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**Restorative Justice Doesn't Work?**

**In an effort to re-conceptualize punishment and to reevaluate restorative justice  
from the perspective of culture and ritual**

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**Sociology**

**Thesis**

## **Preface Intentions and Meta-Theoretical Biases**

At the end of his book called *Punishment and Culture*, Phillip Smith acknowledges that his task, which now nears a close, is to project a path toward greater cultural understanding of punishment in Western societies as a means of achieving further analysis and criminal justice reform. He says, "...coming to terms with the symbolic logics of culture should be the first and not the last step in any analysis and reform of criminal justice," (Smith 2008:183). I aim to contribute further to this effort, with a specific focus on the emerging philosophy of redressing deviance, called *restorative justice*, which is positioned as an alternative to punishment. Smith's theorizing largely references the evolution of punishment, which has been referred to as *retributive justice*. He chronicles, more precisely, the ritualistic, symbolically-oriented, and semiotically 'encoded' activity extant in communities, which indelibly emerges in response to deviations from (what may be generally referred to as) a community's 'moral trajectory.'

I say, "moral trajectory," to initially problematize the idea, prevalent in some sociological literature, that a community simplistically maintains a moral consensus characterized as *empirically* distinct from the specific interactions of people in a given social situation. The two are *analytically* distinct. Analytically distinguishing between interaction itself and the structure of meaning and morality (that structures interaction) will prove useful for my contribution to the restorative justice literature. However, these are not to be reified as actually, empirically, separate. 'Moral trajectory' gives the sense

that a community's moral consciousness is structured, yes, but also moving, alive, and constantly changing due to the situationally specific interactions of real people. The structure (also called morality) sets the trajectory, but the morality consists in people and their imaginations. The two are hard to parse in empirical reality, but the construct will aid in my analysis.

Likewise, I will suggest in this essay that the terminological classification, "restorative justice," deserves its own cultural analysis, as even the manners in which we classify can be inadvertently influenced by our latent and culturally proscribed common sense notions. I would like to deconstruct any such common sense notions that may have inadvertent influence. Restorative justice, retributive justice, and situational sanctions are, rather, names for particular kinds of human activity. This activity is what I will explore, not the narrowing and limiting terms, which may tend to ineffectually delineate what we are actually seeing when we see this activity and talk about it. I admit that whatever terms at which I arrive, for I will have to use words eventually, will compromise some things for other things. This is the nature of the work we do.

Also, the work in this paper will latently house my normative project, which is to discover some way of eliminating retributive justice techniques for redressing deviance completely or almost completely from modern, Western society. This is likely not something that can be accomplished in a lifetime, nor does the normative project play a prominent role in the essay I construct here. However, this essay is a contribution to what may in later works emerge as specific policy recommendations and research projects geared toward the question: can we make a society that avoids using retributive

justice techniques for redressing deviance? Can we at least make one that limits resorting to retributive justice?

The case studies that I have gathered and the theoretical material I have collected all indicate several things. 1) The human activity centered around redressing deviance in communities is predominantly ritual or ritualistic, 2) restorative justice and retributive justice are limitedly equivalent activities only in so far as they both function to reinforce value commitments in community as well as to thereby concretize them as beliefs that regulate actors' selection of goals and limit action, 3) restorative justice and retributive justice are different in so far as the earlier does not deter instrumentally rational actors from action whereas the later does, and 4) it is possible, therefore, for both restorative justice and retributive justice to work effectively in redressing deviance in communities. The benefit of restorative justice is that it may effectively yield to a greater degree than retributive justice reconciliation via victim/offender satisfaction.

## **Introduction**

### **The Research Question *and its problems***

This essay will specifically address the definition and effectiveness of punishment in general and its potential alternative: restorative justice in particular. We will take into consideration a complex set of theories and studies in a literature primarily concerning restorative justice and punishment. The assumption that is made much of the time, and which I aim to disentangle, is that punishment would be more effective than restorative justice in redressing deviance. But we have yet to decide what “deviance” means, what “redressing deviance” means, or even what restorative justice and punishment really are. Making clear our definitions will be the endeavor of the first two chapters of this essay.

I admit that I will not be able to complete a systematic review of the manner in which punishment or restorative justice has been conducted in present or past. To compensate, I will examine different theoretical perspectives on punishment that have already done much of this work for me. I will not attempt to recreate the wheel, as it were, but I will integrate (to some degree) several different theorists’ ideas on punishment and restorative justice, which draw on vast, interconnected literatures—those to do with history, criminology, sociological research methods, deviance, and ritual. As they relate to punishment, I take for granted that the theories draw on valid empirical

evidence, and that they analyze this evidence (in generating theoretical premises) workably for my endeavor.<sup>1</sup>

As aforementioned, much of the literature on punishment is not actually *about* punishment. It instead actually concerns the particular ritualistic, symbolically-oriented, and semiotically ‘encoded’ activity extant in any community, which indelibly emerges in response to deviations from (what may be generally referred to as) a community’s moral trajectory. So we take much of the literature on punishment to refer to this larger activity, describing merely a kind of interactive, structural form it takes. The case studies on restorative justice are similarly, really, about this larger activity, describing merely a different interactive, structural form taken. This section will outline, therefore, much of the theoretical literature on punishment. We will find a precise definition of punishment here, which we will then integrate and use in analyzing case studies conducted on restorative justice to determine, in turn, the definition of restorative justice.

Finally, the concluding chapters will reconsider the theoretical literature and the case studies to determine the conditions under which restorative justice may effectively “redress deviance” in comparison to punishment. This is the second aspect of the research question. Thus there is no direct exploration of restorative justice—I do not conduct my own studies. And there is an even greater distance between what I will argue and the available empirical material regarding punishment. The reader can imagine what methodological issues might arise in this approach. In a longer project, such

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<sup>1</sup> I cannot take the same things for granted with the literature on restorative justice—it is much too nascent for this.

methodological limitations would not play a role. But, for what I aim to do in the time there is to do it, these are the compromises I must make.

The questions are, therefore: What is punishment in a postmodern, Western context? What is restorative justice in a postmodern, Western context? What are the differences between punishment and restorative justice in a postmodern, Western context? How might each redress deviance in communities? Which process redresses deviance in communities more effectively?

**Chapter One**  
**Punishment is ‘just’ a category**  
*A theoretical basis for approaching our problem and research question*

This chapter contains within its sections on the classical economic theory of punishment, the Durkheimian, and the post-Durkheimian theories on punishment. It concludes with my own integration of these theories and with a theoretically defined definition of punishment, some of which I will use in the next chapter to define restorative justice. The theory of this chapter undergirds the whole of the essay.

**The Classical Economic Theory, in brief**

In exploring what ‘punishment’ is, I first briefly take into account classical economics. I do this because, generally speaking, the classical economic conception of punishment is one of the only conceptions contained within the assumptions broadly made about punishment in Western society. It is a conception, to which I add a great deal of material—as I assert that punishment must be thought of in a way extending much beyond the classical economic frame.

In classical economic theory, there is a basic assumption that people principally act to maximize their material ‘gain’ against situational constraints. This is a basically material and instrumentally rational argument. Classical economists refer to punishment as, more theoretically: situational sanctions, which specify situationally specific bulwarks against certain behavior against which, in turn, actors will work to maximize their gain. More precisely, a punishment is a negative sanction, and our focus. The possibility of positive sanctions (rewards) is also permitted in classical economic theory, but it is not

our focus. We may call the classical economic theory, in Talcott Parsons' terms, the positivist utilitarian theory of action (Parsons 1967:60-74).

We take from the classical economic conception of the situational sanction a concern primarily for the situational effect of the sanction on actors' behavior. The idea of the situational sanction, even by virtue of its title, is embedded in the premise that sanctions have little affect outside of the situation. They are situationally specific and only relate to actors' behavior as material motivations around which actors are assumed to act instrumentally rationally as maximizers of gain. I am concerned, however, with the extent to which the situational sanction has influence outside of the specifics of particular situations, outside of the material concerns of actors in question. Though any realistic theoretical schema must take into account the partly situationally specific and instrumentally rational manner in which actors will make decisions to act, there is more to an action than the (situationally specific and instrumentally rational) classical economic account. I challenge classical economic theory by pointing out that classical economics does not take into account action motivated, for example, by some actors' innate desire to integrate a socially-shared moral commitment into action, as in religious community everywhere. We cannot ignore, for example, the fact that United States history is quite clearly embedded in a religiously derived value system and work ethic

that led to a particular commitment to capitalist economics altogether separate (in some ways) from situationally specific concerns related to gain-maximization.<sup>2</sup>

There are a few necessary constructs completely missing from the classical economic account, which we will need in order to talk about punishment and restorative justice. Namely: the construction of meaning through language and interaction, the ritual and pseudo-ritual activity of people in the contemporary Western community, and the over-arching structure of interaction that cannot be derived from any one situationally specific (and atomistic) point in interaction.

**The theoretical Premises: *function, culture, symbolic action, and the self***

***Functional Substitutes***

In terms of function, I take the general idea that function is a way of categorizing structures, “according to the consequences of their actions of the system as a whole, without reference to their organizational characteristics [the particularities of their structure],” (Gould 1987:3). I therefore take for granted that in any community there is the form of its organizational characteristics, and separately there is the function which these forms have. The forms (and their organizational characteristics) are somewhat connected to functions (they correspond to one another) such that a function cannot be fulfilled if there is no structure to fulfill it (Merton 1968:87-88). Generally, when two things are separate, but connected in this way, we say that they are interdependent. The structures and functions of any community are interdependent of each other.

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<sup>2</sup> See Weber, Max 1930 *The Protestant Ethic and the Spirit of Capitalism*. Also see Gould, Mark 1987 *Revolution the Development of Capitalism*. For these see bibliography. (Gould 1987)(Weber 1930)

Further, along with Robert Merton, I take for granted that one structure can have multiple functions, and likewise one function can be fulfilled by multiple structures (Merton 1968:87-88). Enough importance is warranted at this juncture to take from Robert Merton a direct excerpt from his *Social Theory and Social Structure* concerning his argument against the “postulate of indispensability” in which particular functions are thought to be in themselves the sole necessity for the persistence of certain aspects of a society. That excerpt can be found in Appendix A.

More importantly, just as we may identify *functional equivalents*, we may identify *functional substitutes*. That is, a function may be fulfilled by multiple structural sources (not simply the situational sanction, or punishment). What we shall take with us through the entirety of this theoretical discussion is Merton’s explicit and precise identification of the possibility of functional alternatives either by equivalency (used with Talcott Parsons) or by substitute (which is how I will use this concept). Is restorative justice a functional substitute for retributive justice?

### ***Durkheim and the Cultural Sociologists on punishment***

At this juncture I take from Durkheim his idea of the collective conscience (Durkheim and Coser 1997:61, 84-85), which I will add consists broadly in terms of a 'logic of moral commitment.' Within a moral commitment, people act according to certain meaning structures, and within a specified range of acceptable behavior. There is an incumbent *logic* of moral commitment in every community—and Durkheim contributes to this idea

when he creates the theoretical construct referred to technically as the collective conscience or the *conscience collective*.

A key aspect of this idea is contained within its name. The logic of moral commitment, involves *commitment*: a certain majority of commitment in the population. The emergence of this commitment depends on actors' (in one way or another) internalization of a set of morals. The extent to which actors internalize morals relates directly to the extent to which actors *believe* in the morals, and therefore are committed to them. Commitment thus relies on internalization for its emergence. A *logic* of commitment relies, for its emergence, on a set of actors who together are committed to a set of morals. This implies a fundamentally psychological element to any sort of collective conscience. We will talk more about the psychological elements later. In addition to this, a value is not a value unless it is committed to by an actor. The act of commitment, in the very same moment, is the constitution of the value itself.

Further, Durkheim mentions such things as a public temper (Durkheim and Coser 1997:102), which emerges in a collective bantering and the emergence of a collective agreement (sometimes referred to as moral consensus). The nature of commitment becomes, therefore, inextricably about people, and their interaction with each other. So, as a value is only a value if an individual believes in it, a collective set of values is only such if a collective group believes in it and agrees on this collective set forming a moral consensus. This idea of "moral consensus" is overly simplistic, yet it helps us to begin to conceive of a moral life in communities that must be irrational—that cannot be explained

via classical economic theory. It is important to note however that moral commitment can be irrational while still retaining its own inner-logic (however absurd).

When actors are committed to a set of morals they must integrate this commitment into their particular understanding of the world such that the commitment makes sense—has a logical coherence. The morals become systematically related and form a value system. Therefore, the logic of moral commitment in a community consists in precisely two things: 1) the set of morals, which actors have internalized and to which they are therefore committed, and 2) the systemization of said morals into a value system. The complication to this basic idea is that this basic idea is never fully empirically realizable—certainly in contemporary, differentiated Western society.

Philip Smith, a cultural sociologist impresses upon us that Durkheim's simplistic idea of morality and cultural codes as they relate to punishment don't capture the full scope. The problematic terminological pursuit of words to describe what was a burgeoning theoretical observation then, has yet birthed new and arguably more useful jargon: "Durkheim's utility here is compromised by the problematic language game of a 'collective conscience' with its 'nervous currents' and 'vibrations.'" This unhelpfully moves us away from a more contemporary understanding of culture as a shared, contested, and circulating "code" or "narrative"...and towards hazy theories of crowd psychology, group mind, collective trauma, and therapy," (Smith 2008:17).

For my work, it is useful to retain Durkheim's idea of a collective conscience, which is, however, insufficient to define the full scope of empirical reality. Never is there actual moral consensus, and never are the cultural categories (whether normative or

pragmatic<sup>3</sup>) really interpreted exactly the same way for every sub-community within any given society. As Jeffrey Alexander points out in his “Cultural Pragmatics,” Durkheim’s theories dealt largely with communities whose communal life was clear, and uncomplicated (Alexander 2004:566). Such an analysis isn’t as useful as is needed for contemporary, differentiated society, if only because communities overlap and interact without rest in the west.

Punishment enters into Durkheim’s theoretical schema as a structured communal activity (which I call ritual simply) aimed at reinforcing particular moral commitments in the community—and therefore the maintenance of the value commitments overtime (Durkheim 1992:2-6) and (Durkheim and Coser 1997:52). Smith adds: “The criminal body and the apparatus of control...are first and foremost symbols and ciphers in a reordering exercise,” (Smith 2008:16). The process is primarily communicative. The community speaks to itself after violations in the collective conscience to restore the shared normative life simply by expressing it and rebuilding it (Smith 2008:15). But just as the normative life of a community is layered and much more complicated than the simplistic model once articulated by Durkheim, such reordering exercises can complicatedly indicate different things for different sub-communities and take many different forms.

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<sup>3</sup> As in Mark Gould’s differentiation between social (normative) and cultural (pragmatic) norms: Gould, Mark. 1987. *Revolution in the Development of Capitalism: The Coming of the English Revolution*. University of California Press.

