somewhat flexible framework. Although there is a specific order in which to speak, deliberations regarding sentencing allow for someone who asks to speak or begins to speak to do so without interruption. People do not critique one another's contributions. In this sense, the context for speaking is non-judgemental. People in many Aboriginal cultures are "not *expected* to judge everything which everybody says or does" (Ross, 1996: 90).

The freedom to speak without constant assessment and/or challenge, as well as the presence of both host and victim, creates a process of deliberations open to emotions and opinions. Expressions of emotion need not be repressed and life stories/circumstances

which may have contributed to the wrongdoing can be taken into consideration as part of the decision making process. This is unlike the legal nature of the courts which "strip[s] away the human overtones and the social context that is a part of what goes on around us" (McCormick, 1994: 8) in order to become an abstract case to be judged according to a precedent set by similar cases.

Justice circle structure is clearly defined in its goal to resolve conflict as a group effort. Wrongdoers are not set aside as different, but are "hosts" to a problem which the community is called to address and, in that way, shares. The influence of society is considered part of the problem and part of the solution as a motivator in a person's life. The courtroom dichotomy of greater, lesser; winner, loser does not have a place here. Instead, there is a rule of equality of individuals before the Creator.

Therefore, the *people* present at a circle gathering are significant. They are people with experience in the area(s) of concern, people whom the host and victim either know or will likely see again in their lives. In coming to listen to the host and victim, the people present acknowledge that the retelling of this event has significance for them, that the narrative requires their response. To the degree that they share their story, the host and victim offer the people gathered an opportunity to become involved in the situation. Those present have a role to play in the resolution of the problem. "This Blackfoot Circle Structure model gives thus all participants non-exclusive access to a process and ensures that they all contribute to the same goal. This means that all participants have to be clear about their roles in that process" (Crowshoe and Manneschmidt, 1997: 38).
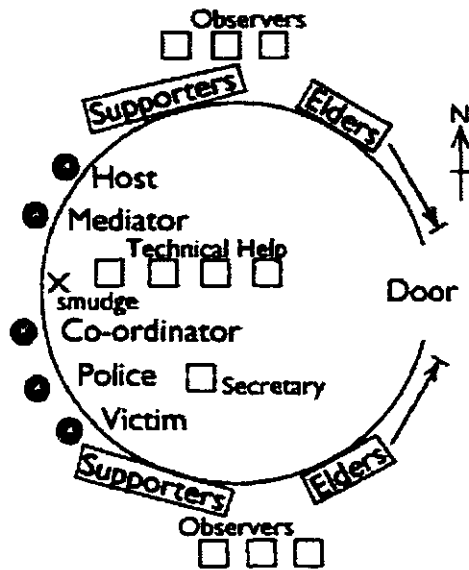
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Figure 1: **Diagram of Ceremonialist Circle Model**

Two types of BJCs base their structure on the ceremonialist model, YJCircles and

HJCs. The following section describes the purpose and function of these justice circle

types, as well as the Innu HJC and Releasing Circle.

Youth Justice Circles

Youth Justice Circles (YJCircles) are initiatives which (often Native) policing

authorities and Nations from reserves have formed under the "alternative measures"

provision of the Young Offender's Act (YOA). First- (and occasionally second-) time

young offenders who agree to participate in justice circles are not actually charged, but

admit their guilt and have their cases approved by corrections and the Crown to enter an

Alternative Measures program. If they successfully complete their sentence in the time

allotted (usually a three month period), no charges are laid and the offender has no youth

record.

The power of the justice system is not represented by a judge. Blackfoot YJCircles have a police officer or RCMP-hired Aboriginal Elder present. Probation officers may be involved and members from the reserve may serve as mentors to follow the youth's progress through his or her responsibilities. In the event that the youth does not successfully complete the requirements of the sentence, the youth is charged and returns to the Western court system for sentencing.

Healing Justice Circles/Innu Healing Justice Circle

Blackfoot Healing Justice Circles (HJC) occur as a result of complaints to the RCMP office. The wrongdoing does not merit a charge and the HJC is held to address the mischief or other unacceptable behaviour of the young person. The atmosphere is less formal than a YJCircle, sessions are not taped and seating arrangements less structured. Although community representatives from schools or agencies may be present, four positions for technical help are not placed facing the host. Rather, agency representatives sit within the circle.

A recent example of a healing circle held for justice purposes regarding a serious offence is found in R. v. Sellon. A report on this Innu circle is attached as an appendix to the Justice O'Regan's record of the case. This HJC took place with the approval, but not under the direction, of a judge and although the circle was held outside of court, the report was made available to the justice, and lawyers were invited to attend (they did not, however).

The format of the Innu HJC was similar to Hollow Water's healing circles described below.

> The traditional way was for *the community:* (1) to bring it out into the open; (2) to protect the victim so as to minimally disrupt the family and community functioning; (3) to hold the victimizer accountable for his or her behavior; and (4) to offer the opportunity for balance to be restored to all parties of the victimization. . . . (Hollow Water, 1995: 7)

There were also four rounds beginning with introductions and reasons for attending at the Innu HJC. This round was followed by a round for words to the victim, words to the offender and finally recommendations. Care was taken that the victim not be made uncomfortable. No one was forced to speak and a stone was used as a speaking tool. The person speaking holds the stone and passes it on when they are finished. Proceedings began and closed with prayer.

The purpose of this HJC was not solely to produce recommendations. Rather,

> a conscious decision was made to be clear and specific about what needs and whose needs we were trying to meet through this process. ... It was decided to tailor the circle to meet L.'s [the victim's] need for an opportunity to be heard within a supportive circle of those most directly affected by and involved with what happened between Gavin [Sellon] and her (R. v. Sellon, 1996: 5-6).

The healing circle was therefore not open to the public and organizers gave considerable attention to the well-being of the victim while respecting Sellon's need in requesting a circle for reconciliation.

The purpose of an HJC is to attend to victim needs, bring problems out into the open and to take steps toward reconciliation. Results of an HJC are obtained independently from the hierarchical power and stipulations of the Western justice system as it presently exists in Canada.

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Releasing Circles

Releasing Circles were in the initial stages of development during the course of this investigation. The term "releasing" refers to release from incarceration and the circle works specifically with people who are or will soon be eligible for a parole hearing. The circle necessarily includes corrections workers from penitentiaries who use the circle as part of their community assessment. Agencies which are available to provide support to the inmate should he (women are not, to this point, referred to RCs) be released, are therefore present.

When successful, the Releasing Circle is a first formal step to organizing a four day long spiritual cleansing or rite of passage (especially for inmates of families who have maintained Blackfoot spiritual practices). The cleansing can involve a sweat lodge experience and fasting in which the inmate comes to know himself before Creator. As preparation for the sweat, the inmate works with spiritual guidance from an Elder and is supported throughout the fast and sweat with prayer from family and other supporters. At the time of my observation, preparations for and one rite of passage ritual had been completed over the course of the previous year. Multiple impediments to such a process exist as restrictions which government policies impose on inmate behaviour and interaction. The restrictions are set up by the justice system and forbid the very nature of cultural and spiritual practices such as gift giving and retreat activities. The future for further Releasing Circles which lead to spiritual cleansing are presently in question.

Observation

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Observations of the five justice circles are presented here as comparative prose. The following discussion explains in general terms my observation of BJCs (two YJCircles, two HJCs, one RC) and my reading of a report on one Innu HJC.

There were usually two people involved in running all of the above mentioned justice circles, the co-ordinator and mediator or two facilitators. In my experience as observer, the mediators were men and the co-ordinators women. In the case of facilitators, i.e., in RCs and the Innu HJC, a male and a female were both present and shared the duties such as contacting people, arranging hospitality and administrative tasks. The co-ordinator's role in YJCircles and Blackfoot HJCs involved contacting family members and inviting Elders and agencies to participate as well as reading charges/complaints at the circle. In some cases her work involved keeping a record of the event. The mediator helped select Elders and others appropriate to the case. As well, he began, run, and ended the circle process.

People sat down as they came in and were then rearranged by the co-ordinator at the recommendation of the mediator. On one occasion the mediator arrived late for a "healing circle" and the positions people had taken at first were not changed. The exception was my seat as the only outsider. It was moved to be included in the circle and I was expected to comment when my turn came around.

The position of mediator was, without exception, next to the table in a clockwise direction, with the wrongdoers and family members invariably nearby. Differences between Blackfoot YJCircles and HJCs were noted in the positions of Elders and the victim. Whereas victims and supporters in a YJCircle are seated beside the co-ordinator

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and a person recording the proceedings on the side of the table opposite the mediator and offender, it seemed to me that victims in the HJCs I attended, sat randomly. Elders in YJCircles sat near the "door" or a space facing east which separated the two semi-circles. Other participants found places between family members and Elders on either side. Elders, speaking last in HJCs, sat next to the co-ordinator or the table. There was no space for a doorway.

When people were seated, the mediator gave a brief history of what he sometimes called "circle sentencing". The first trials were in 1993, he said, and an important part of the process was returning to a practice of including Creator in decision making through the use of prayer. A smudge was used prior to spoken prayer at YJCircles and the Innu HJC, but not at Blackfoot HJCs or the RC.

For the smudge, the mediator or other member of the circle produced a braid of sweetgrass or sage, twisted off some and rubbed it in his hands to loosen or break it down and then burnt it on a small altar or ashtray. Bringing the smoke toward his upper body several times with a slightly cupped right hand and speaking a prayer quietly in Blackfoot, the mediator "smudged" or spiritually cleansed himself. After an explanation, the smudge at the Innu HJC was offered around the room to anyone who might also wish to smudge.

One mediator of ceremonialist circles consistently offered a package of tobacco to an Elder (male or female) who then prayed aloud, standing or sitting. On occasion, the Elder translated parts of the prayer after finishing. I noted that the introduction and the prayer were sometimes reversed, the mediator's introduction coming after the opening prayer.

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The next step at a ceremonialist style circle was a presentation of the "facts". These were read by a police officer if present, or read from a police report by the co-ordinator. The mediator might then call for any questions from people wanting to clarify points in the documentation of the case. Case reports were read at neither RCs nor the Innu HJC. In these cases key people who came had been visited or called, invited and prepared for the circle prior to the gathering.

The ceremonialist circle continued after the prayer and introduction with the offender or parent/guardian, verbally prompted by the mediator, and each participant would then, one at a time, comment on the situation from a personal perspective. Occasionally the mediator would interject or indicate to the person seated next in order around the circle to speak. Technical help, located in the middle when present, spoke last. In the Blackfoot HJC the Elders spoke last and the victim spoke before the host in the Innu HJC. The mediator would then begin a second round, this time he called for recommendations of possible actions for the offender and/or victim.

As mentioned in the methods chapter, the RC did not follow a ceremonialist model. One half of the circle seemed to be dedicated to organizers and the family of an inmate (referred to here as "T"). The other half of the circle was made up of people from various agencies on the reserve, myself, interested citizens and several young women students and their instructors from alcohol counselling services. The facilitator spoke brief words of welcome and then suggested the father of T. request an Elder to pray. There was a round for introductions, several invitations to agency representatives to speak, recommendations beginning with father and mother of T. and a final round for anyone present to speak to

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the circle. The recommendations took place after a blessing over the food and partaking of lunch.

In the YJCircles and HJCs observed actual comments of participants usually began with a self-introduction and were always spontaneous rather than prepared. Most people spoke for two to five minutes. Older people tended to speak for the better part of fifteen minutes often incorporating stories of personal experience in explanation of their comments. Their comments occasionally shifted into the Blackfoot language from English. These narratives were relevant to situations involving caring for children in the age group of the offender, or relevant to what they saw as a cause of the offence itself e.g. peer pressure, alcohol abuse. If they knew the person in trouble, Elders often related their personal connection to him or her and described the young person's character and actions from a personal point of view.

Near the end of my observation time I noticed that the second round was omitted in the ceremonialist model. People spoke once only on the issue, including both their comments and recommendations in one turn. Upon inquiring, I learned that this change was incorporated to save time. This is a deviation from the ceremonialist model as it had been explained to me at the outset of the research. The change has implications for the victim, whose story is not then heard before recommendations are made.

Consistently, the last person to speak was the mediator or male facilitator who summed up what had been said, including his own recommendation(s). From what he had taken in, in the circle, he suggested a plan or sentence for the offender in his closing remarks. The co-ordinator in the YJCircles and HJCs wrote out and reiterated the terms of

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the decision when called on to do so. Then, in a final round, the mediator asked each person around the room, including the offender and victim for consent or dissent on the decision as he had articulated it. If the victim was not present, it was the co-ordinator's job to relay the decision and recommendations to the victim afterward.

Occasionally the mediator asked the two parties to reconcile in front of the people with a handshake or other gesture of friendship. Other times he himself signaled the end of the circle after concensus had been reached, by standing and acknowledging each person around the room with a handshake.

In conclusion, field notes from the early stages of data collection were synthesized to produce a general description of the ceremonialist model of peacemaking. Several BJCs and one Innu circle could then be described according to and in contrast with the ceremonialist model. A major change in the conducting of the YJCircles and HJCs was the modification in the number of rounds for individuals to speak. Originally I understood the first round to serve as a means of "bringing the problem out into the open" (Hollow Water, 1995: 7) and the second round, to make recommendations. In the practice of BJCs, the structure of the ceremonialist circle was altered to proceed with one round only, each person speaking once to address two issues.

Interviews

The research tool can be expected to shape the data which is collected and in the case of the in depth interview, the method produced a wide range of subject matter. Two words used by each interviewee were "circle" and "Elder". The following discussion of the data is arranged according to these two subject areas and several other broad topics.

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Each person was asked to define an Elder. Everyone, in different ways, associated "experience" with the word "Elder". Other descriptors such as advisor were also used in relation to their role in circles. People specified certain behaviour as belonging to an Elder and still others mentioned age and roles Elders play in Blackfoot society.

Circles were described in many ways. The interview opener— "Tell me a bit about the start of circles and your first involvement with them"— produced several chronological pieces of information as well as personal histories of participation in circles. Start-up stories explained the germination of the ceremonialist circle model to have taken place in the early 1990s in a discussion several older people held in regard to passing on traditional ways to youth. References to the beginnings of circles also went back to describing an ancient form of gathering. One man recounted the start of the model as it was used by the RCMP and researched in Ottawa. Still others had contact with a circle form of youth justice off the reserve before contact with the reserve model. Two people mentioned their first contact with circles as observers of YJCircles.

Some interviewees spoke of circles as groups of people sitting in a circular formation for purposes of determining the actions necessary to reconcile a wrongdoer with his family, friends and victim. This type of circle would be referred to as "circle sentencing" or "sentencing circles". The presence of Blackfoot circles used today with justice issues was linked by three people to a certain Crown prosecutor's influence. Changes to this model were attributed to its implementation in the justice field, western influences, and personal manipulation of those leading circles.

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People speculated on the future of the justice circle - its potential beyond the Blackfoot nation, conflict with the mainstream justice system, difficulties arising from a lack of caution and hopes for its use in other areas of band administration. Several people spoke of improvements for circle structure and how it is presently used in a justice format. Positive aspects of family influence in the life of the offender were mentioned as a component of the circle structure. People also noted aspects of how the reserve has been influenced by the introduction of the justice circle. Someone said there is talk about justice now, whereas five years ago people were not discussing the topic.

