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*Philosophical Insights
for a
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Edited by G. Grandi and S. Grigoletto

L. Alici, T. Chapman, G. Grandi, S. Grigoletto, B. Pali,
F. Schweigert, E. Tiarks, S. Worboys, H. Zehr

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SEARCHING FOR COMMUNITY IN RESTORATIVE JUSTICE

by Tim Chapman*

Abstract. *The community is generally seen as an important element of restorative justice. Yet in actual practice it is difficult to discern a part played by community. This may be due to a lack of a clear understanding of what is meant by community and consequently a difficulty in defining its role. General theories of communities, including the organic *gemeinschaft*, communitarianism and the loss of community in modern society may have confused rather than clarified the role of community in restorative processes. New approaches to the philosophy of community have emerged in France and Italy in recent years. This chapter explores the work of Nancy, Agamben and Esposito seeking a fresh perspective from which to understand the practice of restorative justice. It concludes that the harmful event of a crime may provide an opportunity for being with people bonded by obligations to undo injustices and restore values which facilitate conviviality. In this sense restorative justice can activate temporarily in a specific space a community which can only be experienced rather than delineated, owned and immunised from external threats. An actual case will be offered as an exemplar of how this works in practice.*

Keywords. *Restorative Justice; Community; Being-with; Obligations*

1. Introduction

The word *community* is regularly used in restorative justice. Yet, its meaning is ill-defined and consequently a range of diverse roles and functions are attributed to it. In spite of the widely held intuition that community is a positive force in restorative justice, there is little evidence that community is an active element of most restorative processes in practice. This article is a philosophical search for a community that is real, honest and active in modern society and which can be activated by restorative processes. It involves an

* University of Ulster

examination of various theories of community and how they reflect and influence not only how people live together but also how a politics of identity has become more prevalent. The search leads to the work of the philosophers, Esposito, Nancy and Agamben, who have in their different ways conceived a community which can be applied to restorative justice. A case study serves to demonstrate this concept of community in the lived experience of people who have participated in a restorative process.

2. The elusive and illusive community in restorative justice

The most prevalent restorative process in European countries is penal mediation, sometimes referred to as victim-offender mediation. This involves the two principal parties involved in a crime, the perpetrator and the victim, engaging in some form of communication mediated by a trained practitioner with a view to resolving issues arising from the crime. In 1999 the Council of Europe defined penal mediation as: «any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator)»¹.

This definition envisages restorative justice as a private and confidential matter between two parties in conflict due to a crime. They may bring a friend or family member for support. No place is given for the community to participate. Mediations may result in apologies, restitution or compensation or reparation by performing some service to the victim or for the community.

In 2018 the Council of Europe revised the Recommendation on mediation in penal matters with a new Recommendation concerning restorative justice in criminal matters. The definition of restorative justice is more elaborate:

¹ Council of Europe, *Mediation in penal matters: recommendation No. R (99) 19 adopted by the Committee of Ministers of the Council of Europe on 15 September 1999 and explanatory memorandum*, Strasbourg, Council of Europe, 2000.

‘Restorative justice’ refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter the ‘facilitator’). Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender, and can also involve, where appropriate, other persons directly or indirectly affected by a crime. This may include supporters of victims and offenders, relevant professionals and members or representatives of affected communities. Hereinafter, the participants in restorative justice are referred to, for the purpose of this Recommendation, as ‘the parties’².

There are several distinctions between these two definitions. The concept of ‘harmed by crime’ creates a more specific focus. Mediator is replaced by facilitator so as to permit a wider range of restorative processes to be made available. The range of parties who could legitimately participate in restorative processes is substantially extended and includes ‘representatives of affected communities’.