Smith attempts to complicate the idea of punishment by integrating it into cultural sociological theory in which culture is conceived of as having an autonomous influence on human action. Further, human *interaction* is extremely important in the model articulated by Smith, and functional models are given secondary import. Symbolic action, in Geertz' sense (Geertz 1973), takes the stage as we explore communicative activity in which symbols in the field of thought are performatively 'brought to life' and used as markers of meaning (Alexander 2004:548). In this, a structure of meaning emerges to autonomously influence action. That structure is culture. And given the added degree of complication, where people are not always acting in sync and where ritual in the West lacks the cohesive and regularized chronology it once did, the cultural sociologists have to create a construct (via Alexander's cultural pragmatics) to explain how society continues to bring to life its normative order without consistent, cohesive collective action—without formal ritual. Therefore, the following question is begged: how might ritual in contemporary western society bring to life normative order? Is there something *else* we now have to theoretically incorporate, given a contemporary (and postmodern) context? To answer this question, the next section is devoted to punishment's relationship to culture, ritual, symbolic action, and to the relationship between the self and the society. This extension of the theoretical discussion will help with the case study analysis in my later attempts to bridge what I observe with the theoretical perspectives on ritual, personality and social structure.

***The Value System as Semiotic***

Just as with Durkheim's helpful, but clearly overly simplistic models of collective conscience and regularized collective activity, Talcott Parsons may be useful even if his structural functionalism oversimplifies interaction while overemphasizing the structure and function of interaction. Yet he remains particularly useful when thinking about the structure of meaning making—a keystone aspect of the development and maintenance of social order and the redressing of deviance from social order.

Beginning with Parsons who distinguishes between moral/social norms and cultural norms (Gould 1987:9):<sup>4</sup> social norms are those norms that define (to say it simplistically) “right and wrong,” and cultural norms are those that define (also simplistically) sense making—does something make sense or doesn't it make sense. For example, if I were to steal someone's shoe, I might violate a social norm in that stealing is morally “wrong.” If I were to yell, “honk,” very loudly upon shaking hands with someone, I might violate a cultural norm in that no one would be able to understand me, but I would not be doing something immoral.

I also draw on another aspect of Parsons' theory for my analysis. It is predominantly derived from the work of Talcott Parsons, and also from Mark Gould. Briefly: when we think of a community we may think of it in terms of its subgroups and in terms of what these subgroups do. What are the consequences for the community as a whole in the functioning of these subgroups? When we answer this question about a subgroup, we say that we are defining the subgroup functionally. Parsons conceived of

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<sup>4</sup> Parsons is a macrosociologist who wrote in the 1960's about societal structure, and Mark Gould is one of his students, a Professor currently at Haverford College.

four different main ways of defining a subgroup functionally. He envisions that each definition may be ordered cybernetically hierarchically so that there are *levels* of functional definition—a very general one to a very specific one (Gould 1987:11). We can say that 1) the subgroup can be defined *adaptively* (the most specific level) if it develops resources for community in gaining control over the environment; 2) the subgroup can be defined in terms of *goal attainment* (slightly less specific and more general) if it establishes particular relationships with the environment that are favorable for the community's sustenance (that help the community to reproduce itself); 3) the subgroup can be defined in terms of *integration*, if it situates disparate parts of the community into relationships that are reasonably harmonious and 4) the subgroup can be defined in terms of *latent pattern maintenance* (most general) if the subgroup attaches the different parts of the community to overarching patterns that distinguish it from other communities (and the outer environment), (Gould 1987:10-15). We think of cultural norms as emanating from subgroups that fulfill the latent pattern maintenance function (for example, religious community), and social norms as emanating from subgroups that fulfill the integrating function (for example, families).<sup>5</sup>

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<sup>5</sup> The explication I have given of this theory does not include every intricacy, and dilutes many of the major distinctions that make the theory coherent. For an in depth review and understanding of the theory I briefly review here I encourage the reader to read the entirety of Parsons' *The Structure of Social Action*, and his introduction to *Toward a General Theory of Action*, and Mark Gould's *Revolution in the Development of Capitalism*. See bibliography for bibliographic information. I also encourage the reader to review a book edited by Parsons called *Theories of Society; Foundations of Modern Sociological Theory* (Parsons 1965), also see bibliography.

Though in no uncertain terms do we wish to theoretically conflate social and cultural norms, we must understand them as having a broad overlap and systematic interdependency. In so far as we need to do this, it will be useful to approach our idea of a value-system semiotically (in terms of signals, significations, and signs<sup>6</sup>). For even Durkheim admits in his later work that: “To live, [society] requires not only a minimum moral [social] consensus but also a minimum logical [cultural] consensus that it cannot do without either,” (Durkheim 2008:16).

For this I turn to Ferdinand De Saussure. For Saussure, a moral value<sup>7</sup> is represented in the form of a symbol or sign. In linguistic terms, a symbol may be more precisely called a “sign” consisting in a signification (the concept) and a signal (the phonetic form the concept takes, as in a word), (Saussure 1972:67).<sup>8</sup> In this case I equate the term “sign” with the term “symbol.” Parsons re-terms this duality by referring to the abstract notion of the moral value as the “postulated entity” and to the concrete form the value takes in community as the “concrete referent,” (Shils and Parsons 2001:160). See the table below:

<b>Terminological Equivalences in the Dual Make-Up of the Symbol or Sign</b>		
<b>Dutton</b>	<b>Saussure</b>	<b>Parsons</b>
Abstract Notion	Signification	Postulated Entity
Concrete Form of the Abstract Notion	Signal	Concrete Referent

<sup>6</sup> As Ferdinand De Saussure conceives of these: see Bibliography.

<sup>7</sup> Saussure states that meaning is constituted in terms of the relation between the signification and the signal that makes up the sign, and value is constituted in terms of the relation between signs (Erikson 1966:4). I use “value” here in a different sense, in the sense of a moral value: something that is thought of as the ideal form of how we’d like “the world” to be.

<sup>8</sup> Ferdinand de Saussure is a linguist.

When Parsons explicates culture, he explains these terms in another way: “culture is constituted by ‘ways of orienting and acting,’ these ways being ‘embodied in’ meaningful symbols,” (Shils and Parsons 2001:159). But, here, when Parsons says “symbol” he doesn’t mean it in the way that I have conceived the term, he means “symbol” in the same way that I mean the signification or Parsons’ postulated entity. In fact, Parsons utilizes an array of terms to describe the same two things in this duality. I prefer to attempt, at least, to remain as precise as possible so I will try to exclude terminological divergence when such exclusion does not distort any meanings.

The importance here is that actors do not simply act, they have ways of acting, or ways of orienting themselves to the world, and those ways are partly delimited by meaningful significations. Just as abstract notions take concrete (linguistic) form through sound, through some phonetic means (Saussure 1972:67), so do meaningful significations take concrete (cultural) form through symbolic orientations in social action. So any act is not merely an act, it is a representation of an abstract notion and whose concrete form is the act itself. Out of this duality emerges the act’s *meaning*—the actors symbolic orientation to the world. Action is conceived of as having a conceptual relation to other acts via a systemization of the symbol(s) of which the action is a part. To put it more precisely: social meaning is constituted in terms of the relation between the signification and the signal that makes up the sign, and these meanings interrelate systematically to form a systematic meaning<sup>9</sup> in terms of the relation between signs

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<sup>9</sup> ...which Saussure calls “value,” but which I do not call "value" for the sake of avoiding terminological confusion. Saussure’s “value” I call simply: systematic meaning.

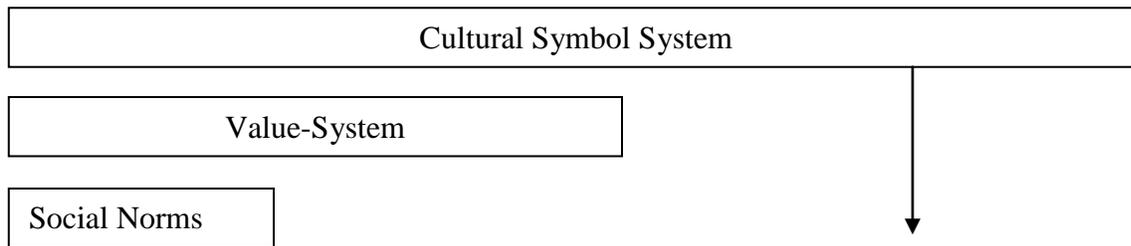
(Saussure 1972:113). This system of signs, which I call the symbol system, is generally referred to as culture. It is has also been referred to as a “meaning structure.”

In these terms, we think of a value-system as involving a part, but not the whole, of the symbol system (system of signs). Simply: our moral premises are couched in a cultural understanding and systematic categorization of these premises (Shils and Parsons 2001:170). So when I say “value system” I mean the part of the whole cultural symbol system in society that delineates via concrete orientations and abstract postulated entities the set of moral premises by which actors in a society live. When I talk about the “reinforcement” of value systems I talk about how actors come to connect a certain set of actions, and way of going about engaging in these actions, with a certain idea of how one should act. Actors become committed to engaging in these acts in a particular way, according to the values to which they correspond. In the latter discussion it will become important to distinguish between social norms and the value system that legitimates them (in Gould’s sense: 1993). For now we understand social norms as a part of the value system, and we understand the value system as part of the overall cultural symbol system.<sup>10</sup>

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<sup>10</sup> A further sophistication as follows: Parsons conceives of his four functionally defined subsystems of the system of action, he also makes it clear that within each subsystem of action there are four further subdivisions that follow the original four. So within the latent pattern maintenance subsystem (also called the cultural subsystem) there is a latent pattern maintenance aspect, an integrative aspect, a goal attainment aspect, and an adaptation aspect. Value-Systems exist in the cultural subsystem at the level of integration, and social norms exist in the integrative subsystem at the level of integration.

See diagram:



### ***Value-Reinforcement in Social Order***

Social order may simply be defined as the state in community of general rest and conformity. Social order is constituted most primarily in the cohesive symbolically-oriented interaction between actors in a community who understand each other most of the time and share some set of rules or expectations for action, which they follow most of the time. This set of rules or expectations for action, norms I will call it, are legitimate (in Gould’s sense: 1993) in so far as they are congruent with the value-system in a community. In the first instance, sanctions only function in a well ordered model of society where few people violate the norms because they are congruent with the value-system to which actors are committed. In this essay we will define deviance (simplistically) as violations in social norms that serve as the basis of the social order. We will define redressing deviance as the process by which people “celebrate justice, render clear the structure of authority, [and/] or show commitment to moral values,” in redressing breaches of social norms and maintaining social order (Smith 2008:6).

The “reinforcement” of value-systems basically denotes the *process* in which actors come to connect a certain set of actions, and way of going about engaging in these actions, with a certain idea of how one should act. Actors become committed to

engaging in these acts in a particular way, according to the values to which they correspond. Actors thereby become committed to a value-system and will follow social norms that are congruent with that value system. More importantly than sanctions, social order requires, as a necessary condition for its persistence, a set of rules or norms that are seen to be legitimate—congruent with the value-system to which actors are committed. This is primarily pragmatic, for without the above, people would not even know to stop at red lights, much less: to avoid telling jokes at funerals, to remember to respect your family priest, to relieve oneself in restrooms, and to avoid embezzling money from your clients and companies.

Recall when I said earlier that a logic of moral commitment in a community consists in precisely two things: 1) the set of morals, which actors have internalized and to which they are therefore committed, and 2) the systemization of said morals into a value system. I now add that *social order* consists in these two things above, along with: 3) a set of social norms that are congruent with the value system<sup>11</sup> and 4) some way of reinforcing the commitment of the majority of the people in a community to the value-system with which the social norms are congruent. Simply speaking, the social order requires moral order where sanctions are no longer merely the embodiment of incentives

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<sup>11</sup> They could also be neutral to the value system, but usually when they seem neutral it is simply because either they do not correspond to this aspect of the broader cultural symbol system or because whatever value system that it does correspond is so latent it seems simply appropriate, the way things are.

and disincentives for action, they more importantly fulfill the function I defined as value reinforcement.<sup>12</sup>

### ***Value Reinforcement via the Ritual***

Victor Turner, a theorist of religion and ritual states that a primary function of ritual in religious community is to bring to life the pervasive symbols representing the community's set of beliefs, where a belief *in* something *is* the commitment to the corresponding value-system. By "bring to life" I mean two things: 1) to reinforce the commitment in individuals to the value-system via 2) a cathectic<sup>13</sup> identification (what I have referred to as internalization) of the value-system (Turner and International African Institute 1968:3). And in so far as we have cathectic identification with the value system (we internalize it), as previously established, we are committed to it. Processes that bring symbols "to life" make symbols into physical representations or representative activity (the signing of a contract, the burying of a stone to signal closure of a ritual process).

We saw before how the meaning of a symbol or sign is constituted both in its abstract notion and in the action that represents it. Such a concretization (in an act or physical representation) Turner calls an, "entelechy [a realization or actuality as opposed to a potentiality]," and he makes clear that, "a good deal of ritual activity consists of the manufacturing of certain key symbols, which represent, so to speak, the actualization of

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<sup>12</sup> Based on previous arguments, I must be consistent and add that "cultural order" is also essential to social order. Value reinforcement has a counterpart, which could be called category reinforcement where the basic concepts that are also systematized in the meaning structure make morality comprehensible. Both moral order and cultural order constitute social order, in the way I have been describing it.

<sup>13</sup> Cathectic: the investment of emotional energy in a particular activity.

the work put into them,” (Turner and International African Institute 1968:3). Ritual activity is a process in which value symbol systems are given meaning through concretization processes.

Turner also makes it clear that, in the concretization of value-systems through ritual, we are also reaffirming tacit understandings about the world (as part of the cultural symbol system). Shared understandings allow us to make sense of each other and of the world. Turner reminds us: “Ritual is the periodic restatement of the terms in which men of a particular culture must interact if there is to be any kind of a coherent social life,” (Turner and International African Institute 1968:6). Ritual then reinforces value symbols and cultural symbols (the cultural symbol system and the value symbol system).

One step further, Turner says: “People only come together to perform ritual in terms of beliefs so powerfully held that they overcome all the forces that, under other circumstances, divide them from one another and set them at odds. If these beliefs lose their efficacy, the rituals and symbols that embody them will produce not cohesion but contention, or finally indifference,” (Turner and International African Institute 1968:8). These, “beliefs so powerfully held,” are those that extend across the community, that are shared by all, and that transcend all other concerns. In Parsons’ terms, these beliefs are those that exist at the higher levels of generality: those having to do with ontology and morality. Our cultural symbol system offers to us a meaning structure through which to see the world (ontology), and our value symbol system (as part of the cultural symbol system) organizes some portion of this ontology into moral categories—what of the world is “right” and what is “wrong,” (to put it simplistically).

If ritual works essentially to give meaning to symbols, to make them concrete for us, and to therefore reinforce our commitment to them, then we can say that ritual is the structural component that fulfills the function of value reinforcement. In this way, we may think of ritual, just as we think of situational sanctions, as making social order more likely by producing four necessary conditions for its emergence: 1) internalization (cathetic identification with) the set of morals such that actors are committed to them, 2) the systemization of said morals into a value system such that 3) the set of social norms are congruent with the value system<sup>14</sup>, and 4) the reinforcement of the commitment of the majority of the people in a community to the value-system with which the social norms are congruent. We may preliminarily assert that the presence of these four things in community indicates ritual activity.<sup>15</sup>

We haven't forgotten about the cultural sociologists who, again, would make the same contention in response to the above model as they do with Durkheim—this model does not take into account the varied possibilities and layered encoding that permeates any society, even any sub-community. It is not necessarily the case that one value will retain the same commitment in one community as in the next. Even the most latent and taken for granted cultural premises are often articulated and given efficacy in a community via different sets of symbols and via different kinds of collective action.