Data on youth resulted from specific questions regarding the influence of circles on youth. One man perceived greater involvement of youth in sacred ceremonies with specific examples. Other people anecdotally described contact between youth and older people with words to the effect that the interviewee suggested there may be a broadening acceptance of cultural ways of doing things. Other culturally specific references to the circle were in regard to small group discussions called a "talking circles", and people verbally sharing personal difficulties, problems or matters of common interest. This informal get together is also referred to as "sitting" with someone. "Circle" was used by one person to describe a program for recovering alcoholic men when sitting in a healing circle. Another described the reintroduction of the "healing circle" practice in more general terms. He recounted that the present day circle phenomenon began as a spiritual gathering first, also as a "support network" and then elaborated: " ... an Aboriginal person came in, an Elder basically came in and prayers were initiated. Then sweetgrass or different smudges were being used. So it became, like, the discussion started. I guess they

were very powerful. They were very intense" (PL, 13/08/97).[5] Two people referred to the concept of circle in relation to the universe. For example: "So for me that is my world as far as my eyes can see. So that's as far as my circle will go, extends" (WD, 19/08/97). In another way circle was used to describe a metaphysical bonding of a group of people such as a tribal clan.

In the subject area of justice and the circle, one interviewee provided a history of Aboriginal policing on the reserve from the time of the Indian agent until the present situation. The recent history of sacred ceremonies are described as going "underground" (PL, 13/08/97) and then surviving to the present day. The male "rite of passage" was described as a progression from child to young adult to adult and then old age, or in some cases an Elder. One person stated that the rite of passage begins with preparations for a four day spiritual ceremony. Understanding maturity and moving through the first stages of the rite of passage was explained as instrumental to changing the behaviour of those who have been breaking the law.

Traditional law, as one person described it, is a progression from natural law to civil law to spiritual law and the concept of circle was tied to clans. In this regard, the use of clans were explained as family Elders who regulated proceedings of the circle while working in conjunction with a facilitator.

Healing in regard to justice appears multiple times. The reference often referred to a change within an individual which affected his or her behaviour positively through clan

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[5] Interviewees were and are guaranteed confidentiality. References are pseudo-initials followed by the actual date the interview took place. If the choice of initials or replacement of actual initials is offensive to any interviewees reading this paper, I apologize for the confusion or error.

involvement or otherwise. The word "healing" was also used as a desirable or needed process for the people on the reserve as a collective.

Two people related personal dreams which had guided them in their lives. These dreams both contained messages from Elders. Someone else spoke of how he assessed a person's claims to spiritual gifts and dreams. He mentioned the importance of passing down knowledge and practices through grandparents as more reliable than "born again ceremonialists".

People spoke of language in several ways. One person spoke of an ancient language understood by all Indian peoples. Reaching youth through translating a Blackfoot way of life into the English written language was important to one speaker. Another mentioned speaking the Blackfoot language fluently was to him, now, a sign of cultural grounding. Twenty years ago, he reported, it was considered unimportant in schooling and was seen as an impediment for Blackfoot people rather than an asset in their adapting to the curriculum introduced by mainstream society. He compared differences in sounds of the two languages. Blackfoot language presently taught in the school system on the reserve was noted by some as a good thing, and by others as not enough to keep it alive. One person related that Blackfoot speakers his age who failed in school were often those he met in the corrections facilities. Finally, one person drew similarities between Blackfoot and German word order.

References to the non-Aboriginal justice system included personal experiences in jail – as inmate, as guard, as visitor. One man mentioned using his time in jail as an opportunity to pass on traditional values to other inmates. Another man found his

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relationship and living out traditional values with inmates as a guard differed from a later experience when he came as a visitor or program co-ordinator. As well, people spoke in general terms about the history of jail in the life of the local Nation. Winter incarceration of many males and mothers was mentioned as having influenced generations of children. One story related frustration with the court system and noted a personal experience in which a convicted violent offender was to be released unchanged and unrepentant. Three people mentioned hope in regard to working with offenders and their families after release from jail.

Terms and concepts which may be understood better or defined with this data are Elders, respect, honesty, and healing circle. These subjects will be considered in Chapter Five, Data Analysis and Interpretation.

Chapter Five
Data Analysis and Interpretation

In this chapter interview data are used to delineate terms important to understanding

the justice circle process, namely "Elder" and "respect." Observation data, drawn from my

own reports of BJCs and the Innu HJC report authored by Lyla Andrew, will be presented

as descriptive interpretation according to the structure, roles, and content of the circles.

Each interpretation is presented in charted form followed by an explanation in prose. The

analysis prepares the reader for the concluding and final chapter which interprets the

findings further in light of the theory of transformative justice.

Interview Analysis

Understanding how people perceive the concept of respect and how they define

Elders is integral to the discussion of the justice circles. Respect will be linked to the

definition of Elder and because it speaks to the honesty and trust in relationships with

Elders. Honesty and trust have repercussions for detecting the presence of authentic

morality in the content of BJCs. Elders and healing circles are culturally specific social

manifestations which may correlate with the definition of community explored in chapter

two. The following interpretation of these two key terms is a result of an analysis of the in

depth interview transcripts.

Elders

Three aspects of people which were present in interviewees' perceptions of Elder

were age, behaviour and experience. Age and aging was used in two ways - as a credible

and as an unreliable determinant of an Elder. In either instance, specific characteristics

were mentioned in regard to an Elder's behaviour and disposition, characteristics which

can be linked to spiritual maturity. Experience was used broadly as a qualification for

Elder status. For clarification, I categorize experience as informal and formal experience.

The chart below explains how an Elder may come to be respected as an Elder, beginning

with the issue of age and following three general perceptions of age as routes to achieving

respect from family members or the general populace.
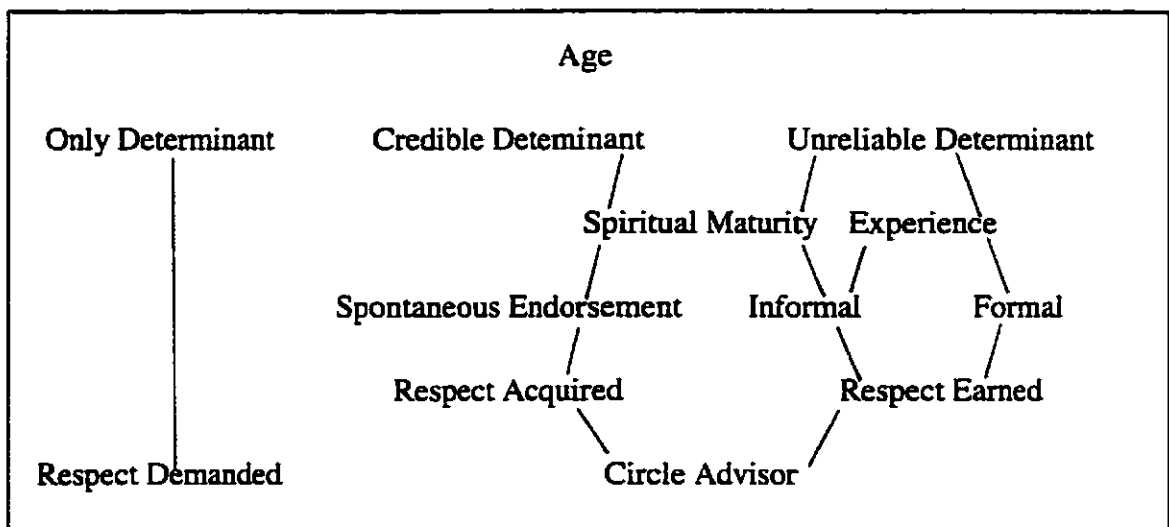
Figure 2: **Defining Elders**

Of the seven informants, everyone mentioned age in response to the question "Who

is an Elder?" Many of the interviewees spoke of themselves as traditionalists and, as

exemplified below, consistently discredited age as the sole qualification or as an

important determinant for becoming an Elder.

> Well, like I said, age has little to do with being an Elder. But like in
> today's society, in the Aboriginal community, you're automatically
> [when turning 65] an Elder no matter what you do (PL, 13/08/97).

The fact that several people felt it necessary to point out that age is a misguided

determinant of becoming an Elder, strengthens the argument that Elders are popularly

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perceived of as people in old age. The interviewees' comments, then, can be seen as a

reaction to a commonly found notion that old age is the equivalent of gaining Elder status.

If respect were given to a person with old age acting as a sole determinant, the respect was

not credited as freely given, but demanded by the older person.

> What's the family, what's the cultural level of the family? Do they
> still retain the Elders? Do they still- Do they consider their Elder - Do
> they still give the Elder that respect that Elders are supposed to have? Or
> is their Elder even an Elder, or is he just the oldest person in that family
> that is very assertive.
> You've got some very assertive Elders, well they're not Elders,
> you've got some very assertive old people that demand, they demand
> that respect (PL, 13/08/97).

In the chart above, this route to Elder status as a valid path recognized by some non- or

less traditional people, is shown as a straight line to demanded respect.

The second route to achieving respect as an Elder credits age as one determinant of

Elder status. Rather than a sole determinant, age is used to assess seniority.

> To me an Elder is someone in let's say— about the eldest in that -
> you know, in a family like a clan or whatever- the eldest of that family is
> considered the Elder where this person is respected (SQ, 08/04/98).

The "eldest" indicates that age represents seniority over someone who may be younger,

and is also showing signs worthy of respected Elder status. The stipulation of respect is an

important detail and is qualified as this speaker comments further on the condition of

Elder.

> They have the guidance, the wisdom, the knowledge, everyone goes
> to when they need that help. Someone who is well respected and not,
> more or less not involved with alcohol or gambling. A real humble
> person (SQ, 08/04/98).

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According to this person, something in the Elder's personal makeup (i.e. humility, wisdom) gives them credibility as a resource person. These characteristics are considered worthy of respect for people who seek advice. "Everyone goes to" indicates a popularity or a recognition of some quality within a person that is valuable. The respect which is given is spontaneous, given in acknowledgement of wisdom and certain other behaviours.

> When I see an Elder, like with me, an Elder is somebody that has some wisdom, that has some kindness, that cares about people, that is sensitive towards other people's feelings and an Elder who does not uh, who does not demand respect. Automatically there's a respect there and to me, that's an Elder (FL, 28/08/97).

"Automatic" respect is a characteristic which can be accredited to spiritual maturity. It is a quality in someone's persona which cannot be pinpointed to any one action, but exists - "automatically there's a respect". The reference to "transition" below can be interpreted as this spiritual maturity which manifests itself spontaneously.

> Well, in some cases, in some families you have to - [Said with recognition in the voice, like "here's an key point"] - An Elder can recognize another Elder even though that Elder may not even know that he is, he or she is an Elder. An Elder can recognize a potential Elder. So what you have to do is go in there and shop around. So you find that person. Once you've found that person, there's an approach that you bring this person about.
> This transition, like I say, it's not like, (pause) when I say it's an acquired - it's something that will naturally happen, but not through age. It's already there and it just happens. It's not age and teaching and everything else. You can teach and teach and it will never occur. What will happen is under certain conditions, that transition will happen. Once you can flip the light switch on, so to speak, you have your Elder there. The thing is, is that, the Elder may be right there, but the family may be so decultured that they don't recognize that individual (PL, 13/08/97).

According to this source, an Elder has the capacity to identify other Elders. It is possible that what an Elder identifies in another is the culmination of physical, spiritual,

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emotional and intellectual maturity. When one person spoke of the rites of passage, Elder

was the final of four steps in maturity (Child, Young Adult, Adult and Elder). Arriving at

the fourth stage of individually paced progressions in physical, emotional, spiritual and

intellectual development also suggests maturity. It is, perhaps, the spiritual maturity which

"flips the light switch on". The other qualities mentioned in the above quotations,

humility, care and wisdom, can be seen as the fruits of this maturity, the coming of age.

The respect in this case is not demanded. It is acquired through the spontaneity of others'

recognition.

> ... Traditionally, an Elder [position] was something that was
> acquired. Something that was - let's see, how do we say, "earned" was
> the other word. Because it was not something that was automatic [with
> turning sixty-five] (PL, 13/08/97).

Acquired respect can be seen as requisite of an Elder from the perspectives of some

people who consider themselves traditional Blackfoot thinkers.

The word "earned" can be used to categorize respect according to experience. Just

as respect can be acquired through acknowledgements of gifts or fruits of a spiritual,

emotional maturity, it can be earned, as the above quote suggests, through experience.

Experience presents a third route to respect as Elder. Although it may be linked to

spiritual maturity, this path requires knowledge through experience. A younger person

explained it to me this way.

> ... an Elder is someone who has a lot of knowledge in one area.
> That's what I feel an Elder is. But different people take it different ways.
> A lot of people think an Elder is you're old. You're an Elder. But I take
> an Elder as someone who has a lot of knowledge and experience of
> something. They know what they are talking about. So that kind of puts
> them in that seat of being an Elder because they can sit back, they've

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been there and they know what's going on (NQ, 14/01/98).

"A lot of knowledge and experience of something" was consistently referenced as

an important condition. From the interview data, the qualification of experience can be

categorized in two ways: formal experience and informal experience. The first pertains to

tasks or jobs which have been a part of one's past life. The second type of experience

applies to more personal struggles.

Formal experience can be identified with someone's past work. This concept is the

understanding of another interviewee.

> Well, my recognition, in my upbringing, my understanding of what
> an Elder should be, age really doesn't have anything to do with it. And
> I'm not saying that because I want young people. When I look at my
> belief and the process that we use, I was raised up in that process ...
> Coming out of that Blackfoot perspective, world view, I would say to
> define - what I would define an Elder as, is anybody that has given on
> authority that they used to hold (DT, 11/08/97).

Formal experience then, could be gained through acquiring knowledge about a certain

condition or subject by holding that office or position. The authority might encompass

political, occupational and/or spiritual roles. For instance, take the passing on of a bundle.

It was explained that the songs and prayers and authority of a bundle are transferred to the

responsibility of another person and the former bundle owner becomes an Elder to the

newly initiated bundle owner. On the chart, this is the far right, outside route.

A specific example of *informal* experience is a reformed alcoholic's experience.

The authority is not through training or work, but through living out the condition and

moving through it to a successful outcome: survival.

> [I]f you were an alcohol counsellor and I called on — was a big
> alcoholic and I needed somebody to talk to. I came to you and I sat with

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you. Third time I find out that you never went through it. You never
went through it. You learned your counsel from the book. That'll be the
last day I walk through your door. Native people have to actually live.
Have to actually live to be a resource person. Otherwise nobody's gonna
to listen to you (NX, 23/08/97).

The matter of "living out" knowledge prior to sharing it with others in an advisory

position was given great weight by this interviewee. The Elder role in the circle, in the

case of informal or formal experience can be specific to a task - counselling someone on

alcohol abuse, explaining proper use of a motor vehicle, speaking of the value of work or

education. Authority is attributed to experience first and other "book" knowledge, second.

The role of the Elder in the circle is not one of decision making, but advising. One

interviewee described the position of the Elders this way: "... [W]ithin the circle, the

Elders' roles are specifically to maintain ideology, to maintain the process, but never be a

part of the decision making" (DT, 11/08/97).

According to the research data, a traditional understanding of a Blackfoot Elder is a

person who matures spiritually, emotionally, physically and intellectually through

experience to the point that others look to him or her as a resource for advice, direction,

teaching. A person who reaches old age and demands respect because of his or her

superior number of years of life does not fit the above definition of Elder. In the BJC, the

role of Elder is a resource person, one who advises, but is not responsible for making

decisions within the circle.

