



When My Community Met the Other: Competing Concepts of “Community” in Restorative Justice

Won Kyung Chang

Abstract

In restorative justice theory, the concept of “community” looms large, since it is the locus of the very restoration to which this form of justice aspires. The questions that then raise themselves are: what is this “community” and how is this community rebuilt through the more relational and dialogical process of restorative justice? In investigating one restorative justice panel program in the United States, it becomes clear that “community” means different things to different individuals. Questioning the possibility of a locally-sanctioned version of justice, this study suggests that the starting point of including “community” in restorative justice should be re-thought.

Keywords: restorative justice, citizen board, citizen panel, community, being-with

Résumé

Le concept de « collectivité » est au cœur de la justice réparatrice. En effet, la collectivité est la clé de voûte de la réparation à laquelle aspire ce modèle de justice. Plusieurs questions se posent. Qu'est-ce que la « collectivité »? Comment le processus à la fois relationnel et dialogique de la justice réparatrice permet-il à la collectivité de se reconstruire? L'étude d'un programme de justice réparatrice aux États-Unis révèle que ce qu'on entend par « collectivité » n'a pas toujours le même sens pour les uns que pour les autres. La présente étude suggère que l'inclusion de la « collectivité » à la justice réparatrice devrait être repensée, et remet en question la possibilité d'une justice sanctionnée à l'échelle locale.

Mots clés : justice réparatrice, conseil citoyen, comité citoyen, collectivité, être avec

Introduction

Restorative justice theory is an idea that came out of an attempt to find an alternative to the traditional punitive, retributive justice theory (Zehr 1990). The criminal justice system assumes a natural order and human ability to make rational choices about one's behavior (Starkweather 1992; von Hirsh 1976, 1992). Thus, crime is a willful violation of that order, and the perpetrator deserves to be punished, albeit proportionally to the severity of the wrongful act. By contrast, restorative justice views crime as a violation of the human relationship of trust within the community.

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The wrongful act is committed by, and unto, real people and generates harms and needs. Rather than seeking justice through punishment, restorative justice finds justice in the healing of those hurts and the fulfillment of those needs that crime generates (Bayley 2001; Beale 2003; Braithwaite 1999; Zehr 1997).

Restorative justice principles hold that the lack of participation on the part of those with a real investment in the original wrongdoing—victims, offenders, and communities—results in an abstract disassociation between “justice” and “community” (Bayley 2001; Braithwaite and Strang 2001; Olson and Dzur 2004; Pavlich 2001; Sherman 2001; Wachtel and McCold 2001). Thus, in restorative justice, victims, offenders, and close relevant community members, acting as the primary decision-makers, engage in dialog and arrive at a mutual understanding to determine the best way to rectify the harm of crime. Central to this process is the idea that everybody wins from it: victims are allowed to participate in the negotiation of an equitable settlement, offenders are called to account for their behavior, and the whole community is restored and repaired, leading to less crime in the future.

Since a “community” is the target of the restoration that gives this form of administering justice its name, the word “community” abounds in restorative justice theory. However, despite the implied singularity within restorative justice discourse, the question of how community is framed by the actual participants in practice is left unexamined. This study empirically examines the concept of community presented in one restorative justice panel program in the United States and calls for an understanding of the dynamic, contested, and negotiated nature of “being-with” as it unfolds in restorative justice processes. Such a deeper understanding based on empirical research could be more conducive to the achievement of the goals of restorative justice.

“Community” in Restorative Justice

The inclusion of a community in the justice process is a distinctive characteristic of programs based on the idea of restorative justice. Dissatisfied with top-down, one-size-fits-all state systems based on adversarial retribution and punishment, advocates of restorative justice are attracted to grassroots initiatives which incorporate pluralistic human values from the bottom up (Zehr 2002). Thus, the concept of “community” figures largely in the discussions of restorative justice, but it does not conform to a unified, cohesive, and comprehensive description (Weisberg 2003).

The three basic concepts of community most frequently mentioned by restorative justice theorists can be distinguished: the community of place, the community of relationships, and the free and active civic community. The first is defined by the geographical neighborhood in which the criminal act took place (Pavlich 2005; Schiff 2007). In this locus, diverse lives have converged upon the event of the crime, which harms the people in that geographical space. Restorative justice proponents use this concept to develop programs tied to that particular space, as a practical first step towards creating locally distinct forms of justice (Crawford and Clear 2003; Dhami and Joy 2007).

The second concept defines community as a small group of people in relationships grown out of common interests, values, beliefs, goals, and aspirations (Pavlich 2005).

These people perceive a certain connection to each other, share certain mutual commitments, identify with each other through commonality, and become unified. Some specific examples of this concept might be a community consisting of extended family members, church congregants, students and school teachers, or even soccer moms and coaches (Schiff 2007). Advocates of restorative justice frequently refer to members of this community as stakeholders whose relationships have been harmed by a criminal event and who should be empowered by right to negotiate restorative outcomes and work towards prevention of recidivism (Bazemore and Schiff 2005).

From this community of relationships, restorative justice theorists have coined the term "community of care" to encompass all direct stakeholders in the crime, including victims, offenders, and their supporters such as parents, friends, and school teachers, i.e., all those who "care" about the people involved in a crime (Braithwaite 2003; Daly 2001; McCold 1996; McCold and Wachtel 2003). The "community of care" becomes the micro-community, as distinguished from the macro-community composed of a broader group of citizens affected indirectly by the crime (McCold 2004). The macro-community is represented by, for instance, volunteer facilitators and concerned community organizations in restorative justice programs. The core issue in restorative justice is to determine exactly who in these micro- and macro-communities should participate; and how each person should participate in the actual process. The make-up of this participation also determines which of the restorative justice models—such as victim-offender mediation programs, family group conferences, sentencing circles, and citizen boards or panels—should be applied in a given situation (Bazemore 1997).