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<sup>14</sup> They could also be neutral to the value system, but usually when they seem neutral it is simply because either they do not correspond to this aspect of the broader cultural symbol system or because whatever value system that it does correspond is so latent it seems simply appropriate, the way things are.

<sup>15</sup> But we will discover in the second instance that these four criteria indicate a particular activity that must be distinguished from “procedural processes” in some way. There is more to be said about this later.

However, ritual remains a basic human activity, which (unlike any other kind of activity) structures and reinforces meaning such that people can continue to understand and believe. In complex and differentiated societies it becomes necessary for sociologists to worry about the manner and process of ritual in the contemporary Western world. Robert Bellah argues that there are three types of meaning, which ritual and only ritual can achieve for individuals: Low-order meaning, middle-order meaning, and high-order meaning. He says, “Low-order meaning is grounded in distinction (a dog is not a cat)...Middle-order meaning does not so much distinguish as connect: its concern is with similarities, analogies, emotional resonances and its chief form is metaphor (the fog comes on little cat feet)...High-order meaning ‘is grounded in identity or unity, the radical identification or unification of self with other’” (Rappaport 1999:71) and (Bellah 2003:39). And he continues by referencing Rappaport again: “...Rappaport, with Durkheim argues that if rational action were all there is, there would be no solidarity, no morality, no society, and no humanity,” (Bellah 2003:39). He finally argues, “Undermining middle- and high-order meaning is not just a threat to ritual and religion, if Rappaport is right, but to society and humanity as well,” (Bellah 2003:39). And it is Jeffrey Alexander in “Cultural Pragmatics” who formulates a distinct process in which ritual may function to make meaning and unify people in understanding and in belief much like Bellah describes.

Alexander’s *re-fusion* (2004:529) is Bellah’s high-order meaning in process. Alexander says, “The more simple the collective organization, the less its social and cultural parts are segmented and differentiated, the more the elements of social

performances are *fused*. The more complex, segmented, and differentiated the collectivity, the more these elements of social performance become *de-fused*. To be effective in a society of increasing complexity, social performances [rituals] must engage in a project of *re-fusion*,” (2004:529). Alexander’s move (among other people) opens up the possibility that, even as we admit that interaction is complicated and never fully comprehensible, we can conceptualize how it might basically work in differentiated, contemporary Western society (and other societies as well).

Up to now, I have established that ritual fulfills the function of value reinforcement in society such that social order is in some way maintained. It may also be the case that punishment is fundamentally ritualistic (having ritual qualities) and thereby also works to reinforce values in instances of re-fusion (in Alexander’s sense). Rituals and punishment involve the same general activity, I argue. Punishments are symbolic and culturally mediated. For negative sanctions<sup>16</sup> to retain their meaning, the abstract notion of “the negative sanction” must be carried through in action—in this case in the enforcement of a punishment or reward. Further, the ritual, as Victor Turner conceives of it, is semiotic in the same way. There are abstract cultural notions that are concretized and therefore given meaning. For now we can say that not only do both ritual and negative sanctions serve to reinforce commitment to value-systems, they both generally concretize abstract notions so as to give them meaning. If rituals were fruit, situational sanctions would be apples. That is, situational sanctions are a *kind* of ritual in so far as

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<sup>16</sup> *Negative sanction* is the technical term for punishments, as established earlier.

rituals concretize any set of abstract notions to give them meaning and situational sanctions concretize only one kind of abstract notion to give it meaning.

### **The Self and the Society, a ritual integration**

What is left to consider is how the ritualistic nature of value-reinforcement and, more broadly, redressing deviance from social order, applies to the micro-interactions between people in community. This section is long because it seeks to intimate a synthesis between macro- and micro-level theories. Yet, this section will prove useful as we explore interaction on the micro-level in the restorative justice processes outlined in the case studies (see chapter 2). Especially Freud, Hochschild, Frattaroli and again Alexander aid us in this last discussion. The reader will be able to see just how complicatedly the interaction in the case studies functions as a meaning-making mediator between personality and social structure.

Arlie Hochschild states that the modern psychiatrist<sup>17</sup> factors out “socially normal benchmarks and focuses,” merely on, “personal meaning systems,” by which she means the formation of personality<sup>18</sup> (Hochschild 1979: 559-560). Yet, none of the most modern psychiatrists and sociologists of our age (namely Freud, Frattaroli, and Parsons) assert that we must lose any socially normal benchmark in conceptualizing the

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<sup>17</sup> The modern psychiatrist in my understanding is a conglomeration of Sigmund Freud 1960 in *The Ego and The Id*, Dr. Elio Frattaroli 2002 in *Healing the Soul in the Age of the Brain*, and Talcott Parsons 1964 *Social Structure and Personality*. See bibliography.

<sup>18</sup> There is the construction of personality, which is different than the construction of the personality system, which is the entire symbol-system around which the human orients her identity, the meaning she uses to function with others and to understand the world. It is the personality system integrated in with social structure, through ritual engagement and emotion-work, which I will get to later.

personality, by which Hochschild means the social and cultural rules that offer to individuals and groups a way to interpret situations. Hochschild inadvertently factors out the personality, and she accuses psychoanalytic theory of factoring out social rules (if only to expedite her argument). She is incorrect in her analysis.

Nonetheless, Hochschild offers to us a definition of emotion-work: "...the act of trying to change in degree or quality an emotion or feeling," (Hochschild 1979: 561). She identifies two types of emotion-work and three techniques. The types are categorically confused<sup>19</sup>, and so we won't concern ourselves with them specifically. The main thrust is that they all are cognitive in one way or another, so that we manage how we feel with how we want to feel. They are also emotional in that we usually feel something in response to a feeling we don't want to have. Hochschild relates: "...the individual is conscious of a moment of 'pinch,' or discrepancy, between what one does feel and what one wants to feel (which is, in turn, affected by what one thinks one ought to feel in such a situation). In response, the individual may try eliminate the pinch by working on feeling," (Hochschild 1979: 562).

The next step then is to discern what determines what a person thinks she should feel in a given situation: what legitimates feeling? Legitimation is constituted via the

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<sup>19</sup> Hochschild asserts that the techniques of emotion work are cognitive, bodily, and expressive, and then identifies the two types as evocation and suppression, both which operate cognitively (Hochschild: 1979, p 561-562). It seems that emotion-work is inherently cognitive, that all its types and techniques are cognitive. Therefore Hochschild either defines cognitive in different ways without saying, or attempts to differentiate techniques incorrectly. A better set of terms to describe techniques might be: psychological, psychosomatic, and expressive-psychosomatic. The first involves just the mind, the second two involve the mind still but go one step further in utilizing the body either in itself (psychosomatic) or expressively (expressive-psychosomatic).

social rule, the normal benchmark discussed earlier. Hochschild asserts that we most often become aware of doing emotion-work when the social interaction, which is suggesting how we should feel, does not match how we do feel. And Hochschild identifies indicators for feeling rules such as our tendency to speak of “the right to feel,” as though there were some implicit set of regulations constituting the desert of feeling, or the questioning or calling into account of certain feelings in a situation, but not others in the same situation (Hochschild 1979: 564). These framing rules would function at the level of integration in Parsons’ cybernetic hierarchy and would take the form of social norms (refer to chapter 1, page 16-18).

When a person is not able to achieve the emotional status to which she aims, within her there is emotive dissonance. And we attempt usually to reduce the extent of emotive dissonance experienced, which, Hochschild writes, is, “our periodic clues to rules of feeling,” (Hochschild 1979: 565). What Hochschild does not recognize is that such emotive dissonance is another way of articulating the inner conflict arising between the *It* (the *id*) and the *I-that-stands-above* (the *superego*).<sup>20</sup> The *It* is driving the emotion

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<sup>20</sup> I rely on Frattaroli’s re-translation of Freud to reflect more accurately the psychodynamics of the inner-person. See his *Healing the Soul in the Age of the Brain* 2002 in the Bibliography. Elio Frattarolian, a contemporary practicing psychiatrist, develops a conception of the self that reworks the Freudian conception. The beginning of which is that Frattaroli transcribes Freud’s *Id*, *Ego*, and *Superego* into their literal English translations, the *It*, the *I*, and the *I-that-stands-above*, respectively. The *I* in Frattarolian theory ends up becoming an analytic conception of personality.<sup>20</sup> First, Frattaroli calls the *It* everything biologically instinctual and stimulus-responsive about the human psyche. Second, the *It* integrates into the *I* where we enact instincts that predetermine personality. Third, the *I-that-stands-above* is the observing part of the self that integrates into the *I* as well, but with everything that is consciously responsive about the human psyche where we enact “freedom of choice” in determining personality. Thus the *It* and

that we don't "want" to feel, and the *I-that-stands-above* is precisely that which doesn't want to feel the said emotion due to the feeling rule indicating that the said emotion is "inappropriate." In the integration of the *It* and the *I-that-stands-above* the inner conflict emerges, which is a source of great anguish<sup>21</sup> for the individual.

As we examine more closely the manner in which feeling rules come to be, we find in Hochschild the concept of "framing rules," which are those rules that limit the situation—her version of social and cultural norms. Contained within the framing rules, are the feeling rules, which define for us the set of appropriate feelings given to the situation. Feeling rules and framing rules are more like social norms emerging as a result of the internalizing of a set of values.

Moral consensus, though it was a problematic idea for Durkheim, can help us at this juncture as a simplistic beginning in the effort to quickly sketch how micro-interaction relates to the macro-level structure on which I have spent much of this first

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the *I-that-stands-above* (because they are opposites) conflict with each other via their dual integrations into the *I* from opposite ends. They are diametrically opposed and serve as the fundamental basis for inner conflict (Frattaroli 2002: 313). I interpret this beyond the individualism of which Freud is accused (whether rightly or not). Frattaroli's conception of the *I-that-stands-above* is precisely George H. Mead's "me" in *Mind Self and Society*; and likewise Frattaroli's *I* is Mead's "I". The difference here is that Frattaroli has made the distinction more complicated. In Mead, the "me" is constituted by the organized group attitudes, "to which the individual responds as an 'I,'" (Mead 1934: 186). Yet, Frattaroli asserts not merely that the "I" responds as instinct to the "me." Frattaroli's *I* integrates the instinctual aspect of personality, the *It*, with the "aware" aspect of the personality, the part that injects "consciousness" to decisions, the *I-that-stands-above*. And the integration of the *It* and the *I-that-stands-above* makes the *I* (or the personality), which is in part influenced by, and yet also influences, the social.

<sup>21</sup> This 'great anguish' is focused, not merely on anxiety, but on a whole host of negative emotions, which serve to indicate the inner conflict.

chapter. Moral consensus might be thought to be constituted when a person is committed to a set of values along with other people. A person constructs her identity as a member of the moral consensus and thus as a member of the community. The moral consensus may be a figment of her imagination and impossible to realize empirically, but it is important that it be perceived. She conceives of herself as a member of a community, in part, because she at least *thinks* that she shares the same set of values with the members of the community in question. This commitment and identification is also emotional—*cathectic*.<sup>22</sup>

In more sophisticated terms, this moral consensus looks more like an interactive negotiation of identity and social positioning. The interactive negotiation makes clear (though temporarily) the values that have import in the particular social situation. The negotiation establishes why the values have import and where action fits in with this temporarily negotiated interactive agreement. But the values, being constructed both within and outside of the community in question, serve to limit the interaction itself. The values, as it were, didn't just emerge out of the blue. The interaction is structured by a pre-existing set of values related to each other in a symbol system. And this set of values within the symbol system is the main resource for interactive negotiation—a negotiation not necessarily for determining *what* the values are but *which* values the people in the interaction choose to reference. The values are limiting as much as they are life-giving—they are the resource for meaning, but the resource is limited.

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<sup>22</sup> Cathectic: the investment of emotional energy in a particular activity.

Further, we return to the beginning of Hochschild's essay when she discusses Irving Goffman: "To study why and under what conditions 'participants...hold in check certain psychological states...' ...we...appreciate the importance of Goffman's work, as it seems he does not, as the critical set of conceptual connecting tissues by which structure and personality, real in their own right, are more precisely joined," (Hochschild 1979: 557, reference omitted). I would add that Goffman's interaction theory is, even more precisely, the ritual (and interactive) process through which the personality system and the social structure become connected (Goffman 1982). And Goffman's interaction ritual is the process by which the individual becomes a member of society—and simultaneously the process by which the society comes to be carried inside the members that constitute it. Goffman's interaction ritual is a precise analysis of the interactive negotiation of which I speak above.

Personality is integrated into the social structure via the Goffmanian interaction ritual (also the Durkheimian "pure" ritual), where framing rules that give rise to feeling rules are a specific result of certain normative benchmarks that are negotiated through this interaction ritual. Emotion work is the attempt to manage the occasional contradiction between the personality system and the social structure in so far as that contradiction has to do with emotion.

This socio-psychoanalytic integration will allow me to feasibly analytically connect, in a precise way, the micro-interaction in the restorative justice processes with a broader social macro-structure that structures the micro-interaction by limiting it to the

available symbols, norms, and ritually-oriented strategic resources available to the groups in the case studies.

### **Deterrence in Punishment vs. Restorative Justice**

The last thing left to address is deterrence and materiality in the maintenance of social order. We cannot ignore the potential situation in which some subset of actors is NOT committed to a part of the value-system such that they will NOT follow a norm. I here assume that it is possible for certain actors to operate in the strategic, ritualistic processes of interaction without regard to the value-symbols available to whatever group. I assume that there are actors who might in one way or another take advantage of the strategic action and use it merely for material gain maximization—whether in the form of physical objects or social capital. In these cases, only situational sanctions can feasibly theoretically be used to deter their deviance. That is, in the case of unresponsive deviant actors, the ritualistic, symbolic activity of punishment (negative sanctions) is reduced to a body-oriented act meant to prevent people from acting in whatever way is punished. So, what had been (in Bellah's sense) a middle- to high-order meaning ritual activity, has been reduced to a low-order ritual activity. Indeed, but the activity is still ritualistic, and maintains a higher order of significance for most people, just as it maintains lower-level meaning additionally.

Yet, deviance even by a small portion of the population can undermine the whole system if it is not publically and sufficiently addressed. I return to Smith who mentions Durkheim's writing about discipline in schools: the teacher in face of a student's infraction must show unequivocally that the rule is still legitimate in his eyes (Smith

2008:20). This is precisely because overtime, if some portion of the community is not committed to a value and so acts in deviation to it, while another portion of the community *is* committed to this value and *does* act in accordance with it, we assume that eventually, without reinforcing rituals, the people who are committed will lose their commitment. The community will fracture—no longer sustaining unifying belief. Sanctions play a role in keeping this from happening by establishing instrumentally rational deterrence effects that ensure conformity regarding those who are not committed to the values—those who are simply acting instrumentally rationally.

