

Justice for All: An Indigenous Community-Based Approach to Restorative Justice in Alaska

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Abstract: The current study reviews the comparative successes of two restorative justice programs in Alaska, namely, the Upper Tanana Wellness Program and the Circle Peacemaking Program in Kake, Alaska. In an analysis of the two case studies, the authors develop nine principles useful to those interested in developing restorative-justice programs. The authors recommend an Indigenous community-based approach consistent with practice in the field of Dispute Systems Design.

Introduction

This article invites readers to consider the relative effectiveness of two distinct Restorative Justice (RJ) programs in Alaska, both concerned with the improvement of the justice system for young offenders. One of the programs followed an Indigenous community-based approach, consonant with principles of *Dispute Systems Design*. This Indigenous community-based program emerged in Kake, a Tlingit fishing village in Southeast Alaska.¹ It has come to be known in Alaska as *Circle Peacemaking* (Rieger, 2001).² The other, the *Upper Tanana Wellness Program* (the Wellness Program)³ originated in Tok, a predominantly non-Native town located along the Alaska Highway in the Upper Tanana Region, near the US–Canada border.

Dispute Systems Design (DSD) is a field that developed as a result of melding alternative dispute resolution with organizational development in efforts to manage protracted labour relations disputes (Costantino and Merchant, 1996). Because design management and prevention strategies were so successful, its proponents introduced it in public agencies, government organizations, private sector corporations, and the like. It even found a home at the US Post Office as an integral part of the *Redress*

Program (Bingham and Nabatchi, 2010). Meanwhile, Restorative Justice was developing along a separate path in the criminal justice field and so had little historical connection to Dispute Systems Design. However, RJ and DSD are now beginning to open up to each other as complementary disciplines, as policy-makers search for solutions to an often overburdened and ineffective criminal justice system.

Circle Peacemaking is a traditional Tlingit practice. Magistrate-Judge, Mike Jackson, along with Elders, community members, and council members of the Organized Village of Kake Tribal Council (OVK), met with fellow Tlingit peacemaking practitioners, Harold and Philip Gatensby, from the Yukon Territory, Canada. Together they developed and implemented Circle Peacemaking as a community program, based on traditional Tlingit knowledge and practices.⁴ Because they relied on traditional knowledge and worked closely in consultation with community members, they intuitively followed a community-based design approach that resulted in a program notable for its robustness and longevity. In contrast, the Upper Tanana Wellness Committee developed a standard RJ protocol based on community group conferencing largely from outside the communities it was attempting to serve.⁵ The committee sought to implement the wellness program in the five Native villages surrounding Tok, but achieved only minor successes despite well-intentioned efforts.

Before examining these two distinct programs it is important to understand the problem that both were attempting to address and the socio-historical context in which these programs emerged. This requires a brief look at the high incidence of crime in the Alaska Indigenous population, particularly among young persons, and the antecedent events that gave rise to this high crime rate. It is also useful to identify the dysfunctional legal structures that continue to exacerbate the problem of crime in the Alaska Native villages.

Part I of this paper addresses the high incidence of crime and its antecedents, with particular regard to the Upper Tanana region as an exemplar. Part II discusses the current legal structures that contribute to the problem of youth crime in the Native villages of Alaska. Part III provides an overview of both the Wellness Program and the Circle Peacemaking Program and analyzes them through the lens of community-based design principles. Last, based on an analysis of the two programs, as comparative case studies, Part IV recommends nine design principles to any person or organization seeking to start a sustainable, restorative program in rural Alaska.

I. High Rate of Crime and its Historical Antecedents

Though Alaska Native and American Indian⁶ peoples make up 14.8% of the Alaska population, they represent approximately 38% of the population incarcerated in the correctional facilities (Alaska Dept. of Corrections, 2012). Alaska Native and American Indian youth make up approximately 37% of the population in the Alaska's Juvenile Justice System (see figure 1).⁷

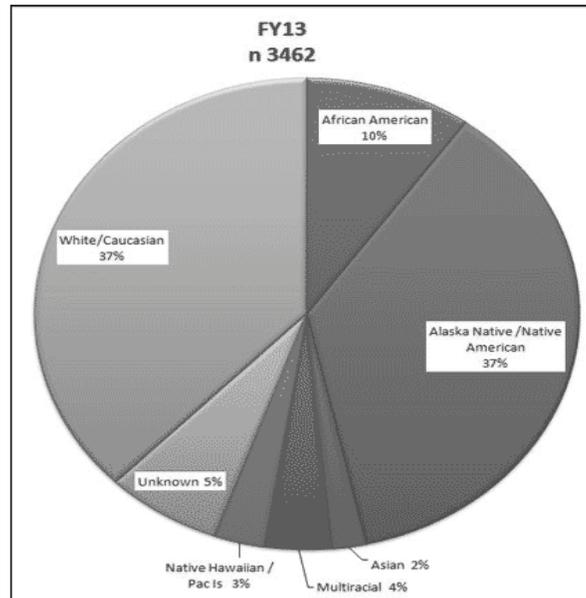


Figure 1. Percentage of youth ethnicity represented in Alaska's Juvenile Justice System (Source: Alaska Division of Juvenile Justice, 2013)

Since 1994, the Alaska Division of Juvenile Justice and its citizen advisory board, the Alaska Juvenile Justice Advisory Committee, have been working to reduce the incidence of disproportionate minority contact in Alaska.⁸ However, the number for young institutionalized offenders is increasing rather than decreasing. In 2010, the recidivism rate was close to 53% of Alaska Native Youth released from secure treatments (National Criminal Justice, 2011). Over the years, there have been several recommendations and studies by task forces, committees, and academics recommending more village input and co-operation. The Division of Juvenile Justice (DJJ) has made it a priority to work with community-based efforts regarding all youth. In fact, its advisory board encourages a community-based strategy that addresses needs of all youth involved with the juvenile justice system: "The state strategy should reflect a comprehensive community based youth

services system that provides equal access for all youth involved with the juvenile justice system” (Alaska Juvenile Justice Advisory Committee Annual Report to the Governor, 2012). The DJJ expresses a need to be open and responsive to the communities, and a need to encourage their involvement and collaboration.

In the 2012 Annual Report to the Governor of Alaska, Chief Justice Carpeneti recommended more community-based restorative justice processes to divert young offenders from detention and court.⁹ The report also encouraged the legislature to fund diversion and re-entry programs, earmarking particular funding to target juvenile status offenses, alcohol-related offenses, and mental health protective custody cases with expanded community-based interventions.

In her 2013 State-of-the-Judiciary speech to the Alaska Legislature, Chief Justice Dana Fabe spoke of the urgent need for greater opportunities for local rural leaders and the legal system to engage in justice delivery at the local level. She spoke of attempts that began in 1970 at the first Alaska Bush Justice Conference wherein conference members passed a resolution mandating more local participation in the justice process. Chief Justice Fabe asserted, in her speech, that decision making and problem solving in the administration of justice in “‘village Alaska’ must move closer to the village” (The State of the Judiciary, 2013).

Despite the stated intent and apparent commitment to involve local decision making and participation in the justice system, particularly in relation to the overrepresentation of young Indigenous persons, there remains a substantial lack of participation by local community leaders and village Elders. To tackle this problem of Native youth overrepresentation, the state and respective tribal authorities will undoubtedly have to develop a greater working relationship. For the State of Alaska, the fact that Indigenous persons are significantly overrepresented in the Division of Juvenile Justice system is a contemporary reality stemming, in large part, from a legacy of oppression, colonization, and resulting cultural trauma (Nielson & Robin, 2003). Engaging legitimate local leadership represents one of the avenues for breaking the criminality cycles set in place by cultural trauma.

