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DISSOLVING THE DIVIDE: CROSS-RACIAL COMMUNICATION IN THE RESTORATIVE JUSTICE PROCESS

KRISTA SMITH[†]

ABSTRACT

Restorative justice encounters often bring together participants of differing races. The communication style of participants has a significant impact on such encounters. To date, the restorative justice literature has given little attention to the effect of cross-racial communication on the encounter process. This paper discusses this issue by exploring the risks and opportunities present when an individual from a traditionally marginalized race openly shares her experience of the crime with an individual from the dominant race. In order to draw these risks and opportunities into high relief, the author relies on a single example: a restorative justice encounter between a White victim and Black offender. This scenario is used to explore three major issues. First, the potential of restorative justice encounters to ease racial tension and ultimately perpetuate social justice is contemplated. Through storytelling, a participant voices her truth to the other participants, which may have a cathartic effect on the speaker, and an educational effect on the listener. Secondly, obstacles to effective cross-racial communication are considered, including the vulnerability of truth-telling, prejudice against certain linguistic styles, and manipulative manners of listening. Finally, practical techniques to remedy the obstacles identified in the second part are suggested. Though this paper is not intended to suggest that restorative justice is a panacea to racial conflict, the author argues that an appropriately facilitated cross-racial restorative justice encounter could do much to increase understanding between races and dismantle the prejudices of individual participants

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INTRODUCTION

When a crime is committed, victim, offender and the surrounding community are harmed. The restorative justice process aims to acknowledge and begin to rectify these harms. At the heart of the restorative justice process lies communication. Victim, offender, their respective communities of care, and other stakeholders sit together in a circle to recount their versions of the incident.¹ Restorative justice encounters rely on such storytelling to restore relationships² and address the harm suffered by all involved.³ Sitting as equals, telling and listening, has the effect of humanizing the other.⁴

The restorative justice process begins when an offender takes responsibility for the crime. Though the procedure used depends on the circumstances, the ideal encounter brings all the stakeholders together⁵ to share perspectives and determine the appropriate outcome.⁶ The group

¹ Terry O’Connell, “From Wagga Wagga to Minnesota” in *Conferencing: A New Response to Wrongdoing. Proceedings of the First North American Conference on Conferencing* (Bethlehem, PA: Real Justice, 1998) at 8. For example, the author describes the Wagga Wagga approach as follows: “have the offenders talk about what happened, what they were thinking and who was affected; followed by the victims and supporters; and finally, the offender’s family and supporters.” (*ibid.* at 8)

² Jennifer J. Llewellyn & Robert Howse, *Restorative Justice: A Conceptual Framework* (Ottawa: Law Commission of Canada, 1999) at 15 [Llewellyn & Howse].

³ See Paul McCold, “Primary Restorative Justice Practices” in A. Morris & G. Maxwell, eds., *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Oxford: Hart Publishing, 2001) 41 at 47.

⁴ Kay Pranis, “Restorative Justice, Social Justice and the Empowerment of Marginalized Populations” in G. Bazemore & M. Schiff, eds., *Restorative Community Justice: Repairing Harm and Transforming Communities* (Cincinnati, OH: Anderson Publishing, 2001) 287 at 297 [Pranis].

⁵ Participation is never compelled; if a victim does not wish to participate in the process, then alternative methods of redressing the harm are pursued. This idea of voluntariness is implicit to restorative justice. For more detail, see Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice*, (Cincinnati: Anderson Publishing Co., 2002) at 74-75 [Van Ness & Heetderks].

⁶ Each outcome is unique to the situation. This may include several components, such as: monetary reparation for the victim; community service; and counselling sessions for the offender. Since offenders participate in the creation of the contract, they are actively engaged in constructing the path to their own rehabilitation. For more information on outcomes, see Van Ness & Heetderks, *supra* note 5 at 79 – 97.

develops what is sometimes called an “accountability agreement”: a contract that sets out the actions the offender agrees to take to repair the harm. John Braithwaite points out that this process focuses on redressing the offence rather than blaming or ostracizing the offender.⁷

Given the importance of sharing one’s perspective in the restorative justice process, the participants’ ability to communicate with others in the circle has a significant effect on the outcome. Therefore, differences in communication style can determine the success or failure of a restorative justice encounter. How people speak and listen is influenced, in part, by social identity,⁸ which is informed by membership in a particular social group.⁹ Since members of a given social group communicate more or better with one another than with members outside their group, inquiries into the effects of social group identity on communication in restorative justice processes is a particularly important area of study.

This paper will consider the restorative justice process when the participants involved belong to different races.¹⁰ The information that is selected to be shared in a restorative justice encounter, how it is related, and how the story is subsequently heard and interpreted by the listener can vary significantly depending on the participant’s race. A cross-racial restorative justice encounter presents both risk and opportunity; an encounter can either go awry because of an inability to communicate across racial barriers, or it can present an opportunity to weaken barriers through effective communication.

Bringing together individuals from different races in a restorative justice process can be a difficult task. One reason for this difficulty is that race has historically been used to distinguish dominant from mar-

⁷ John Braithwaite, “Restorative Justice and Social Justice,” (2000) 63 Sask. L. Rev. 185 at 185 [Braithwaite, “Restorative Justice”].

⁸ Many forces shape identity, including cultural conditioning, socialization, socio-economic class, attitudes, beliefs, education, and personal experience. The fewer of these factors the participants have in common, the more difficult it will be to communicate effectively and empathize with one another.

⁹ Iris Young defines a social group as “a collective of persons differentiated from at least one other group by cultural forms, practices or way of life. Members of a group have a specific affinity with one another because of their similar experience or way of life, which prompts them to associate with one another more than those not identified with the group, or in a different way.” Iris Young, *Justice and the politics of difference* (Princeton, NJ: Princeton University Press, 1990) at 43 [Young].

¹⁰ Race is often used as a determiner of social groups.

ginalized groups. Individuals born into the dominant race are accustomed to having a stronger voice in society, while those from marginalized groups have customarily been compelled to listen to and follow the will of the more powerful. Secondly, people of different races are often isolated from one another in daily life. They live in different neighbourhoods; they shop in different stores; they go to different schools.¹¹ Even where individuals from different races occupy the same physical space, there is a tendency to remain separate.¹² This separation is both a symptom and continuing source of racial tension.

The first section of this paper elaborates on the potential of restorative justice encounters to address racial tension on an individual level. Through storytelling, restorative justice potentially has an effect that extends beyond merely responding to crime. Storytelling can create unity and identification amongst members of a disparate group. When a minority speaker and a dominant listener are open to defining the truth collectively, social distance is reduced and the divide that separates the races is weakened. In this way, storytelling in a restorative justice en-

¹¹ Despite legal reform, segregation continues in many aspects of life. See, for example, Edward S. Shihadeh & Nichole Flynn, "Segregation and Crime: The Effect of Black Social Isolation on the Rates of Black Urban Violence" (1996) 74 *Social Forces* 1325 at 1327 for statistics on continuing residential segregation in American cities in the 1990s. With respect to education, see also Sue Ellen Henry & Abe Feuerstein, "'Now We Go To Their School': Desegregation and Its Contemporary Legacy" (1999) 68 *The Journal of Negro Education* 164 at 164 for information on continuing segregation in schools. The authors referred to three studies conducted in the late 1990's that revealed a phenomenon dubbed "resegregation", that is, the percentage of black students in majority white schools was dropping [Henry & Feuerstein].

¹² Henry & Feuerstein, *supra* note 11. Henry and Feuerstein's study revealed that formal integration does not necessarily produce racially integrated school communities. Using qualitative methods to explore the reality of one school whose student body population was roughly equally apportioned in terms of race, the authors noted that the student body remained segregated even though attending the same school. At this school, black students were almost three times as likely to receive disciplinary referrals (*ibid.* at 173). Access to advanced academic programs was also disproportionate (*ibid.* at 174), meaning that students of the same race tended to be placed in the same classrooms and "not mix" with other races. Segregation was also apparent in school activities, where student government and band were predominately white (*ibid.* at 175) and the "teen club" and step dance troupe were predominately black (and female) (*ibid.* at 176).

counter has the potential to perpetuate social justice by easing racial tension.

Though this is a beguiling promise with respect to race relations, there is also tremendous potential for miscommunication and further harm in situations of cross-racial dialogue. Obstacles to effective cross-racial communication form the focus of the second section of this paper. The vulnerability involved in truth-telling, especially for minority speakers, will be explored. Listening well also poses challenges; people tend to hear what they want to hear.