Apart from value-systems, deterrence “ensures” conformity to a set of norms that for most people are legitimate (congruent with the value-system). Ritual activity is the principal action, however, aimed at reinforcing value-systems by refusing and establishing high-order meaning. Negative sanctions participate in a particular kind of ritual activity, which, in the beginning of this essay, I referred to as the ritualistic, symbolically-oriented, and semiotically ‘encoded’ activity extant in any community, which indelibly emerges in response to deviations from (what may be generally referred to as) a community’s moral trajectory. Restorative justice is another kind of activity of the same type. Both punishment (at this stage, along with negative sanctions) and restorative justice are ‘just’ the categories identifying this particular activity—identifying a particular way of going about doing it. Neither primarily plays a deterrence role.

The definition at which we therefore arrive for punishment, involves something more complicated than we at first thought. Punishment takes the form of the negative situational sanction, and in taking that form does five things (four of which are

aforementioned): 1) punishment internalizes (via cathectic identification with) the set of morals such that actors are committed to them, 2) it systematizes the said morals into a value system such that 3) the set of social norms are congruent with the value system<sup>23</sup>, 4) it reinforces the commitment of the majority of the people in a community to the value-system with which the social norms are congruent, and 5) it materially and instrumentally rationally deters those not committed to the values.

Therefore, whereas we had before equated punishment with situational sanctions, we now conceive of them as different from each other. Punishment is the larger ritualistic activity, and situational sanctions are reduced to merely mechanisms for providing the deterrence effect. This means, as a beginning point in our discussion of the definition of restorative justice, we identify a fundamental difference between punishment and restorative justice. They both may indicate the same kind of activity, but restorative justice does not make space for this fifth component—the instrumental rational component. This argument makes clear that restorative justice processes and retributive justice processes (punishment) are fundamentally ritualistic, while sustaining key ramifications from each other in terms of situational sanctions.

For clarity's sake, let us take a look at the following excerpt from a scholar discussing restorative justice. It presents its own theoretical problems, and by pointing them out, my argument becomes clearer.

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<sup>23</sup> They could also be neutral to the value system, but usually when they seem neutral it is simply because either they do not correspond to this aspect of the broader cultural symbol system or because whatever value system that it does correspond is so latent it seems simply appropriate, the way things are.

On a theoretical level, this could be considered one of the major differences between a punitive justice approach and a restorative one. A punitive approach is deterrent, seeking to prevent recidivism because offenders realize the damaging effect on themselves of offending—a fine, a prison sentence or other deprivation of liberty—and they do not re-offend due to the consequences which they foresee for *themselves* if they are caught. The restorative approach seeks to change the internal perception of offenders by presenting them with the harm caused by their offending on the *outside world*: on victims by meeting them face-to-face, or on society as a whole, represented by community panel members. This is a quantum shift in the approach to preventing re-offending. Instead of appealing to a person's regard for self, the restorative approach is attempting to foster an understanding of the other. (Newbury n.d.:137)

Among other problems, Newbury commits a common conflation. He makes the “deterrence reduction” in which individuals are *only* assumed to avoid being punished because of an enforced sanction. The presence of sanctions as deterrents may be a theoretically cogent idea, but it is analytically imprecise. Yet, likewise, it is not usually empirically distinguishable from the other four aspects outlined above. This may offer some understanding as to why many scholars reduce punishment to deterrence, to situation sanctions (as in fact I almost did).

Similarly, the above presented alternative to sanctioning, in which the offender is brought face-to-face with the consequences of her actions in a restorative justice process, is just as analytically imprecise. In fact, both theoretical options are imprecise in the same way—neither takes into account the situation of the actor. Neither considers the actor's social position, the cognitive and normative norms regulating her selection of goals, the cultural manifestations of her identity, the community in which she has been primarily socialized, etc. The reason why someone is deterred by a sanction is not usually as simple as its severity and the likelihood of getting caught. Severity of the

sanction and the likelihood of getting caught is, however, always a factor in the overall decision. And this aspect of any theory of deviance cannot be ignored, not even by the most ardent restorative justice advocates.

## **Chapter 2** **The Definition of Restorative Justice**

### *Introduction*

The lone effort of this chapter is to put under microscopic scrutiny a small slice of the studies conducted on restorative justice, out of the total bulk of the available literature. Restorative justice, in the words of one researcher named Rachel Monaghan from the University of Ulster, is not a unitary concept, “nor does it propose a singular academic theory of crime or justice,” (90: 2008). In referencing another researcher she agrees, as do I, that restorative justice has conceptually evolved into, ““a convenient shorthand expression that is commonly applied to a variety of practices which seek to respond to crime in a more constructive way than is conventionally achieved through the use of punishment,”” (Dignan & Lowey: 2000 qtd Monaghan 2008: 90). Other scholars have offered other varied definitional claims. Rossner refers to restorative justice as a theory drawing on Maori, Celtic, and Native American cultures, “before the advent of the Western-style criminal justice system,” (Rossner 2008:1735). Rossner goes on to indicate that, “Worldwide, dominant models of restorative justice include victim-offender mediation, victim-offender reconciliation programs, sentencing circles, family group conferencing programs, and restorative justice conferencing. Other models use restorative boards or panels to address offending,” (Rossner 2008:1736). Other scholars such as T.F. Marshall (2003), Gilbert and Settles (2007), Clark (2008), Monaghan (2008a), and Ervin Staub (2000), (2006) each make definitions particular to the arguments they are making and to the cases they address.

If restorative justice has retained such a diverse set of definitions, it now subsequently retains little meaning beyond its very broad indication as quoted above. Shall we, out of the scholarly chaff, make up our own definition for restorative justice? Such an attempt might seem just as meaningless as previous attempts for I will also indelibly be selecting only those definitions for restorative justice that best fit the argument I am attempting to make. I would like to avoid the appearance of such a bias, at least initially. I instead aim to discover the underlying interactional, functional, and structural characteristics of this thing “restorative justice” in order to discover how and why it works or doesn’t work. When I have done this, we may find a term better attuned to these underlying characteristics. For now, we will simply treat restorative justice as: a non-retributive response to breaches in social norms that aims to, “celebrate justice, render clear the structure of authority, [and/] or show commitment to moral values,” in redressing breaches of social norms and maintaining social order (Smith 2008:6). This definition is our beginning, and it is that to which this second chapter is devoted. Restorative justice as a proposed process for redressing deviance retains many more characteristics that must be discussed before embarking further into a discussion of effectiveness. The next chapter will aim to outline effectiveness.

Though the case studies I use may seem unsystematically collected from a field that is broad and inexhaustible, they each have particular merit as we attempt firstly to define restorative justice. They are varied examples, which is a characteristic that yields greater credibility as we are dealing with a general theoretical idea rather than with that idea in a specific situation. The analysis remains insufficient, however, in so far as the

collection of case studies is limited—a sufficient analysis should be the subject of someone’s book. The studies have to do with the following topics (not in order of presentation): the ritualistic reconciliation processes of Bougainville, a province of Papua New Guinea (Reddy 2008b), and Gullah Island off the coast of South Carolina in the United States (Jenkins 2006); restorative justice and conflict transformation in Northern Ireland and South Africa (Eriksson 2008), (Monaghan 2008a); the implementation of restorative justice techniques in a Denver, Colorado public school (Jennings, Gover, and Diane M. Hitchcock 2008); and an ethnographic study of the interactive characteristics of restorative justice (Kenney and Clairmont 2008).

I will center my argument on two main differences between kinds of restorative justice processes: procedural and ritualistic. I will relate my discussion of these two main differences to the five definitional points I develop in the previous chapter. The definition to which I will arrive for restorative justice will result after a discussion of the case studies within the above framework.

I will unveil the fact that procedural restorative justice processes sustain a ritualistic quality, but are usually coupled with the threat of negative sanction. While, the ritualistic restorative justice processes retain more strictly proscribed action and lack the threat of sanction. I will hypothesize that the reason for finding these two fundamentally different types of interaction relates to success and effectiveness. For procedural restorative justice to facilitate successful restoration, reintegration, and redressing of deviance in communities it must be coupled with the threat of negative sanction. For ritual restorative justice to facilitate success in the same way, it must be extremely strict

in its proscriptions of action because it lacks any threat of sanction. The threat of sanction, in ritual restorative justice processes adds no effectiveness to the process. These hypotheses will be discussed in the third and final chapter. To reiterate from earlier: In this essay we define deviance (simplistically) as violations in social norms that serve as the basis of the social order. We define redressing deviance as the process by which people “celebrate justice, render clear the structure of authority, [and/] or show commitment to moral values,” in redressing breaches of social norms and maintaining social order (Smith 2008:6).

### **The Procedural and Ritual Processes as Categories**

Earlier in the essay (in chapter 1) I articulate a functional definition of ritual that doubles as a definition of punishment. I say that ritual makes social order more likely by producing four necessary conditions for its emergence: 1) internalization (cathectic identification with) the set of morals such that actors are committed to them, 2) the systemization of said morals into a value system such that 3) the set of social norms are congruent with the value system<sup>24</sup>, and 4) the reinforcement of the commitment of the majority of the people in a community to the value-system with which the social norms are congruent. Punishment is a particular kind of ritual in which the above four elements exist in a particular structural form—the guillotine or the electric chair. I therefore added to this definition a particularizing fifth criteria, which is: 5) punishment materially and

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<sup>24</sup> They could also be neutral to the value system, but usually when they seem neutral it is simply because either they do not correspond to this aspect of the broader cultural symbol system or because whatever value system that it does correspond is so latent it seems simply appropriate, the way things are.

instrumentally rationally deters those not committed to the values in the community from transgressing. Restorative justice lacks this fifth category, which offers to us the preemptive theoretical assumption that restorative justice might only effectively serve as a precursor to punishment rather than as a replacement.

I acknowledge that as I apply this theory to the case studies, I have not taken the (arguably necessary) step of formally operationalizing the definitions above as observable qualities in a restorative justice process. I will assert some general operationalizations for which I will look, but they are in no way completely fleshed out. For criterion number one, I look for the introduction of emotion in interaction and any behavior that clearly displays emotional attachment to certain identities or role positions either as claims of others or of the actors themselves. For criteria numbers two and three, I will look for specific linguistic or behavioral mention of morals or values as in terms of a larger community's set of values. For criterion number four I will look for the making of a contract, the burying of a stone or other symbolic gesture of closure that centers around an acknowledgement of a breach of values and a resolution to that breach (signifying a recommitment to those values). For criterion number five, I will simply look for the presence of a situational sanction or the threat of situational sanctions.

The case studies of restorative justice are distinctly different from each other in at least one way. Some of the restorative justice processes retain a rational, procedural "quality" while others are more "purely" ritualistic. There is a fundamental difference in some of the processes where the behavior is explicitly proscribed, as in the Bougainvillean case. Most of the processes involve some degree of complicated

interactive negotiation, and the behavior is not explicitly proscribed (there is flexibility).

This difference must be acknowledged as it points to a potential conclusion to be reached about the form taken of restorative justice in a postmodern context. In order to intimate toward that conclusion I make a theoretical distinction here between ritual and procedure.

For our purposes I will apply rational egalitarian procedural process as a category to those cases in which the restorative justice processes retain a proscribed interactional goal in which both the procedures used and the outcome(s) of the procedures are expected to be congruent with the values extant within the community (Gould 1993). But the procedures are not always the same, though maintaining a similar trajectory, and the outcome(s) are usually different (being particular to the particular case). I will apply traditionalistic ritual process as a category to those cases in which the restorative justice processes retain proscribed interaction along with a proscribed interactional goal in which the procedures used and the outcome(s) are predetermined (being based more on tradition rather than on rationality per se), and in which there exists no real deterrence effect. This structural variation will largely be due to a greater tendency to utilize reasoning and to “be rational” in the procedural examples. Nonetheless, the demonstrated rationality is still a kind of cultural inscription via ritualistic processes that retain a higher degree of contended meaning, and a simultaneous re-inscription of that more greatly contended meaning. It is as if, in the case studies, the rational debates are just the Western kind of ritual. There is a different quality, or structural form to the ritual for sure, but it remains a ritual. The important functional distinction between the procedure and ritual remains primarily related to the deterrence effect.

## **The Case Studies Represented with preliminary analysis**

### *Interactional Dynamics in Restorative Justice Processes in Canadian Criminal Justice*

This study looked at restorative justice processes in a mid-size Canadian city. The cases deal with young offenders. The focus of the study predominately rests on the mediation processes.<sup>25</sup> Out of the interaction in the mediation processes, most primarily, emerge what I refer to as position-forming claims. By position-forming claims, I mean the symbolically mediated evaluations of the situation, which establish for the present group who has done what, and what kind of action is to follow in response. Kenney and Clairmont (2008) observe that claims in the restorative justice process actually merge two different aspects of the process: the facts of what happened and the culturally mediated meanings of what happened. These claims, they say, refer to, “costs incurred, inconveniences suffered..., shock at offenders’ identities and the breach of trust involved, disrespect shown by the offender, how offenders’ actions relate to a previous trauma, special occasion ruined, or items of sentimental value, and the broader social impact...” (Kenney and Clairmont 2008:286). The result of these claims, observe Kenney and Clairmont, is a strategic angling on the part of victims to, “overcome offender claims,” (2008:286). Especially, the victims in the restorative justice conversation often refer to “what could have happened,” as a designation of the severity of the offender’s action. The claims also encapsulate a reflection on actors’ values such as trust, respect, safety, and fairness.

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<sup>25</sup> For detailed descriptions on the methods of the research conducted and the form of the interaction in the original authors’ words, go to pages 283-285 (Kenney and Clairmont 2008).

The claims do several things in consequence: 1) they define the offender's action as presupposed criteria justifying her role in the conversation as the offender, 2) they thereby do the same thing in reverse for the victim, 3) they strategically do 1 and 2 in their performative nature (think back to our discussion of Jeffrey Alexander and the cultural sociologists) and 4) they thereby reinforce a structuring of the interaction that is superimposed on it, proscribing how the interaction can proceed<sup>26</sup>. The nature of the interaction remains performative, but takes up a strategic character in which roles are reinforced not simply by traditional and proscribed action, but via action that is conjured up spontaneously in the position-forming claims. The position-forming claims are part and parcel to the interaction, and are necessarily present for the procedure to retain legitimacy, or more precisely and in Gould's sense: to retain justifiability (Gould 1993).

The aim being reconciliation, the claims that victims make are expectedly responded to by complementary claims on the part of offenders. These claims are part of the strategic and performative process that draws on the external social norms and cultural norms. As seen again in Kenny and Clairmont, offenders and their supporters enacted contrition by indicating remorse, guilt, and even a kind of victimhood, and they enacted contrition by attempting to demonstrate change (2008:287). They write:

Many designated offenders managed their emotions in line with institutional feeling rules and appropriated victim language defensively. They admitted the offence; claimed remorse or guilt...asserted the incident "ruined their lives" and listed consequences they had suffered... Supporters reiterated that offenders had suffered consequences, adding vicarious redemption narratives [citation omitted] that they had 'learned' and

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<sup>26</sup> This is a conditioning effect, not a determinative effect. So the claims are not proscribing what will happen, only what can happen.