The third concept of community lies in civil society outside formal state institutions, where people come together to make informal decisions about issues that affect them directly (Pavlich 2005). These people assemble spontaneously and voluntarily, in their own interest, and actively supplement the functions of formal state institutions as part of a free society governing itself (Braithwaite and Strang 2001). Since they find state retributive, punitive justice unsatisfactory, restorative justice proponents rely on this community to administer justice, for they believe this community will best benefit from true accountability and restoration (Dzur and Olson 2004).

Two main branches of restorative justice theory, each based on a different civic design, have at their core a healthy citizenry taking responsibility for its own ills. In Braithwaite and Strang's republican normative perspective of restorative justice, individual citizens take "active responsibility" for dealing with conflict and crime because they are free to do so, thereby restoring the community relationships upon which democracy depends (Braithwaite 2002; Braithwaite and Strang 2001). A similar concept of community appears in Shonholtz's more communitarian justification for restorative justice. Because the community takes "collective ownership" of crime and "collective responsibility" for responding to it, citizens willingly participate, actively and directly, in the process, without having to rely on specially trained state professionals (Shonholtz 1984).

What Braithwaite and Strang, on the one hand, and Shonholtz, on the other, have in common is their agreement that restorative justice offers a forum for creative problem-solving in which the offender can be viewed not as a criminal to be shunned,

but as an errant community member who can be reintegrated (Nugent and Paddock 1995; Nugent, Williams, and Umbreit 2003; Schneider 1986; Umbreit and Coates 1992). Throughout this dialogical and participatory process, the overall civic ties that create social solidarity will be illuminated, and social capital will be generated, rather than merely addressing existing person-to-person relationships (Bazemore 1998; Bazemore and Griffiths 1997; Hedeem 2004; Johnstone and Van Ness 2007). Restorative justice advocates argue that ultimately, all of these components contribute to the development of a locally-sanctioned version of justice that improves the quality of civic consciousness (Kurki 2000; Morris and Young 2000).

Each of these concepts emphasizes different notions of “community”: a geographical region or neighborhood, family members and friends, concerned community volunteers, or spaces of civil society. However, they are all based on the assumption that community members can agree on a set of relevant norms brought forth from their shared life in that community. In other words, restorative justice theorists assume that throughout the restorative justice process, participants from a given “community” recognize their common identity as community members, feel responsibility toward that community, and consent to moral and behavioral standards necessary for maintaining community spirit and social order (Schiff 2007).

Two underlying questions present themselves. Firstly, how do these different concepts of “community” actually function in the real discourse of restorative justice (i.e., how do various participants understand what and who their “community” is, who is excluded, who is included, and how does this affect their interactions in restorative justice practice)? Secondly, how do these concepts eventually generate a locally-sanctioned version of justice responsive to community needs and values? Only a qualitative study can provide an in-depth understanding of such human interactions around the concept of “community.” This study makes a first step towards such an understanding of the communities of restorative justice encounters.

The Study

For four months, in a large Midwestern city in the United States, I observed seventeen sessions of a government-run program based on the citizen board, or panel, model, herein referred to as the Restorative Justice Panel (hereafter RJP). This program is administered with regard to adult offenders who have committed only certain types of minor offenses, as an alternative to conventional judicial resolution options, such as probation, fines, and imprisonment. I recorded audio of all sessions (mostly lasting one-and-a-half to two hours) and took detailed notes, as well as obtaining police reports of all cases and all offenders’ complete criminal records. I also interviewed program staff and one deputy prosecutor who supported the RJP program from its inception.

The Program

The RJP program was intended to provide offenders and community members with an opportunity to discuss the impact of low-level and mostly victimless crimes on local residents’ lives, especially those who committed crimes in a specific residential

area adjacent to downtown. The RJP program was initiated by a local prosecutor’s office in order to focus on offenders’ accountability for their criminal behavior and to promote offenders’ understanding of the effect their crimes have on the community. The court in this jurisdiction agreed to provide case referrals, and the Department of Corrections agreed to provide operating funds, especially staff salaries. This inter-departmental cooperation led to the implementation of the RJP program based on the citizen board, or panel, model. This program was envisioned as helping to reduce recidivism by encouraging communication and rebuilding community bonds between offenders and residents.

The citizen board or panels of this RJP program are generally regarded as less restorative in nature, because those with a direct connection to the particular offenders or offenses at hand—especially the actual victims—do not necessarily participate in the process (Sharpe 2004). Furthermore, this program is unique in that offenders interact with the panel in groups, with sometimes as many as fifteen offenders in a single session; while most similar programs provide for each offender to appear before the panel alone. In addition, since offenders in this program have had the terms of their plea agreements imposed upon them at the time of sentencing, the terms of restitution, community service, treatment, etc. are not negotiated between offenders and panel members during the panel discussions.

The program staff and a deputy prosecutor involved in the design of the initial program indicated that these unique characteristics were the product of careful deliberation about the restorative nature of the program. They explained that the actual victims are excluded from participation, since allowing victims to confront the offenders in such cases is considered too harsh. Similarly, having the offenders appear alone before the panel would be too oppressive. Finally, they believed that the absence of remedy negotiation during the panel discussions would rather allow the panel to focus its discussions around the offenders’ actions in the context of the community in which the crime occurred.

