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Conferencing: Western Application of Indigenous Peoples' Conflict Resolution Practices

Lorenn Walker

Waialua, Hawai'i

Author's Notes

Lorenn Walker, J.D., M.P.H., is a health educator who designs violence prevention and resiliency development programs. She teaches administration of justice and public speaking courses for the University of Hawaii Honolulu, is an adjunct professor for Chaminade University of Honolulu, and is a former trial lawyer who has represented the State of Hawai'i and defended juveniles. She coordinates programs for the Hawai'i Friends of Civic and Law Related Education.

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Address correspondence to Lorenn Walker, P.O. Box 489, Waialua, Hawai'i, 96791. E-mail: lorenn@hawaii.rr.com.

Abstract

Conferencing is a restorative justice process based mainly on the practices of the Maori people of New Zealand. Conferences are similar to many indigenous people's practices including Africans, Hawaiians, and North American Indians. Conferencing is a group process for conflict resolution used when someone who has harmed others, admits wrongdoing. Western governments are using conferencing in child protective services and criminal cases. There are different conference models including family group conferencing, community conferencing, restorative conferencing, family group decision making, and Real Justice conferences. At conferences, offenders and those most hurt by specific incidents of wrongdoing gather in a circle to discuss how they have been affected by the event and collectively decide how to repair the harm and make things right. Conferences are based on the assumption that crime damages relationships between people. The goals of conferencing are to meet the needs of people hurt by crime by providing them with a process for expressing how they have been affected and how things can be made right. Unlike traditional autocratic and adversarial Western justice systems, conferencing uses consensus and cooperation for decision making. Conferencing can build community by bringing people together who have been harmed by repairing relationships and building new ones where none existed prior to the crime.

Key Words

Conferencing, conflict resolution, restorative justice, indigenous people, family group
conferencing, community conferencing, restorative conferencing, Real Justice
conferencing, violence prevention.

Introduction

With his head hung down and his eyes staring at his feet, the 14-year-old boy mumbled in the Hawaiian dialect commonly known as pidgin English, "I don' know wa I was tink'in, but my fren say da guy call me one wus." The boy was sitting in a chair in a circle explaining why he had punched another boy at his intermediate school 10 days earlier. The school is in a rural area on the island of O'ahu in Hawai'i. Also sitting in the circle were the boy who was punched, along with both boys' mothers, the school's principal, and a group facilitator. The 14-year-old had been arrested for assault. His case was randomly selected by the Honolulu Police Department for a pilot diversion program. The boy, his victim and their supporters were participating in a *conference* instead of traditional police and court processes.

Conferencing Based on Maori Practice

Conferencing is a group conflict resolution process that focuses on participants' needs and repairing harm when offenders admit wrongdoing. Conferencing is mainly based on a traditional Maori practice (Maxwell, 1996; Maxwell & Morris, 1993). The indigenous people of New Zealand, the Maori, have an ancient conflict resolution practice known as *whanu* decision making. *Whanu* means *family* in Maori. Many other indigenous people, including Africans, Hawaiians, and North American Indians have practices that are similar to conferencing (Choudree, 1999; Some, 1999; TuTu, 1999; Zartman, 1999; Shook, 1985; Bazemore & Griffiths, 1997; Schiff, 1998).

In 1989 New Zealand introduced a law that required all juvenile offenders to participate in a family group conference (FGC) as an alternative to traditional court proceedings (Maxwell & Morris 1993). Although the FGC model that New Zealand

developed was not meant to replicate the Maori whanau process, "it seeks to incorporate many of the features apparent in whanau decision-making processes" (Maxwell & Morris, 1993). One of the goals of New Zealand's FGC process was the "empowerment of families, offenders and victims" (Maxwell & Morris 1993, p. 4). Conferencing empowers participants by allowing them to make the decisions about how to deal with the wrongdoing.