‘changed’ in positive, responsible directions. (Kenney and Clairmont 2008:287)

Their change was in connection not simply with the indignation of the victims, but with larger social norms defining how one “should” act to “make-up” for a deviant act. This interaction reinforces the norms at the same time as the interaction is structured by the norms. The procedure retains its legitimacy principally via such interactional inscriptions of the social norms (as feeling rules for example).

We see here some indication that some kind of internalization of values has occurred in the actors at least to an extent that the actors enact the values in the form of social norms in the interactive negotiation of this restorative justice process. They seize roles and positions with warlike emotionality and make such claims about others. The process demonstrates in one stroke the possibility for the actors in this study to have internalized a set of morals, and to have associated them to each other in terms of a culturally mediated system of values such that the social norms violated by the offender are worth continuing to follow. At least my description of this case study would indicate that the interaction meets the first three points of my aforementioned criteria, and possibly the fourth.

The question that opponents may beg concerns the nature of the authenticity of this interaction: to what extent are the actors “pretending” to be committed to a set of values in order to be perceived as acceptable to their peers? If the actors are pretending then they are clearly not committed to the values. I will say that the extent of internalization can’t be demonstrated empirically, so thank God it is not necessary to do

so. The fact that the actors are enacting the norms in their interaction means that the norms are structuring the interaction, and that the actors in so far as they play into the social norms are reinforcing them. The linguistic and symbolic representations of the values are played out in the action itself such that the norms are constituted via this interaction. To be sure, the social norms don't have any real unitary distinction—they are to be parsed in the observation of the interaction itself. As people represent values and symbols to each other via their speech and body language, they constitute and re-constitute these more situationally specific social norms<sup>27</sup> (refer back to our discussion of Parsons in chapter 1). It doesn't matter whether actors are doing this strategically.

Additionally, Kenney and Clairmont chronicle an often-times warlike dialogue between the two sides, the victims and the offenders, in which each engages in, “shame-based ‘victim contests’ where sides effectively [claim] to be the *real* or *biggest* victims to gain practical control,” over the conversation (2008:292). Eventually, one of three things would happen: the conversation would fail and the case would be sent back to court, the facilitators would successfully intervene and enable the negotiation of a contract, or the claims of victimhood would be accepted by each side whose acceptance would serve as a, “vehicle to resolve the case,” (2008:292). In this communicative activity symbols are strategically employed in the effort toward reaching an outcome. The outcome, as in the signing of a contract, is simultaneously a ritualistic entelechy (in Turner's sense), and the fourth criterion in my aforementioned criteria is met. The contract is a material symbol

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<sup>27</sup> Social norms, if I haven't already mentioned, are analytical constructs I use to understand the interaction.

signifying the potential for negative sanction. Along with reinforcing norms it thereby *enforces* the norms procedurally. Here the restorative justice process is procedural because it lacks strict proscriptions for behavior, combining ritual activity with rational discourse. Undergirding the entirety of the restorative justice process in this case study is the potential (if resolution can't be reached) for the case to be returned to the formal criminal justice system and to undergo traditionally assigned negative sanctions to the offender as determined by the law. The fifth criteria is thereby also met.

The case study ends with a note from the researchers as follows: “Whereas [restorative justice] may facilitate meaningful resolution for some, for others it may merely be a ‘ritual that we purposefully create with a view to eliciting a performance of the offender’s compassion and remorse’ [citation omitted],” (2008:304). In fact, I argue, that no matter what process used, whether it is a process less competitive than the one described in this case study, the same kinds of identity performance and dramaturgical strategy is employed by those party to the restorative justice processes. The process is inherently performative, just as are retributive justice processes outlined theoretically in the previous chapter. Though it retains a procedural quality, it meets the five point criteria as outlined previously where norms are reinforced via the strategic action.

From this case study we can glean, that the restorative justice process in the West is ritualistic and performative where re-fusion is merely attempted. In the above citation, by “ritual,” the researches really mean “inauthentic.” They are referring to times when the outcome cannot be trusted because it did not ritually achieve any (or as much as is desired) re-fusion. Re-fusion for Alexander is a term intended for a contemporary

western context in which strict, proscribed ritual processes have virtually vanished from the face of the Western world (Alexander 2004). If his cultural theory is to carry weight, or to have much use, it requires this pragmatic edge. At the same time the interaction retains a procedural quality—given the strategies employed and the threat of sanction if the process fails.

Also we can glean several things related to emotion management or emotion work, as Arlie Hochschild refers to it, in the procedural restorative justice process of this case study (Hochschild 1979). The position-forming claims we identified, in their performative nature, involve Goffmanian maintenance of expressive order affecting how we display, manage and understand our emotions in a strategy to establish self-images favorably within the narrative being procedurally and ritually constructed. When re-fusion occurs, if it does, it occurs when the proposed narratives couched in particular identities have been accepted by all parties, where actors believe that their emotion presentation is real, and they accept for themselves their own social position in the interaction. The outcome of the procedural restorative justice process, in so far as it is seen to be congruent with the values extant for the group gathered, is seen as acceptable not merely because it is “legitimate” in Weber and Gould’s sense (Gould 1993), but because the legitimacy has been reproduced in this pseudo-ritualistic process. The process is dialectical. We see here how identity negotiation, emotion work, and position-forming claims are the micro-interactive reflections of the broader social and cultural symbols being enacted in the interaction—and thereby reinforced. The reinforcement is codified in the contract resulting from the mediation process. The contract is enforced,

which thereby retroactively determines the process as additionally procedural in so far as the interaction is also legitimate because the stipulations in the contract are enforceable via situational sanctions. At the same time, the stipulations and the applicability of situational sanctions are legitimate merely because the interaction was able to establish itself as legitimate originally, demonstrating again the dialectic nature of the interaction.

***Denver Public School: Victim Offender Mediation (VOM) in circle conferences***

A non-governmental organization called Restorative Solutions, LLC worked with the public schools to implement the victim-offender mediation (VOM) program (VOMP) (Jennings et al. 2008:172). Restorative Justice Coordinators were hired to work with community members (governmental and public school officials as well as family members and students) surrounding the offender/victim. The program emphasized the inclusion of parents in the process—parents who play a direct role in managing the life of their child (at least to a degree).

The restorative justice process, in this case, begins with an infraction of the school rules, and then a pre-conference meeting between a restorative justice coordinator (RJC) and the offending student. The RJC reviews with the offending student the upcoming process and asks the offender to come up with a preliminary action plan (what she'll do to make up for her offence). Then there is a "circle conference" involving the offending student, the victim(s) and surrounding community where the preliminary action plan is discussed and a decision as to what to do to redress the offence is reached. Lastly, the RJC follows up with the offender to ensure that she is fulfilling whatever decisions at which the group arrived during the circle conference.

The circle conference itself begins with a mediation/intervention process in which the offender is expected to claim her accountability and to demonstrate remorse after describing her experience of the events in question, whilst presenting the preliminary action plan she developed previous to the conference. The offender is always encouraged to express her feelings about what happened to the group. Others involved are encouraged to respond to the offender's words in their own recounting of the events; they are also encouraged to express feelings. Recognition and acknowledgment of each side is encouraged as the group progresses to decision-making. The group discusses how everyone will move forward: what should the offender do to make-up for her offenses and what should the offender and the community do to prevent the offender from offending again? In this, a final action plan is approved, and the offender and others involved are expected to follow through on whatever is stipulated in the action plan. In this instance, superiors, teachers and administrators oversee the process while threat of traditional sanctions remains if the offender doesn't follow through on the action plan.<sup>28</sup>

Several things are important to notice in this process. Firstly, there is the expression of remorse, the claiming of accountability, and thereby the offender's immediate acceptance of the identity of "offender." And in so far as this immediate acceptance of the identity of "offender" is reproduced, we can say, as we did before, that at least the first criterion in my list is met to a degree. The offender is required to accept that she is guilty, and therefore to perform the accompanying position in the coming

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<sup>28</sup> Recounting of the process in the author's own words can be found on pages 175-180 (Jennings et al. 2008)

interaction during the circle conference. There is little negotiation of identity, however, which is different from the first case between older people (adults) in the restorative justice session analyzed by Kenney and Clairmont (2008).

The acceptance of the identity of “offender” on the part of the offender may have largely to do with the structuring of the interaction of the circle conference outside of the circle conference itself. The authority figures, the older people: administrators, teachers, the RJC, and even the parents all play an external, structuring role in leading the offender to accept her identity and role as such, and thereby to behave in the way an offender behaves in the interaction.<sup>29</sup>

The action plan, eventually agreed to by everyone present, is again a symbol serving to reinforce the community’s commitment to the set of rules. Also the action plan is a procedurally enforced contract, which, when broken, brings about institutional responses in the form of punishment (2008:173-176). The restorative justice process may have restorative aims,<sup>30</sup> but the process is *reinforced* by external structure and *enforced* by the threat of sanction. Unfortunately, due to the lack of data describing the actual interaction itself in this case it is, again, hard for me to determine to what *extent* the actors (especially the students in the interaction) have internalized the values. We might infer that the fourth criterion is met in the interactions described in this case study: reinforcement of the commitment of the majority of the people to the value-system at play in the community. We, however, can’t be totally sure whether that reinforcement

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<sup>29</sup> More research is to be done to confirm this assertion.

<sup>30</sup> Although the authors of the study never reveal to us the content of the action plans, nor do the authors really tell us much about the interaction during the conference circles.

took place or whether the structure of authority in the schools is able to maintain a “semblance” of that commitment due to the continued threat of sanctions if students do not go through the process.

Additionally, the authors indicate that, “the RJ program promotes resolution of disciplinary matters at the lowest level possible while reserving the most severe discipline (out-of-school suspension and extended out-of-school suspension, expulsion, and referral to law enforcement) for misbehavior that most seriously disrupts the school environment or endangers other students or school staff,” (2008:176-177). So far, in the procedural cases of restorative justice processes, those embedded in traditional criminal justice systems *and* those embedded in educational environments are coupled with the threat of situational sanctions.

I maintain however, that roles are not simply enforced by the threat of sanctions; a preset structure of authority reinforces the roles. I point out again, but in a slightly different way, the distinction between structure-*reinforcing* authority figures in interaction, and structure-*enforcing* situational sanctions. The authority figures are imbued in the interaction with an innate social norm: respect your teachers, respect your superiors. Do what they say. The threat of situational sanction accompanies their authority, but the threat does not constitute the authority per se. Their authority is constituted in terms of the reinforcing micro-interaction and the broader structure limiting the interaction. As said, the authority is a result of a larger structure of social action centered on the cultural and social norms being played out in the micro-interaction of the circle conferences. In this, we may be able to assert that the second and third criteria are

met, but we cannot be completely sure due to the lack of specific interactive date. The frame of interaction in which the circle conferences are placed in the Denver Public Schools case is much more limiting than in the Kenney and Clairmont case. The next case study is even more limited.

### *Northern Ireland Restorative Justice Processes*

Several restorative justice programs developed in Northern Ireland separate from the formal criminal justice system in Northern Ireland. One program is called the Great Shankill Alternatives Program (SAP), (Monaghan 2008b:92) and another is called the Community Restorative Justice (CRJ) scheme, (Monaghan 2008b:93) also called CRJI for Community Restorative Justice Initiatives (Eriksson 2008:242). A third program exists, which Eriksson discusses called East Belfast Alternatives (2008:240), but I will not relate it to this study. It is similar to the Shankill Alternatives Program in its form and approach.

In Northern Ireland there are paramilitary organizations that basically fill in the roll, which the formal criminal justice system would play in a contemporary American city. Those living in Northern Ireland do not trust the criminal justice system because (in the past) the system had not sufficiently redressed crimes. The advent of paramilitary organizations gave community's needed safety, but the paramilitary organizations had begun to over-utilize physical violence in punishments doled out to those considered to have "disturbed the peace." As a result, restorative justice programs emerged with an aim to resolve conflicts nonviolently and to provide a non-paramilitary alternative. The programs are in the process of gaining legitimacy from the community and the

paramilitary organizations. Today, paramilitary organizations usually refer crimes in their area of jurisdiction to the restorative justice program also in their area. Yet different paramilitary organizations cover different areas of Northern Ireland, only some of which (at the point of the case study) retain a connection to a restorative justice program.

The Shankill Alternatives Program (SAP) involves the following: An investigation is carried out to determine the facts and the veracity of victims' claims, and to determine the needs of the victim(s). A contract is drawn up as a result of this investigation if veracity is determined. The contract is discussed between the victim and the offender (often just between the two and not involving the larger community). Each party signs the contract, agreeing to follow the stipulations in it. Paramilitaries only refer small-scale crimes to SAP, preferring to keep more severe instances under their direct management.

The Community Restorative Justice (CRJ) Program does the following:

...engage in informal mediation, issue informal cautions, or refer more complex cases to the mediation service, a group of trained voluntary mediators, to reach an agreed solution. As a last resort, contested cases would be referred to a community forum that has the "power" to impose an outcome. Typically these could include a mediated agreement, work with families, restitution, payment of damages, referral to a program or statutory agency, and community service. The ultimate sanction envisaged by the forum was a community boycott or, "...the right of the community to refuse to have persons living in its midst..." [Citation omitted]. (Monaghan 2008b:93)

The restorative justice processes in both of these cases involve mediation, the signing of a contract, then the expectation that the terms of the contract will be fulfilled. Different from the Denver public school case, the contract signed in these instances lacks

a directly attached threat of sanctions to “back up” the contract. There is still something “backing up” the contract, however. In the first case, there is the threat of paramilitary action if the disturbance continues and cannot be resolved by the restorative justice process. In the second case the threat of paramilitary action is not as present because the restorative justice program is more robust. However, the community, as indicated, retains the right essentially to exile members who continue to disturb the peace. The larger questions raised in the analysis of the Denver Public School restorative justice process remains: to what extent does the surrounding community—and the structure of social action within it—condition the interaction within the mediation to limit the kind of resulting outcome and the manner in which the outcome will later determine action (mainly the offender’s)?

There is even less description of the actual interaction involved in the mediation processes here than the previous two case studies. It is unclear to me whether any of my aforementioned criteria are met. Certainly some form of social order is added with these programs and generally maintained, though it is limited. I can’t be any more theoretically specific than this. Both case studies reflecting on the restorative justice processes in Northern Ireland indicate that the programs are nascent and are attempting to gain legitimacy in the respective communities. The kind of social order they are able to reproduce is probably insignificant at this point.

However, in terms of the fifth criterion, in the cases so far with Northern Ireland included, restorative justice emerges as a precursor to situational sanctions. Restorative justice relies on situational sanctions to provide the material basis for complying with the

outcomes of the restorative justice process. The potential for negative situational sanctions adds a “procedural quality” with concrete and material consequences to the ritualistic reinforcement of the social and cultural norms. The significance of the potential for material sanctioning may ultimately be symbolic, but it is significantly symbolic in Blumer’s sense (Blumer 1986:9).<sup>31</sup> The ritual component of restorative justice, just as with the ritual component of punishment (retributive justice), is wrapped into—at the same time as being separate from—the procedural component. Both components are symbolic and communicative, but it is not useful to attempt to analytically distinguish between procedures and rituals functionally. They each take different interactive forms, but are functionally (substantively) equivalent in so far as they both contribute to my five-point functional criteria.