In spite of their justification of the restorative nature, this RJP program is quite different from a typical citizen board or panel beyond the fact that it holds the minimum essential elements of restorative justice—i.e., an informal process to discuss the aftermath of a crime that gives power to everyday citizens who have been impacted by unlawfulness (Johnstone and Van Ness 2007). Thus, it is hard to generalize from the conclusion of this empirical study to a broad assessment of most restorative justice citizen boards or panels. However, interestingly, the unique characteristics of this RJP program clearly brought to light the widely variant and sometimes mutually exclusive definitions of community held by the participants.

Research Methods

I observed all eighteen Restorative Justice Panel sessions, which comprised all RJP meetings held during the research period, and analyzed seventeen sessions led by the primary RJP facilitator, whom I will call Sam. (One session was led by the less experienced assistant facilitator and therefore excluded from the analysis.) Before the start of each session, I identified and approached all participants for that session—both offenders and volunteers—gave a brief explanation of my study,

requested permission to observe and to record their panel session, explained that their identities would remain confidential throughout my study, and asked them to sign an informed consent statement. No one declined to participate.

I digitally recorded and transcribed all of the sessions. During each session, I took notes on the non-verbal cues of participants, such as their attitude and gestures when responding to other participants, to provide context for the transcripts. All transcripts were saved as Microsoft Word files and imported into Nvivo 2, a qualitative data analysis computer software package produced by QRS International. In accordance with ethnographic methodology of analyzing discourse, I coded the text from all the sessions according to relevant concepts of reconstructing community (Titscher et al. 2000; Starr and Goodale 2002). For example, the codes include references to geographic region, community of family or friends, community values and norms, the denial or admission of individual responsibility, and mention of criminal justice authorities. These factors were cross-coded with codes identifying certain participant characteristics. Furthermore, I coded the conversational dynamic between participants—e.g., whether they confronted each other on the responsibility issue, culpability, or the standard of values. I also coded factors such as who spoke first and how often, who controlled the active topic, and the extent to and ways in which that topic was changed.

In addition to observing RJP sessions, I interviewed Sam and one deputy prosecutor who frequently offers participation in the RJP program as part of offenders' plea agreements. Moreover, the prosecutor's office allowed me full access to offenders' complete criminal records, past and present once I had obtained informed consent from the offenders.

Overview of the Sessions and Participants

Of the seventeen sessions, 152 different offenders charged with 155 different cases participated. (Three offenders were counted twice: two were expelled from the program because of attitude problems, then were referred back to attend later sessions, and one attended two sessions, but for two separate charges.) In two sessions (Sessions 7 and 11), there were no community volunteers in attendance. Each of the remaining fifteen sessions had at least one of sixteen different volunteers present. Several volunteers attended multiple sessions, and two volunteers attended thirteen and nine of the seventeen sessions, respectively.¹

The most common crimes among the cases I observed were disorderly conduct, public intoxication, resisting law enforcement, trespass, prostitution, and panhandling. All of these crimes, while technically victimless, were nonetheless considered disturbing to the general peace and tranquility of society. The majority of offenders led a highly unstable and impoverished way of life. While only fifteen offenders in my observation stated they owned their own home or were paying off a mortgage,

¹ For my own identification, I assigned each offender a decimal ID number (e.g., 1.01), where the first number indicates the session they attended and the second, their unique identification number within the session. Volunteers were also given an alphabetical ID, indicating the order in which they joined the series of sessions.

another fifteen explicitly said that they were homeless. Many were unemployed, and those who were employed held only temporary, seasonal, or day laborer work. The level of education in the group was generally low, with most not having finished high school. Fourteen of the offenders admitted to being illiterate. Some offenders had difficulty understanding key concepts in the discussions, for example the notion of volunteerism—willingly working for no pay. Others seemed to have difficulty carrying on a logical conversation in which they explained the situation surrounding their arrests.

In relation to the number of offenders, only a small number of volunteers participated—sixteen different volunteers in the fifteen sessions. Two volunteers who attended the highest number of sessions identified themselves by their residence status as long-time homeowners in this high-crime residential area adjacent to downtown. Both were white, middle-aged single females on fixed disability income. The volunteer who most frequently attended the sessions, whom I will call Rita, has been involved in the RJP program for the five years since its inception. The other fourteen volunteers represented organizations for the needy and downtown business associations, or were criminal justice professionals in the areas where the offenses had taken place. The individuals in this group were motivated to participate in the RJP program by their business or professional interest in preserving the image and safety of the downtown area.

Findings

In the RJP discussions, the word “community” was repeated by every participant—Sam, Rita, other volunteers, and even offenders. However, individual usages and meanings of the word varied among participants depending on the context of the conversation. Based chiefly on ethnographic analysis of the transcribed texts, I reconstructed each participant’s perception of community, primarily focused on Sam, Rita, and the offenders. Of the volunteers, Rita participated in the highest number of sessions. She also controlled a considerable portion of the discourse, second only to Sam. Thus, I reconstructed Rita’s concept of community instead of generalizing all volunteers’ concepts together. The reconstructed concepts of community as used by, respectively, Sam, Rita, and the offenders are described below.

