

**THE SOCIO-LOGIC OF
RESTORATIVE JUSTICE**

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On my honor
I have neither given nor received
unauthorized aid on this thesis.

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ABSTRACT

Restorative justice seeks to repair harm by bringing together those involved in and affected by an offense in order to address their needs and impose obligations. However, the field of restorative justice has become increasingly undefined due to its expansion over the last couple of decades. Moreover, existing empirical research on restorative justice predominantly evaluates its effectiveness and then grounds its finding in restorative justice theory. This thesis uses interviews and participant observation to demonstrate the connection between the theory and practice of restorative justice group and family conferences and the tradition of social theory. I argue that restorative justice reflects the theories of Emile Durkheim, George Herbert Mead, Jürgen Habermas, and Ivan Illich. Threads of their theories are evident in how the structure of restorative justice conferences creates the conditions for the process of communication to occur, which then facilitates the realization of abstract values and strengthens community. By explaining the role of this implicit yet significant logic, I locate restorative justice within the broad historical processes of social theory and modernization to illustrate its potential foundations.

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INTRODUCTION

Restorative justice (RJ) poses a stark contrast to the classical criminal justice system. Generally speaking, it seeks to repair harm by bringing together those involved in and affected by an offense in order to address their needs and impose obligations. In doing so, restorative justice relies on communication to restore harmony. However, there is a lack of consensus as to what constitutes an accurate definition of restorative justice because it varies in form and structure.

Using interviews and participant observation, I seek to explain what might be called the socio-logic of restorative justice by focusing on one particular type: family and group conferences in the Colorado Springs and Manitou Springs areas. I purport that the practice of family and group conferences reflect the theories of Emile Durkheim, George Herbert Mead, Jürgen Habermas, and Ivan Illich. More specifically, family and group conferences are inclusive, de-professionalized, and confidential forums in which multiple stakeholders use communication to repair the harm. In doing so, abstract values are realized. Such values, though realized in micro-level interactions, have profound implications for society as a whole as they increase social integration and solidarity. Therefore, the application of social theory to family and group conferences clarifies the overarching—and undefined—field of restorative justice.

REVIEW OF THE LITERATURE

Definition of Restorative Justice

Howard Zehr, one of the founding fathers of restorative justice theory, defines restorative justice as “a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal

and put things as right as possible” (Zehr and Gohar 2003: 40). Though his definition was originally inspired by victim-offender mediation, it nonetheless holds widespread applicability.

Restorative justice is a dynamic process; it is purposely variable, situational, and circumstantial because it is a human process. Therefore, it is not a set of rigid, pre-designed programs and consequently appears in many forms (Umbreit et al. 2005). For example, in addition to the victim-offender mediation programs mentioned above, family and group conferences and circles are also two practices that employ restorative justice dialogue. Such models are practiced by a variety of institutions, including schools, neighborhoods, and local courts. However, restorative justice is also conceptualized as a way of life and/or a new social movement because it has the potential “to transform... our family lives, our conduct in the workplace, [and] our practice of politics” (Sullivan and Tift 2006: 4).

Models of Restorative Justice

All models of restorative justice provide intentional “forums for dialogue among stakeholders” to repair the harm (Strickland 2004: 2). Three examples of restorative justice are victim-offender mediation, family and community group conferences, and circles.

Victim-offender mediation was the first official method of restorative justice (Roberts 2004). It involves a direct dialogue between victims and offenders in a safe environment. This dialogue, which is guided by trained mediators, allows the victims “to let the offenders know how the crime affected them, receive answers to their questions, and be directly involved in developing a restitution plan that holds the offenders accountable” (Keanini 2011). The needs of the victim are the primary focus of this type of restorative justice.

Family and community group conferences, hereafter referred to as conferences, are distinct from victim-offender mediations because they involve more participants, including friends and families of the victim and offender and community members. An offender must have admitted his or her fault for a crime to a facilitator during a pre-conference in order for this approach to be taken. Then, a victim chooses whether he or she wants to participate, use a surrogate victim, or not participate whatsoever. The actual conversation is gently guided by an objective facilitator in a circle formation. However, decisions as to how a crime should be dealt with are dependent upon a group consensus. Consequently, group conferences focus on the causes of the criminal behavior and its effects on the larger community in addition to the needs of the victim in order to strengthen community relationships and safety (Keanini 2011).

Circles are similar to group conferences because they also invite multiple stakeholders to address the needs of the victim, offender, and community. However, circles do not have a facilitator. Instead, the participating members take turns discussing the event and deciding how the harm should be repaired, typically by using a talking piece. Therefore, circles are very time and labor intensive and tend not to be used for minor or first time offenses (U.S. Department of Justice).

History of Restorative Justice

The principles behind restorative justice have historical roots in ancient Arab, Greek, and Roman civilizations and community justice programs employed by, but not limited to, Native American tribes, Pacific Islanders, aboriginal communities in Australia, the Maori people in New Zealand, the First Nation people in Canada, and African tribal councils. These peoples believed peacemaking and social control were the responsibilities of the community (Keanini 2011;

Strickland 2004). Restorative justice also has spiritual roots, including in the Judeo-Christian religious cultures and ancient Buddhist, Taoist, and Confucian traditions (Braithwaite 1999; Umbreit et al. 2005). For example, according to Umbreit et al. (2005: 256), “many biblical examples are found in both the Old and New Testaments setting forth the responsibility of offenders to directly repair the harm they caused to individuals, harm that has created a breach in the ‘Shalom community.’”

Beginning in the 1970s, scholars, activists, and criminal justice professionals began to advocate for restorative justice. Such individuals realized the conventional criminal justice system was not rehabilitating offenders and thus not reducing recidivism rates. Inefficiencies such as these inspired the first recorded restorative justice interaction in Kitchener, Ontario in 1974. The victim-offender mediation was arranged by Mark Yantzi, a probation officer, for a case in which two teenagers had committed acts of vandalism. The victims were pleased with the process and outcomes of the mediation, which included an agreement that the offenders would provide restitution. Consequently, the Victim Offender Reconciliation Program was formed (Wachtel 2012). Restorative justice then spread through the 1980s and early 1990s, though on a relatively small scale, throughout North America and Europe, particularly with respect to corporate crime (Braithwaite 1999). Since the mid-1990s, restorative justice has gained traction through support from stakeholders including victim organizations, prison abolitionists, the American Bar Association, the conventional criminal justice system, and even the United Nations. With respect to political support, liberals embrace the process because it presents an alternative to the retributive and punitive nature of the current criminal justice system, while conservatives view it favorably because of its emphasis on victim and family empowerment and its fiscal savings (Braithwaite 1999). Van Ness and Strong (1997) situate the

overall development of the restorative justice movement among other social movements, including the informal justice movement, the movement to use restitution as a response to crime, the victim's rights movement, the reconciliation and conferencing movement, and the social justice movement.

Restorative justice programs now exist in communities in nearly every state in the United States. In fact, restorative justice has developed more rapidly throughout the rest of the world, including throughout Europe, South Africa, South Korea, Russia, Japan, Australia, and, most notably, New Zealand (Umbreit et al. 2005).

Restorative Justice Theory

Restorative justice has been conceptualized and defined in many different ways (Johnstone 2004; Johnstone and Van Ness 2007; Levad 2012; Pranis 2007; Sharpe 2007; Strickland 2004; Van Ness 2002; Walgrave 2002; Zehr 2003). More specifically, over the last 40 years, "more techniques, models, practices, frameworks, and theories have been created" (Roberts 2004: 241). Consequently, restorative justice has become "amorphous" (Roberts 2004: 241). However, this growth is positive; the variable nature of restorative justice is one of its biggest strengths. In fact, restorative justice would not work if it was a rigid program designed to be applied to all situations. The values, processes, and outcomes most important to restorative justice are only realized because restorative justice is situational and adapted to the nuances and complexities of all human situations. As Ann Warner Roberts (2004: 246) explains, "RJ must continue to innovate both philosophically and practically for the movement to thrive." Therefore, the underlying similarities of restorative justice models, as opposed to their differences, are most important. In this case, theories that include the role of community members will be emphasized because this study focuses on group conferences.

According to Daniel W. Van Ness (2002), the four principal values of restorative justice are inclusion, encounter, amends, and reintegration. Inclusion is “the most important restorative value” because it empowers all of the individuals affected by an offense to redress the harm, including the victim, offender, family members, and community members (Van Ness 2002: 5). Thus, restorative justice returns an offense to the realm of the community. Encounter refers to the actual meeting between the facilitator, victim, offender, and community. The meeting provides an opportunity for the stakeholders to engage in dialogue, which enables them to understand each other and the “personal, material and moral/spiritual” dimensions of the offense (Van Ness 2002: 3).

