

The Significance of Procedural Justice for Peacemaking Processes

- Designing Appropriate Dialogue Conditions
for Conflict Prevention, Early Intervention, Resolution and Transformation -
- Case Example of Generic Indigenous and Generic Mainstream American Processes -

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Since 1948 when the General Assembly adopted and proclaimed the Universal Declaration of Human Rights, the United Nations has continued to explore ways to assist in their recognition and implementation. Among the thirty articles in the Declaration, are several which address the right to enjoy “freedom of speech”, “competent tribunals,” “fair and public hearing(s) by an independent and impartial tribunal,” and, particularly of concern herein, Article 19 which proclaims “Everyone has the right to freedom of opinion and expression...”. How diverse citizens of the world can exercise these particular rights, in ways that are considered appropriate to them, and how others may facilitate their doing so is the focus of this paper.

Expressing opinions and participating in discussions and dialogues are virtually an everyday occurrence among all people. The type of dialogue that promotes speaking clearly from the heart, listening deeply, fully understanding and appreciating differences, though often painfully difficult work, is necessary to generating vital, harmonious, peaceful communities. Internal dialogues are as important as what Etzioni describes as megalogues. When we think about and express what is important to us, have realistic expectations of one another, educate and learn from others, and honestly work at acknowledging and respecting our differences, we will have made much progress toward building and maintaining healthy communities. Opportunities to do this sometimes need to be arranged and in a way that will encourage active participation, which means the people need to anticipate and experience dialogues with justice.

People around the globe call for justice. What is justice and how might it be achieved? To what extent is it considered to be a matter of distribution of resources; a matter of revenge, retaliation, punishment; equality; of healing broken relationships; or of methods used to handle differences? There is no universal meaning ascribed to “justice.” In this paper justice is viewed as the acceptable and appropriate rules for social behavior and attitudes, according to the society of concern. The focus here is on procedural justice, that is, the processes considered to be the right ones according to the particular people involved in peace building, making and sustaining dialogues. It is the guiding principles, the spoken and unspoken customary rules and activities the people use in talking about issues, differences of opinion, and making decisions; those that they consider fair.

Research has demonstrated that when people have been a part of a conflict resolution process that is customary to them, and that they consider is a fair and just process, they are more likely to comply with the outcome (even if the results are not in their favor), have a higher level of psychological satisfaction, keep relationships in tact over a longer period of time, and will participate in the process again. Procedural satisfaction is one of the basic ingredients for durable agreements. Identifying processes that people consider fair is of utmost concern when diverse identity, ethnic and culture groups need and/or want to talk with each other. These are reasons that determining what the people feel are the right procedures for them is so important.

It is acknowledged that truly successful conflict resolution and dialogue processes (together these are hereafter labeled “peacemaking processes”) provide all the people of concern with substantive and psychological satisfaction, in addition to procedural. The way in which something is discussed and decided is often at least as important as what is decided. The process designed to fit the participants will certainly affect the outcome, both immediate and long term. Providing procedural justice is of great consequence. The crux of the matter is determining what processes, and especially which significant components of processes, are considered by the people involved to be those which are customary, fair, and just; in order to employ them. Then we will need to be innovative in methods of process design when there are disparate visions of what is the right way to dialogue with one another.

Imagination Makes Communities
Robert Hass

Peacemaking Process Design

Serious process design is often neglected in the course of peacemaking. When it does occur, it is often perfunctory, controlled by the host, and limited to using one of the extant processes. The right peacemaking processes reflect the values and practices of the people who want full engagement in dialogues. Differences in processes are much more than simply whether or not, or the extent to which they are adversarial, inquisitorial, autocratic, democratic, consensus-based, et cetera. Specific components of processes may be much more important. There are various ways to identify preferences and to then design peacemaking processes that meet the criteria established by the people (to be) involved. It is always a matter of “Don’t Tell. Ask.”

Peacemaking process design should be the first step in creating viable dialogue opportunities. Examples of features which need to be determined when designing inter-group peacemaking processes are given in a framework I have used and called PROCESS FOR (the group, e.g., Eagle Village). Each of the letters (P, R, O, C, etc.) designates one element of the framework (e.g., F is for facilitator). A PROCESS FOR _____ is constructed with each group, by their members or their selected

representatives. Each group's framework is shared with the other groups who will be in the peacemaking process, in order to then do collaborative design work, culminating in a mutually acceptable process model. The peacemaking process is usually a new creation of the customary features that are most important for each community; it is not the consequence of compromise.