The Upper Tanana region and surrounding areas represent a significant site of historical and cultural trauma. The region is located in the interior of Alaska, near the US–Canada border (see figure 2) and encompasses several Native Athabascan (Dineh) villages—Northway, Tetlin, Dot Lake, Eagle, Healy Lake, Tanacross, and Mentasta—in addition to a largely non-Native population residing in the town of Tok, Alaska. Most of the villages are located near the Alaska Highway, which allows access by road in contrast to remote villages accessible only by air or water.



Figure 2. The Upper Tanana is one of several Alaska Native language groups in Alaska.

The Upper Tanana Region

The Upper Tanana region was the last region in Alaska affected by the arrival of non-Natives following the United States purchase of Alaska from Russia in 1867. The region was visited by passing traders in the late 1800s and by a map-making expedition led by Lt. Allen in 1885 (McKenna, 1959). However, the fragmentation of communities began with the first epidemics in the mid-1800s. Ensuing epidemics killed a large number of Indigenous persons in the region. The smallpox epidemic that swept through Alaska in 1835–1840 devastated the population, leaving one-third dead and many individuals disabled, scarred, or blind (Fortune, 1992).

Outbreaks of influenza devastated the First Peoples of the Upper Tanana, as in other regions of Alaska. The first flu epidemic began in 1835 and killed many community members in the area. Sixty-five years later, the second major flu epidemic occurred around 1900, and again resulted in a great number of deaths throughout Alaska. Though the precise numbers of deaths will never be known, the mortality rate was high. In some areas the mortality ranged between 25%–50% (Fortune, 1992). Alaska Native Peoples refer to these events collectively as the period of “The Great Death.” Gold miners, merchants, frontiersmen, and settlers all brought the diseases with them. For example, the perhaps infamous 1898 Gold Rush brought a plethora of adventurous miners through the Upper Tanana region, all seeking to find their fortune in the Yukon Klondike (McKenna, 1959).

Native people in the region had little immunity to these imported diseases because they had never been exposed to them prior to first contact. Infections included not only flu-related viruses and bacteria, but measles, rubella, and bronchitis, among others. These infections spread like wildfire through the region's communities—events now deeply etched in the collective memory of these communities. As physician and historian, Robert Fortune, writes: “[The Great Death] must rank among the most significant single event in the recorded history of the peoples they affected” (Fortune, 1992).

The epidemics threatened the social structure of these communities. They killed Elders, tribal leaders, culture bearers, healers, medicine people, young adults, and children alike, and in so doing shredded the community social fabric by eliminating key people from leadership roles. The onslaught of disease and associated chaos continued from 1835 well into the 1930s. In fact, in the 1930s a tuberculosis epidemic took the lives of many in the region. Many young people were sent away to TB wards, separated from their families. Some were sent away for years. Others were never to return as they succumbed to the disease. Many children were forced to leave school to help raise their families as adults succumbed to the disease.

But great death from disease was not the only scourge visited upon these people. The advent of both rapid geo-political transformation and socio-economic change also wrought substantial social dislocation in these communities. For example, in 1887, the drawing of the US–Canada border was a particular intrusion that exists to this day, touching and re-shaping the lives of numerous families in the region:

The establishment of the International Boundary along the 141st meridian was the first real incursion by the State into the lands and lives of the Upper Tanana and while at first this had only a minimal effect on their lives, the existence of the border would come to have profound social change. (Easton, 2005, p. 147)

Now community members living on opposite sides of the border have to pass through Customs to visit their family living close on the other side, whether that be for potlatch, family dinner, or some other social function. It is often difficult to take traditional Native food across the US–Canada border. Furthermore, border interviews since September 11, 2001 have become more of a strained experience for all and inspections are more frequent. This social reality lies in stark contrast to a past in which people lived nomadically, crossing freely back and forth across the boundary region.

Other geo-political events wrought similar interference with community life. Independent of the border issue, during the Second World War, the Native people of Northway were required to go through military checkpoints and carry identification papers when leaving and returning to their own village. This region includes land they had inhabited and occupied for millennia free of any geo-political checkpoints (Barnes, 2010). It is no wonder, then, that people in the region view these border inspections as a colonial imposition, even if they are performed in the interests of what may be legitimate national security.

The 1942 building of the Alaska Highway issued in one of the most single far-reaching changes to the traditional ways of the Upper Tanana region of Alaska. During this era, the village of Northway became a staging area for thousands of military personnel who built an extensive airfield nearby that destroyed a sacred burial ground (Haynes & Simeone, 2007). Elders still retell stories of construction crews tearing down the trees and ripping out their hunting grounds, disturbing forever their lives and practices.

Local communities were exposed to new visitors arriving from the Lower 48. For instance, Elders re-count narratives in which Alaska Native villagers saw African-American people for the first time (Hyslop, 1994). These African-Americans were drawn from the army labour force to build the Alaska Highway. The highway was constructed to link Alaska to the Lower 48 to open supply lines for trucks, oil, machinery, and soldiers travelling to the North. The highway was initially built to defend America against the Japanese Imperial Army but it has, in the post-war era, become a conduit for, among others, tourists as well as corporations and their workers engaged in resource extraction.

Despite the inevitable dislocation associated with the opening of the Alaska Highway and the influx of outsiders, Indigenous people in the region did not oppose the building of the road system, as roads brought jobs, and jobs fed families. In fact, Native communities were relieved to have the opportunities to pursue these jobs in the post-industrial new economy after the Second World War. Labouring jobs were welcomed as traditionally nomadic people of the Upper Tanana began their transition from a barter to a cash economy.

As Natives started working for the first time as modern industrial labourers, their work created an influx of money into the local economy, which, in turn, created markets for local merchants. Prior to the cash economy, most income was earned by trapping and selling furs to local traders for staples such as flour, sugar, tea, and rice. The Native peoples' way of life was to change forever as these socio-economic shifts became irrevocable.

Additionally, the road itself brought further disease and chaos for the local communities of the region. Easton (2005) has documented the diseases associated with the construction of the Alaska Highway:

The building of the road itself led to a noted increase in mortality and sickness within Native populations, particularly through dysentery, jaundice, whooping cough, mumps, meningitis, measles and influenza. These last two diseases were particularly devastating ... Infant and youth mortality during construction were particularly high. (Easton, 2005, p. 208)

In short, the Alaska Highway brought the modern world to the Upper Tanana, but in the process radically transformed the Native communities in ways that were often harmful. Western culture brought great socio-economic upheaval, contributing to loss of cultural identity and the emergence of cultural trauma. The Upper Tanana people, in a short space of time, were separated from many of their historical practices as they moved into a cash economy: "Rapid changes forced upon us by the Western culture have also introduced a lot of stress and uncertainty into many of our people's lives. The subsistence and trapping economy was changed overnight into a cash economy" (Hayes & Simeone, 2007).

For the most part, Natives found themselves occupying positions of lower socio-economic status in this transformation. Harold Napoleon has documented this distinction in social class: "Many of our parents were forced to find jobs to survive and most of those jobs were menial and other low class positions" (Napolean, 2005).

In addition to the dramatic sources of social dislocation described above, the invention of the Boarding (Residential) Schools dealt yet another devastating blow to these Native Communities. From the early 1900s to 1970s many Alaska Native children were removed from their homes in rural communities and sent to boarding schools run jointly by the federal Bureau of Indians Affairs (BIA), the State of Alaska, and private church organizations. The goal was to assimilate Native students. The children were forbidden to speak their respective languages. As time passed, they would lose touch with traditional culture and practices. Many were removed as young as age five. Many endured physical and sexual abuse. Some have described the worst schools as creating "concentration camp" like conditions (Hirshberg & Sharp, 2005). In many communities, where parents lost their children, adults turned to alcohol (Hirshberg, 2008).

When children returned home (sometimes years later) they found it difficult to gain acceptance in their home communities. They had become the lost generation. The loss of culture, identity, language, and traditions among those who attended boarding schools contributed to a breakdown in the cultural fabric and greater alcohol and drug abuse in the Native communities (Hirshberg & Sharp, 2005). Today, the Elders, most of them in their 70s, are just now beginning to share their painful past with others. What these stories share is the theme of inter-generational trauma (Volkan, 1998, 2000, 2001, 2002, and 2004).