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Respect

Several categories emerged regarding a description of respect. Of these categories listening predominated. People's actions were also indicators of respect and finally positions or places might be respected out of a sense of awe. People spoke of respect in regard to themselves, others, and the environment.

Listening in the circle process, as it is described here, is a key behaviour which complements each person's speech and leads to a voicing of solutions.

> It is just listening. Everybody speaks one at a time. You state your mind. Basically say what you have to say. At the end you have to be able to identify a solution and in some situations you have to be able to identify, - you have to be able to put a plan together (PL, 13/08/97).

In this way, listening creates order. Listening was also mentioned as a means of learning, as in the following statement "I was brought up to, I respect my Elders and always listen to what is being said, because if you don't, you're not going to be picking up anything" (NQ, 14/01/98). Listening to Elders can be compared to listening to an academic lecture or reading for knowledge. The speaker makes a direct link between the respect for an Elder and listening.

Other interviewees distinguished between respect as being quiet while an Elder spoke, and respect as listening with the intent of following the advice.

> Well I find the youth - some may accept what is told to them and use it to — as guidance in their lives. And others will just more or less listen - No. How does it go? *Hear*, but not listen. Just for the respect of the Elder. We're supposed to respect our Elders. They respect them by just agreeing to them, by not arguing, but not following what they say (SQ, 08/04/98, emphasis in original).

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Listening was not considered solely a one-way event, i.e. youths listening to Elders. One Elder described how, when working on a circle advisory panel with a hesitant youth, listening could be used to achieve mutual respect.

> We [the Elders] told him [the offender], Well, we're here to listen to you; not for you just to listen to us. It goes both ways. We have to listen to you and you have to listen to us. We respect you and you have respect for us. And you know, you have to get, have the responsibility for yourself, to speak for yourself. You know, because you got a tongue, you got a head, you can think, you can talk, you can hear (FL, 28/08/97).

The action of speaking and being listened to can be a significant step toward gaining the respect of another.

One person raised the issue of language, how one speaks, as a means of conveying respect, not necessarily for another, but for oneself.

> I'm down in the corrections and I'm telling the guards and the other guys coming "Ah, we want this and we want that, you know. And others are talking "We f'in want and we f' in want it now" sorta thing. And I am sort of like, standin' there like, "May I?" you know, "please" and "Good Morning", you know and I'm trying to maintain my respect for myself (WD, 19/08/97).

The suggestion in this passage is that what others hear and how one chooses to speak are significant in the process of gaining respect. Choosing words carefully, making oneself clear and free from angry or abusive words is a respectful use of language when the speaker has an audience. As well, words can be used to "maintain" control and order in oneself as the last phrase states: "I'm trying to *maintain* my respect for myself."

Actions were a second category which people attributed to showing respect. In the following case, the interviewee's commitment to an organization was an action of respect.

> So out of respect I stayed with the movement. There was a movement there. I respect ZM and [spouse] ... for being on the board. That's about

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> as far as it went. My heart just wasn't in it anymore. I attended several
> cases (PL, 13/08/97).

The respect shown by this individual is for a movement (restorative justice) and for

certain people (ZM and spouse). The action of respect for the movement and the board

members can be seen in this person's attending "several cases" despite a personal

disagreement with the methods and values witnessed in the specific undertaking (panels

which met with young offenders).

The above story is an example of a Blackfoot conceptualization of participation as a

means of connoting agreement or disagreement. In Blackfoot culture, it was explained to

me that silence of a participant has generally represented disagreement. Vocal

participation in a circle shows commitment to shaping the end result in a decision making

process. A lack of participation therefore connotes dissension. In this case, the

interviewee's attendance represents respect for the alternative justice movement and two

people on the board, but the words "my heart wasn't in it" can be likened, to not actually

taking part. The dissension the interviewee's phrase conjures up is like the voiceless

participant in a Blackfoot gathering. One's silent presence, then, makes it possible to

show respect of another or others while disagreeing with their ideology, methods, or

decision.

Keeping peace with one another is also seen as a respectful action in the following

comment. "My job is to help the people. Is to help them be with their their family and

have respect in their homes. Quit fighting with one another. Quit chewing at one another"

(NX, 23/08/97). The interviewee, as peacemaker, seeks to harmonize relationships within

the home. To have respect in the home, as it is related here, is to avoid violence and

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vengeful words. In working with circles techniques, NX attempts to help "them", the wrongdoers, establish harmonious relationships with family members. Thus, those who "quit fighting", increase the amount of respect they have for one another in their homes. Actions then, can show respect for oneself and for one another, especially in orderly, caring behaviour.

How a person treats his or her own space can also show respect. In this next excerpt, the person refers to keeping order in the home as a way of maintaining respect. "W: I usually keep house pretty good./ T: Oh. I don't./ W: I just try to have respect for my area" (WD, 19/08/97). Keeping physical order in the home and/or cleanliness are associated in this statement with respect for the physical space. This respect seems to be associated with personal responsibility as it is expressed in the words "my area."

Finally, respect was described as reverence, or awe. Awe for the authority of nature was passed on through the example and oral teachings of this person's grandparents.

> Like my grandmother used to say that they have a lot of respect for
> the universe because it's a mystery . . . and then also she told me that
> the earth was a living organism and as a little girl I learnt all these things
> and now they're coming back to me (FL, 28/08/97).

Respect for the universe was expressed not only as personally recognizing the mystery in one's surroundings, in creation, but also as formal spiritual practices among Blackfoot people in their traditional way of life.

An Elder interviewee explained how the Blackfoot world view incorporates respect for the natural world as a way of life.

> Thunder, lightening, floods, uh - anything that you had to live in was
> something that we had to make sense of. . . . As Blackfoot people we
> had to use them or we had to explain them and those explanations

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became principles of our ceremonies. The Thunder Medicine Pipe
Bundle. When the water floods - the Beaver Water Pipe Bundle. When
the Sun Dance is on in the summer, the Sun Dance Headdress. You
know, you're looking at all these types of ceremonies. The Brave Dog
societies, the Bumblebees and so on. All the bundles of ceremonies
pretty well came from those explanations of our world view (DT,
11/08/97).

The interview data reveals the quality of respect as a personal choice exposed

through listening, speaking, acting, and reverencing. According respect tooneself, one

another, one's place or nature respect can be seen as a positive gesture which shows

cultural maturity, confidence in oneself and encouragement for the other. In regard to

nature, living out respect in the ceremonies is a means of survival, where bundles become

an expression of harmony with and explanation of the environment.

Observation Reports

The following analysis is based on several reports of justice circles: two observed

Blackfoot Youth Justice Circles (YJCircles), two observed Blackfoot Healing Justice

Circles (HJC), one observed Blackfoot Releasing Circle (RC) and a description of an Innu

Healing Justice Circle (Innu HJC). Although there are three general categories of justice

circle, i.e., the YJCircles, HJC and RC, the Innu HJC varies significantly from the

Blackfoot HJC in its structure and is therefore considered separately from the Blackfoot

HJCs. The Innu HJC is useful here for comparison because it represents an alternative

route for Aboriginal peoples to work healing circles into the lives of those people

grappling with the Canadian criminal justice system. Three charts present the justice

circles comparatively, highlighting differences in structure, in participant roles and in

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content. The commentary which accompanies the charts furthers the analysis in light of the concepts of *community*, as a power in decision making and expression of care; *justice*, as the representation and building of authentic morality; and *peacemaking*, as a process of patient listening in the presence and advising of Elders who have acquired or earned this title. The text also incorporates certain personal insights.

Structure

The structure of the circle is significant for several reasons. The structure lends itself to degrees of equality among participants, possibilities for emotional contributions, and participation opportunities for the offender and victim in decision making. The structure determines the method of decision making and to some degree the atmosphere of the encounter.

The setting for the structure is also significant. Circles all took place on the reserve, not in courtrooms. Indian people were therefore on their own turf, so to speak. YJCircles involve a time-sensitive sentence. The youth is subject to court sentencing should she or he not fulfill the final recommendations of the circle within three months. The RC and HJCs, on the other hand, operated more independently. Time pressures existed in the RC because of a late start and the need for the inmate to return to the penitentiary. Some participants attending HJCs had to return to day jobs or other tasks.

The following chart explains the circle according to the physical and procedural structure of justice circles as I witnessed them. Included in the physical structure are hospitality, number of roles and the seating plan. The procedural categories begin with the

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introduction and follow through to the sign or word of agreement, recorded in the chart below as "final vote." Following the chart is a detailed explanation of the categories. Each category is italicized within the text for easy recognition.

Table 3: **Circle Structure**

	YJC 1	*YJC 2*	*HJC 1*	*HJC 2*	*RC*	*Innu HJC*
Hospitality: Yes/No	N	Y	Y	Y	Y	Y
Number of Roles	9	11	9	10	8	7
Seating Plan: Ceremonialist/ Other	C	C	C1*	C1	O	O
Introduction	Y	Y	Y	Y	Y	Y
Opening Prayer	Y	Y	Y	Y	Y	Y
Police Report	Y	Y	Y	Y	N	N
Number of rounds for speaking	2	1	2	1	2**	4
Resolution: Spoken/Read	S	R	R	R	S	S
Final Vote	N	Y	Y	Y	N	N

* "1" indicates a variation on the ceremonialist model
**After a round of introductions, several community members were invited to speak, then parents, corrections officials and a second round was open to anyone in the room.

I have come to recognize *hospitality* as an action of some cultural importance. One woman spoke of hospitality as sharing.

> Whatever it is that we have even if, you know, we don't have too much food or we invite people and say, "Come on, share with what, you know, share what we've got." We'll share what we've got (FL, 28/08/97).

Hospitality in the context of the circle ranged from an offer of Blackfoot mint tea, or coffee before assembling (the HJCs), to a full luncheon prior to the circle (the Innu HJC and second YJCircle) or mid-circle (the RC). Even in the case of the first YJCircle when the co-ordinator had several tasks to perform, I was offered a coffee in the office prior to making my way over to the centre where the circle was held. One interviewee explained

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the importance of sharing in indigenous cultures this way: "Native people. It's in our blood, it's in our culture, it's in our tradition, it's in our natural instinct as a [means of] survival to be kind, to share, to teach, to show that hospitality. That is in our genes" (WD, 19/08/97). The sentiments of this statement suggest that hospitality, as a part of the circle gathering, is a cultural teaching of the value of sharing for those present.

The *number of roles* in the chart above does not reflect the numbers of people present and participating. Occasionally one participant took on several roles as in the case of the first YJCircle. The co-ordinator in this instance was also secretary and a member of the technical help. The second YJCircle appeared to me to have a person for every role. The RC had the largest number of people gathered, in part because the circle offered an opportunity for family to be present with a loved one who had been incarcerated and for a number of students participated as observers with their instructors.

What the number of roles does suggest is the complexity of the structure. For example, the Innu HJC was relatively simple in form and had the fewest number of roles. This HJC was designed with the comfort of the victim in mind. Although the circle involved a serious charge, the intent was not to bring that matter to the attention of the leaders or public. Sellon himself had reported his crime to the RCMP months before as an action of bringing the wrongdoing out into the open. Rather, this circle responded to a need in the offender to reconcile with the victim, as well as the victim's needs, including privacy. Although the circle was set up independently of the courts, the facilitators were prepared to share the results of the meeting with the judge prior to sentencing. The courts, although not participating, approved of the circle after having acknowledged that

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recommendations from the Aboriginal point of view were applicable and desired in this case.

The highest number of roles was in the second YJCircle I attended. The case also involved a serious charge, but the circumstances for holding the circle were different. The offender in this case did not request reconciliation, but was offered an opportunity to deal with the charge through the circle process. People involved were invited because of their expertise and experience, or to perform specific tasks such as taping the proceedings. People in charge of running the YJCircle were accountable to their written constitution and the justice system. Therefore, certain representatives had to be in place to meet these requirements creating a more complex structure. Another sign that the structure of the second YJCircle was more formal than the others was that the offender and victim were not known to everyone in the room. The setting was considerably less intimate than the description given in the Innu HJC report.

As explained in the delineation of the term respect, active participation within the circle is seen as important by the designers of the ceremonialist model. Silence of a participant can communicate disagreement. Consensus decision making presents an opportunity for each person to express their agreement and make suggestions for revision of some suggestions and the inclusion of others. Disagreement expressed as silence indicates an unwillingness to participate or take part in the plan under discussion. Knowing one's role as a participant therefore, can be seen as important to Blackfoot decision making. The more people involved, the more active and complex the circle.

Physical changes to the ceremonialist *seating plan* in the cases of "C1" in Table 3, included the shape of the circle itself, positions and placement of people. The two half circles with an open doorway in the model which were apparent in the YJCircles were modified in the HJCs. HJCs were a closed circle with a table between the co-ordinator and mediator. Four positions for technical help were moved from the centre facing the host, to a less certain number of counsellors and agency representatives sitting as part of the circular set-up. Placement of the victim and supporters sitting within the circle also varied in the HJCs. They were not necessarily sitting beside the co-ordinator as the second to last to speak. Seating appeared to be more random.

The seating plan seemed to influence the atmosphere of the circle. I noted differences between the two HJCs and the two YJCircles. The former appeared to be less stressful for the offender, or host. Differences which may have made the HJCs seem more comfortable than the YJCircles were, first, visibility. In HJCs everyone could see one another. Second, there were fewer or no direct questions, since the technical people within the circle were less likely confront the host as the panels did. Last of all, I detected less pressure on the host and victim and credited this sense to the fact that HJCs were not tape recorded nor accountable to the courts.

Early on in the proceedings, every circle entered into *prayer*. People were silent as the Elder who had been asked to pray, spoke. Several times Elders mentioned that prayers were said for everyone in the room. The presence of prayer in indigenous people's gatherings can be seen as their acceptance of the spiritual nature of humans. The spontaneity of the prayers indicated to me a familiarity with prayer spoken aloud, in the

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presence of others. Creator was acknowledged as central to the making of decisions and one who is all knowing. One mediator commented in his introduction, that Creator has been left out of the justice process too long. Using prayer at the outset of the circle also functions as a petition for Creator's presence to enter into and remain throughout the process. In this way the structure can be seen as technically encompassed in prayer with Creator as overseer of events as they unfolded. Whereas courts secularized justice, circle justice can be seen as a step toward desecularizing the justice process.

The circles were consistent in their inclusion of an *introduction*. My interpretation of the importance of the introduction is twofold. First, circles used in conjunction with the Canadian justice system are a new phenomenon. In the Innu HJC the facilitators were aware of setting a precedent. The purpose and structure of all of the justice circles charted above were likely unfamiliar to some or many of the people gathered (whether those people were from the Aboriginal community or from outside). The introduction therefore, can be seen as an explanation for the presence of justice circles on the reserve and as well as a means of teaching others about circle dispute resolution and its uses. For instance, according to the Innu report, spreading the word in regard to the benefits of the circle in matters of reconciliation was stressed at that HJC. Participants were encouraged "to let others know that it is possible for someone in our community to be held accountable by others in the community and to take responsibility for hurting another person" (R. v. Sellon, 1996: 10).

Second, the introduction assists in calming tensions in the room, especially fears as to what is taking place. Uncertainty is bred by unfamiliarity with the process and the

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formal set-up. The nature of the problem at hand, i.e. illegal, immoral offences may also

contribute to a somewhat unsettling or fearful atmosphere among those gathered. I

interpreted the introduction as an ice breaker which, early on, draws attention away from

the offender and victim to the mediator or facilitator and the process itself.

