

**Widening the Circle:  
Can Peacemaking Work Outside of Tribal Communities?<sup>1</sup>**

**A Guide for Planners and Policymakers**

*The innovative power of tribal jurisprudence, which long ago discovered alternative dispute resolution methods, can continue to provide direct benefit to non-Indian sovereigns and their citizens. Enriching and reciprocal potential exists; it is only a matter of whether the non-Indian world is ready to learn and appreciate the customary wisdom in tribal common law.<sup>2</sup>*

—Gloria Valencia-Weber  
Law Professor, School of Law, University of New Mexico  
Member, Southwest Intertribal Court of Appeals

**Embracing tradition**

Before European contact, Native American approaches to law and justice were rooted in culture and customs that had served tribes for countless generations. But the European invaders suppressed or actively sought to destroy those traditions, requiring the surviving tribes to adopt Anglo-Western models.

In recent decades, however, the situation has begun to change.

“Since the 1960s, the indigenous nations have increasingly exercised their sovereignty” through the expansion of tribal governments and tribal courts that use “custom to create jurisprudential principles distinct from the state and federal government,” according to Gloria Valencia-Weber, the founder of the Indian Law Certificate Program at the University of New Mexico.<sup>3</sup>

The Navajo Nation offers a prominent example of the return to traditional law. In the early 1980s, the tribe formed the Navajo Common Law Project “to learn about, collect and use Navajo wisdom, methods and customs in resolving disputes.”<sup>4</sup> This effort led the Navajo Nation Judicial Conference to create the Peacemaker Court in 1982. Other

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<sup>2</sup> Gloria Valencia-Weber, “Tribal Courts: Custom and Innovative Law,” 24 *N.M.L. Rev.* 225, 1994.

<sup>3</sup> *Id.*

<sup>4</sup> Howard L. Brown, “The Navajo Nation’s Peacemaker Division: An Integrated, Community-Based Dispute Resolution Forum,” 24 *Am. Indian L. Rev.* 297, 1999 / 2000.

tribes followed suit, helping inspire the first Tribal Peacemaking Conference, held in Seattle in 1985.

At least since the 1990s, some leaders of the American justice system have expressed support for incorporating tribal practices into non-Indian justice systems. Among those advocating for change are former Attorney General Janet Reno, who has said that crime victims would be better served by the Indian emphasis on healing rather than conventional adversarial proceedings, which emphasize determination of guilt.<sup>5</sup> In a similar vein, former U.S. Supreme Court Justice Sandra Day O'Connor wrote in 1996: "The Indian tribal courts' development of further methods of dispute resolution will provide a model from which the Federal and State courts can benefit as they seek to encompass alternatives to the Anglo-American adversarial model."<sup>6</sup>

As part of its efforts to support tribal justice systems, the U.S. Department of Justice has encouraged state and tribal practitioners to consider the question: What lessons can state and tribal courts learn from each other?<sup>7</sup>

The hope is that the answer to this question will help strengthen both tribal and state court systems by expanding knowledge of proven strategies and fostering mutual understanding.

The U.S. Department of Justice's Bureau of Justice Assistance, in collaboration with the Center for Court Innovation's Tribal Justice Exchange, sponsored a day-long discussion among tribal and state court practitioners and policymakers in December 2011 to explore Indian peacemaking, with an eye toward documenting promising practices and introducing peacemaking in non-Indian settings. A summary and analysis of the roundtable discussion, which took place at the Fort McDowell Yavapai Nation in Scottsdale, Ariz., is scheduled for completion in early 2012.

This paper was originally written as a guide for participants in the roundtable but is relevant for anyone interested in adapting peacemaking to non-tribal settings. After providing an overview of peacemaking, the paper outlines key issues jurisdictions will most likely want to consider during planning and implementation.

### **What is peacemaking?**

Peacemaking is a traditional Native American approach to justice. Unlike procedures in state and federal courts, peacemaking was not shaped by case law or legislation. Rather, it evolved in various forms and among various tribes over generations, emerging organically from each community's culture, religion, and collective life experience.

Peacemaking arises from an Indian conception of dispute resolution. While conventional Anglo-Western courts are "based upon the primacy of the individual and his or her rights," peacemaking reflects an Indian sensibility, one "heavily dependent upon

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<sup>5</sup> Carole E. Goldberg, "Overextended Borrowing: Tribal Peacemaking Applied in Non-Indian Disputes," 72 *Wash. L. Rev.* 1003 (October 1997).

