

CIRCULOS DE PAZ AND THE PROMISE OF PEACE: RESTORATIVE JUSTICE MEETS INTIMATE VIOLENCE

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I.

INTRODUCTION

When I first started the program, I was confused, worried, frustrated . . . I didn't know what to expect. As I continued with the Circle, I started to make changes in my life . . . I learned that the world didn't have to come to an end because of the [violent] incident, and how good things can come from the bad.¹

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1. Letter from Applicant, Circles of Peace, to Judge (2007) (on file with Linda Mills) (name withheld for client confidentiality).

2. When describing the people who participate in the Circles of Peace program, the term "applicant" is used to refer to an "offender" and "participant" is used to refer to a "victim." These terms are consistent with the Circles of Peace philosophy, which recognizes the importance of drawing on the humanity of those involved in the recovery process and the qualities that encompass more than just the violence they have inflicted or experienced. By using terms such as "applicant" and "participant" to describe circle members, people who participate in this program are not defined exclusively by their violent experiences. Moreover, by refusing to essentialize one member of the couple as victim and the other as perpetrator, we acknowledge the complexities of these identities

According to a study funded by the National Institute of Justice and the Centers for Disease Control, “most victims of intimate partner violence do not consider the justice system an appropriate vehicle for resolving conflicts with intimates.”³ Only one fourth of the women in the study who had been physically assaulted by an intimate partner called the police.⁴ Among those who did not call the police, 99.7% reported that they did not think the police could do anything to stop their victimization.⁵ In 2003, a Ms. Foundation for Women report focusing on sexual and domestic assaults found that “[h]eavy investment in the criminal legal system has had a disproportionate negative impact on the lives of people of color.”⁶ The report concluded that while some women of color who experience violence request police intervention during a violent episode, these women “find that they lose all control over the intervention once the system (be it criminal, legal, child welfare, mental health, or welfare) enters their lives.”⁷ These findings suggest that focusing exclusively on a criminal justice response to incidents of domestic violence is too limited; a consequence of this one-size-fits-all approach is that it supports certain people who experience abuse at the expense of others who may not benefit from such a response.⁸ This zero-sum outcome calls for rethinking our approach to include a comprehensive menu of options that better responds to a diversity of needs.

The limitations of the criminal justice system response not only permeate the lives of victimized parties, but also extend to the treatment provided to those who are convicted of these crimes. For example, when victims request that their partners “get help” instead of going to jail, the only available option in the vast majority of jurisdictions is a Batterer

and roles. For example, most people who perpetrate violence have also experienced violence during childhood. See Linda Mills, *Shame and Intimate Abuse: The Critical Missing Link Between Cause and Cure*, 30 CHILDREN AND YOUTH SERVS. REV. 631, 632 (2008). The program has found that freeing circle members of traditional labels allows them to imagine themselves and their lives differently. See *id.* at 635. The terms “offender” and “victim” are used occasionally and reluctantly elsewhere in this article to describe research and programs that rely on this or similar nomenclature.

3. PATRICIA TJADEN & NANCY THOENNES, DEP’T OF JUSTICE & CTRS. FOR DISEASE CONTROL AND PREVENTION, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE, at v (2000), <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>, cited in LINDA G. MILLS, *VIOLENT PARTNERS* 34 (2008).

4. TJADEN & THOENNES, *supra* note 3, at 49–50.

5. *Id.* at 50.

6. MS. FOUNDATION FOR WOMEN, *SAFETY AND JUSTICE FOR ALL: EXAMINING THE RELATIONSHIP BETWEEN THE WOMEN’S ANTI-VIOLENCE MOVEMENT AND THE CRIMINAL LEGAL SYSTEM* 1 (2003), http://www.ms.foundation.org/user-assets/PDF/Program/safety_justice.pdf.

7. *Id.* at 4.

8. See MILLS, *supra* note 3, at 35–37 (describing “conceptual deficiencies” involved in addressing male, gay, lesbian, bisexual, and transgender victims of intimate abuse).

Intervention Program (BIP).⁹ The most common BIP approach (called the Duluth model) is designed to reprogram people who are abusive to understand that the violence they inflict on their partners is intentional and based on a socialized understanding of male dominance.¹⁰ Victims are not permitted to participate in this treatment, nor are they encouraged to take an interest in their partners' recovery.¹¹ Two prominent studies of traditional batterer treatment programs have produced discouraging assessments of these types of programs. A 2002 study funded by the U.S. Department of Justice found that of 404 male domestic violence defendants who completed a BIP, there were *no* statistically significant differences in their attitudes, beliefs, behaviors, or likelihood of future violence when compared to violent men who had not completed any treatment.¹² Similarly, a 2003 study of two BIPs found no significant attitudinal change towards domestic violence in abusive men before and after the treatments, although there was a slight improvement in post-treatment violence among those who participated in a longer treatment program.¹³

Circles of Peace/Circuitos de Paz was founded in Nogales, Arizona in 2004 to address these myriad problems with both the criminal justice response to intimate violence and Batterer Intervention Programs. Circles of Peace is the first court-referred domestic violence treatment program to use a restorative justice circle approach to reduce violent behavior in families in the United States.¹⁴ The program consists of twenty-six to fifty-two weeks of conferences, or "Circles," bringing partners who have been abusive (the "applicants") together with willing family members (including those who have been abused, the "participants"), support people, a trained professional facilitator, and community volunteers. The goal is to encourage dialogue about the incident, the history of violence in this family, and meaningful change. The inclusion of the extended family

9. *See id.* at 29 (observing that BIPs are "favored to the exclusion of other treatment approaches").

10. *Id.* at 26.

11. For example, couples counseling has been rejected as an acceptable treatment for domestic violence in an effort to ensure that abusive partners take exclusive responsibility for the violence. *See id.* at 143.

12. Lynette Feder & Laura Dugan, *A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward Experiment*, 19 JUST. Q. 343, 371 (2002).

13. *See* SHELLY JACKSON, LYNETTE FEDER, DAVID R. FORDE, ROBERT C. DAVIS, CHRISTOPHER D. MAXWELL & BRUCE G. TAYLOR, NAT'L INST. OF JUSTICE, BATTERER INTERVENTION PROGRAMS: WHERE DO WE GO FROM HERE? 9, 19 (2003), <http://www.ncjrs.gov/pdffiles1/nij/195079.pdf>.

14. Circles of Peace is supported by the generosity of the Andrus Family Fund, the Arizona Foundation for Women, and the Arizona Community Foundation. In March of 2008, Circles of Peace was named one of the "Top 50 Innovations in Government" by the Ash Institute at Harvard University's Kennedy School. For more information, see <http://www.circlesofpeace.us>.

network in the treatment helps those in the circle understand how violence is transmitted across generations and serves to hold applicants accountable to those whom they respect.¹⁵ It also keeps the treatment flexible and culturally sensitive, as all circle members have an opportunity to speak and the language and concepts used can be adapted to the parties involved. Someone close to the family is appointed to serve as “safety monitor” before the first circle convenes. This person performs frequent check-ins with the couple and seeks help if tensions begin to increase. Finally, circles are enhanced through mental health and drug and alcohol treatment services, available to both applicants and participants when necessary or helpful.

In this article, we argue that these circles, based on restorative justice principles, provide both a potential path for recovery and a safe environment for the families who participate in them. We believe they hold great promise for providing expanded options for applicants and participants seeking to improve their chances of recovery. In Part II, we introduce the principles behind restorative justice in general and the Circles of Peace program in particular. In Part III, we discuss the debate regarding the use of restorative justice in intimate abuse cases. Part IV reviews the research on criminal justice approaches to intimate abuse, as well as the field research on restorative justice programs. In Part V, we describe the development of the Circles of Peace program and its day-to-day operations. In Part VI, we conclude with a discussion of the promise of restorative justice for intimate abuse crimes.

II.