These changes are a result in the increasing influence of restorative justice theory promulgated by researchers in anglophone countries. Community has been construed as either the community of care that supports each party and is a vehicle for reintegrative shaming³ or as a separate party affected by and addressing harm⁴,

² Council of Europe, *Recommendation CM/Rec (2018) 8 of the Committee of Ministers to member States concerning restorative justice in criminal matters*, Strasbourg, Council of Europe, 2018.

³ J. Braithwaite, *Crime, Shame and Reintegration*, Cambridge, Cambridge University Press, 1989; H. Mika, H. Zehr, *A Restorative Framework for Community Justice Practice*, in K. McEvoy, T. Newburn (eds.), *Criminology, Conflict Resolution and Restorative Justice*, Basingstoke, Palgrave MacMillan, 2003.

⁴ D.W. Van Ness, K. Heetderks Strong, *Restoring Justice*, Cincinnati (OH), Anderson Publishing, 1997; G. Johnstone (ed.), *Restorative Justice: Ideas, Values, Debates*, Collumpton, Willan, 2001; M.S. Umbreit, M.P. Armour, *Restorative Justice and Dialogue: Impact, opportunities, and challenges in the global community*, «Washington

or as a goal implicit in healing relationships⁵. It is generally considered positive, though for some⁶ community is a contentious concept, which has limited validity or usefulness in restorative justice. Few academics have understood community as potentially exacerbating harm as Harbin and Llewellyn have⁷.

Maglione⁸ discovered that there is a more extensive literature on community in restorative justice than on either the victim or the offender. Yet as Gal⁹ observes there is little evidence in restorative justice research of actual community participation in practice. What accounts for this gap between theory and practice? There seems to be confusion over the definition and role of community in restorative justice. Maglione¹⁰ through his archival research of

University Journal of Law and Policy», XXXVI, 2011, pp. 65-88; E. Zinsstag, T. Chapman, *Restorative youth conferencing in Northern Ireland*, in E. Zinsstag, I. Vanfraechem (eds.), *Conferencing and Restorative Justice: Challenges, Developments and Debates*, Oxford, Oxford University Press, 2012; H. Zehr, *The Little Book of Restorative Justice*, New York, Good Books, 2014; T. Gal, 'The Conflict is Ours': *Community Involvement in Restorative Justice*, «Contemporary Justice Review», XIX (3), 2016, pp. 289-306; T. Chapman, *The Problem of Community in a Justice System in Transition: The Case of Community Restorative Justice in Northern Ireland*, «International Criminal Law Review», XII, 2012, pp. 1-15.

⁵ D. Sullivan, L. Tifft, *Restorative Justice: Healing the Foundations of Our Everyday Lives*, Monsey (NY), Criminal Justice Press-Willow Tree Press, 2001; K. Pranis, B. Stuart, M. Wedge, *Peacemaking Circles: From Crime to Community*, St. Paul, Living Justice Press, 2003.

⁶ L. Walgrave, *From community to dominion: in search of social values for restorative justice*, in E.G. Weitekamp, H.J. Kerner (eds.), *Restorative Justice: Theoretical Foundations*, Portland (OR), Willan, 2002, pp. 71-89; G. Pavlich, *The Force of Community*, in H. Strang, J. Braithwaite (eds.), *Restorative Justice and Civil Society*, Cambridge, Cambridge University Press, 2001, pp. 56-68.

⁷ A. Harbin, J.J. Llewellyn, *Restorative Justice in Transitions: The Problem of 'the Community' and Collective Responsibility*, in K. Clamp (ed.), *Restorative Justice in Transitional Settings*, London, Routledge, 2016, pp. 133-151.

⁸ G. Maglione, *Communities at Large: An Archaeological Analysis of the 'Community' Within Restorative Justice Policy and Laws*, «Critical Criminology», XXV (3), 2017, pp 453-469.

⁹ Gal, *The Conflict is Ours'*.

¹⁰ Maglione, *Communities at Large*.

official documents and academic writing on restorative justice referring to community discerns four main discourses on community: 1. Community as stakeholder, 2. Community involvement and participation, 3. Restoring communities, 4. Reintegrating into the community.