<sup>6</sup> *Id.*, citing Sandra Day O'Connor, "Lessons from the Third Sovereign: Indian Tribal Courts," 9 *Tribal Ct. Rec.* 12, 14 (1996).

<sup>7</sup> This question guides the work of the U.S. Department of Justice-funded Tribal Justice Exchange, a project of the Center for Court Innovation. The Exchange encourages "formal collaborations between traditional tribal justice systems and state and local court systems" and identifies and disseminates "best practices developed in Indian Country that could help strengthen public safety initiatives elsewhere in the United States." See <http://www.justice.gov/tribal/ta-cci.html>

serving the justice needs of the community, not the individual,” writes President and former Attorney General of the Seneca Nation Robert B. Porter.<sup>8</sup>

Robert Yazzie, writing when he served as chief justice of the Navajo Supreme Court, describes peacemaking as a “‘horizontal’ system,” in which “decisions and plans are made through consensus.”<sup>9</sup>

Historically, some form of peacemaking was common to tribes in the Southwest, including the Navajo and Zuni. It was also known to have been practiced in the Pacific Northwest, the Plains, the Southeast, Alaska, and Hawaii.<sup>10</sup>

Today, the most well-known and emulated peacemaking takes place in the Navajo Nation but there are references to modern-day peacemaking taking place in tribes across the U.S. Those tribes include the Nez Perce in Idaho, the Mille Lacs Band of Ojibwe in Minnesota, the Eastern Shoshone and Northern Arapaho in Wyoming, the White Mountain Apache in Arizona, the Cheyenne-Arapaho and Kiowa Nations in Oklahoma, the Skokomish, Swinomish, and Sauk-Suiattle Nations of Washington, the Tlingit Indians of the Yukon region of southeastern Alaska (particularly the Organized Village of Kake), the Chickasaw Nation in Oklahoma, the Grand Traverse Band of Ottawa and Chippewa in Michigan’s Upper Peninsula, the Little River Band of Ottawa Indians in Michigan, and the Alabama-Coushatta Tribe of Texas.

In reconstructing their traditional justice systems, tribes have done extensive research. They’ve relied on the advice and recollections of elders, convened focus groups, and deployed other modern research methods to gauge current attitudes and devise a system that reflects community aspirations. When the Grand Traverse Band sought to revive peacemaking, they sought help from Ada Pecos Melton, president of American Indian Development Associates, who organized meetings with youths, adults, elders, and employees of tribal agencies to determine how the current justice system responded to juvenile crime and delinquency.<sup>11</sup> Among many topics, they “discussed what the concept of law meant to them and how they would have designed an Indian justice system had the dislocation of Indians by European settlers never occurred.”<sup>12</sup>

The specifics of tribal peacemaking vary from tribe to tribe, ranging “from a court-annexed process which strongly resembles non-Indian arbitration, or mediation, to a sacred ritual with a peace pipe.”<sup>13</sup> Even the word “peacemaking” is not universal. While the Navajo have “peacemakers,” the Muscogee have “law menders,”<sup>14</sup> and the Ottawa call their Peacemaker Court *Mnaweejeendiwin*, which means “Walking together in a good way.”<sup>15</sup>

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<sup>8</sup> Robert B. Porter, “Strengthening Tribal Sovereignty through Peacemaking: How the Anglo-American Legal Tradition Destroys Indigenous Societies,” 28 *Colum. Human Rights L. Rev.* 235 (Winter 1997).

<sup>9</sup> Robert Yazzie, “‘Hozho Nahasdlii’—We are Now in Good Relations: Navajo Restorative Justice,” 9 *St. Thomas L. Rev.* 117 (Fall 1996).

<sup>10</sup> Porter, *supra* note 8.

<sup>11</sup> Nancy A. Costello, “Walking Together in a Good Way: Indian Peacemaker Courts in Michigan,” 76 *U. Det. Mercy L. Rev.* 875 (Spring 1999)

<sup>12</sup> *Id.*

<sup>13</sup> Phyllis E. Bernard, “Community and Conscience: the Dynamic Challenge of Lawyers’ Ethics in Tribal Peacemaking,” 27 *U. Tol. L. Rev.* 821 (Summer 1996).