The contemporary Indigenous narratives reflect the totality of all these traumatic events. To be catapulted into the modern era through The Great Death, disease, geo-political and social-economic change, the threat of starvation, rapid socio-cultural shifts from subsistence to wage earning, and the imposition of boarding schools has been devastating for the lives of Alaskan Native People (Napolean, 2005). In a short space of time, the Native communities in the Upper Tanana region, as in many others, experienced rapid disorienting shifts as well as dramatic transformation from subsistence to western economic practices, customs, institutions, and social norms.

In contemporary Alaska, local communities are struggling to recover from these sources of intergenerational trauma. This trauma is real and ongoing in these communities. Families live with a shared sense of social dislocation, alienation, anomie, and a massive disruption in parent-to-child bonding. Generations lost parenting skills because children were removed from homes and raised by abusive strangers. This led to parents who were ill-equipped to raise children because they had been stripped of their culture in the schools and had far too often experienced psychological, physical, and sexual abuse. Alcoholism, suicide, and domestic violence have often been the result (Jones, 1986; Napolean, 2005). Young people are particularly vulnerable to the effects of intergenerational trauma (Office of Juvenile Justice, 2000). They often act out in attempts to reduce their shared sense of alienation and psychological pain.

In sum, there is likely not one Alaska Native person alive today who has not been affected by alcoholism, domestic violence, suicide and, more recently, drug addiction, with regard to either immediate family, friends, and/or fellow community members. Many of the current-day social conflicts plaguing Alaska's Native communities stem from inter-generational trauma. Absent meaningful collaboration between the state government and federally recognized Tribes, these conflicts are likely to continue unabated on their current trajectory.

II. Socio-Legal Structures that Contribute to the Problem of Native Youth Crime

In recent times, there appears to be a shared recognition among many working in the Alaska State government and in the local communities that the current justice system must be modified to encourage local participation in resolving the problem of disproportionately Native-youth crime. This acknowledgement has given rise to a resurgence of restorative and traditional peacemaking practices. However, until the State recognizes legal and policy structures that inadvertently perpetuate violence, restorative measures will be of very limited value. It is therefore important to review some of these structures before discussing how principles of DSD may be of help in reducing Native youth crime.

Three sovereign governments co-exist in Alaska, namely, the federal, state, and tribal governments. There is one reservation and there are 229 federally recognized Tribes in Alaska and (US Department of the Interior, Indian Affairs). Most of the remote villages in rural Alaska are accessible by airplane and/or boat only. The villages of the Upper Tanana region, as an anomaly, are situated near the highway system.

Tribal self-determination in judicial matters has been a struggle in rural Alaska (Case & Voluck, 2010). Each and every small victory appears to come slowly—primarily by way of Supreme Court judicial pronouncement. Currently, tribal courts have jurisdiction with respect to the welfare of Alaska Native children in their respective villages since the passage of the *Indian Child Welfare Act* (ICWA) in 1978. The State has concurrent jurisdiction. ICWA protects children, who are defined as persons under the age of 18. The tribal court stepped in when alarming numbers of Indigenous children were being removed from their homes and adopted into non-Native homes. In *John v. Baker*, 982 P.2d 738 (Alaska 1999) the Alaska Supreme Court affirmed the jurisdiction of the tribal courts in child custody matters, even where the children are residing outside their traditional communities. See also *Kaltag Tribal Council v. Hogan*, [344 9th Cir. 2009, cert. den. 2010] and *Alaska v. Native Village of Tanana* [Alaska Supreme Court Opinion No. sp-6542 (1999)].

In contrast, as a practical matter, Alaska Tribes have very limited jurisdiction in criminal cases. Since the passage of Public Law-280 in 1953, the US federal government transferred legal authority to the State of Alaska to act in criminal and civil matters with respect to Native Alaska peoples. Technically, the tribes still retain jurisdiction as legally recognized entities, but due to the US Supreme Court ruling in *Alaska v. Native Village of Venetie Tribal Government*, 522 US 520 (1998), tribes have no “Indian Country” or reservations over which they can exercise their authority, due to the extinguishment of land claims under the Alaska Native Claims Settlement

Act of 1971. It is therefore often frustrating for tribal members who are effectively restrained from confronting and reducing criminal activity by the action of local tribal courts.

The tribal courts' relationship with the State of Alaska is, at best, uncertain and often strained. Despite legal strictures such as those imposed by the Venetie decision, *supra*, it is our view that the discussion regarding crime in Alaska Native villages must begin in the village among local people if the state and the tribes are ever to improve this relationship and effectively address and manage crime. It is important for the state to recognize Indigenous communities as a valuable resource in tackling local crime. This is particularly true for matters concerning young offenders as the youth represent the future of these communities. This community approach, by encouraging local stakeholders to create a forum to work with their young offenders, is arguably the only viable long-term solution. It can complement the standard legal approach by empowering local communities to develop more culturally appropriate set of practices.

Olin (2013) emphasizes the importance of understanding the difference between the Anglo-American legal system and the concept of justice among Native peoples. He argues that the Indigenous concept puts far greater emphasis on community cohesion, healing, and peacemaking. Greater understanding of the Indigenous concept of justice and the differences between this and the standard adversarial map will help both the state and the tribes to work together to address and reduce crime in the Alaska Native communities.

Currently, tribal courts and their respective Native community members are often left right out of the decision-making process when young offenders are charged with a misdemeanor offense, even though the system currently countenances local diversion programs in rural Alaska. Generally, the state magistrates who handle these cases have no specific training and/or willingness to use diversionary processes. Also, the top-down structure of the centralized court system adds to the psychology of alienation that many Indigenous people feel in the rural villages. Because of the disjuncture between the state courts and Native communities, there is often nobody to whom the magistrate might refer the young offender, even if she wanted to do so. Therefore, it is imperative to explore processes that begin at the village level with local Native community members to provide viable options that they endorse and are willing to support.

Taking the case of the Upper Tanana region, for example, the first stop for a young offender charged with the offense of Minor Consuming Alcohol (MCA) is the magistrate-judge in Tok. Much of what the magistrate-judge does has an impact on the psychological well-being or emotional life of

persons affected by the law. This can include both long-term therapeutic and anti-therapeutic effects (Wexler, 2008, 2011, 2013; Winick and Wexler, 2006). The anti-therapeutic effect of the current juvenile-justice system on young persons in Native communities needs significantly more attention (Wexler, 2008, 2011, 2013; Winick and Wexler, 2006).

The typical Native youth does not know the magistrate or any of the legal actors. He or she is a virtual foreigner to the process. And with high turnover of personnel, the very legal systems designed to help the young person may actually contribute to his or her sense of estrangement from that system. For example, the probation officer for that young person may be replaced frequently over the course of a troubled adolescence, leaving the young person with few supportive, long-term guides.

For offences other than MCA, the juvenile probation officer is contacted in Fairbanks, a larger city 250 miles away from Tok. If the offence is considered serious, the police remove the young person from the village and take him or her to a detention centre until he or she completes a so-called "treatment plan." This may take weeks, months, or longer. The effect of this virtual banishment from the community can be psychologically devastating and cause the young person to seek solace among fellow juvenile inmates, who may have already psychologically labelled themselves as criminal and "bad" (Goffman, 1963). The psychology of gangs emerges in these alienated social environments as a way to meet essential human needs, including the need to belong and maintain self-esteem (Gangs 101, 2007). Young persons in these conditions develop a sense of identity with criminality itself (Gangs 101, 2007). In fact, this is what community members report, as they witness young offenders returning to their villages.