The last portion of this paper considers ways that the restorative justice process itself can be structured to deal with some of the identified pitfalls associated with cross-racial communication.

Before the discussion can proceed, it is first necessary to understand the restorative justice scenario on which the arguments in this paper are based, as well as the effect of racial isolation and racism in the restorative justice process.

1. Imagining a restorative justice circle

Through the use of an example, this paper will consider the consequences when the conventional dynamic (dominant speaker, minority listener) is turned on its head: a unique opportunity is created when a marginalized person is invited to speak and a person from the dominant class is compelled to listen. To best illustrate both the potential and risk involved in authentic cross-racial communication, I have imagined the marginalized person as offender and the dominant-class participant as victim. For the purposes of this paper, a restorative justice encounter involving specifically a White victim and a Black juvenile offender will be examined.¹³

In such a situation, the White victim is in a position of power over the young offender. The victim has the moral high ground while the offender is set up to feel grateful that this alternative process has been

¹³ This hypothetical is not intended to capture the infinite iterations of social group dynamics that result when stakeholders of differing races are brought together in the restorative justice process. The dynamic created when a Chinese-Canadian communicates with an Anglo-Canadian will be different from the dynamic between an African-Canadian and a South Indian-Canadian. Unfortunately, such an exploration is beyond the scope of this paper.

made possible by the victim's willingness to participate. The power dynamic in this encounter is off balance from the very beginning, even before one takes into account the long history of racism and oppression that has shaped the relationship between this victim and offender.

The participants in this restorative justice process will likely approach the face-to-face encounter with a combination of animosity, suspicion, anxiety and fear. The victim will quite possibly be angry because she has been the subject of a crime. When the victim learns that the offender is a Black juvenile, it is likely that the victim and her community of care will tie their emotions about the crime into pre-existing sentiments against minorities.¹⁴

Similarly, it is likely that the Black offender and the offender's community of care will approach the encounter with their own anger and trepidation, given their awareness of the role that racial prejudice has played in limiting socio-economic opportunities, increasing frustration and causing the crime itself. Racial tension may significantly limit communication and conflict resolution depending on the minority party's previous experiences with individual or institutional racism. Mark Umbreit and Robert Coates argue that these feelings may be manifested by a tendency to be guarded, closed, passive or aggressive.¹⁵

In considering these effects, it is necessary to factor in the larger societal context contributing to this polarization. According to Sherene Razack,

we need to direct our efforts to the conditions of communication and knowledge production that prevail, calculating not only who can speak and how they are likely to be heard but also how we know what we know and the interest we protect through our knowing.¹⁶

¹⁴ Franklin D. Gilliam and Shanto Iyengar, "Prime Suspects: The Influence of Local Television News on the Viewing Public" (2000) 44 *Amer. J. of Poli. Sci.* 560 at 569. [Gilliam & Iyengar] Since Gilliam and Iyengar found that racist sentiments increased when television viewers watched news stories about violent minority crime, it is plausible that these same reactions will occur, perhaps more intensely, when an individual is the subject of a violent minority crime or the loved one of such a victim.

¹⁵ Mark S. Umbreit & Robert B. Coates, "Multicultural Implications of Restorative Justice" (1999) 63 *Fed. Probation* 44 at 47 [Umbreit & Coates].

¹⁶ Sherene H. Razack, *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (Toronto, ON: University of Toronto Press, 1998) at 10 [Razack].

2. The New Racism and Restorative Justice

A restorative justice encounter may be the first, and only, opportunity for a participant to listen to and craft solutions with individuals from another race. Since opportunities for meaningful cross-racial interaction in daily life are rare for most people, it is likely that many participants in a restorative justice encounter will come to the table with prejudicial, or even racist, attitudes.¹⁷ The first-hand experience of a restorative justice encounter could fill in knowledge gaps and help to dismantle the racist attitudes of a particular participant. At the same time, such attitudes, if unacknowledged and unaddressed, could frustrate an encounter.¹⁸ It is then necessary to have some understanding of modern racism.

In the last century racism in North America has changed. In general, people no longer ascribe to “old-fashioned” racism that “proves” the genetic inferiority or cultural deprivation of certain races.¹⁹ David Sears has argued that “[o]ld fashioned racism no longer captures the essence of American racial attitudes.” Instead, the “new racism” is symbolic, subtle, covert, hidden or underground.²⁰ Kinder and Sanders identify four central elements of this new racism against Blacks:

Firstly, a denial that discrimination against African-Americans continues; secondly, a sense that Blacks have violated traditional American values of hard-work and self-reliance; thirdly, a perception

¹⁷ The norm of isolation increases the risk of miscommunication between individuals of differing races. When an individual has heard much about another race, but never interacted with or spoken frankly with a person of that race, the individual is left to make sense of the information they have heard in the absence of complete information. Forming an opinion without sufficient knowledge is the very definition of prejudice.

¹⁸ As far back as 1954, Gordon Allport captured the nature of this effect in a metaphor: Realistic conflict is like a note on an organ. It sets all prejudices that are attuned to it into simultaneous vibration. The listener can scarcely distinguish the pure note from the surrounding jangle. In Lawrence D. Bobo, “Group Conflict, Prejudice, and the Paradox of Contemporary Racial Attitudes” in P.A. Katz & D.A. Taylor, eds., *Eliminating Racism: Profiles in Controversy* (New York: Plenum Press, 1988) 85 at 86 [Katz & Taylor].

¹⁹ See Gilliam and Iyengar, *supra* note 14 at 565, referring to the work of McConahay 1986; Pettigrew and Meertens 1995; Sidanius, Pratto and Bobo 1996.

²⁰ David O. Sears, “Symbolic Racism” in Katz & Taylor, *supra* note 18, 53.

that Blacks make illegitimate demands; and lastly, the belief that Blacks receive undeserved benefits from the government.²¹

The denial that discrimination continues may partly be a function of our modern rights-based sensibility. In setting out to discover what stories or explanations people told themselves in order to believe that racism did not exist in Canada, Razack found “rights thinking” was a significant contributor. Razack describes rights thinking as:

[B]ased on the liberal notion that we are all individuals who contract with one another to live in a society where each of us would have the maximum personal freedom. Starting from this premise, there are no marginalized communities of people and no historical relations of power.²²

Razack maintains that relations between dominant and subordinate groups are marked by histories of oppression that cannot be ignored.²³

The fact that racism has “gone underground” means that it is much more difficult to detect. It dwells in the everyday habits and cultural meanings of which people are mostly unaware, such as gestures, speech, tone of voice and movement.²⁴ Often, these unconscious cultural reactions are perpetrated by “liberal-minded people who intend to treat everyone with equal respect.”²⁵ Such liberal-minded people are committed to rights thinking and strive to ignore any differences in the people they encounter.

But no matter how much it is wished otherwise, differences between groups *do* matter in our society. Consequently difference affects our behaviour toward one another.

White people tend to be nervous around Black people...In social interaction the social superior group often avoids being close to the lower-status group, avoids eye contact, does not keep the body open.²⁶

²¹ In Gilliam and Iyngar, *supra* note 14 at 566.

²² Razack, *supra* note 16 at 16-17.

²³ Razack, *supra* note 16 at 8.

²⁴ Young, *supra* note 9 at 123-124.

²⁵ Young, *supra* note 9 at 11.

²⁶ Young, *supra* note 9 at 133.

These symptoms are experienced by minorities as the new racism. “For them [members of oppressed groups] such behaviour, indeed the whole encounter, often painfully fills their discursive consciousness.”²⁷

The new racism underlies cross-racial restorative justice encounters. The presence of racism in the encounter could lead to one of two outcomes: either the racism will destroy the encounter, or the encounter will weaken the racism. Which outcome prevails will depend on those responsible for preparing the participants and facilitating the encounter. The next section will consider the potential for the encounter to weaken the racism.