The third principle, amends, refers to the outcome of the restorative justice process. This includes the offender taking responsibility for his or her offense, offering a genuine apology, and committing to change. There is also restitution, sometimes in monetary form, or as Susan Sharpe (2007) explains, as material and symbolic reparation. Such reparation, aside from being verbalized, is reflected in the agreement the offender must accomplish in order to repair the harm. The agreements are most effective when they are “tailored to meet a victim’s particular needs, when the terms of the reparation are chosen by those most directly involved and when it is offered rather than ordered” (Sharpe 2007: 29). Reintegration, the fourth principle, is also essential for a positive outcome. It refers to the re-integration of both the victim and the offender into the community as contributing and de-stigmatized members.

Kay Pranis (2007) uses a different system of categorization to highlight the values of restorative justice and instead classifies them into process values and individual values. She defines process values as “the qualities of the restorative processes themselves” and individual values as “qualities the processes should nurture within the participating individuals” (Pranis

2007: 60). Process values include equality, community, inclusion, fairness, restitution, and safety, while individual values include personal responsibility, respect, empathy, compassion, and honesty. The values in each category are not mutually exclusive, but process values do facilitate the realization of individual values. Ultimately, both process and individual values allow participants to “transcend their own sense of themselves and their capabilities—and in so doing create a new sense of how they can be in the world and how they can relate to one another differently” (Pranis 2007: 67). Therefore, as theorized, restorative justice can have a profound impact upon both personal identity and social relations.

Restorative Justice versus Retributive Justice

According to John R. Bacon (2010: 1), “The fundamental question for Society is how to hold account offenders to ensure justice for the victims of crime while rehabilitating offenders to normative social values and behavior.” Although as previously mentioned restorative justice has historical roots, the Western world currently exercises social control largely through retributive justice. This manifests itself in “harsh sentencing and punitive criminal law” (Strickland 2004: 2). However, restorative justice has grown increasingly popular due to recent scrutiny of the structure of the traditional criminal justice system and its antagonistic, competitive logic.

The differences between restorative justice and the criminal justice system can be explained through a critical comparison of three central questions and four key variables (Umbreit et al. 2005). The criminal justice system asks: What laws have been broken? Who did it? What do they deserve? Restorative justice, on the other hand, seeks to answer: Who has been hurt? What are their needs? Whose obligations are these?

The contrast between restorative justice and the criminal justice system can also be illuminated through the comparison of four variables. The first variable revolves around the conception of what or whom an offense violates; in the criminal justice system, the law and the state are violated, while in restorative justice, people and relationships are violated. The second variable pertains to the effects of violations; in the criminal justice system, violations create guilt, while in restorative justice, violations create obligations. Third, there is a contrast in understandings of justice; in the criminal justice system, justice requires the state to determine guilt and then impose punishment, while in restorative justice victims, offenders, and community members collaborate to form an agreement. Finally, the primary focus of each system differs; the criminal justice system emphasizes that the perpetrators receive the punishment they deserve, while restorative justice focuses on both the needs of the victim and the responsibility of the offender in repairing the harm he or she created.

Criticisms of Restorative Justice

Restorative justice is criticized for several flaws and limitations. One of the primary criticisms relates to the lack of a precise definition of restorative justice. As Kathleen Daly (2006: 135) explains, there is “theoretical, empirical, and policy confusion.” Consequently, practitioners, policymakers, commentators, and the general public do not, for example, know if restorative justice is a process, an outcome, or a set of values—or even what constitutes authentic and inauthentic forms. Similarly, Roberts (2004: 246) warns “Restorative Dialogue is becoming marginalized, thus compromising the essential core of RJ” because of its recent expansion in a variety of forms. Other critics claim restorative justice does not restore victims and offenders; according to Allison Morris (2002), while victims who participate often report high levels of satisfaction and fairness, both monetary restoration and emotional reparation do not always

occur. Likewise, some claim that restorative justice does not create long-term change, primarily because it does not reduce recidivism rates (Morris 2002). Moreover, restorative justice may not be appropriate in certain instances, such as domestic violence or sexual abuse, where there is a high risk of re-victimization (Sullivan and Tifft 2006; Umbreit et al. 2005). Specifically with respect to violence against women, critics claim restorative justice “decriminalize[s] men’s violence against their partners and return[s] it to the status of a ‘private’ matter” (Morris 2002: 603). Finally, the practice of restorative justice has been criticized for improper training of volunteers and a lack of monitoring mechanisms (Umbreit et al. 2005).

Empirical Research on Restorative Justice

Currently, the majority of empirical research on restorative justice programs assesses the effectiveness of their short-term and/or long-term outcomes. Such studies employ a variety of quantitative and qualitative methods, including meta-analysis, interviews, surveys, and case studies. Additionally, a small number of studies, including two in particular, focus on restorative justice facilitators.

Mark Umbreit et al. (2002) reviews 63 empirical studies of restorative justice programs spanning five different countries to evaluate the impact of restorative justice conferencing—victim-offender mediations, conferences, and circles—on variables such as satisfaction, fairness, restitution, diversion, and recidivism. They find that offenders, victims, and family and community members who participated are largely satisfied with their experiences because of, among other reasons, the opportunity to both share personal stories and listen. Of the three restorative justice models, victim-offender mediations yield the highest satisfaction rates, most notably with respect to victims. The authors find similar results with regards to fairness. Restitution, which occurred in monetary form and as community service, is present in both

victim-offender mediations and family group conferences with high completion rates. However, the impact of restorative justice conferencing on diversion from the formal criminal justice system yields either mixed or inconclusive results. Nonetheless, restorative justice does prove to be effective at reducing recidivism rates. Three years later, Jeff Latimer et al. (2005) conducted a meta-analysis of 22 studies on restorative justice and focuses on three of the same variables as Umbreit et al. (2002): victim and offender satisfaction, restitution compliance, and recidivism reduction. Their findings echo those found in the earlier study.

Madeline Lovell et al. (2002) analyze the narrative accounts of offenders, victims, and community members who participated in restorative justice seminars at Washington State Reformatory. They collected the accounts through participant observation, focus groups, and personal interviews and find that remorse is a significant variable. More specifically, victims and community members consider remorse crucial to the success of a session. In fact, participants confront prisoners “when they appeared to deflect responsibility” (Lovell et al. 2002: 264). However, the authors find inconclusive results as to what constitutes an effective display of remorse. Offenders themselves struggle to understand what remorse means and how to properly display or express it. Lovell et al. (2002) also study the variable of empathy and find that the victims, offenders, and community members are able to relate to each other through the sharing of personal stories and experiences. Moreover, by relating to each other, the different participants overcome pre-conceived notions and stereotypes they had of each other.

Heather Strang et al. (2006) also evaluate the effectiveness of restorative justice, but solely focus on victim evaluations of restorative justice conferences in Australia and the United Kingdom. The authors find that victims are less fearful of their offenders after participating in conferences, as well as less angry. Additionally, victims experience an almost three-fold average

increase in feelings of sympathy towards their offenders: “In any event, across all sites it was clear that victims who had the opportunity to assess their offenders’ circumstances and character for themselves over the two hours or so of scrutiny that the RJ conference provided, tended to feel much more sympathy than they had felt beforehand” (Strang et al. 2006: 298). Therefore, the authors conclude victims who participated in the conferences are satisfied by their experiences.

Jung Jin Choi et al. (2011) observe and interview youth offenders who participated in one victim-offender mediation program in the United States. After analyzing the discourse the offenders used to describe their experiences with the program, the authors find several themes. For example, the youth offenders express how participating in victim-offender mediations is difficult; the juveniles are especially anxious and nervous to meet with their victims. Nonetheless, Choi et al. (2011: 345) find that the offenders consider the victim-offender mediation program to be a “good punishment” because of four reasons. First, the youth find that listening to their victims is an opportunity to understand and learn from the mistakes they have made. Moreover, they often learn about consequences that they have not previously considered. Third, the juveniles also identify that they left the victim-offender mediations with stronger feelings of empathy, which is intimately related to the fourth finding of how victim participation humanizes the crimes for the offenders. Avery Calhoun and William Pelech (2010) also focus on the experiences of juvenile offenders and compare those who participated in restorative justice with those who participated in the conventional criminal justice system. They focus on three specific intermediate outcomes: accountability, relationship repair, and closure. Accountability includes the variables of an assumption of responsibility, an experience of empathy, an experience of remorse, and a commitment to redress. Relationship repair is

operationalized as an experience of respect and an understanding of impact, while closure includes an experience of acknowledgement and hopefulness for the future. Calhoun and Pelech (2010) ultimately find that the participants in restorative justice experience more positive intermediate outcomes in all three areas than those in the criminal justice system.

