

**Protest, Community and Uncertainty:**  
Restorative Justice and the Risks of Social Fracture

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**-INTRODUCTION-**  
**The College Streetcar**

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*Everything comes to us from others. To be is to belong to someone.*  
*J-P Sartre*

Multiculturalism, like the democratic tradition which underlies it, is most poignantly revealed, not in the policies of our legislatures, or in the decisions of our courts, but rather in the extraordinary if apparently mundane success, accomplished every day, of our mostly peaceful coexistence with one another. Likewise, the most evocative symbols of our commitment to multiculturalism are not items of political importance or objects of historical reverence. Instead, they are the many places we share in our workaday lives: our schools, our parks, our sidewalks, our neighbourhoods, our hospitals, our places of worship. In fact, I have long found one of the most impressive symbols of Canada's commitment to democracy and multiculturalism to be the College Streetcar, which runs east to west through many of Toronto's most distinctive and vibrant communities: the Gay Village, China Town, Little Italy, and the newly blossoming Little India among them. On a weekday afternoon this streetcar is typically packed with families and individuals, with no two from the same heritage or background, but all sharing the same cramped space with the usual Canadian attitude of quiet forbearance. Standing in these close quarters, I have often reflected that the College Streetcar rolls along at the figurative pinnacle of twenty-five centuries of often violent political development in the West, and embodies a social diversity and cohesion beyond the

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dreams of most utopians. All this has led me to consider carefully our responsibilities in protecting the social unity which allows a place like the College Streetcar to exist and, indeed, flourish. In a very real sense, protecting, sustaining and reproducing places like the College Streetcar must be the ultimate goal of our legal and political systems.

This is not to say, of course, that Canada is somehow at the “end of history”—our society faces urgent challenges, which must be addressed with creativity and vigour if Canada, and its cramped streetcars, are to endure. One of the more pressing challenges is crime; though some recent trends are encouraging, many observers view our criminal justice system as badly flawed, and in need of fundamental reform.<sup>1</sup> One such approach to reform is a concept called “restorative justice” which, to describe it in the simplest terms, seeks to involve the community, the victim and the offender in a process where relationships which have been strained by the criminal event are restored. In this sense, restorative justice is fundamentally different from the conventional “retributive” criminal justice system, which emphasizes punishment. But the restorative justice movement, as it is described and evaluated by many of its more prominent theoreticians, is more than an effort to change the way society reacts to criminal events. To properly understand restorative justice theory, we must recognize that it is in fact a vibrant protest movement, whose ideological underpinnings are grounded in a broad-based and deeply felt critique of certain fundamental characteristics of contemporary Western society and governance.

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<sup>1</sup> Particularly troubling is Canada’s very high youth incarceration rate. The federal Department of Justice reports that “Canada has the highest youth incarceration rate in the Western world, including the United States.” See Department of Justice Canada, online: <<http://canada.justice.gc.ca/en/ps/yj/ycja/explan.html>>. However, some trends are positive; though 2003 saw a slight upsurge in criminal activity in Canada, rates of criminal incidents per 100,000 persons declined slightly in the four years from 1999-2002. See Statistics Canada: Crimes by Type of Offence, online: <<http://www.statcan.ca/english/Pgdb/legal02.htm>>.

Specifically, with its heavy emphasis on “community”, much restorative justice theory challenges the primacy of the State, and seeks to relocate power and authority within local groups, thereby infusing new life and energy into a democratic system which many restorative justice theorists view as profoundly dysfunctional. Indeed, restorative justice theory can often be seen as having two goals: First, the introduction of healing, explanation and communal restoration into a retributive criminal justice system; and second, the empowerment of local ‘communities’ and the revitalization of certain kinds of grassroots democracy. Though these goals might at first appear to be entirely positive, we must not accept them uncritically. In evaluating them closely we shall see that by relying on a poorly defined notion of community, and by asserting the supremacy of community over State authority, some restorative justice theory, if implemented without sufficient care, will place at risk the very social solidarity and unity which is both a purported goal of the restorative justice project, and fundamental to the success of Canadian multiculturalism.

In this paper I will undertake four related analyses. First, I want to show how restorative justice theory is rooted in a broad-based protest against State power. I will look at the ideological and historical foundations of restorative justice theory, as it is articulated by the most influential restorative justice scholars, in an attempt to understand the fundamental intellectual drivers behind the project, and the ultimate goals to which restorative justice, as a theory, aspires. Second, I will use this evaluation to come to an understanding of what restorative justice theorists might mean when they discuss “community”, a concept which has eluded specific definition as long as restorative justice has been discussed. Third, I will evaluate the potential dangers of restorative justice

theory in the context of Canadian multiculturalism. Specifically, I will show that by emphasizing community control of criminal justice processes, restorative justice practices threaten to weaken the important but fragile bond of Canadian social unity which is our national adherence to common criminal justice norms. Finally, I will briefly examine a restorative justice process which is currently operating—the Nova Scotia Restorative Justice Initiative—to see how insights gained from contemporary restorative justice practice might help resolve the theoretical concerns which I have outlined. Through these analyses I hope to show that if they are implemented in a spirit of State/community collaboration, and with the goal of building local confidence in the State’s criminal justice system, restorative justice processes might be forces for social cohesion, strengthening the bonds between local communities and the State which governs them. But I will also warn that for restorative justice processes to succeed the State must remain vigilant. If restorative justice programs are allowed to overstep the bounds set for them, and are free to manifest in their practices the ultimately destructive protests against State power which underlie so much restorative justice theory, these restorative justice processes may threaten the social cohesion and civic unity which makes possible our College Streetcar.

**-PART ONE-**  
**Stealing Conflicts: Restorative Justice as Protest**

In his enormously influential 1977 essay “Conflicts as Property” Professor Nils Christie laid the intellectual groundwork for many of the restorative justice and alternative dispute resolution theoreticians who followed.<sup>2</sup> Christie argued that conflicts had been “stolen” by the State, imposing a double loss on the victim, “first, *vis a vis* the offender, but secondly, and often in a more crippling manner, by being denied rights to full participation in what might have been one of the more important ritual encounters in life. The victim has lost the case to the state.”<sup>3</sup> Crucially, Christie described conflicts, not as troublesome and difficult episodes to be endured and overcome, but rather as valuable property, with important potential uses for the community in which they occur. Specifically, Christie saw conflicts as involving essentially two social opportunities. First, they provide the possibility for what Christie called “norm-clarification”, whose theft is a “loss of pedagogical possibilities. It is a loss of opportunities for a continuous discussion of what represents the law of the land.”<sup>4</sup> Second, conflicts allow for critical “personalized encounters” between the victim and offender, where the victim can assert blame, the offender can offer explanation, and the restoration of relationships can occur.<sup>5</sup> By being denied this encounter, both the victim and the offender find closed to them essential avenues of expression and healing.