I. EASING RACIAL TENSION THROUGH STORYTELLING IN RESTORATIVE JUSTICE ENCOUNTERS

By providing a space for frank dialogue, a restorative justice encounter could begin to defuse racial tension and dismantle the prejudices of the participants. In this way, a restorative justice encounter could accomplish more than its stated goal; an encounter’s effects could go beyond the crime itself to address the social context in which the crime occurred. Llewellyn and Howse have argued that restorative justice does not aim to “restore” in the sense of putting things back exactly as they were before the crime occurred. Rather, “[r]estorative justice seeks to restore the relationships between the parties involved to an ideal state of social equality.”²⁸

The reader may object that cross-racial restorative justice encounters will be usurped by discussions of race, so that the crime itself is forgotten or obscured. However, let me clearly state that the potential of a restorative justice encounter to ease racial tension may be an unanticipated consequence of an otherwise standard encounter. The simple existence of a respectful setting and a structured process where each person is invited to speak provides an opportunity for greater understanding between races.

²⁷ Young, *supra* note 9 at 133-134.

²⁸ Llewellyn & Howse, *supra* note 2 at 26.

1. Restorative Justice and Social Justice

Easing racial tension and eliminating racism are central goals of social justice. Social justice has been defined many times; for now, let us rely on the definition put forward by Iris Young: “[s]ocial justice concerns the degree to which society contains and supports the institutional conditions necessary for the realization of [the] values [necessary to lead a good life].”²⁹ Such values include the freedom to pursue self-realization and to determine one’s own actions. Since racism has historically limited the ability of Black people to choose their own path, the alleviation of racism is inherent to social justice.

Based on Young’s definition, restorative justice has much in common with social justice. By placing stakeholders in a circle and asking each to speak, restorative justice ensures that each participant has an equally important voice in the encounter and is empowered to assist in crafting a resolution.³⁰ Restorative justice honours those values that are central to social justice, such as inclusiveness, equality, community responsibility, and fair treatment.³¹ John Braithwaite identified non-domination as a core value of restorative justice.³² Like social justice, “restorative justice affirms the worth of every individual and insists that no human being is a ‘throw-away’.”³³ The effect of listening to the powerless has the potential to reorder society:

[t]he use of a consensus process that can bring together some of the most disempowered citizens and neighbourhoods in encounters with the most powerful players of the criminal justice system is slowly creating a redistribution of power at a grassroots level.³⁴

²⁹ Young, *supra* note 9 at 37. Young continues, “[t]hese are universalist values, in the sense that they assume the equal moral worth of all persons, and thus justice requires their promotion for everyone.”

³⁰ Albert Eglash, “Beyond Restitution: Creative Restitution” in J. Hudson & B. Galaway, eds., *Restitution in Criminal Justice* (Lexington, MA: D.C. Heath, 1977) 92.

³¹ Pranis, *supra* note 4 at 289.

³² “[A]ll voices in the circle are heard and that none are silenced by domination.” J. Braithwaite, “Restorative Justice”, *supra* note 7 at 186.

³³ Pranis, *supra* note 4 at 288.

³⁴ Pranis, *supra* note 4 at 293.

While the primary task of a restorative justice process is to redress the harm created by a single crime, the process can simultaneously serve as a mechanism by which participants engage on a personal level with social problems that plague greater society:

It is very clear to practitioners that restorative justice efforts alone cannot resolve social inequities, but that many community-based initiatives have the potential to shift power to allow for more inclusive decision-making and more meaningful and just relationships. Over time the cumulative effect of those shifts at the micro level can make a significant contribution to social justice.³⁵

Another effect of inviting individuals into a circle to discuss an incident with people from a social group with whom they would not normally have contact is that social distance will likely be decreased. Kay Pranis defines social distance as “the degree to which people do not identify with other community members or do not feel connected by common interest or a sense of fate.”³⁶ When people are alienated from one another there is a lack of empathy and a failure to recognize the other as human. Alienation makes crime easier to commit³⁷ and the call for punitive measures more strident.³⁸

These dehumanising tendencies break down when such individuals are asked to actually communicate:

The processes of restorative justice, particularly face-to-face processes, involve the telling of personal stories in an intimate setting. Stereotypes and broad generalizations about groups of people are difficult to sustain in the face of direct contact with an individual in a respectful setting.³⁹

³⁵ Pranis, *supra* note 4 at 288.

³⁶ Pranis, *supra* note 4 at 296.

³⁷ John Braithwaite, *Crime, Shame and Reintegration* (New York: Cambridge University Press, 1989).

³⁸ Gilliam & Iyengar, *supra* note 14.

³⁹ Pranis, *supra* note 4 at 297.

2. The Value of Telling

*Healing takes place within us as we speak the truth of our lives.*⁴⁰

~ bell hooks

The psychological value in telling one's story has been acknowledged in the restorative justice literature; however, in discussing this issue, writers have tended to focus on the victim:

"Victims should have the opportunity to describe the crime in their own words, and to tell the offender the effects it had";⁴¹

"[Victims] need a safe place to express a cataclysm of emotions without judgment or blame";⁴²

"Victims need to tell their story over and over again. The repetitive process is a way of putting the pieces together and cognitively organizing the event so that it can be integrated into the survivor's life."⁴³

Despite the focus in the literature on the victim, the psychological power of storytelling is as important to the offender in her journey of transformation. Relaying what happened is both a means of catharsis⁴⁴ and a way to understand why the crime occurred:

The longing to tell one's story and the process of telling is symbolically a gesture of longing to recover the past in such a way that one experiences both a sense of reunion and a sense of release.⁴⁵

⁴⁰ b. hooks, *Sisters of the Yam: black women and self recovery* (Boston, MA: South End Press, 1993) at 19 [hooks, *Sisters*].

⁴¹ Martin Wright, "Victim/Offender Conferencing: The Need for Safeguards," in L. Walgrave, ed., *Restorative Justice for Juveniles: Potentialities, Risks and Problems for Research* (Leuven: Leuven University Press, 1997) 75 at 79.

⁴² Mary Achilles & Howard Zehr, "Restorative Justice for Crime Victims: The Promise and the Challenge" in Bazemore & Schiff, *supra* note 4 at 89.

⁴³ *Ibid.*, Marlene Young as quoted at 90.

⁴⁴ Sujata Moorti, "Cathartic Confessions or Emancipatory Texts? Rape Narratives on the Oprah Winfrey Show" (1998) 57 *Social Text* 83 at 89.

⁴⁵ b. hooks, *Talking Back: thinking feminist, thinking black* (Toronto, ON: Between

Hopefully the process of telling will increase the offender's ability to function well in the world. As bell hooks writes, "Our mental well-being is dependant on our capacity to face reality."⁴⁶

Offenders and their communities of care should be encouraged to tell their side of the story. They are the keepers of the context in which the crime occurred; they can help the group start to understand *why* the crime occurred.⁴⁷ The "whys" for a minority offender might include the family situation or peer group, as well as the larger social context, which could include problems in the educational system, lack of opportunity for meaningful employment or extracurricular activities, and the long-term effects of continuing social inequity. Howard Zher notes that the traditional concept of guilt ignores social context. He notes:

Much evidence suggests that offenders often do not act freely or at least do not perceive themselves as capable of free action...Instead they see themselves as shaped by almost irresistible forces – whether social-economic or providential.⁴⁸

This means that the offender's story must go as deeply as possible into the *why* behind a crime. Razack suggests that:

Without history and social context, each encounter between unequal groups becomes a fresh one, where the participants start from zero, as one human being to another, each innocent of the subordination of others.⁴⁹

Therefore, in order to prevent continued power imbalances, discussion of social context must be built into the restorative justice process. Pranis agrees that blaming the offender for the harm caused to the individual

the Lines, 1988) at 158 [hooks, *Talking Back*].

⁴⁶ hooks, *Sisters*, *supra* note 40 at 25.

⁴⁷ See Barry Stuart, "Guiding Principles of Peace Making Circles" in Bazemore & Schiff, *supra* note 4, 219 at 220-223 [Stuart]. This idea is implicit in this article. The author relates a specific instance where it was decided to use a circle process to deal with a violent offence because the community felt it would give them the opportunity to address the underlying causes of the crime, including attitudes toward domestic violence and substance abuse.

⁴⁸ Howard Zher, *Changing Lenses: A New Focus for Crime and Justice* (Waterloo: Herald Press, 1990) at 70.