While the literature focuses primarily on the victims, offenders, or family and community members, two studies emphasize the facilitators of restorative justice programs. Karen A. Souza and Mandeep K. Dhimi (2008) study volunteers—two-thirds are facilitators and the rest are educators, coordinators, chairs, administrators, or various other positions—from restorative justice programs in British Columbia, Canada through a self-reported survey that collected information on the volunteers' background, training, motivations for participation, views on justice, and experience as volunteers. They find the majority of the volunteers are middle-aged, religious females who have at least a bachelor's degree. The volunteers are motivated by a desire to help others and benefit the community and by feelings of dissatisfaction with the conventional criminal justice system's inability to reduce recidivism rates. Moreover, Souza and Dhimi (2008) find volunteers attribute their effectiveness to communication skills, career-related work in fields such as counseling and social work, certification in areas such as dispute resolution, and a considerable number of hours of training. However, the majority of the volunteers desire additional training.

Bacon (2010) studies how facilitators attempt to foster successful restorative justice programs through group meetings and individual interviews. He finds that they deliberately build rapport and an environment of trust, as well as listen and communicate clearly in order to appease participants' fears. Other strategies and techniques include embracing silence, reflecting thoughts and questions back to participants, and adjusting both body language and tone

depending on the situation. Facilitators also express their struggle to “maintain control of the process while empowering the participants to own the progress and outcomes” (Bacon 2010: 57-8). Jean Mackenzie’s (2010) analysis of six facilitators and facilitator assistants in a restorative justice program in Western Australia also illuminates some of the important characteristics and techniques of facilitators. For example, Mackenzie (2010) finds that facilitators describe themselves as flexible, sensitive to the needs of the participants, and non-directive, yet able to intervene when necessary.

The literature on restorative justice tends to focus on the effectiveness of programs. In addition, a small number of studies have solely analyzed the role of facilitators. However, the overall literature grounds its findings in restorative justice theory, which has the effect of making restorative justice appear as an autonomous process and/or structure. Therefore, I seek to use qualitative research focused on group conferences to highlight the connection between the theory and practice of restorative justice and the tradition of sociological theory in order to clarify it. Specifically, I locate restorative justice within a broad historical process of social theory to illustrate the potential foundations of restorative justice. In doing so, I illustrate the significance of restorative justice by evaluating its structural components, processes, and outcomes. I believe that by explaining the role of this implicit and very significant logic I am shedding light on the entire field of restorative justice, as undefined and unclear as it may be.

The Sociological Tradition

Emile Durkheim, George Herbert Mead, Jürgen Habermas, and Ivan Illich are significant theorists in the discipline of sociology. Each theorist critiques the dynamics of modernity. Durkheim focuses on the transition to organic solidarity, while Mead emphasizes the increasing

capacity of individuals to role-take. Moreover, Habermas discusses the effects of the dual processes of rationalization on the achievement of consensus, while Illich warns of the consequences of increasing professionalization. Taken altogether, the four theorists wrestle with the future of modern society as reflected in social solidarity and integration in light of increasing individuation, specialization, and interdependence.

Emile Durkheim (1858-1917) uses the discipline of sociology as a scientific attempt to highlight the different moral and ethical implications of the division of labor on society. In order to do so, Durkheim's work explores a historical narrative about the societal transition from mechanical solidarity to organic solidarity. In societies characterized by mechanical solidarity, there is homogeneity in beliefs because individuals engage in similar tasks and pursuits. In other words, there is a low level of the division of labor. Consequently, the individual consciousness is completely enveloped by the collective consciousness and "the individual...does not belong to himself; he is literally a thing at the disposal of society" (Durkheim 1997: 85).

However, social solidarity is greatly affected by the development of the specialized division of labor that occurs with modernity. The increasing specialization within the division of labor fosters a society characterized by both individuation and interdependence. Durkheim uses the concept of organic solidarity to describe this new and potentially stronger type of social solidarity. However, society has not yet institutionalized organic solidarity; it is still in the transition period, during which pathologies occur. Nonetheless, Durkheim (1997: 21) attributes this strength to how

[i]ndividuals are linked to one another who would otherwise be independent; instead of developing separately, they concert their efforts. They are solidly tied to one another and the links between them function not only in the brief moments when they engage in an exchange of services, but extend considerably beyond.

The elements of individuation and interdependence subsequently transform the collective consciousness; rules and values become “more general” and abstract (Durkheim 1997: 231). Moreover, the collective consciousness reflects moral individualism, or the belief in the dignity and worth of all individuals. Members of society realize that the only thing they hold in common with each other is their status as individuals. Therefore, the individual becomes sacralized because that which is held in common is the basis for sacralization: “Consequently nothing remains which men can love and honor in common if not man himself. That is how man has become a god for man and why he can no longer create other gods without lying to himself” (Durkheim 1973: 52). Hence, moral individualism becomes a premise for a world where all individuals are equal and there is respect for one another’s rights: “Whoever makes an attempt on a man’s life, on a man’s honor, inspires in us a feeling of horror analogous in every way to that which the believer experiences when he sees his idol profaned” (Durkheim 1973: 46).

Durkheim (1997: 24) studies the law and its corresponding sanctions as the “visible symbol” of different types of social solidarity. Generally speaking, criminal violations of the law are offenses committed against the collective consciousness of a society because “all law is public, in the sense that it is a social function, and all individuals are, although in different respects, functionaries of society” (Durkheim 1997: 28). Two categories of law correspond to the two types of social solidarity. In societies characterized by mechanical solidarity, repressive sanctions are applied through penal law by an organized body “for the sake of punishing” (Durkheim 1997: 44). The offenses that are punished are ones that have threatened the homogeneity of the society. The resulting sanctions are designed to “do harm to [the perpetrator] through his fortune, his honour, his life, his liberty, or to deprive him of some object whose possession he enjoys” (Durkheim 1997: 29). On the other hand, societies characterized by

organic solidarity rely upon civil, commercial, procedural, administrative, and constitutional law that imposes restitutive sanctions. Officials who have received “a very special kind of training” (Durkheim 1997: 70) administer these sanctions, which do not aim to harm or injure the perpetrator but instead “[restore] the previous state of affairs” and “[re-establish] relationships that have been disturbed from their normal form” (Durkheim 1997: 29). In other words, they aim to protect social solidarity by restoring society to its previous form. As Durkheim (1997: 68) describes it, “Damages awarded have no penal character: they are simply a means of putting back the clock so as to restore the past, so far as possible, to its normal state.” Therefore, repressive sanctions, which are rigid and clearly defined, impose a punishment on an offender, while repressive sanctions, which are situational and fluid, impose an obligation.

While Durkheim’s theory revolves around society’s increasing capacity for organic solidarity, George Herbert Mead (1863-1931), the founder of symbolic interactionism, explores how interaction with others is the basis for social order. More specifically, Mead asserts that individuals have developed an increasing capacity to take the role of the other, which has led to the development of a differentiated society. On a micro-level, Mead begins by examining the foundations of the social self through the distinct concepts of the “me” and the “I”. These concepts relate to the influence of social interactions on an individual’s attitude and subsequent behavior. The “I” is the spontaneous, free, subjective self, while the “me” is the social, objective self that internalizes the attitudes and expectations of others. As a result, “social control is the expression of the ‘me’ over against the expression of the ‘I’” (1967: 210). Therefore, the development of the social self is a reflexive process.

Mead continues to explore the development of the self by comparing and contrasting the social and the asocial selves that emerge in different social situations. The social aspect of the

self emerges when an individual engages in a situation in which all people interact in a respectful, cooperative manner. Consequently, the individual “integrate[s] his own behavior with the behavior of the other individual selves” and behaves ethically (Mead 1967: 322).

Meanwhile, the asocial aspect of the self emerges when an individual encounters “groups whose respective social purposes or interests are antagonistic or conflicting or widely separated” (Mead 1967: 322). As a result, the individuals exhibit hostile, independent, and unethical behavior and reflect an attitude of superiority.

Mead also examines how two institutions, economics and religion, have facilitated the conditions for individuals to take the role of other. Each of the institutions is dependent upon the medium of communication which “provides a form of behavior in which the organism or the individual may become an object to himself” (Mead 1967: 138). Communication is essential because individuals only become self-conscious members of society when they role-take, or identify themselves with the other. Mead (1967: 300) explains this process of self-conscious role-taking:

To take a distinctively human, that is, self-conscious, social attitude toward another individual, or to become aware of him as such, is to identify yourself sympathetically with him, by taking his attitude toward, and his role in, the given social situation, and by thus responding to that situation implicitly as he does or is about to do explicitly.