Daly, 2001 argues it is a "misconception" that "conferences reflect or are based on indigenous justice practices." She states "Efforts to write histories of restorative justice, where a pre-modern past is romantically (and selectively) invoked to justify a current justice practice, are not only in error, but also unwittingly reinscribe an ethnocentrism they wish to avoid" (Daly, 2001). Her concern appears to be that some are incorrectly claiming the conferencing process was introduced as a restorative justice process. While she is correct that conferencing was not developed as a restorative justice practice, the conferencing process does reflect the practices of indigenous people (Hassall, 1996; Maxwell & Morris, 1993; Walker, 2001). A review of New Zealand's legislative history shows the Maori's *whanau* practice influenced the country's mandated conferencing process. In 1986 New Zealand had rejected legislation that was "monocultural" because it failed to incorporate the "cultural identity of the *tangata whenua* (the people indigenous to or belonging in an area)" and did not "involve parents, family groups, *whanau*, *hapu* and *iwi* in developing solutions to the problem situations" (Hassall, 1996). After these two issues were addressed and included in the 1989 legislation, New Zealand enacted the law requiring that juveniles be diverted to family group conferences.

Conference Process

Conferencing is a generic term for a group conflict resolution process that can be used when someone who has harmed others, admits wrongdoing. Conference groups make decisions by consensus and are facilitated by a neutral third party. Western governments are using conferencing in criminal and child protective services cases (Hudson, Morris, Maxwell & Galaway, 1996). There are different conference models including family group conferencing (Maxwell & Morris, 1993), community conferencing (Cameron & Thorsborne, 1999) restorative conferencing (Hudson, 1999), family group decision making (Graber, Keys & White, 1996), and Real Justice conferences (O'Connell, Wachtel & Wachtel, 1999).

Victims, offenders and the affected community, including the victim's and offender's families and friends, participate in conferences. Conference participants sit in a circle facing each other without a table between them. A victim may send a representative to the conference if he or she chooses not to participate. Conferences are facilitated by a neutral third party who does not participate in decision making.

During the boy's conference described above, each individual in the group had the opportunity to discuss how they had been affected by the assault, and suggested ways the resulting harm could be repaired. In discussing the effect of the assault, the victim said it hurt and he was afraid that he and his friends would get into a serious fight with the offender and his friends. The victim's mother said she was angry that her son was hurt and she was afraid he would get hurt again. The offender's mother said she felt bad that her son hurt another child. Her eyes watered when she told the group she felt like a failure as a parent because of his behavior. The victim's mother quickly told her, "No, it's not your fault. You couldn't help what he did." The principal spoke next and said

that she was concerned for student safety at the school, and that she worried the boys and their friends would get into a more serious fight in the future.

After thoroughly discussing how they had been affected by the offender's assault, the group addressed ways the harm could be repaired. The consensus was that the offender should not listen to rumors and react violently. It was also agreed that the boys and their friends should do something constructive together to learn to understand each other. The group agreed that the offender, the victim, and their friends would paint a mural together in the school cafeteria. When the group discussed the lack of activities available after school for students, the victim's mother volunteered to teach hula to students once a week. At the end of the conference, the agreement was written down by the facilitator and signed by all the participants. The formal part of the conference lasted about forty-five minutes; then the group shared some cookies and juice.

The victim, his mother, the offender and his mother, and the school principal all had different needs as a result of the assault. These needs are not normally addressed by traditional Western conflict resolution processes which are adversarial and focus primarily on punishing the offender. Victim needs, and the needs of others affected by crime, are not normally considered and dealt with by courts or police.

As a result of this assault, the victim needed to be reassured that the offender's friends would not retaliate against him. His mother needed to know that her son would be safe in the future. The offender needed to learn that violence does not solve problems. The offender's mother needed to express her feelings of responsibility for the offender's behavior to the victim and his mother. Hearing the victim's mother say "It was not your fault" helped the offender's mother overcome her feelings of guilt for her son's behavior. The school principal needed to maintain order at the school and prevent future assaults.

Her participation in the conference addressed these needs. Having the two groups of boys' work together painting a mural will help them develop relationships, which will help prevent further fights. The conference was a process for examining and dealing with all the participants' needs. The conference facilitated healing.