⁴⁹ Razack, *supra* note 16 at 8.

victim runs the risk of reinforcing an unjust social order unless the social inequities experienced by the offender, such as racism and poverty, are also acknowledged.⁵⁰

Additionally, telling their story is a means of therapy for marginalized social groups:

By becoming acquainted with the facts of their own historic oppression – with the violence, murder, deceit, co-optation, and connivance that have caused their desperate estate – members of outgroups gain healing.⁵¹

3. The Value of Hearing

To arrive at an agreeable resolution in any restorative justice encounter, the participants must make an effort to listen to the perspectives of the other participants. However, from a social justice perspective, hearing the story of a minority stakeholder has the added potential of easing racial tension and increasing the common ground between races.

In the telling of a story, there is no one correct version of a single event. Although certain facts did objectively occur, what those objective facts meant to each of the parties involved is as important as the facts themselves. Arguably, this is the point at which the restorative justice process makes a unique contribution: once the parties have heard the alternate versions of the same events, they are no longer married as fully to their own versions. The encounter makes clear that there is more than one way to tell the same story.

When diverse perspectives are shared and considered, speaker and listener develop a bond, which political philosopher Hannah Arendt referred to as a “common sense.”⁵² Considering the standpoint of another frees the listener of idiosyncratic beliefs and creates what Arendt called

⁵⁰ Pranis, *supra* note 4 at 287.

⁵¹ Richard Delgado, “Storytelling for Oppositionists and Others: A Plea for Narrative” (1989 87 Mich. L. Rev. 2411 at 2437 [Delgado, “Storytelling”]).

⁵² “Common sense...discloses to us the nature of the world insofar as it is a common world.” Hannah Arendt, “The Crisis in Culture: Its social and its political significance” in *Between Past and Future: Eight Exercises in Political Thought* (New York: Viking Press, 1968) 197 at 221.

an “enlarged mentality.”⁵³ This mentality enables an individual to form a “general standpoint” that is the sum of all the perspectives shared;⁵⁴ it is the closest one can come to “truth” on matters that have no objective correct answer.

The multiplicity of perspectives will also increase as the deeper social context is explored. Richard Delgado points out that social and moral realities are possibly even more indeterminate than the interpretation of single objects or events.

We all create stories that “pick and choose from among the available facts to present a picture of what happened: an account that justifies the world as it is.”⁵⁵ Delgado suggests that we select facts to reinforce our social reality: “[w]e decide what is and almost simultaneously, what ought to be.”⁵⁶ This tendency causes us to see patterns in the world around us. We begin to believe that there is a certain inevitability to what occurs. This tendency also closes our eyes to alternate interpretations of a given set of facts. “Alternate visions of reality are not explored, or, if they are, rejected as extreme or implausible.”⁵⁷

However if the participants are open to the perspectives to which they are exposed in a restorative justice encounter, then their assumptions may be challenged. In hearing another’s story, the hearer

moves back and forth between two worlds, the storyteller’s, which the reader [hearer] occupies vicariously to the extent the story is well-told and rings true, and his or her own, which he or she returns to and reevaluates in light of the story’s message. Can my world still stand? What parts of it remain valid? What parts of the story seem true? How can I reconcile the two worlds, and will the resulting world be a better one than the one with which I began?⁵⁸

In this way, no one who enters the restorative justice process with an open mind will leave with the same version of the story with which they began. Part of the value of the restorative justice process is that no one

⁵³ Jennifer Nedelsky, “Communities of Judgment and Human Rights” (2000) 1 *Theoretical Inquiries in Law* 1 at 6.

⁵⁴ *Ibid.* at 14.

⁵⁵ Delgado, “Storytelling”, *supra* note 51 at 2421.

⁵⁶ Delgado, “Storytelling”, *supra* note 51 at 2416.

⁵⁷ Delgado, “Storytelling”, *supra* note 51 at 2417.

⁵⁸ Delgado, “Storytelling”, *supra* note 51 at 2435.

wins; rather, a new collective story will be created for all of the parties – a single story that incorporates elements from all involved. This shared story will create a common bond amongst the participants. This then, is a path to building community where none previously existed; this is how storytelling can act as a means toward social justice.

4. Storytelling & Social Justice

In discussing the linkages between restorative justice, storytelling and social justice, Kay Pranis writes: “[p]ersonal narratives are a powerful way to reduce social distance, to recast the ‘other’ as one of ‘us’ and, in so doing, see our fates intertwined.”⁵⁹

Sherene Razack argues that storytelling can be a powerful teaching tool leading to social change. It provides an opportunity to relate an experience of the world that is not admitted into dominant knowledge paradigms.⁶⁰ Richard Delgado agrees that oppressed groups have instinctively known that stories are an essential tool to their own survival and liberation.⁶¹ He explains that the storyteller gains psychologically from telling her truth while the listener gains morally and epistemologically.⁶²

Telling stories from the margin has the potential to diversify the perspective of the listener. Delgado argues that these stories “reveal things about the world that we *ought* to know,” and that:

Members of the majority race should listen to stories, of all sorts, in order to enrich their own reality [...] [r]acial and class-based isolation prevents the hearing of diverse stories and counterstories.⁶³

The assumption that we all encounter the same social reality because we share the common characteristic of being human cannot hold up when authentic stories from the margin are told. Stories, parables, chronicles

⁵⁹ Pranis, *supra* note 4 at 298.

⁶⁰ Razack, *supra* note 16 at 36.

⁶¹ Delgado, “Storytelling”, *supra* note 51 at 2436. See also J. Amoah, “Narrative: The Road to Black Feminist Theory” (1997) 12 Berkeley Women’s L.J. 84 at 84.

⁶² Delgado, “Storytelling”, *supra* note 51 at 2437.

⁶³ Delgado, “Storytelling”, *supra* note 51 at 2439.

and narratives are powerful means for destroying this mindset.⁶⁴ Counter-stories “can open new windows into reality, showing us that there are possibilities for life other than the ones we live”.⁶⁵

II. OBSTACLES TO STORYTELLING ACROSS COLOUR LINES

Baring one’s soul in a restorative justice encounter is a risky proposition. Even though the speaker is accompanied by supports such as family members and friends, the speaker must also communicate with a potentially antagonistic “other” – a party that has harmed or has been harmed by the speaker.

The real value of restorative justice can only be had when authentic expression is possible. However, the barriers to such expression are formidable. This section will explore obstacles to both telling and hearing in the restorative justice process.

1. The Vulnerability of Telling

*So the central and painful questions for me in this encounter become questions of speech: En que voz, with which voice, anclada en que lugar, anchored in which place, para que y por que, why and to what purpose, do I trust myself to you?*⁶⁶

~ Maria Lugones

Lugones’ comment captures the dilemma that must be confronted when parties from differing races come together in a restorative justice process. In what manner can a party speak to those with whom it is perceived there is no mutual understanding of reality? And why should there be any presumption of trust, especially given a long history of racial inequality? Although it can be difficult to speak of “[s]tories about oppression, about victimization, about one’s own brutalisation – far from

⁶⁴ Delgado, “Storytelling”, *supra* note 51 at 2413.

⁶⁵ Delgado, “Storytelling”, *supra* note 51 at 2414.

⁶⁶ Maria Lugones, “Hablando cara a cara/Speaking Face to Face: An Exploration of Ethnocentric Racism” in G. Anzaldúa, ed., *Making Face, Making Soul* (San Francisco, CA: Aunt Lute Foundation Books, 1990) at 50 [Lugones]. [emphasis in original]

deepening the despair of the oppressed, lead to healing, liberation, mental health.”⁶⁷

There has been a tendency to avoid such painful truth-telling. bell hooks argues that there is a reticence to tell the truth to oneself and to the people of one’s own community. This resistance multiplies exponentially when faced with telling the painful truth to listeners who are implicated by the story and in relative positions of power.

This is truly, on a deep level, a real race and class issue ‘cause so many Black folks have been raised to believe that there is just so much that you should not talk about, not in private and not in public. So many poor and working-class people of all races have had the same stuff pushed down deep in them. One of the jokes we used to have about the ‘got everything’ White people is how they tell all their business, just put their stuff right out there.⁶⁸

hooks situates the resistance to truth-telling against an historical backdrop:

Continued racial oppression, especially when it took the form of lynching and outright murder of Black people, made it clear to all Black folks that one had to be careful about speaking the truth to Whites.⁶⁹

Though lynching is no longer a daily occurrence, reticence to confront Whites with the truth survives. How much more difficult it is then to speak the truth in a restorative justice process—an open forum, in a context where the speaker must admit culpability to the White victim.

hooks insists that the truth must be told for the benefit of the individual and society. Lying about the lived experience of discrimination is self-destructive for the individual,⁷⁰ while speaking the truth publicly can be empowering.⁷¹

⁶⁷ Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (New York: Basic Books, 1987) at 215-21.

