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Brother, can we talk?
Restorative Justice in the Criminal Judicial System
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by

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Restorative Justice is an age-old philosophy which is more recently being applied to the Criminal Judicial System. Based on traditions of the Original Peoples, Restorative Justice is the belief that harm was done, so healing must happen in order to restore things closer to where they were. Restorative Justice also takes into account that there is always more than one person affected by a single crime. Friends, families and people in the community are all affected and need to be involved in the healing process. One of the amazing components of Restorative Justice involves a "Healing Circle."

In today's Criminal Judicial System, the victim is often re-victimized by not being given a voice or any input into their perpetrator's case. Once a victim has given a statement, the State takes control and rolls over anyone and everything that may stand in the way of its gaining a win tally. Their persistent mantras of "win at all costs" and "the end justifies the means" echoes throughout stone Courthouses across the country. The state falls into automation mode, in the most efficient manner possible, the system reduces people with emotions and feelings to cold, hard numbers and statistics. "Just the facts, ma'am." I have seen victims who never wanted to bring charges torn apart by the subsequent devastation they feel they have caused, all in the name of "justice." I have seen cases that could have been resolved by utilization of a Conflict Resolution Circle instead end up with years of therapy for the victim and years of prison for the perpetrator. And community members are never involved in any legal courtroom resolution.

Most problems start with communication issues. People don't feel heard or understood. People feel bullied. Someone assumes someone else feels the same as they do. Someone feels insulted or disrespected by an action. People feel triggered by key words or tones of voice. We often stuff our true feelings and don't communicate how we really feel because we're afraid of hurting or offending the other person. But communication starts small. Being able to say "I'd prefer you not turn the light on while I'm trying to sleep" seems simple, and it is. But sometimes simple things are the most difficult to do. We blame ourselves, think we'll get over it, or it's no big deal.... So we stuff it and let things build up. And emotions under pressure are like a pressure cooker – eventually they'll need to be let out.

So despite communication being a key to resolution of issues, the first thing that happens once a person has reported a crime to the authorities is that both sides are prohibited from talking to each other to prevent appearances of "witness tampering," "harassment" or

“intimidation.” Once again, the goal of the Judicial System is to “win” the case against the defendant – there is no glory or money in having them communicate and resolve this issue themselves.

But communication, REAL communication, takes time, energy and effort. Anyone who has participated in a Restorative Justice Circle knows that it is not a slap on the wrist nor is it easier than jail. Oftentimes Circle participants will drop out of the program, opting for their suspended jail time rather than to continue into the scary realm of authentic communication. In Circles, everyone is given an equal voice. People of the community are involved and are able to state how they were affected. Victims are given their voice back and allowed to speak openly of their hurts and fears. Even the perpetrators are given a voice; not to minimize and reduce their accountability, but to attempt to explain some of the factors that may have contributed to their committing their crime. Please don't confuse this with the 1-sided “victim impact statement” that is sometimes read at sentencing. This is two-way communication, with all participants being able to respond authentically and in the moment to what they hear. These circles may occur weekly for up to a year. That requires commitment to a real solution. This involves real challenges and vulnerability. The Circle facilitator is trained to help run things smoothly, and the end result is a true healing of all parties involved. Forgiveness may or may not be involved – it most certainly happens, but is not a requirement or even a goal of Restorative Justice Circles.

Now let's quickly compare this to the current Judicial System solution. The perpetrator is incarcerated for a pre-determined period of time and is then released back into society and expected to now know better. They may or may not receive some obligatory classes such as Anger Management, Alcohol-Chemical Dependency or Sex Offender treatment. They have to deal with finding a job with the stigma of a criminal record. They have to try to reintegrate with their friends and family, often not knowing how to deal with their toxic shame and guilt.

The victim may have read a prepared “victim impact” statement in the public courtroom, often in front of media cameras. After that, they are ignored and forgotten. The excitement and attention is over and they're still hurting. They may or may not ask for therapy to help resolve any issues, but their life goes on. School, work, family issues, all those normal issues are still there... but they never really got to truly communicate freely with the perpetrator, or their own friends and family. There is no official process to allow the Court System to follow-up to check-in on how they're doing.

A supervised Restorative Justice Circle by a trained facilitator could have been used at the beginning to help divert the case from Criminal Court. But even for cases that go all the way through a Criminal Court, a Restorative Justice Circle can still be utilized afterwards, to help open communication, develop empathy and restore the community to where it was before the crime. Whether used in conjunction with or in lieu of traditional incarceration, Restorative Justice Practices are the way of the future.