Despite all the legislation and policies set in place that could permit interventions by tribal courts, as opposed to state magistrate courts, there is still very little tribal involvement respecting young offenders. The state courthouse has essentially become a symbol of oppression for many Native people in Alaska. And, sadly, there are few local processes to address the psychological and other related needs of young offenders in Alaska. When there is a so-called restorative justice program available it is often still top-down in nature and therefore perceived as an extension of an already alienating set of legal state institutions. Moreover, in practice, top-down programs tend to run counter to the spirit of restorative goals even if young persons were willing to use them.

For young offenders from the village (overwhelmingly males), the first visit to the court is often a rite of passage. This is the first of many visits to the courthouse for many Native youth. Once a young person is taken out of the village and placed in a detention centre away from home, family, and

friends, he may develop resistance and antipathy toward the system, making it even harder for him to modify self-destructive or anti-social behaviour.

In short, there is currently little, if any, positive relationship established between Native young people and the legal institutions in Alaska. Moreover, standard legal practices, including detention, arrest, and litigation, produces psychological resistance, denial, minimization, rationalization and essentially reward identification with thugs and bullies (Wexler, 2008, 2011, 2013; Winick & Wexler, 2006). Contemporary legal structures encourage anti-social behaviour among young people by facilitating social cohesion between troubled youths within so-called “treatment centres” – centres that are built and maintained, for political expediency, far from the local communities to which these young offenders must inevitably return. Arguably, the system contributes to the misbehaviour of Native youth by continuing this policy of removing people, in the absence any protection concerns, from the very communities in which they could otherwise receive support.

III. Assessing the Relative Success of Two Restorative Programs

Dispute Systems Design (DSD) is an area of practice that works to empower organizations and communities to develop their own conflict resolution systems (Costantino & Sickles-Merchant, 1996). It requires us to recognize not only structural dynamics within the village communities but also the influence of the external socio-legal environment upon the community (Costantino & Sickles-Merchant, 1996). Before one can assess the relative merits of a restorative program in any given community, it is important to understand that community’s location in and response to the larger socio-legal environment (Costantino & Sickles-Merchant, 1996; Ury, Brett & Goldberg, 1988).

Specifically, the DSD paradigm envisions three components—power, rights, and interests that are distributed in some fashion in any given social system. According to Costantino and Sickles-Merchant (1996), a healthy dispute resolution system favours interest-based solutions over rights and power-based resolutions. Conversely, a distressed system, i.e., one plagued with unresolved and ongoing conflicts, favours power and rights-based solutions over interest-based resolutions (see figure 3).

In a distressed system very few disputes are resolved through the mutual exploration of parties’ respective interests (Costantino, 1996; Ury et al., 1988). The majority of disputes in such a system are resolved, often unsuccessfully, by the assertion of rights or the exercise of dominant power. Most dispute-resolution systems in contemporary society adopt a power and/or rights-based approach (Costantino & Sickles-Merchant, 1996).

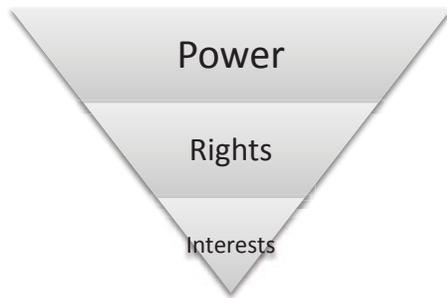


Figure 3. A distressed system (Source: Ury et al., 1988).

The Alaska State juvenile justice system is largely a power-based, rights-driven model. In this legal environment, a power struggle has emerged between the state government and the tribal communities, producing rights-based adversarial contests between the two. Through their tribal courts, these communities are increasingly contesting the state courts' authority over their

tribal members, often resulting in lengthy legal battles and unsatisfactory outcomes for both the tribal governments and the state. Often, these legal battles simply work to divert attention away from the social problems of Native youth crime—the very problem that Alaskan legal institutions were mandated to address in the first place.

The rights-based approach is grounded in fixed rules, entitlements, and legal positions that often lack the flexibility associated with community-based restorative measures. Courts determine who is right in a given case as measured against accepted legal precedent. Courts therefore do not, by necessity, concern themselves with abstract notions of justice in contests regarding jurisdiction. In Alaska, most contests for jurisdiction have become struggles over the interpretation of legal precedent. In this climate, there has been little room for dialogue concerning community restoration and the need for healing in the face of historical trauma. In addition, many legal contests over jurisdiction in the state have prompted appeal after appeal, producing protracted and seemingly never-ending legal exchanges through the appellate process (see *Kaltag Tribal Council v. Hogan*, supra). Because these lengthy legal disputes continue until the US Supreme Court can produce a final word on any given matter, the legal issues surrounding questions of jurisdiction often remain unsettled for long periods (see *Kaltag Tribal Council v. Hogan*, supra).

In contrast to the emphasis on rights and power in the distressed system, the interest-based approach turns the pyramid on its head (see figure 4). According to this approach, all relevant stakeholders are encouraged to identify their concerns, needs, and desires in addressing any issue in dispute. Resolutions emerge out of careful exploration of all of the parties' respective interests. This often involves empowering community members to develop appropriate forums in which all parties can discuss the issues

and find mutually acceptable solutions (Costantino, 1996; Ury, Brett, and Goldberg, 1989).

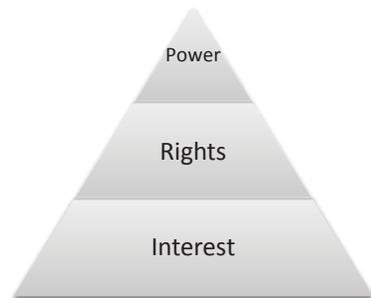


Figure 4. An Effective System (Source: Ury et al., 1988).

Both the Kake Circle Peacemaking Program and the Upper Tanana Wellness Program are located in the contemporary Alaska socio-legal environment. The former managed to navigate this environment successfully and continues to thrive. The latter struggled and is currently in hiatus. The difference in effectiveness cannot be attributed to a less traumatic history in Kake because the Tlingit community in Kake endured a similar pattern of colonization and

historical trauma, also resulting in a high incidence of youth crime and youth suicide. It is likely that the difference in the success of the two programs depends largely on how each navigated this top-down legal environment within the State. The Upper Tanana Wellness Program accepted and situated itself within the top-down rights-based paradigm, as in the inverted pyramid, reproducing the self-same structures of the larger legal environment, while Kake Circle Peacemaking boldly turned the pyramid on its head, focusing primarily on resolving disputes at the interest level, including broader-based community interests. A brief historical analysis of the two programs demonstrates why and how this happened.

A. A Brief History of The Upper Tanana Wellness Program

In 2009, a number of concerned citizens in the town of Tok, Alaska, began meeting to address the high rate of minor-consuming-alcohol (MCA) charges in the Native communities of the Upper Tanana Region of Alaska. The group included volunteers, drawn from various local agencies, including the counselling centre, the school district, the local branch of the University of Alaska Fairbanks, Head Start, law enforcement, and a local Native non-profit organization that offered alcohol screening and social services. The state magistrate-judge began holding monthly community meetings at the courthouse in Tok to address the MCA problem with the group. The group met once a month during the lunch hour for nearly two years before forming a non-profit organization called the Upper Tanana Wellness Committee—a group dedicated to developing restorative justice options for MCA offenders and, potentially, other young offenders. The committee applied for a Department of Transportation grant and received funding to address

the MCA issue. The committee, as a non-profit organization, also hired a manager and trained a family-group conferencing facilitator to manage the diversion of cases to its restorative justice program.

Unfortunately, the level of Native participation was extremely low from the surrounding villages. The committee, despite the best of intentions, failed to fully appreciate the significance of this lack of participation and its historical antecedent causes. Most of the attending members were from Tok, a non-Native town, in a centralized location situated along the Alaska Highway. In addition, the relationship of the committee to the people in the communities it was attempting to serve was not well established, again despite the good intentions of its members. In effect, the program was largely separated from the people it attempted to serve. The committee came to realize that any restorative program seeking to be an effective intervenor in youth crime must consider the particular history of the cultural community within which the program is to operate.