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<sup>2</sup> John Braithwaite calls Christie’s essay “the most influential text of the restorative justice tradition.” See John Braithwaite, “The Fall and Rise of Restorative Justice” in *Restorative Justice and Responsive Regulation* (Oxford: OUP, 2002) at 11.

<sup>3</sup> Nils Christie, “Conflicts as Property” in *Restorative Justice*, ed. Declan Roche (Ashgate Publishing: Burlington, VT, 2004) at 39.

<sup>4</sup> *Ibid.* 44.

<sup>5</sup> *Ibid.* at 45.

This characterization of conflicts as valuable social property, deserving of full appreciation and proper utilization, is a central tenet of restorative justice theory. Equally important, however, is Christie's assertion of responsibility with respect to the theft of conflicts. For Christie, the key culprits are professionals (specifically lawyers), and what Christie describes as "rigid social structures", which depersonalize social life, destroy conflicts before they are properly resolved (by arbitrarily adjusting social standards to make acceptable certain kinds of previously unacceptable conduct), and make other conflicts (especially those involving the poor) disappear by normalizing abhorrent social conditions.<sup>6</sup> Both explicit and implicit in Christie's argument is that the State has fundamentally failed its citizens with respect to conflict management. It is the State, after all, which privileges the position of legal professionals and empowers them to "steal" conflicts, and it is the State which maintains the social structures which he views as an important element of the problem. According to Christie, what is needed is a radical devolution of State power to local communities, which can create restorative processes focussed on the victim, dominated by non-lawyer citizens, and supported by vibrant neighbourhoods. This last point is especially important; as Christie writes,

One of the major ideas behind the formulation "Conflicts as Property" is that it is neighbourhood-property. It is not private. It belongs to the system. It is intended as a vitalizer for neighbourhoods. The more fainting the neighbourhood is, the more we need neighbourhood courts as one of the many functions any social system needs for not dying through lack of challenge.<sup>7</sup>

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<sup>6</sup> *Ibid.* at 42-3.

<sup>7</sup> *Ibid.*

As early as Christie's 1977 essay, we can detect a broader hope for the restorative justice project: that it might reengage and revitalize local communities, especially those that are disordered and fragmented.

Nils Christie's complaint with respect to the role of the State in the criminal justice system has been echoed and expanded by other prominent restorative justice theorists. Both John Braithwaite and Howard Zehr root restorative justice in a historical framework which amplifies their complaints regarding the role of the State. In his book *Changing Lenses*, Howard Zehr describes the State's takeover of criminal justice as an incremental "revolution":

...[A]t the core of this revolution was a movement from private or community justice to public justice. The movement began with the opening of possibilities for state initiated prosecution. Eventually the state claimed partnership, then ownership, and finally, for harms and conflicts termed crimes, the state had a monopoly on justice.<sup>8</sup>

Zehr goes on to note that in this process of State encroachment, "the victim of the crime was redefined, with the state becoming the legal victim. Victims were abstracted and individuals became peripheral to the problem or solution."<sup>9</sup> This abstraction from the needs and requirements of the individual occurred because the justice system had become a means by which the State could demonstrate its authority, "Justice in these circumstances was often no more than a theatre of guilt and vindication which demonstrated the awesome power of central authorities."<sup>10</sup> For Zehr, this use of the criminal justice system by the State as a means to demonstrate its authority continues into the present day, "As I observe punishment being imposed, I often suspect a need to

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<sup>8</sup> Howard Zehr, *Changing Lenses* (Herald Press: Scottdale, 1995) at 121.

<sup>9</sup> *Ibid.* at 122.

<sup>10</sup> *Ibid.* at 123.

dramatize the power of the state and the law of the individual.”<sup>11</sup> Of course, for restorative justice theoreticians like Zehr, this dramatization by the State is manifestly unjust, doing nothing to heal the bonds of community which have been strained by the criminal event.

John Braithwaite joins Zehr in rooting the restorative justice tradition in the pre-state past, asserting that it was “the dominant model of criminal justice throughout most of human history for perhaps all of the world’s peoples.”<sup>12</sup> Like Zehr, Braithwaite sees the State-controlled criminal justice system, implemented following the Norman Conquest, as a “central part of the monarch’s program of domination of his people.”<sup>13</sup> Braithwaite describes a five step history of “Western regulation”; the first stage of development is a “pre-state stage where restorative justice and banishment are dominant”, and the fifth stage is a “contemporarily evolving new regulatory state phase of community and corporate policing (with a revived restorative justice)”.<sup>14</sup> For Braithwaite, therefore, we have in a sense come full circle. Having passed through a period of State domination, we are just now returning to a “natural” approach to justice, with deep roots in human pre-history. Richard Delgado agrees: “This approach, with the state wielding monopoly power over the prosecution and punishment of crime, has reigned unchallenged until recently.”<sup>15</sup>

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<sup>11</sup> *Ibid.* at 123.

<sup>12</sup> *Supra* note 2 at 5.

<sup>13</sup> *Supra* note 2 at 5.

<sup>14</sup> *Supra* note 2 at 7.

<sup>15</sup> Richard Delgado, “Prosecuting Violence: A Colloquy on Race, Community and Justice” in *Restorative Justice*, ed. Declan Roche (Ashgate Publishing: Burlington, VT, 2004) at 265.

Some critics have challenged the historical veracity of accounts such as the ones made by Braithwaite and Zehr<sup>16</sup>, while other historical analyses would suggest that a return to pre-State modes of justice is not a progression to be applauded.<sup>17</sup> For our purposes, however, it is important only to note the fundamental historical antagonism which these accounts deploy between State-sanctioned criminal justice on the one hand, and restorative justice on the other. Both Zehr and Braithwaite view the State as having claimed the criminal justice system for itself, not because any particular State felt that its approach was practically superior to the forms which had preceded it, but because the State needed a means by which to indicate its dominance and power. In doing so, the State overlooked, and continues to overlook, the individual victim and offender, and the broader community of which they are a part. As Declan Roche writes, “To their critics, modern criminal justice systems are characterized by their impersonal, professional and bureaucratic nature.”<sup>18</sup>

Christie, Zehr and Braithwaite have different ideological approaches to this problem, and these differences should be acknowledged; to group all restorative justice theorists together would be to obscure important nuances. Braithwaite, in particular, is deeply involved in private-sector regulatory reform in Australia, and would likely not share the complete antagonism towards State power we see in Christie and Zehr’s

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<sup>16</sup> For a critique of the historical veracity of Braithwaite and Zehr’s accounts see Kathleen Daly, “Restorative Justice: The Real Story” in *Restorative Justice*, ed. Declan Roche (Ashgate Publishing: Burlington, VT, 2004) at 85.