RESTORATIVE JUSTICE AND CIRCLES: DEFINITIONS AND PRINCIPLES

Howard Zehr, a pioneer of the American restorative justice movement, defines restorative justice as processes “to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”¹⁶ According to Zehr, the questions asked in any restorative process are (1) “Who has been hurt?”, (2) “What are their needs?”, and (3) “Whose obligations are these?” In contrast, the criminal justice system asks (1) “What laws have been broken?”, (2) “Who did it?”, and (3) “What do they deserve?”¹⁷ These questions highlight the differences in values between the two approaches. Restorative justice sees wrongdoing as damage done to relationships, while the criminal justice system sees wrongdoing as a violation of state law. In restorative justice,

15. See MILLS, *supra* note 3, at 83–93 (discussing how violence is learned, particularly in the context of a violent person’s family of origin).

16. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 37 (2002).

17. *Id.* at 21.

violations create obligations, whereas in the criminal justice system, violations create guilt. Restorative justice attempts to redress the harm to the injured parties and put things as right as possible, while the criminal justice system requires the state to “determine blame . . . and impose pain” through punishment.¹⁸

Circle processes, the type of restorative justice used by the Circles of Peace program in Nogales, introduce additional values that differentiate them from a traditional criminal justice approach to violence. Circles bring stakeholders—the couple, community members, and support people—together to symbolize connection, community, and an opportunity for all to be heard. This approach stands in sharp contrast to a courtroom, where participation is restricted, hierarchical, and primarily relies on experts.¹⁹ At the core of circle work is the belief that human beings want to be positively connected to others, share core values that indicate what that connection means, and often bury their core values beneath the pain of adverse life experiences. Circles are safe spaces where participants can rediscover both their core values and their desire to be positively connected to others.²⁰

In Circles of Peace, the facilitator raises themes each week for the participants to discuss, including power and control, healthy family dynamics, conflict resolution, anger management, and other topics. Once the theme is raised, however, the flexible nature of Circles allows participants to discuss the nuanced and complex patterns of violence and abuse that have developed over many years (sometimes generations). The facilitator encourages support people and community members, so-called “outsiders” to the intimate relationship, to express how the abuse may have impacted their lives. Through this process, the couple sees how they are connected to their family, as well as to the larger community. Everyone begins to feel responsible for the recovery taking place in these individuals and this family. All Circle participants agree to a social compact with an express pledge to end the violence and with goals for the future. The safety monitor identifies periods of rising tensions within the family and notifies the Circle facilitator (or even the police, in appropriate circumstances) of any danger. In this safe environment, participants have the opportunity to lower their defenses, express deep and long-held beliefs and accompanying emotions, and move towards change.²¹

18. *Id.*

19. See KAY PRANIS, BARRY STUART & MARK WEDGE, PEACEMAKING CIRCLES: FROM CRIME TO COMMUNITY 29 (2003).

20. *Id.* at 9–10.

21. See discussion *infra* Part V.C. See also CIRCLES OF PEACE: A NEW PROGRAM ADDRESSING DOMESTIC VIOLENCE (The Working Group 2008) (film depicting the Circle Process in Nogales, Arizona).

III.

RESTORATIVE JUSTICE AND INTIMATE VIOLENCE: THE DEBATE

Whether it is appropriate, effective, and/or safe to handle intimate abuse cases using a restorative approach has been a continual subject of debate among scholars and practitioners. Critics worry that individuals who have been abused will be harmed again by manipulative tactics of control employed by their partners in circle, or that they may feel coerced into participating in the process, or worse yet, into reconciling with their abusive partners. They also fear for the physical safety of the person who has been abused, worry about the re-privatization of the issue of domestic violence, and doubt whether they can trust community-based agencies with the job of addressing such a large and dangerous problem. We respond to each of these concerns in detail below.

A. Power Differentials and Reconciliation

A central issue expressed by critics of restorative justice interventions is that individuals who are abusive will use the forum to manipulate their partners subtly in ways that are not immediately discernible to others.²² Such tactics could include pretending to be “nice” in circle but threatening or intimidating their partners when they return home, blaming their partners in circle and subtly leading others to agree, or staying quiet in circle and then exploding when they return home. Such manipulation could lead to new trauma for people who have been abused, who may already feel wounded and afraid, and who would not be in a position to express how they really feel in circle.

Similarly, critics fear that restorative justice’s emphasis on remorse and healing is not helpful for those who have experienced abuse because most intimate violence is “characterized by repeated offending and apology.”²³ Many individuals who have been abused have put themselves in harm’s way by trusting the seemingly genuine remorse of their partners, only to be faced later with their partner’s abusive behavior again. According to critics, encouraging people to trust an untrustworthy partner in a circle may therefore be unwise and even dangerous.²⁴

Unquestionably, there are layers of subtle control and manipulation at play in many intimate violence cases, presenting treatment providers with significant challenges.²⁵ It is precisely these complex layers that have *not*

22. See Julie Stubbs, *Domestic Violence and Women’s Safety: Feminist Challenges to Restorative Justice*, in *RESTORATIVE JUSTICE AND FAMILY VIOLENCE* 42, 57 (Heather Strang & John Braithwaite eds., 2002).

23. *Id.* at 58.

24. *Id.* at 60–61.

25. See generally MILLS, *supra* note 3, at 143–61 (discussing the complex layers of manipulation and control in intimate violence cases within the context of couples counseling).

been adequately addressed by the blunt tools of the criminal justice system and that people in abusive relationships are seeking help to navigate. Even in the most severely violent cases, fifty to sixty percent of women return to abusive relationships following shelter stays, suggesting that the systems in place—even shelters—return women to their abusive partners without interventions to help them address the violence.²⁶ Restorative models, by contrast, can be carefully designed and implemented in order to “address the specific healing needs related to the nature of domestic violence, which is generally chronic, deeply entrenched behavior with many possible manifestations.”²⁷ According to Kay Pranis, intervention programs that are tailored to the needs of those experiencing abuse must include (1) the involvement of family violence experts in designing the process to ensure safety, (2) a community presence that validates the significance of the criminal act and addresses wider patterns of family violence, and (3) approaches that are sensitive to the particular cultural context in which the intimate violence is situated.²⁸

Additionally, the inclusion of support people outside the nuclear family addresses critics’ concerns about power imbalances. These support people are family or friends whom the couple respect and know well. Support people often have the ability to cut beneath the secrecy surrounding intimate violence and provide accountability by virtue of the fact that they are simultaneously outside the couple, able to see them with some perspective, and also inside their world, feeling love for the people involved and likely having influence on them. Support people are also engaged in monitoring the safety of the family constellation from a close vantage point.²⁹

Finally, effective and safe programs should provide ongoing means by which couples experiencing violence, facilitators, and the larger community can provide feedback and reflect on the process, ensuring that it can be paused and revised if necessary.³⁰ The importance of this feedback loop cannot be overstated; it has become an integral part of the circle program in Nogales in large part because it allows the participants to identify and absorb the changes and transitions they are experiencing.³¹

26. See Einat Peled, Zvi Eisikovits, Guy Enosh & Zeev Winstok, *Choice and Empowerment for Battered Women Who Stay: Toward a Constructivist Model*, 45 SOC. WORK 9, 9 (2000).

27. Kay Pranis, *Restorative Values and Confronting Family Violence*, in RESTORATIVE JUSTICE AND FAMILY VIOLENCE 23, 37 (Heather Strang & John Braithwaite eds., 2002) (explaining that restorative justice processes must address the nature of healing needs in intimate violence cases).

28. See *id.* at 32–34 (discussing, inter alia, the development of a restorative justice process to address family violence in Minnesota’s Hmong community).