Even though the Upper Tanana Wellness Program was intended as a helpful diversion project, the committee inadvertently adopted the forms of the surrounding institutional environment without making the local cultural connection or including local traditional practices. The committee could, and perhaps should, have explored the antecedent causes of distrust and consulted with local Elders about traditional Athabascan (Dineh) practices before proceeding to implement the diversion program. This was no fault of the Tok magistrate who made sincere and laudable attempts to connect with the communities of the Upper Tanana. Nor was it the fault of any of the committee members who worked diligently in the development of the diversion program. Rather the problem was structural. Locals simply perceived the court and its restorative justice program to be inaccessible to them, as disempowered outsiders.

The Upper Tanana Wellness Program, while currently in hiatus, is likely to continue down the road once it makes significant adjustments as a restorative program, including far greater local consultation. While the committee members introduced the notion of interest exploration they did not have an adequate opportunity to implement it at the ground level in their restorative model. To fully understand the nature of local stakeholder interests, it is imperative to engage in a dialogue about local history and its continuing influence in the region and the importance of traditional cultural practices.

We have a great respect for the Upper Tanana Wellness Committee and laud the aspirations of the program. It is therefore our hope that the Wellness Committee will re-instate the program with significantly greater local

consultation and increased exploration of community-based interests, in addition to the interests of all relevant institutional actors. This will require a design-savvy approach much more akin to that associated with Kake Circle Peacemaking.

B. A Brief History of Circle Peacemaking in Kake, Alaska

The most sustainable community-based diversion program in Alaska for young offenders is the Circle Peacemaking process in Kake—a Tlingit village located in southeast Alaska that is accessible only by water or by air. In 1998, Mike A. Jackson, a Tlingit member of the community who also serves as magistrate in that community, recognized the work of fellow Tlingit peacemaking practitioner Harold Gatensby, from the village of Carcross, Yukon. Magistrate Jackson noticed the similar pattern of Circle Peacemaking that his own grandfather and father had practiced when the magistrate was a young man—long-standing practices that had fallen into relative disuse with the advent of Western law.

Magistrate Jackson held a meeting with other members of the community to find solutions to a scourge of youth suicide and crime that was plaguing the village at that time. Alcohol consumption and suicide rates were among the highest in the country. When the village youth got into trouble with the law, the juvenile justice probation officer rarely visited the village because of its inaccessibility by road. With a growing problem and seemingly no solution, the magistrate and community members decided to work together to resolve their own problems. Together, in 1999, they formed the Healing Heart Council. This council, made up of all local Tlingit Tribal members, agreed together to reinstate Circle Peacemaking, based on traditional Tlingit practices. This stands in stark contrast to the Upper Tanana Wellness Program, which attempted, albeit with good intentions, to address problems in other people's villages without the commitment from community stakeholders in those villages. It is evident from the stark difference in effectiveness between the two programs that sustainable solutions in Alaska Native communities will likely only come from the communities themselves rather than from outsiders.

For example, the very first case involved the State's removal of children from the home of a young alcoholic mother (Rieger, 2001). In that case, after several failed trips to the local treatment centre and untold misery to her family, the woman was invited to attend the Circle and began, with the support of other members, to plan a life without alcohol. When she attended treatment at the recommendation of the Circle, members of the community maintained her bills and home. After gaining the support of the community

through the Circle process, she returned to her home sober and regained custody of her children. She has, to this day, maintained that it was the meeting of the Circle that gave her the new life she needed. Her success story is not atypical with the intervention of Circle Peacemaking.

With particular regard to young persons, Magistrate Jackson encourages the adoption of positive and pro-social behaviours. He emphasizes the importance of role models for young people, especially now in the face of messages in the popular media often encouraging young people to engage in self-destructive behavior. He describes the role of Elders as follows:

To encourage the goodness to come out to help one another in our community, to be a better community but also a better people to ourselves. To stop the suicides, to encourage kids to do good. There are so many contemporary messages out there that say, 'It's good to drink beer.' That's not our way. We have to stop them, because too many of us have already been lost. Thousands of years wasted here in Kake, and that's way too many years wasted. So the circle heals, celebrates sobriety, celebrates goodness, and celebrates life. (Healing Our Communities, 2010)

In the Circle, Magistrate Jackson also stresses the importance of respecting young people and their particular interests in the community. He runs the Circles, carefully considering the interests of young people while also those of the broader community and those victimized by crime. Because he is the local Magistrate-Judge, Tribal member, and Keeper of the Circle, he has the legitimacy needed to implement solutions that meet the interests of all concerned. He is also empowered as a respected leader and judicial officer in the Kake community to make significant modifications to the standard legal process in order to address the root causes of the youth misbehaviour. His emphasis on community stewardship, which includes traditional teachings as well as individual accountability, has provided the climate for a much more interest-based approach to youth crime.

Circle Peacemaking is a locally developed program, based primarily on community-based interests, as expressed by local stakeholders in that community. It emphasizes interests over power or rights, modifying the standard legal process when appropriate. Importantly, the interests that it explores tend to be more communitarian rather than individualistic in nature. The Circle practices are designed to frame interests in the larger context of long-held cultural traditions. Today, Circle Peacemaking has become so successful that it is now codified in the Tlingit Tribal Court rules, as acceptable alternative practices to the standard legal process.

IV. Nine Principles of Design

Every community or village should have the opportunity to define the type of restorative program it wishes to implement as this is the best way to empower local community participation and to ensure program effectiveness. This is evident from an analysis of the two Alaskan case studies above. Furthermore, after analyzing the difference between the two case studies and the characteristics of each, we developed several principles designers should adopt in assisting communities to develop an effective restorative program tailored to their respective needs. We have modified, and added to, the standard DSD principles to fit the restorative justice context in Alaska in an effort to expand the application of DSD and to improve restorative justice programs. The nine principles are as follows.

A. Involve Local Stakeholders At All Stages of the Restorative Program

It is useful to invite a facilitator to hold the community meetings to begin discussing the issue of young offenders in the village. However, the facilitator must maintain a safe environment in which people can talk openly to one another. This approach to facilitation involves listening to people as a participant observer. The generations of trauma have created many social problems in the villages. The first step for community members, in some villages, is to learn how to communicate with one another in a more effective manner. Members can agree to disagree on any matter. A community meeting must be a safe forum for community members to discuss what they want as a community and what must be accomplished to achieve the desired result. This is imperative for restorative facilitators, researchers, and agents for the State of Alaska to consider when visiting a village.

It is imperative that the facilitation process include the interests of all community stakeholders (Costantino & Sickles-Merchant, 1996; Hyslop, 2012). In fact, the entire restorative process, to be successful and sustainable, must be a community-based effort by local people. The local community can make good use of outside facilitators as part of the process, but these invitees must work closely with local persons (Costantino & Sickles-Merchant, 1996; Hyslop, 2012). What the Upper Tanana Wellness Committee encountered was resistance and lack of buy-in and ownership from the Native people in the surrounding villages. For example, most of the MCA's charges, at that time, resulted in Tetlin, a Native community located off the highway system, forty miles from Tok. But there was little outreach to Tetlin and therefore little interaction.

If Tetlin had a local diversion process, the MCAs arguably would have received better attention. The local community members could have become the unofficial probation officers with supportive roles in the life of the young offenders. The committee had few social ties in Tetlin or any of the other villages. When the committee visited Tetlin to make a presentation it was met with disinterest and even occasional cynicism. This could have been remedied by involving local stakeholders at all stages of the program implementation.

B. Do Not Adopt a One-Size-Fits-All Method

Too often, well-meaning non-Native outsiders want to impose restorative programs on Native villages based on a standard restorative model. This can often lead to a program that is ineffective and not sustainable. The Upper Tanana Wellness program was a well-meaning attempt to serve as a diversion model for MCA offenders. It did not take into account that the other villages may have other ways of working with their young people. In a community-based model, each village can best decide what works best for them. In the case of the Upper Tanana Wellness Program, if it is to continue in Northway or any of the local Native villages of the Upper Tanana region, it will have to go back to the drawing board and seek local stakeholder involvement in each of the villages.