To me, there was a notable difference in the atmosphere at the start of several

circles as compared to the finish. As mentioned, the mediator's words of introduction

usually dove into an atmosphere of tension and as people around the room continued to

speak the stress level was reduced. I concluded that people became familiar with the

process and somewhat, with one another. In several circles the introduction began a

informing process which progressed until, at the end of the second round, I sensed a near

harmonious atmosphere.

In other gatherings, the difference from the outset and end may not have been as

pronounced or as positive a change. These circles could be described as ending with some

uncertainty, and some dissatisfaction. Reasons for the discrepancy I attribute to political

undercurrents, an incompleted process (see section on rounds below) and insufficient time

allowed for discussion. However, in both scenarios the introduction seemed to be an

appropriate beginning for the people assembled.

Police reports served the purpose of introducing the action of the crime or the

wrongdoing to those gathered in the circle. As seen in the chart above however, two

circles presented without police reports. At the RC, the facilitator spoke words to the

effect that he understood that those present were aware of the offender and his case. No

report was read, nor was there much reference made to the circumstances which resulted

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in the jail sentence. An Elder did speak of his association with and observation of the inmate in the penitentiary. Many people present had been invited and 'briefed' prior to the gathering. In the same fashion, only people directly involved or aware of Sellon's case were invited to the Innu HJC. Therefore, the circumstances of harm did not need to be reintroduced by a police report, nor was the Innu victim or the offender forced to listen unnecessarily to painful events as told by an outsider (a course of action which did occur at other justice circles).

When it was used, the police report was a means of outlining (as I heard one mediator explain) "the facts" of the case. It was my experience however, that the police reports were only a starting point. In the second YJCircle I attended, the mediator requested that people stick to the "facts" of the case as they had been presented, cautioning them not to get off topic. However, the nature of the circle is such that one view or statement is insufficient to define the problem. What is to be discussed is multi-faceted - with as many sides as there are voices around the circle. This characteristic can be observed in the first round.

The first rounds in ceremonialist BJCs were dedicated to comments on the situation. The "truth" of the matter unfolded as each person contributed details according to their perceptions both verbally and emotionally. The police reports may present a case skeletally, but the circles help to flesh out the case and produce a living body of information which people are free to interact with or react to as they take their turns. This unfolding dialogue includes references to the host's life as well as the circumstances

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leading up to breaking the law. Hidden feelings and intricate detail may remain unvocalized, but are alluded to when facial or body gestures indicate emotional pain.

The multiple perspectives around the room provide a grounding on which decisions can stand. The first round (or second and third rounds in the Innu HJC) therefore act(s) as a foundation for the solutions which follow. The "facts" of the case as recorded in the police reports are not the only account produced to define the situation at hand. In contrast to the richness of the gentle wave of information built up with each contribution around the circle, the police reports, when taken alone, can be compared as somewhat flat. When presented orally by the officer on duty, they were only a beginning to unveiling the event.

The presence of police reports were also evidence that the wrongdoing had triggered and involved the justice system. Like prayer determining the spiritual nature of the undertaking, the police reports signify an underlying presence of the Canadian justice system. I attended no circles for justice in which the justice system did not play some role. In fact, I have come to see the police report as a symbol of a power greater than the gathered circle. This "power" is the criminal justice system, a product of the mainstream society. The authority to initiate and clear the offender of the offence rested with the dominant system.

The undermining of the circle's authority created two adverse effects. First the authority of the Elders and possibly others in the circle could be discredited and second, the development of community, (as McKnight has described it) was short circuited at the outset. Because the power of the dominant system persisted from the initiation to the completion of the justice decision making, a degree of synthetic morality was present.

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Inequality existed not in the physical bodies around the room, but in the authority given to the recorded origins of the charges and complaints: both represented criminal justice according to Canadian rule.

The starting point for community, according to McKnight's sources, takes place at determining the problem. Reviewing de Tocqueville's observation of the early New World settlements clarifies this position.

> First, they were groups of citizens who decided they had *the power to decide what was a problem.* Second, they decided they had *the power to decide how to solve the problem.* Third, they often decided that *they would themselves become the key actors in implementing the solution* (McKnight, 1995: 117, emphasis added).

Unless the people discerning and forwarding cases of wrongdoing are working within the Aboriginal Blackfoot world-view, the problems are not determined by the Blackfoot people. The Blackfoot lack this power. This is not to say that actions of harm will not be mutually condemned or corrected by both societies. It is to say, however, that definition of the problem must originate with those solving the difficulties. Ryan makes a similar comment regarding the power of the justice system and the Dene people in the NWT.

> It seems that it is difficult for the judiciary and lawyers to understand that making a ruling that is consonant with existing local custom is not necessarily preserving, nor understanding, the cultural issues. The judgement in itself is an intrusion into the culture that is not appreciated. Because the overlaid system arrives at some decisions that are the same as those of the community does not affirm the latter. Nor is legal affirmation of their decisions necessarily wanted by the community (Ryan, 1995: 121-122).

The following example illustrates this point and explains how the dominant system, in maintaining ownership of the problem, draws authority away from the circle. At one

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circle an Elder interpreted a child's illegal actions as a reaction to the fear of abandonment. Though the child's actions in fact were illegal, they were not immoral. The Elder's recommendation was for no further punishment to be arranged, as he considered the ordeal itself and the parent's correction enough. In the ensuing comments, the suggestions of school and corrections' representatives were incorporated into the sentence while the advice of the Elder was mentioned by the mediator, but not adopted. Respect, if understood as the ability to be listened to (Pranis, 1998) and have one's advice followed, is not reflected in the circle's response to this particular Elder's words.

Ultimate respect is for Creator and this type of respect was explained by the following story an interviewee told regarding a relative who challenged a judge. The narrative serves as a delineation of the bundle process and the Blackfoot understanding of power in justice.

> My responsibility as a community member is to support that bundle owner for justice. You know, so when we sit there, there's three parties. There's Creator and the gift of justice, then there's the biggest responsibility, the bundle owner and his process for our safety. Then it's my responsibility. It might be small, but I have to maintain justice for the survival of our community too. So whatever I do in actions, I have to make sure I check that. The bundle owner and myself both have responsibility. We're equal. He's never more powerful than I am because there's a third party here which is the bundle of justice, which the Creator gave us and we're both responsible. And that is his [the interviewee's uncle] world belief.
>
> But if you take that power that the bundles [themselves] own, and you take that bundle out and you put a person there, then there's only one Creator, it's not the judge. The Creator has power, everybody else has responsibility, but if you give a judge power that he's - the judge's doing what you want to be your Maker - And that's where he challenged the Court. When the judge said that power invested in him to give him thirty days he said "Creator is my power, justice bundle is my power and bundle owners are my people that are responsible for the safety of our community. What is this judge today saying that he's got power? (DT,

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11/08/97).

BJCs work on the premise of a guilty plea. Although pleading guilty is in accordance with Native American Indian and Inuit values of honesty, submitting the plea articulates the problem according to the standards and rules of Canadian law. Under these laws, the admission of guilt concedes power to the judge for deciding one's future. In the earlier example above, the circle could not open itself to the interpretation of the crime as the Blackfoot Elder presented it because finding the boy "not guilty" was not within the jurisdiction of the people present in the circle. Excusing him of any punishment or conditions which would be reported back to the Crown's office was also inadmissible.

In the YJCircles especially, ownership of the problem is assumed by the Blackfoot in de Tocqueville's second and third steps, but the origins of the procedure remain with the dominant system. Defining the problem in the first round may modify the description of the problem, but it does not remove it from the authority of the framework of the Canadian Justice System.

If the first round of comments defines the problem, then the *number of rounds* are significant. In the first round of the ceremonialist model, offenders and victims both had opportunities to describe what took place while others recalled what happened to their loved ones and/or commented in reaction to what had been said. (Together, the first three rounds of the Innu HJC are comparable to the first round of a BJC). In determining the problem, the ceremonialist BJC does not so much latch onto the police narrative as a sole reference, as it does create a living vine of description and information which grows as it weaves through the group. This process, created for the moment, redefines the problem.

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Participants speak of the wrongdoing, of the offender's strengths and weaknesses, of the family background and reputation, of community services, struggles and needs for change. The first rounds, dedicated to the event and reactions to it, seemed to me to recreate the past in a spoken process. In other words, historically drawn conceptions of what had happened in the past ritualistically brought the situation into the present.

In part, I attribute freedom for emotional expression to this effect. Sadness or expressions of being overwhelmed, evident in tears or sobbing, and feelings of violation expressed in words and tone of voice, brought something of the essence of the past situation into the immediate. My assessment of careful listening in the first round, where these emotions were silently respected, was that the initial series of contributions also provided time for plans and recommendations to emerge for the second round and eventually, for consensual agreement.

Combining the comments with the recommendations into one round effectively limited the circle's breadth. Hence, there was an alteration in the process of decision making. Such a change also has implications for the victim, whose story cannot be heard before recommendations are made. Rather, recommendations are made based on the police report, the host's contribution, and what has been spoken by family members and others at the point of one's turn.

Granted, those who speak after the victim are, in the YJCircles, the participants who are designated technical help. The opinion, stories and suggestions of these four people seemed to me to bear the most weight in regard to determining a sentence. They had the advantage of listening to everyone else in the circle prior to speaking. With a structure

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based on a single round for input, however, the content of the circle by the time technical help speaks, is somewhat depleted.

To begin with, the first recommendations to be made around the circle have been based, not on the collective voice, but on a fragment of the complete picture. A single round for both comment and suggestion reduces the options and time available to consider and suggest plans for improving the life conditions of the offender and victim. What people have to suggest in the course of the circle may be ideas for healing pains which have surfaced within the group that day. Allowing everyone to comment first is a unifying motion in that everyone is heard from. It is also stabilizing because emotional testimonies have usually aired themselves in the first round leaving space for people to absorb the complete circle reaction before suggesting a recourse.

Respect for the power of the victim's testimony must also be called into question when only one round is used. The information on which participants base their recommendations, is incomplete without the victim and the victim's family's testimony. If authentic morality is used as a measure of justice, equal participation is essential. One round renders participation unequal. The ceremonialist model seats the victim last before the technical panel and therefore, two rounds must be held to ensure that everyone hears from the victim before deciding on "sentences" or solutions.

I learned from the mediator in charge that the change from two rounds (one round of commentary and a second round for recommendations), to one round (which included both) was a means of saving time. This change, however, is not consistent with LeResche's description of traditional peacemaking methods nor with the original

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Blackfoot model. According to LeResche, Native Americans "are not bound by Whiteman's handcuffs - the wristwatch" (1993: 324).

When people are asked to make recommendations without completing the task of assessing the situation, the degree of *careful* listening can also be questioned. Attending to the person speaking is one manner of careful listening. A second expression of careful listening can be taken as allowing time for people to think and to respond, as well as hearing everything which might be said. Taking these two points into consideration, two rounds for discussion in a BJC more adequately facilitate careful listening than one round does.

Another aspect of BJCs which reflects cultural influences from Western justice practices are written and oral *resolutions*. Blackfoot language, although transcribed in the form of a dictionary this century, has been historically oral. The Blackfoot speakers I met did not write their language and doing so was a practice limited to names, signs, book titles and some school materials. Written papers, and in these cases, legal forms are prepared in English. Blackfoot people have maintained an oral history and teaching to the present day, but the justice circles working in the ceremonialist model have adapted written policies and a constitution for co-operative resolution of problems with the Canadian justice system. At times the mediator called for the conclusion or recommendations to be read aloud. In the chart above, this step is indicated by an "R".

Written conclusions appear to be an accommodation to the Western justice style and an adaptation of the Blackfoot ceremonialist process to produce a justice model. Co-operation with Native Counselling services, the RCMP and the Crown prosecutor who

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helped to coordinate some of the first justice circles, may have encouraged the production of written conclusions. Written decisions are in keeping with the mainstream practice of criminal records and sentencing decisions. In the BJCs (excepting the RC), the wording of the resolutions or recommendations seemed to be considered the responsibility of the probation officer/co-ordinator whose recorded statement would then be agreed on by the group. The female facilitator at the Innu HJC created a written report from a tape-recorded version of the circle and her own observations.

Consensus or agreement was not necessarily achieved through a *final vote*. As related in the chart on structure, three of the BJCs confirmed their agreement through voting, but the Innu HJC, RC and the first YJCircle did not. It may be a misrepresentation to refer to the gesture of nodding or speaking in agreement as voting. Technically, if someone dissented, the circle would continue to deliberate until everyone was in agreement. However, as I witnessed the proceedings, the question posed around the room and the answers individually offered, I associated this action with voting.

In regard to the RC, this circle was not designed to reach an agreement as much as it was held to explore the potential plans for a parolee's possible return to the community. After the second round of the other BJCs, people generally felt free or sought permission from the mediator to mention additional considerations or ask for points to be clarified prior to a determination of consensus. The Innu HJC held a fourth round of recommendations which resulted in suggested actions for the offender and the victim. As recounted below, "consensus" was related in the Innu report, indirectly.

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When the Innu fourth round (recommendations) was over, one person asked the victim about her feelings regarding reconciliatory gestures. In her own language, the victim expressed agreement which was interpreted into English by the male facilitator. His interpretation, however, was not completely accurate. After he was corrected and then listened once more to the victim speak, the matter was straightened out. He used the incident to make "a disparaging remark about his interpreting skills and this prompted a lot of laughter which seemed to clear away any remaining tension" (R. v. Sellon, 1996: 12). I understood from the report that everything which was recommended was forwarded to the judge. Consensus in this case was illustrated by having any questions addressed after the fourth round and then joining in a common action: "Everyone agreed to close the circle and stood up with hands joined and together repeated the 'serenity prayer'" (R. v. Sellon, 1996: 12).

Reasons for the difference between voting and not voting in the remaining three justice circles may be circumstantial. Mediators may have interpreted the circumstances as not requiring a vote. In the first YJCircle, the host was a child and under the authority of the parent who was present. As well, my impression was that the young person was accountable to and in the care of the people gathered. Ownership of the problem and resolution appeared to be shared by them with the host playing a lesser role. He himself was given behavioural stipulations as a result of the circle decisions. The mediator had summed up the suggestions with his own recommendation for ways in which the host could assume responsibility for his actions. With some further discussion, the technical panel appeared to agree with the parent as to what was appropriate in regard to curfew and

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other corrective measures. In the small group gathered, a vote to secure consensus may have seemed redundant.

In conclusion, categorizing the structure of justice circles according to the basic procedural components reveals similarities and differences among BJCs and their Innu counterpart. Common to all or most circles were hospitality, a minimum of seven roles, an introduction, and an opening prayer. Discrepancies occurred in seating plans, the presence of a police report, the numbers of rounds for discussion and in the delivery and decision making of resolutions.

Theoretically community is compromised by incomplete power to define the problem. LeResche's definition of peacemaking as a process requiring patience and incorporating good listening skills is jeopardized when the ceremonialist BJCs are reduced to one round. If charges were pending an unsuccessful agreement, the circle was significantly undermined by the power of the main justice system to assume jurisdiction of the offender's case. Synthetic morality accurately describes this condition.