Thus, role-taking begins the struggle towards the general interest of all people because it extends empathy and creates capacities for social integration: “If the system of communication could be made theoretically perfect, the individual would affect himself as he affects others in every way” (Mead 1967: 327). An additional component of role-taking is what Mead calls “the generalized other” (Mead 1967: 154). This concept refers to more than just a singular other and instead to how an individual develops a sense of self by taking “[other individuals’] attitudes toward the

various phases or aspects of the common social activity or set of social undertaking in which, as members of an organized society or social group, they are all engaged” (Mead 1967: 155). This process of role-taking allows the community to exercise social control over individuals’ behaviors. Overall then, when individuals are self-conscious and engage in role-taking, which takes place in organized activities, they behave in an ethical manner that fits in with the behavior of the larger community. Unethical behavior, on the other hand, “is socially harmful or conducive to the disruption of society” (Mead 1967: 321).

Returning to the economic system, role-taking occurs through processes of exchange during which it is necessary for individuals to know and understand the needs of other individuals engaged in the market. Mead views the specialization in the economic system as contributing to the development of relationships among members of society. Meanwhile, religion provides for role-taking in that it emphasizes “neighborliness” and reflection on how to assist others (Mead 1967: 292). The medium of communication inherent in the two institutions progresses society towards “a universal society that includes the whole human race, and into which all can so far enter into relationships with others through the medium of communication. They can recognize others are members, and as brothers” (Mead 1967: 282). Thus, despite the differentiation and complexity of modern society, individuals are brought together in a “process of integration” (Mead 1967: 297) to be members of a potentially universal society because of the existence of “the universe of discourse” (Mead 1967: 284). The outcome of the systems of economics and religion is democracy, which is a system in which “the individual can be as highly developed as lies within the possibilities of his own inheritance, and can still enter into the attitudes of the others whom he affects” (Mead 1967: 326).

Jürgen Habermas (1929-) assesses communication through the concepts of the system and the lifeworld. The system is characterized by economic and political institutions/agencies in which action is coordinated by the de-linguistified steering media of money and power, while action in the lifeworld is coordinated through the medium of language. In one sense, the lifeworld refers to “a dense network of shared meanings that individuals draw from to construct identities, to negotiate situational definitions, or to create social solidarity” (Seidman 1989: 18). In traditional society, the system and lifeworld were integrated; the forces of production took place within the “mythical, religious or metaphysical” dimensions of the traditional lifeworld (Habermas 1971: 95). However, the expansion of capitalism, industrialization, and technology undermined the legitimacy of the traditional lifeworld and led to the uncoupling of the system from the lifeworld. This process of uncoupling then created the conditions for the dual processes of rationalization that characterize modernity.

With respect to the system, this process of rationalization is reflected in the development of instrumental-strategic reason, which “supposes for the individual the concern with the outcome of a certain action; in this respect, it implies that the individual operates a careful calibration of the available means in order to bring about a desired effect” (Dragomirescu 2012: 41). Instrumental-strategic reason encompasses both instrumental and strategic action, both of which are based on an evaluation of the potential for success, efficiency, and technical rules; instrumental action refers to action taken towards an object, while strategic action “refer[s] to action that is social” (McCarthy 1979: 25). In essence, Habermas argues the process of instrumental rationalization leads to human dependence on empirical proof, technical expertise, and efficiency.

Rationalization of the lifeworld results from the expansion of communicative rationality, which refers to the achievement of consensuses through communication and discourse rather than through ascription by force or tradition. Habermas claims that consensuses are achieved because communication and discourse allow individuals to repair any validity claims that have not been realized. Though the four validity claims—comprehensibility, truth, legitimacy, and sincerity—are inherent in speech, they are often not realized or validated. According to Habermas, comprehensibility refers to the ability to understand each other, while truth refers to the accuracy of commentary on the natural or objectified world. In addition, legitimacy refers to the right speakers have to make statements in social interactions. Finally, sincerity involves the capacity to truthfully express one's feelings, otherwise known as the inner world (McCarthy 1989: 288). Moreover, each validity claim, aside from comprehensibility which refers to the medium of language, responds to a type of discourse; truth refers to theoretical discourse, legitimacy refers to practical discourse, and sincerity responds to therapeutic discourse. Habermas argues that rationally grounded consensuses are often not met because the inequalities of money and power result in the distortion of the validity claims. Therefore, effective discourse will only be realized in the ideal speech situation, in which all individuals have an equal ability to initiate and perpetuate discourse, as well as refute and ground statements.

However, Habermas warns that the lifeworld is in peril because the process of instrumental rationalization developed faster than that of communicative rationalization: "What we have already found in the system perspective seems to be confirmed from this internal perspective: the more complex systems become, the more provincial lifeworlds become. In a differentiated system the lifeworld seems to shrink to a subsystem" (Habermas 1987: 173). In other words, Habermas warns that the de-linguistified steering media of the system are

colonizing the lifeworld. Consequently, undistorted communication is routinely suppressed by the dominance of money and power. In dominating communication, institutions, corporations, bureaucratic agencies, and the legal system turn citizens into clients and prevent them from having equal opportunities to participate in discourse. Habermas (1987: 350) describes this as “a cleansing of political participation from any participatory content.” The coordination of action and the formation of consensuses are therefore not communicatively achieved, but instead ascribed.

Ivan Illich’s (1926-2002) theories on increasing professionalization in the modern era relate to Habermas’ warning on the colonization of the lifeworld. Illich outlines two historical periods called the Age of Dominant Professions and the Age of Disabling Professions. The first period refers to how professionals have developed the power “to measure what shall be good, right, and done” and prescribe needs (Illich 1996: 81). Consequently, a condition of “modernized poverty” arises (Illich 1996: 8). This condition occurs when individuals become dependent on the commodities produced in the market in every facet of their lives—people become consumers, clients, students, etc. As a result, individual autonomy, personal satisfaction, creativity, and ultimately freedom are undermined. Illich (1996: 29) uses the example of self-building in Venezuela once legislation was passed that required that plans receive an architect’s approval: “The man who produces his own ‘housing’ is looked down upon as a deviant who refuses to cooperate with the local pressure group for the delivery of mass-produced housing units.” Such a man is not just looked down upon by the professionals and the elite, but by his neighbors as well because modernized poverty “corrupts the trust of people in their own and their neighbors’ ever-surprising autonomous competencies” (Illich 1996: 32). Self-building is, according to Illich, an example of “useful unemployment” (Illich 1996: 29) and “a kind of

satisfaction that has no market equivalent” (Illich 1996: 30). Thus, individuals depend on those who are considered experts armed with the specialized knowledge to dictate their needs and subsequent satisfactions.

During the Age of Disabling Professions, “professions claim that they are the exclusive experts of the public good” (Illich 1996: 55). In prescribing “the public good” however professionals provide standardized responses. They are able to maintain their dominance due to several illusions, one of which involves how modern economic models ignore the value of “non-marketable use values” (Illich 1996: 68). Furthermore, Illich (1996: 79) explains,

The synergy of autonomous and heteronomous production is reflected in society’s balance of liberties and rights. Liberties protect use-values as rights protect the access to commodities. And just as commodities can extinguish the possibility of producing use-values and turn into impoverishing wealth, so the professional definition of rights can extinguish liberties and establish a tyranny that smothers people underneath their rights.

Thus, the ability of disabling professions to define citizens’ rights undermines the citizens’ individual and group autonomy. Illich (1996: 82) relates this loss to the effects of the legal profession: “When the right of the citizen to a lawyer has been established, settling the dispute in the pub will be branded unenlightened or anti-social.”

However, during the Age of Disabling Professions there is a growing awareness on the part of some minority groups that their individual and group autonomy is being undermined and that they need to “directly challenge the insinuating dominance of disabling professions [to] open the way to freedom for non-hierarchical community-based competence” (Illich 1996: 40). Thus, Illich (1996: 41) proposes social reconstruction as necessary in order to free members of society from being forced to be “consumers of care.” He envisions a convivial society: “A convivial society would be the result of social arrangements that guarantee for each member the most ample and free access to the tools of the community and limit this freedom only in favor of

another member's equal freedom" (Illich 2009: 12). In essence, professionalization would not be completely eradicated, but instead diminished to such a degree as to allow individuals to retain their freedom and autonomy.

The theories of Emile Durkheim, George Herbert Mead, Jürgen Habermas, and Ivan Illich are bound together by a thread of continuity. Durkheim asserts that society is in the midst of transitioning to organic solidarity and sacralizing the human individual as a result of the specialized division of labor. While Durkheim focuses on the macro-level effects of the division of labor, Mead analyzes how the division of labor effects the development of the self. Specifically, Mead explores how specialization is the impetus for individuals' capacity to integrate their impulsive, asocial selves with their social, cooperative selves, and engage in self-reflection through the process of role-taking. Self-reflection is also essential for Habermas, who emphasizes that reflexivity is necessary for the process of communicative rationalization to occur. Communicative rationalization refers to the achievement of consensus through language and discourse in which all individuals can participate. However, Habermas warns that language is increasingly being distorted by money and power. Illich builds upon Habermas' warning and argues that increasing professionalization has forced citizens to become dependent on commodities and industrial tools. Consequently, individual and group autonomy, creativity, and freedom are threatened.