“Community” of the Facilitator

Sam opened each panel session by steering the group of offenders towards a revised notion of community defined by two concepts: the “people you care about” (called *the community of care* in restorative justice theory) and the actual geographic area of their residence. As they entered the meeting room, Sam required each offender (but none of the volunteers) to write on the blackboard “your name, and the names of people you are about, okay? ... If you got kids you put their names, or your wife or girlfriend, whatever” (Session 14, Sam). To this foundation, Sam added the geographic element by establishing exactly where each offender lived: “So cross-streets are important. The reason why we do that ... the areas in [our city] have certain characteristics. Those characteristics paint a picture about the neighborhood and the community” (Session 16, Sam).

Sam encouraged each offender to identify and focus on the nucleus of his own personal community, his family, within a concrete sense of place. Interestingly, however, Sam did not ask the community volunteers about their families or their specific residential area. Rather, he merely introduced them as being from the very same community the offenders had harmed by their crimes. Sam may have excluded specific family and residential information out of concern for the volunteers' safety and comfort. Nonetheless, by doing so, Sam obscured the true picture of the real community involved, according to restorative justice theory, in which both offenders *and* volunteers are members who deserved to be equally respected.

As the session unfolded, Sam's picture of the community in which the offenders had committed their infractions first transcended immediate experience and then morphed into the generalized. After beginning with a community centered around each offender's nuclear family and specific neighborhood, Sam's community became an all-encompassing generalized one—"the society"—without geographic boundaries, and without cultural or social subdivisions.

You're part of the community; whether you live in a—rent a home or own a home or live in an apartment, doesn't matter. Whether you came here visiting, whatever it was, you committed the crime, whatever, that's part of the community. It affects the community. So you're important in those regards. You know, everybody has—everybody's a member of some community somewhere. I don't care if you live in [the affluent area]. I don't care if you live [in the poor area]. I don't care if you live out of the country. Doesn't matter. Someplace, somewhere, you guys are members of a community. That's what we focus on. (Session 9, Sam)

Sam further constructed a generalized concept of community by adding the criminal statutes themselves which, he believed, contained in their wording insights into the nature of the community affected by the offenses. For example, the public intoxication statute defined the crime as being visibly intoxicated "in a public place." Sam believed that "in a public place" described the community where the offenders' behavior had had a negative impact. "If you notice, in what the statute calls for or says about it, there's mention of how it impacts the community" (Session 15, Sam). However, in an effort to include all places where intoxication might be a crime, the statute defines "public places" in such a way that no specific features are mentioned, while in fact, people live in real places where specific cultures and personal stories exist. Because he gave the statute's definition of the crime, and the locus of that crime from the statute's concept of society in general, Sam did not feel the need to identify the specific harm the offenders' particular actions did to real people in a real geographically distinct area.

In Sam's generalized society, unlawful behavior alone—the violation of the criminal statute—and even the mere potential of a resulting incident, constituted a negative impact on the community. In Session 16, for example, one underage offender (Offender 16.1) was arrested for public intoxication, even though, he contended, he was not intoxicated. Sam suggested that he had hurt the community just by being out and drinking underage instead of "being home studying for his GED" (Session 16, Sam). "You're not positively contributing to the community," Sam said (Session 16). Once again, Sam referred to the whole all-encompassing community in general.

In the same case, one volunteer suggested that if the offender had been drunk, he could have hypothetically slipped and fallen on the streets and gotten hit by a car. In that hypothetical case, the volunteer said it would be the driver who would be "getting in a lot of trouble" (Session 17, Volunteer C). Other offenders (Offenders 16.5, 16.11) in the session remonstrated, sometimes in angry tones, that in a traffic situation where a vehicle strikes a pedestrian, the driver is always entirely at fault. At this point, Sam presented his theory of "the oneness of responsibility" under which, when the pedestrian has violated some law, such as public intoxication, then that pedestrian is equally responsible for the incident, at least as far as its negative impact on that generalized community. By extension, even if the automobile does not strike the pedestrian, the pedestrian is still culpable, because his public intoxication increases the chance of a more harmful incident.

Sam's goal was to enable offenders to say "I shouldn't be drinking to the point that I'm getting intoxicated and I'm sitting on a sidewalk out in public," instead of simply shifting their responsibility to someone else (Session 16, Sam). Sam was trying to teach the offenders to understand their situation in the context of law as it affected a generalized community and even to understand generalized actions and events that might happen, rather than focusing on the immediate experiences of offenders in his discussion.

State institutions lie at the nucleus of Sam's society, which consists of just one generalized community. By alluding to a higher power, Sam gave the impression that these institutions codified a sort of rationality of law outside the sphere of random human behavior, thereby creating the only authorized norms. In Sam's view, the criminal justice system as an institution, of which the RJP program is part, both ordains and imposes this norm. Consequently, as representatives of the codifying institution, police officers provide the only correct interpretation of events. Thus, Sam attempted to convince offenders of the police officers' justification and infallible discretion. He repeatedly dismissed or ignored altogether any offender's attempt to describe his arresting incident from his own perspective. Invariably the offender's version differed significantly from the arresting officer's written probable cause report.

For instance, in Session 12, one offender (Offender 12.2) believed he had been mistreated and disrespected by the arresting officers. The offender argued that while searching him, the officers had pulled twenty dollars out of his pocket and tossed it to the wind, which aggravated the offender greatly. In the police report, no mention was made of this provocation, only that the offender "became disruptive, loud, and argumentative while we were conducting our investigation" (Session 12, Sam). When reviewing the case, Sam glossed over the twenty dollars, a factor that may have contributed to the offender becoming loud and belligerent. In other cases (Offenders 5.4, 9.7, 11.5, 16.13), some level of entrapment by undercover police officers became the issue for offenders arrested for prostitution or patronizing prostitution. Sam accepted only the officers' versions of events supported by recorded evidence when discussing the incident with offenders. "[F]or prostitution, they video tape or audio tape all of that. So the cop wasn't doing anything illegal" (Session 5, Sam).