Out of this simple group process, community was built at this rural school in Hawai'i. Before the assault, most of the participants did not know each other, but after conferencing and sharing some food and drink together, and fulfilling the agreement, they developed relationships. The outcome illustrates how "community, like the word *family*, is really more of a verb than a noun. Community comes about in the process of caring for those in need among us" (Byock, 1997, p. 96).

Conferencing Builds Community

Although we traditionally think in terms of geography when we define community, it takes more than location to make a community. It is common today for many neighbors to not even know each other. According to Kay Pranis, a pioneer of the restorative justice movement in the United States, community is "a group of people with a shared interest and a sense of connection because of that shared interest." She quotes Ronnie Erale, District Attorney in Austin, Texas, who "defines community as 'shared joy and pain.'" (Pranis, 1999, p. 2). Community is relationships and connections between people. In addition to our neighborhoods, our communities include relationships formed through work, school, family, religious practices, sports, hobbies and other activities that we engage in. For example, we can have a level of community when we walk in a park and interact with people we see there.

When it comes to crime and conflict resolution, the people most affected and harmed by each incident make up the community. Conferences are a healthy way to

address the needs of those (the community) which were most affected by the wrongdoing. Conferences provide an effective way to repair the relationships damaged by wrongdoing. It is normal for humans to respond emotionally when someone has caused them harm. Our emotional natures need personal processes to deal with our feelings of despair when someone violates our expectations of safety for us, our loved ones, and our property. Out of the conferencing process, which deals with emotional needs and repairing damaged relationships, community can be built. Conferencing is often used in cases where the participants did not know each other before the incident of wrongdoing. Through this process relationships and community can emerge where there were none before.

Restorative Nature of Conferencing

Conferencing is a *restorative justice practice*. Restorative justice is an “alternative approach to criminal justice” which began evolving about 15 years ago in response to what many experts describe as the ineffectiveness of our current justice system (Pranis, 1996, p. 498). Our current justice system is based primarily on retributive values where: “Crime is a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by systematic rules” (Zehr, 1995, p. 181) In contrast, restorative justice is based on values that hold “Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victims, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance” (Zehr, 1995, p. 181). The theme of needs also resonates in restorative justice. Howard Zehr, who has been referred to as the father of the restorative justice movement, believes that “Justice begins with needs” (Zehr, 1995, p. 191).

Conferencing addresses the needs of those most affected by crime. It allows them to personally participate in a process, which focuses on how they have been affected by wrongdoing, and how they think the harm can best be repaired.

Real Justice Conferencing

Real Justice conferencing is based on the New Zealand FGC process. New Zealand's FGC model was substantially revised by Terry McConnell, a former police officer from Wagga, Wagga, Australia (McCold & Wachtel, 1998). In 1990 O'Connell's police department was trying to make the traditional *police cautioning* method more effective. Police cautioning is when a police officer simply cautions a youth for an offense and releases her without arrest or further official action. Police cautioning is used throughout the world. O'Connell heard about New Zealand FGCs and started doing them with youth who would normally be cautioned and released. He developed basic protocols which remain in the Real Justice conferencing model today:

The offenders talk about what happened, what they were thinking and who was affected; followed by victims and supporters; and finally, the offenders' family and supporters. Discussion then focused on what needed to happen to make things right. Refreshments were provided immediately after the conference to provide an informal opportunity for the participants to talk while the facilitator prepared the written agreement. This sequence appeared to work and within a short period, conference processes and outcomes had certain predictability about them. Ultimately the conference protocols were converted into a script, with the key statements and questions written out for the convenience of the facilitator (O'Connell, 1998, p. 2).

Today the use of a script to conduct conferences also serves other valuable purposes. The script helps keep facilitators from becoming autocratic. The true community affected by the incident of wrongdoing--the victim, offender and their supporters--should be the exclusive decision-makers in conferences. Although some find the use of a script distasteful, its use in conferences has been extensively evaluated. The use of the script is "supported by several research studies which have consistently demonstrated high rates of participant satisfaction, perceptions of fairness and offender compliance with conference agreements (McCold & Wachtel, 1998; Moore & Forsythe, 1995; Umbrieth & Fercello, 1998, 1999)" (as cited by O'Connell, Wachtel & Wachtel, 1999, p. 30).