⁶⁸ hooks, *Talking Back*, *supra* note 45 at 2.

⁶⁹ hooks, *Sisters*, *supra* note 40 at 21.

⁷⁰ “Dissimulation makes us dysfunctional. Since it encourages us to deny what we genuinely feel and experience, we lose our capacity to know who we really are and what we need and desire.” hooks, *Sisters*, *supra* note 40 at 24.

⁷¹ “It has been a political struggle for me to hold onto the belief that there is

The risks of speaking frankly are great in the restorative justice context. An unwelcome story or a story “wrongly” conveyed runs the risk of rejection, derision or reprimand. Victims may not want to hear an offender’s tale of woe. What content can constructively be shared? Razack comments: “[t]here are penalties for choosing the wrong voice at the wrong time, for telling an inappropriate tale. Far better, one might conclude [...] to keep silent.”⁷² hooks counters: “[a]nd yet there is no healing in silence. Collective Black healing can take place only when we face reality.”⁷³

Silence, or merely saying what the other parties want to hear, will undermine the transformative potential of the restorative justice process. Although opening up and telling one’s story to individuals who one’s race has historically avoided is an intimidating proposition, such a risk must be taken to make healing possible. Again, the wisdom of bell hooks elaborates the point:

[O]penness is about how to be well and telling the truth is about how to put the broken bits and pieces of the heart back together again. It is about being whole—being wholehearted.⁷⁴

The challenge for restorative justice models then, is to create a safe space where such truths can be told without fear of retribution. “Restorative justice has the potential to lift some of the silencing of the voices of dominated groups.”⁷⁵

2. The Need to Speak Authentically

It ain’t no White people really care about us, cause if they did they wouldn’t try to make you turn you into a White person, they’d take

much which we – Black people – must speak about, much that is private that must be openly shared, if we are to heal our wounds (hurts caused by domination and exploitation and oppression), if we are to recover and realize ourselves.” hooks, *Talking Back*, *supra* note 45 at 3.

⁷² Razack, *supra* note 16 at 53.

⁷³ hooks, *Sisters*, *supra* note 40 at 25.

⁷⁴ hooks, *Talking Back*, *supra* note 45 at 2.

⁷⁵ Braithwaite, “Restorative Justice”, *supra* note 7 at 193.

you like you is [...]. Talkin' proper don't feel natural to me, but that don't make me stupid.⁷⁶

In daily life, minority speakers are often forced to decide whether the style of speech with which they were raised should be modified in order to render it comprehensible to listeners from other races or cultures. bell hooks writes of “the struggle we have even to make our words a language that can be shared, understood.”⁷⁷

Speaking non-standard English is a common characteristic of individuals who belong to minority groups.⁷⁸ Given that this paper relies on the example of a Black offender speaking to a White victim, only African American English (AAE) will be considered. Whether it is labelled an accent, dialect or its very own language, its existence has a significant impact on how a story is told and heard.

There are three major reasons to justify the use of African American English in a restorative justice process. First, especially for juvenile offenders, AAE may be the only available means of self-expression. Linguistic research has shown that Black adults have linguistic dexterity – they can shift from AAE to standard English depending on context. However, “children tend not to develop style-shifting until they find some personal value in standard English.”⁷⁹

Therefore, those involved in the restorative justice process who speak standard English exclusively will need to accept AAE speakers. Arrigo and Schehr have argued that restorative justice processes that rely on a script or linguistic formality seriously hamper the ability of the speaker of AAE to communicate.⁸⁰ The feeling of discomfort created by the expectation to speak formally stunts authentic expression:

[T]he [victim-offender mediation] method endeavours to superimpose its coordinates of intersubjective meaning onto the

⁷⁶ African-American woman interviewee in John Baugh, *Out of the Mouths of Slaves* (Austin, Texas: University of Texas Press, 1999) at 5. [Baugh]

⁷⁷ hooks, *Talking Back*, *supra* note 45 at 3.

⁷⁸ Derald Wing Sue & David Sue, *Counseling the Culturally Different*, 2nd ed. (New York: John Wiley & Sons, 1990) at 32 [Sue & Sue].

⁷⁹ Baugh, *supra* note 77 at 69.

⁸⁰ Bruce A. Arrigo and Robert C. Schehr, “Restoring Justice for Juveniles: A critical analysis of victim offender mediation” (1998) 15:4 *Justice Q.* 629 at 655. [Arrigo & Schehr]

juvenile. The result is the psychic disequilibrium expressed in the form of symptoms (such as silence, hypervigilance, inattention, incoherence or inattentiveness).⁸¹

Secondly, AAE should be recognized as an expression of cultural pride originally created during slavery as a way to confound White domination. Marcyliena Morgan states that, “[a]s with many marginalized peoples, African American language ideology exists within and often in opposition to dominant ideology.”⁸² Therefore, speakers of standard English who encounter speakers of AAE in the restorative justice process should treat such linguistic expression with respect. Baugh argues that AAE speakers value their linguistic style as an expression of identity.⁸³ This is especially true for juveniles. As Morgan maintains, “[t]he teenager who confronts and confounds the world with language games and verbal usage that celebrates the dialect is recognizing its power.”⁸⁴

Maria Lugones makes a similar point in explaining her use of both English and Spanish in her writing:

And if you do not understand my many tongues, you begin to understand why I speak them. It is truly not just to be understood by you. I speak them because I want to point to the possibility of becoming playful in the use of different voices [...] The more fully this playfulness is appreciated, the less broken I am to you, the more dimensional I am to you. But I want to exercise my multidimensionality even if you do not appreciate it. To do otherwise would be to engage in self-mutilation, to come to be just the person that you see. To play this way is then an act of resistance as well as an act of self-affirmation.⁸⁵

⁸¹ *Ibid.* at 650.

⁸² Marcyliena Morgan, *Language, Discourse and Power in African American Culture* (UK: Cambridge University Press, 2002) at 38. [Morgan]

⁸³ “Their personal and cultural identities are closely linked to the language of their friends, family, and forebears. And AAVE [African American Vernacular English] symbolizes racial solidarity. As long as the adoption of standard English is perceived to be an abandonment of Black culture, an African American vernacular will continue to survive, and it will do so despite perceptions that Black speech is ignorant.” Baugh, *supra* note 77 at 5.

⁸⁴ Morgan, *supra* note 83 at 7.

⁸⁵ Lugones, *supra* note 67 at 46.

Finally, the third reason that AAE should be encouraged in the restorative justice process is that a true story must be told in one's own voice. Even if the parties involved are fluent in both standard and non-standard English, they should not be expected to use standard English. This point refers to the discussion of storytelling and psychological healing above. If restorative justice is really committed to creating a space in which a person can tell his or her truest story, then expecting this story to be articulated in standard English – a tongue both unfamiliar and symbolic of oppression – dilutes this commitment considerably. As Arrigo and Schehr comment, “[h]ere the juvenile longs to speak through a grammar that uniquely embodies his or her way of knowing and experiencing crime and victimization.”⁸⁶

If only formal language is used by the facilitator and other stakeholders and the expectation is imposed on the minority youth to respond in like terms, then “the juvenile offender’s inexpressible ‘truth’ remains concealed during the reconciliation session.”⁸⁷

The value of genuinely-felt expression should not be minimized; as Stuart explains:

A stumbling, inarticulate personal attempt to reach out secures a deeper, stronger connection to others than does an eloquent representation made on someone else’s behalf. Personal stories can be very powerful in shaping personal and public decisions and in building relationships. These stories are the primary currency of trading information, ideas, and feelings within circles.⁸⁸

If AAE is to be accepted as a legitimate medium of expression in the restorative justice process, then the prevalence of dismissive attitudes must be confronted. Given the much-publicized failure of the Oakland School Board’s proposed Ebonics program in California in the mid-1990s, it does not seem contentious to assert that AAE as a discourse in itself is derided by speakers of standard English.

“Many native speakers of standard English assume that non-standard speakers are ignorant, lazy, and less capable intellectually. The common stereotype is that non-standard speakers, including

⁸⁶ Arrigo & Schehr, *supra* note 81 at 650.

⁸⁷ Arrigo & Schehr, *supra* note 81 at 654.