Sam brought different concepts of community from restorative justice theory—the community of place, where offenders and volunteers reside, the micro-community

of “people you care about,” and the macro-community of volunteers. Throughout the discussion, however, his community broadened and eventually reached a single community, which became generalized society itself. In this community, state institutions codify universal values of right and wrong that should be accepted by all as a single standard of behaviors, and the police officers’ report becomes the institutionalized truth that cannot be challenged by the offenders. Thus, in the RJP discussion, Sam played the role of judge, teacher, and parent rather than empowering self-determination and facilitating reciprocal reconciliation through an attempt to befriend the offenders.

“Community” of the Long-Time Residential Volunteer

The most prominent volunteer, Rita, was present at thirteen of seventeen sessions. In her fifties, she was a long-time resident of the jurisdiction covered by this RJP program. In some ways, Rita’s concept of community was based on reality to a greater extent than Sam’s was. At the time, Rita owned her home in a neighborhood with a high incidence of prostitution and drugs. She had lived in this area all her life. Consequently, her experiences and interactions included witnessing the neighborhood degenerate from a relatively peaceful area to one riddled with crime. She described how much of the crime was not just annoying, but had also affected her property and safety.

Crimes were committed in her community, in her actual neighborhood, on the street where she lived. In Session 2, she described to offenders who had pled guilty to prostitution (Offenders 2.5, 2.6) how their activities had affected her dignity, her health, and her safety. She complained that sex workers constantly littered her front yard with dangerous paraphernalia, including needles, used condoms, and even once a container of blood. Strangers regularly and repeatedly attempted to solicit her in the short block-and-a-half walk to the local convenience store. “You want a date? How much?” (Session 2, Rita). Girls even took advantage of the fire hydrant, the street light, and the free parking space in front of her house to service customers.

As another indignity, Rita no longer had any downspouts on her home because they had been stolen and presumably sold to a scrap metal dealer. If the siding of her house was aluminum, Rita believed that it too would have been removed by alleged users of illicit substances to sell for cash at the recycling center. The lack of downspouts made her home look neglected and “people assume things about me too” (Session 4, Rita). Without downspouts, rainwater accumulated around her home’s foundation and eroded the soil, blemishing her home’s curb appeal and diminishing its value. In Session 4, she mentioned this very predicament to an offender (Offender 4.7) who was arrested for receiving stolen property at the recycling center. Her interaction with these offenders was proximate. The geographic community affected by their crimes was Rita’s actual front yard. In this respect, Rita’s concept of community was grounded in that place where real people were in contact with each other in a tangible geographic region.

Despite the fact that she and most offenders inhabited the same geographic area, Rita did not include the offenders in her community. She identified her community, herself included, as the composite victim of the offenders’ unlawful behaviors. As victims, Rita’s community was in the right, legally and morally, and offenders

were outsiders of this community. Accordingly, Rita did not see any ground for sharing responsibility for the offenders' crimes. By excluding the offenders, Rita constructed her own concept of a single, generalized community that encompassed her personal world entirely.

Within Rita's community, the community rationale that was used to judge actual world events came from the same general ideal as Sam's, not from the immediate experience in her physical neighborhood. Her "normal" was the same as Sam's institutionalized "normal"; right and wrong were handed down by a higher authority. Institutions had crystallized specifically what constituted behavior inside and outside the norm. Rita preferred to believe in a standard of right and wrong as set forth by institutions operating in the generalized society rather than negotiate a locally sanctioned version of justice generated by the local residents' perspectives.

Rita's generalized community differed from Sam's society, however, in the placement of the offenders. Sam relegated them to a marginalized position, but still within the same single society, while Rita, with her own personal victimized world at the center, excluded offenders completely from the single generalized society and made that society the normative one—what might be called "a community of the right."

In the RJP discussions, Rita clearly distinguished between normal and abnormal behavior based on a rationality constructed and defended by centralized institutions. In Session 5, one offender (Offender 5.3) recounted that he had been arrested several times as a runaway when he was a juvenile. His tone was nonchalant, and Rita was shocked that the offender would consider such behavior trivial. "You said it just like that's no big deal. Do you understand that's not normal?" (Session 5, Rita). She clearly placed normal behavior inside her own normative community and relegated abnormal behavior to the outside. Since the institutional arrest alone proved that the behavior was abnormal, the solely responsible offender automatically became an outsider.

Rita firmly believed that she and her family had always lived according to this generalized standard, despite the neighborhood's degeneration. In Session 6, she elevated her son to a righteous position. Several offenders (Offender 6.1, 6.2, 6.4, 6.5) complained of being stereotyped and targeted by police officers because of where they lived and who they were. Rita countered, "I have a 26-year-old son that was born and raised in the neighborhood that I live in now and he was never arrested ... Did he ever get in fights? No" (Session 6, Rita). An offender responded, "That's amazing. It is" (Session 6, Offender 6.1), and Rita continued, "Did he ever own a gun? No. Did he ever run in a gang? No. It's possible to choose to live well in any circumstances that you live in, in any surroundings that you live in" (Session 6, Rita). In the eyes of Rita, a middle-aged white woman, her son had chosen to live within the bounds of the law, which is the ethical thing to do, while fundamentally unethical people would naturally choose behavior contrary to the generalized norm.