In 1994 O'Connell came to the United States and spoke in Pennsylvania where Ted Wachtel, the founder of a school for juvenile offenders and at-risk youth heard him and was deeply moved. Wachtel says hearing O'Connell's description of conferencing was an "'epiphany,' a sudden intuitive realization that I had just encountered an essential universal truth. Conferencing was so simple that it was elegant, so basic that it was complete. Nothing in my experience with youth offenders could match the positive outcomes being described by this Australian police officer. I wanted to bring family group conferencing to North America where we lead the world in escalating juvenile crime and school misconduct" (Wachtel, 1997, p. 31). In 1994 Wachtel started the non-profit Real Justice organization and did the first Real Justice facilitator training in North America. Today Real Justice has trained over 5000 conference facilitators.

The Real Justice conferencing model differs from the New Zealand FGC model in several significant ways. First, in Real Justice conferences victims' needs are the priority in determining whether to conduct a conference. Second, there is no reliance on

professionals to participate in the conference. Third, no private time is provided for participants to meet. Fourth, victims' supporters are invited to attend the conference. Fifth, conference facilitators use a script. Finally, Real Justice conferences are always held at a neutral setting while a New Zealand FGC may be held in the offender's home. (O'Connell, Wachtel & Wachtel, 1999; Maxwell & Morris 1993).

Various Indigenous Peoples' Conflict Resolution Practices

When conflicts occur, many indigenous societies tend to focus on relationships and maintaining communities more than Western societies which focus on the punishment of the offender. An analysis by Marshall in 1985, of indigenous societies' dispute resolution practices, when compared to traditional Western processes, revealed at least four distinct features (as cited in Maxwell & Morris, 1993, p. 2). These differences are consistent with the goals of conferencing. First, indigenous peoples' conflict resolution practices prefer community consensus decision making rather than a single autocrat making all the decisions. Second, a reconciliation that is acceptable to all affected parties takes precedence to the punishment and isolation of the offender. Third, the purpose of the practice is not to "apportion blame but to examine the wider reasons for the wrong." And fourth, "there is less concern with whether or not there has actually been a breach of the law and more concern with the restoration of harmony" (as cited in Maxwell & Morris, 1993, p. 2).

Traditional African conflict resolution practices focus more on reconciliation and relationships than Western processes (Choudree, 1999; Some, 1999). South Africa's establishment of its Truth and Reconciliation Commission (TRC) is an illustration of that country's preference for healing and reconciliation instead of revenge and retribution. The TRC was developed to deal with individuals who committed horrible

crimes during the apartheid years. South Africa's Desmond Tutu, the 1984 Nobel Peace Laureate, and chairperson of the TRC states:

We contend that there is another kind of justice, restorative justice, which was the characteristic of traditional African jurisprudence. Here the central concern is not retribution or punishment. In the spirit of *ubuntu*, the central concern is the healing of breaches, the redressing of imbalances, the restoration of broken relationships, a seeking to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he has injured by his offense.

This is a far more personal approach, regarding the offense as something that has happened to persons and whose consequence is a rupture in relationships. Thus we would claim that justice, restorative justice, is being served when efforts are being made to work for healing, for forgiving, and for reconciliation. (Tutu, 1999, p. 54-55)

Tutu explains that the TRC was “a compromise between Nuremberg trials and blanket amnesty.” He states that it was a “third-way” which granted “amnesty to individuals in exchange for a full disclosure relating to the crime for which amnesty was being sought” (Tutu, 1999, p. 30). Tutu shows that the TRC was consistent with “African *Weltsanschauung*—what we know in our languages as *ubuntu*, in the Nguni group of languages, or *botho*, in the Sotho languages” (Tutu, 1999, p. 31). Ubuntu is not easy to translate into English, but Tutu says that “A person with *ubuntu* is open and available to others, affirming of others, does not feel threatened that others are able and good, for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others

are tortured or oppressed, or treated as if they were less than who they are (Tutu, 1999, p. 31). The section of the South African Constitution authorizing the TRC states specifically that “there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu, but not for victimization” (Tutu, 1999, p. 45).