Examples of some items to be considered in a peacemaking design are :

- purpose of the process (e.g., establishing relationships, building trust, distributing resources, sharing information, idea generation, problem-solving, planning, etc.)
- roles of the people participating (e.g., who speaks when, extent of disclosure expected, proxies, witnesses, etc.)
- orientation to time (e.g., emphasis on past, present, future issues; acceptable times, days, duration, interludes of sessions; turn-taking patterns, etc.)
- setting (e.g., office, restaurant, on the grass, under the tree, homes, whose location, alternating, etc.)
- communication choices (e.g., language, no/time restrictions on speaking, non-verbal aspects such as seating arrangements, atmosphere that is culturally comfortable, direct/indirect message exchanges, multiple – include songs, etc.)
- ethics (e.g., confidentiality, private/public forums, taboos, etc.)
- structure of the proceedings (e.g., linear/sequential agenda/ non-linear/spontaneous/intuitive approach, prayers, focus on relationships, concrete aspects of issues, agreement to be detailed/principles, etc.)
- equipment and resources (e.g., food, gifts, okay use of cameras, audio-visual, caucus spaces, exhibits, funding, etc.)
- how the process is concluded (e.g., written document, prayers, sharing a glass, handshakes, feasting, speeches, etc.)
- ground rules/common courtesies
- facilitators/hosts/conveners (attributes, amount of control,roles,responsibilities,etc.)
- rank ordering importance of various process features.

Regardless of the ultimate design created, there are some universal factors which either contribute to or inhibit people from speaking. These need to be approached so we won't have missing voices. For example, people might refrain from participating if they are overwhelmed with new information, were not asked to speak, the language is too technical or full of unknown acronyms, the tone of the gathering is too loud, not appropriately welcoming, there is a lot of criticizing, probing, closed-end questions, etc. There are enumerable items like these that a culturally aware facilitator can anticipate and respectfully work with.

The relatively limited grounded research conducted on peacemaking processes indicates that features of processes which appear to be consistently supported and salient in North America are voice (the opportunity to tell one's story), a sense of being respected and carefully listened to, methods which are consistent with the group values, trust in the facilitator or third party who demonstrates impartiality and respect towards all present, knowledge at the onset of the general structure of the process, interactive format, sense of

safety, careful selection of terms used, and no coercion regarding use of the process nor decisions made.

We do not yet know what themes may be consistent among peoples around the globe. There definitely continues to be a need to search and research for variations in what is considered to be a fair process, as well as methods for designing processes when there are major diverse preferences. We need to know how to develop processes that can lead to the type of consciousness changing which is necessary for peaceful community-building, whether on a small, medium, or large scale.

Knowledge that is not used is abused. (Plains Cree)

Example of a Successful Process Design with Implications for All

A significant example of process design, which resulted in concrete conflict prevention, management and relationship transformation among 48 Native American tribes and ten U.S. federal agencies occurred in 1996. There had previously been twenty years of failed negotiations on developing regulations required for a particular federal law. However, after a good process design and faithful implementation, a new effort saw successful completion in twenty months. It ended with a declaration that the process used was a good model for future dialogues between tribal governments and U.S. government agencies. Full consensus was achieved on decisions, and representatives said they were satisfied with the clarity and usefulness of the final documents. Participants did not simply sit politely through a series of meetings, nor did they leave in the midst of them. They felt respected, interested in learning new ways, and thus became actively engaged. New voices were heard.

The new facilitators (from the Federal Mediation and Conciliation Service) spent considerable time designing the process, doing so with representatives of the people concerned, the Tribal and Federal co-chairs, and with the author serving as inter-cultural conflict resolution consultant. In preparation, the lead facilitators read all they could, then used both directed and open-ended questions to guide people in describing their process preferences. Expressions of negative expectations of the people involved, based on previous experiences and stereotypes, were encouraged in order to consider them in the new design. Agreement on what they called “ground rules and protocol” was facilitated and reached at the first formal convening. Some adjustments in the process were made during the course of the sessions. Facilitators agreed that the time and resources needed for the upfront process design were crucial to the successful outcomes. The new hybrid design was a combination of process features declared most important by the participants and some positive external factors. It came from the concerted effort of the lead facilitators to recognize there would be unique cultural issues, which meant they needed to learn and apply knowledge of the following information :

(For all of the details, including how crises were handled, read Sunoo and Falkner, 1999).