Before I was simply distinguishing between restorative justice and punishment, but now it seems that there is further heterogeneity to be acknowledged. In identifying the five point criteria to determine whether punishment is present, we have *actually* returned to a necessary function in society.

We reflect for the first time that the empirical cases can’t be explained without consideration of the ritual processes as in some way structurally separate from the procedural processes. They may seem one in the same—there aren’t mediations that happen firstly ritually and secondly procedurally. The mediations in the restorative

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<sup>31</sup> The act is the centerpiece, the gesture as the initiation, which communicates a *significant* symbol, where the actor communicates in the gesture what she expects in her counterpart, and thereby what she will do in response to her counterpart’s response. In the gesture-response interaction, there is a communicative exchange, which constitutes meaning.

justice processes examined in this essay are both ritualistic and procedural at the same time in so far as they in some way retain structural characteristics of each. But the processes are, at core, value-reinforcement processes. This is how we can understand the process as on the one hand redressing deviance and re-inscribing social and cultural norms while also setting down the material consequences for deviating from the conformity agreed to via these ritual processes. Procedure has ritualistic qualities and is embedded in ritualistic activity (as pointed out by Alexander). Procedure may be functionally equivalent with ritual, but procedure is structurally distinct from ritual—and that is largely due to the fifth criterion. We will observe the same below.

### *The South Africa Case*

The Community Peace Program or CPP is the primary program in South Africa working to facilitate a restorative justice reconciliation process post-apartheid. Its application has transformed, as the CPP now handles crime unrelated to apartheid.

Monaghan relates:

No distinction is made between civil and criminal cases although in practice there are constraints as to the type of dispute or problem that Peace Committees can deal with. For example, cases involving murder fall outside the jurisdiction of the Committees. Furthermore, they are unable to deal with disputes that are already being dealt with by the police. Peace Committees thus deal with a range of cases involving assault, domestic violence, theft, trespass, and unpaid loans [citation omitted]. They also deal with matters that do not fall into the normal ambit of justice or policing, for example, insults between neighbors. Such incidents in the townships have the potential to escalate from irritation to assault through to shack burning. (Monaghan 2008a:95)

The restorative justice process begins with a referral, which will come from some place in the community (the criminal justice system, a political official, etc). The committee

meets to ascertain the facts of the situation. Those directly involved are given a chance to tell their version of the events, "...as are other community members who believe they have been affected by the dispute/problem," (2008b:95). There is a facilitator who encourages participants to think about a plan of action that will "make things better." The committees avoid taking sides or apportioning blame. The case is concluded when the people together can agree on a resolution: more than 90% of meetings held in 1997 reached a resolution (Monaghan 2008b:95). In referencing Roche (2002), Monaghan quotes: "Peace committees, however, at this stage appear to provide townships with a better experience of informal justice. Peace committees are not a vehicle for extending state control, or a forum for dealing with trivial grievances in a heavy-handed way," (2002:531).

A secondary restorative justice program operating in South Africa is called the Guguletu Community Forum. The forum operates in the same basic way as the CPC, excepting that the Guguletu Community Forums emerge out of a hierarchical structure of forums operating at different levels of community. The forum, "deals with a range of disputes including disagreements over money, house break-ins, domestic violence, malicious damage to property, assaults, theft and arguments concerned with the rightful ownership of property," (Monaghan 2008b:96) and it avoids cases of robbery, rape, and murder. The forum investigates the matter, while inviting all those directly involved to the forum sessions to recount their version of events. The descriptions in both programs are often emotionally charged. In addition to those directly surrounding the situation in the community who are personally invited to attend the forums, anyone else can attend

the forums. Parties to the dispute can call witnesses and present their version of the events (2008b:96). In 80% of the 200 cases dealt with by the Forum in the first 10 months of operation, a resolution was found. Monaghan relates:

The forum aims to help those in conflict arrive at a remedy that restores the parties to a situation as close as possible to where they were before the conflict arose. This involves the victim or complainant in a process in which the offender takes responsibility for their actions and allows for the reparation of relations between the two. The Forum allows for mediation, offers solutions to correct an injustice and supervises the implementation of the decision. In most cases, a negotiated settlement is reached between the parties but the Forum is also able to adjudicate and pass judgment. [Possible outcomes range from a simple apology to] ...payment of compensation or expenses, the return of goods or moneys, and/or the undertaking of community service such as cleaning the community center,” (Monaghan 2008b:96).

Since this study was conducted, the South African government has made continued progress toward nationalizing a restorative justice system as part of its institutionalized criminal justice system.

In both cases, again, there isn't enough micro-level information to specifically gather whether my five point criteria might actually be operative within the restorative justice processes. There is some intimation, especially with mention that the offender takes responsibility in the Guguletu forums that some amount of interactive negotiation occurs thereby acknowledging that a social norm has been violated and thus a value breached—yet I can't say for certain whether such criteria are present to any significant extent. Sanctions sustain the only steadfast presence. The first four criteria are likely loosely met. The introduction of emotion and the focus on making things better offers this suggestion. It isn't discernable to what extent each are met, but the case study

follows the same pattern: an acknowledgment of a system of values, a breach of those values, and a cathetic internalization of them. This gets played out in the emotionally-charged acting out of the circumstances of the crime during the forums, and the pattern is played out in the general aim in the process toward reaching a resolution and reconciliation in the community. There are other things to be said about this case study, additionally.

In the case of the Community Peace Program (CPP) and the Guguletu Forum, the criminal justice systems are formally separate. And the criminal justice system still manages “severe” cases—those that involve murder. This would indicate to us, again, that restorative justice programs might rarely exist in a Western postmodern context without the accompaniment of sanctions. I use “accompaniment” metaphorically, as in the music under the voice of a solo performer. Negative situational sanctions are in the background, their potentiality lingering in everyone’s minds, providing the melodious framework in which the solo performer’s art is understood—in which the restorative justice process is understood. We see here, the same necessity for analyzing the case studies in the way I so far have. There is a clear distinction between the ritualistic interaction, as discussed in Kenney and Clairmont, and the procedural nature of that ritualistic interaction at least in so far as procedures are partly constitutive of sanctions, which rest in the background of the process.

So far, all the restorative justice processes involve the same general steps. There is a moment of ascertaining facts, of relating experience and expressing emotion (from the side of victim(s) and offender(s)), and of discerning an outcome usually via

negotiation and consensus. This is a procedure in so far as this main form of the restorative justice process structures the interaction, but does not specifically determine the interaction. The process is also procedural, and crucially, because the sanction potentiality rests in the background, framing the interaction as a piano accompaniment would a solo voice performer. In the same stroke, the case studies have included ritual action in so far as the action in the case studies has retained some level of proscribed interaction if only observably through identity formation and role expectations (as seen in the Kenny and Clairmont case). But all the case studies have to some degree (except perhaps the Northern Ireland case) met the five point criteria. They have all fulfilled the same functional analytical definition at the same time as having (at times) significant structural deviations.

We now turn to cases that retain an even greater degree of proscribed interactional goals in which the procedures used and the outcome(s) are predetermined (being based more on tradition rather than on rationality per se).

### ***Reconciliation in Bougainville***

A civil war over Bougainvillean<sup>32</sup> independence emerged. The civil war originated as a fight between Bougainville and Papua New Guinea, the country of which Bougainville is now a province. However, for various reasons the fight degenerated into a civil war between different Bougainvilleans (Reddy 2008a:119). The case study concerns the reconciliation processes applied to the aftermath of the civil war.

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<sup>32</sup> Bougainvillean is the word for someone who is native to Bougainville.

I am particularly interested in the rituals in which the natives engaged in order to reconcile the killing and rape committed between different parties during the civil war.

Quoted directly from the case study text, a description of the ritual in Reddy from page 123:

In Bougainville, deliberative and patient discussion and negotiation take place before any meeting to reconcile occurs between victims and offenders. The harm to be repaired can range from wounding, theft and looting, to destruction of homes, rape and killing. Time is taken to allow the offenders to purchase shell money or make other gifts to be used as compensation. Sometimes it may take months to grow food for a reconciliation feast and prepare a pig for slaughter. The importance of a gift was put to me this way: ‘The other party gives a gift first. This means “let’s put our weapons down, let’s calm down and discuss it, I want you to understand why we did it” [citation omitted].

The process begins with some negotiation, which would suggest that there is an indicating social factor that needs to be activated to determine when the reconciliation ritual is necessary. Further research might be useful in discovering what this social factor is. It may rest in apparent harm that needs to be repaired. Notice that there is nothing “too severe” for this reconciliation ritual—in fact it seems this ritual is an option usually aimed directly at the more severe crimes. Those who committed the harm need to be willing to engage in the ritual with those to whom the harm was committed, and vice versa. This might also be part of the initiating negotiation: the establishment of willingness. Because people are willing to wait so long for the ritual to prepare a proper gift, the gift could have a high degree of significance as the first step in the ritual process. The gift is the first symbolic move in expressing remorse on the part of the one (or the people) who committed the harm. We read further:

The offenders come to the victim and their community at the agreed time and place. This might be on the victim's home ground or it could occur on neutral territory. Betel nut is shared and chewed—this is the quintessential greeting ritual that occurs whenever people meet for any social purpose; it is not restricted to reconciliation and is a custom that is indicative of amicable relations between the parties. ...Although some reconciliation processes do occur at the individual-to-individual level, in the main these ceremonies are community activities including immediate family, extended family and perhaps others who happen to be nearby. Often some bows and arrows, traditional weapons, will be broken to indicate that the violence and fighting and the aggression have finished.

The eating of betel nut is like a handshake in the United States. The function of the handshake: to initiate amicable relationships, and to indicate fellowship and respect. The eating of the betel nut functions in the same way, though it facilitates the above with a greater emphasis on community—one eats betel nut in community at the same time as everyone else eats betel nut. One shakes hands, indeed with everyone in a group, but with each person one at a time—thereby emphasizing individuals in a community to a greater degree than in this reconciliation ritual. Whether the ritual occurs in community, it *emphasizes* community.

In the breaking of arrows or traditional weapons, one should notice that guns are not broken, nor do participants break the salient weapon used in the harm around which the ritual is centered. A *traditional* weapon is broken, which thereby imbues the activity with an undisputed meaning clarifying the intentions of the ritual in an uncontested, symbolic way. It symbolizes the reconciliation just by symbolizing it, as it were, rather than by rationally discussing it, or explaining what the symbol is to mean as a strategic gesture. There is no strategic gesture, the breaking of the traditional weapon is innate in its symbolism, and no one dissects this reality.

'*Tarout*' or 'vomiting' occurs and this is where unrestrained emotional outpourings are allowed—even encouraged. Here anything that any relevant party feels needs to be said, shouted or cried out is expressed. As with physical vomiting, where toxins are purged, this verbal equivalent gives vent to internal emotional and psychological poisons. In either case, some movement along the path to feeling better has commenced.

This may be the most important part of the Bougainvillean reconciliation ritual.

Emotions are discretely expressed here without being couched in any sort of rational discourse. They are vomited, unkempt, uncivilized even—from the perspective of culturally Western onlookers. This activity is a reversal of the expectations of decent behavior to be found in most Western restorative justice contexts. Yet this activity is keystone to moving into the next steps. It mirrors the steps in the more procedural, culturally Western contexts in which offenders and victims are asked to give accounts of what happened and to express emotions: but never so “purely” as is found here. There is clear evidence especially for the cathartic element of criteria number one in this instance, where actors are relating at a “core level” to their emotions and identities.

...Next, admission of responsibility and explanations of the events that happened are given. An apology is made. Gifts and compensation are given to the survivors or the victim's relatives. Forgiveness will be given because here, when forgiveness has been asked for, it is custom that it cannot be refused. People will shake hands and embrace, and this can extend to the, by now foreign and accepted, offenders having to shake hands with perhaps hundreds of people. At some ceremonies, a rock will be buried to symbolize the departure of the weight of sorrow. The bad experience is now over [citation omitted]. In other areas, a tree might be planted to symbolize a new future [citation omitted]. Invariably there is some singing and dancing and a fest will conclude the ceremony...

Forgiveness cannot be refused—there is, again, no negotiation and no strategic positioning. There is a preset and proscribed behavior. There is no concept of “refusal.”

Once willingness to enter into the ritual has been established at the beginning, the ritual is played out with little negotiation and little contest around what different things mean. One meaning is established principally—that is reconciliation. The whole process happens with an understanding that there has been a breach, which requires repair. Additionally some value set is being reinforced—whatever the topic of the offence. More importantly, each symbolic gesture in this ritual is discrete and much more akin to a mechanistic “fixing tool” for violations in the community’s social cohesion and social norms, than with the procedural restorative justice processes above.

Further, the shaking of hands here serves a different function than the shaking of hands in the United States. Here, shaking hands is an entrance into the community—an affirmation that each person in the community accepts the plea of forgiveness from the offender(s). The shaking of hands is the symbolizing gesture of reconciliation. The burying of a rock and/or the planting of a tree is also a symbolizing gesture in the same vein. It indicates that a better future is on the horizon and that the past is to be kept from influencing the future. The ritual establishes a transformation for the individuals, not simply an agreed to plan of action. The community has been restored and offender/victim categories are erased. The matter is never to be raised again, and if the ritual is not “successful” then it is said to have not actually happened, as in a “fake ritual.” The following concludes the excerpt:

There is a sense of finality about these reconciliations, and the custom is that once a matter is concluded, it should never be raised again. Very rarely some ‘phony’ or ‘fake’ reconciliation has occurred. No real examples of this happening were given in interviews, but it was alluded to as a possibility. (Reddy 2008a:123)

With the UN intervention, in efforts to facilitate the reconciliation process, UN trained Bougainvillean peacemakers would facilitate these ritual processes. That became more common later in the reconciliation process (Reddy 2008a:122). Some sub-communities have yet to undergo extensive reconciliation processes due to their refusal to participate (2008a:125).

It is clear that the fourth criterion is reached at least in terms of the symbols, which signify closure, reconciliation and the restoration of a set of values sustaining the social cohesion. Criterion number one is hinted at with the heavy emotional emphasis, suggesting a deep identification with the particular behavior, which violated communal trust and expectation. The use of the different symbols also suggests a systematized understanding of the different symbols as they relate to each other, perhaps within a symbol system such that criteria numbers three and four might be met. There is symbolic action, but not a symbolic linguistic reference. In more rationally oriented ritual (as in procedure) much more about what is happening in the interaction is elaborated verbally. This is a key difference, perhaps, in the structural form of ritual vs. procedural restorative justice.