Currently, “the day to day governance of townships across South Africa” utilize *peace committees*, which rely on consensus and focus on reconciliation, in response to crime (Roche, 2000, p. 2). Peace committees are restorative in nature and are being used even in cases where alleged offenders do not admit responsibility. A “person accused of some wrongdoing is not required to make any admission before a peace committee gathering is held, and indeed is not required to make any admission during the course of the gathering” (Roche, 2000, p. 19).

The Pedi people of South Africa's North Sotho population strive to convince individuals to resolve their disputes without interventions from others. The Pedi “have a highly evolved system of conflict resolution, and parties are actively encouraged to resolve their differences without intervention from the chiefs or their delegates through the medium of family processes as ‘courts of the first instance’” (Choudree, 1999, p. 7).

Another example of an African conflict resolution practice consistent with conferencing, is from West Africa where the Dagara people of Burkina Faso, use an *ash circle* to resolve disputes. “The parties involved in the conflict come together in an ash circle. They sit facing each other, and the defendant listens to the story of his accuser first. The accuser speaks about how the action of the other made him feel, and the crowd, led by the chief, guides the parties along. The whole crisis usually ends up looking like an unpleasant misunderstanding, and the two opponents become friends with the applause

of everyone witnessing” (Some, 1999, p. 88-89). When the ash circle does not settle things, the village healers become involved. The Dagara are a highly mystic and spiritual people who rely heavily on divination by shaman and healers for assisting people in times of illness and conflict. When the ash circle is ineffective in solving a dispute between two people, the healers “make an offering to the ancestors so that they can tune up the energies of the two parties in order to allow for a healing ash circle” (Some, 1999, p. 89). When the healers are unsuccessful, a more autocratic practice involving the chief is used to get compromise between the disputing people.

For many centuries, Hawaiians have used a group process called *ho'oponopono* “for maintaining harmonious relationships and resolving conflict within the extended family” (Shook, 1985, p. 1). Ho'oponopono has been translated by Mary Kawena Pukui, a respected Hawaiian historian, to mean “setting to right . . . to restore and maintain good relationships among family, and family and supernatural powers” (as cited in Shook, 1985, p. 10). Ho'oponopono is a complex process that “was traditionally led by a senior family member or, if necessary, by a respected outsider such as a *kahuna lapa'au* (healer).” The “problem-solving process is a complex and potentially lengthy one that includes prayer, statement of the problem, discussion, confession of wrongdoing, restitution when necessary, forgiveness and release” (Shook, 1985, p. 11).

The Navajo Indians of North America have a traditional justice system known as *hozhooji naat'aanii* which translates to *peacemaking* in English. “Peacemaking is an indigenous Native American form of dispute resolution and a leading example of restorative justice” (Zion, 1998, p. 1). *Talking things out* is the nature of the peacemaking dispute resolution procedure (Zion, 1998). This group process is lead by a *naat'aanii peacemaker* who is a respected community leader. Other participants are

those directly affected by the conflict and also their relatives which “include persons who are related by clan affiliation as well as by blood. They participate in the process of *talking things out* and have significant input in the form of expressing an opinion about both the facts and the effect of the dispute, the parties' conformity to Navajo values, and the proper outcome of the dispute” (Zion, 1998, p. 7). The process begins with prayer, followed by the *talking things out* period. During this period, the victim and her supporters explain how they feel and how they have been affected by the dispute. The offender will have an opportunity next to respond and usually does so by making an excuse of her offense. Next comes what translates into English as *the lecture* by the peacemaker. The “peacemaker knows the traditional Navajo values and will most often express them by relating what happened in creation times to the problem at hand. The teaching is in fact a kind of case law in which the *naat'aanii* can point to similar disputes or problems in the past, related who went through them, and show how the situation was resolved” (Zion, 1998, p. 7).