METHODOLOGY

This study involved two different approaches: ethnographic fieldwork and individual interviews. My target population for both methods was individuals involved in restorative

justice. For participant observation, this included facilitators, community members, offenders, and victims, while my interviews were limited to facilitators, community members, and lawyers.

I conducted participant observation on four separate occasions. I selected these settings based on my ability to gain access and because of the time frame. I was able to gain access after I contacted Lauren, the co-chair of the Manitou Springs Restorative Justice Project and expressed my interest in observing their restorative justice group conferences. However, the Manitou Springs Restorative Justice Project does not allow individuals to solely be observers; all individuals present at conferences have to be active participants. Therefore, I agreed to be a participant and ultimately acted as a community member in four different conferences. Each conference was held at the Manitou Springs Congregational Church and lasted around an hour and a half. Because the conferences were confidential, I was unable to record them or take notes. The first three conferences I participated in were facilitated by Lauren, and, including myself, there were three community members. The fourth conference was facilitated by Malcolm. At each conference I presented myself as a Colorado Springs community member and local college student researcher. After each conference I jotted down general notes and was careful to keep in mind the confidentiality agreements I had signed. I knew what information I could and could not include in my notes based on a conversation I had with Lauren before I attended my first conference. She shared that I could take down only general notes—no names, no direct quotes, and no particularly identifying circumstances.

The primary purpose of my field research was to observe restorative justice in practice. This included being attentive to the physical set-up, the procedural flow, the roles of facilitators and community members, the types of questions that were asked, the reflections that took place, and the outcomes of the conferences. My experiences in the conferences also affected the types of

questions I subsequently asked interviewees. During each conference, we sat in chairs in a circular formation in the basement of the Congregational Church. The conferences began with every participant signing a confidentiality agreement and briefly introducing themselves. Lauren or Malcolm then asked the offenders to describe their offenses and then asked the family members (when present) a few questions. Typically, the facilitators would then ask one of the community members to speak. From this point forward, the conversation would then begin to flow naturally with community members contributing their thoughts and asking additional questions. If there appeared to be a lull in the conversation, the facilitators asked prodding questions. The conferences ended with a brainstorming discussion over what the offender's agreement should entail. Agreements contained the obligations the offenders had to meet, including letters of apology, community service hours, and informational brochures. If the offender completed the requirements in the agreement before his or her next court date, then he or she would not have to appear in court. After there was a consensus over the agreement, all of the conference participants signed it. The first conference involved two juvenile females who had been ticketed for resisting arrest, so the victim was the police officer who had arrested them. One of the offenders had her mother with her, while the other offender had her mother and stepfather with her at the conference. However, the police officer did not attend the conference. The second restorative justice conference involved a woman who had been arrested for leaving her dog unattended in her vehicle. The victim was thus the dog, which she brought to the conference. The woman also brought her husband with her to the conference as a family member. The third restorative justice conference I participated in dealt with a twenty-year-old man who had been caught trespassing on the roof of a building in Manitou Springs. He came to the conference alone, and the primary victim—the building owner—did not attend the

conference. Finally, the last conference I participated in dealt with a twenty-year-old male who had been caught with drug paraphernalia. He came to the conference alone. It is important to note that I never witnessed an offender actually confront his or her victim.

I completed nine interviews in total. Five of the interviewees were restorative justice facilitators, two were community members, and two were lawyers. Of the five facilitators, Kim, Rhonda, and Lauren are all involved with the Manitou Springs Restorative Justice Project. Kim is a middle-aged mother who became involved with restorative justice after participating as a support member for friends in a restorative justice conference. Rhonda is a middle-aged female who previously worked as a forester and conference planner. She now works both as a mediator and facilitator. Lauren was a Special Education teacher and volunteered with at-risk youth before becoming involved with restorative justice. She is the most experienced and oldest member of the Manitou Springs Restorative Justice Project. The other two facilitators, Andrew and Jill, work full-time with an organization titled The Youth Center which seeks to teach restorative justice practices to youth. Andrew previously worked with youth as a soccer coach, while Jill worked for a non-profit that taught financial literacy before becoming involved with other local restorative justice groups. Of the two community members, Lisa is an undergraduate college student who just recently began participating in conferences, while Jeremy is a retired engineer who has been involved with restorative justice for decades. Finally, Keith is a personal injury lawyer but was instrumental in the institutionalization of restorative justice in Manitou Springs and Daphne is the part-time prosecutor for Manitou Springs.

All of the interviewees were aware that I was an enrolled college student and a student researcher. I originally selected interviewees based on a sample of convenience gathered from contacts in the Colorado Springs community. After conducting some of the initial interviews, I

was able to gather additional contacts to interview and thus engaged in snowball sampling. In addition, I contacted one interviewee after participating in the same restorative justice conference. The interviews lasted between twenty and ninety minutes, and each was recorded using an audio recorder. Each interviewee signed a consent form agreeing to a recorded interview. I also occasionally jotted some notes during the interviews. I subsequently thoroughly transcribed the interviews. The interviews took place at various locations in Colorado Springs and Manitou Springs, including a local college campus, local coffee shops, and local churches. The purpose of the interviews was to gather more information on the theory and practice of restorative justice (in general and as it differs from the conventional criminal justice system) and to understand the roles of facilitators and community members. After transcribing all of the interviews, I engaged in multiple processes of coding to discover and unpack recurring themes and concepts. Examples of codes included empathy, respect, communication, and community.

The decision to employ qualitative methods to study the socio-logic of restorative justice was deliberate because I was interested in how the process—complex, human, and interactional—works. Specifically, I wanted to discover the implicit logic reflected in the subtleties of meanings, interpretations, interactions, and behaviors of restorative justice. I would not have been able to conduct such in-depth analysis had I utilized quantitative methods, which are more suited for the analysis of outcomes. Therefore, participant observation and interviews were both appropriate methods. More specifically, I used participant observation because in witnessing/participating in group conferences I was able to develop “understandings of [the] social settings” (Warren and Karner 2010: 17). In addition, I used interviews because, as Robert Weiss (1994: 1) states, they provided “access to the observations of others.” Through these

interviews, I was able to gather invaluable and varied perspectives on the theory, purpose, and practice of restorative justice. These perspectives allowed me to develop a detailed and semi-holistic description of restorative justice, which, most importantly, allowed me to analyze the process.

As with all qualitative research, there are limitations. My greatest limitation was the short time-frame within which I had to work. Therefore, my sample size is relatively small. Additionally, my participation in the field research impacted my ability to be more of an impartial observer. Therefore, I most likely missed important elements of the restorative justice conferences that could have affected my findings. Still, as Warren and Karner (2010: 8) assert: “A qualitative scholar’s implied definition of validity is, often, his or her loyalty and commitment to representing as fully as possible the people and settings being studied.” Consequently, my research is not rendered invalid because of my participation. However, the data I gathered on restorative justice cannot be generalized because I only attended one type of restorative justice—group conferences—in Manitou Springs based on a sample of convenience. Moreover, I was only able to interview certain individuals gathered by convenience and snowball sampling.

FINDINGS

The interview and participant observation data reflect that restorative justice conferences are inclusive, de-professionalized, and confidential. This structure creates the conditions in which the process of communication, which allows individuals to empathize and exert social

control, takes place. These processes consequently generate certain outcomes, including the realization of abstract values and a stronger sense of community.

I. Structure

The structure of the conferences can be explained by analyzing its inclusive, de-professionalized, and confidential nature. First, it is important to note that facilitators are aware that there are certain cases, such as domestic violence, which are unlikely to be repaired in a conference format because including the offender could lead to re-victimization. However, the conferences that do take place are inclusive; they invite multiple perspectives, including the victim, offender, family members, and community members, to be articulated and heard. In fact, every member present is required to participate. As a result, the conferences provide a holistic and integrative picture of the harm that has been committed. With respect to the victims, restorative justice conferences give them the right to express their thoughts and feelings about the offenses committed against them, as well as ask questions they need in order to achieve closure.

Meanwhile, the act of including the offender greatly contrasts with the criminal justice system, in which an offender is isolated and ostracized. Daphne also described how an offender is prevented from providing an apology in the criminal justice system: “An offender is protected and shielded by his lawyer. There is no way in hell his lawyer is going to let him talk to that victim and say I am sorry. Not going to happen.” Meanwhile, in restorative justice, the offender has the opportunity to explain the circumstances surrounding the offense, provide a sincere apology, and/or develop a greater understanding of the consequences of his or her crime by listening to others. In order to even be allowed to participate, an offender must have admitted his

or her guilt in a pre-conference and then continue to admit this accountability in the conference. If offenders are unable to hold themselves accountable or apologize for the harm they have inflicted in the pre-conference, they continue on through the process of the conventional criminal justice system. If offenders initially hold themselves accountable in the pre-conference but then fail to do so during the conferences, the facilitators will remind the offenders of their discussion during the pre-conference. One way facilitators continuously gauge accountability is through possession of the police reports; they compare the facts the offenders share in the conference with those in the police report. All of the facilitators expressed how they did not want restorative justice to completely replace the criminal justice system because of situations such as those in which offenders are unable or unwilling to hold themselves accountable and/or there is a high change of re-victimization.