Just as in the civil application of DSD, it is evident that there is no one-size-fits-all for any effective restorative justice program (Costantino & Sickles-Merchant, 1996; Hyslop, 2012). To suggest otherwise is the antithesis of restorative practices. Moreover, a program can actually adopt several different restorative practices as a smorgasbord of useful processes, within its larger program. This would of course depend on its available resources and local stakeholder interest. Examples of useful restorative process could include, but are not limited to, victim-offender mediation (VOM), circle peacemaking, elder panel (a form of arbitration), family-group conferencing (a mediated conference involving family members), reparative board (an advisory board which provide terms of restoration for the victim, offender, and community). Practitioners should avoid the tendency to slavishly follow one particular practice to the exclusion of others (Jarrett, 2011). Indeed, different conflicts in the same community may require very different responses. We therefore recommend a creative multi-door approach.

C. Seek Solutions in Reference to the “Bigger Picture”

The “Indigenous problem” is a recurrent theme in all imperial and colonial attempts to deal with Indigenous peoples. It originates within the wider

discourses of racism, sexism, and other forms of positioning the Other (Smith, 2012). Many researchers and policy-makers frame their work to make the focus of a particular problem the problem of the Native person or the community without taking into account the bigger picture. It is often communicated to Native people that they have no solutions to their own problems (Smith, 2012), without further discussion. For sociological researchers, the problem reaches back to the history of oppression and misguided acculturation efforts. It does not begin with “the problem” (Smith, 2012) in isolation. In Alaska, there is a need for cultural understanding at all levels of government and institutions.

D. Encourage Agreements Between the State and Tribal Courts

Currently in Alaska law, nothing prohibits the State of Alaska and tribal governments from entering into agreements that allow for flexibility in the development of restorative practices, allowing an array of alternatives. This is the only way that restorative programs will become sustainable in Alaska, because institutionalization helps undergird programs in the long term. As discussed above, when the state magistrate and the Division of Juvenile Justice created an agreement to divert cases to the Kake Peacemaking Circle, they institutionalized a sustainable peacemaking process for the long-term. This agreement serves as an example to others of what is possible.

In Alaska, there are currently at least three statutory provisions that allow for diversion agreements for “Juveniles” between state courts, tribal governments, and the DJJ. These are as follows:

1. Alaska Statutes, section 47.12.010 aims to promote a balanced juvenile justice system in the State by protecting the community, imposing accountability for violations of law, and equipping juvenile offenders with the skills needed to live responsibly and productively. It seeks to divert juveniles from the formal juvenile justice process, as warranted, through early intervention and only when consistent with the protection of the public.
2. For first-time MCA offenders, there is a diversion option in Alaska Statutes, section 04.16.050 for Possession, Control, or Consumption by persons Under the Age of 21. The magistrate has the option of diverting young offenders to a community panel. In Tok, the magistrate diverted the MCA cases to the Upper Tanana Wellness Program, for example. This statutory provision may grant a suspended imposition of sentence and place the person on probation for one year or until the person is 21 years of age, whichever is later, if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including

counselling, education, treatment, community work, and payment of fees; in this paragraph, “community diversion panel” means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section.

3. Alaska Statutes, section 47.12.140 allows the court to impose the least restrictive alternative dispositional order that, in the judgment of the court, is most conducive to the minor’s rehabilitation, taking into consideration the interests of the public.

Recently, Alaska courts have addressed the need to encourage restorative justice programs. Effective April 15, 2014, the Supreme Court of the State of Alaska has modified its rules, adding Rules 11(i), 21(d)3, and 23(f) to expressly support restorative measures. Rule 11(i) permits a judge, with the consent of the victim(s), the prosecutor, and the defendant(s), to refer a case to a restorative justice program. Such programs may include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim-offender mediation. Rule 21(d)3 allows a judge to condition an admission to an alleged offending act to the recommendations of a restorative justice program to which the matter is referred. Rule 23(f) permits the court to stay the disposition of a juvenile matter pending a referral to a restorative justice program.

E. Provide the Necessary Motivation, Skills, and Resources

Restorative programs cannot function effectively if the tribal councils do not have the necessary skills, knowledge, and resources to support these programs. There is a need to build local capacity and social structures to support and sustain these programs. All this requires funding. DJJ receives federal funding each year to work on reducing the disproportionately high number of Native young offenders in the system. Some of this funding could be used to collaborate and, with the tribal councils, to develop culturally appropriate services and programs to young persons. It is incumbent on the justice institutions, granting agencies, and the villages themselves to provide the resources and time necessary to engage in these collaborative efforts.

A process cannot be made whole by volunteer efforts alone as is often expected from Native people. In order for tribal councils to become more viable as agents of care for young offenders, the State of Alaska and federal government must collaborate and provide the resources necessary to do the job. In both the case studies above, governments did provide adequate funding. The Kake Circle Peacemaking program received funds directly from its Tribal Government, allowing it to hire a full-time facilitator to work

with the Department of Juvenile Justice and local magistrate. The Upper Tanana Wellness Committee received grant funds from the Department of Transportation to pay their full-time manager and facilitator. Ideally, a mediator and/or circle facilitator working actively with young offenders should be in a full-time position to give the latter the ongoing support and consistency they need and to ensure that the mediator has enough time to interact meaningfully with young persons.

F. Seek out Lower Cost Procedures that Ensure Sustainable Programs

By their nature, restorative programs save costs in the long run, even though the government must invest in the start-up phase. For example, it will cost the State of Alaska less if young offenders are permitted to remain at home with family and community members as part of a restorative program. The family and community members are volunteers who can serve as informal probation officers. In addition, it costs more to fly a young offender to and from a remote village and into the juvenile treatment and/or incarceration centres than to address the problem with local restorative measures. Wisely, both the Kake Circle Peacemaking Program and the Upper Tanana Wellness Program envisioned this local approach for the young offenders in their respective villages.

G. Reformulate and Expand the Definition of "Success"

Often, legislators, policy-makers, researchers, and academics are fixated upon the notion of reduced recidivism as the definition of success for restorative programs. While monitoring recidivism is useful, it is not the only measure of success in a village-based restorative program. Though it is the hope of all parties that young persons remain out of trouble, success can be measured in a host of other complementary ways. An understanding of DSD can help restorative practitioners and others reframe and expand the notion of success for the purpose of program evaluation.

For example, when the Upper Tanana Wellness Committee undertook a Circle process with a young offender in Northway, the members of the community set aside their long-held differences and focused on the needs of the young person. The Circle established long-needed connections between community members, Elders, and the young offender. In this example, an expanded measure of "success" could have included improved communication, increased cohesion and solidarity established among previously estranged families, and improved satisfaction with the process as a whole. Also, local community members were empowered to take ownership of the problem and seek local solutions. All these outcomes represent success

for a community seeking to manage and reduce crime through greater community involvement. Yet, many of these successes might be lost if efforts at program evaluation do not recognize them.

H. Focus on Restorative "Practices" Instead of Restorative "Justice"

Many Native people are suspicious of the term "restorative justice" and do not know what it actually means. For many, it has become synonymous with a dysfunctional justice system seeking to appear more user-friendly while continuing to conduct business as usual. Native Peoples don't generally use this term in their own Indigenous dispute-resolution processes. We suspect that the term is often used as a trigger word in applications for grant funding. It may also be used as a buzz word for programs in the legal system that look in some way restorative, but actually fall short of authentic restorative practices. For example, a so-called "restorative justice" court may only mandate that a young offender complete community service. While it may be a useful task for the offender to accomplish such service, it is not an authentic restorative process if it does nothing to heal the harm to the victim, encourage offender accountability, and instill a sense of safety in the community.