Rita had constructed a single normative society out of the generalized norm that she believed ought to prevail in her actual neighborhood. She felt that this qualified her to make evaluations about a person's character or behavior with regard to that imagined construct. Frequently throughout the sessions, Rita projected the

impact of a particular offense into that imagined community. In Session 9, she chastised a minor caught with alcohol (Offender 9.1). Speaking from within her sense of community, she adopted the role of a hypothetical local liquor store owner. “I could lose my business, my ability to earn money and feed my family” if the police were to trace the offender’s alcohol back to her store (Session 9, Rita). She would lose her liquor license for selling alcohol to minors and have to close her store. This, in turn, would put all of her hypothetical employees out of work, whereupon they would hypothetically become idle and probably turn to crime. Thus, this one underage drinker (a real person) became responsible for the all the hypothetical youth in the neighborhood becoming unemployed and unproductive. In this way, a single real crime could harm the wider imagined community.

In another case (Offender 17.7), the offender had pled guilty to public indecency. Rita explained how his guilty plea to a sexual crime could affect his own granddaughter’s life in Rita’s imagined community. His arrest might prevent him from being fully involved in his granddaughter’s school life because schools were conducting more and more background checks before allowing volunteers to participate at school events. Indeed, when the neighborhood found out about his arrest, it could affect his granddaughter’s social life as well, for Rita would never allow her fictitious daughter to spend a night at the offender’s house. With regard to children, again, Rita’s generalized normative society could even be victimized in the future, since crimes of the present would have consequences in the future.

Rita typically began with a concept of community centered on her own real neighborhood—the one that had usually been victimized either by the participating offenders or offenders in general. Feeling victimized, Rita considered her community to be in the right, morally speaking, at all times. Furthermore, her community was part of a generalized normative one, as ordained and established by state institutions. With their decision to behave outside the universal norm, offenders had become outsiders, completely excluded from the “community of the right.” Since she placed the offenders outside her community, fundamental restorative justice principles, such as community support, shared burden of guilt, healing, and reintegration, were absent in her dialogue.

“Communities” of the Offenders

Few offenders actually admitted their guilt or, as did Sam and the volunteers, demonstrated any concern for what the latter considered behavioral norms. Some were passive and complacent throughout the RJP process and did not express any views on community or ideas about presumed behavioral norms. However, the largest number willingly described their own community as lying outside of society in general. Just as Rita (and, similarly, other volunteers) excluded the offenders, neither did the offenders consider themselves as belonging inside the generalized society where Rita and other volunteers existed.

While many of these offenders spoke about the existence of a society in general, they saw it only as one among many distinct communities. Contrary to the non-offenders’ notion of a single, generalized, homogenous society, most offenders described a far more complex society made up of an almost limitless number of separate communities. In their view, the norm of the generalized society was

not necessarily the norm to which they should adhere, for that norm was of a community outside their proximate experience. In other words, each offender lived by the norm set by his own community.

While in Sam and Rita's understanding, state institutions sit at the core of society in general, they remained outside most offenders' communities. Furthermore, offenders saw no need to have their identity acknowledged by those institutions, as evidenced by the fact that many offenders in the RJP program did not possess a state identification document. In Session 8, one offender (Offender 8.4) explained that he did not have an ID card because he was waiting for his birth certificate to arrive. His statement sparked a brisk round of commentary from the whole group regarding the ID card process, indicating that many were in the same situation. A state identification card is seen by some as denoting the state's acknowledgement of a person's existence. However, most offenders could not see a justification for obtaining a state ID card because the state institutions that issued it were outside their communities. Offenders did, however, acknowledge that without such an ID card it became more difficult to get a job and earn a living.

At the same time that offenders excluded state institutions and their normative prescriptions, they constructed their own personal and unique communities, each complete with its own set of behavioral norms. These communities usually had little between them, but occasionally there were similarities—and even alliances—between them. Communities that offenders described frequently revolved around the family, the extended family, groups of friends, or residential subdivisions. One offender (Offender 7.8) described his community as "me and my family, yeah, and my friends" (Session 7, Offender 7.8). This offender, a minor, had been arrested for public intoxication and disorderly conduct. In a long discourse, Sam failed to make him understand how his behavior affected the whole community—that generalized society of Sam's. The offender was unable to expand his concept of community outside the people immediately surrounding him. "It's no skin off my back. That's them, not me" (Session 7, Offender 7.8).

In another offender's (Offender 5.4) circle of friends, which constituted her community, prostitution was a common and usual behavior. Since her concept of community did not extend beyond the street that she was walking at the moment, the concept of legality or her behavior affecting society was inconsequential. "Because I see other people doing it on the street and I been following the leader, really... I'm not saying I was pressured... because I was hanging around with bad groups and stuff... I used to roam with the girls and do like that" (Session 5, Offender 5.4).

In these two cases, offenders had shielded themselves from within, surrounding their communities with barriers to separate and protect them from the rest of society and its institutions. Other offenders argued that it was society and its institutions that created barriers to exclude their communities from the rest of society. Some offenders believed that they had been neglected by the institutions which were supposed to protect them. One offender (Offender 4.3) repeatedly had to defend herself against an abusive husband, but it was she who was arrested for disorderly conduct. Another (Offender 5.5) was working his way out of depression when he was robbed and severely injured while living at the community shelter, which supposedly provided a safe haven. The injuries from that attack led to him

developing an alcohol problem and to homelessness, whereupon he became susceptible to street violence and further arrest. A series of unfortunate events had drawn these offenders, in their understanding through no fault of their own, outside the widely held standards of acceptable behavior, standards set by the very institutions that should have protected them.