<sup>14</sup> *Id.*

<sup>15</sup> Costello, *supra* note 11, noting that “According to Paul Raphael, Peacemaker Coordinator for the Grand Traverse Band, the word ‘peacemaking’ does not exist in Ottawa language because tribe members never

Still, most peacemaking efforts share a common outlook. “Usually the objectives of peacemaking are equated with ‘problem-solving’ rather than articulation of rights and obligations. The emphasis is on future relations, not on legal consequences of past events, and in considering future relations, ‘the good of the community’ matters, as well as the concerns of the individuals most directly involved.”<sup>16</sup>

In the following pages, we look at the constituent parts of peacemaking in an effort to catalog their unique practices and also determine which elements might support restorative justice programming in non-Indian settings.

## How it works

### *The Peacemaker*

A peacemaking session is guided by one or more peacemakers. They are usually elders, respected members of the community well versed in tribal culture, tradition, religion, and community norms. They use lectures and storytelling to help participants reach an outcome that benefits not only the disputants but the whole community.

Navajo peacemakers are *naat'aanii*, which attorney James Zion describes as “a community leader whose leadership depends on respect and persuasion and not a position of power and authority.”<sup>17</sup>

The Navajo Peacemaker Court Manual from 1982 states that:

*Any person who has the respect of the community of his or her residence, an ability to work with chapter members, and a reputation for integrity, honesty, humanity and an ability to resolve local problems shall be eligible to be appointed as a peacemaker.*<sup>18</sup>

While many tribes have a panel of peacemakers on hand, some tribes allow disputants to choose any individual to serve as a peacemaker.<sup>19</sup>

The most important skill of any peacemaker is “the ability to induce people to talk about their problems with one another,” according to Michigan State University law professor Nancy A. Costello.<sup>20</sup>

Significantly, peacemakers are not expected to be neutral. As long-time members of the community, peacemakers often know the parties involved and may even be related to them by blood or marriage. This personal knowledge is considered an asset, allowing “the peacemaker to rely upon his or her own personal moral power to urge the parties toward resolution,” according to Robert B. Porter, the president of the Seneca Nation, who adds, “scoldings and lectures, rather than any type of more obvious physical coercion, assist in restoring the relationship between the disputing parties.”<sup>21</sup>

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spoke of peacemaking. There was no need. Striving to live together in harmony and solidarity was a concept simply inherent to Ottawa culture.”

<sup>16</sup> Goldberg, *supra* note 5.

<sup>17</sup> James Zion, “The Dynamics of Navajo Peacemaking,” *Journal of Contemporary Criminal Justice*, Vol. 14 No. 1, February 1998 58-74.

<sup>18</sup> Quoted in Brown, *supra* note 4.

<sup>19</sup> Brown, *supra* note 4.

<sup>20</sup> Costello, *supra* note 11.

<sup>21</sup> Porter, *supra* note 8.

More than just a job, being a peacemaker can be a lifestyle commitment, requiring one “to perform community service and maintain an upright, exemplary life.”<sup>22</sup>

### Questions for Planners

How does the concept of “peacemaker” translate to a non-Indian setting? Who would best fill the role of a peacemaker in a non-Indian setting? What should peacemakers be called in a non-Indian setting? How should they be selected? What skills and training should be required? Is it necessary for peacemakers to be community elders? If so, how is “elder” defined in non-Indian communities, especially diverse communities? Is it OK for peacemakers to know the disputants beforehand?

### *Cases*

Peacemaking is used to handle a wide range of matters in Indian country. Navajo peacemakers handle civil and criminal matters, including domestic violence, gang activity, fighting, disorderly conduct, public intoxication, and driving while intoxicated.<sup>23</sup> The Little River Band Peacemaker Court handles drunken driving offenses involving adults, non-violent domestic relations issues, and juvenile wrongdoing.<sup>24</sup> The Peacemaker Court of the Grand Traverse Band handles mostly juvenile misdemeanor cases, alcohol and drug possession, truancy, shoplifting, thefts, property damage, vandalism, and assault and battery.<sup>25</sup> Peacemakers among the Swinomish, Skokomish, and Sauk-Suiattle handle child custody matters, juvenile matters, classroom conflict, vandalism, and housing disputes, among others.<sup>26</sup>

According to the literature, peacemakers have also been known to tackle marital strife and divorces, issues relating to environmental protection, neighborhood conflicts, transactional disputes, and job-related conflict.