***The Gullah Island Restorative Justice Process:***

The Gullah Islands exist off the coast of South Carolina. From 1800 to 1950 a small community of slaves and ex-slaves formed on the Island, which integrated engrained Christian belief with African tradition. The center of the Gullah community during these years was embodied in the praise houses, which were akin to Churches in

traditional Christianity, but which served the function of law, government, religion, and socialization for much of the community. Jenkins relates:

At the end of the Civil War, the praise houses became the center of the Gullah Community. Using the scriptures and other traditional African folkways as the law and the Praise House as the location, elders came up with creative ways to deal with social wrongs. For example, during slavery, stealing from a fellow Black was considered a breach of the sacred trust. This law was grounded in Christianity (thou shalt not steal) and traditional African customs. To gain reentry into the community, the sinner, through a ritual that combines the sacred and secular, must pick up a *benne* (sesame) seed with his nose [citation omitted]. (Jenkins 2006:307-308)

Though, the situation is different and the ritual lacks hardly as an extensive description as in the previous case study, we glean from the reentry ritual again the idea of proscribed action that itself lacks a negotiable or changeable process. It is static overtime, and defines the same set of symbols and produces the same set of outcomes. These are “pure” ritual processes that retain a restorative quality in so far as they reinforce communally shared symbols via this communicatively pre-established ritual activity. Reconciliation, rather than revenge, is the aim of the ritual—a symbol in itself being reinforced in this ritual process (Jenkins 2006:307-308). In this case, however, people were “exiled” from the community and then had to gain reentry, suggesting some potential for instrumentally rational thinking. But, again, the exiting and reentering here may just be a physical “entelechy” representing a larger symbolic understanding of what happens when someone violates communal expectations. There is a clear understanding of how each symbolic action interrelates with the cultural and social values and norms, demonstrated in the symbolic action itself. To have these things, so purely

representative, mean something, they surely must be related to a whole set of cultural beliefs and practices corresponding to values and behavioral expectations retaining perhaps, even, a mythical quality. With this case study we don't have enough information to understand the psychological components of my 5 point criteria (criterion number one), nor are we for certain whether criterion number five is met. We can however glean that criterion number four is definitely met along with criteria numbers two and three.

### **Conclusion to Chapter Two**

It is clear that every case study substantively discusses restorative justice processes that seriously (to some extent) respond to breaches in social norms in order to, “celebrate justice, render clear the structure of authority, [and/] or show commitment to moral values,” in redressing breaches of social norms and maintaining social order (Smith 2008:6). The manner in which each case study does any of these things and to what extent is varied and hard to parse. See the below table:

	Bougainville	Gullah Islands	South Africa	Northern Ireland	Canadian Criminal Justice	Denver Public School
1. Internalization	yes	questionable	yes	questionable	yes	questionable
2. Value-system systemization	yes	yes	questionable	questionable	yes	yes
3. Social norm formation	yes	yes	questionable	questionable	yes	yes
4. Recommitment by the majority of people	yes	yes	Yes	questionable	yes	questionable
5. Presence of situational sanction	no	questionable	Yes	yes	yes	yes

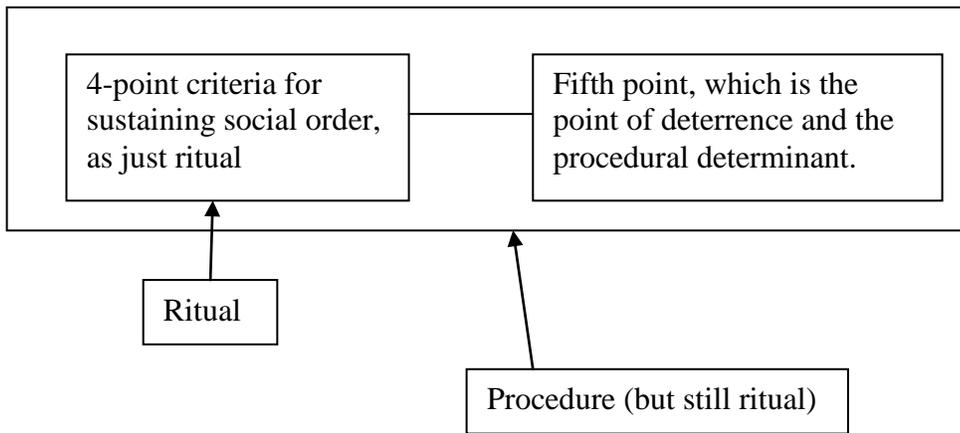
The theory I am developing with this essay is largely nascent with a great deal of further work to complete. However, I make a substantive effort to reconceptualize punishment and reevaluate restorative justice in such a way as to challenge traditional ways of thinking about each especially as they play out in contemporary Western society. We can see with the above table that there is no definitive correspondence between my theory and the case studies, but there is some promise. So I spend this concluding section of the second chapter to reiterate my analysis of these case studies as a way to develop a sophisticated definition of restorative justice.

As seen in the past two cases, the more formal and purer ritual activity *doesn't* retain the kind of negotiation of meaning we expect to happen in contemporary Western restorative justice processes. There is little negotiation, and I therefore make the clear structural distinction between ritual processes (as in the Bougainvillean and Gullah Island case studies) and procedural process (as in all the other case studies) in enacting the four

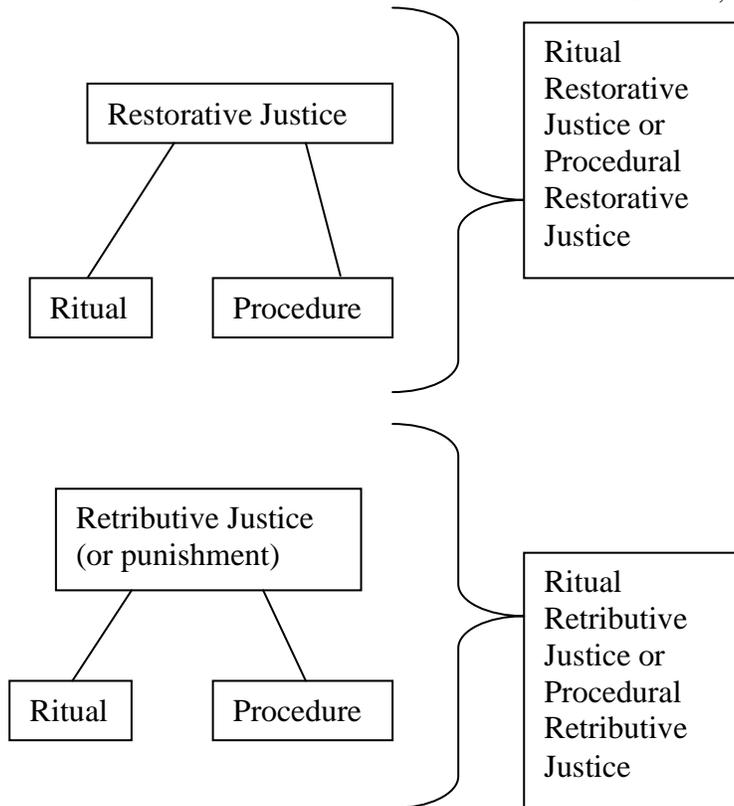
(or five) point criteria for sustaining social order. When the action is proscribed and there is little negotiation of meaning (the meaning is pre-established) the process is ritualistic. When the action is less proscribed and more flexible, while sustaining negotiation of meaning and social positioning, the process is procedural. But, usually, the procedural process retains a form of ritual interaction also—there is not an unlimited amount of flexibility and usually some portion of the interaction is proscribed. Whereas, in the purely ritual processes, there is no procedural quality.

The basic process of value-reinforcement (the four aforementioned points) is observed in all the case studies. The fifth point added to this four-point set then becomes the transforming aspect, which is not present in all the case studies. Ritual embodies this four point process and procedure embodies this four point process with the addition of the fifth point (in the complicated interactive way above described). We do not *reduce* procedure to situational sanctions or to the deterrence factor represented by the fifth point, we instead additively relate the deterrence factor to the whole of the interaction and call it procedure. For example, subjecting someone to the electric chair could be either a ritual process or a procedural process depending on how it is enacted and how it is related to. If the symbols being reproduced in the community don't conceptualize in any way the punishment being enacted as rational deterrence, then (even if the act is violent) it is purely ritual and lacks a procedural component. Only if there is instrumental rational conceptualizing of the action being engaged in during the "justice process" (whether restorative or retributive) will it be considered procedural. The electric chair could be either ritual or procedural depending on how it is conceived, therefore, by the

surrounding community. The situational sanction is only significant when it is culturally incorporated in communities. In the Bougainvillean and Gullah Island examples it was not incorporated in the communities. The communities did not take into account what would result after unsuccessful reintegration into the community after the ritual. This might be due to lack of complete reporting on the part of the researchers, but we will assume otherwise in constructing a theory to help explain the differences between the two types of restorative justice. See the below visual depiction for clarity:



It seems again that I am distinguishing between structure and function. The definitions above for the 4/5 point criteria encapsulate the functional analysis, whereas terms such as restorative justice and retributive justice are the structural analyses. Restorative justice in the Western context utilizes the ritual processes to a high degree, while integrating the ritual component into a procedurally oriented society thereby opening up the analysis to theories produced by Alexander, Smith, Hochschild and Goffman. Restorative justice in a Western context is both ritual and procedural in that it can be either or both. Likewise, retributive justice (punishment) can be either or both ritual and procedural. There may be examples of some societies in which retributive justice was conceived of purely ritually—where the burning of witches, for example, was less of a situational sanction and more of a purging of the community of the ever-present, insidious evil (Erikson 1966). I reiterate the distinction between punishment and negative situational sanctions. Negative situational sanctions are, rather, not the term for punishment, they are a term for the materially oriented and situationally specific forms of punishment meant to deter instrumentally rational actors from committing whatever act has been sanctioned. Ritual and procedure are the functional definitions for the process we have been discussing. Retributive justice (or punishment) and restorative justice are the structural terms for the process we have identified—either can be ritual or procedural. Negative situational sanctions are not the same as retributive justice (or punishment). See the below visual depiction for clarity:



This explains why restorative justice, I hypothesize cannot work on its own in rational egalitarian societies who have exited a purely ritualistic culture. No restorative justice process can exclude, without intentional denial, the potential for situational sanctioning. Even when the situational sanction is intentionally excluded, the lack of it, rather than reducing the interaction to ritual, simply renders the ritual processes of restorative justice ineffective. A ritualistic process, by its nature, doesn't consider deterrence and doesn't include situational sanctions. Restorative justice *must* be procedural if it is to be effective, I hypothesize. That is to say, restorative justice must include some element of the situational sanction in order to be effective. The only sense in which ritual restorative justice would effectively redress deviance is if the rational instrumental component of the fifth criterion didn't enter into cultural considerations at all in a community, at least in terms of a specific act of deviance and the ritual to redress

it. We have now achieved a more complicated and sophisticated definition of restorative justice and punishment and now we continue to the last chapter to discuss the effectiveness of restorative justice.

### Chapter 3

#### **The Effects and Detriments of Restorative Justice as compared to Punishment**

When I say, “as compared to punishment,” in the title I slightly mislead the reader. I will not be reviewing *other* case studies related to retributive justice processes and then comparing those statistics with the statistics from the restorative justice case studies. With this third and final chapter I review the statistics mentioned in some of the above case studies and in a few other overview articles written on restorative justice. The assumption made, of course, in the wider community (sociological and every-day) is that retributive justice “works” and that restorative justice does not. I will take for granted this assumption that retributive justice “works,” if for no other reason than because it is easier to make my argument this way.

In this last section I ask whether restorative justice “works.” I will merely intimate as to *why* and *how* restorative justice *might* work. Does it achieve the same goals as retributive justice with less violence, less suffering, less money, more community-building, etc? Is it possible to at least establish the detriments of restorative justice, or the benefits of it?

I begin with a study conducted by Newbury of youth crime in the UK, in which the findings of punishment are that in retributive justice processes young people, “...felt that they were given little sense of worth by their teachers and the police, or by their parents and peers,” and Newbury theorizes that this, “leads to feelings of marginalization from society, triggering taunting or offending behavior, or misuse of alcohol or drugs,”

(Newbury 2008:138). Newbury goes onto to assert, from within his own pseudo-ethnographic review of his cases, that the restorative justice process employed with some youth in his study allowed them to achieve a higher degree of understanding of their offense. This would lead to opportunities for addressing their wrong-doing in useful ways, often appreciating a different experience of being, “listened to and respected by the community panel members,” (Newbury 2008:148).

In the case study relating to the Denver public school program, Jennings et al (2008) relate that the implementation of restorative justice programs as indicated are a partly effective technique in reducing the number of suspensions and other severe disciplinary possibilities in the schools. The program that Jennings et al studied explicitly saw a decrease in out-of-school and in-school suspensions in the Middle School and an increase in the same for the High School (2008:183). The incompatible increase in the High School was attributed to ineffective implementation of the program due to turn-over in the principal and vice principal of the schools in the first year of the study. Because of the way in which culture has to change among the administrators, faculty and the students, a lack of immediate results could also be attributed to the slow movement of the communitywide mind-set. The implementation of the restorative justice programs in the Denver Colorado Public School district was largely initiated in response to alarmingly high statistics indicating increases in suspensions as well as increases in police involvement (issuing tickets and making arrests).

Jennings et al offer another semi-success tale. The researchers site elementary schools in South Saint Paul, Minnesota (and in one school particularly) where, “acts of

physical aggression dropped from 773 to 153, the number of out-of-school suspensions [reserved for severe incidents] declined from 30 to 11, and the number of behavioral referrals decreased from 1,143 to 407,” (2008:175). The data indicates the possibility, at least, that the restorative justice process, in the case of the public school environment may be effective in tangibly *reducing* crime, perhaps by achieving some of what Newbury mentions (in terms of offender satisfaction). Jennings et al indicate positive perspectives on the processes from students and surrounding community members:

Survey results indicated a high degree of support for the RJ program. For example, 90% of the participating individuals surveyed agreed with the statement: “I had the chance to explain my feelings,” 86% agreed with the statement: “The RJ agreement was fair to all,” and 87% agreed with the statement: “Meeting with the other person was helpful.” Data also indicated that the majority of the participants received answers to their questions, thought that the other person understood them better, would recommend the RJ program, and were satisfied with the outcome of the process. Survey data with parents and teachers who participated in the process indicated strong support for the program... Follow-up data were collected from 80% of the students who participated in the RJ program to assess the student’s completion with the RJ agreement. Overall, the majority of students surveyed indicated that their relationship with the other party improved as a result of the RJ program. Agreements were reported to be completed by 72% of students surveyed. An additional 63% reported that the other party involved in the conflict completed their part of the agreement. (Jennings et al. 2008:183)

As noted, the process seemed also to result in high rates of follow-through in which participants in the restorative justice processes completed their side of the agreements reached in the restorative justice sessions.

However, in terms of the restorative justice processes in Northern Ireland a less positive data-set emerged. Monaghan relates that the restorative justice schemes have had no or little impact on the overall increasing trend of punishment attacks from

paramilitary organizations and individuals in the community (Monaghan 2008b:99-100). See Appendices B and C for Monaghan's graphs representing an increase rather than a decrease in punishment attacks during the period in which restorative justice programs began operating. The restorative justice programs here are less "institutionalized" and much more nascent than those in the Denver Public schools or in South Africa. Their effectiveness may simply be miniscule and unnoticeable. It brings into question the potential for effectiveness of the restorative justice processes in Northern Ireland.