29. See *id.* at 32.

30. *Id.*

31. The Circles of Peace program is supported by a Restorative Justice Advocacy Team (RJAT) that helps monitor the safety of the program, serves as a consulting and

The Dove Project in the United Kingdom is an excellent example of a program that blends insights about intimate violence dynamics—for example, power imbalances, manipulation, and cycles of violence—with restorative processes in a safe and effective manner.³² The Dove Project sets up a series of ongoing conferences that generally include the affected couple, other family members, and trained coordinators who develop a plan to stop the violence and move forward. All of the program's coordinators are specially trained in issues of power, control, and the dynamics of abusive relationships.³³ They watch for subtly coercive or abusive behavior and learn how to be both encouraging of healthy solutions and supportive of the victim's wishes.³⁴

Though at first “[w]omen’s and victims’ advocates were concerned about the safety aspects of putting victims and perpetrators together[, later on, after witnessing the success of [the conferences], they became the [Dove P]roject’s biggest supporters.”³⁵ These successes included the observation that when properly screened and prepared, neither individuals who had a history of abuse or their support people lashed out or became abusive in the conferences, safety plans were respected, and victims had easy access to any domestic violence services they needed.³⁶ In every case, precautions were taken, including alerting the police and enlisting family and professional support.³⁷ The Dove Project provides an example of how restorative justice programs can safely challenge entrenched power imbalances in violent relationships.

B. Pressure on Abused Parties

Some critics have argued that the focus on restoration in restorative justice proceedings may pressure individuals who have experienced abuse to reconcile with their violent partners, even if such reconciliation would not be in their best interests.³⁸ They fear that restorative justice's traditional emphasis on decision-making by consensus, the belief that abusive partners are capable of changing their violent patterns, and the potential lack of effective surveillance and social control over abusive

support network, and gives the program ongoing feedback from the community.

32. See Laura Mirsky, *Hampshire County, U.K.: A Place of Innovation for Family Group Conferencing*, RESTORATIVE PRACTICES E-FORUM (Int'l Inst. for Restorative Practices), Nov. 4, 2003, at 1, 4–6, <http://www.iirp.org/pdf/hampshirefgc.pdf> (describing the Dove program).

33. *Id.* at 5.

34. *See id.* at 5–6.

35. *Id.* at 5.

36. *See id.* at 5–6.

37. *Id.* at 6.

38. *See* Stubbs, *supra* note 22, at 58–60 (questioning whether restorative justice's focus on offender apologies offers “false hopes” to victims and encourages them to accept an apology in a way that may jeopardize their safety).

behavior all point the person being victimized toward reconciliation as the best or only option.³⁹

Donna Coker, a scholar of indigenous peacemaking circles, expresses similar concerns and advocates for a model of “transformative justice” rather than restoration.⁴⁰ The term “restorative,” she argues, implies that once the program is over, power relations between the couple are likely to be “restored” to the status quo—a status quo that is characterized by the victim’s powerlessness and lack of safety.⁴¹ A transformative model would still gather the victim and offender together with their respective supporters; however, its focus would be on the “ways in which racism and economic subordination as well as childhood experiences of abuse relate to a man’s use of violence in his intimate relationships with women while stressing personal responsibility for the decision to use violence.”⁴² In Coker’s view, this alternative model would enable men and women to examine their violent dynamic more closely and to reconceptualize how they perform their gender roles.⁴³

Coker’s description of this transformative model is consistent with the goals of the Nogales Circles of Peace program. Most importantly, the circle process does not in any way enforce old dynamics in the violent relationship or interfere with a couple’s desire to separate. Indeed, Circles of Peace promotes new solutions for couples, including separation. Couples who participate in Circles range from those who choose to stay together to those who are divorcing. In Circles of Peace, couples who are separating sometimes want to participate in Circles treatment in order to process old trauma and pain and to gain a sense of closure before moving forward. Additionally, couples who have children often feel connected to each other after the relationship ends and therefore need help to manage the separation process peacefully. Even if a person who has been abused wants nothing to do with her partner in the future, she often feels the need to be heard. “Healing,” Pranis writes, “does not require reconciliation in a particular relationship. Healing may involve some sort of closure and it requires regaining a sense of lost personal power, but not necessarily an ongoing friendly connection.”⁴⁴ It is crucial to remember that *healing*—

39. *Id.* at 57.

40. Donna Coker, *Transformative Justice: Anti-Subordination Processes in Cases of Domestic Violence*, in *RESTORATIVE JUSTICE AND FAMILY VIOLENCE* 128, 143 (Heather Strang & John Braithwaite eds., 2002).

41. *Cf. id.* (arguing that restorative justice naively assumes that “a prior state existed in which the victim experienced significant liberty and the offender was integrated into the community”).

42. Donna Coker, *Race, Poverty, and the Crime-Centered Response to Domestic Violence*, 10 *VIOLENCE AGAINST WOMEN* 1331, 1347 (2004).

43. *See id.* (describing programs that “seek to enable men to redefine their masculinity in ways that do not depend on oppressing women”).

44. Pranis, *supra* note 27, at 37.

not reconciliation or forgiveness—lies at the heart of a restorative approach to intimate abuse.

C. *Privatizing Abuse*

One of the most enduring criticisms of the use of restorative justice for intimate abuse crimes is that it takes us back to a time when domestic violence was a “private matter.”⁴⁵ Through criminalization and punishment of intimate violence, the state communicates that such acts “offend community standards.”⁴⁶ Restorative justice’s critics argue that by abandoning state control over the violent person, restorative justice programs send the message that the abuse is not a product of a systemic social problem but is instead a problem particular to this family and this woman.⁴⁷ Once that message is sent, they argue, the government divests itself of its responsibility for domestic violence.⁴⁸

Critics also worry that the non-legal nature of circle processes may cause victims to feel shortchanged by the “justice” being offered to them. As Julie Stubbs has argued, “the desire for external validation has been found to be linked to women’s sense of justice and thus, for some women, restorative justice may be seen to be offering a form of second class justice.”⁴⁹

This lack of outside validation for the suffering of people who have been victimized, combined with the possibility of domestic violence being handled in private settings, certainly produces a worrisome picture. This picture, however, unfairly assumes that restorative approaches are strictly private or family-based solutions. It also assumes that the criminal justice system is the preferred means by which society’s voice can be heard and, more specifically, that individuals who have experienced abuse only feel validated when the criminal justice system punishes the person who abused them. These assumptions about both restorative approaches and people who have been affected by abuse are too narrow. The Circles of Peace program, for example, is closely connected to the criminal justice system and to the state.⁵⁰ The program is strictly regulated through state licensure and is deliberately buttressed by access to the police and courts. Critics’

45. See Coker, *Transformative Justice*, *supra* note 40, at 129; Stubbs, *supra* note 22, at 52–54; Evan Stark, *Insults, Injury, and Injustice: Rethinking State Intervention in Domestic Violence Cases*, 10 VIOLENCE AGAINST WOMEN 1302, 1309 (2004).

46. See Stark, *supra* note 45, at 1309.

47. See *id.* (arguing that “when the sociological and structural components of a public wrong are interpolated through subjective perceptions, the effect is to reprivatize and reindividualize the problem thus making the realities of sexual power and hierarchy appear ephemeral”).

48. *Cf. id.* (describing intimate violence as a “public wrong”).

49. Stubbs, *supra* note 22, at 51 (citations omitted).

50. Offenders in Circles of Peace are referred from the local court and must report back to the judge at regular intervals. See discussion *infra* Part V.C.

arguments that community-based programs for intimate violence represent “a divestiture of responsibility”⁵¹ on the part of government fail to recognize the multitude of ways careful planning can ensure government oversight for the treatment of intimate abuse.