Differences in typical peacemaking processes between generic Native American and U.S. Government agencies are substantial. Because they may be less well known, the following focuses more on some contemporary indigenous peacemaking factors, than on those of U.S. government agencies (which tend to reflect generic mainstream American practices). A cursory comparison table follows the descriptions.

Generic Indigenous Peacemaking Processes

Peacemaking processes of indigenous societies vary extensively today. Native American and Alaskan Native tribes and the First Nations of Canada use hybrid processes today, combinations of traditional and contemporary ways. Many are working at revitalizing traditional values, beliefs, practices, and languages in both their own villages and in urban settings. There are substantial changes occurring among indigenous groups as the newer generations move to urban areas and are not living their traditional ways to the extent they did in prior times. Hence, their peacemaking processes are in fluctuation. The amount of experience contemporary indigenous individuals have with non-indigenous processes varies, thus their skills in mainstream processes are uneven.

My direct knowledge of indigenous processes beyond North America only includes some of the Pacific Basin areas and Rwanda. They also have a number of relevant models that are used within and between themselves and with others. They, too, are cultivating and nourishing their traditional methods.

Although the format and naming of the processes vary (e.g., Council Gathering, Group Conferencing, Peacemaking Circles, Peacemaker Court, Council of Elders, Peoples Justice Program, Faithkeepers, Ho'oponopono, whanau, Gacaca), indigenous models tend to have these similarities: There are prayers to open and close the gathering. They tend to focus on understanding the community reasons for problems rather than on blaming individuals; talk is neither argumentative nor adversarial; there is deep listening, thoughtful and respectful storytelling; the pace is relatively slow, with comfort in periods of silence. Talk is non-linear. There is frequent use of circle seating patterns. People speak of the past as well as more current matters, looking for holistic solutions which encompass physical, mental, emotional and spiritual dimensions. The goal is to restore balance and harmony among the people. Gatherings are relatively uncomplicated and not costly. Elders play a vital role in counseling and advising. Knowing the people involved, their relationships, histories, and attributes are considered important. Speaking may be done through storytelling, dances, songs (which might seem obscure to other populations), humor, and other forms of visual language. How something is said and other non-verbal language messages are observed and noted extensively. Words and symbols are carefully chosen. A dialogue of sharing ideas does take place. The people combine social activities with so-called serious business. Eating together is part of the gathering. There is a long-term perspective on the issues, so taking all the time needed to talk and decide is considered fundamental.

Some of the noteworthy differences among contemporary indigenous peacemaking processes appear to be how flexible the process is as it proceeds; who the facilitator/leader is and his or her role; who is involved in the gathering, who speaks (e.g., anyone and/or everyone in the community; primarily elders; men/women; ultimate decision-makers, etc.); who is consulted, but is not speaking in public; and concerns about feelings of powerlessness.

Generic Mainstream American Peacemaking Processes

In contrast to generic indigenous methods, generic mainstream American processes are typically fast paced with formal agendas that are linear in structure. They tend to reflect a secular business model taking place in an office setting where people are expected to “trust and buy into” the process, “get right down to business,” use strategized negotiating techniques with the intention of their views winning and to “own the decision”, which will be written with extensive detail. Talk in these formal settings is usually limited to the immediate issues at hand. It is more debate and discussion than dialogue. There is comfort in talking with strangers. Facilitators are trained in process management.

Following is a chart illustrating some of the differences in values and practices usually evident in the gatherings and meetings within each adult group, as seen from the viewpoint of many indigenous original Americans. These are types of factors that need to be discussed, respected, and tended to in the process-designing phase of a case between people from these two groups. The caveat is that these are generic, not valid for each individual in any group, nor necessarily any particular group. They are a starting place.

<u>Generic Indigenous</u>	<u>Generic Mainstream American</u>
1. Relationship-centered, build meaningful relationships first	Agreement-centered, get down to business quickly
2. Cooperation	Competition
2. Follow the old ways	New, change is best
3. Humility, anonymity	Win, announce it
4. Harmony	Mastery
5. Accommodating	Assertive
6. Share resources	Save resources for self
7. Time is always with us, no hurry	Time is limited, enforce deadlines