### Questions for Planners

Are both civil and criminal issues appropriate to tackle in a non-Indian setting? Which issues in particular are most amenable to peacemaking? Put another way, which kinds of offenses or disputes are best served by a less adversarial approach?

### *Referral and Supervision*

Cases can be referred by a wide range of sources, from law enforcement officers and judges, to schools and social workers. They can also be self-referred.

In the Chickasaw Nation, peacemaking courts are a division of the nation’s Western-style tribal courts. Supreme Court judges appoint peacemakers; tribal judges, who preside over courts, refer cases. If the peacemaking process fails to resolve the dispute, the case returns to the Chickasaw district court.

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<sup>22</sup> Costello, *supra* note 11.

<sup>23</sup> Bernard, *supra* note 15, citing Robert Yazzie, “The Navajo Peacemaker Court: Contrasts of Justice,” (1992).

<sup>24</sup> Costello, *supra* note 11.

<sup>25</sup> *Id.*

<sup>26</sup> Bernard, *supra* note 15.

In the Navajo Nation, district court judges retain final control over peacemakers and the peacemaking process.<sup>27</sup>

### Questions for Planners

Who should refer cases to peacemaking? What are the advantages/disadvantages of accepting court referrals and/or court supervision? Should non-Indian peacemaking be court supervised? If not, to whom should peacemakers be accountable?

### *Participation*

Participation in peacemaking is inclusive, involving not only those directly involved in the offense or conflict but family members, friends, and the larger community. Lawyers and judges are generally excluded. On that subject, Porter explains:

*In litigation, hiding behind one's lawyer is the best way to say and do the nastiest things to the "other side," all within the professed spirit of trying to resolve the dispute.... [Removing lawyers] ensures that parties are directly involved in the process and not insulated from the give-and-take that is characteristic of a peacemaking session. This dynamic is critical because subtle behavior altering mechanisms such as shame, embarrassment, anger, and satisfaction play an important part in the process of finding compromise.*<sup>28</sup>

Although it's hoped that extended families and friends participate voluntarily, Navajo peacemakers retain the power of subpoena "to compel persons involved in the dispute to participate in its resolution."<sup>29</sup>

### Questions for Planners

In non-Indian peacemaking, should there be rules or limits on who participates? If so, how should participants be selected? Should representatives of the larger community be actively invited? Should participation always be voluntary? Can/should lawyers be excluded? If lawyers are excluded, how can participants be certain that everyone's rights are being protected? What concerns will institutional voices (such as defenders, prosecutors, judges) have about the idea of peacemaking? Will the size of the group impact the manageability of the process?

### *Atmosphere*

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<sup>27</sup> Brown, *supra* note 4, notes: "In addition to ensuring that qualified peacemakers are selected and that the proceedings run smoothly and fairly, the supervising judge may issue protective orders ending the peacemaking process on grounds including misconduct by the peacemaker. As officers of the court, peacemakers are bound by the Navajo Nation Code of Judicial Conduct and are subject to dismissal for violations of ethical standards."

<sup>28</sup> Porter, *supra* note 8.

<sup>29</sup> Brown, *supra* note 4.

A peacemaking session usually takes place in a location selected for its neutrality, such as tribal court offices. However, some tribes allow for selection of a location that is more convenient for the victim and the victim's family.

There is generally no time limit to the peacemaking process. "There is an Indian saying, that the watch is the white man's handcuff," said Michael Petoskey, currently the chief judge of the Pokagan Band of Potawatami Indians. "Peacemaking is not time limited. If it takes time, it takes time. Everyone has an opportunity to say what they want to say. They take whatever time necessary to develop a consensus."<sup>30</sup>

### *Ceremony*

A peacemaking session is "inherently spiritual."<sup>31</sup> It is a "justice ceremony," often beginning and concluding with a prayer.<sup>32</sup>