In a truly community-based, restorative approach, the young offender may be asked to chop wood for his grandmother and/or help out at a relative's home. This latter approach offers more meaning to the offender, victim, and community, as a way of re-building relationships and restoring trust. Therefore, if we are seeking a more accurate term, the notion of restorative "practices" may be more appropriate, as this term emphasizes the work in action in a community. It does not invoke the same appeal to some abstract claim of justice associated with the legal system as a whole that, for some, has created great suspicion. In short, the notion of restorative "practices" arguably permits the possibility of greater inclusion of cultural and historically relevant norms, values, and rituals that offer more meaning to young offenders, as well as to others in the community.

I. Include Local Cultural Norms in Developing Restorative Practices

The Native peoples of Alaska had their own traditional conflict resolution methods and practices, which were part of everyday practice in the community. For example, in the villages of the Upper Tanana, if someone hurt another's feelings or did something to create discord with a member of the opposite clan, that person had to make amends in public by giving gifts to the aggrieved. If the amends were ever made in private for some exceptional reason, a third person served as mediator.

Village-based restorative practices can be healing for all members of a community. Indigenous peoples have long used such processes to resolve disputes between their own people, with other Tribes, and with newer settlers. Disputes are resolved based on the Indigenous community's culture and custom. There is an emerging field of study called Indigenous Dispute Resolution (IDR) that catalogues and analyzes these culturally relevant approaches.¹⁰ The outside system working with tribal councils is only likely to establish legitimacy through respect for local norms. Native people, for example, often give far greater deference and respect to Elders, particularly in matters of dispute resolution. Therefore, to legitimate restorative practices in Native communities, it is imperative to include Elders in the process.

The Upper Tanana people traditionally had important positions of leadership. For example, Chief Walter Northway, the last traditional Chief who died in 1993, was known as *Haskeh*, signifying an important person who acts for the benefit of the community. Before the imposition of state law, village life was largely governed by a traditional council of adults who made decisions by consensus regarding all aspects of conduct within the village. The councils created the social rules for acceptable conduct in the village (Yarber et al., 1987).

Traditional rules respecting child rearing were very strict. When children disobeyed the social rules the parents were sanctioned. Children obeyed curfews. Parents were publicly scolded if they let their children run wild. Council members made sure that homes were kept in order. Indigenous communities enforced social rules through re-integrative shaming (Braithwaite, 1989, 2000; Braithwaite and Mugford, 1994). For example, in some instances in Northway, the council would have the contents of a persistently dirty house emptied out and thrown away as an expression of public opprobrium, and the contents were only replaced when the occupant publically acknowledged the recurring misbehaviour (Yarber et al., 1987).

Living conditions were harsh for Native communities in Alaska. People had to co-operate to survive. Native people survived the harsh winter climates by watching out for one another. They were nomadic people travelling from fish camp to hunting camp, often living in tents in the winter months (Hyslop, 1994). Potlatch ceremonies announced rites of passage within the communities such as birth, sickness, and death (McKenna, 1959). To this day in the Upper Tanana region, there is an emphasis on knowledge of kinship and rules of behaviour between members of the opposite clans.

As members of a clan, all persons are expected to help one another in times of need, especially when a loved one passes away. In general, generosity is seen as a virtue by Native people and the generous person is praised over

one who is merely “successful.” There are many rules regarding proper behaviour within the clan as well. Most especially, Native peoples of the Upper Tanana are taught to respect the members of the opposite clans:

Law is embedded in our ways of thinking, living, and being. For Indigenous people, law is far more than rules to be obeyed. Law is found within our language, customs and practices. It is found in ceremony and rituals. It is found within the carefully balanced relationships within our clan system and extended families. Law is a whole way of life. Though countless means, our traditions teach us how to be respectful of others and mindful on how our actions affect them. (McCaslin, 2005, p. 88)

In the village of Northway, for example, there are many community potlatch ceremonies recognizing a variety of social events and rites of passage that have come down to the present generation. These ceremonies include practices that date back thousands of years and reveal Native ways of knowing and knowledge systems that people are only now rediscovering (Barnhardt & Kawagley, 2011).

In recent history, Chief Walter Northway actively used the potlatches as a venue in which he shared his knowledge of clans, culture, and history, including the relatively recent arrival of White people to the region. He would often personalize the stories connecting community members through their shared history. For example, when his own granddaughter made a potlatch for the naming of her son Taiy Ta’, he recounted the story of the son’s great-great-grandparents and their life ways (Yarber et al., 1987).

Other rites-of-passage ceremonies included, for example, the first haircut or first picked berries, to honour someone, or in memory of a family member who had passed away. These ceremonies represented a gathering time in which people shared food, stories, songs, dances, and welcomed friends from far away (McKenna, 1959). There were many rules to follow, relationships to repair, and conflicts to manage. Native Alaskans managed their affairs successfully long before the arrival of the colonial settlers.

Conclusion

Lack of participation will always remain a problem until local Native community members are recognized and included, as legitimate stakeholders, in the implementation and development of restorative measures in their respective villages. This is particularly true for youth crime, because young people are almost always intimately connected to villages in which they live.

A systems design approach that emphasizes local empowerment can help the State of Alaska and local Native communities implement programs

as partners that ensure sustainability and long-term effectiveness. The discipline of Dispute Systems Design, which has been very useful in the civil arena, can also serve communities interested in developing restorative programs to combat youth crime. Adhering to the principles of Dispute Systems Design ensures long-term sustainability and effectiveness. In contrast, adopting a one-size-fits-all, top-down, cookie-cutter approach tends to lead to program failure.

The comparative successes of the Upper Tanana Wellness Program and Circle Peacemaking in Kake reveal how different the results can be in this regard. From an analysis of the two comparative case studies, nine principles emerge that are useful to anyone interested in developing a restorative program. It is our hope that restorative practitioners and program designers consider these principles as they go forth to implement future restorative programs.

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Notes

1. The authors engaged in numerous in-depth conversations with Tlingit *Keepers of the Circle*, including Mike Jackson, Harold Gatensby, Phillip Gatensby, Eileen Wally, and an in-depth conversation with Anthony Gastelum, who is currently facilitating the Circles in Kake, Alaska. The authors are also preparing a documentary film on Circle Peacemaking practices titled *The Origins of Circle Peace-Making*, sponsored by the University of Alaska Fairbanks. For a discussion of Circle Peacemaking and the success of the program in Kake, see *Circle Peacemaking* published by the Ash Center for Democratic Governance and Innovation at Harvard Kennedy School, retrieved from <http://www.innovations.harvard.edu/awards.html?id=6164>.
2. Ibid.
3. The authors both sat as members of the Upper Tanana Wellness Committee, participating in and observing the activities of the Wellness Program in Tok.
4. See note 1, *supra*.
5. The Wellness Program derives practice from the Restorative Community Conferencing which Valerie Binder, Coordinator, practices in the Restorative

Community Conference Program, Youth Justice, Health and Social Services, in Whitehorse, Yukon Territory, Canada.

6. Indigenous Peoples in Alaska are commonly referred to in Alaska as Alaska Natives. American Indian refers to a person of Indigenous origin in the Lower 48 States.
7. Alaska Division of Juvenile Justice (2013), dhss.alaska.gov/djj/Pages/ReferralsByRace.aspx
8. The Juvenile Justice and Prevention Act of 2002 mandates that every state with a disproportionate minority contact (DMC) receive federal funding to address the issue. A "DMC" refers to the Disproportionate number of Minority youth who come into Contact with the juvenile justice system (Office of Justice Programs, US Department of Justice).
9. The State of the Judiciary Speech, February 29, 2012, <http://courts.alaska.gov/soj/state12.pdf>
10. See, for example, the Program on Dispute Resolution in the Department of Communication at the University of Alaska for its course and associated materials on Indigenous Dispute Resolution, <http://www.uaf.edu/com>.