One valid concern raised by critics is that these treatment entities, whether connected to the state or not, do not have the resources to tackle the problem of intimate violence.⁵² This is true, however, of all treatment options currently available for domestic violence crimes.⁵³ Whether or not agencies are furnished with sufficient resources does not depend on whether they are located in the community or in a courtroom. Instead, it is a question of how much the state and federal governments are willing to invest and how much the community is willing to insist that they do so. If the state and the community believe that the criminal justice system can be enhanced by the presence of these alternative methods of justice, they should provide adequate resources to support them.⁵⁴

Contrary to the criticism that circle-type programs re-privatize violence, these approaches actually have the potential to *increase* the external validation for people who have experienced abuse and to mobilize the community to respond to the harm instead of sending the violence underground.⁵⁵ Because restorative processes involve people such as extended family and community members beyond just the victimized and the offending parties, these processes have the effect of publicizing the problem, holding people who are abusive accountable to those whom they care about, and creating new ways of addressing dynamics still largely hidden from view.⁵⁶

Circles can be a valuable experience for the community as well. The Centers for Disease Control estimate that thirty-two million Americans

51. See, e.g., Stark, *supra* note 45, at 1326.

52. *Id.* at 1326–27 (questioning the plausibility of community-based responses to violence against women “when U.S. cities have virtually no independent financial base and are held political hostage by surrounding suburbs and state governments on such vital issues as education, health, housing, taxation, environmental pollution, and welfare”).

53. See, e.g., Fernando Mederos, *Batterer Intervention Programs: The Past, and Future Prospects*, in COORDINATING COMMUNITY RESPONSES TO DOMESTIC VIOLENCE: LESSONS FOR DULUTH AND BEYOND 127, 144 (Melanie F. Shepard & Ellen L. Pence eds., 1999) (observing the lack of public funding for batterer intervention programs).

54. Battered women’s advocates have often argued that state funds should not be used for domestic violence treatment on the grounds that offenders must be accountable for their crimes by paying for treatment. See, e.g., Juliet B. Austin & Juergen Dankwort, *Standards for Batterer Programs: A Review and Analysis*, 14 J. INTERPERSONAL VIOLENCE 152, 162 (1999). Since a large portion of men required to seek treatment are either low-income or indigent, this policy has restricted the availability of treatment programs to these groups. See Mederos, *supra* note 53, at 144.

55. See Pranis, *supra* note 27, at 27 (discussing community involvement in peacemaking circles).

56. *Id.* (discussing how peacemaking circles provide “a framework . . . for public discussion of larger social issues contributing to the violence”).

are affected by domestic violence each year.⁵⁷ One study found that sixty-three percent of children who witness intimate violence fared worse than children who did not witness intimate violence when measuring outcomes such as aggression and withdrawal.⁵⁸ Witnessing domestic violence as an adolescent may breed disrespect for women and provide an example for dating violence.⁵⁹ The personal stake all citizens have in resolving the problem of intimate violence can easily be overlooked when it is not directly happening to them or their loved ones. When, however, communities have the opportunity to participate in a process like Circles, where they witness the devastation of families affected by violence, “[they] do not typically see behavior in isolation,” according to Pranis. “They look for underlying causes and examine the complexity of connections to other issues. By participating in a discussion of what happened in a particular family, the community begins to examine itself.”⁶⁰ Restorative justice advocates hope that this self-examination becomes the foundation for future prevention efforts, addressing the intergenerational dimensions of domestic violence.⁶¹

The most striking evidence that restorative justice approaches may have an opportunity to contribute positively to the problem of intimate violence is the fact that both female and male survivors do not find the criminal justice system to be an effective response for their needs.⁶² No matter how much we want to “will” those who have been abused to come forward and expose the violence through a state-endorsed approach, they remain reluctant to do so. Providing alternative options such as circles could encourage people to seek help, particularly if the solution—healing—resonates more closely with their desires than punishing their abusive partners.

57. Press Release, Centers for Disease Control, CDC Study Documents High Costs and Impact of Intimate Partner Violence (Oct. 25, 2005), *available at* <http://www.cdc.gov/od/oc/media/pressrel/r051025.htm>.

58. See Katherine M. Kitzmann, Noni K. Gaylord, Aimee R. Holt & Erin D. Kenny, *Child Witnesses to Domestic Violence: A Meta-Analytic Review*, 71 J. CONSULTING & CLINICAL PSYCHOL. 339, 344–45 (2003).

59. See NAT’L INST. OF CHILD HEALTH & HUMAN DEV., WORKSHOP SUMMARY, CHILDREN EXPOSED TO VIOLENCE: CURRENT STATUS, GAPS, AND RESEARCH PRIORITIES 7 (July 24–26, 2002), http://www.nichd.nih.gov/publications/pubs/upload/children_violence.pdf (summarizing presentation of David Wolfe).

60. Pranis, *supra* note 27, at 27.

61. See MILLS, *supra* note 3, at 241–52.

62. See TJADEN & THOENNES, *supra* note 3, at v (stating that “the majority of victims [of intimate partner violence] who did not report their victimization to the police thought the police would not or could not do anything on their behalf”).

IV.

CRIMINAL JUSTICE VS. RESTORATIVE JUSTICE: THE EVIDENCE

The best way to judge the potential of restorative justice approaches to address the problem of intimate violence is to examine the emerging research that has developed on the few restorative programs that exist around the world. Before doing so, however, it is important to put these evaluations in context. How well has the criminal justice system done in reducing incidents of domestic violence?

National rates of recidivism for domestic violence are difficult to gauge, since researchers have typically examined different community interventions with differing populations and all too often employed unique approaches to the research.⁶³ For example, one recidivism study of a domestic violence court in Quincy, Massachusetts, relying in part on victim interviews, found that roughly fifty percent of victims were being revictimized within a one-year follow-up period from the date of the initial arrest.⁶⁴ The study is unclear about which intervention was used with those who re-offended, although it does note that completing batterer treatment had no significant impact upon re-offending behavior.⁶⁵ Another study of recidivism rates following post-arrest sanctions (such as probation and fines) was completed using criminal justice records. Researchers found a fifty-six percent re-offense rate after one year.⁶⁶ It is clear from these statistics that the current one-size-fits-all approach to intimate violence—the criminal justice system—is not effectively reducing the violence for as many as *half* of the victims and families that it reaches.

The Morrison Institute for Public Policy at Arizona State University recently published a study painting a bleak picture of the Arizona criminal justice system's approach to intimate abuse crimes. Researchers interviewed and surveyed more than eight hundred of Arizona's judges, prosecutors, victims, victim advocates, and probation officers.⁶⁷ The study found "widespread agreement" that the state's existing response to

63. Melanie F. Shepard, Dennis R. Falk & Barbara A. Elliott, *Enhancing Coordinated Community Responses to Reduce Recidivism in Cases of Domestic Violence*, 17 J. INTERPERSONAL VIOLENCE 551, 553 (2002).

64. EVE BUZAWA, GERALD T. HOTALING, ANDREW KLEIN & JAMES BYRNE, DEP'T OF JUSTICE, NAT'L INST. OF JUSTICE, *RESPONSE TO DOMESTIC VIOLENCE IN A PRO-ACTIVE COURT SETTING: EXECUTIVE SUMMARY* 11 (1999), <http://www.ncjrs.gov/pdffiles1/nij/grants/181428.pdf> (noting that "victim survey data showed a re-victimization rate of 49.2%").

65. *Id.* at 18.