For still other offenders caught up in a vicious cycle, the institutions that could help them to reintegrate after their experience with the criminal justice system had excluded them because of their criminal history. Several offenders, for example, were both unemployable and ineligible for government assistance of any kind because of felonies they had committed many years earlier. One person, present due to a conviction for panhandling (Offender 14.10) but with a previous felony conviction, explained, "I go to get a job now and this felony follows me everywhere I go... [just] give me an opportunity to work and show that I have paid my price to society. It wants to follow me with my mess-up twenty years ago, well it's like a monkey on your back" (Session 14, Offender 14.10). In the eyes of this offender, institutions within society in general had ostracized him two decades previously, because of what might have been a youthful indiscretion. As a result, he felt isolated from those institutions and forced to live in a marginal community. Later, the same institutions entered his community and arrested him for panhandling, an action that was only a crime in the single generalized society, while in the context of the community in which he lived, it was one of the only ways to get money for food.

Whether offenders had formed their barriers between communities from within or institutions had imposed them from without, offenders did not live inside society in general. They lived in their own distinct communities, surrounded by barriers that were protective, opaque, formidable, and even unjust. They had established within these communities their own set of behavioral norms, some of which conflicted with those of society in general. The younger brother of one offender (Offender 7.6) had been implicated in a robbery. When the alleged victim of the robbery began shouting accusations and insults publicly about the offender's brother and whole family, she felt duty-bound to protect her brother physically. Identifying herself within her community of family, she chose to uphold family safety and honor over behavioral norms imposed by a single generalized society, norms with which she did not identify.

In one community of extended family, a seventeen-year-old drinking beer was not unusual. An offender (Offender 10.1) and his minor cousin had run out of gas late at night in front of a resident's house. Frightened by the ruckus, the resident called the police. After the investigation, the offender was arrested not only for public intoxication but, more seriously, for contributing to the delinquency of a minor, which can be considered a serious misdemeanor. To this offender, however, "alcohol ain't nothing new to us" (Session 10, Offender 10.1).

From the point of view of these offenders, they were behaving within the boundaries of normal behavior in their communities. They saw the police as invading their communities, imposing behavioral norms from outside, and deeming certain behaviors contrary to those norms as being infractions of the law. This, they felt, turned people who did not consider themselves part of society in general into lawbreakers. To them, this society is not universal, but only one of a myriad of valid communities.

When asked in the RJP sessions who in the community their behavior had impacted, offenders most frequently answered, “me.” Within the minds of the offenders, it was not their actions for which the police arrested them, but the arrest itself that had impacted their community. Their actions were not wrong; being removed from their community was. One offender (Offender 16.4) explicitly addressed this contradiction: “My mom [was affected], because I had two days’ community service. I’m in school, so that affected myself, and because I’m [in this RJP] class right now, I had to arrange some transportation for my son to get to school, so that affected my son. That’s about it” (Session 16, Offender 16.4). In her mind, the criminal justice institution from society in general had invaded and disrupted her community. She was fulfilling the plea agreement terms only because the institution had power over her liberty if she did not.

Most offenders described a complex society made up of multiple and diverse communities. These communities were highly compartmentalized, fragmented, but also entirely grounded in the offenders’ immediate experiences. Just as Rita and other volunteers excluded offenders from their community, offenders consistently argued the irrelevance to their own community of society in general, its abstract nature, and its norms and notions of crime. Offenders felt that every person lives in his own community following the norms generated by that community. No one community’s norm can be universally applied to other communities. Consequently, offenders felt their behaviors had been deemed in violation of law in a community irrelevant to them, belonging rather to Sam, Rita, or the “community” volunteers. They attended the RJP program with but one purpose in mind: to minimize the foreign community’s invasion into their lives.

Discussion

No concept of community described in restorative justice theory could be found in the RJP discussions. In restorative justice theory, community is not just the place where the crime occurs, but also where those who care about both the perpetrator and the victim live together, freely interact, and negotiate a shared set of norms. In this RJP program, however, both non-offenders—represented by Sam and Rita—and offenders consistently drew lines between themselves, and each excluded the other entirely from their own community. Consequently, while all vocalized the same word “community,” every participant had in his or her mind a different meaning, and the word “community” became a kind of shibboleth, a term devoid of practical meaning.

This opposition between non-offenders and offenders regarding who is in and who is out of the “community” might be exacerbated by the unusual structure of this RJP program (Amsler, Martinex, and Smith 2015; Bingham 2008; Hedeem 2012). As mentioned earlier, this RJP program is not a typical restorative justice panel model due to two design characteristics: multiple offenders’ joint attendance in a single RJP session and the lack of remedy negotiation process within the panel discussions. The offenders chose to attend the RJP program as one option of their plea agreement, but they remained unwilling to accept accountability, took a defensive stance, and were apt to form strong alliances with like-minded offenders in the discussion. In confronting the multiple offenders’ arguments, which they

clearly believed were illogical and in some cases not worth engaging with on their own terms, non-offenders insisted on the absolute validity of their own standards and recommended that all offenders simply choose the path of productivity instead of crime.