The purpose of the prayer in Navajo peacemaking is "to summon the assistance of the supernatural, focus the minds of the participants and create an atmosphere of *hozho*, or harmony," writes Howard L. Brown, who served as a judicial law clerk for the Supreme Court of the Navajo Nation.<sup>33</sup> Zion further notes that for the Navajo, prayer "prepares the parties for the 'talking out' to come, commits them to engage in that process sincerely and 'in a good way,' and starts them on the beginning of the process of reconciliation to achieve *hozho* through consensus."<sup>34</sup>

While the mixing of prayer and justice might seem unusual to non-Indians raised in a country where separation of church and state is a founding principle, in many Indian traditions, the civil and the sacred worlds are closely linked. "Traditional Navajo thinking does not separate religious and secular life; rather, all of life is sacred and imbued with spiritual meaning," writes Donna Coker, of the University of Miami School of Law.<sup>35</sup>

In the Peacemaking Court of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, the peacemaker burns sage or sweetgrass in a smudge bowl "to dispel negative energy" and then "prays for wisdom to help the hostile parties resolve their dispute."<sup>36</sup> In addition, the perpetrator and victim offer small gifts (for instance, pouches of tobacco or sage) to the peacemaker.<sup>37</sup>

### Questions for Planners

How important are ceremonial qualities to the success of peacemaking?  
How much does the success of peacemaking depend on participants' sharing the same values?

Can peacemaking work if participants don't share the same culture or religion? Are there appropriate secular substitutes for religion or ceremony in a non-Indian setting? Can religion or ritual have a place in non-Indian

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<sup>30</sup> As quoted in Costello, *supra* note 11.

<sup>31</sup> Costello, *supra* note 11.

<sup>32</sup> Brown, *supra* note 4.

<sup>33</sup> Id.

<sup>34</sup> Zion, *supra* note 17. Zion defines *hozho* as "an ideal situation where everyone and everything relates to each other as they and it should."

<sup>35</sup> Donna Coker, "Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking," 47 *UCLA L. Rev.* 1 October, 1999.

<sup>36</sup> Costello, *supra* note 11.

<sup>37</sup> Id.

peacemaking? How are community norms determined in a non-Indian, more heterogeneous community? Are there a set of norms in non-Indian communities that are universally accepted and understood? In non-Indian communities, can laws be substituted for norms? Is it helpful to write down a code of conduct or list of shared values to refer to during a peacemaking session? How important is a feeling of membership in a group to the success of peacemaking?

### *Process*

In a peacemaking session, participants take turns discussing the crime or conflict. Often the victim and community members speak first, describing the harm to themselves and the community. Perpetrators and their supporters are given a chance to explain themselves or contest the description of events. Only one person talks at a time, and all speak without interruption.

In a typical peacemaking session, participants sit in a circle, sometimes with a lit candle in the middle. The Navajo call this process “talking things out.” Unlike a state or federal court, peacemaking does not follow rules of evidence, does not look for an objective “truth,” and does not focus on blame. Emotions play an important role in the conversation; participants’ feelings are valued as much—if not more—than reason.

After the discussion has been exhausted, the peacemaker may discuss religious values, the tribe’s value system, and previous cases that resemble the current dispute. He or she may offer guidance on moving forward. The ultimate goal is a consensus resolution to restore relationships and ameliorate suffering.

### Question for Planners

How can peacemaking in a non-Indian setting retain its informality and flexibility while also protecting rights and maintaining clarity and fairness?

### *Resolution*

Peacemaking is generally resolved through a consensus decision that focuses on healing and restitution, not punishment.

In sessions involving juveniles, wrongdoers are sometimes assigned to perform community service for an older member of the tribe. As Michigan State University law professor Nancy A. Costello explains: “In some cases relationships have blossomed when juveniles have adopted elders as role models, listening to their tribal stories and heeding their advice.”<sup>38</sup>

The concept of restitution does not necessarily fit Western notions. Indeed, restitution is not one of the general goals of sentencing (which include, rehabilitation, incapacitation, and both general and individual deterrence). In Navajo justice, *nalyeeh* refers to a payment made to a victim or someone who is injured but “it transcends the usual definitions of ‘restitution’ and ‘reparation,’” former Chief Justice Yazzie writes. He continues:

*It does not dwell upon what tort lawyers call ‘just compensation.’ In nalyeeh, the parties discuss what is needed to make the injured person feel better and compensation can be symbolic. Navajo justice is also distributive justice because*

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<sup>38</sup> Costello, *supra* note 11.