66. See Michael Steinman, *Lowering Recidivism Among Men Who Batter Women*, 17 J. POLICE SCI. & ADMIN. 124, 128 (1990).

67. RICHARD TOON & BILL HART, ARIZ. STATE UNIV., *SYSTEM ALERT: ARIZONA'S CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE* 1 (2007), <http://www.asu.edu/copp/morrison/SystemAlert.pdf>.

intimate and domestic violence was “falling short of achieving its goals.”⁶⁸ Only twenty-four percent of the prosecutors who were surveyed agreed with the statement that “[p]rosecuting [domestic violence] offenders helps reduce future [domestic violence] incidents.”⁶⁹ Additionally, although judges require virtually all people arrested of a domestic violence crime to participate in BIPs as part of their sentence, only fourteen percent of judges agreed that “the treatment options now available for offenders are effective.”⁷⁰ Arizona’s system, the study concludes, “is one that most [domestic violence] victims avoid using, in which most cases entering it are dismissed, that disappoints a substantial majority of victims who do use it, and that sends most offenders to treatment programs whose effectiveness has not been demonstrated.”⁷¹

The Morrison study recommends instead a “victim-centered approach” that takes seriously a victim’s desire for justice as the *victim* understands it, not simply as the system mandates. For victims who choose to remain in a relationship, this could mean providing counseling and community interventions that draw upon restorative justice practices.⁷² The report specifically mentions Circles of Peace as an innovation worth exploring to address the problem of intimate violence.⁷³

The Ms. Foundation for Women has also raised serious concerns about the nation’s criminal justice approach to domestic violence. Their 2003 report shows that “[t]he rate of women’s victimization (assaults and murders) by intimates appears to be about the same as it was in the 1970s.”⁷⁴ The authors also highlight the destructive impact the criminal justice system has had on the lives of poor communities and communities of color, including disproportionately high arrest rates for African American, Latino, and poor men in domestic violence cases, as well as the two million women arrested each year.⁷⁵ Among women in prison, one-third report a history of child sexual abuse, and twenty to thirty-four percent report abuse by an intimate partner.⁷⁶ This excessive contact with the system for both partners in an abusive relationship has caused an upheaval in many communities of color, resulting in the routine removal of children, deportation of immigrants, and serious weakening of community structures.⁷⁷ Although the report is cautious to note that community-based programs that do not rely on the criminal justice system should be

68. *Id.* at 81.

69. *Id.* at 21.

70. *Id.* at 32.

71. *Id.* at 81.

72. *Id.* at 82.

73. *Id.* at 83.

74. MS. FOUNDATION FOR WOMEN, *supra* note 6, at 9.

75. *Id.* at 12–13.

76. *Id.* at 13.

77. *See id.* at 14.

carefully evaluated, it also argues that community interventions hold a great deal of promise as systemic and holistic solutions to the problem of domestic violence.⁷⁸ The report specifically mentions restorative justice as a development that, together with other approaches, could ensure the safety of the individual while building the capacity of the community to stop the abuse within it.⁷⁹

Early studies of the few restorative programs that have been created to address domestic violence suggest that these approaches may, in fact, be viable alternatives to current interventions. Professors Joan Pennell and Gale Burford's research showed that a Family Group Conferencing program that drew on similar principles to Circles' was very effective at changing violent dynamics within families.⁸⁰ This program, located in Eastern Canada, addressed both child welfare issues and domestic violence, recognizing that they were commonly paired in families.⁸¹ In one year, the program treated approximately thirty-two rural, urban, and Inuit families.⁸² A total of 472 people participated in the conferencing program, 384 of whom were family members and eighty-eight of whom were service providers, including representatives from child welfare, schools, and cultural organizations.⁸³ The role of these professionals was to bring their expertise to the conferencing program, as well as to link the family to any outside services they required.

Family Group Conferencing brings together professionals—such as child welfare workers, women's advocates, and police officers—with the family group in which abuse or neglect is taking place (including extended family, friends, supporters) in order to develop a plan for stopping the maltreatment.⁸⁴ Conferences usually last over five hours.⁸⁵ They begin with a culturally-appropriate opening for the family, such as a prayer or greeting.⁸⁶ The coordinator reviews the conference's purpose, process, and ground rules, including that all proceedings are confidential and will be conducted without violence.⁸⁷ Service providers then report the reason for the referral, which usually comes from the child welfare agency, and what issues need to be addressed in the treatment plan.⁸⁸ The family adds to the plan, speaking on a personal level about how the violence has affected

78. *See id.* at 18–19.

79. *Id.* at 19.

80. *See* Joan Pennell & Gale Burford, *Family Group Decision Making: Protecting Children and Women*, 79 CHILD WELFARE 131, 151 (2000) (describing how “the conference opened up dialogue, fostered a sense of family cooperation, and stopped family violence”).

81. *Id.* at 134, 137.

82. *Id.* at 138.

83. *Id.* at 138–39.

84. *Id.* at 133.

85. *Id.* at 140.

86. *Id.*

87. *Id.*

88. *Id.* at 139, 140.

them, the needs they face, and what they hope will be achieved during the conference process.⁸⁹ This might include the abusive parent attending counseling or drug treatment, or a family member helping with childcare or transportation needs.⁹⁰ The plan is adopted after every conference participant is satisfied with it and the referring authority authorizes its terms.⁹¹ If necessary, the coordinator may reconvene the family group and revise the plan.⁹²

Pennell and Burford evaluated this program using two outcome measures: follow-up interviews with the family and “reviews of Child Protective Services’ files for the presence of indicators of child maltreatment and adult abuse.”⁹³ Although only one-fifth of all plans were followed to completion, two-thirds of the family members interviewed said that their family was “better off” as a result of the conference.⁹⁴ Another one-fifth said that the family was left the “same,” while only seven out of the 115 respondents said their family was “worse” following the conference.⁹⁵ According to Pennell and Burford, the conferences left the families better off primarily because they “strengthened positive ties among the participants, removed some negative ties, and enhanced their sense of being a family.”⁹⁶ Additionally, the conferences resulted in a significant reduction in the indicators of child maltreatment and domestic violence, such as fewer children being taken into care and fewer “family members fleeing the home out of fear.”⁹⁷

As already noted, Donna Coker extensively studied indigenous peacemaking circles—another restorative justice approach—in the Navajo Nation.⁹⁸ Peacemaking circles are convened when two parties in conflict appear before a Peacemaker (a respected neutral) along with friends and members of the parties’ families.⁹⁹ The parties typically self-refer, but cases may also be referred from the Navajo Nation civil or criminal court.¹⁰⁰ After an opening prayer in both Navajo and English, petitioners present their complaints and respondents are asked to provide a statement. Family members and others participate in the discussion, adding their insights into the problem. The Peacemaker encourages the creation of a

89. *Id.* at 140.

90. *Id.* at 141.

91. *Id.* at 140.

92. *Id.* at 141.

93. *Id.* at 142.

94. *Id.* at 144.

95. *Id.*

96. *Id.*

97. *Id.* at 151.

98. See Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, 47 UCLA L. REV. 1, 4 (1999).

99. See Donna Coker, *Restorative Justice, Navajo Peacemaking and Domestic Violence*, 10 THEORETICAL CRIMINOLOGY 67, 70 (2006).

100. *Id.*

peacemaking agreement and, in doing so, may utilize traditional Navajo stories or lessons. Agreements frequently call for the rehabilitation of abusive partners through drug and alcohol treatment and include a “stay away” clause, designed to separate the couple for a specified length of time.¹⁰¹

Coker used data from peacemaking files, as well as interviews with Peacemakers, family court judges, and Navajo Nation anti-domestic violence advocates, to conduct an empirical and theoretical examination comparing peacemaking to formal adjudication proceedings.¹⁰² While she found that peacemaking circles had some significant problems, including some victims who felt coerced into attending,¹⁰³ she concluded that the circles provided benefits that were unavailable in the formal adjudication process. These benefits included the potential to disrupt social and familial structures that support battering and the potential to change the way abusive partners and their families understand battering through the use of traditional Navajo stories with anti-subordination themes.¹⁰⁴ Coker also saw these circles as avoiding the “cultural and legal focus” on the necessity of permanently separating the couple.¹⁰⁵

In South Africa, Amanda Dissel and Kindiza Ngubeni examined the Victim Offender Conferencing Project (VOCP), a pilot restorative justice domestic violence program operating in conjunction with magistrate courts in four sites across the country.¹⁰⁶ At VOCP, cases are mediated by trained community members who meet separately with both partners, as well as all support people, prior to convening the conference. The mediator helps participants engage in a process of storytelling, discussion of the issues, and creation of an agreement.¹⁰⁷ Agreements often list the ways abusive parties will change their lives and repair the harm they caused.¹⁰⁸ The conference participants sign the agreement, and it is presented to the court. If the magistrate approves the agreement and the person who had experienced the abuse consents, any case against the partner would either be withdrawn or suspended to allow for completion of the agreement.¹⁰⁹

Dissel and Ngubeni analyzed 116 intimate abuse cases in all four

101. *See id.*

102. Coker, *Enhancing Autonomy for Battered Women*, *supra* note 98, at 13–14.

103. *See id.* at 82.