There are also contesting viewpoints concerning the Northern Ireland case. Monaghan reports that the Project Director for Community Restorative Justice Ireland, claimed, "there is a direct correlation between the scheme and the decline in 'punishment' attacks, [subsequently arguing that] 'around 90% of victims and offenders were satisfied with the outcomes of the restorative justice process and some 80% did not reoffend,'" (Monaghan 2008b:97). This case study is also complicated by the continued fighting between the paramilitary organizations between loyalist and republican communities. Punishment attacks are generally attacks from loyalists on republicans or vice versa, which are justified in terms of a discourse of "keeping the peace." Ultimately, the restorative justice programs in Northern Ireland do not address this continued fighting directly—and this may be the problematizing factor in the face of success for the Northern Ireland programs.

Continuing on: in South Africa, the Community Peace Program (CPP) yielded resolutions in more than 90% of meetings held in 1997 (Monaghan 2008b:95). Likewise the Guguletu Forums yielded resolutions in more than 80% of its cases (2008b:96).

There is no data available, however, on whether participants in either the CPP or the Guguletu Forums followed through on whatever agreements were reached at the close of each process.

In a case study not specifically reviewed in chapter two, but mentioned throughout this essay, Rossner discusses findings in a restorative justice process employed in the UK in conjunction with its criminal justice system. Rossner describes benefits in restorative justice processes to participants as compared to retributive justice processes. He states:

Victim surveys [citation omitted] suggest that symbolic reparation is an important component to the healing process. This type of reparation is a key component of restorative justice. Victims who meet their offender receive an apology more often, are more forgiving, feel more sympathetic toward the offender, and are less likely to desire physical revenge than those victims who do not meet with their offender [citations omitted]. These findings are strengthened by Poulson (2003) who illustrates positive psychological outcomes for both victims and offenders. Further randomized trials in Great Britain building on Strang [citation omitted] provide us with evidence of increased social well-being for victims [citation omitted]. Angel [citation omitted] compares measures of Post Traumatic Stress Symptoms for British crime victims randomly assigned to participate in a restorative justice conference to a control group. She finds significantly reduced levels of stress among restorative justice victims both immediately following a conference and at a 6-month follow-up. (Rossner 2008:1737)

Additionally, restorative justice processes are found, for Rossner, to generate higher rates of satisfaction and even a high frequency of voluntary offerings from offenders to victims of monetary restitution in high amounts.

In another case study not mentioned at all in chapter two, but which offers an important picture on a micro level, Okimoto et al remark on several components of restorative justice processes implemented in the United States. They observe three things

in the study they conducted: 1) When the transgression was resolved with some kind of penalty for the offender and when the consensus reached was achieved bilaterally, the perception of the outcome of the process was that it was fairer than when either of these variables were not present (Okimoto, Wenzel, and Feather 2009:158-159, 174). 2) When respondents felt a strong shared identity with the offender, resolutions that were based on bilateral consensus were regarded as fairer than resolutions decided on unilaterally, compared to when respondents did not feel a strong shared identity (Okimoto et al. 2009:160, 174). 3) When the transgression elicited high levels of moral loss (sadness, disappointment, shock), resolutions including bilateral consensus were regarded as more fair, compared to when the transgression elicited low levels of moral loss (Okimoto et al. 2009:161, 174). When respondents identify “fairness” they implicitly identify their perceived legitimacy of the procedure due to its congruence with the set of values shared amongst the participants and committed to by the participants in the process. Likewise, shared identity correlating with a perceived legitimacy indicates a sense of implied community. This fits in with the idea that the bonds between people become stronger when people share values and reinforce their shared values in action (via bilateral consensus, reciprocal consequences or restitution). High levels of moral loss imply a high level of meaning and higher stakes—and therefore the enactment of bilateral consensus and reciprocal consequences are seen as more urgently necessary for the conclusions reached to retain their legitimacy.

Beyond the limited explanatory value of the theory articulated above (due to the unsystematic and pre-mature nature of the presentation of these case studies) the case

studies intimate that restorative justice does *work* to some degree and that it works to produce higher satisfaction for victims and offenders. Further, restorative justice, in so far as it remains effective in redressing deviance may also work to fulfill the four/five criteria identified previously (along with punishment, which we assume does so).

The effectiveness appears to break down in several ways. It appears to break down when legitimacy can't be achieved for the process—either via outside structuring elements (the paramilitary organizations in Northern Ireland, the teachers in Denver Colorado, the South African state and criminal justice system) or via interactive micro-elements (the perception of fairness in the process and the establishment of acceptable narratives and identities in the process). In terms of the Gullah Islands, for example, the community maintained a predominantly extra-criminal restorative justice process in connection with its Praise Houses until integration when the community was “forced” to allow white Americans to participate in the community (Jenkins 2006:310). Now much of the strict ritual and restorative character of the judicial processes are lost. The same outer-structuring elements (this time cultural) allowing for the rituals and the praise houses to maintain predominance gave the interaction the significance it needed to retain legitimacy. With the mixture of white American and Eurocentric cultural perspectives on the management of deviance, the rituals have lost much of the ubiquity. Likewise, in Bougainville, there are still portions of the community that refuse to participate in the reconciliation processes (Reddy 2008a:126), demonstrating the continued struggle of restorative justice to achieve applicability to all components of community.

In considering the effectiveness specifically of the case studies analyzed in chapter two, I acknowledge that significant discussion of the Bougainville and the Kenny & Clairmont cases is left out from chapter three. Despite this, consider that the case study in which I was least able to find evidence supporting my five-point criteria, was also the one demonstrating the lowest degree of effectiveness (Northern Ireland). And likewise, the case studies demonstrating higher degrees of success (South Africa and the Denver Public Schools) correspond to my greater ability to analyze these case studies using my five-point criteria. This preliminarily suggests that for restorative justice to be successful in redressing deviance it must at least meet the five-point criteria. These criteria seem to be necessary conditions for the emergence of successful processes of redressing deviance. But the ultimate question is still begged: are all five points required for success, or just the first four? Must the process be dually ritualistic and procedural, or can it be *just* ritualistic? So it is here we return to the concluding section of chapter two and to the beginning of the essay in which I hypothesize that restorative justice can't be successful in Western societies without situational sanctions.

I can now say with some confidence that, for procedural restorative justice to facilitate successful restoration, reintegration, and redressing of deviance in communities it must be coupled with the threat of negative sanction. The procedural case studies of restorative justice have demonstrated that they work to redress deviance and reproduce social order, while retaining some problems in their workability, indicating the necessity for the continued presence of situational sanctions (or at least the threat of situational sanctions). The second hypothesis I made was: for ritual restorative justice to facilitate

success in the same way, it must be extremely strict in its proscriptions of action because it lacks any threat of sanction. The threat of sanction, in ritual restorative justice processes adds no effectiveness to the process. In both ritual cases, situational sanctions did not enter into discussion. And in the Gullah Islands case, the concept of situational sanctions (and the situation-specific materiality associated with it), when introduced to the communities there, seemed even to reduce the effectiveness of the ritual restorative justice processes. The rituals, now coupled with sanctions, had to become procedural, thereby necessitating the integration of rationality. Such cultural transformation would not have been easy. I further intimate that restorative justice may more effectively produce substantive reconciliation (than retributive justice processes) via a greater degree of victim/offender satisfaction.

### Conclusion to Essay

I have made mere suggestions in this essay, and I have sufficiently demonstrated a possibility. That possibility has likewise been given a few pegs on which to stand temporarily stand in wait while I get a PhD. Many have written on restorative justice theoretically and otherwise, but few have attempted to seriously reconcile its philosophy with the substantive challenges presented to it in the sociological literature. My aim in this essay was to begin a discussion in which such challenges could find substantive “come-backs.” Restorative justice as a concept emerges in a field of nay-saying, amid a global society desperate for solutions.

I have found that restorative justice, perhaps to the dismay of some ardent supporters, probably does not successfully redress deviance in communities without the presence of at least the threat of situational sanctions. I have discovered, however, that situational sanctions are different from punishments and that there may be real benefit in societies in a switch from retributive to restorative techniques. The presence of situational sanctions are a minor point to the overall likelihood that restorative justice may be a less detrimental method of reproducing social order than punishment. Social order, however, must retain some kind of situational sanctioning—even if it means the willingness on the part of government to lock a select few away for good. The government must at least be *willing* and it must demonstrate that willingness from time to time.

In establishing this proposition, I have redefined rational-legal procedure in terms of ritual and cultural theory, perhaps to the dismay of some other materialists. I have

reconceptualized punishment as a predominantly ritual process, retaining in it situational sanctions. I do not reduce punishments to situational sanctions. I instead develop a five point criteria functionally defining punishment. I then apply that definition likewise to restorative justice arguing that restorative justice can meet all five points in the criteria also. It is not the function that is different between punishment and restorative justice, it is the structure of the two. We can indeed replace the one with the other and vice versa if we understand what that means.

If a process of redressing deviance generally does the following, it will likely be successful in reproducing social order: 1) internalization of (cathectic identification with) the set of morals such that actors are committed to them, 2) the systemization of said morals into a value system such that 3) the set of social norms are congruent with the value system<sup>33</sup>, 4) the reinforcement of the commitment of the majority of the people in a community to the value-system with which the social norms are congruent, and 5) the material and instrumentally rational deterrence of those not committed to the values in the community from transgressing.

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<sup>33</sup> They could also be neutral to the value system, but usually when they seem neutral it is simply because either they do not correspond to this aspect of the broader cultural symbol system or because whatever value system that it does correspond is so latent it seems simply appropriate, the way things are.

## Appendix A

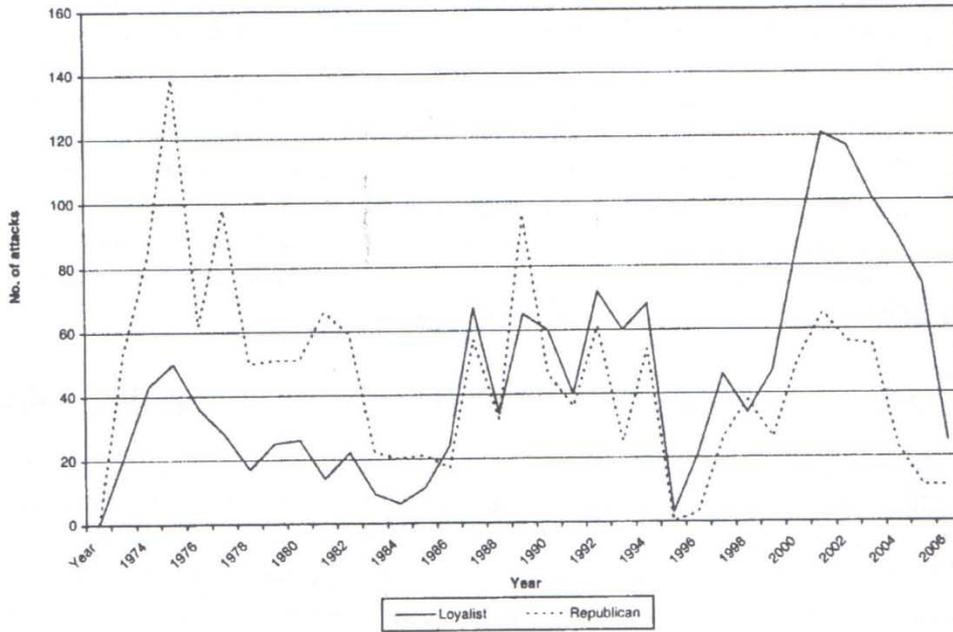
### Robert Merton on Function and the Postulate of Indispensability

In short, the postulate of indispensability as it is ordinarily stated contains two related, but distinguishable, assertions. First, it is assumed that there are certain *functions* which are indispensable in the sense that, unless they are performed, the society (or group or individual) will not persist. This, then, sets forth a concept of *functional prerequisites*, or *preconditions functionally necessary* for a society... Second, and this is quite another matter, it is assumed that *certain cultural or social forms* are indispensable for fulfilling each of these functions. This involves a concept of specialized and irreplaceable structures, and gives rise to all manner of theoretic difficulties. For not only can this be shown to be manifestly contrary to fact, but it entails several subsidiary assumptions which plagued functional analysis from the very outset. It diverts attention from the fact that alternative social structures (and cultural forms) have served, under conditions to be examined, the functions necessary for the persistence of groups. Preceding further we must set forth a major theorem of functional analysis; *just as the same item may have multiple functions, so may the same function be diversely fulfilled (87) by alternative items*. Functional needs are here taken to be permissive rather than determinant, of specific social structures. Or, in other words, there is a large range of variation in the structures which fulfill the function in question... In contrast to this implied concept of indispensable cultural forms (institutions, standardized practices, belief-systems, etc.), there is, then, the concept of *functional alternatives*, or *functional equivalents*, or *functional substitutes*. This concept is widely recognized and used, but it should be noted that it cannot rest comfortably in the same theoretical system which entails the postulate of indispensability of particular cultural forms.

(Merton 1968:87-88)

Appendix B

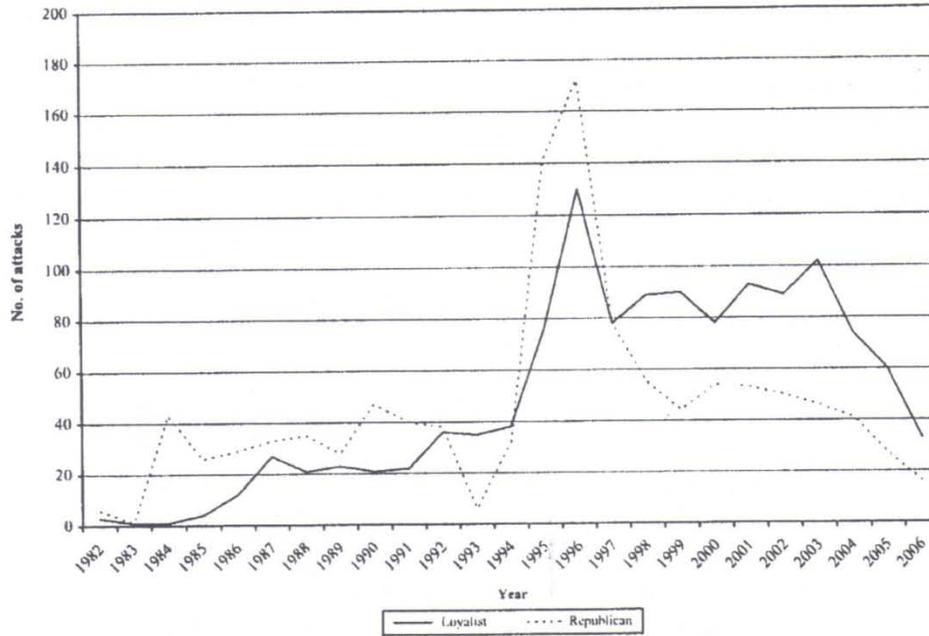
Figure 2  
Recorded "Punishment" Shootings 1973-2006



Source: Police Service of Northern Ireland.

Appendix C

**Figure 3**  
**Recorded "Punishment" Beatings 1982-2006**



Source: Police Service of Northern Ireland.

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