<sup>17</sup> In his history of Western legal development, Harold J. Berman writes that the development of the Western legal system in the late eleventh and early twelfth centuries was, among other things, a reaction against the deficiencies of the “folklaw”, “which was basically tribal, local and feudal (or protofeudal), based on blood feud...with ordeals, oath-helping, and other procedures...[and with] overwhelming biases of sex, class, race, and age”. See Harold J. Berman, “The Background of the Western Legal Tradition: The Folklaw” in *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983) at 51-65.

<sup>18</sup> Declan Roche, “Introduction” in *Restorative Justice*, ed. Declan Roche (Ashgate Publishing: Burlington, VT, 2004) at xii.

accounts, though he does deploy a historical model which certainly privileges restorative justice. But quite clearly there is evident within the accounts of Christie and Zehr (and others critics I will introduce below) a profound mistrust of State action with respect to criminal justice. For these theorists, restorative justice is a means by which to claim radical independence of a kind from a State structure intent on domination and mistreatment.

This search for independence from State action, and mistrust of State authority, can be further seen in the intersection between restorative justice theory and practices common in a number of indigenous communities. As Chris Cunneen notes, “restorative justice has drawn on and connected itself with justice processes among colonized peoples, particularly indigenous peoples in Australia, New Zealand, Canada and the United States.”<sup>19</sup> Braithwaite views the expansion of restorative justice theory as drawing on the influences of “Canadian First Nations’ notions of healing circles...the Navajo justice and healing ceremony...[and] African restorative justice institutions such as the Nanante.”<sup>20</sup> Other crucial elements of restorative justice theory, especially as it has developed in New Zealand, are drawn from traditional Maori approaches to community justice and specifically family group conferencing, which “acknowledge the power of the Maori communities and enable them to operate in ways that will fortify and affirm their members.”<sup>21</sup>

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<sup>19</sup> Chris Cunneen, “Restorative Justice and the Politics of Decolonialization” in *Restorative Justice: Theoretical Foundations*, eds. Elmar G.M. Weitekamp and Hans-Jurgen Kerner (Willan Publishing: Portland, 2002) at 35

<sup>20</sup> *Supra* note 2 at 8.

<sup>21</sup> The New Zealand Maori Council, “Restorative Justice: A Maori Perspective” in *Restorative Justice: Contemporary Themes and Practice*, eds. Helen Bowen and Jim Consedine (Ploughshares Publications: Christchurch, 1999) at 29.

Because it draws so much of its force from pre-colonization indigenous justice systems, it is not surprising that many restorative justice theorists are as sceptical as they are of State-sanctioned authorities, with their histories of violence and cruelty towards indigenous populations. Indeed, for some critics, the re-introduction of restorative justice practices among indigenous populations can be viewed as a kind of “decolonization”.

Cunneen writes,

...[D]ecolonization can refer to the need to ‘rethink’ institutions outside of the context of colonization; decolonization implies the potential of postcolonialism. This point has particular relevance to restorative justice given that, historically, the institutions of the criminal justice system have been so instrumental in the colonial project of delegitimizing the social institutions and political aspirations of colonized peoples.<sup>22</sup>

At times, the comparisons drawn between the Western State-sanctioned criminal justice system and the restorative justice practices of indigenous peoples are dramatic. Nils Christie opens his essay “Conflicts as Property” with the depiction of a rural Tanzanian court: “[It was a] happy happening [with] fast-talking, jokes, smiles, eager attention [and] not a sentence to be lost.”<sup>23</sup> He contrasts this with a Western court: “...[L]et me assure you: what goes on is no happening. It is all a negation of the Tanzanian case. What is striking in nearly all the Scandinavian cases is the greyness, the dullness, and the lack of any important audience. Courts are not central elements in the daily life of our citizens, but peripheral”.<sup>24</sup> If we understand restorative justice, at least in so far as it relates to the indigenous populations from which it draws many of its key theoretical tenets, as a

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<sup>22</sup> *Supra* note 19 at 35.

<sup>23</sup> *Supra* note 3 at 38.

<sup>24</sup> *Supra* note 3 at 39.

“decolonializing” force, we can appreciate the strength of many restorative justice theoreticians’ suspicions regarding State authority.

Considering the brief analyses undertaken here, and the clear strength of the “antistatism” which is inherent in restorative justice literature, it cannot be surprising that many restorative justice theorists hope for more than simply an improvement in the criminal justice system’s efficacy and compassion. Many view restorative justice as a meant to wrest control over certain key elements of society from the State and return them to their proper owners. As Kay Pranis writes, “[t]he use of a consensus process that can bring together some of the most disempowered citizens and neighbourhoods in encounters with the most powerful players of the criminal justice system is slowly creating a redistribution of power at a grassroots level.”<sup>25</sup> Pranis is not alone, either in her optimism, or in her belief that restorative justice principles can work to change broad social structures; Gerry Johnstone argues that “[r]estorative justice arguably has the potential to do far more than provide a satisfactory way of dealing with some crimes...It may have the potential to make an impact on the sense of disempowerment that is rampant in modern societies”.<sup>26</sup> Our question now is: If some restorative justice theoreticians wish to radically reduce the authority of the State in the criminal law sphere, to whom would they entrust these powers? As we shall see from my analysis in the following section of this paper, the answer for most restorative justice critics is: the “community”. But this response opens other problematic lines of inquiry: As a matter of

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<sup>25</sup> Kay Pranis, “Restorative Justice, Social Justice, and the Empowerment of Marginalized Populations” in *Restorative Community Justice*, eds. Gordon Bazemore and Mara Schiff (Anderson Publishing: Cincinnati, 2001) at 293.

<sup>26</sup> Gerry Johnstone, *Restorative Justice: Ideas, Values, Debates*, (Willan Publishing: Portland, 2002) at 219.

definition, what is “community”? What, or who, constitutes a “community”, and what, or who, does not? And what do we expect “communities” to do?