104. *Id.* at 38, 59.

105. *Id.* at 14, 102.

106. AMANDA DISSEL & KINDIZA NGUBENI, GIVING WOMEN THEIR VOICE: DOMESTIC VIOLENCE AND RESTORATIVE JUSTICE IN SOUTH AFRICA 1 (2003), <http://www.csvr.org.za/docs/crime/givingwomenvoice.pdf>.

107. *Id.* at 4.

108. *See id.* at 10 (indicating that agreements often require the abusive partner to seek treatment for drug or alcohol abuse).

109. *Id.* at 4.

locations. Twenty-one victimized people were interviewed six to eighteen months after the mediations were completed.¹¹⁰ All those respondents who had been assaulted indicated that the person who had been abusive had not revictimized them since the mediation, and all respondents noted an overall improvement in their partner's conduct toward them.¹¹¹ In the cases in which couples had stayed together, the victimized party reported improved communication and reduced verbal abuse.¹¹² As one woman explained, "[Victim Offender Conferencing] has helped us to talk to one another. He used to beat me up every time that I tried to express my feelings before."¹¹³ Finally, in results that are similar to those of Pennell and Burford, even when the entire agreement was not fulfilled, respondents still viewed the conference as a success.¹¹⁴ This suggests that it is the dynamics of the conference *itself*, and not just a perfect outcome, that provides healing for those who have been victimized.

In Hollow Water, a small community in Manitoba, Canada, the Community Holistic Circle Healing (CHCH) process has been used since 1986 to deal with criminal family charges, including intergenerational family violence and sexual abuse.¹¹⁵ Those who have been abusive choose whether they want to participate in a lengthy and intense healing process or take the traditional criminal justice route. If they decide to participate in the program, they begin weekly circles where they are both supported and valued as a community member, but also continually challenged to take responsibility for their actions and the harm that they have caused.¹¹⁶ Family members are invited into the circle once the abusive parties are ready to acknowledge their behavior and accept their family's responses.¹¹⁷

In cooperation with the Canadian Solicitor General, Professor Joe Couture and his colleagues evaluated the Hollow Water experiment, measuring intangible benefits to the community as well as making direct cost comparisons with traditional policing, court, institutional, probation, and victims' services.¹¹⁸ The researchers examined financial records and conducted interviews with community members, CHCH staff, social

110. *Id.* at 4–5.

111. *Id.* at 9.

112. *Id.* at 9–10.

113. *Id.* at 8.

114. *See id.* at 10 (noting “[t]he full extent of the agreement was not always fully adhered to, but this did not appear to affect the perceptions of the success of the mediation”).

115. *See* BERMA BUSHIE, COMMUNITY HOLISTIC CIRCLE HEALING: A COMMUNITY APPROACH 1–2, www.iirp.org/library/vt/vt_bushie.html (last visited Mar. 10, 2009).

116. *See id.* at 3.

117. *See id.*

118. *See* JOE COUTURE, TED PARKER, RUTH COUTURE & PATTI LABOUCANE, NATIVE COUNSELING SERVICES OF ALBERTA: A COST-BENEFIT ANALYSIS OF HOLLOW WATER'S COMMUNITY HOLISTIC CIRCLE HEALING PROCESS 8, 10–11 (2001), http://www.eric.ed.gov:80/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/10/19/77/08.pdf.

resource people, and justice system participants to identify the benefits of this community healing process.¹¹⁹ They found that the CHCH program costs were less than one-third of those associated with the traditional criminal justice system and that, as a result of the program, the community showed significant improvements on health and wellness scales, indicating healthier children, better parenting skills, individual empowerment, greater community responsibility toward domestic abuse issues, an increased sense of safety, and a decrease in overall violence.¹²⁰

V.

RESTORATIVE JUSTICE AND INTIMATE VIOLENCE: ON THE GROUND

Circles of Peace—founded in 2004 by Dr. Linda Mills, professor of social work, public policy, and law, and Mary Helen Maley, an Arizona judge—incorporates decades of theory on effective restorative justice strategies while also attempting to address many of the field’s central practice concerns discussed above.¹²¹ This section explores the creation and implementation of the program, how it operates in conjunction with the traditional criminal justice system, and how it attempts to address the critics’ concerns.

*A. Background of Circles of Peace*¹²²

After sitting on the bench for more than a decade, Judge Maley had become convinced that the court’s options for handling people convicted of misdemeanor domestic violence crimes were inadequate. In Arizona, a first-time defendant who is convicted of a domestic violence misdemeanor is required to attend at least twenty-six treatment sessions at a state-licensed facility as part of a court-supervised probation.¹²³ The only facilities in Santa Cruz County (as well as most of the country) were Duluth-style BIPs.¹²⁴ Judge Maley could either sentence these defendants to those programs or, at their partner’s urging, allow the prosecutors to dismiss the case altogether, which she estimates occurred in approximately sixty percent of cases. Whichever option she chose, the Judge frequently saw the same defendants return to court within a few months. After several years, she began to see the children of past violent relationships in

119. *Id.* at 3–4.

120. *Id.* at 4–5.

121. *See supra* Part III.

122. The program’s original name was Construyendo Circulos de Paz/Constructing Circles of Peace.

123. ARIZ. REV. STAT. ANN. § 13-3601.01(A) (2007); ARIZ. ADMIN. CODE § 9-R20-1101(C)(1) (2008).

124. Telephone Interview by Yael Shy with Hon. Mary Helen Maley, Justice Courts, Santa Cruz County, Arizona (Dec. 20, 2007).

her courtroom in both victim and offending roles.¹²⁵

Judge Maley sought input from survivors in order to understand their perspectives and interests following a domestic violence arrest. They frequently said that they wanted to continue to have contact with their partners but that they also wanted the violence to end. People who had been abused were asking Judge Maley to send their partners to counseling and were expressing a desire to participate in the treatment process themselves. They wanted an opportunity to discuss the issues in their relationships that they believed were leading to violence, but the local BIPs strictly prohibited victim participation.

Judge Maley was also concerned that BIPs were culturally inappropriate for her community. In the small border towns of Santa Cruz County, Arizona, those who experience family violence face enormous difficulties securing the services and help they need. In addition to coping with violence in the home, many victims also experience racism, cultural isolation as new immigrants, language barriers, and the effects of extreme poverty in the region.¹²⁶ A significant percentage of the Santa Cruz County population identifies as Catholic, which suggests that many people living with domestic violence in the county may come from backgrounds where divorce is not an acceptable option.¹²⁷ Given the needs of the population, traditional criminal justice approaches to domestic violence have not been effective. Few victimized parties feel comfortable going to the authorities or leaving their partners and communities for a shelter. When these men or women did consider calling the police, ineffective, impersonal treatment options for their partners were disincentives to doing so.¹²⁸

In 2003, Judge Maley sought opinions from presiding judges in several other Arizona counties. The judges all agreed that BIPs were not working.

125. *Id.*

126. According to the most recent U.S. Census data, eighty-one percent of Santa Cruz County residents are of Latino/Hispanic origin, and thirty-eight percent of County residents are foreign born. Eighty-one percent speak a language other than English at home. Nineteen percent live below the poverty line, compared to fifteen percent of all Arizonans and thirteen percent of Americans. See U.S. CENSUS BUREAU, STATE AND COUNTY QUICKFACTS: SANTA CRUZ COUNTY, ARIZONA, <http://quickfacts.census.gov/qfd/states/04/04023.html> (last visited Mar. 10, 2009); U.S. CENSUS BUREAU, STATE AND COUNTY QUICKFACTS: USA, <http://quickfacts.census.gov/qfd/states/00000.html> (last visited Mar. 10, 2009).