As a stakeholder the community is seen as a «collective actor with an interest or responsibilities towards crime»¹¹. Community involvement and participation generally refers to people from the supportive networks of the victim or offender or community representatives who may be volunteer facilitators or activists representing the community¹². Community participation is seen as offering many benefits including strengthening social cohesion, generating social capital, and increasing public confidence in the criminal justice system. Communities which have been harmed by crime can be restored through the reparations offenders make as a result of participation in a restorative process. Finally, by repairing relations with victims, families and the community, offenders can be reintegrated reducing the risk of reoffending. Each of these ways of conceiving the role of community in the restorative process both provides an alternative to the professionalised process of the criminal justice system and provides a response to crime that is compatible with and determined by the system's aims and values.

There is an irony in this. The theorist who has probably most inspired the value of community in restorative justice is Nils Christie. He criticised the criminal justice system and its professional experts for stealing conflict from the community¹³. He understood conflict as 'property', a resource to communities that enabled them to clarify norms, to support victims and to reintegrate offenders. His ideas have had a huge influence on the value that restorative justice places on ordinary people resolving conflict caused by crime. Conflicts are seen as the property of the victim, the offender, and their local community. In restorative justice crime is no

¹¹ Ivi, p. 457.

¹² As described by Gal, *The Conflict is Ours*'.

¹³ N. Christie, *Conflict as Property*, «The British Journal of Criminology», XVII (1), 1977, pp. 1-14.

longer approached simply as a breach of the criminal law but as «a violation of people and relationships»¹⁴.

Inspired by Christie's work on the 'ideal victim' and the 'ideal offender', Maglione¹⁵ proceeds from his analysis of the four key discourses of community to profile the characteristics of the 'ideal community' in the literature of restorative justice. Community tends to be described as innocent, local, alternative to state and society, weak but resilient, fusional as in sharing beliefs and bound by emotional connections, and genderless and colourless. Such a construction serves a communitarian element in government criminal justice policy but clearly does not reflect the complex reality of people's experience of community. If restorative justice policy makers, managers and practitioners are searching for such communities, it explains why there is little evidence of community participation in actual restorative processes. Further, does such an idealistic construction of community serve to exclude the possibility of 'community' enhancing the experience of restorative justice?

The problem seems to stem from the construction of community as an entity that can be identified, invited, be fit for participation and facilitated to articulate the community's authentic narrative of the harm and the needs or issues arising from it. Who/whatever community is, it is assumed that it/they are affected by the harm and have an interest in repairing it, rather than that they may have colluded with or have direct responsibility for the harm. It is further assumed that the community's primary emotion will be fear and need will be for safety¹⁶ or, perhaps, anger over an injustice requiring some ritual of forgiveness¹⁷. This implies that

¹⁴ H. Zehr, *Changing Lenses: A New Focus for Crime and Justice*, Scottsdale (PA), Herald Press, 1990.

¹⁵ Maglione, *Communities at Large*, p. 460.

¹⁶ V. Mackey, *Restorative Justice: Toward Nonviolence*, Louisville (KY), Presbyterian Criminal Justice Program, Presbyterian Church (USA), 1990; F.H. Knopp, *Restorative justice for juvenile sex offenders*, Paper presented at the National Council of Juvenile and Family Court Judges, Lake Tahoe-Reno, November 16, 1992.

¹⁷ J.R. Gehm, *The function of forgiveness in the criminal justice system*, in H. Messmer, H.U. Otto (eds.), *Restorative Justice on Trial*, Dordrecht, Kluwer Academic, 1992, pp. 541-550.

a community has the same psychological integrity as an individual human being. It follows that, like people, the community needs to be healed and to be educated (to be more liberal) about crime and to take responsibility (relieving the state) for controlling it.