8. Win once, let others win, too	Win as often as possible
9. Everything is interrelated	Everything is separated, categorized
10. Success is measured through relationships and giving	Success is measured by power, material accumulation
11. Thinking based on wisdom	Logic based on strategy
12. Reasoning based on experience	Scientific explanations
13. Informal communication	Formal lectures and forums
14. Remember the past, look at present, future is primary	Present needs are primary, future is secondary
15. Relaxed atmosphere	Formal business atmosphere
16. Trust verbal agreements, generalized	Written documents, detailed
17. Respect based on age, experience, reputation	Respect based on status, education, social-economic level
18. Group consensus for decisions	Final decisions by individual, boss
19. Trust honesty of statements, expressions of feelings	Trust facts, evidence, details by witnesses
20. Decision based on effects on future generations and everyone	Decision based on immediate gains for own entity
21. Peacemaking is spiritual, healing, mending broken relationships	Conflict resolution is problem-solving
22. Consider and balance spiritual, physical, emotional, mind	Focus on one dimension at a time, especially the mind
23. Watch and listen	Read and listen
24. Speak carefully, deeply, patiently	Speak, strongly, be certain to be heard
25. Respect differences, don't hurt others	Listen to differences, look out for self

26. Silence is comfortable	Silence is not comfortable
27. Spontaneous agenda emerges, circular discussions	Linear, sequential discussion of topics, efficient agenda
28. Ambiguity not a concern	Certainty and clarity important
29. Take time to see everyone understands and is comfortable	Goal and results orientation
30. Sit in circles to see each other, be inclusive	Sit in rectangles, rows facing head table
31. Host known to everyone, models and guides process	Facilitator a trained neutral, manages and controls process
32. Know, live your beliefs	Know, use requirements and laws
33. Word of mouth about gathering	Advertising the meeting
34. Common courtesies	Ground Rules
35. Climate is calm, quiet	Climate is energetic, provocative
36. Connotation, symbolic meaning of words may be significant; words have feelings (e.g., social recognition; serious disagreement, disharmony)	Denotation. Possible other meanings of words may be overlooked; consequences of words may not be considered (e.g., social integration; conflict, argument)
37. Call upon one's Creator and inner strengths	Call upon authority, rules, leader
38. Do not confront directly; use metaphors, stories	Confrontation happens; unadorned, straight talk
39. Correct by teasing, shaming, ceremony	Correct by punishing, naming, exclusion, retribution
40. Take responsibility for actions	Blame, pass it to others first
41. Equality is balancing different parts to make a whole	Equality is being the same

In this Tribal – U.S. Government case, which used these concepts, all appreciated the bridge-building features. It was a good learning experience, in addition to being instrumental in producing needed outcomes. At this time, no longer-term evaluation has been conducted.

And In Closing.... with Challenges for a New Beginning

There is a call for active work to design peacemaking processes that are considered procedurally just by all participants. There are models for doing so. Processes that reflect important customs and procedural preferences of the people involved will inspire them to participate and thus provide longer-term positive outcomes. Good peacemaking designs provide the opportunity for profound dialogues and, ultimately, important social connections with feelings of honest acceptance in the larger world. Good processes are intentional and will revitalize those who are tired of going to unproductive meetings and being marginalized.

Let us note that there are currently enumerable projects that value and provide specialized opportunities for community dialogues (forums, hearings, meetings, gatherings, consultations, etc.). There is a community dialogue movement, especially in the so-called developed countries. This should not just be a short-lived trend and it should be expanded, where desired by the people themselves. They must be more than projects. We must use imagination. Sponsoring, supporting, encouraging, modeling constructive community conversations can help citizens reclaim public issues, develop deep understanding, connect as neighbors, and build momentum for actions they care about.

Designing viable dialogue processes that contribute to thick dynamic participation is but one step in the need to offer people approaches for creating, building and sustaining peaceful environments. Article 26 of the Universal Declaration of Human Rights speaks to the rights to education that "... shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace." It is crucial that educating, modeling, and training people in the skills of genuine heartfelt listening, speaking, understanding, respecting, thinking, developing, convening and facilitating fair peacemaking processes needs to be energetically addressed. To break down barriers to both intra- and inter-group communications, to get people to communicate deeply, we need to set tables that are appropriate for the occasions.

Hopefully we are not simply reflecting and echoing; that is, not just looking at and listening to ourselves; but, rather, we are engaged in a much larger effort that will ripple out to create peacemaking processes that will provide procedural justice for all. Together we can build and walk a path from the ideal to the real.

Vision without action is merely a dream.

*Action without vision just passes the time.
Vision WITH action can change the world.
Joel Arthur Barker*

Suggested Reading

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