⁸⁸ Stuart, *supra* note 47 at 229.

many Blacks, could speak ‘properly’ if only they put forth sufficient effort.”⁸⁹ However, careful study of AAE has shown that it is a coherent language system that in several instances is capable of meanings that have no equivalent expression in standard English.⁹⁰

Prejudice against non-standard English may intensify in an emotionally charged restorative justice encounter. If upset, participants from the dominant class may seize on language differences may give agency to discriminatory behaviour.⁹¹ Therefore efforts must be made by facilitators in the restorative justice process to dispel the notion that victim and offender are in an adversarial or hostile relationship. Further, pains must be taken to increase linguistic tolerance among parties involved. Measures to mitigate such tensions will be discussed more extensively in the final section.

Much of the tension that may be encountered when speakers of AAE and standard English try to communicate in a restorative justice encounter could be eased by abandoning the script. Many restorative justice programs around the world, such as Transformative Justice Australia⁹² extol the virtues of following a script verbatim. However, the potential for flexibility is quite limited by this practice. Arrigo and Schehr have argued that new possibilities emerge when the script is discarded for true expression:

[T]he language that is invoked is transformative; it is a significant departure from the orchestrated, staged, manipulated way in which victim-offender mediation dialogue traditionally unfolds. Because of the interplay between a much more open, more fluid, more dynamic process for discovering and creating meaning, and a total rearticulation of the victimization experience, the juvenile is increasingly liberated.⁹³

The juvenile is not the only one liberated. Authentic dialogue benefits everyone involved in a restorative justice process. Of course, not fol-

⁸⁹ Baugh, *supra* note 77 at 5.

⁹⁰ Baugh, *supra* note 77 at 6.

⁹¹ Baugh, *supra* note 77 at 71.

⁹² David Moore & John MacDonald, *Community Conferencing Kit* (Australia: Transformative Justice Australia, undated) at 19: “It is advisable to read the script verbatim for the first conferences you facilitate.”

⁹³ Arrigo & Schehr, *supra* note 81 at 660.

lowing a script increases the likelihood that an emotionally-charged encounter will go awry. This then increases the need for skilled facilitators, as is elaborated below.

A flexible process that is able to shift away from overly formal language can help achieve the ultimate goal expressed by Baugh:

Somehow the linguistic scope of the judicial system must be expanded so that our rich linguistic diversity will not be a liability for any American [...]. The ultimate goal would be to make our citizenry more linguistically sophisticated and tolerant. In the bargain, minorities would be more likely to obtain equal justice.⁹⁴

3. The Difficulty of Hearing

*Her story remains irreducibly foreign to Him. The Man can't hear
it the way she means it.*⁹⁵

~ Trinh T. Minh-ha, *Woman, Native, Other*⁹⁶

At best, speaking is an approximation of the emotional and intellectual processes that occur within us. It can be a struggle to say exactly what we mean. It is an even more onerous task to accurately hear what is conveyed by another. We have likely all had the experience of finally – after much internal deliberation and many false starts – enunciating our truest of truths only to then feel that it has been completely misunderstood and distorted by the hearer.

When the personal experiences and collective histories of speaker and listener differ, the potential for distortion of meaning increases significantly. “[T]he most difficult aspect of communication is figuring out what someone actually means, and why they said it the way they did.”⁹⁷ Further, when hearers are members of the dominant class, it is necessary to acknowledge and critically examine the common notions, beliefs and

⁹⁴ Baugh, *supra* note 77 at 76.

⁹⁵ Razack, *supra* note 16 at 36.

⁹⁶ T.T. Minh-ha, *Woman, Native, Other* (Bloomington, IN: Indiana University Press, 1989).

⁹⁷ Morgan, *supra* note 83 at 3.

stereotypes through which communications may be filtered and hence attributed meaning.

The first reality that must be acknowledged is that White people, as the dominant race, tend not to see themselves as racialized. Whiteness is a cultural category that includes a variety of sub-categories. It is historically grounded, but changes over time and space. Despite its dynamic elements, Frankenberg has argued that, in the U.S., Whiteness has consistently signified privilege.⁹⁸

The blindness associated with the White identity leads to a certain insensitivity when it comes to race issues. White people in general cannot understand why people of colour are talking about race all the time. White people don't see themselves as White.⁹⁹ To them, the "White" perspective is the "normal" perspective. As a result, to function in the world, Nikki Giovanni argues that listening is not as necessary for White people as it is for people of colour.¹⁰⁰

When these assumptions are challenged, the White hearer is likely to either harshly reject the assertion¹⁰¹ or experience a crisis of self.¹⁰² Therefore, assertions that challenge the assumptions of a person from the dominant group can spark a variety of responses, including impatience, defensiveness and irrational guilt.¹⁰³ Our aim then in the following discussion is to circumvent this possibility by increasing awareness about how words are commonly (mis)heard by Whites.

⁹⁸ Krista Ratcliffe, "Rhetorical Listening: A Trope for Interpretive Invention and a 'Code of Cross-Cultural Conduct'" (1999) 51 C.C.C. 195 at 212. [Ratcliffe]

⁹⁹ Ratcliffe relays the comment of a frustrated white male student: "I don't see what the big deal is. I don't wake up every morning, look in the mirror and say, 'Hey, I'm a white man.'" *Ibid.* at 211.

¹⁰⁰ *Ibid.* at 200.

¹⁰¹ As bell hooks experienced as a black woman in the feminist community. See "black and female: reflections on graduate school" in *Talking Back*, *supra* note 45 at 55-61.

¹⁰² Razack, *supra* note 16 at 172.

¹⁰³ Young, *supra* note 9 at 130-136.

4. How the Dominant Class Hears

Krista Ratcliffe argues that members of the dominant class inhabit a culture of speaking rather than of listening.¹⁰⁴ In this culture, the hearer listens for what she agrees with or can challenge – she aims to become a “master of discourse” rather than approaching listening as an exercise in attention and receptivity to the speaker. Content is manipulated to the advantage of the listener.

Self interest is arguably a value that permeates Western society. Ratcliffe asserts that self-interest often distorts our hearing; we hear what we want to hear. She suggests that this is accomplished in three ways.¹⁰⁵ Firstly, agreement – everything that is heard affirms the hearer’s own view of reality. All communications are filtered to conform to and never challenge the hearer’s worldview. Secondly, appropriation – the hearer usurps the message and manipulates it to serve her own ends, possibly to the detriment of the speaker, with the ultimate intent of “winning”. Thirdly, Burkean identification – the hearer smoothes over differences between herself and the speaker. The hearer finds a point of common identification in order to persuade.¹⁰⁶

Ratcliffe points out that people are not good at recognizing both similarities and differences simultaneously.¹⁰⁷ The hearer either tends to focus exclusively on what she holds in common with the speaker or how she is different from the speaker. The hearer seems to have little ability to acknowledge both points of identification and points of divergence with the speaker’s story. This is a skill that will need to be honed in order to make cross-racial communication more effective.

¹⁰⁴ Ratcliffe, *supra* note 99 at 202.

¹⁰⁵ Ratcliffe, *supra* note 99 at 205.

¹⁰⁶ “The problem with traditional identification is that differences are often glossed over and erased, left outside the circle of consubstantially; the problem with post-modern identification is that commonalities are often perceived as impossible or as impossibly naïve.” Ratcliffe, *supra* note 99 at 208-209.

¹⁰⁷ Ratcliffe, *supra* note 99 at 201.

III. FACILITATING THE RESTORATIVE JUSTICE PROCESS BETWEEN RACES

In order to create a space for authentic cross-racial dialogue in a restorative justice process, it will be necessary to build in features that contribute to an atmosphere of safety, trust and mutual respect.

A restorative justice encounter that perpetuates social justice requires participants to listen with an attitude of openness, receptivity, and a willingness to be changed by what one hears. Of course, this cannot be forced on participants in a restorative justice process, and it can be difficult for those involved to confront their racial biases.