It becomes complicated, so many questions: what is the nature of the harm from the community's perspective? in which context did the harm take place? who has the power to determine what community and who represents it? what level of community (family, friendship network, neighbours, civil organisations, faith groups, political groups, interest groups, municipality, society, state)? what will be their needs and interests? Each of these factors is potentially contentious. It is unsurprising that community is rarely invited to participate in restorative processes.

The problematic question is what or who represents the 'proper community' as opposed to the 'improper community'. To answer this question requires the strategic use of power by a qualified person or agency. In doing this restorative justice can be accused of stealing the conflict from the community. So what is the proper community and does it really exist?

3. *Losing community*

Community, we feel, is always a good thing.
Zygmunt Bauman¹⁸

Community is generally seen as organic and defined by what people have in common – religion, culture, tradition, identity, territory or interests. The distinction made by Tönnies¹⁹ between *Gemeinschaft* and *Gesellschaft* focused on the quality of relationships. Community was where personal interactions took place. This led to expressions such as 'community spirit' or 'a sense of community'. McMillan and Chavis define sense of community as «a feeling that members have of belonging, a feeling that members

¹⁸ Z. Bauman, *Community: Seeking Safety in an Insecure World*, Cambridge, Polity Press, 2001, p. 1.

¹⁹ F. Tönnies, *Community and Association*, London, Routledge, 1955.

matter to one another and to the group, and a shared faith that members' needs will be met through their commitment to be together»²⁰. Significantly, this seminal article was published in a psychological journal.

Cohen's²¹ theoretical work on community emphasises belonging and meaning: «People construct community symbolically, making it a resource and repository of meaning, and a referent of their identity»²². The words, belonging, resource and repository clearly construe community as a thing that can be owned and used. Cohen also argues that members of a community share something in common and that their membership distinguishes them from others²³. He concludes that difference requires boundaries, which may be physical or symbolic. As such community is inevitably exclusionary.

Habermas's²⁴ concept of the lifeworld encompasses the idea of community in the sense of the informal and largely taken for granted norms, the networks of relationships, and the shared meanings of people's everyday world. Communicative action within the lifeworld sustains mutual understanding and consensus. Habermas believes that these important qualities of community are under threat in modern society. He states that:

in modern societies, economic and bureaucratic spheres emerge in which social relations are regulated only via money and power. Norm-conformative attitudes and identity-forming social memberships are neither necessary nor

²⁰ D.W. McMillan, D.M. Chavis, *Sense of community: A definition and theory*, «Journal of Community Psychology», XIV, 1986, pp. 6-23, p. 9.

²¹ A.P. Cohen, *Belonging: identity and social organization in British rural cultures*, Manchester, Manchester University Press, 1982; Id., *The Symbolic Construction of Community*, London, Tavistock, 1985.

²² Id., *The Symbolic Construction of Community*, p. 118.

²³ Ivi, p. 12.

²⁴ J. Habermas, *The theory of communicative action. Vol. 2: Lifeworld and system: A critique of functionalist reason*, Boston, Beacon Press, 1987.

possible in these spheres; they are made peripheral instead²⁵.

Bauman similarly observes that bureaucratic regulation increasingly takes the place of personal commitments and social bonds or obligations. «Modern power was first and foremost about the entitlement to manage people, to command, to set the rules of conduct and extort obedience to the rules»²⁶.

To address ‘social pathologies’²⁷ and lack of social cohesion, states develop a culture of control²⁸. For McKnight and Block: «All that is uncertain, organic, spontaneous and flowing in personal, family and neighbourhood space is viewed in system space, and in science, as a problem to be solved»²⁹. ‘These problems must be allocated to experts. «Professionalisation is the market replacement for a community that has lost or outsourced its capacity to care»³⁰. People are increasingly treated and see themselves as consumers or users of public services rather than participants or citizens combining to improve their lives. This tendency exacerbates the ‘loss of community’. Bauman describes the sense of loss of community: the «kind of world which is not, regrettably, available to us – but which we would dearly love to inhabit and which we hope to repossess»³¹.