Finally, the inclusion of community members—who are untrained volunteers—is significant because they express how the larger community is affected by the offense. They then also have a role in how the harm is repaired. Lauren in particular appreciated the inclusion of all parties because in a successful conference every participating member gains something: “I really feel like when you sit in a restorative justice circle that everybody benefits from being there, not just the victim or the offender, but me as a facilitator, you as a community member.”

Facilitators play crucial roles in the conferences. However, the facilitators do not act as experts or professionals in the traditional sense, which creates conditions of equality. For example, they do not seek to impose professional expertise. In addition, the only training that four out of the five facilitators had undergone ranged from multi-day to one-week-long training seminars. One facilitator had not undergone any specific training in restorative justice. Moreover, only one of the facilitators had a relevant educational background. The lack of

specialized training contributes to a de-professionalized atmosphere. Linda articulated how the status of facilitators influences conferences: “You notice lawyers, for example, have an elevated status in our society and tend to be less relatable because of that status. So by having a facilitator more normalized, less lofty, it’s easier to share and open up with an equal than it is somebody who you’ve already put yourself in a subservient position to.” Instead, the facilitators explained that they had gained the most from their experiences volunteering as community members and then facilitating conferences. Lauren, who has a Master’s Degree in Education, stated: “For me, it’s not as much about education as it is about practice.” Over the course of these experiences the facilitators developed skill sets that they believe allow them to be effective facilitators. These skills include objectivity, flexibility, organization, and the ability to be both non-directive and directive over the course of a conference. In fact, several facilitators expressed that the most successful conferences were those in which they said the least. This directly contrasts with the interactions that take place between lawyers and their clients; lawyers want to maintain total control.

Another component of the structure of the conferences is the physical formation of restorative justice conferences, which are held in circles. All four conferences occurred in a circular formation, with the participating members sitting in a different order of seats each time. Thus, there is no head of the table, which creates a sense of equality. All of the facilitators believed the circular formation was significant because, as Jill explained, “the circle is perfect for creating the subtle mindset that we’re all equal here and that everyone’s voice matters.” The formation also allowed all participating members to see each other. In all four conferences, individuals made direct eye contact while engaging in discussion.

Finally, all of the participating parties must sign a confidentiality agreement. This then creates an opportunity for all participating members to speak freely and openly. For example, community members feel open to discuss past experiences in which they too have broken the law and offenders share troubles with substance abuse.

II. Process

The structure of restorative justice creates the conditions for the process of communication to take place. More specifically, all participating members of the conferences are required to share their perspectives and reflections on the offense that has been committed, as well as respond to questions that are asked of them. As a result, as Andrew pointed out, “people are able to talk and be listened to and find out what really happened, why, and who did it.” Therefore, the dialogue that takes place manifests itself in the form of a discussion that is based on honesty and truth. Participating members feel comfortable sharing, and, as Kim described, “Community members will disclose something about their past or some trouble they got into or what they’ve dealt with.” This type of honest communication poses a stark contrast to the criminal justice system, where opposing sides are engaged in a competition. In this competition, the lawyers, according to Keith, “want to maintain control of the process” and thus dictate to their clients what to say and when to say it. The truth falls to the wayside. Jill articulated her viewpoint on the criminal justice system:

Look at the conventional legal system. You have an adversarial team, you have a defense lawyer, you have a prosecutor, and they are there competing with one another. One’s ready to throw the book at the offender and the other one wants to get him off scot-free. I mean that’s an over-simplification, but of course that’s going to be adversarial, and sadly, the truth doesn’t come out quite often, because it’s not even admissible in court.

Not only is the communication that takes place truthful, but it is also creative. In particular, this is reflected in the brainstorming and crafting of the agreement. The obligations included in

the agreement do not have to be conventional or dry, but can instead be, according to Jill, “very inventive.” In the four conferences, the brainstorming process yielded obligations such as informative brochures and pamphlets that would be designed in creative ways to attract attention. In one restorative justice conference, the offender had trespassed on a vacant lot. When he ran from the police, he left behind an empty beer bottle. In the beginning of the brainstorming of the agreement, ideas included picking up trash in vacant areas, but in the end, the agreed-upon solution was community service hours with a specific non-profit that had a mission statement that resonated with the offender.

Embedded in the process of communication is the process of empathizing, which helps to bridge the gap between the individual perspectives of victims, offenders, and community members. By engaging in dialogue, the parties not only develop a more holistic understanding of the harm that was created, but are also able understand the perspective of each individual member. Keith called this “an opportunity to exchange.” This process of mutual understanding is powerful in allowing all of participating members to grasp and realize each other’s feelings, attitudes, and thoughts. Daphne spoke about this process:

People have a better understanding of one another and what happened or why the offender did what they did. The offenders have a better understanding of why they did what they did and maybe what they should have done differently and/or has taken steps to fix or correct or improve on something that caused them to be where they were.

Daphne’s remarks also relate to the process of social control, which simultaneously takes place because the conferences provide the community, through the community representatives, the opportunity to impact and ultimately change the behavior of its citizens through the medium of communication. The community members impact the offenders by asking difficult questions and sharing personal reflections. All of the facilitators described the importance of community

members as pertaining to their impact on the offenders. Jill expressed that restorative justice allows this to take place because “we tell the offender ‘we do want you here, but here’s how you need to interact with us.’” This influence on attitude and behavior was also reflected in one conference in which one of the community members told the offender, a twenty-year-old, that he had too much time on his hands and should participate in more extracurricular activities. The offender considered the suggestion and then responded that he too agreed that he had too much free time. They even brainstormed potential activities in which he could participate. Therefore, while restorative justice provides the community with the opportunity to change behavior, it also provides the offender with the opportunity to become a contributing member of society by, as Kim put it, “stepping it up a notch.”

III. Outcomes

The processes embedded in restorative justice facilitate certain outcomes. One outcome is the realization of abstract values, including the dignity of the individual, respect, and equality, all of which can be grouped under the overarching category of humanity. By interacting with individuals from different walks of life with the purpose of repairing harm, every individual respects and appreciates each other as a fellow member of the community. Kim’s statement reflected this appreciation of each other: “Restorative justice is about the offender sitting in the room and although you don’t know him, you’re not judging him. You’re saying, ‘Yeah you screwed up but so have I. We all have. You just happened to get caught. And what can we do to help you?’” The realization of humanity contrasts with that of the criminal justice system, which operates according to an antagonistic logic that separates offenders from the greater community in a physical sense and through stigmatization. Jill’s description of the effects of the cooperative, restitutive logic of restorative justice highlights how it differs from the criminal

justice system: “It brings humanity to the group. It says I care about you as a human being. I want the best for you, and I want the best for the people that you’ve interacted with.”

A second outcome of restorative justice is a stronger sense of community. In other words, restorative justice strengthens relationships between members of a society and restores harmony in the community. This is due to the realization of the values outlined above; for example, community is strengthened when individuals realize they are all equals. Moreover, restorative justice presents a unique opportunity to bring together a community to address, as Jeremy said, “a social contract that’s been broken.” The restorative justice process itself thus facilitates the strengthening of the community because it gives the community responsibility for its members and simultaneously returns problematic members to the community as contributing, functioning individuals. Daphne specifically attributed the restoration of the community to the process of communication in restorative justice: “Once we have an opportunity to communicate with one another and learn one another’s circumstances, we can find ways not just to forgive and to understand but to really restore and make things better so we can go on.” Additionally, restorative justice is crucial in allowing a victim to feel safe again; if one member of the community is offended and feels unsafe, then social relations are strained.

Overall, qualitative data collected from interviews and participant observation highlight how the structure of restorative justice conferences encourages the process of communication to occur, which then leads to both the realization of humanity and a stronger sense of community. However, it is important to note that the categories of structure, process, and outcome are not mutually exclusive because restorative justice is founded on the very beliefs that it seeks to facilitate.