Roles

In the previous section, it was explained that the structure of the circle can encourage the people present to define the problem collectively. The process becomes an act which ritualistically brings the past into the present. Who attends a justice circle is important for this reason. The people present share the problem - whether family members, people present for reasons of mutuality, or representatives of agencies attending because of their interest and their job description. The roles which these people play are

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outlined in the chart on the next page. A role may be shared by all, or be specific to groups of people or be designated to individuals.

A few general comments can be made regarding the roles. Necessary to the circle are the roles of host and those who run the circle - mediators, co-ordinators and facilitators. Hosts ultimately have supporters present and if a victim is available, he or she is also likely to have family supporters present, but not necessarily. At the second YJCircle, a friend accompanied the victim. People running the circle also invite band members and others who, to them, seem relevant to the discussion of the case. These are "technical" people. Observers are the least involved in the proceedings, but do play a role.

Every person present in the room is included in the process in some way. There is silent participation in prayer where all are considered equal before Creator, giver of life. (Note that in the structure chart above, an opening prayer was a part of each circle). Gestures of hospitality also extend to otherwise silent observers such as myself.

The roles can be divided into two groups: 1) leaders and others called on to perform a task, and 2) those most directly touched by the act of wrongdoing. The following chart begins with a leadership role and moves on to the second category of "those directly touched". This is the host and those listed below through to the victim supporters. Outside professionals, technical help, community representatives, secretary and observer are all roles with a specific task and are featured last.

Table 4: **Roles in Justice Circles**

"X": Present	YJC 1	YJC 2	HJC 1	HJC 2	RC	Innu HJC
Mediator/Coordinator or Facilitators	M/C	M/C	M/C	M/C	F	F
Host	X	X	X	X	X	X
Host supporters	X	X	X	X	X	X
Elders	X	X	X	X	X	X*
Victim	X**	X	X	X		X
Victim supporters		X	X	X		X
Outside professionals	X			X	X	X
Technical help	X	X				
Community representatives		X	X	X	X	
Secretary	X	X	X	X		X
Observers	X	X	X	X	X	X

*I have classified Sellon's step-father as an Elder here because of his background
in living with the land hunting and trapping, his personal achievement overcoming
alcohol addiction and his alcohol counselling experience. His role was not stated as
such in the report.

**In this case the victim submitted a letter which was read aloud.

Two people were in charge of preparing for and running each circle. As seen above

they are a team of *mediator and co-ordinator* or two *facilitators*. Facilitators seemed to

share responsibilities while duties of the co-ordinator and mediator appeared to me to be

more clearly defined in their division of labour. I have therefore counted them as a shared

role with two positions. The role, as I saw it, was organizer, operator and guide.

Organizing the circle included interactions with the justice system, (police, Crown

prosecutor's office), booking a facility, and arranging for appropriate people to be

informed and attend. Notification of cancellations also fell within the organizing duties of

the co-ordinator/facilitator. These duties could be shared, but I understood that the

co-ordinator took charge of the physical arrangements and that contacting and visiting

people prior to a circle was a shared responsibility. Visits may have been necessary in the

case of no telephone service or for cultural appropriateness. Contacts for the Innu Circle

were made in a series of interviews beginning with the victim, for the most part in person (R. v. Sellon, 1996: 6). That I was aware of, one co-ordinator also provided transportation for one participant. There is a possibility that arrangements for transport (especially of those without vehicles) may have occurred more often as a task for the co-ordinator/mediator.

As "operator" the mediator or a facilitator ensured the smooth running of the circle. He gave the introduction, asked for prayer from an Elder, kept the flow of the circle moving, initiated new rounds and brought the circle to a close. As mentioned earlier, his role was delivering the introduction, thereby relieving tension and setting the circle in motion. The male RC facilitator also delegated the opening contributions from the circle by calling on certain people present to speak in regard to their position or area of work. The facilitator might also be in charge of translation (Innu HJC) and the facilitator (male), like the mediator made closing remarks.

As "guide", the mediator or a facilitator led the people through the process. In this sense the leadership role is an essential position in the circle. Decision making is a part of the mediator's job description, as it would have been for a bundle owner through a spiritual circle process. The facilitators in the RC and Innu HJC seemed to engage family Elders or other circle participants to share in the decision making. For instance, the facilitator in the RC made reference to a conversation with the inmate's father in regard to possible cleansing rituals which would take place in a release plan. Sellon's mother also clarified certain aspects of the recommendations for the victim within the circle prior to its completion (R. v. Sellon, 1996: 11).

Mediators or facilitators also guided the process through problems which occurred. For example, one mediator interceded during a political controversy between the family of an offender and the jurisdiction of the justice system. He clarified the situation with a question, putting the decision as to what should happen next, in the hands of the family.

A central difference between the duties in the roles of the mediator/co-ordinator and that of the facilitators occurred with recommendations. The Innu facilitators made recommendations as their turn in the circle arose, and the last to speak in the final round happened to be a family Elder. In general, co-ordinators also spoke as their turn occurred within the circle. Mediators, however, spoke at the end of the circle. The BJC mediators summed up or clarified what others had said and then proceeded to make a decision in regard to a plan. Sometimes the plan formed in dialogue with the circle or with technical help, especially when Elders were required to work with a host. The mediator's own recommendation was applied to his summary.

In the circle itself, facilitators of the RC did not share between them the visible duties of operation and guidance. I was aware that the female facilitators worked in the same office and took part in problem-solving and communication tasks, facilitating smaller circles among women when necessary. The male Blackfoot facilitator, however, operated and guided the RC while his female co-worker spoke as a matter of course with other participants. Although there was no need to pronounce a decision, the facilitator made concluding remarks. The mediator role differed from the facilitator role mainly in the degree of control his position allowed for synthesizing contributions and finalizing decisions before a consensus vote.

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The role of *host* is a prominent role, not only because she or he is encouraged to speak to the case directly, but because the name "host" signifies someone who has called on others to be present. The wrongdoer is in a position of asking for help from his or her people and so, is host to the circle. This person has also been pinpointed as an offender by the justice system because of his or her actions. In this sense the role of host is openly acknowledged in the circle by name and the role of offender is its silent shadow, cast by the involvement of the justice system. After the mediator and police report, the host is usually the first to be given an opportunity to speak in regard to his or her involvement in the case. (Exceptions are the RC and the Innu HJC which were less standardized in their seating plans). His or her narrative provides an opportunity for everyone present to understand better the circumstances according to the perspective of the wrongdoer.

The host, however, does not stand alone. The role of family and other *host supporters* who accompany him or her calls attention to the fact that this person is part of a greater, immediate whole. These positions provide strength as well as guidance in the host's predicament. It is also their role to inform the room as to who this person is according to and apart from the harm or misbehaviour under discussion. The growing years, the family situation, struggles and successes were among the topics mentioned by supporters. My experience was that, for the most part, people designated "supporters" in the ceremonialist models described character and circumstances. Explaining the hosts talents, successes in sports, good school behaviour, and work achievements were all ways to balance the criminal incident with positive aspects in the host's life. The supporter

acted as a physical extension of the host's life as an individual and beyond the present case, while increasing the detail in the circle's depiction of that person's character.

The presence of *Elders* extends the range of relationships with the host beyond the immediate family. With the role of Elder, the host is associated with his or her people as a Nation. In addition to the presence of immediate loved ones, these men and women acted in the circle as signs pointing to the broader populace, past and present. Their knowledge, practices and philosophy are conveyed to the group in their words, certainly, but also in their mannerisms. Because the Elder holds a position of respect and has earned or acquired that position, *how* he or she speaks, listens, prays and gestures are all lessons in proper behaviour. By sitting for long periods of time with the others, listening, I myself came to understand the absolute error of interrupting an Elder who is speaking.

Elders said what they had to say through stories. These stories might be interpreted as correction, but their implication went into and beyond the present moment. Indirectly, they spoke of an earlier way of life. Stories, like parables, could work within the people on an individual basis while speaking to the whole. Basic values such as loving children were illustrated by stories. For instance, one Elder illustrated from his own life the need for children to play. He spoke of recognizing that what children needed in the winter months was not punishment for being noisy indoors, but warmer clothes to go outside and exercise their need to play. In the stories, the focus was an explanation of the essence of the value (e.g. children need to play - give them opportunities to fish, climb trees, run), not the error (parental neglect, lack of authentic loving). I would characterize this method of correction as gentle, yet firm and non-judgemental.

The Elder role, one person explained to me, does not encompass decision making. Rather, what they have to say is in the form of an assessment. This assessment serves as a connection to what has come before in the life of the Elder and the lives of others according to the teaching she or he has received. I observed that the role of Elder was consistently represented in each circle. Not only are Elders included in the ceremonialist model, but it was my experience that they have a recognized role on the reserve in various capacities. Examples are positions within their own families and politically, in local organizations. Circle structure then, includes roles for the individual (host), roles for care (family and other supporters) and the greater whole - present and past (Elders).

The role of Elder can be interpreted as a means of broadly linking the present situation of the people to the ancestral ways. In a philosophical sense, the context of wrongdoing has an opportunity to shift somewhat in the presence of Elders. This move can be an adjustment in the interpretation of law and order set within a Western paradigm, to a Blackfoot context. The interpretation of wrongdoing, correction and future planning are all implicated in the Elder role. Effectively, Elders advise the circle according to their attributes of ancient knowledge, teachings of their own life experiences and Blackfoot world view. Their words address everyone in the room, including the victim and victim supporters.

To some degree, the *victim's* role was to explain the harm which had occurred. At times the position presented an opportunity for reconciliation to begin and it brought a demand for accountability or resolution before the host, within the circle. The nature of the victim role varied. In the first YJCircles the victim was represented through a letter

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only. The correspondence was submitted by the victim, addressed to the offender and read aloud to the circle before technical help made their second round comments. In this case the voice and emotion of the victim was subject to the reader's voice, timing and choice of expression.

Occasionally the victim was not an individual. Vandalism is a harm which may be shared by all residents, especially those using the damaged facility. One woman identified herself as a victim in such a case, as she had been present in a building where contents had been vandalized. In the Innu HJC the role also went beyond an expression of harm. The role of th7e victim was particularly involved in shaping the circle size and tone of the gathering. Interviews with the victim sought her permission regarding the circle itself and the presence of each person invited by the offender. The circle structure was adjusted according to concerns for this person's well-being as well as the need for the offender to reconcile.

The Innu victim illustrates another aspect of the victim role. This woman's actions within the circle dictated the degree of reconciliation possible that day. No one forced her to speak, to face into the circle, or to reach out to the offender. Her body gestures were important to facilitators as measures of success in steps toward possible reconciliation and in easing her discomfort with the painful topic.

When a victim does not speak, (as in the early rounds of the Innu HJC, the role of the *victim supporter* is especially crucial to maintaining the circle's purpose of exploring the issue. The victim role is then extended to the people close to the victim - parents, siblings and other friends or relatives who have felt the impact of this person's grief. The

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role can be shared, to some degree, by more than the individual directly impacted. Victims present at the BJCs were willing and able to contribute. The supporters consistently spoke first in the YJCircles and the HJCs. Their participation can be seen as preparation for the victim, providing moral support prior to the victim's turn to speak.

The above roles of host and victim and their respective supporters are understood here as those "most directly touched by the wrongdoing". The Elders are included in this category for several reasons. To begin with, on occasion the Elders were also well-known to the offender. Several Elders expressed a deep love and concern for young people in general. Their remarks spoke of the preciousness of a child, of the hope in young people for the future of the culture, and more specifically of the host as a good person or typical child. Others mentioned the need for unconditional love and play in the lives of young people. For these reasons the Elder's contribution can be linked to the concept of mutuality where "the actor contributes, not out of a strict sense of obligation, but freely and necessarily for the well-being of another and the future generation(s)" (see page 39 above).

Outside professional is a role within the circle which fits under the label of "those with a specific task." In an Aboriginal context it can be considered an advisory position like the Elder role. However, the occupational connections of these people with the dominant society introduced a second role, not discernible within a circle model. These people were brought in or were present because of their occupation with Western agencies. The professional role, derived from their position in the mainstream society, was evident in how the person spoke and presented him or herself within the circle.

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Included in the role of "outside professional" were a non-Aboriginal police officer in the first YJCircle, two off-reserve social workers in the second HJC, penitentiary staff/probation officers at the RC and a court liaison in the Innu HJC.

Communication of information and values, like that of the Elders was transferred not only through their comments, but with the professional's mannerisms, occupational status and type of suggestions. I noted that the sound of their voices was louder. Stories of their personal lives, of growing up, of difficulties in their own lives did not enter into the discussion. These people who attended BJCs were in uniform or dress clothing which I assumed was their working wardrobe. The police officer made no recommendations and was not asked for any suggestions, the social workers expressed gratitude for the invitation and suggested further professional contacts, the corrections staff also made comments of appreciation and approval for what they had seen. All of the above narratives were grounded in professional knowledge and a position of distance from everyday life on the reserve. A lack of personal communication distinguishes the contributions of the outsiders from the narratives of the reserve participants.

Symbolically the professional role represents the Blackfoot people's exposure to Western ideals and methods of control over the past hundred and fifty years. At times I sensed hope, disappointment, resentment, and a desire to please in the manner with which leaders spoke to and related to the outsiders (including myself as someone associated with a university). My suspicions that different relations exist between the insiders and outsiders are supported by comments the facilitators make in the Innu HJC report. The following comment regarding Innu circle preparations reveals some antagonism and

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uncertainty between Western ways and Aboriginal methods. "There was a great deal of concern expressed that the circle needed to be witnessed by members of the justice system so that Innu would not be open to seemingly inevitable criticism that we had something to hide or fear in the circle process" (R. v. Sellon, 1996: 5).

The outsiders I witnessed sometimes seemed a little uncertain prior to sitting down for the start of the circle, but comfortable enough when their turn to speak came up. Early on in one circle, I inwardly questioned whether one professional outsider's comments were not skeptical about the circle's ability to function as the mediator had explained it would in his introduction. An officer openly doubted the possibility of the host contributing. This comment may be related to what the facilitators referred to above as "inevitable criticism". The same officer approached me at the termination of the circle to ask my business there. His investigative nature seemed to operate not so much out of friendly curiosity as it did professional probing.

Observation of the manner and comments of the outsiders have led to my interpret7ation of their presence as somewhat cautious and curious. Justice or social services representatives were present in the line of duty and I suspect that their use of the circle was as a source of information - especially in the case of the corrections staff. While others may view visiting justice circles on the reserve as a means of keeping current, corrections employees are responsible for assessing communities for their strengths and weaknesses in regard to working with parolees, prior to releasing former residents into the community.

As their interests and comments seemed to be fostered by concern at an intellectual level, the professional role does not appear to contribute to a condition of mutuality. The professional role did not lend itself to contributing personal life stories with the group. The Elder advisory role, however, related stories which drew from experiences within their own lives. The latter can be considered a giving of self and the former a giving of cognitive information. Included in the Elder narrative were direct statements of care for the victim, host or both - as youths or as individuals. Elder roles are an example of mutuality and professional roles, reciprocity.

Technical Help and *Community Representatives* roles were, in my assessment, similar to one another and also advisory. They differed in seating arrangements, and the strength of their positions in determining a sentence. Technical Help can be distinguished structurally by being one of four positions and sitting opposite the mediator and host. Community Representatives always sit within the circle proper. They are invited to attend HJCs and attend in addition to Technical Help positions in YJCircles. Because of their seating placement across from the offender and because of their position in speaking last, the role of technical help has the potential to impress upon the offender errors in behaviour and the possibilities for change. People assuming these roles were relating personal failures and accomplishments in their own lives as well as suggesting plans of action for offenders and victims to follow.