**-PART TWO-**  
**Problematic Ambiguity: Towards a Definition of “Community”**

In discussing the effects, dangers and possibilities of restorative justice, theorists have been preoccupied with how restorative justice interacts with four broad stakeholder groups: victims, offenders, the community and the State. In the first part of this paper I focussed on how restorative justice theory might be understood as a protest against State domination across a broad spectrum of social areas, but obviously most specifically in the area of criminal justice. I want now to turn to examine restorative justice theory with respect to another key stakeholder group: the community. The community is particularly important for my analysis because I see it as the recipient of the powers which restorative justice theorists hope to devolve from the State. To understand the potential dangers of this devolution for the Canadian State, it is therefore important to know both what part the community is meant to play in the restorative justice project, and, just as crucially, what exactly restorative justice theorists mean when they use the word “community”. Once we understand, at least in part, what role community plays, and what community means, we can evaluate its possibilities and dangers in the context of the contemporary multicultural Canadian society.

Just as the State is largely vilified in restorative justice theory, so the community is lauded and privileged. Indeed, for many restorative justice theorists, the community is the central beneficiary of restorative justice’s work, as well as the key actor in the success of restorative justice programs. What is immediately conspicuous in restorative justice theory is the heavy pressure which is placed on the community; much is expected from the community in order for restorative justice to achieve its goals. In his essay

“Restorative Justice and the Role of the Community”, Paul McCold outlines five central responsibilities of the local community which arise as a result of the criminal event:

(1) [A]ct immediately to protect [the] victim and offender; (2) hold offenders accountable and insist on active involvement of interested parties in the resolution process; (3) provide the local resources for victim and offender to seek their healing; (4) provide public education and serve as a model or peaceful resolution processes; and (5) seek the systemic sources of recurring conflicts and encourage amelioration of their etiological source.<sup>27</sup>

These are not minor roles, and it is important to remember that whatever we mean by community here—and I undertake a discussion of the problems with defining exactly what we mean by “community” below—it is not the formal, organized and structured State apparatus undertaking law enforcement. McCold, like most other restorative justice theorists who hope for the State to relinquish important parts of its justice work to restorative processes, would have these responsibilities undertaken by sub-state, local, or even neighbourhood organizations. As you can imagine, this is a problematic notion, and one which has been the object of a fair amount of criticism, as I will describe in Part Three of this paper.

John Perry agrees with McCold that the community has responsibilities which follow in the wake of a criminal event. In his book *Repairing Communities Through Restorative Justice*, Perry writes that the “community owes a debt to the victims, for not having protected them from crime.”<sup>28</sup> This failure on the part of the community involves it in a moral obligation to help the victim become “wholly restored.”<sup>29</sup> Indeed, in Perry’s

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<sup>27</sup> Paul McCold, “Restorative Justice and the Role of the Community” in *Restorative Justice: International Perspectives*, eds. Burt Galaway and Joe Hudson (Criminal Justice Press: Monsey, 1996) at 96.

<sup>28</sup> John Perry, “Challenging the Assumptions” in *Repairing Communities Through Restorative Justice*, ed. John Perry (ACA: Lanham, 2002) at 12.

<sup>29</sup> *Ibid.*

conception, the community has a requirement to recognize and articulate its failure.

Perry writes:

One of the bitterest consequences of the retributive state system of justice is that victims are set apart from the community and labelled, shamed and excluded from reintegration. By acknowledging the reality of the harm done, and by taking responsibility for the breach in reciprocity with the victim, the community begins to repay the debt it owed to the victim.<sup>30</sup>

This requirement to help the victim heal meshes with another requirement to provide offenders with whatever they were denied, in a social and psychological sense, which might have provoked, or contributed to provoking, their criminal act: “The community also owes a debt to the offenders for not having provided the appropriate opportunities to their family for nourishing and supporting their success.”<sup>31</sup> This notion may be difficult to properly appreciate for those of us who know only the retributive norm of the current criminal justice system, but the requirement for the community to provide the appropriate resources to ensure that the offender is properly reintegrated is a key element of restorative justice theory. Without the support of the community, the offender is likely to re-offend, because the “etiological source” of the criminal conduct has not been properly addressed.<sup>32</sup>

Beyond the responsibilities outlined by theorists like McCold and Perry, many view the community’s obligations as encompassing a norm-creating role. As we can recall, Nils Christie wrote that the State’s theft of conflicts from the community deprived the community of important moments for what Christie called “norm-clarification”.<sup>33</sup>

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Supra* note 26.

<sup>33</sup> *Supra* note 3 at 44.

One of the important roles of restorative justice, therefore, is to allow communities to create, remember and recreate their own norms; the process of holding offenders accountable is a process of remembering, rearticulating and even generating the norms which bind the community together. As Perry writes, “The role of the community in restorative justice, whether in conferencing, reparative boards, in community courts, community prosecution, or youth courts, is to establish the boundaries for the community, to set moral norms. The community provides the forum in which justice can occur.”<sup>34</sup> This obligation to set moral norms is presumably undertaken in concert with the responsibilities to enforce moral norms; in Perry’s approach, therefore, the community has parallel obligations to determine within itself which norms it holds as important to its community life, and then to enforce those norms in a way which fulfills its responsibilities to both the victim and the offender.

What these various obligations and responsibilities entail, of course, is a profound and sincere involvement on the part of community members in one another’s lives. And this is viewed by restorative justice theorists as one of the central goals of the restorative approach as a whole. Some critics, in fact, have written that the restorative justice *process is more important* in terms of the benefits which accrue to the community than are its outcomes. As Gerry Johnstone writes:

...[W]e might...measure the success of restorative justice, not by reference to whether it achieves its declared goals, but by reference to whether it fulfills its true potential to instil in people caught up in social conflict the power to solve problems themselves, a sense of control over their own lives, and an ability to see their adversaries as real people with real needs.<sup>35</sup>

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<sup>34</sup> *Supra* note 28 at 11.

<sup>35</sup> *Supra* note 26 at 218.

The key here is that the process of restorative justice—of collaborating in a “norm-clarification” effort—brings together the community in a way which enhances relationships, and breaks down the barriers which exist, often between neighbours, in contemporary urban societies. This in turn makes “an impact on the sense of disempowerment that is rampant in modern societies.”<sup>36</sup> When communities are empowered, they are less likely to fall victim to the systemic hopelessness and ennui which are key drivers of criminal activity.