Ironically, however, this structural problem of the RJP program rather reveals the theoretical flaw of the concept of community in restorative justice. Even though no unified and comprehensive description of community is proposed in restorative justice theory, most theorists assume the ontological existence of community. The predefined community exists to serve, and is overseen by, its members, and this in turn makes the members beholden to each other to protect and uphold that same community. Thus, the community becomes the source of moral standards in which the fundamental requirements imposed upon each of its constituents are reflected. However, at the same time, the community's constituent members refuse to take responsibility for those excluded from the given definition of community. As a result, in the RJP discussion, non-offenders took the morally superior stance of teacher-to-student, or of parent-to-child, vis-à-vis the offenders, pushing them to accept the values of their generalized community. On the other hand, offenders, who often delineated communities around their own family, extended family, or groups of friends, were unwilling or unable to extend the boundaries of their responsibilities outside of their own immediate community.

In this respect, Pavlich rightly points out the hazard of restorative justice theorists' appeal to fixed, or absolute, images of community (Pavlich 2004). Taking into account the inherent nature of a community to draw borders between people and divide them into insiders and outsiders, Pavlich warns that restorative justice theorists' creation of boundaries around a community could actually lay the seeds for dangerous and careless alienation. Such boundaries may not allow room for the other, and those who are within the boundaries could thus spontaneously and totally neglect those who are excluded, even if this is unintended and unforeseen (Pavlich 2004, 2005). As a strategy to counteract such dangers, Pavlich appeals to the French philosopher Jacques Derrida's deconstructive approach and calls for "hospitality" as an ethic. This approach would involve more engagement from all parties and would therefore be more conducive to new conceptions of justice. By disrupting any given or fixed identities, the deconstructive approach leads to openness to others, encourages hospitality towards otherness (which forms new patterns of engagement), and eventually situates ethical responsibilities with those who are excluded (Pavlich 2001, 2004, 2005). Pavlich believes that promoting such a strategy, rather than discussing the common notions of unifying community, will bring about a form of justice that is better for all.

Pavlich's theoretical attention to the potentially perilous nature of enclosures around community was materialized in this RJP program. An all-inclusive definition of community in restorative justice theory divided the participants into insiders and outsiders, and they either urged the other to accept their community values or completely ignored the other. Both non-offenders and offenders similarly initiated their concept of a community from the factors of shared goals, mutual dependence, moral forces, intimate bonds and solidarity, sense of belonging, and common identity. None of these factors, in these RJP discussions, crossed over between

non-offenders and offenders, in spite of the fact that they walked the same streets. Based on this result, it would perhaps be more fruitful to remove the very concept of community from restorative justice theory. Perhaps only after it is admitted that there is no agreed-upon vision of a community can true communication between all the participants begin.

In this context, the French philosopher Jean-Luc Nancy's concepts of “being-in-common” and “being-with” offer a different manner of interacting with others, instead of stressing homogenous relations within a concept of “community.” In common with Pavlich, Nancy points out the danger of totalitarian violence within the concept of community, which excludes those who are not captured within its boundary for the purpose of maintaining its closed unifying nature (Nancy 1991). Consequently, the concept of community contains within itself a tendency to avoid contact with others, or to fear any change to its own identity that might be caused through such contact. Against this fabricated concept of community, Nancy conceives of “being-in-common” and “being-with,” indicating co-existence with others—those who are not familiar with and those who do not belong within the same boundary, and thus whose existence is not easily appreciated—throughout constant contacts (Nancy 2003). Accordingly, removing the concept of community would generate better conditions for co-existing with others, based on true acknowledgement of and valid communication with them.

Considering the empirical result of this study, Nancy's insight into the notion of co-existence, together with Derrida's concept of hospitality, raises a fundamental question regarding the role played by “community” in theoretical discussions of restorative justice. Advocates of restorative justice believe that face-to-face meetings between stakeholders of certain offences within a community are far more humane than cold impersonal courtroom structure, but it would seem to be deeply flawed in at least the restorative justice practice of this study. Thus, instead of emphasizing the positive connotation of the word “community,” restorative justice theorists and practitioners must first concede the nonexistence of “community” and then try to build a dialogical and participatory process of searching for a better way of “being-with” by redressing the harm caused by offenses.

Conclusion

Restorative justice theorists argue that, as more genuine peers of victims and offenders participate (instead of an anonymous “jury of peers”), a stronger understanding of commitment to community is fostered. When offenders are confronted directly by the fruits of their misdeeds and see themselves as having harmed neighbors and compatriots rather than some faceless moral edifice, perhaps the community can recover more profoundly. In the RJP program examined in this study, however, non-offenders were not different from the anonymous jury of peers, viewing the offenders as criminals to be judged and expelled from their generalized community. The offenders seldom focused on the harm they caused in “the community” that the non-offenders mentioned because that community is not theirs.

This study, therefore, suggests that there is value in re-starting restorative justice from the point of bracketing the concept of community, and instead focusing on how different participants negotiate their own forms of “being-with” in relation

to each other in restorative justice practice. This negotiation needs to be a continuous process, not a one-off or conclusive event. Holding on tenaciously to a theoretical ideal of “community” that does not exist in practice brings harm to the goals of restorative justice. Since this particular study has clearly highlighted the problematic and contested nature of “community,” it must be left to future studies to map a way forward to more practical and realistic approaches to “community” in restorative justice practice that come closer to realizing its original goals.

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Won Kyung Chang
Assistant Professor
Scranton Honors Program
Ewha Womans University
Seoul, South Korea
wonchang@ewha.ac.kr