DISCUSSION

The results of the interviews and participant observation are intimately connected to the sociological tradition. This is evident if we begin with Durkheim's historical narrative about societal transition; restorative justice stands as an example of this transition. Today, society is no longer characterized by homogeneity in beliefs as globalization and the spread of technology increase both individuation and interdependence. Society is undergoing the transition to organic solidarity, which is a society bound together by moral individualism. The institutionalization of restorative justice symbolizes this transition in multiple ways. First, Durkheim envisions moral individualism to be the premise for a world where all individuals are equal and there is respect for one another's rights. The institutionalization of restorative justice contributes to the conditions, or the process, by which this moral premise can be implemented and upheld. The specific features of restorative justice that reflect moral individualism are the circular formation that conferences are held in and the requirement that all questions and reflections be asked and stated respectfully. Similarly, the goals of restorative justice, specifically reintegration and inclusion, reflect how "a man's honor" (Durkheim 1973: 46) is restored to the offender. As a result of participating in the process of restorative justice, the community as a whole is strengthened because of the healing that takes place; the victim achieves closure and does not have to keep worrying about re-victimization, the community members feel safer because of the offender's understanding of his or her behavior, and the offender is not ostracized but instead re-integrated into the community. The solidarity of the community is stronger than it was before the offense was committed.

For Durkheim, the law is a visible indicator of the type of solidarity that characterizes a community. Thus, a society characterized by organic solidarity imposes restitutive sanctions, which are based on obligations, as opposed to retributive sanctions, which are based on punishment. The concept of restitutive sanctions is also reflected in restorative justice, which employs a different philosophy than that of the criminal justice system. Thus, the institutionalization of restorative justice and its restitutive sanctions implies a shift in how society seeks to answer “how to hold account offenders to ensure justice for the victims of crime while rehabilitating offenders to normative social values and behavior” (Bacon 2010: 1). More specifically, restorative justice seeks to restore harmony in the community; it does not punish for the sake of punishing. The restitutive elements of restorative justice are reflected in how conferences conclude with agreements that impose obligations on offenders. These obligations are not meant to humiliate the offenders, but instead revolve around the needs of the victim and the community, the responsibility of the offender to repair the harm, and the ability of the offender to accomplish the agreement. The fact that restorative justice relies primarily on restitutive sanctions, which are creative and situational in nature, reflects how Durkheim theorizes that societies will cease to rely predominantly on repressive laws in organic solidarity and instead move towards a preponderance of restitutive sanctions.

Mead theorizes how there has been a rise of universalism throughout the evolution from more static societies to more dynamic societies. For Mead, communication is essential to this evolution because individuals can only become self-conscious members of society if they develop the capacity to take the role of the other. As a result, “they can recognize others as members, and as brothers” (1967: 282). Restorative justice provides the conditions or location through which communication that encourages empathizing can take place. In Mead’s terms,

this communication facilitates role-taking, or the identification with the other, which leads to empathy. Specifically, restorative justice encourages a dialogue between the facilitator, victim, offender, and community members in which all members engage in role-taking and develop a mutual understanding of each other. This occurs because the type of dialogue that takes place in restorative justice conferences is respectful and truthful and addresses such components as: what was the harm, why was the harm inflicted, and how can the harm be repaired. Consequently, the offender is able to become a self-conscious member of society because he or she has developed the capacity to be both accountable and empathetic within the circle and in the long-term. In other words, through this process of role-taking the offender has developed social control because the “I”, or the free, subjective self, is now actively constrained by the “me,” the social, objective self. Meanwhile, the victim and community members have also engaged in this process of mutual understanding because they understand the circumstances surrounding the offense and why the offender committed the harm.

Mead’s concept of the generalized other is also relevant because of the role of community members in restorative justice conferences. Mead (1967: 155) describes this process as when an individual develops a sense of self by taking “[other individuals’] attitudes toward the various phases or aspects of the common social activity.” The role of community members is, as articulated by the interviewees and evident in participant observation, to highlight to the offender how the consequences of his or her actions are not limited to the victim—how the whole community is affected and, as Jeremy phrased it, “a social contract [is] broken.” Therefore, the participants who act as representatives of the community shed light on the attitudes and ethics of organized society by asking questions and reflecting on the harm. More specifically, the

community members use communication to encourage offenders to constrain their behavior for the sake of the social order.

A later concept of the symbolic interactionist tradition that is applicable to restorative justice is altercasting because it also pertains to the idea of constraint. Altercasting refers to “the imputation of roles to individuals” (Hewitt and Shulman 2011: 144). One form of altercasting that occurs in conferences is how community members treat offenders as contributing, respectable members of society and not as disgraced, insignificant persons who are incapable of being functioning members. By treating the offender as such throughout the entire conference, the community members attempt to “shape the character of self-concept” (Hewitt and Shulman 2011: 145). Altercasting tends to be effective in casting the offender into the role of being a contributing, respectable member of society because of two reasons. First, the offender may perceive an advantage in responding positively, and, second, he or she may be attempting to respond to “a general norm of reciprocity” (Hewitt and Shulman 2011: 144). If a restorative justice conference is successful, the offender should alter his or her behavior because of both reasons.

Finally, it is crucial to point out that it is not just the offender who engages in role-taking and thus develops the capacity to be empathetic. Instead, all of the members of restorative justice conferences develop a sense of self through restorative justice. This is due to the conditions of restorative justice because, as Mead asserts, a sense of self can only develop in certain conditions. Specifically, the social aspect of the self can only be engaged when an individual cooperates and engages on an equal playing field with the other members of society. If an individual encounters “groups whose respective social purposes or interests are antagonistic or conflicting,” then the asocial aspect of self is realized (Mead 1967: 322). Thus, the conditions

of restorative justice allow people to integrate their social and asocial selves. This process of integration and transformation encourages the ethical behavior associated with the social self. The criminal justice system, on the other hand, in which the different parties—prosecution, defense, victim, offender—hold conflicting interests, engages the asocial self. In fact, the criminal justice system sets up an antithesis between the asocial and the social self and therefore encourages superiority, social independence, and impulsive and unethical behavior. This then undermines social integration and prevents the development of a “universal society” (Mead 1967: 282).

Habermas also writes on the conditions necessary for successful communication to take place. In order for the ideal speech situation to be realized, the four validity claims of comprehensibility, truth, legitimacy, and sincerity, must be realized. However, he feels that the ideal speech situation rarely, if ever, exists amidst the increasing instrumentalization of society. Therefore, restorative justice reflects an attempt to overcome the systematic distortion of communication and prevent the colonization of the lifeworld by the system. It does this by encouraging the facilitator, victim, offender, and community members to engage in discourse to achieve, or repair, the validity claims of speech. In the conferences, all members who participate are allowed to, and are, in fact, required to participate either by sharing what happened, asking questions, or reflecting. If individuals are not contributing to the conversation, the facilitator will intervene and ask prodding questions. Moreover, individuals are allowed to make any statements or express any opinions, attitudes, or needs about the harm that was committed so long as they are true and legitimate. Likewise, all individuals are able to question other individuals. Thus, the conditions of the ideal speech situation are at least approximated in most restorative justice conferences. For example, when participating members discuss what

happened they are incorporating the validity claim of truth, while when they discuss an apology they are validating sincerity. In addition, discourse about whether the offender realizes his or her actions were out of line and unethical reflects an attempt to realize the validity claim of legitimacy. However, it is important to note that some restorative justice conferences, especially those that occur in schools, are unable to fully achieve the ideal speech situation because of fear of the authority figures that are present—principals, superintendents, teachers, etc. In other words, rationally grounded consensus are not achieved in such restorative justice situations because the communication is systemically distorted by the influence of power.

A comparison of the conventional criminal justice system, or even the civil justice system, with restorative justice highlights how communication is routinely systematically distorted. The criminal justice system exemplifies one of the specialized institutions of the system that is based on technical expertise and efficiency. As a result, everyone does not have an equal chance to initiate and perpetuate discourse, as well as refute or support statements; consensus are ascribed by the legal professionals who seek to control the processes. Moreover, the coordination of action is through the de-linguistified steering media of money and power. First, this can be attributed to the hierarchy that is embedded within the criminal justice system, including how the judge is raised up on a platform and has the ability to decide what is and is not admissible. Thus, the truth can be deemed inadmissible. In addition, the conflicting legal sides of each case—the prosecution and the defense—result in each case becoming not about the truth and justice, but instead about competition. Therefore, the prosecutor and defense attorney both seek total control over the case and consequently dictate to their clients what they should and should not say. This manifests itself in how cases can begin with a lie when the offender pleads not guilty. Thus, the criminal justice system is an example of Habermas' concept of strategic

action; dominant groups such as legal professionals have distorted communication by turning, as Habermas would assert, citizens into clients in the quest to win. Such groups control how to frame issues and thus present their perspectives because of their perceived, or claimed, expertise, which limits the ability of the rest of the population to engage in discourse and prevents consensus. This domination has led the system to colonize the lifeworld.