Many restorative justice theorists have articulated a deep enthusiasm for this aspect of involving the community; it lies at the heart of what is important and vital about the restorative justice movement. Gerry Johnson writes, “[R]unning through the discourse of restorative justice is the suggestion that the restorative justice process is a desirable way of handling criminal conflicts because it has the potential to engender moral growth and a sense of community.”<sup>37</sup> The possibility of the community’s revitalization through the use of restorative justice is discussed by Kay Pranis:

A restorative community is a community that embraces those who have been harmed and those who have caused harm. A restorative community is one that uses the event of a crime as an opportunity to strengthen the community, to deepen understanding of one another, and to build caring relationships. A restorative community is a learning community, a community that learns about itself from those who have been hurt, and uses that learning to improve community life for all.<sup>38</sup>

As we can see, the hope for restorative justice’s effects on the community go far beyond simply creating a more efficient, effective and compassionate system of the criminal justice. The hope articulated here is that restorative justice will lead to a fundamental

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<sup>36</sup> *Supra* note 26 at 218.

<sup>37</sup> *Supra* note 26 at 218.

<sup>38</sup> *Supra* note 25 at 289.

renewal of the very fabric of the communities. This, in turn, will lead to a new and revitalized democracy. As Pranis writes, “Restorative justice involves a broader view of democracy by involving citizens in decision-making processes that allow interaction and reflection, thus capturing nuanced understandings of the issues at hand and engaging citizens in concrete responsibilities for some aspect of everyday life.”<sup>39</sup>

Clearly, restorative justice theory imposes heavy responsibilities on communities, and expects transformative outcomes from their participation in the restorative justice project, a participation which involves the community not only in the norm-clarification role, but also as the guardian of change with respect to these norms. In this sense, the community is both a “norm-maker”, and the arbiter of all alterations to the processes by which these norms are imposed on its members. These are extraordinary expectations, but they are in keeping with the understanding we gained from our analysis in Part One of this paper: Restorative justice theory sees important powers devolving from the State to the community. Now that we have assessed the importance of the community in the context of restorative justice theory, we can ask the key question: What is “community”?

From the beginning of the contemporary restorative justice project in the mid-1970s, restorative justice theorists have struggled with the notion of community. This is in a sense ironic given the position of enormous importance which the community holds in most theories of restorative justice. Lode Walgrave writes, “Nowhere is community defined in a concrete way, even when explicit attempts are made to cope with the criticism of non-definition.”<sup>40</sup>

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<sup>39</sup> *Supra* note 25 at 289.

<sup>40</sup> Lode Walgrave, “From Community to Dominion: In Search of Social Values for Restorative Justice” in *Restorative Justice: Theoretical Foundations*, eds. Elmar G.M. Weitekamp and Hans-Jurgen Kerner (Willan Publishing: Portland, 2002) at 74.

The central problem is that the notion of community is enormously fluid, encompassing both geographic neighbourhoods, and groups of individuals of similar interests, needs and backgrounds. This notion of community as being an intimacy of interests, and not a geographic location, is supported by Paul McCold: “The problem with many community justice initiatives is that they have defined community primarily in terms of geography, ignoring the very vibrant sense of community that exists in personal networks of relationships.”<sup>41</sup> But the immediate problem with a definition based on “communities of interest” in the context of restorative justice is clear: How do you enforce decisions when individual members of the community might be separated by great distances, even located in different countries?

A similarly difficult question must be asked when one assesses the problems with taking a purely geographical approach to community. Especially in urban and suburban areas, many individuals living in close proximity to one another have no relationship at all with each other. Can restorative justice be effective in this environment, where there will be so little enthusiasm for improving a community which, for all intents and purposes, does not exist?

In his essay “Community is not a place”, Paul McCold discusses the possibility of “an incident-based definition of community.”<sup>42</sup> This approach involves “micro-communities” which are comprised of the victim, offender and others affected by a particular incident, but not other individuals not directly affected by the incident in some way, as would be the case with other conceptions of “community.”

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<sup>41</sup> Paul McCold and Benjamin Wachtel, “Community is Not a Place: A New Look at Community Justice Initiatives” (Unpublished, 1997) at 201.

<sup>42</sup> *Ibid.* at 199.

It is not my hope to attempt here to reach a usable definition of community where so many other theorists have failed. Instead, I want only to contrast the heavy expectations and high hopes which are directed at communities in restorative justice theory with the indeterminacy of the very notion of “community” among the proponents of restorative justice. It is clear that an enormous gap exists. It is the dangers which this gap may pose for restorative justice which I wish to examine now.

**-PART THREE-**  
**The Risks of Restorative Justice**

From the examinations I have undertaken in the previous sections of this paper, we can see that many restorative justice theorists hope that the community will be the recipient of considerable powers, which will devolve to the community from the State. In this conception of restorative justice, the community will have substantial responsibilities, but it will also be the recipient, if the project is successful, of enormous, even transformative, benefits. The problem just discussed, however, is important: There is no agreed-upon definition of community. What is agreed is that this lack of definition is a problematic lacunae for a theory which places so much emphasis on community. As Lode Walgrave writes,

Advanced restorative justice practitioners appear to be able to determine intuitively the community which is affected by a concrete crime and to sense whom they should invite to participate to the process. Such intuition may be satisfactory, and even crucial in practice. But restorative justice is now leaving its experimental stage to evolve towards being an integrated recognized practice, even if this brings with it the danger of being [a] too routinized ‘fast food’ intervention. In order to avoid deterioration, good normative theory on restorative justice must be developed.<sup>43</sup>

In the section which follows I want to outline some of the criticisms that are given of restorative justice’s conception of community, paying particular attention to why it may be problematic in the context of Canadian multiculturalism.

A key critique of restorative justice’s emphasis on community—aside from the lack of a concrete definition—is that communities are not always the caring and responsible places which many restorative justice theoreticians seem to believe they are.

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<sup>43</sup> *Supra* note 40 at 73.