127. See THE ASSOCIATION OF RELIGION DATA ARCHIVES, COUNTY MEMBERSHIP REPORT, DENOMINATIONAL GROUPS (2000), http://www.thearda.com/mapsReports/reports/counties/04023_2000.asp (reporting 58.5% of the Santa Cruz County population was Catholic in 2000); BARRY A. KOSMIN, EGON MAYER & ARIELA KEYSAR, THE GRADUATE CENTER OF THE CITY UNIVERSITY OF NEW YORK, AMERICAN RELIGIOUS IDENTIFICATION SURVEY 12 (2001), http://www.gc.cuny.edu/faculty/research_briefs/aris.pdf (reporting that only 24.5% of the U.S. population identified as Catholic in 2001).

128. See TOON & HART, *supra* note 67, at 43 (reporting that 57% of victims in the study did not believe their partners' court-ordered treatment helped to stop the abuse).

It was at this time that Judge Maley read Professor Mills' publications, which introduced the concept of restorative justice and the idea of circles for use in domestic violence cases.¹²⁹ Judge Maley thought that the involvement of the extended family would enable these circles to address the intergenerational nature of the violence and its transmission—an issue about which she was especially concerned. She also believed that the model's flexibility would enable it to take root in a traditional Latino/a community that was dissatisfied with Anglo systems of justice.

Just before Professor Mills received the call from Judge Maley, she had convened a roundtable discussion that brought together experts in restorative justice and domestic violence to develop a criminal justice-based restorative justice treatment program for couples experiencing abuse. Kay Pranis, Gale Burford, and Professor John Braithwaite from Australia were among the experts who evaluated the feasibility of developing this new treatment for domestic violence. They designed an approach that brought the whole family together in a circle over a period of several weeks to address the violence. Once Professor Mills and Judge Maley spoke, they decided that it was possible to pilot this new treatment program as an alternative to BIP treatment in Arizona.¹³⁰

In late 2004, on the heels of the roundtable discussions, Professor Mills and Judge Maley met with fifty community leaders in Nogales, Arizona to develop a circle program in their community. Representatives from law enforcement, the courts, community groups, and cultural institutions from a wide range of racial and socioeconomic backgrounds participated. Prosecutors and judges were particularly interested in this new approach, as there was mounting dissatisfaction with the high levels of case dismissals based on victims' refusal to assist.¹³¹ Drawing on the peacemaking circle model designed earlier, these community leaders adopted an approach which they called *Construyendo Círculos de Paz*/Constructing Circles of Peace (later shortened to Circles of Peace/*Círculos de Paz*). The program was deliberately embedded in the criminal justice system as a court-approved referral in order to determine whether combining a restorative justice treatment program with criminal justice intervention could create an approach to treating domestic violence that was optimally responsive to the needs of people who had been victimized. Circles of Peace was

129. See LINDA G. MILLS, *INSULT TO INJURY: RETHINKING OUR RESPONSES TO INTIMATE ABUSE* 134–41 (2003) (advocating a blending of restorative justice principles, such as those employed in South Africa's Truth and Reconciliation Commission, with intimate violence scholarship in "Intimate Abuse Circles").

130. MILLS, *supra* note 3, at 222.

131. See TOON & HART, *supra* note 67, at 16 (reporting that eighty-eight percent of prosecutors in the study agreed that "[t]oo many cases cannot be prosecuted successfully because victims fail to assist prosecution"). Most prosecutors in the study estimated that more than half of all cases were dismissed, and one prosecutor estimated as high as eighty-five percent. *Id.*

generously funded by a grant from the Andrus Family Fund, a small foundation in New York City dedicated to social justice. In order to evaluate the program, the National Science Foundation approved a New York University study comparing the Circles of Peace program's outcomes to those of the local BIP.¹³²

B. Implementing Circles of Peace

In order to be an appropriate treatment referral for the Court under state law, Circles of Peace needed to be integrated into a licensed facility. A local not-for-profit agency that offered BIP programming agreed to provide licensing support for Circles and to house the program.¹³³ The community was trained on how to use a restorative justice approach to domestic violence cases. The program hired a facilitator, or what is referred to as the "Circle Keeper," and a Community Outreach Coordinator, both of whom had training and experience in domestic violence. The Community Outreach Coordinator's role was to recruit community members to take part in Circles. She was also to prepare participants, applicants and support people for their circles by reviewing the expectations of the parties, explaining the process and ground rules, and screening for safety. The first three pilot circles began in 2005. They ran smoothly and, with high satisfaction reports from circle members, the program slowly began accepting more applicants. In 2007, Circles of Peace became its own non-profit organization, and in 2008 it was licensed by the Arizona Department of Health to provide domestic violence treatment. The program currently serves thirty-five families, with a staff of three part-time Circle Keepers, a Community Outreach Coordinator, and an Executive Director.

C. Circles of Peace: Procedure

As noted earlier, all defendants convicted of misdemeanor domestic violence crimes in Arizona are required to attend a minimum of twenty-six treatment sessions.¹³⁴ Judges refer domestic violence defendants to Circles of Peace based on their individualized evaluation of a case and their history.¹³⁵ As already noted, once they start attending the program,

132. Results from the N.Y.U. study are still being analyzed. The full report will be released in Spring 2009. For more information, see the N.Y.U. Center on Violence and Recovery, <http://www.nyu.edu/cvr/rjdv.html>.

133. Portable Practical Education Preparation Inc. (PPEP) provided administrative and other support for Circles of Peace from 2005 to 2007. Their commitment to the program in its earliest phase of development was both significant and groundbreaking, as well as consistent with their community development philosophy.

134. ARIZ. REV. STAT. ANN. § 13-3601.01(A) (2007); ARIZ. ADMIN. CODE § 9-R20-1101(C)(1) (2008).

135. See N.Y.U. CTR. ON VIOLENCE AND RECOVERY, PEACEMAKING CIRCLES/CONSTRUYENDO CIRCULOS DE PAZ (CCP): A PROGRAM GUIDE FOR

defendants are referred to as “applicants” in order to make the individual feel more comfortable and willing to share and participate freely.¹³⁶ Applicants are initially evaluated and screened for safety by the Circle Keeper assigned to their case. The screening consists of a set of assessments that look at the abusive behaviors that applicants have used in the past, as well as their current substance usage, anger levels, and suicidal or homicidal tendencies.¹³⁷ A similar assessment form is given to participants to report on their partners’ past behavior, anger, substance abuse, and suicidal and homicidal tendencies. All Circle Keepers are clinically trained in domestic violence counseling as well as the Circle method.¹³⁸ This training consists of a series of exercises that help Circle Keepers learn to build trust and consensus in their circles.¹³⁹ Trainings also include role playing and troubleshooting in order to address difficult situations that might arise. If applicants pass the initial screening, the Circle Keeper explains the Circle program to them. Applicants must pick a “support person” who will also attend the sessions to provide emotional support.¹⁴⁰ Supporters are generally family members, friends, or co-workers.¹⁴¹ The Circle Keeper then contacts participants, explains the program, and, if they decide to attend, asks them to choose their support people.¹⁴² Currently, about fifty percent of participants take part in the Circles of Peace program. Finally, trained community members are matched with circles in order to serve as liaisons between the families and the larger community and to provide additional support to the couples.

In the first circle, all circle members develop a “social compact,” which includes promises that applicants will be expected to adhere to throughout the program. These promises may include refraining from alcohol or drugs, participating in community service, exercising, or other things that applicants believe will help them achieve their goals. The social compact always includes a “no violence” provision. Applicants then sign the social

COORDINATORS AND COMMUNITIES 8 (2005). The offender is accepted into the program based on input from the judge, prosecutor, and probation officer. A defendant’s program choice, after a detailed explanation of both Circles of Peace and BIP, is also taken into account. It is important to note that during the period in which the program was evaluated for the National Science Foundation study (2005–07), defendants were randomized into Circles of Peace or a batterer intervention program, in accordance with study protocols.