Restorative justice, on the other hand, can be seen as a social movement that is defending the life-world from domination by money and power. For Habermas, communicative rationality is a particular way of using language that allows individuals to form consensus that are communicatively achieved. However, it is important to note that communicative rationality has emerged because individuals have developed the capacity for self-reflection, particularly as it relates to issues of morality and humanity. The concept of self-reflection is crucial in restorative justice because it allows individuals, primarily the offender, to evaluate his or her identity and sense of self. Moreover, the use of language to achieve consensus relates to the social integration that is achieved through restorative justice; the opportunity in restorative justice to engage in dialogue and arrive at a consensus consequently coordinates the action of individuals. Therefore, restorative justice provides the means by which all members of society can interact as citizens, unhindered by the influence of money and power. In doing so, restorative justice allows citizens to defend against colonization.

Habermas does not, however, advocate for the system to be completely dismantled. Instead, he seeks a balance between the system and the life world. This is reflected in how restorative justice is not meant to completely replace the criminal justice system, but instead be an alternative to or even a tool of the criminal justice system. It cannot completely replace the criminal justice system because some offenders will not hold themselves accountable.

Consequently, they would not be able to engage in discourse to achieve a consensus to repair the harm that is necessary for restorative justice to be successful. Therefore, the criminal justice system of the system is necessary to manage those offenders.

Similar to Habermas, Illich views the world as being colonized by professionalism. Professionals have determined peoples' needs and thus what should be done and in what way. Thus, individuals are forced to become clients and lose the capacity for creativity and individual and group autonomy. This is reflected in the criminal justice system as both the state and the legal profession dictate to victims and offenders their needs and the subsequent solutions. Consequently, the community is left out completely. In fact, the victim's voice is also silenced. In fact, one of the only opportunities victims have to speak is at the sentencing hearing, a point in time in which they have had limited interactions, if any, with the offenders and have ordinarily listened to the offenders deny responsibility for their crimes. Therefore, the criminal justice system deliberately creates an opportunity for the victim to speak after his or her retributive impulses have been heightened. This reflects the strategic motives of the criminal justice system, which revolve around a desire to win; for the prosecutor, this can involve seeking jail time, fines, or probation, while a defense attorney fights to have his or her client face no penalties or punishments.

Restorative justice, on the other hand, can be considered "a de-professionalizing project" for several reasons (Braithwaite 1999: 28). First, restorative justice relies upon lay participation. Specifically, the facilitators have not undergone extensive education or training related to restorative justice, nor do they receive a substantial income or social prestige/recognition for their role. Likewise, the community members who are so central to the process of restorative justice are also volunteers who have received no training at all. Second, conferences are

designed to reflect equality; although the facilitator is technically in charge of the conference, he or she attempts to be as non-directive as possible. Moreover, the circular formation prevents the facilitator from being at the head of the table. The implication of this de-professionalization is “a shift from *passive responsibility* to which offenders are held by professionals for something they have done in the past to citizens taking *active responsibility* for making things right into the future” (Braithwaite 1999: 28). In other words, restorative justice restores individual and group autonomy, creativity, and freedom to citizens. This is reflected in the brainstorming of the agreement that the offender must accomplish in which the victim and community members are able to identify what needs to be done to repair the harm, as well as consider the interests and needs of the offender. Restorative justice conferences are therefore, using Illich’s terms, an example of “useful unemployment” (1996: 29) because the outcome is “a kind of satisfaction that has no market equivalent” (1996: 30).

However, Illich’s view of a convivial society implies that professionalism such as the criminal justice system should not be completely eradicated. More specifically, Illich (2009: 12) states that a convivial society would only limit freedom “in favor of another member’s equal access to freedom.” Thus, in certain situation, such as an offender being unwilling to hold himself or herself accountable, the criminal justice system is needed to protect the freedom of all other citizens. Braithwaite (1999:29) articulates a vision for a pyramidal strategy that addresses such instances:

The idea of responsive regulation is that we have a preference for deliberative forms of regulation at the base of the regulatory pyramid, but we are willing to escalate through more and more interventionist strategies when these fail to protect the community from injustice. The pyramidal strategy seeks to cover the weaknesses of one regulatory strategy with the strengths of another. It is a dynamic strategy that assumed all actors have multiple selves—a socially responsible self that we can appeal to through civic

deliberation, a rational calculating self that we can touch with deterrence and irrational and incompetent selves that might only be managed by incapacitation.

Overall then, when it is appropriate, restorative justice creates the opportunity through which civic deliberation, unencumbered by professionalism, can take place to restore harmony in the community.

CONCLUSION

This study grounds the practice of restorative justice group conferences in the sociological tradition to provide a greater understanding of restorative justice as a whole. Using data collected through ethnographic research and interviews, I argue that restorative justice reflects the theories of Emile Durkheim, George Herbert Mead, Jürgen Habermas, and Ivan Illich. Threads of their theories are evident in how the structure of restorative justice group conferences creates the conditions for the process of genuine, undistorted communication to occur, which then facilitates the realization of abstract values and a stronger sense of community. Therefore, this study fills a gap in the current literature on restorative justice, which predominantly evaluates the effectiveness of restorative justice programs and supports its findings with restorative justice theory and/or critiques of the criminal justice system. Moreover, this study has implications for the theory and practice of restorative justice as a whole; the application of social theory helps clarify the relatively “amorphous” nature of the field of restorative justice (Roberts 2004: 241). In fact, by locating restorative justice within a broader historical process, this study sheds lights on the sources and significance of the practice of restorative justice.

The future of restorative justice poses two distinct paths. The first path refers to the potential for restorative justice to thrive as it receives increasing support from professionals,

institutions, and the government. This success would be reflected in the increasing diversion of resources to the practice of restorative justice, specifically to facilitate the expansion of restorative justice programs to every community so that all victims, offenders, and community members have the opportunity to participate. Currently, the growth of restorative justice is impeded by three factors. First, legal professionals, such as prosecutors or prison wardens, are resistant to give up control. Second, there are waitlists for victims and/or offenders who want to participate, and third, certain crimes are considered inappropriate for restorative justice settings. Increased support and resources would allow restorative justice to overcome these impediments. However, in order for restorative justice to capitalize and succeed, the support and resources would need to be directed primarily towards the training of facilitators to become democratic professionals. Susan Olson and Albert Dzur (2004: 151) state that “democratic professionals seek to open up their domains of authority to lay participants, to share tasks, and to share in the construction of the norms that constrain and direct professional action.” In other words, democratic professionals operate in an intermediate realm between the community and institutions and bureaucracies because they use their professional expertise “to facilitate[e] public participation” and “share decision-making domains” (Olson and Dzur 2004: 147). Olson and Dzur (2004: 152) claim democratic professionals involve and rely on community participation to defend against “technocratic control.” It is particularly important in maintaining this community participation in restorative justice in order to create the conditions for genuine, truthful, and creative communication to take place. However, through the involvement of community participants, democratic professionals gain “the security and integrity that help the profession itself function and get its job done better” (Olson and Dzur 2004: 152). Consequently, both the community and the profession benefit from democratic professionalism.

Therefore, the diversion of resources from the criminal justice system to the training of facilitators would simultaneously legitimize the role of facilitator as a profession, but provide facilitators with the tools to maintain the flexible, situational, and non-hierarchical nature of conferences.

On the other hand, the alternative prospect for the future of restorative justice is that it may be killed by increasing professionalism and bureaucratization. Consequently, restorative justice would disregard the complexities and nuances of each individual circumstance and “instead assume that the same treatment is appropriate for all” (Olson and Dzur 2004: 147). Moreover, it would remove the responsibility for social control from the community and again place it in the hands of professionals.

It is important to point out that the future of restorative justice will also require it to decide whether it should be conceptualized as a tool of the criminal justice system, a parallel system, or both. If restorative justice is a tool of the criminal justice system, then offenders are still processed through the judicial system and have charges on their records; in the case of conferences, if offenders complete their agreements within the allotted time frame, then these charges will be cleared. However, if restorative justice is conceptualized as a parallel system, then individuals would use restorative justice to repair the harm from disputes and offenses before being processed through the criminal justice system. The challenges for this approach include how to achieve public support and, more specifically, how to motivate offenders and victims to seek out this option before turning to the traditional judicial system. Finally, restorative justice may decide that it needs to be both a tool of the criminal justice system and a parallel system because of Braithwaite’s (2004) theory, outlined earlier, that individuals have multiple selves that necessitate several regulatory strategies.

In order for restorative justice to grow and be institutionalized in such a way that it successfully integrates the organizational logic of democratic professionalism, future research needs to be undertaken. First, research must continue to evaluate the long-term effectiveness of restorative justice processes on victims, offenders, and community members; however, it should also specifically track the development of the self that occurs during and after processes of restorative justice by evaluating victims, offenders, and community members before, during, and after restorative justice. This involves studying why and how individuals develop the capacity to role-take and realize values such as humanity—if these happen at all. In addition, research should also grow to include the effectiveness of restorative justice on the wider community, otherwise known as social integration and solidarity. Finally, restorative justice will only continue to thrive if future research explores the relationship between the value-orientations of facilitators and mediators and the values that are realized through restorative justice processes.

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