The ‘loss of community’ has led to a change of focus from organic community to social networks or social capital. Putnam’s³² research provided evidence to demonstrate that those societies in

²⁵ Ivi, p. 15.

²⁶ Bauman, *Community: Seeking Safety*, p. 40.

²⁷ Cf. Habermas, *The theory of communicative action*.

²⁸ D. Garland, *The Culture of Control. Crime and Social Order in Contemporary Society*, Chicago, University of Chicago Press, 2001.

²⁹ J. McKnight, P. Block, *The Abundant Community: Awakening the Power of Families and Neighbourhoods*, San Francisco, Berrett-Koehler, 2010, p. 30.

³⁰ Ivi, p. 36.

³¹ Bauman, *Community: Seeking Safety*, p. 3.

³² R.D. Putnam, *Bowling Alone: The collapse and revival of American community*, New York, Simon & Schuster, 2000.

which social interaction was greater and social networks were stronger generated many benefits including to child development, safer public spaces, economic prosperity, and health. Building on these findings policy makers have been attracted to the communitarian agenda³³. Communitarianism values the community as collective, united and socially responsible.

The perception that community spirit is in decline is associated with an experience of powerlessness in the face of a volatile global economy and in relation to distant centralised government. This creates a sense of precarity³⁴. In such precarious circumstances people seek shelter and safety with people who appear to be the same as themselves perceiving 'community' a source of safety³⁵. Haidt³⁶ proposed that three core moral themes, autonomy, community and divinity, drive political ideology. He then identified six values emanating from these themes: care, fairness, liberty, loyalty, authority and sanctity. He found that the politics of the left appealed to three of these foundations: care, liberty and fairness, while the right understood that they could garner more support by using all six particularly those that were associated with community. These politicians understood how appeals to cherished or «sacred values»³⁷, even when they are against their economic self-interest, evoke strong, emotional responses from many people, especially those living precarious lives.

Sandel³⁸ has argued that progressive politics have neglected this moral discourse and as a result have allowed conservatives to exploit people's need for core values to give their communal life

³³ A. Etzioni, *The Spirit of Community. Rights responsibilities and the communitarian agenda*, London, Fontana Press, 1995.

³⁴ J. Butler, *Precarious Life: The Powers of Mourning and Violence*, London, Verso, 2004.

³⁵ Bauman, *Community: Seeking Safety*.

³⁶ J. Haidt, *The Righteous Mind: Why Good People are Divided by Politics and Religion*, London, Allen Lane, 2012.

³⁷ S. Atran, *Talking to the Enemy: Faith, Brotherhood and the (Un)Making of Terrorists*, New York, Harper Collins, 2010.

³⁸ M.J. Sandel, *Justice: What's the Right Thing to Do?*, London, Allen Lane, 2009.

meaning. The modern left distrust community as nurturing prejudice and intolerance and prefer to place their trust in human rights and individual citizens freely choosing their values and lifestyles. However, as Sandel observes: «Fundamentalists rush in where liberals fear to tread»³⁹. Fundamentalists tend to imbue communities with a common essence, with which members identify, and then provide protection from those seen as threats to this identity.

Such politics can lead to hate crime, inter-communal violence, violent extremism and ultimately totalitarian regimes⁴⁰. Esposito⁴¹ asserts that the politics of identity is based upon a misrepresentation of community. The loss of community is derived from the experience of *immunisation* designed to protect people from external threats and internal risks by immunising them from exposure to their obligations to each other. These conditions nurture the development of a politics of identity.