Some people took on two or more roles in the circles. Facilitators of the Innu HJC taped and wrote up the report leading me to attribute to them the role of secretary. I was the sole observer twice. At both the first and the second YJCircles, one other observer

attended. I considered the court liaison in the Innu circle an observer, because she was asked to observe as a member of that office. Observers were generally silent apart from introductions and possible comments on the process. In this sense their position was neither one of mutuality or reciprocity. While these roles may seem somewhat minor in the circle process, the silence may be deceiving. I myself was silent as I felt another's grief, anxiety or disappointment. However, in reaction, I silently prayed a prayer of peace for that person and sometimes those close to them. In this sense, the role of observer has the potential to assume mutuality as a characteristic. Occasionally, it occurred to me that people in other roles were also observers.

In conclusion, people sitting within or just outside a circle contribute with their presence and usually, with a minimum of a verbal introduction of themselves. Most of the positions in the circle can be credited with care expressed as mutuality. An exception is the professional role which was not suitable to personal story narration, humour or expressions of love for the Blackfoot youth.

Content

It is the participation in the circle, through structure and roles, which shapes the problem, the concerns and the resolutions of that circle. In other words the potential for community purely as people in relationship is most likely to be found in circles as content. The following section is a descriptive analysis of the content of circles. Content here refers to the who, what and how of circle contributions. Comments from the host and victim could, according to results of victim-offender studies, promote reconciliation and

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show signs of responsibility in the host (Umbreit, 1995b). However, as seen in the chart

below, on occasion the host did not speak.

Table 5: **Content of Circles**

	YJC 1	*YJC 2*	*HJC 1*	*HJC 2*	*RC*	*Innu HJC*
Police report: **Read/Oral**	O	R	O	R	—	—
Host speaks: Yes/No	Y	Y	N	N	Y	Y
Victim speaks	Y*	Y	Y	Y	—	Y**
Village concerns beyond present case mentioned	Y	Y	Y	Y	Y	Y
Personal testimonies	Y	Y	Y	Y	Y	Y
Elder stories - heritage	N	Y	Y	N	N	—
Elder comments	Y	Y	Y	Y	Y	Y
Emotional expression (tears, anger)	Y	Y	N	N	Y	Y
Reconciliatory action prompt	N	Y	N	N	N	Y

*Letter from victim was read aloud.

**Victim spoke after second of four rounds.

The host did not begin the comments regarding the wrongdoing. Rather, a *police*

report related the topic to the circle. Generally, the police reports seemed to be a

combination of an officer's wording and the victim's story as it had been told or

interpreted at the time of the incident/reporting. The police officer at the first YJCircle

gave an oral report. Of the other three, two were read aloud by the co-ordinator and one

was delivered by the co-ordinator from memory, orally. The police officer did not read,

but spoke of what he witnessed and thought. He emphasized that the purpose of the circle

was to deal with the host's actions, not with other misdemeanors and similar crimes

committed the same evening by acquaintances of the host.

Once again, the question the presence of the police reports begs is "Who or what

initiates the circle?" While the host's actions can be considered a precipitant, the very

existence of the police report indicates that the starting point for the first four

(ceremonialist) circles was with the Western system. The content of the police report acts as a definite jewel set in the law of Western gold. Interpretation of that law can occur in the shape of a ring, under the care of Blackfoot people, i.e. as a BJC. The arrangement and choice of voices surrounding the infraction may also be left to Aboriginal determination under Alternative Measures. However, the central definition of wrongdoing is determined through non-Aboriginal means. The forging of the law and the establishment which backs it have strong repercussions in the circles. BJCs were designed to deal with the problems fed to it by the larger system.

An example cited above related that an Elder's examination of a case led to his assessment that the root of the problem rested with others, not the host. (He identified a threat to a young boy's life as precipitating the law-breaking action and therefore meriting a dismissal of the charge). The Elder's advice could not be acted upon nor could his insights be incorporated into the circle's mandate. The central control of the case remained with the police officer who arrested the boy, and with the admission of guilt submitted to the system of prosecution to which the officer and the circle leaders were accountable. The problem's definition and its conclusion technically originated and ended with the Canadian justice system. A similar situation existed with the RC.

The possible release of an inmate led to the formation of the RC. The greater RC process may have had the potential to make an assessment of the inmate and move through a spiritual process of correction, but such action was blocked by the control of the problem by the mainstream system. The conditions set by Canadian law for parole bind the physical actions available to the Blackfoot people. The jurisdiction of the corrections

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department rules the situation. According to what I understood from the facilitators, the justice system also demands explanations according to Western protocol for managing inmates and parolees. Theoretically, only when the inmate is cut free from the system in unconditional release can the Blackfoot exercise Aboriginal practices autonomously.

The Innu HJC is significantly different from the five BJCs in the respect that it was initiated by the host reporting himself. While the BJCs are rooted in a direct complaint to or apprehension of someone by the police, it was an admission of guilt, and a request for reconciliation by Sellon that initiated both the Western legal process and the ensuing Innu HJC (R. v. Sellon, 1996: 1). The "problem" in this case, was determined by Sellon through his experiences in a treatment centre. Finding a solution to the problem was also taken on by people directly affected by the wrongdoing and those in Sellon's confidence. It was at the point of carrying out the circle solution that the problem's resolution had to be shared with the justice system.

The judge, by ruling to accept the circle's recommendations, assisted with implementing the solution. The authority was in place for the judge to discredit the circle and its recommendations, but he chose otherwise stating

> The energy, enthusiasm and efforts of the community must be given
> weight by the court. The approach they have taken is new, innovative
> and certainly appears to have a positive tone. Our traditional method of
> sentencing may well benefit from their example. In that regard I am
> going to accept the recommendations of the healing circle and pass a
> non-custodial sentence (R. v. Sellon, 1996: 4-5).

The content of the Innu HJC illustrates community justice which in turn was respected by the court's decision. As Ryan has pointed out, consent of the courts is not necessarily sought out by indigenous peoples (Ryan, 1995: 121-122).

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The content of the BJCs, on the other hand, was undermined by allegiances to the encompassing structure of the Western justice system. Using de Tocqueville's "problem/solution/implementation" criteria for determining the presence of community in Blackfoot justice circles, it follows that justice circle process is pre-empted from a state of true community by the overriding mainstream system. The circle does not flow from self-defined problems. Solutions arise within the circle to address the problem as it is described in the police report and further defined by first rounds of the circle. In tackling a problem defined or partly defined by others, a dependence on the dominant system is in existence. The fact that the system also processes the resolutions of YJCircle cases, situates the final resolution of these conflicts with the Canadian system. Synthetic morality is in evidence.

Does the orientation to the mainstream system have other effects? When justice circles are compared to the following description of healing circles, a difference in focus becomes apparent. One Elder testified regarding what can be identified as mutuality in healing circles.

> But this is the circle. In the circle, within the circle the best thing that could happen to our community is by working in circles. Because that way you've got support, you've got anything you want is there in that circle. And you go out of there and you come back and you feel warm, *you feel all people are there for you.* You're not there only for yourself. There's other people that are there for you in that circle (FL, 28/08/97, emphasis added).

When questioned about differences between BJCs and healing circles the same interviewee makes a comment similar to Kay Pranis' fifth observation: "metaphorically speaking, in a circle the problem is in the centre of the circle; in conferencing the person

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making mistakes is in the centre" (see p. 78 above). Pranis contrasted her experience with

circle techniques in northern Canada and those with FGC techniques in the US. There is a

shift from the group or the group's problem(s) to one person and the trouble they are

experiencing.

> (Sigh) Um ... A difference is I think, the healing circle that we -
> work on, they work on yourself, everybody individually works on
> themselves. Or I see the difference where the justice circle, there's one
> individual that everybody's trying to help. And, but, the people they also
> have to talk about themselves, but I don't know if they do. In some
> cases they do; in some cases they don't (FL, 28/08/97).

The problem in a justice circle seems to be more narrowly defined than in a healing

circle, and further it may not necessarily be taken on as everyone's problem. In other

words, the mutuality sensed in the Elder's words "you feel all people are there for you"

may be compromised. To what degree mutuality is weakened or strengthened depends on

the people gathered there - which introduces another Blackfoot concept explained to me:

spiritual community.

The concept I have designated spiritual community was explained to me by an

Elder, as a Blackfoot definition of community. The description of community included

here can be related to feelings of "warmth" participants may experience in the circle.

Blackfoot community, according to my informant, begins with Creator and the creation of

the individual.

I understood that an individual is perceived as both a physical creation and a

spiritual "shadow". Both come from Creator. When the two are not balanced, the person is

weak according to the degree of imbalance. "Confidence" is created where the shadow

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and body meet. If they are fully balanced or in contact with one another, a person is confident, strong. They are aware of their full identity in Creator.

According to my cognizance of this Blackfoot interpretation of the human condition, the ability to survive or to function in a healthy way improves with the awareness of and coming together of the body and the shadow. Healing or strengthening of an individual can therefore take place with his or her increasing confidence where that confidence refers to a balance of the spiritual and physical being. My understanding from the Elder is that when confident people come together, the state of their co-operative life is known as community. Community is therefore the strength or confidence of a people - individuals living together. To differentiate this definition of community from earlier definitions, it is designated here as "spiritual community". In spiritual community, "gifts" or qualities within a person which come from Creator serve the whole, and are accepted and respected by the individual and the collective.

A non-adversarial approach to conflict resolution can therefore be sustained in a circle through spiritual community in several ways. A reverence for a power greater than humanity, i.e. acknowledging Creator, encourages humility in the human condition. Vulnerability opens up the process to honesty. Acceptance of one another encourages a non-judgemental approach or openness to the other. Building confidence in oneself is one way to improve relationships with others. All of the above aspects of spiritual community contribute to the conditions for care within an authentic morality.

In light of the above concept of spiritual community, a process which singles out someone weakens, rather than promotes spiritual community. The focus moves slightly

from each person strengthening him or herself and consequently strengthening the group, to people focussing on one person's issue before the whole group. The situation is not this simple, however. The BJC model includes the needs of the victim, and the people who care most for both the host and victim.

The support of family and Elders present, can be seen as building the strength of an individual by affirming gifts of Creator within the host and victim. The words and actions of support from these care givers, aid in the approximation of the shadow and physical bodies. Using patience to listen without interruption and to wait in accepting, and not (as I also percieved it) uncomfortable silence while someone weeps (R. v. Sellon) is an expression of respect and expected by members of the healing circle. As well, healing involves looking beyond the immediate situation to consider the well-being of future generations (Ross, 1996). Patient listening or waiting for tears to pass, allowing months for conversion and pondering the importance of future generations (Hollow Water) are examples of how time is used and considered on small and larger scales in healing circles. Spiritual community features qualities of mutuality where "there is no obligation on the part of the receiving party to pay anything in return. The actor contributes, not out of a strict sense of obligation, but freely and necessarily for the well-being of another" (see page 39 above). In a confident state, an actor is free to reach out, and inquire within him or herself.

In chapter two it was stated that "while the restorative principle that 'a wrong should be righted' specifies an action to be taken in response to a certain act, engaging the principle of ascribing dignity to others also engages the supposition that *all* actors must

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contribute to the righting process. Involving all members in society in the responsibility for righting the wrong departs from the restorative justice philosophy" (see page 38 above). Spiritual community fosters transformative justice as it builds authentic morality in ascribing dignity to others at various levels of human interaction. Under an authentic morality, implications for change in relationships in the name of justice apply to any situation characterized by inequality. Evidenced in circle dynamics, spiritual community has the potential to equalize situations in which one person has been designated wrongdoer. Whether this event actually occurs at a circle is left up to the people present. Despite the undercurrent of the justice system, the structure of the circle, allowing equal opportunity to speak and be listened to, permits spiritual community. The inequality and competition which defines the Western court system opposes the act of building one another in spiritual community.

The Innu HJC also involved the justice system, but its presence at the circle itself was absent creating an atmosphere more conducive to spiritual community and therefore authentic morality. The circle is described as "an informal 'healing circle' outside the courtroom setting and in the community of Sheshashit" (R. v. Sellon, 1996: 2). Pressures from the outside system are present, but less controlling than in the case of YJCircles and the RC where the circle acts as a framework for assessment within justice system regulations. The judge in the Sellon case did not surrender his authority in determining the future for the offender. His position is evident in the following comment made in his report:

> At the time I indicated to both counsel that if they wished to attend
> the 'healing circle' they could do so and *I would place what I deem to be*

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the appropriate weight to the results of the 'healing circle' after I had
received the results (R. v. Sellon, 1996: 2, emphasis added).

The purpose and conception of the Innu HJC remained with the Inuit people, but the
implementation of the plan rested with the jurisdiction of the dominant society. According
to the three stipulations for the presence of community, only the Innu HJC meets the initial
requirement of determining the problem. Innu and Blackfoot resolutions and
recommendations *are* derived through Aboriginal methods, i.e. the justice circle. Given
the authority, they would likely implement their plans without judicial approval.

The third step, which is implementing the solution or resolving the conflict, happens
to involve the justice system to the greatest extent, when the wrongdoing is most serious.
The Blackfoot HJCs, based on complaints to the RCMP are the least serious and therefore
have the greatest flexibility for developing and carrying out solutions. The court system is
not involved. The time pressures associated with YJCircle agreements do not exist. In
YJCircles, the host presents with a guilty plea subject to the standards of Canadian courts.
With a time allotment for completion of the measures, should the host not keep the
agreement, the Blackfoot do not have the authority to reassess the situation. The matter
returns to the jurisdiction of the courts.

In summary, the police reports, and the custody of the inmates are both indications
that the determination of the problem transpired within the laws of the dominant culture.
The sectors of the justice system dealing with complaints, charges and convictions is run
according to standards of law set down by the criminal justice system whether the police
officers and others involved are Aboriginal or not. The circle itself is contained within the
main justice system.

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Whether the *host* spoke or not, may have been implicated by the degree of intimidation the host felt. A contributing factor in this regard may be age. Four of the Blackfoot hosts were under the age of twelve (in the first healing circle two siblings occupied the role of host). They found themselves the centre of attention in a room of adults. A high collar on a jacket provided a shield for one host to hide behind, initially. When asked a question, the coat collar was raised a little higher and closer to the face in response. This behaviour is similar to the initial reactions of the victim in the Innu HJC.

In the case of the *victim* who did not speak at first: "She sat herself in such a way that she could look at her mom and at her cousin, but she had her back to almost everyone else in the circle" (R. v. Sellon, 1996: 8). In both cases the physical gesture of guarding fell away as the circle progressed. In the Innu HJC, "by the fourth round she had shifted around so that she could see and be seen by all the participants" (R. v. Sellon, 1996: 8). In the former case, hiding behind the collar seemed to be less a preoccupation as the young host listened to the victim describe her feelings at the time of the incident. The adult victim spoke at length, personally, about the consequences of the offence in her home life and work situation. By the end of the victim's commentary, the young host's face was completely visible and facing the victim.

In regard to the young siblings, co-hosts who did not speak, the parent spoke on their behalf. Their actions, after thirty minutes of sitting still, resembled quiet play - solo and together. In contrast, the fourth child, also a host, spoke clearly and quietly of the circumstances and his involvement the day of the crime. He also answered questions from

the "technical help" panel. His speaking at all contradicted the expectations expressed by the RCMP officer.