1. How to improve listening

Listening with an attitude of openness and receptivity is the only way to begin trying to truly hear what a speaker is saying. Ratcliffe calls for a different kind of listening that incorporates these two values:

Such listening does not presume a naïve, relativistic empathy, such as ‘I’m OK, You’re OK,’ but rather an ethical responsibility to argue for what we deem fair and just while simultaneously questioning that which we deem fair and just.¹⁰⁸

In this kind of listening, the hearer is not expected to unquestioningly accept everything the speaker says. As Ratcliffe states:

If we recognize not just [the speaker’s] claims but the historically-grounded cultural logics enveloping other people’s claims, we may still disagree with the claims, but we may better understand the personal and cultural assumptions (dare I say, values and beliefs) that guide other people’s logics.¹⁰⁹

Crown Attorney Rupert Ross in his book *Dancing with a Ghost*¹¹⁰ suggests that mitigating the distortion of meaning between a speaker and listener of different cultures can take place in a two-step process:

¹⁰⁸ Ratcliffe, *supra* note 99 at 203.

¹⁰⁹ Ratcliffe, *supra* note 99 at 209.

¹¹⁰ Rupert Ross, *Dancing with a Ghost: Exploring Indian Reality* (Toronto, ON: Penguin Books, 1996).

The first step in coming to terms with people of another culture, then, is to acknowledge that we constantly interpret the words and acts of others, and that we do so subconsciously but always in conformity with the way which our culture has taught us is the ‘proper’ way. The second step involves trying to gain a conscious understanding of what those culture-specific rules might be.¹¹¹

In order to engage in listening that is open and receptive, the hearer must be aware of the ways in which both she and the speaker are socialized. This kind of listening leads to understanding. Understanding, Ratcliffe argues, should be conceptually inverted, so that we stand under the discourses that surround us and others while consciously acknowledging all our particular and fluid standpoints. “Standing under discourses means letting discourses wash over, through and around us and then letting them lie there to inform our politics and ethics.”¹¹² Allowing this to happen could lead to transformation of the hearer’s worldview.

Listening, then, becomes a simultaneous process of soul-searching. As one of Ratcliffe’s interview subjects commented: “Listening with the intent to understand opens [us] up [...] to being challenged, convicted and hurt by the truth.”¹¹³ Ratcliffe elaborates:

It may be more another’s truth than the truth that hurts us; however, this challenge, this conviction, this hurt exposes a space of dissonance. When responding to this dissonance, we should not accuse the person of foregrounding it, deny its existence, nor bristle defensively. Such reactions only shut down dialogue and reinforce the status quo. Rather, we should question ourselves—our attitudes and our actions—to determine whether we need to affirm, revise or reject them. If such questioning makes us more uncomfortable, so be it.¹¹⁴

This kind of listening mirrors the vulnerability experienced by the teller, as previously discussed. Mutual vulnerability may be a good starting point for authentic cross-racial communication, especially in a restorative justice process where presumably all parties involved have been wounded.

¹¹¹ Razack, *supra* note 16 at 8.

¹¹² Ratcliffe, *supra* note 99 at 205.

¹¹³ Ratcliffe, *supra* note 99 at 210.

¹¹⁴ Ratcliffe, *supra* note 99 at 210.

2. Preparing the Restorative Justice Encounter to Foster Openness

The victim, offender and community-member stakeholders are not the only parties involved in a restorative justice process. The process itself is organized and managed by at least one facilitator.¹¹⁵ As Daniel W. Van Ness points out, the facilitator's role is to ensure that the process does not become dangerous for anyone, either emotionally or physically, and that the discussion stays on topic.¹¹⁶ In addition, facilitators do not act as advocates for any of the parties involved, nor do they act as adjudicators – they “regulate and facilitate communication within the encounter setting.”¹¹⁷

Given the importance of the facilitator in the restorative justice process, choosing and training a facilitator to be aware of and to address the difficulties surrounding cross-racial communication is essential.

i. Choosing & Training the Facilitator

A restorative justice process that involves parties from different races should consider, if possible, having a facilitator from each race. This will likely ease communication problems and increase the parties' comfort level.

The facilitator has an enormous responsibility in negotiating a tense restorative justice process successfully, therefore, training is key. Facilitators can begin

with a recognition that we are each implicated in systems of oppression that profoundly structure our understanding of one another. That is, we come to know and perform ourselves in ways that reproduce social hierarchies.¹¹⁸

Therefore, facilitators must make a concerted effort to identify the ways in which they reproduce social hierarchies.

¹¹⁵ The facilitator is also “responsible for approaching the victim and offender, helping prepare them for the meeting, and then guiding the actual meeting.” Van Ness & Heetderks, *supra* note 5 at 73.

¹¹⁶ Van Ness & Heetderks, *supra* note 5. at 73.

¹¹⁷ Van Ness & Heetderks, *supra* note 5 at 73.

¹¹⁸ Razack, *supra* note 16 at 10.

Facilitators should notice how they react to interactions with individuals who are not of their own race. Self-awareness is vital, since much of what goes on in racial interactions is subtle and unconscious. Facilitators should try to note what makes them feel uncomfortable, tense or angry. The culturally skilled restorative justice practitioner acknowledges and is aware of her own racist attitudes, beliefs, and feelings.¹¹⁹ Racist feelings cannot be changed by force of will. An awareness of how one reacts is all that can be asked – this is actually the starting point of change.

It is also important for facilitators “to analyse their own behaviours for residual elements of racism subtly apparent in their nonverbal behaviours or assumptions about the worlds of the victim and the offender.”¹²⁰ Such behaviours could include nonverbal actions such as folding of arms, scooting a chair backwards or shuffling papers. Such actions could indicate discomfort and a desire to be somewhere else.¹²¹

Facilitators also need to be familiar with the social contexts experienced by the participants. Therefore, facilitators should spend time in race communities different from their own to become more aware of their own assumptions and to learn how other communities communicate and resolve conflict.¹²² Facilitators can also read about other races, tensions between races and how individuals from certain races communicate.¹²³ There are a plethora of cross-cultural counselling texts that could help sensitise facilitators to such issues.¹²⁴

Though a facilitator may be alerted to certain factors simply by knowing a participant’s race, an individual is more than her racial identity. Each participant will have her own personality, worldview and way

¹¹⁹ Sue & Sue, *supra* note 79 at 167-168; Umbreit & Coates, *supra* note 15 at 48.

¹²⁰ Umbreit & Coates, *supra* note 15 at 47.

¹²¹ Umbreit & Coates, *supra* note 15 at 47.

¹²² Umbreit & Coates, *supra* note 15 at 49.

¹²³ “[W]e [should] invest our energies in exploring the histories, social relations, and conditions that structure groups unequally in relation to one another and *that shape what can be known, thought, and said.*” Razack, *supra* note 16 at 10. [emphasis in original]

¹²⁴ See for example: H.M. France, M.C. Rodriguez & G.G. Hett, *Diversity, Culture and Counselling: A Canadian Perspective* (Calgary, AB: Detselig Enterprises Ltd., 2004); Sue & Sue, *supra* note 79; Pederson, P.B. and Ivey, A. *Culture-Centered Counseling and Interviewing Skills: A Practical Guide* (Westport, CT.: Praeger Publishers, 1994). [Pederson & Ivey]

of reflecting her cultural heritage.¹²⁵ Facilitators will have to take the time to get to know participants as individuals in order to assess their needs and vulnerabilities and to build the trust and rapport vital to creating a safe environment during the encounter portion of the restorative justice process.

ii. Preparing the Participants

In meeting with participants prior to the encounter, facilitators should sensitise parties to the communication styles of the other parties involved. For example, regardless of the volume at which a person speaks, the use of silences and comfortable speaking distances are all influenced by cultural norms.¹²⁶ Much misunderstanding can be avoided if parties are made aware of these differences ahead of time. For example, Mark Umbreit relates a restorative justice encounter between an African-American victim and a Native-American female adolescent. The girl refused to look the man in the eye – in her culture, such a gesture is a sign of respect. However, the victim thought the girl was not paying attention.¹²⁷ Umbreit points out that:

Sharing this awareness and nurturing such sensitivity may fall on deaf ears, and then again, it may make a lot of difference. At least the participants receive some information which may help them prepare for the encounter and what they might normally regard as insulting or disrespectful behaviors. Also, each participant may be moved to some self-awareness, thereby tempering behaviors that might be interpreted as offensive by others.¹²⁸

¹²⁵ Umbreit & Coates, *supra* note 15 at 49.

¹²⁶ Umbreit & Coates, *supra* note 15 at 45.

¹²⁷ Umbreit & Coates, *supra* note 15 at 44.

¹²⁸ Umbreit & Coates, *supra* note 15 at 50.