It is clear that many people yearn for an unrealisable ideal of community. Nancy writes:

The lost, or broken, community can be exemplified in all kinds of ways, by all kinds of paradigms: the natural family, the Athenian city, the Roman Republic, the first Christian community, corporations, communes, or brotherhoods – always it is a matter of a lost age in which community was woven of tight, harmonious, and infrangible bonds and in which above all it played back to itself, through its institutions, its rituals, and its symbols, the representation, indeed the living offering, of its own immanent unity, intimacy and autonomy⁴².

This construction of community is in many parts of the globalised economy in a state of turmoil. Rather than radically

³⁹ Ivi, p. 28.

⁴⁰ R. Esposito, *Terms of the Political: Community, Immunity, Biopolitics*, New York, Fordham University Press, 2013.

⁴¹ *Ibidem*.

⁴² J.L. Nancy, *The Inoperative Community*, Minneapolis, University of Minnesota Press, 1991, p. 9.

rethinking the concept of community, people seek more protection, more walls, and fewer obligations towards others.

4. *Discovering community*

For Esposito theories of community, whether Tönnies' organic *Gemeinschaft* or the Anglo-American communitarian model, can all be traced back to being founded on the concept of the proper.

The truth is that these conceptions are united by the ignored assumption that community is a 'property' belonging to subjects that join them together [*accumuna*]: an attribute, a definition, a predicate that qualifies them as belonging to the same totality [*insieme*], or as a 'substance' that is produced by their union. In each case community is conceived of as a quality that is added to their nature as subjects, making them *also* subjects of community⁴³.

When community takes the form of a property, it belongs to its members. This proprietary relationship to community carries exclusive entitlements which must be protected. Such an immunised formulation of community provides a fertile environment for ethnocentrism, racism and populist politics.

Is it possible in a society characterised by «liquid modernity»⁴⁴, which dilutes the solidity and solidarity of tradition, family and religion to conceive of a viable community? For Esposito the concept of community needs to be revitalised by separating it from identity:

Here, I intend community not as a locus of identity, belonging, or appropriation but, on the contrary, as a locus of

⁴³ R. Esposito, *Communitas: The Origin and Destiny of Community*, Stanford, Stanford University Press, 2010, p. 2.

⁴⁴ Z. Bauman, *Liquid Times: Living in an Age of Uncertainty*, Cambridge, Cambridge Polity Press, 2007.

plurality, difference and alterity. It is an option that is both political and philosophical, and one in which I believe the very task of contemporary political philosophy lies: liberating freedom from liberalism and community from communitarianism⁴⁵.

Esposito adopts an etymological approach to explaining the word, community. Other theorists such as Nancy have focused on the 'com' in community and emphasised 'with' or relationship based upon something shared. Esposito is interested in the meaning of the Latin word, *munus*, which he translates as having different meanings such as debt, gift and obligation. «The *munus* is the obligation that is contracted with respect to the other and that invites a suitable release from the obligation. The gratitude that demands new donations»⁴⁶. Communal duties and obligations, (and not common culture, interest or territory), are what sustains a community. Such obligations are observed freely without expectation of anything in return. They are gifts. They are an expression of altruism beyond the influence of the market or the politics of identity, which immunise people from communal responsibilities. Immunity

reconstructs their identity by protecting them from a risky contiguity with the other, relieving them of every obligation toward the other and enclosing them once again in the shell of their own subjectivity. Whereas *communitas* opens, exposes, and turns individuals inside out, freeing them to their exteriority, *immunitas* returns individuals to themselves, encloses them once again in their own skin. *Immunitas* brings the outside inside, eliminating whatever part of the individual that lies outside⁴⁷.

This construction of community relates to a *being with others* community rather than *having* a community to belong to and to use.

⁴⁵ Esposito, *Terms of the Political*, p. 55.

⁴⁶ Id., *Communitas*, p. 5.

⁴⁷ Id., *Terms of the Political*, p. 49.

Once the proper is excluded from community, it loses its essence and consequently a fixed meaning to which people are loyal and a fixed identity which people defend and exclude others from: Nancy's «community without community»⁴⁸.