Hosts who did speak, then, delivered a narrative of the crime event from their perspective. One person recounted that his memory of the occasion was poor because of intoxication. Another explained a number of personal fears, circumstances and difficulties associated with the wrongdoing. In all three cases, the articulate and gracious nature of their words revealed thoughtful individuals who had reflected on their present and past situations. Their manner can be interpreted within the circle, as responsible. One person openly apologized to the victim. The circle, as mentioned earlier was also used for supporting the host and/or victim in their presence and what they had to say.

Supporters all provided commentary. Many spoke words of encouragement and affirmation about the lives of the host and victim. References to the person's activities, character, family background, as well as difficulties with alcohol and parental supervision came to light. As the circle moved on to contributions from non-family members, a general topic which often surfaced was the care for children on the reserve.

Without exception people in the circles commented on unsatisfactory conditions in their *village life*. The reserve was compared to neighboring townsites. On several occasions the issue of a curfew for youth surfaced. People also reflected on the place of circles in the area of justice and wrongdoing. The activity was generally approved of with residents affirming the process of coming together to voice concerns and speak among themselves.

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This aspect of the circle involves defining problems and suggesting solutions. In this respect, justice circle activity *can* be credited with generating community according to de Tocqueville's criteria. However, the power to implement the solutions did not appear to me to be in place. Chief and council representatives were not present at the ceremonialist BJCs where the discussions regarding youth curfews and programs took place. The agencies acting as reference points on the reserve were the local RCMP and the Native Counselling Services. Although problems were identified and solutions discussed in regard to those problems, the circle lacked authority to move outside the parameters set by the justice case.

On a more personal level, people spoke of their own behaviour and their past experiences of wrongdoing. Table 5 above lists this activity as "*Personal testimonies*". In every circle people voiced stories of experiences in their own lives chosen for the relevance to the discussion. On occasion participants brought up the fact that they were once the age of the host. Some emphasized the importance of education and work and the need for good friends. Such contributions can also be attributed to the presence of mutuality. In many instances, I felt that the person spoke out of care for the youth. If care was the underlying motive for conveying concern for the well-being of the youth on the reserve, as well as an explanation for the coming together of circle participants, part of the foundation for building authentic morality was in place.

Elders comments can be divided into two subject areas: 1) heritage, and 2) the youth and his or her situation. Elders made reference to the Blackfoot life as they understood how things have been done in the past and passed down by the grandparents and their

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respective grandparents. Two examples in this regard are the importance of play in the lives of children - having warm clothes to play in the snow, roaming around the land, climbing trees and fishing - and the traditional use of berries for drying, making dyes, eating, soups, prayer, but not alcohol. The first story was used after a discussion concerning what parents and the reserve can offer children in conditions of housing shortages, and lack of employment for parents. The second comment regarding berries, addressed a case in which a youth was under the influence of alcohol at the time of the wrongdoing. In each instance an example can be seen for following Blackfoot wisdom in loving children or using nature's fruits in a proper way. These comments can be considered wisdom or knowledge. They are a basis for understanding a situation and draw from personal experience as well as teachings from grandparents. When Elders commented on the youth (or offender) and the situation he or she was in, they spoke of the world as they understood it, with insights into the fortune and misfortune of the situation as they perceived it. Their recommendations, if any, and their stories can be considered advising.

In regard to the first category, Elders' insights pointed to the minor illegal acts as a response to needs - in one case a threat to the child's life, in another, a need for love. Their comments appeared to be in response to the silent question "Where is the root of the problem?"As such, the content of the Elders' contributions correlates with the model of transformative justice suggested by Morris (1995b: 71ff.). Transformative justice seeks answers to questions which reach beyond the present situation to the root cause of the disruptive, harmful behaviour. As honesty is key to an authentic morality, the collective

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acceptance of emotional honesty in the circle can also be considered a sign of transformative justice.

Obvious *emotional expression* included raised voices and tears. Facilitators of the R. v. Sellon circle suggest feelings of "anger, sadness or frustration" are to be expected "because honesty and emotion are an integral part of the process" (R. v. Sellon, 1996: 8). Signs of emotions were related not only to the circumstances of the wrongdoing, but were also related to frustration with the extreme nature of the situation (criminal charges on a child whose wrongdoing was singled out from the like actions of several companions). I also detected exasperation in comments of supporters who seemed to struggle with the impossibility of controlling a youth's behaviour, and discontent with uncertain resources for youth and families (e.g. housing) as well as frustration with obstacles to proper parenting and personal relationships (e.g. alcohol abuse).

Other emotionally charged statements included political comments regarding policing jurisdiction. My perception of the statements were that they were made in an angry reaction to the colonial imposition of justice (exercised in charging the child). A newspaper article/letter to the editor was read aloud to this effect stating a position for self-government as well as an opposition to intrusion of the policing/court system in the lives of Blackfoot treaty Indians. In a similar vein, less emotional comments were fielded in regard the inaccuracies of police reports presented at the justice circles. A final, sometimes staged, emotional response occurred in reaction to reconciliatory action prompts.

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Reconciliatory action prompts did not, of course, take place in the absence of a victim (although a letter of apology was suggested in one case where the victim was not present), nor were prompts made in cases where children were silent throughout. However, in two cases regarding violation of young women by young men, a facilitator and mediator suggested an appropriate gesture to connote reconciliation. The Blackfoot prompt was specific to the task. That is, there was a call for the two people to demonstrate their affection for one another "in front of their community", the circle. In the Innu case the suggestion was made, but no time was specifically designated for an act of hugging.

> [The facilitator] said he thought that L. and Gavin should start talking
> to one another if they were not already doing so, that they both needed
> to accept what had happened because it was his experience that people
> sometimes "over say things and over think things". He said maybe it
> wouldn't happen right now but what needed to happen was for L. and
> Gavin to start having contact again maybe to try and hug each other (R.
> v. Sellon, 1996: 9).

Hugs did take place in both instances. In the YJCircle the two people were asked by the mediator first, if they loved one another and then to stand and show their love for one another in front of their community. In the Innu HJC, after the tape had been shut off, "participants embraced one another at their own choosing. It is noted that L.'s mom went over to Gavin [Sellon] and embraced him and most significantly that L. and Gavin embraced one another" (R. v. Sellon, 1996: 12).

In regard to specifications of care as a spiritual encounter, the spontaneity of the latter embrace speaks to an authentic emotional response. The Blackfoot prompt did not allow the freedom of expression for the host and victim to reconcile in their own time. My own sense of this was that the action of embracing was engaged in with some discomfort.

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In this sense the two young people showed respect for the mediator's request in their action of embracing, while their reluctance can be interpreted as a sign of disagreement. Such action reflects respect through action only. As one interviewee explained the sentiment, his "heart just wasn't in it" (PL, 13/08/97). People I spoke with informally also suggested that the direct prompts were devised by the mediator in charge and not in keeping with Blackfoot ways. They were regarded as an inappropriate addition to the ceremonialist model. The research sample is not big enough to comment on the regularity of this practice.

In conclusion, content of the circles as described above reveals transformative justice in several ways. Elders' commentary seemed to address transformative questions. The care expressed for the well-being of the youth displayed honesty and the ascription of dignity to one another. Narratives describing gifts and achievements of hosts and others present in the circle can be seen as an aspect of mutuality and spiritual community, conditions of reaching out and strengthening another in confidence. The use of time in all the circles spoke to the philosophy that the circle is one part of a larger process involving change. While preparation and continuation existed in all three forms, changes in the ceremonialist model revealed some impatience with the process of the circle itself.

Another negative influence was the presence of the criminal justice system in the form of police reports. The reports were interpreted as undermining the power of the circle. An admission of guilt as defined by this system held power over the circle's ability to quash the offence as it was written and reinterpret the problem according to a Blackfoot perspective. In this respect, the community aspect of transformative justice was hampered.

Despite this fact, the element of care could maintain the presence of community in the content of the circles. The circles expressed varying degrees of defining the problem (the Innu HJC strongest) and arriving at a solution which could be implemented by the people in the circle.

Conclusion

To summarize, this chapter has delineated two terms which are ultimately encountered in the discussion of BJCs: Elder and respect. Whereas Elder can be seen as a status acquired or earned through spiritual and experiential means and automatically deserving of respect, "respect" can be understood as actions of listening, following advice, keeping order and peace, and/or revering nature as a manifestation of Creator. Respect can be addressed to oneself, one another, one's surroundings.

The observation material presented above considers and compares three aspects of circle justice: the structure, roles within that framework, and the general content of justice circles. The data is biased according to my perceptions as (participant) observer and according to my interpretation of an Innu HJC report. The structure can be seen as conducive to authentic morality, with the RC, HJCs and the Innu HJC least complex and imposing in atmosphere and structure. Roles generally contributed to the sense of mutuality. An exception was the professional role which contributed to the circle more technical and little personal information. The content included silence, verbal contributions, emotional cues, and physical actions. An impediment to transformative

justice is the police report which represents synthetic morality at work in the justice process.

With the acknowledgment of my biases (especially as an outsider) and in light of the discussion of justice in chapter two, my interpretation of Aboriginal circle justice on the whole is that it is a form of transformative justice. The reasons for this conclusion and further speculations on the significance of this research are the topic of chapter six.

Chapter Six
Conclusion

Thesis Overview

This investigation of justice circles on a Blackfoot reserve was an ethnographic exploration for signs of community. The qualitative study took place during some of the early years of justice circle development. Theoretical applications of the principle of transformative justice were illustrated as authentic morality which respects human dignity through care and creates community through people holding power in conditions of equal participation and problem-solving. Practical examples of transformative justice were cited as a prison project in the United States (Studt et al., 1968) and healing circle practice with Hollow Water First Nation (Ross, 1996; Hollow Water, 1995). Two other justice forms chapter two explained and illustrated within alternative justice practices are retributive justice and restorative justice.

In regard to methodology and analysis, data collection took longer than expected. After some difficulty getting into the field, a period of time in which I increased my understanding of Blackfoot culture and eventually secured permission for the research, I interviewed seven men and women with varying degrees of familiarity with BJCs and other Blackfoot circles. During the in depth interviews I was invited to observe BJCs, which resulted in observation and participation observation of three types of BJCs, five in all. Analysis of the interview transcripts was conducive to defining Elder and respect, two terms central to the understanding of BJCs as a cultural undertaking. The observation data were combined with a descriptive report from an Innu HJC and analyzed descriptively in three categories: structure, roles, and content.

The results of this analysis can be summed up as answers to the following questions. Is problem-solving carried out as community? Is the practice of justice through BJCs and the Innu HJC illustrative of authentic morality? of care? Can transformative justice be identified in other circle practices? What elements of circle justice, if any discourage or block authentic morality? community? and ultimately transformative justice?

Problem determination, problem-solving and solution implementation were practical characteristics of decision making which were used as a guide to determining the presence of community in justice circles. De Tocqueville's criteria that community define, solve, and implement plans to resolve problems suggested that community in BJC's was undermined by the Canadian justice system defining the problem. In contrast, the Innu HJC had the power to define the problem, as it was set up independently of the justice system. However, the solutions determined in that HJC lost authority in their implementation. As recommendations, not resolutions, the solutions were submitted to a Western judge, a "higher" authority within the Canadian system. Although the courts chose to accept the plan for the host's care, the power of this system to overrule remained. Full community through problem-solving could not be established in any of the scenarios studied: YJCs, HJCs, the RC or the Innu HJC.

Despite the synthetic domination of the criminal justice system, a second indication of community exists in the type of morality present in the circle itself. Aspects of community were revealed in three ways: how the circle was structured, the people involved and the nature of their contributions. Equal opportunity existed for stakeholders

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to be present and participate through listening to one speaker at a time without interruption. Victims, offenders, supporters and Elders as well as circle organizers were present. This structure and these roles are conducive to shaping an authentic morality. Narratives of personal experiences created a sense of authenticity in the circle. Generally, personal stories and comments appeared to be delivered with emotional honesty and from a non-judgemental stance. As such, comments and emotions regarding hosts and others were often suggestive of mutuality and fit into a Blackfoot context of spiritual community where this term refers to people confident in a combination of spiritual and physical well-being. By mutually receiving teaching from one another, members of the circle participated in a healing or "strengthening of confidence" format. Non-justice healing circles, where specific individuals are not singled out for correction, may better represent the give and take nature of care. The role of host, however, indicates a state of repentance in which someone seeks correction. Participants can therefore ascribe dignity to one another in the very act of being together. Inasmuch as people present act spontaneously for the benefit and love of another, care was present at the justice circles. Ongoing relationships in the form of follow-up are likely to increase the strength of transformative justice.

Issues and solutions were raised, defined and discussed in the circles apart from the crime issue which initiated the gathering. Curfew regulations are an example of a solution discerned for the problem of children being out late in the evening. However, with the jurisdiction of the circle restricted to "criminal" matters, other issues requiring the participation of non-policing authorities could not be acted on. The justice issue itself was

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based on an admission of guilt worded through the criminal justice system. The presence of the circle within this system carries overtones of synthetic morality and compromises the definition of the problem as belonging to the Blackfoot people.

How Elders came to a position in the circle could be discerned from the in depth interview data. Elder status was earned or achieved according to physical and spiritual definitions of character. This role, in its honesty, integrity and spiritual base, can be seen as important example of Blackfoot ideology. Concern for future generations and the continuation of this world view through the youth came through in the formation of the ceremonialist model itself and the nature of the contributions in justice circles in practise. Elders spoke openly of love for children, of the knowledge of their grandparents, of treating the earth and its gifts with respect. The manner with which people listened, the personal nature of the narratives and the acceptance of everyone as having an opportunity to contribute can be seen as a passing on of cultural decision making techniques in the traditional format of a circle.

Cultural teaching by Elders was supported by the presence of hospitality, the consensual closing of the circle and the element of prayer, linguistically and spiritually. Cultural teaching was hampered in some ceremonialist circles by structural changes which reduced the rounds for speaking from two to one. Specifically, this change interfered with the emphasis on careful listening and freedom from time pressures evident in peacemaking literature (LeResche, 1993). As careful listening is important to the values of respect and conducting meetings of authentic morality, transformative justice may have been blocked by this structural change in the ceremonialist model.

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Research Relevance

Implications of Findings

This study has implications for the future of alternative justice in Aboriginal centres where the justice system continues to define the problem while delegating processes of resolution and implementation to agencies found on reserves. While some co-operation between the justice system and Aboriginal peoples in the form of justice circles may meet the Hamilton and Sinclair (1991) and the Cawsey (1991) reports' calls for change to the system, a question remains as to whether the system's defining and control of the problem is not a block to exercising community, and therefore transformative justice among Aboriginal people. Bianchi stated that "Justice is a principle serving to assess rules of law and their just operation and *eventually to assess whether their promised effect has been realized*" (Bianchi, 1994: 5, emphasis added). In the case of transformative justice, the "promised effect" is in having the needs of the victim met, an alleviation of guilt from the offender through reconciliation and forgiveness and a determination to address the root cause of the crime - viewed most likely as socio-economic imbalance.