References

- Alaska Department of Corrections. (2012). Division of Administrative Services, 2012 offender profile. Retrieved from http://www.correct.state.ak.us/admin/docs/2012Profile07_FINAL.pdf
- Alaska Department of Health and Social Services. (2013). "Division of Juvenile Justice: Referrals by race." Retrieved from <http://dhss.alaska.gov/djj/Pages/ReferralsByRace.aspx>
- Barnes, S. (2010). Unpublished diagram of the military post near the Village of Northway. (Contact authors for unpublished notes).
- Barnhardt, R. & Kawagley, A.O. (Eds.). (2011). *Sharing our pathways: Native perspectives on education in Alaska* Fairbanks, AK: Alaska Native Knowledge Network.
- Bingham, L.B. & Nabatchi L. (2010). From postal to peaceful: Dispute Systems Design in the USPS REDRESS® Program. *Review of Public Personnel Administration*, 30(2), 211-234.
- Braithwaite, J. (1989). *Crime, shame and reintegration*. Cambridge, UK: Cambridge University Press.
- Braithwaite, J. & Mugford, S. (1994). Conditions of successful reintegration ceremonies. *British Journal of Criminology*, 34(2), 139-171.
- Braithwaite, J. (2000). Shame and criminal justice. *Canadian Journal of Criminology*, 42(3), 281-298.
- Costantino, C. A. & Sickles-Merchant, C. (1996). *Designing conflict management systems: A guide to creating productive and healthy organizations*. San Francisco, CA: Jossey-Bass.

- Easton, N. (2005). An ethnohistory of the Chisana River Basin, Volume 1—Origins, places, and cultures. *Unpublished Manuscript*. Whitehorse, Yukon Territory, Canada: Northern Research Institute, Yukon College.
- Fortuine, R. (1992). *Chills and fever: Health and disease in the early history of Alaska* (2nd ed.). Fairbanks, AK: The University of Alaska Press.
- Gangs 101: *Understanding the culture of youth violence: Esperanza strengthening our Hispanic community*. (2010). Retrieved from <http://gangs.umd.edu/Downloads/Prevention/Gangs%20101%20-%20Understanding%20the%20Culture%20of%20Youth%20Violence.pdf>
- Goffman, E. (1963). *Stigma: Notes on the management of spoiled identity*. NJ: Prentice-Hall.
- Haynes, T., & Simeone, W. (2007). Upper Tanana ethnographic overview and assessment, Wrangell St. Elias National Park and Preserve. *Alaska Department of Fish and Game. Division of Subsistence Technical Paper No. 325*. Juneau AK.
- Hirshberg, D. & Sharp, S. (2005). Thirty years later: The long-term effect of boarding school on Alaska Natives and their communities. *Institute of Social and Economic Research*. Anchorage: University of Alaska Anchorage.
- Hirshberg, D. (2008). "It was bad or it was good": Alaska Natives in past boarding schools. *Journal of American Indian Education*, 47(3). Retrieved from http://jaie.asu.edu/v47/47_3_%202008%20%20Hirshberg.pdf.
- Hyslop, P., Sr. (1994). *Unpublished Autobiography by Hyslop P, Senior, mother of author, Polly E. Hyslop*. (Contact authors for the manuscript).
- Hyslop, P. E. (2012). Restorative justice in Alaska. *Alaska Journal of Dispute Resolution*. Vol. 2012, Number 1. Fairbanks, AK: University of Alaska Press.
- Jarrett, B. (2011). An invitation to Integral Mediation. *Journal of Dispute Resolution* Vol. 2011, Number 1. Fairbanks, AK: University of Alaska Press.
- Jones, R. (1986) *Emile Durkheim; An introduction to four major works*. Beverly Hills, California: Sage Productions Inc.
- McCaslin, W. D. *Justice as healing* (2005). Ed. W. D. McCaslin. St. Paul, Minn: Living Justice Press.
- McKenna, R.A. (1959). *The Upper Tanana Indians*. New Haven, Conn: Yale University Publication in Anthropology.
- National Criminal Justice Reference Service (2011). Office of Justice Programs, Alaska Juvenile Justice Committee, Annual Report to the Governor and Legislature.
- Napolean, H. (2005). *Yuuyaraq: The Way of the Human Being*. (Eric Madsen, Ed.) (Seventh Printing, 2005). Fairbanks, AK: Alaska Native Knowledge Center.
- Neilson, M., & Robyn, L. (2003). Colonialism and criminal justice for indigenous peoples in Australia, Canada, New Zealand, and the United States of America. *Indigenous Nations Studies Journal*, 4(1), Spring 2003. Retrieved from <http://kuscholarworks.ku.edu/dspace/bitstream/1808/5791/1/ins.v04.n1.29-45.pdf>
- Office of Juvenile Justice and Delinquency Prevention. (2000). Challenges facing American Indian youth. *Juvenile Justice*, VII(2). Retrieved from <https://www.ncjrs.gov/pdffiles1/ojjdp/184747.pdf>

- Olin, F. (2013). *Alaska Native Justice*. Retrieved from <http://www.uaf.edu/justice/adr-symposium/symposium-papers>
- Rieger, Lisa, (2001). *Circle Peacemaking*, Alaska Justice Forum, Winter, 2001. Retrieved from http://justice.uaa.alaska.edu/forum/17/4winter2001/a_circle.html
- Smith, L.T. (2012). (2nd ed). *Decolonizing Methodologies: Research and Indigenous Peoples*. New York, NY: Zed Books, Ltd.
- The State of the Judiciary, A message by Chief Justice Dana Fabe to the First Session of the Twenty-Eight Alaska Legislature, February 13, 2013. Retrieved from <http://courts.alaska.gov/soj/state13.pdf>
- U.S. Department of the Interior: Indian Affairs. Retrieved from <http://www.bia.gov/WhoWeAre/RegionalOffices/Alaska/index.htm>
- Ury, Brett J., & Goldberg, S. (1988). *Getting Disputes Resolved: Designing Systems to Cut the Cost of Conflict*. San Francisco, CA: Jossey-Bass Inc.
- Volkan, Vamik D. (1998) *Bloodlines: From Ethnic Pride to Ethnic Terrorism*. Colorado: Westview Press.
- . (2000). Traumatized Societies and Psychological Care: Expanding the Concept of Preventive Medicine. *Mind and Human Interaction*, 11:177-194.
- . (2001). Transgenerational Transmission and Chosen Traumas: An Aspect of Large-group Identity. *Group Analysis*, 34:79–97.
- . (2002). Bosnia-Herzegovina: Chosen Trauma and Its Transgenerational Transmission. (Ed.), Maya Shatzmiller, In *Islam and Bosnia: Conflict Resolution and Foreign Policy in Multi-Ethnic States*, 86–97. Montreal: McGill-Quenn’s University Press.
- . (2004). Chosen Trauma, The Political Ideology of Entitlement and Violence. Retrieved from <http://vamikvolkan.com/Chosen-Trauma,-the-Political-Ideology-of-Entitlement-and- Violence.php>
- Wexler, D. (2008). *Rehabilitating Lawyers: Principles of Therapeutic Jurisprudence for Criminal Law Practice*. Durham, North Carolina: Carolina Academic Press.
- . (2011). Retooling Reintegration: A Reentry Moot Court, *Chapman Journal of Criminal Justice*, Vol. 2, p. 191.
- . (2013). New Wine in New Bottles; The Need to Propose a Therapeutic Jurisprudence “Code” of Proposed Criminal Processes and Practices. Arizona Legal Discussion Paper 12-16. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2065454
- Winick B., and Wexler, D. (2006). The Use of Therapeutic Jurisprudence in Law Schools Clinical Education. Transforming the Criminal Law Clinic. *Clinical Law Review*, Vol. 13, p. 605.
- Yarber, Y., and Madison, C. (1987). Walter Northway. Fairbanks, Alaska: Alaska Native Language Center.