George Pavlich, an influential critic of the notion of community in restorative justice literature, writes:

Appeals to homogenous, consensual and unified images of community harbour serious dangers marked by identity through exclusion. For instance, the assumption of harm to be restored is always issued from within a given community and responsibility for the definition is mostly placed upon self-defined members—not to ‘others’ at the margin of (and so constituting) that identity formation.<sup>44</sup>

Pavlich is not alone in his worry that rooting the criminal justice process in the local community leaves open the possibility of exclusion and/or vilification of groups which differ from the self-defined identity created by members of the community group. Pavlich goes on to write that “the community’s secret [is] the secret of its subtle identification through exclusion.”<sup>45</sup> As Adam Crawford and Todd Clear write, “Communities are hierarchical formations, structured upon lines of power, dominance and authority. They are intrinsically exclusive—as social inclusion presupposes processes of evolution—and may solidify and define themselves around notions of otherness that are potentially infused with racial overtones.”<sup>46</sup>

This is a critical issue which must be acknowledged: Though the restorative justice roots its hopes for compassion, responsibility, accountability and healing in the community, communities can be deeply flawed units of social life. In keeping with its narrative of restorative justice’s long history, it may be that theorists are utilizing an idealized and unrealistic conception of what a community is. As Walgrave writes,

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<sup>44</sup> George Pavlich, “Deconstructing Restoration: The Promise of Restorative Justice” in *Restorative Justice: Theoretical Foundations*, eds. Elmar G.M. Weitekamp and Hans-Jurgen Kerner (Willan Publishing: Portland, 2002) at 99.

<sup>45</sup> *Ibid.* at 100.

<sup>46</sup> Adam Crawford and Todd R. Clear, “Community Justice: Transforming Communities Through Restorative Justice” in *Restorative Community Justice*, eds. Gordon Bazemore and Mara Schiff (Cincinnati: Anderson publishing co., 2001) at 137.

“Community is the utopia of the communitarians, for whom community is the ‘antidote to the *fin de siecle* crisis of modernity’, or a mirage of what we are craving for in a desert of fragmentation and individualism.”<sup>47</sup> The problem is, of course, that if the notion of community as articulated by the proponents of restorative justice is really impossible to “make complete”, it is not clear how the project can be successful.

And the problem is not merely one that a community will be exclusive, but that it will be divided as well. Johnstone writes,

The proposal that the community should take the lead in deciding what should be done about a criminal incident is highly problematic. Communities, even small, tight-knit communities, are not the homogenous units which many suppose them to be. Rather, they contain hierarchical social arrangements based on considerations such as wealth, race, ancestry and family connections, and acquired authority.<sup>48</sup>

What is important to understand from this critique is that simply offloading authority from the State to the community does not in and of itself ensure that the injustices imposed by the State as a result of its hierarchical structure will be absent; even the smallest communities have hierarchies, and injustices may result from rooting restorative justice in the community as a result of this.

The particular problem which George Pavlich identifies also deserves close analysis. After all, communities are what they are because they include some and exclude others; all communities have walls. Pavlich’s critique is rooted in this suspicion: “...[C]alls for a so-called free and uncoerced community life may be laudable, but they are all too often offset by the concomitant tendency to shore up limits, fortify a given

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<sup>47</sup> *Supra* note 40 at 75.

<sup>48</sup> *Supra* note 26 at 29.

identity, and rely on exclusion to secure self-preservation.”<sup>49</sup> The problem seems to involve knowing when this exclusive activity, which a community will do naturally, is harmful to the restorative justice project. For instance, if a theft occurs in a neighbourhood, and the offender is black, while the geographic community of which he or she is a part is entirely white, notions of justice could break down if the white community is incapable of acting without prejudice towards the black offender.

If we eschew geographic communities, and take up Paul McCold’s “communities of interest”, the problem is no less severe. In this event, the challenge will be that the community of interest which is identified around the offender will usually be “like” the offender—made up of family, friends, schoolmates or work colleagues, who, in all likelihood, will have racial and/or socio-economic similarities with the offender. The “community” in which the restorative justice project will be rooted will be a homogenous community, with an identity drawn from similar cultural characteristics. Likewise, we can expect the notions of justice on which they will agree to be drawn from their specific cultural heritages.

Of course, in the example outlined above, there will be two “communities of interest”—one of the offender, and one of the victim. But with much crime occurring in the context of familial relationships, or in areas of cultural homogeneity, much restorative justice work will be done in communities identifiable by their racial and/or socio-economic similarities. In this context, two related possibilities arise: First, much restorative justice work will become work done *inside* communities of one particular ethnic or economic tradition or identity; and second, the bonds which link communities

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<sup>49</sup> George Pavlich, “The Force of Community” in *Restorative Justice and Civil Society*, eds. Heather Strang and John Braithwaite (CUP: Cambridge, 2001) at 58.

of differing ethnicities to one another will be lost as the State relinquishes its ability to set common values for the country.

This is a particularly important critique in the context of Canadian law and policy. Canada is an avowedly multicultural country; that is, it is made up of a variety of racial, ethnic and cultural groups. In the Canadian context—as opposed, perhaps, to the American “melting pot” history of assimilation—these groups are encouraged, by legal as well as social structures, to maintain their cultural allegiances, while at the same time adhering to Canadian law and submitting to the values articulated in the Canadian *Charter*.<sup>50</sup> This multiculturalism places strong pressures on the binding elements of national unity. Because the retention of historical difference is promoted in Canadian law and tradition, counteracting forces for civic unity must be vigilantly empowered, in order to avoid social disintegration. The *Charter* is one such bond, intriguing in its facility to both unite and recognize difference; while the *Charter* allows substantial difference to exist and flourish, it acts as a binding force both by virtue of its national character, and in its strong, and broadly interpreted, protections of equality. But another important bond, especially relevant to our current analysis, is the criminal justice power, which was entrusted to the Federal Government by s.91(27) of the *Constitution Act, 1867*.<sup>51</sup> As with many decisions made at Confederation, the distribution of criminal law power was a compromise: The federal government creates the criminal law (currently consolidated in the *Criminal Code* and several associated statutes governing matters such as illegal drugs and youth criminal justice), while the provinces have the power to administer justice

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<sup>50</sup> See *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

<sup>51</sup> See *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5.

within their territories.<sup>52</sup> Criminal law in Canada is therefore the product of a nuanced balancing of national and unifying values with the practicalities of local implementation. If federal and provincial governments were to relinquish their value-setting powers in favour of poorly defined local communities, the criminal law power balance—constructed by the founders of this country as a national unifying bond, which respects local practicalities through provincial implementation—would instead become a force of fracture, pulling apart our multicultural society as atomistic communities, united in themselves by their ethnic homogeneity, articulated and acted on their various, and variously different, values and beliefs.

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<sup>52</sup> See s.92(14) of *Constitution Act, 1867*. See also Peter W. Hogg, *Constitutional Law of Canada*, looseleaf (Scarborough: Thomson Canada, 1997) at 19-3.