According to the principle of authentic morality, justice exercised within circles acknowledges the human dignity of the offender and every other participant in the circle. This recognition is reflected in the vocabulary used for the wrongdoer, "host", a rule of equal opportunity for participation with the greatest power existing as Creator, and a freedom of information within a context of honesty. If practised in its original form, the ceremonialist circle model has the potential for administrating justice in situations of

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decision making. Elements of transformative justice can take place in BJCs despite the imposition of power. These elements of honesty, openness, equal opportunity and consensus can be credited to cultural components of the process and people involved - not the affiliation with the mainstream justice system.

Unexpected findings

Blackfoot Justice Circles, with the exception of Releasing Circles are not endorsed by Chief and Council, but handled through the co-operation of RCMP and Native Counselling Services. The division of internal authority places limitations on the circle's jurisdiction for communication and implementing plans to the larger Blackfoot public. This fact creates an obstacle for the development of secondary circles as recommended in the section below, "Recommendations".

The variety of justice circles was unexpected. The version of the ceremonialist model referred to in this thesis as HJCs and the development of a clan model for inmate release (RC) both took place during the course of the research. These developments indicate to me a cultural flexibility for the interpretation of circles for justice.

Possible Contributions

In its descriptive element, this study compliments research on and definitions of the Blackfoot circle model (Crowshoe and Manneschmidt, 1997). It is described here as ceremonialist and accounted for as a working model for justice purposes. Differentiations between sentencing circle, healing circle, the Releasing Circle, Youth Justice Circles and

Healing Justice Circles provide a basic vocabulary for discussing the phenomenon, especially within the area of alternative justice. The account of the Releasing Circle is likely the only record of this style of justice circle presently available, with the exception of correctional officers' records.

The thesis also draws correlations between certain styles of circle justice and the field of alternative justice according to a definition of transformative justice. It does this by linking Aboriginal values in peacemaking (honesty, equality, reconciliation) with ancient Western (Jewish) problem-solving and mediation techniques in justice practices today. Concepts of honesty and equality are basic to the definition of (authentic) morality (Boldt, 1995; Studt et al., 1968) and provide a window for the light of transformative justice to shine through. That window, which is based on a spiritual expression of human care, is referred to in this work as community. The transformative justice principle of authentic morality was tested further through a dimension of community which focused on de Tocqueville's three stipulations for control of problems and solutions among groups of people (McKnight, 1995).

Relation to Previous Studies

In regard to justice circles working within the framework of the Canadian justice system, this work agrees with the anthropological work of Ryan which maintains the undesirable quality of Aboriginal justice "overlaid" by the main justice system (1995: 122). Palys (1993) documents that Aboriginal peoples view co-operative ventures "as prospective stepping stones to full-fledged aboriginal justice" (Palys, 1993: 28) rather

than an end in themselves. Cultural values of Aboriginal justice can suffer or cease when stifled under the legal jurisdiction of the dominant system. To support this argument, this study of BJCs identifies a lack of freedom in Elders identifying and defining the problem of wrongdoing in Youth Justice Circles. The absence of the first criterion in de Tocqueville's problem-solving sequence (definition; resolution; implementation) illustrates a leeching of power from the Blackfoot culture for control determined as community. The regulation of the solution is also, to some degree, out of the control of the workers on the reserve because the Crown prosecutor's office processes the paper work charging or releasing offenders from charges.

Limitations

While a wide variety of circles informed the research, the study is based on a minimal sample at a time when numbers of BJCs escalated dramatically especially in regard to YJC cases. Most of the cases observed were young children with misdemeanors or minor charges. The study's strength is not so much in summarizing techniques of sentencing in YJCs as it is in describing their origins, development and the appearance of HJCs. Also, participant observation techniques led to understanding justice issues as a whole on the reserve, rather than an intense study of YJCs as they presently operate.

The research is also limited by the perceptions of the researcher in the circle observation records as well as the interpretation of the interview data. The project did not address Blackfoot circles for adults, circles used in the courtroom or circles outside of the justice system, used for healing.

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Unlike Ryan's (1995) investigation of Dene traditional justice and Ross's

presentation of Elders' teachings from across the country (1996), the research does not

survey large numbers of Blackfoot Elders for their understanding or world view. Rather, it

builds on previous historical research (Crowshoe and Manneschmidt, 1998) and

consultation with Elders (DT, 11/08/97). The research resembles the above three studies

in its ethnographic nature. As a descriptive and explanatory piece of work, it does not

function as an assessment or quantitative account of the success or failure of Blackfoot

Justice Circles.

Practical Applications

Recommendations

I hesitate to embark on suggestions regarding the direction BJCs may take when I

acknowledge that my way of seeing is not Blackfoot. Nor is my understanding of justice

comparable to the wisdom I encountered in several women, men and children I met on the

reserve. However, my present thinking does include some suggestions for revision and

considerations which may lead to change. It is in the Blackfoot way that I speak my

concern to show my respect for and interest in the area. I also acknowledge that my words

may be considered and acted on just as they may be considered and ignored in preference

of a different route or stored away period. In a tempered, yet sincere manner, I offer the

following comments and recommendations.

Building community, in justice, as in any other area of people's lives, will require

increasing the local resources to define problems, establish directions, and administer

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solutions under a system of authentic morality. In indigenous people's lives, it also involves eliminating the synthetic moral strings which tie justice circles to the power of the mainstream system. Palys (1993) proposes self-government as the most workable solution to the present oppression of Aboriginal justice under the mainstream authority.

What has been made clear, is that the justice system defines the problems which the circles address thereby placing a limitation on the scope of the circles' influence as community. Noting that other matters of interest outside of complaints to police and indictable offences can surface and receive attention is important. As well, the exercise of care was evident to me in the verbal and emotional exchanges I witnessed in BJCs. The potential for community to develop through the power of discerning problems, adopting solutions and implementing plans of actions to a greater degree exists and might receive further attention from circle leaders seeking means to further community development.

Certainly, the rehabilitation of inmates is generally conceived of differently by the two worldviews. The cessation of the Releasing Circle program can be seen as an incompatibility of rehabilitation styles and methods with the dominant system maintaining control financially and ideologically. Spiritual practices of the Blackfoot, in my opinion, have a central place in the restoration of cultural practices as a way of life where that way is a desire of the people.

Altering the ceremonialist model from two rounds to one round to meet time pressures is a revision which, in my view, risks losing the power of the circle to adopt and redefine the problem. I see the thoroughness of the circle's recommendations also compromised by this alteration. Alternatively, some of these suggestions, which may

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already be underway, may be useful to lift time pressures and establish power to define and control problems of wrongdoing as well as solve them.

1) My first recommendation concerns the route of circle justice through the mainstream system. In accordance with Menno Boldt's observations (1995-7), I see society moving increasingly from social control as morality to legality. Included in this movement, in my opinion, is an over-policing of minor cases regarding youth. I favour programs such as policing options mentioned in chapter two, but I also favour solutions which operate outside of the system. As many minor cases are referred to the Crown as indictable offences, I suggest that they be dealt with through more informal means such as the Healing Justice Circle, mediators in training (see number two below), or private family gatherings with a guest mediator. Senior mediators can then take on more serious cases and have time for more of them. Kay Pranis (1998b) made the point that when the issue is of a serious nature, that is when time and attention involved in circle justice is justified. When cases are more serious, the proportion of several hours of circle time to the future of a young (or other) person's life, I believe, is brought into an acceptable balance.

2) More mediators and co-ordinators from various backgrounds might be trained or introduced to the justice circle concept and begin organizing gatherings for less serious cases. As has been done to some extent in the past, training for the mediator role can be rooted in the historical and practical reasons for the ceremonialist model using mock circles for practice. Having people from various backgrounds - especially adults who may

be practising or participating in other circle methods - frees mediators who have otherwise busy occupations in addition to circle tasks to attend to.

For the reasons given above in the body of this work and the introductory paragraphs above, the training should promote an understanding that two rounds are not only a Blackfoot cultural practice according to ceremonial practice, but a reliable means of allowing enough time to hear everyone's contribution fully. The victim's contribution will also be heard prior to the circle voicing recommendations and may serve a need of the victim to vent emotions, explain his or her position, and ask questions.

3)   Uses of the circle model are many and increasing as people become familiar with its structure. Decision making circle techniques taught at life skills classes, youth centres and parenting courses encourage families and others to work through problems before they come to the attention of the justice system. One circle participant, a middle-aged woman, spoke of changing her method of parenting after taking a course offered on the reserve. The Innu Circle encouraged members of the circle to spread the word that problem-solving with circle methods was a good thing. If the definitions of the problems of wrongdoing are to begin with the people, identification of such problems can begin with meetings operating independently from the justice system. The establishment of youth working with older and younger adults has the potential to build caring relationships.

4)   As mentioned above, when problems are defined within a justice circle, a second circle process could be in place to further discuss and solve these problems. This

follow-up circle might involve interested band members, governing (Chief and council members) and non-governing bodies to find and implement solutions to them.

Further Study

Further studies involving circles might involve continued ethnographic monitoring of BJCs as they develop. A matter not addressed here is how do youth perceive justice circles in regard to their structure, roles and content? One interviewee mentioned his perception that youths, both male and female, are increasingly attending and taking part in ceremonies since the introduction of circle justice (DT, 11/08/97). Is youth involvement in spiritual ceremonies or their general cultural awareness encouraged by evidence of hospitality, prayer, listening, equal opportunity and unity in decision making in BJCs?

Studies outside of the criminal justice area might include investigating community in non-justice circles. Is there a potential use for healing circles as follow-up to justice circles (similar to the style suggested by Hollow Water Healing Circle coverage - (Ross, 1996))? Continuous sessions with Blackfoot offenders reportedly take place now as mentoring relationships with Elders or by building rapport with counsellors over several months of short daily or weekly visits (NQ, 14/01/98; NX, 23/08/97). Healing circle programs for youth in trouble with the law and selected Elders could be examined for the presence and development of mutuality and spiritual community.

Finally, in regard to Releasing Circles, for such a project to continue, long term projects on the reserve which allow spiritual work and follow-up with a few potential parolees or recently convicted inmates are one way to examine the effects of cultural

methods of rehabilitation. A research format may or may not be the context in which

Blackfoot people wish to move in their quest for justice. Such a project would necessarily

be free from intervention and interruption of correctional authorities. Adequate funding

and backing for facilitators, housing and spiritual guides would reveal a relinquishing of

power from corrections officials and their trust that the knowledge and skills exist for

such work to be carried out by the Blackfoot people. As an outsider who has experienced

a degree of the hospitality, ingenuity and spiritual life of Blackfoot people, I share the

sentiments of the Newfoundland judge in R. v. Sellon that all people might well gain from

the teachings of the Aboriginal justice circle (R. v. Sellon, 1996: 4-5).[6]

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[6] In preparation for the participation in or observation of Aboriginal circle justice, I offer the following as my earliest lessons: be open to prayer and listen quietly, without interruption. In the circle gatherings I observed, everyone who spoke was teacher. Choose words; care fully.

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Appendix A

EXPERIENCE - motivation, people influence

ATTITUDE/APPROACH expectations, thoughts, predictions

PERSONAL STORY OF CIRCLE -what happened to you.   reflections later?

FEELINGS- influences from others in room

ELDERS- Who is an elder to you?
          What part do they play in justice?

STORYTELLING? Your experience,   problem-solving

COMMUNITY Differences between court and traditional

What influences have Circles had in this settlement ?

What changes have you noticed in people or relationships since Circles were introduced?

MONEY its influence, motivation, lack of

FUTURE changes, what needs to happen

Appendix B

April 29, 1997

Dear Chief and Council:

Re: Teresa Hanlon, Permission for research approval - Youth Justice Circles

For the last year and a half I have been studying Circle justice because of an initial interest in alternatives to punishment in the Canadian criminal justice system and a plan to work in this area.

Background
- enrolled in graduate studies January 1996
- faculty of sociology at the U of L.
- accountable to three advisors: Pat Chuchryk (Soc.), Menno Boldt (Soc.)
(329-2551: Sociology office) and Leroy Little Bear (NAS) (329-2733) who are all willing to answer questions you might have.
- attended one day of Police Camp 1995 on the Reserve, observed Mock Circle
- contact with the first Youth Justice Committee
- attended one YJCircle as part of an "open door" policy.
- have a basic understanding of Circle structure through Mr. _____ and reading

Study:
- observation of Circles, conversation style interviews
- qualitative, concentrating on meaning rather than focussing on statistics.
- interest is in how people make decisions, and bring about change within Circle structure.
- reference to the Circles will be Blackfoot Youth Justice Circles.
- the work will be written up as a masters thesis.

Community Benefits:
- The research can provide feedback on Circles from a neutral or uninvolved observer.
- I offer services of writing and speaking should they be of use for education or other purposes.
- I plan to work in the area of criminal justice, especially prison work where an understanding and promotion of Native values is essential among non-natives like myself.

Personal information: Born in Northern Alberta in 1961, raised near Edmonton, five siblings, married, mother of two boys aged 12 and 14, several travel experiences with family visiting friends and relatives world wide.

I've home-schooled my children for five years (four years full-time).

I view learning as experience which combines absorbing ideas from living with others as well as reading books and writing.

I informally practise silent prayer for physical healing

I have one year experience on panels for Alternative Measures in the City of Lethbridge so I have taken an oath of confidentiality there. (These panels are not and have not been a part of my research).

Reasons for this study:
1) To learn about alternatives to courts and prisons and punishment
2) To address the needs of youth in trouble with the law
3) To further my understanding of Native philosophy

Reflection: I do not seek to become an "expert" or to collect financial benefits through publishing work associated with justice Circles, although I do hope that something of my thesis will be worthy reading for people inquiring into Circle justice.

Although I am willing to collaborate on written projects, my *academic* writing is, for me, a way of thinking and becomes an expression of who I am at that point in time. The thesis will therefore not propose to speak for anyone but myself and my interpretations in light of what I have understood. All of my work is accountable to my advisors and I welcome response from community committee members and others on my interpretations to prevent cultural misrepresentation. _____ has agreed to read over my writing.

I acknowledge, too, that my "findings" are not only recorded in what I write, but in who I am, how my understanding changes, and in skills I may acquire. How I conduct myself after the study is equally important to me. I do not see this work as a project with a beginning and end, but rather as a step in the process of learning and an opening for continued work in this area. _____ has suggested that I work in the area of awareness.

My completion date for the degree is Dec. 1997 and my observation/interview data should be completed by Fall 1997. I do not plan to drop my interest or my work with conflict resolution at that time. My home phone is 403-381-1845 and at the university sociology dept.: 382-7121.

Thank-you very much for taking the time to consider this request. Should you approve this research, I've enclosed letters of permission which can be sent with _____ or in the enclosed envelope. I will sign and return your copy for your records.

Sincerely,

Teresa Hanlon

Appendix C

August ___ 1997

Letter of Permission for Teresa Hanlon, student University of Lethbridge
From _____ for Reserve Policing (Referred from Chief and Council):

Permission is given to Teresa Hanlon, under the university supervision of advisors, Chuchryk, Little Bear and Boldt to observe Youth Justice Circles and conduct informal interviews with willing Circle participants (not victims, hosts or their families) for the purpose of qualitative study under the following conditions:

1. Confidentiality of names and identifying features of offenders, victims, and interviewees.

2. Tape recording of interviews only, not justice sessions.

3.

4.

5.

Research is to finish in the fall of 1997. It is understood that I have the right to withdraw my permission at any time and to read the results of this research.

Signature (s)	Teresa Hanlon
	27 Sunset Road
	Lethbridge, AB
	T1J 4R9

Date	Date
Researcher Copy	

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