*of the Navajo's belief in sharing. In the process of discussing a dispute, material goods (including money) can flow from the person who created the injury, from that person's clan relatives, or even from the injured person's relatives. The focus is not on an 'eye for an eye, tooth for a tooth' approach, but on helping people and adjusting their relationships in k'e.*"<sup>39</sup>

Consistent with Indian traditions, many tribes allow or even encourage relatives of the responsible party to assist in making compensation. "In Indian culture, if you wrong a person, you wrong a family," said Ronald Douglas, associate judge of the Saginaw Chippewa Tribal Court.<sup>40</sup> In the Navajo and Grand Traverse Band tradition, extended and family friends play the role of probation officers, monitoring wrongdoers to make sure they cause no further harm.<sup>41</sup>

### Questions for Planners

In non-Indian peacemaking, how should consensus be defined? How should restitution be defined? Is it useful or acceptable for extended families to help compensate victims or is that only workable in Indian country? Does ostracism work as an enforcement tool in non-Indian communities?

### *Enforcement*

Enforcement of the consensus decision relies on community involvement. "Unlike the American enforcement mechanism, which is based on physical coercion at the hands of the state," Porter explains, "the subtle forms of native psychological sanction utilize societal pressure to play upon the wayward member's need to remain in good stead within the community."<sup>42</sup>

Coercion from an outside force—such as a government—is anathema to Native Americans. According to Yazzie, "the thought that one person has the power to tell another person what to do is alien. The Navajo legal maxim is 'it's up to him,' meaning that every person is responsible for his or her own actions, and not those of another."<sup>43</sup>

In the Navajo Nation, however, participants may choose to enter their final agreement as a court judgment, in which case it may be enforced like any other court judgment.<sup>44</sup>

### Questions for Planners

Outside a tribal setting, how should resolutions reached through peacemaking be enforced? If a final resolution involves extended family members, can they be sanctioned for non-compliance? Is enforcement possible without court involvement? What are appropriate consequences for non-compliance?

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<sup>39</sup> Yazzie, *supra* note 9. The author explains that *k'e* "is difficult to translate into English because it has no corresponding term. *K'e* describes many emotions: respect, good relationships, love, and group solidarity. It is feelings, it is good relationships. *K'e* promotes and prompts trust."

<sup>40</sup> Quoted in Costello, *supra* note 11.

<sup>41</sup> Costello, *supra* note 11.

<sup>42</sup> Porter, *supra* note 8.

<sup>43</sup> Yazzie, *supra* note 9.

<sup>44</sup> Brown, *supra* note 4.

## Research

A 2001 study of Navajo peacemaking compared 57 Navajo peacemaking participants to 37 Navajo family court participants.<sup>45</sup> Among the findings: 81 percent of peacemaking participants agreed or strongly agreed that the process was fair compared to 50 percent who participated in family court. The vast majority of participants in peacemaking (86 percent) said the process gave them an opportunity to voice their feelings compared to only 50 percent of family court participants.

Peacemaking participants were also more likely to say that their cases resulted in what they perceived as a settlement—79 percent compared to 51 percent—but the principal investigator noted that the “substantial difference” might be due to the fact that “settlement was more obtainable in peacemaking because it was dealing with cases possessing conflict issues of less gravity or seriousness.”

The study also tried to look at whether or not peacemaking reduced the rate of reoccurrence of the presenting problem, but the difference, due possibly to the small sample size, was not statistically significant.

An evaluation of the Hollow Water First Nation Community Holistic Circle Healing, which has similarities to peacemaking, found that the benefits of participation included having a voice and a stake in justice outcomes, mutual respect, and renewed community and cultural pride.<sup>46</sup> Another study found high satisfaction among victims who participated in the Healing/Sentencing Circles Program in Whitehorse, Yukon Territory.<sup>47</sup> And 30 victims and offenders involved in restorative justice circles for misdemeanors and low-level assaults in South St. Paul, Minnesota indicated that they would recommend the circle process to others who were in similar circumstances.<sup>48</sup>

## Questions for Planners

What can we say about the effectiveness of peacemaking? Is peacemaking more lasting and satisfying than formal court-based processes? Is there research that documents levels of satisfaction among participants in peacemaking? How does their satisfaction compare to similarly situated participants in conventional Western courts? What is the rate of compliance with peacemaking sentences? What is the rate of recidivism among perpetrators who have participated in peacemaking? Does peacemaking have the potential to increase public confidence in justice? Are participants in peacemaking more likely to perceive that they've been treated fairly?