3. Managing the Encounter

*Encounters between dominant and subordinate groups cannot be 'managed' simply as pedagogical moments requiring cultural, racial, or gender sensitivity. Without an understanding of how responses to subordinate groups are socially organized to sustain those existing power arrangements, we cannot hope either to communicate across social hierarchies or to work to eliminate them.*¹²⁹

~ Sherene Razack

i. Effective Communication Techniques

When a restorative justice encounter includes discussion of the surrounding social context in which the crime was committed, there is increased potential for conflict. Conflict should not be feared or avoided. In fact, many writers in the restorative justice field view conflict as an opportunity. According to Mary Parker Follett:

As conflict [...] is here in the world, we cannot avoid it, we should I think use it. Instead of condemning it, we should use it, set it to work for us.¹³⁰

Conflict presents an opportunity to integrate disparate and contending influences; it can be an opportunity to build integrative and supportive relationships among previously fragmented individuals and community members.¹³¹

Though conflict should not be feared, the facilitator needs to be able to recognize the difference between functional and dysfunctional conflict. Dysfunctional conflict “threatens to erode the consensus that brings a group together,” while functional conflict is often tangential to the main issues and takes place within a context of general consensus.¹³² The more specific and less general the confrontation, the more likely it can be confronted successfully.¹³³ Throughout a conflict, the facilitator

¹²⁹ Razack, *supra* note 16 at 8.

¹³⁰ Stuart, *supra* note 47 at 220.

¹³¹ Stuart, *supra* note 47 at 220.

¹³² Pederson & Ivey, *supra* note 124 at 167.

¹³³ Pederson & Ivey, *supra* note 124 at 169.

should stay attuned to her own feelings and reactions. In handling a situation of dysfunctional conflict, the facilitator should try to calm others and “focus on defeating the problem rather than the person.”¹³⁴ Facilitators should also look for win-win solutions or mutual compromises.

The manner in which parties communicate is also vitally important. Speaking the “truth” can injure or repair a situation, depending on the underlying intent. bell hooks distinguishes between harsh critiques which contain the “truth” and “liberating truth-telling”. “Telling it like it is” can be used as a weapon of power to humiliate and shame an individual.¹³⁵

In a similar vein, Richard Delgado points out that depending on the way in which the story is told, the content can have an effective or alienating impact. Delgado relates a single story, from a variety of perspectives, about an African-American professorial candidate who failed to gain a tenure-track appointment at an elite law school. Both the rejected candidate and a radical social activist who took up the cause failed to get their version of the story across. With respect to the activist’s story, Delgado comments:

His counterstory overwhelmed the audience. More than just a narrative, it was a call to action, a call to join him in destroying the current story. But his audience was not ready to act. Too many of his listeners felt challenged or coerced; their defences went up.¹³⁶

This is not to suggest that parties must rein-in their stories or veil elements of the truth that may be difficult for the other parties to hear. Parties do need to tell it as they see it, but to tell their story in a cruel or bombastic manner will not lead to constructive dialogue.

Perhaps the nature of the process itself can protect restorative justice from the potential of speech as weapon:

Respectful treatment of all views, deep listening to understand the perspective of others, acceptance of emotions as valid – all these characteristics of restorative dialog produce interactions that do not degenerate immediately into hard ideological positions.¹³⁷

¹³⁴ Pederson & Ivey, *supra* note 124 at 171.

¹³⁵ hooks, *Sisters*, *supra* note 40 at 32.

¹³⁶ Delgado, “Storytelling”, *supra* note 51 at 2430.

¹³⁷ Pranis, *supra* note 4 at 294.

ii. Naming the racism

What should be done when one of the parties is exhibiting signs of subtle (or not-so-subtle) racism?

Racism may be used by the offender as an excuse for committing the crime, or by the victim as a justification for overly harsh demands for restitution.¹³⁸ Oftentimes this rationalization will not be stated explicitly, but will instead lie under the surface of a party's communications.

Young posits that the way to deal with this is not to blame the person who has acted unconsciously, but to hold them responsible.¹³⁹ The facilitator then should name the unacknowledged racism. Facilitators must be good mediators and not afraid to confront discrepancies, inconsistencies and mixed messages in a party's speech or behaviour.¹⁴⁰ Confrontation can help parties explore alternative ways of perceiving themselves or the situation, which can in turn lead to new choices.¹⁴¹ Young suggests the only aim of pointing out racism is to improve future communication and self-awareness. Such confrontation would never have a punitive purpose, but instead encourage the person "from here on out" to submit such unconscious behaviour to reflection in the hope of changing habits and attitudes.¹⁴² Cultural habits can only be changed if the parties are made aware of them.¹⁴³

Good confrontation manages to avoid making the party feel defensive. The facilitator must have established a strong rapport and trust with the party before the moment of confrontation. Also, a facilitator should check her own motives for confronting the party before proceeding. Facilitators will also need to develop a sense of timing – knowing when the party is ready to be confronted constructively.¹⁴⁴

Umbreit also suggests that facilitators should be prepared to act as an interpreter or buffer where racist assumptions or accusations are likely between victim and offender or their communities of care.¹⁴⁵ In the

¹³⁸ Umbreit & Coates, *supra* note 15 at 48.

¹³⁹ Young, *supra* note 9 at 151.

¹⁴⁰ Pederson & Ivey, *supra* note 124 at 167.

¹⁴¹ Pederson & Ivey, *supra* note 124 at 171.

¹⁴² Young, *supra* note 9 at 151.

¹⁴³ Young, *supra* note 9 at 152.

¹⁴⁴ Pederson & Ivey, *supra* note 124 at 171.

¹⁴⁵ Umbreit & Coates, *supra* note 15 at 78.

capacity of interpreter, Arrigo and Schehr suggest that the facilitator can begin “by offering what is missing [...] to the ‘other’.”¹⁴⁶ The facilitator can validate and revalorise the minority party’s particular left-out knowledge.¹⁴⁷

CONCLUSION

Stories are powerful because they are personal and allow us to draw a more nuanced picture of the world. Dogmatically held ideological positions disintegrate in the face of a truthful story.¹⁴⁸

If we look to a restorative justice encounter as a place to tell our truest stories, then restorative justice, in addition to being a method for restoring the relationship between individual victim and offender, can be a catalyst for social justice. One person at a time, such encounters can begin to heal the rifts that have torn North American society over the centuries.

By allowing people to speak their truths authentically – by allowing difference to co-exist while respecting that difference – people of differing races can begin to come together. Paradoxically, acknowledging and respecting difference could lead to new unity. As Gloria Anzaldúa points out, we will not always need to situate ourselves within oppositional/either-or dichotomies. Though it is vital to make space for the telling of stories and counterstories in the beginning, “[i]t is not a way of life. At some point, on our way to new consciousness, we will have to leave the opposite bank, the split between the two mortal combatants somehow healed.”¹⁴⁹ Razack recommends: “[t]o heal the split, we have to think about our way of life.”¹⁵⁰ Restorative justice processes, for all parties involved, can spark such reflection.

¹⁴⁶ Arrigo & Schehr, *supra* note 81 at 655.

¹⁴⁷ Arrigo & Schehr, *supra* note 81 at 655.

¹⁴⁸ In Razack, *supra* note 16 at 46, Bettina Aptheker reflects, “[t]his is why I have been drawn to the poetry and to the stories: because they are layered, because more than one truth is represented, because there is ambiguity and paradox. When we work together in coalitions, or on the job, or in academic settings, or in the community, we have to allow for the ambiguity and paradox, respect each other, our cultures, our integrity, our dignity.”

¹⁴⁹ Razack, *supra* note 16 as quoted by Gloria Anzaldúa at 45.

¹⁵⁰ Razack, *supra* note 16 at 45.

This paper is not intended to suggest that restorative justice is the panacea to racial conflict; however, because much stereotyping occurs around race and crime, restorative justice may provide a valuable opening to dispel such beliefs and to “hear the other side.”

Obviously, this paper is only the beginning of a larger discussion that needs to take place within the restorative justice literature. Though the claims made in this paper may be carried over into other contexts, I initially set out with the modest goal of exploring the value and risks attendant with telling stories from the margin in a restorative justice encounter through the example of a Black offender and a White victim. Other group dynamics should be explored, as should ways to better facilitate the process. My coverage of this issue is intended to raise these issues, so that those with deeper practical and theoretical experience of restorative justice will be tempted to reflect and comment.