The final phase of the process is reconciliation where the group decides by consensus what should be done to repair the harm. The repair of relationships is key. Other forms of reconciliation may be symbolic or reparation for the victim, or rehabilitation for the offender. The group adopts a pragmatic plan. “A plan is a major Navajo justice concept” (Zion, 1998, p. 10). Providing a plan to deal with harm, is a healthy and empowering response for both the victim and the offender. Instead of only focusing on punishment for the offender, developing a plan for dealing with the results of the wrongdoing, leaves those most affected with hope and better chances of recovering.

The Hmong people of Laos, many of whom have immigrated to the United States, do not have prisons (Fadiman, 1997). Instead, “The Hmong sense of justice was

pragmatic and personal: how would incarceration benefit the victim? Corporal punishment was also unknown” (Fadiman, p. 194).

Conferencing Programs for Juveniles and Adults

Conferencing programs are available to many in the Western world for child protective service cases (Buford & Hudson, 2000). In criminal cases they are scarce for adults while availability to juveniles is growing. A report of a recent survey by Carsten Erbe with Florida Atlantic University showed that the use of conferencing programs for juveniles in the United States is rapidly growing (Erbe, 2000). The report identified 82 juvenile conferencing programs in the United States as of August 2000.

In 2000, the Honolulu Police Department tested an experimental project and diverted 102 juveniles to conferences facilitated by community members (Walker, 2001). The project was evaluated in three areas: participant satisfaction, compliance with agreements and recidivism. Participant satisfaction with the Honolulu conferencing project was extremely high. Only seven of 405 participants evaluated indicated that they did not believe the conferencing process served justice. Compliance with the agreements was also high. Six months after the conferences, it was verified that at least 90 of the juveniles complied with the terms of the agreements reached at the conferences (Walker, 2001).

The only significant difference in recidivism rates for the conferenced juveniles compared to non-conferenced juveniles concerned non-violent offenses (Walker, 2001). Conferenced juveniles arrested for non-violent offenses did not escalate to arrests for violent crimes as much as juveniles who participated in traditional police diversion processes for non-violent offenses. Juveniles assigned to traditional processes had a significantly higher rate of arrest for subsequent violent crimes.

Other juvenile conferencing programs that have been evaluated include programs held in Bethlehem, Pennsylvania during 1995 – 1997; in four different sites in Virginia during 1998 – 1999; in Indianapolis, Indiana during 1997 – 2000; and in Canberra, Australia during 1997 – 1999 (McCold, 1998; McCold, 1999; McGarrell, Olivares, Crawford, & Kroovand, 2000; Sherman, Strange, Barnes, Braithwaite, Inkpen, and The M.M., 1998 & 1999).

There are some conferencing programs for adults. For example, in Canberra Australia, certain adult criminal cases are being diverted to conferences instead of traditional programs (Sherman, Strang & Woods, 2000). In Thames Valley, England, police officers accused of wrongdoing are being offered conferences (Pollard, 2000). A public housing community in Honolulu, Hawaii uses conferences instead of calling the police for certain cases of adult and juvenile misbehavior (Walker, Lee & Tanio, 1999).

Conclusion

Conferencing is a group conflict resolution process based on indigenous people's practices. It is a process that can build community out of wrongdoing. The assault victim's mother who volunteered to teach hula at her son's intermediate school did so as a result of the conference. The boys and their friends who painted the mural together were left with relationships that they lacked prior to the conference.

Ted Wachtel gives us an excellent description of conferencing when he states that it is "elegant" and "so basic that it is complete." Humans don't need elaborate systems or professionals and experts to deal effectively with all wrongdoing. Communities can use conferences to deal with bad behavior without calling the police and involving the traditional criminal justice system in every case of wrongdoing. While conferencing cannot necessarily usurp *all* of our society response to crime, it can provide a viable

alternative in many situations, especially those involving youth. Other communities should consider following the example of the public housing community in Honolulu, mentioned above. Autocratic and adversarial processes do not build community; instead, we can look to the wisdom of many indigenous peoples. We can find community in dealing with crime by using conferencing which addresses the needs of those most affected by wrongdoing.

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