136. *See id.* at 5 (explaining that by referring to the offender as an “applicant,” the program hopes to “mov[e] away from the judgmental and hierarchical language that is assigned to defendants during criminal justice proceedings without diminishing the applicant’s accountability for the violence”).

137. *Id.* at 9.

138. *Id.* at 4.

139. Telephone Interview by Yael Shy with Hon. Mary Helen Maley, *supra* note 124.

140. *See* N.Y.U. CTR. ON VIOLENCE AND RECOVERY, *supra* note 135, at 9.

141. *Id.* at 6.

142. *Id.* at 11. Victimized parties are always invited to be part of the Circle and, if they choose to participate, they are required to sign a consent form. They may choose to participate by preparing something to be read or they can personally appear at the Circle.

compact, and their compliance is monitored weekly by the circle participants.¹⁴³ If applicants complete the required weeks of treatment, they are issued a Certificate of Completion and the case is dismissed. If applicants are non-compliant with the program—or if they do not meet drug treatment or service requirements that are part of the social compact—they are sent an “Order to Show Cause” to appear in court to tell the judge why they have not complied with the treatment. If they fail to appear, a new charge of “Failure to Obey” is lodged by the prosecutor and a warrant is issued.¹⁴⁴

Finally, Circles of Peace ensures safety through the appointment of a “safety monitor.” The safety monitor is usually someone who is close to the couple and fulfills the important task of checking in with both parties regularly to ensure safety.¹⁴⁵ This is done by in-person visits or phone calls at random times.

The beginning weeks of the circle are devoted to establishing values and guidelines that will govern the circle process, and the circle follows these guidelines throughout the course of treatment.¹⁴⁶ Subsequent weeks of treatment are organized through topic areas mandated by the State Health Board and issues arising in the lives of the circle members.¹⁴⁷

Circles of Peace relies heavily on William Bridges’s transition framework.¹⁴⁸ The framework starts from the premise that people are always making changes, but few pay attention to the process of transition that underlies that change.¹⁴⁹ The framework distinguishes between “change,” which is external and situational, and “transition,” which is the internal process of how one responds to change.¹⁵⁰

Bridges developed the framework in the 1970’s in order to help individuals and businesses respond to organizational change. The Andrus Family Fund integrated this framework into its core philosophy, recognizing that these principles are relevant in the not-for-profit sector. Andrus grantees—of which Circles of Peace is one—are devoted to the use

143. *See id.* at 10, 26.

144. Telephone Interview by Yael Shy with Hon. Mary Helen Maley, *supra* note 124.

145. *See* N.Y.U. CTR. ON VIOLENCE AND RECOVERY, *supra* note 135, at 5–6.

146. *Id.* at 24.

147. *See* ARIZ. ADMIN. CODE § R9-20-1101(A)(2) (2008) (requiring agencies providing domestic violence offender treatment to address personal responsibility and domestic violence as a means of asserting power and control, and allowing agencies to address [although not disproportionately or exclusively] anger or stress management, conflict resolution, family counseling, and domestic violence education).

148. *See* N.Y.U. CTR. ON VIOLENCE AND RECOVERY, *supra* note 135, at 7 (acknowledging Bridges’s transition framework as “an integral part” of Circles of Peace).

149. WILLIAM BRIDGES, *MANAGING TRANSITIONS: MAKING THE MOST OF CHANGE* app. E (1991).

150. *Id.* at 3–4.

of transition framework in their approach to social change.¹⁵¹

Bridges describes three stages involved in transitions. First, there is the “ending,” where one acknowledges the losses that result from letting go of familiar behavior, such as using violence to control others.¹⁵² Second, there is the “neutral zone,” where the old behavior can no longer be used, but finding a new way of being is not yet clear.¹⁵³ At this point, an applicant would ask, “If I don’t use violence when I get upset, what do I do instead?” The “neutral zone” is an in-between time, marked by considerable chaos, but it is also a place where creativity and new possibilities emerge.¹⁵⁴ These new possibilities include the recognition by applicants that they have options other than violence when they get angry and hurt. By learning the language of the transition framework, circle members, as well as staff, are able to see their struggles with intimate violence within a larger context. One applicant, for example, spoke about being in the neutral zone with his wife where they were unable to help each other because they were both in a state of transition. He described the neutral zone as “a scary river full of debris hitting him every which way.”¹⁵⁵ He asked the circle members to help him move toward a new beginning. Within the structures set up by the transition framework and the mandated discussion topics, the family’s stories are explored, and legacies of pain and violence are uncovered and processed. Progress is made step-by-step as the family gains the tools it needs to create healthy relationships. Facilitators qualitatively measure the progress of circle members as they move through the phases of transition. Narrative evaluations in client files help chart their use of transition framework in the change process.¹⁵⁶

As the participants of a circle begin to expose their vulnerabilities, applicants or participants will frequently admit that they have alcohol problems, have been facing severe economic difficulties, or are confronting other challenging issues that contribute to familial tensions. Circle Keepers are trained to identify these issues and to suspend circles in order to get applicants or participants individual counseling and other support, such as Alcoholics Anonymous or job training. This is a key juncture where the community’s participation is invaluable, since community members are able to suggest resources that could help applicants, as well as support the family through the difficult process of making changes.

151. *Id.* at 164.

152. *See id.* at 4.

153. *See id.* at 5 (describing the neutral zone as “a time when the old way is gone and the new doesn’t feel comfortable yet”).

154. *See id.* at 6 (describing the neutral zone as “an opportune place”).

155. Circles of Peace case notes (2007) (name withheld for client confidentiality).

156. Telephone Interview by Yael Shy with Hon. Mary Helen Maley, *supra* note 124. *See also* Yael Shy & Linda G. Mills, *Social Change and Transition Framework: A Case Study in Intimate Partner Violence* (forthcoming 2009).

As the weeks pass, the family and the community members grow closer and the group improves in its role as a new support system. This mechanism helps both applicants and family participants to feel less isolated and ensures a higher degree of safety for those who have been victimized in the past.

VI.

DOMESTIC VIOLENCE, RESTORATIVE JUSTICE, AND THE MOVEMENT AHEAD

For far too long, the most vocal advocates, policymakers, and theorists have assumed that the most important outcome of a domestic violence incident is retribution. Treatment has always been a byproduct of that castigation, never truly valued or appreciated. It is high time that we change this all too narrow punitive philosophy. There are now examples of programs that meet the expectations of those who are directly affected by domestic violence—reinforcing what they have known all along: that people can change, that violent behavior can be transformed, and that this dire problem affecting the family and community can be healed.

Circles of Peace is one important example of how restorative approaches can bring the criminal justice system and the community together in the service of those who have been harmed by intimate abuse. The program has remained attuned to the concerns raised by domestic violence advocates and shaped itself in response. Participant safety is carefully monitored before and during the circle process through danger assessments and ongoing check-ins with the safety monitor. Likewise, the support people and the Circle Keeper are trained to cut beneath the power dynamics and the manipulation that can occur between partners, and the circle structure itself allows each member an equal voice in the process. When participants do join the circle, they are offered validation for their experiences of abuse in ways that are direct (due to the applicant's presence) and public (due to the presence of community members).

Circles of Peace and the other innovative circle-based domestic violence programs located around the world are experimenting with ways to accomplish the universal goal of validating the needs of people who have been victimized while providing meaningful treatment options for all members of the family, including those who have been abusive. Together, they tell a hopeful story that combines the commitment to acknowledging and understanding abusive behavior with the possibility of actually preventing it—creating important opportunities to heal families and transform communities.