**-PART FOUR-**  
**Learning from Practice**

Clearly, restorative justice theory raises complex concerns. Articulated as a protest movement against State power, and raising extraordinary expectations for local communities (but deploying only very problematic definitions of “community”), restorative justice theory appears to threaten cherished values of civic unity which are crucial to the success of a multicultural society. But are these concerns fatal for the restorative justice project in the context of Canadian multiculturalism? That is, can citizens who value *both* the principles of restorative justice *and* the vibrancy and moral integrity of a unified multicultural society develop a restorative justice theory which is honest to both programs? In this final section, I will show that by learning from elements of current restorative justice practice, we can craft a robust theory of restorative justice which does not place at risk the fragile bonds of Canadian social harmony. Because space is limited, I will ground my analysis in the example of one relatively advanced restorative justice implementation: Nova Scotia’s Restorative Justice Initiative.

When assessing current restorative justice practice in Nova Scotia one recognizes quickly that though restorative justice as a theory might involve a protest against State power, restorative justice as a practice is inextricably linked with the State and the State’s criminal justice system. First, and most obviously, the restorative justice program in Nova Scotia is enabled by statute. That is, it is the State which has recognized (admittedly with the help of the convincing arguments made by community activists) the need for restorative justice programs, and made room for them within the statutes which constitute the legal framework for the criminal justice system. Two of the most

important examples of this are s.717 of the *Criminal Code*<sup>53</sup>, which creates a diversion program for adults, and ss.4-10 of the *Youth Criminal Justice Act*<sup>54</sup> which sets the foundations for youth restorative justice, such as the initiative which thrives in Nova Scotia. In addition, ss.18 and 19 of the *YCJA* create the “Youth Justice Committees” and “Conferences” which are important elements of restorative justice processes in various provinces.<sup>55</sup> That restorative justice programs are creatures of statute may seem an elementary point, but it means that in Canada restorative justice does not involve a grassroots usurpation of State power in favour of the community. Instead, restorative justice is a controlled and collaborative exercise of sovereign discretion in favour of State/community cooperation. Speaking theoretically, if a restorative justice program were to act beyond the limits set by the legislation, such action might be subject to judicial intervention. And if such extra-jurisdictional actions became the norm, the legislature, if it were vigilant, could revise the statute and suspend the power of the restorative justice program altogether.

That restorative justice initiatives are constructed on a statutory foundation does not diminish their local nature, however. The Nova Scotia program involves ten local agencies, which implement restorative justice programs in their particular localities, with the assistance of a provincial coordinator, who keeps an office in Halifax.<sup>56</sup> The local agencies, though funded by the province, are autonomous in their operations, and act in

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<sup>53</sup> R.S.C. 1985, c-46.

<sup>54</sup> R.S.C. 2002, c-1. [*YCJA*]

<sup>55</sup> *Ibid.* at note 50 at ss. 18 & 19. By 2004, for instance, the Ontario Government had authorized “Youth Justice Committees” which operated in twenty-three of the province’s communities, including some of the most troubled. See Ministry of the Attorney General, Fact Sheet, “Youth Justice Committee Program” (June 14, 2004) online: <[www.attorneygeneral.jus.gov.on.ca/english/news/2004/20040614-youthjustice-fs.asp](http://www.attorneygeneral.jus.gov.on.ca/english/news/2004/20040614-youthjustice-fs.asp)>.

<sup>56</sup> For a list of the participating agencies, see Restorative Justice Nova Scotia, online: <<http://www.gov.ns.ca/just/rj/rj-community.htm>>.

accordance with the best interests of their communities, within the parameters set by the governing statute and the service contracts these agencies enter into with the provincial government (in Nova Scotia, only youth are currently involved in the province-wide restorative justice program; the governing statute is therefore the *YCJA*).

Indeed, when examining the restorative justice project as it exists in Nova Scotia one is struck not by the antagonism of the community towards the State, but rather at the hope, articulated by community leaders, that the State will *more actively participate* in the restorative justice project. This balance, between State funding, oversight, statutory guidance and encouragement on the one hand, and the local actions of the agency leaders and volunteers who know the needs of their communities on the other, is articulated in a foundational document of the Nova Scotia Initiative entitled *Restorative Justice: A Program For Nova Scotia*,

[T]he [role of] Government in this Initiative should be that of facilitator, or overseer. Government should not become the *de facto* deliverer of restorative justice programs. Individual communities should be empowered to shape these programs and to deliver the service of restorative justice...Government has a leadership role to play in areas such as establishing a legal framework for the programs, enabling community-based programs, initiating interest, setting standards, and monitoring progress...The goal is a genuine partnership and collaboration, not Government avoidance of its responsibility with respect to justice services.<sup>57</sup>

Three years later, in his evaluation of the first year of the Restorative Justice Initiative, Don Clairmont wrote that the most important challenge facing restorative justice in the province was resistance to the project by those involved in the criminal justice system.

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<sup>57</sup> Nova Scotia, Department of Justice, *Restorative Justice: A Program for Nova Scotia* (Halifax: Communications Nova Scotia, 1998) at 6 [*Program*].

To remedy this, Clairmont advocated *renewed collaboration* with the State to promote restorative justice across the criminal justice system:

There would appear to be a need to re-articulate the vision of Restorative Justice [‘RJ’] in a more collaborative, realistic and creative fashion....[This] re-articulated vision has to convey better that RJ is more than just a few set programs which crowns, defence lawyers and judges may accept or reject...[RJ] seeks to enlist the creativity of these key role players in applying the RJ philosophy throughout the CJS [criminal justice system]....It would appear that major responsibility for...dealing with the challenges outlined must fall to the Department of Justice. It has the moral authority, the legislative responsibility, and the resources.<sup>58</sup>

This assertion was echoed in March of 2005 at a conference at Dalhousie Law School, where Nova Scotia’s Restorative Justice Coordinator, Pat Gorham, articulated her hope for a stronger relationship between the agencies implementing the restorative justice program and the provincial government. Gorham noted that strong support by the provincial government and the Department of Justice were essential to the success of the project as a whole.<sup>59</sup>

There is no hint in these dialogues of the broad-based protest against State power which is clear in the restorative justice theory we evaluated above. Though of course many participants in the restorative justice project, like many others, including this author, are dismayed at the shortcomings of the criminal justice system in reducing recidivism, treating minority groups with respect, and healing the frayed bonds of community, this does not seem to spark in the minds of restorative justice practitioners in Nova Scotia a broad rejection of State authority. More than anything else, these

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<sup>58</sup> Don Clairmont, *The Nova Scotia Restorative Justice Initiative: Year One Evaluation Report* (Bedford, NS: Pilot Research, 2001) at xvii.