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<sup>45</sup> Eric K. Gross, “Evaluation/Assessment of Navajo Peacemaking,” available at <https://www.ncjrs.gov/pdffiles1/nij/grants/187675.pdf>.

<sup>46</sup> Mark S. Umbreit, Betty Vos, Robert B. Coates & Elizabeth Lightfoot, “Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls,” 89 *Marq. L. Rev.* 251, 276 (2005), citing Thérèse Lajeunesse & Assocs. Ltd., *Evaluation of Community Holistic Circle Healing*, Hollow Waters First Nation, Apr. 2, 1996.

<sup>47</sup> Umbreit et al, citing a study of the Healing/Sentencing Circles Program in Whitehorse, Yukon Territory in Stephen A. Matthews & Gayle Larkin, *Guide To Community-Based Alternatives For Low-Risk Juvenile Offenders* 67 (1999).

<sup>48</sup> Umbreit et al, citing Robert B. Coates, Mark S. Umbreit & Betty Vos, *Restorative Justice Circles In South Saint Paul, Minnesota* (2000).

### *Restorative Justice in the U.S.*

There are a number of programs currently in operation that have been inspired by the practices of indigenous populations both in North America and elsewhere. These initiatives, which began emerging in the 1970s, go by many names and vary slightly in their approaches. They include victim-offender mediation, family group conferencing, community conferencing, restorative justice panels, and neighborhood accountability boards.

Like peacemaking, these “restorative justice” strategies are less formal, support greater degrees of disputant control over the process, and are, at least to some extent, concerned with restoring relationships.

The differences among the approaches are too numerous to list here but they include variations in the types of conflicts addressed, the number and type of participants, the training and role of the facilitator, and the goals of the session.

Compared to these various models, a number of features make peacemaking unique. Those features include using a shared religion and culture to guide the process, encouraging the participation of extended communities, and seeking to heal the community as well as individual disputants. In addition, peacemaking emphasizes the supremacy of feelings, the open-ended nature of the process (i.e., there are few or no time limits on speakers and a case can last multiple sessions) and the role of the peacemaker (i.e., peacemakers use storytelling, lectures and other strategies of persuasion, etc.)

#### Questions for Planners

Relative to other restorative practices, what makes peacemaking unique?  
How important are these unique features to the model’s success?

### **Conclusion**

Programs based on peacemaking and similar Native American justice practices have already been developed in a number of U.S. jurisdictions. Yellow Medicine County, Minn., for example, has adapted several Indian models to create sentencing circles for juvenile offenders, peacemaking circles for child neglect and abuse cases, and most recently “circles of hope” to monitor and support people in substance abuse treatment. Among the program’s successes: the county recently reported a 91 percent reduction in out-of-home placement expenses during the sentencing circle program’s 10 years of existence.<sup>49</sup>

Before a jurisdiction can successfully borrow justice strategies, however, it needs to understand both the original model and the challenges planners will likely confront in adapting it. That desire—for knowledge and understanding—was what led the Tribal Justice Exchange, with the support of the U.S. Department of Justice, to sponsor the peacemaking roundtable in December 2011.<sup>50</sup>

Although this paper was written specifically to guide that particular discussion, it is nonetheless relevant for anyone interested in peacemaking. By highlighting key issues,

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<sup>49</sup> Steve Browne, “Grant would expand YMC’s restorative justice program,” *Marshall Independent*, April 14, 2011, available at <http://www.marshallindependent.com/page/content.detail/id/527410/Grant-would--expand-YMC-s-restorative-justice-program.html?nav=5023>

<sup>50</sup> A summary of the roundtable discussion is scheduled for completion in early 2012 and will be available on the Center for Court Innovation website, [www.courtinnovation.org](http://www.courtinnovation.org).

the paper provides policymakers and planners with a basic understanding of peacemaking and the questions to ask to adapt the approach to local needs and circumstances.