<sup>59</sup> Pat Gorham, “Comments on Presented Papers” (Dalhousie Law School Restorative Justice Paper Conference, March 2005) [unpublished].

restorative justice practitioners hope to find ways to make restorative justice *work* effectively, and they recognize that the State is an essential partner in this effort. Idealistic conceptions of democratic renewal and a return to pre-State modes of local criminal justice are not necessary, or even recognizable, as useful to the achievement of their goals. Clairmont’s assertion of a “collaborative, realistic and creative” approach to re-articulating the vision of restorative justice sounds an important challenge therefore, not only to the practitioners who were his audience, but also to the restorative justice theorists who must develop a lasting intellectual foundation for the project’s growth and success.

Of course, there is no question that restorative justice practitioners in Nova Scotia hope that restorative justice will strengthen their local communities. But there are two important points to recognize about this desire for community renewal. First, it is not a primary goal of the program. Where in some restorative justice theory we saw that the *process* of restorative justice—and the strengthening effect which these processes would have on the community—was often viewed as more important than its outcomes, in the Nova Scotia program community renewal is viewed as a secondary driver; it is actually listed under “Secondary Goals”—after “Reduce Recidivism” and “Increase Victim Satisfaction”—in the *Program*.<sup>60</sup>

But the most important point to be made in the context of the Nova Scotian experience is that the “strengthening” of the community which restorative justice practitioners desire is one which *increases* the community’s confidence in the State’s criminal justice system. This is alluded to in the *Program*:

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<sup>60</sup> *Supra* note 57 at 5.

The existing formal justice agencies have assumed primary responsibility for crime prevention and crime control. As a result, communities have become increasingly alienated from the justice system. A restorative approach invites the participation of communities in achieving reconciliation between offenders and those harmed through the commission of an offence. Greater participation by communities and victims, and evidence of a more effective justice process *will enhance public confidence*.<sup>61</sup> (emphasis added)

What is left unsaid here is what precisely the public is growing confident *in*—is it their own local communities, or in the State, or both? Clairmont, in his one-year evaluation of the Initiative, seems to answer this question. In his analysis of whether the Initiative has met the secondary goal of strengthening communities, Clairmont writes, “Data from exit questionnaires and follow-up interviews, as discussed above, have been quite positive about the RJ option among all types of participants (i.e., victims, offenders, supporters, police and community representatives), suggesting *increased public confidence in the CJS* [criminal justice system] [emphasis added].”<sup>62</sup> To some degree, we can understand this as the *opposite* of the theoretical approach. Restorative justice succeeds, in this conception, not when the community views itself as the norm-clarifying centre, but when the community’s confidence in the State is re-established, as the community recognizes that the State is willing to cooperate with the community in the creation of just outcomes for all participants. And this stands to reason: If the local community and the State collaborate in the delivery of restorative justice programs, both the local community and the State are empowered by those programs’ successes.

In restorative justice contexts where the goal is the reinforcement of the bond between the community and the State, the problems of the definition of “community” and

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<sup>61</sup> *Supra* note 57 at 6.

<sup>62</sup> *Supra* note 58 at xv.

our concern regarding social fracture may be somewhat ameliorated. If restorative justice is an *integrative* force—if it brings communities together in a common confidence in the State’s authority—then we should be less worried about whether or not specific communities, as they are defined for the purposes of restorative justice, are culturally homogenous. This is because the State as the locus of common civic values, and as the point of encounter for groups of different heritages and ethnicities, remains intact, and is indeed strengthened in the estimation of the citizenry.

But our problems with restorative justice theory are not completely resolved, of course. Still apparent is the issue of defining community as a practical matter. And the central problem of social fracture still looms, in two ways. First, if the State fails to remain vigilant, and allows restorative justice movements to grow unsupervised beyond the bounds set for them—thereby encroaching unauthorized upon the authorities of the criminal justice system—we risk social fracture because, as we have discussed, the State will be replaced as a point of encounter for the different ethnicities which make up our multicultural society. Second, if the restorative justice movements shift from having as their purpose a rebuilding of confidence in the State’s criminal justice system—if, for instance, a restorative justice program were to decline all government collaboration and take on an antagonistic stance towards State authority—the risk of social fracture would arise again because, as before, the restorative justice movement would be operating as a replacement for State authority and would be moving its community out of participation in the civic whole, and towards an isolation which is intolerable in the context of multiculturalism. The Nova Scotia project, with its emphasis on State/community collaboration and the building of confidence in the criminal justice system, is not a threat

to the State; but vigilance is nonetheless required by all who value Canada's unified multicultural society, if we are to ensure that other restorative justice programs follow Nova Scotia's collaborative lead.

## CONCLUSION

In this paper I have undertaken four analyses. First, I evaluated restorative justice theory as a protest movement, examining its interest in devolving power from the State to the community. I showed that a strong antagonism towards the State appears in much restorative justice literature, and is indicated in the history of restorative justice (as it is articulated by restorative justice proponents), as well as in these theorists' positioning of restorative justice as a means of decolonization. I then moved on to assess restorative justice theorists' claims regarding community, showing the heavy responsibilities which are placed on the community in restorative justice theory, and the transformative benefits which are expected to accrue to the community if the restorative justice project is successful. But I showed that, because no satisfactory definition of community exists in the literature, the proper fulfillment of these responsibilities, and the appearance of the benefits described, are open to question. In Part Three of this paper I picked up on this issue, showing that social fracture could result from the improper application of restorative justice principles in the context of Canadian multiculturalism. Finally, I looked at how these risks of social fracture might be ameliorated, analyzing the practical approach undertaken by those who are implementing the Nova Scotia Restorative Justice Initiative. I noted that a restorative justice project could avoid the some of the dangers of social fracture if it is rooted in a collaborative approach, and designed to rebuild the community's confidence in the State's criminal justice system, which is the example set in Nova Scotia.

From the forgoing analyses we can see that if a restorative justice program is to benefit the citizens of a multicultural society, it must be implemented with care and

developed in a collaborative spirit, eschewing the protest ideology articulated by some restorative justice theorists. Perhaps most importantly, it must be vigilantly monitored by the State, whose responsibility it is to ensure that no damage is done to the social framework which facilitates the peaceful existence of the College Streetcar, cramped with Canada's multicultural citizenry, making its way through Toronto's mostly peaceful neighbourhoods.