Nancy⁴⁹ writes about the concept of 'the singular plural'. The individual is already in a state of 'being-with-others'. So far from community sheltering, protecting or containing, people in communities expose themselves to each other through *munus* or mutual obligations. For this to occur, Nancy and Esposito both believe that the disposition to appropriate some private or political end needs to be suspended so as to allow the experience of community to emerge. Community is not experienced or received passively by being in a community. It is experienced through being-with-others as activity.

Community, then, is never a constant entity offering a sense of belonging to a collective or group of individuals. It is the experience of contact temporarily in a specific space through which people are no longer individuals but relating to others in a way that separates them from themselves. The relationships do not shape, enhance or offer other goods to their being. Rather, their being is the relationship. Community is the active removal of the appropriation of identity or propriety that immunises people from their obligations to each other. People enter into communion to give (*munus*), not to receive (*donum*) a gift. By suspending their self-centredness, people move from their interior lives to the exterior, and focus on their obligations to others rather than their need to have and to protect.

In deconstructing the concept of community based upon *having*, these philosophers seem to open up the concept of community to a new possibility of *being with*. Yet, to the untrained philosopher their writing seems abstract. From a restorative justice point of view, the critical question is: what do their ideas mean for practice or *doing*? Their analysis of how globalisation, new technology, media, and identity politics has created nihilism, a loss of general

⁴⁸ Nancy, *The Inoperative Community*, p. 71.

⁴⁹ *Ibidem*.

meaning, also seems pessimistic. Yet this loss opens a space in which the world can become visible with nothing transcendent to obscure it. Community enables each singularity, each specific event, each person's experience to be in itself meaningful. It facilitates new thinking and new possibilities of action.

Esposito urges us to activate new spaces of the common. He asserts that the politics of private rights and the economics of private property should only create, hold and protect the space that is required for co-existence. Yet this requires that the political must be restricted to accommodate this space.

5. *Activating community through restorative justice*

Restorative justice can only exist in such a complex and vulnerable space. It is dependent upon powerful systems for its authority and resources. Yet it operates in the world of being, meaning, emotion, and relationship. It needs to be protected from colonisation and commodification by politics and the market. An immune system is required as a filter between the political and economic systems and the space in which people can be supported to be open with each other and to communicate with authenticity. It should not act as a barrier to contact with the surrounding environment. Van Ness and Strong distinguish the role of the state from that of the community in relation to restorative justice. «In promoting justice, the government is responsible for preserving order, and the community is responsible for establishing peace»⁵⁰.

How can restorative justice activate such spaces? Its search for community and authority has led it to plunder indigenous rituals especially in post-colonial societies. This cultural appropriation is ethically dubious⁵¹. While there is much to learn from traditional

⁵⁰ D.W. Van Ness, K.H. Strong, *Restoring Justice: An Introduction to Restorative Justice*, New York, LexisNexis-Anderson Publishing, 2010⁴, p. 46.

⁵¹ H. Blogg, *A just measure of shame? Aboriginal youth and conferencing in Australia*, «British Journal of Criminology», XXXVII (4), 1997, pp. 481-501; K. Daly, *Conferencing in Australia and New Zealand: Variations, research findings, and prospects*, in A.

cultures, it is necessary to discover forms of community that fit the conditions of modern society. Esposito advises us not to fill the void in community with old or new myths. The other tendency within restorative justice is to refer to healing as if the purpose is therapeutic, requiring facilitators with a social scientific knowledge that offers them strategies and techniques to achieve restorative outcomes. The risk in these options is that community is instrumentalised and becomes a practice of appropriating relationships to influence people. The concept of *having* (possession, property or appropriation) is private not common. This may explain why, if a restorative process is satisfactory, the victim rarely seeks compensation, understanding that loss cannot be replaced materially, or harm repaired by money.

The strategic approach to restorative justice separates the parties, the process and the outcomes and insists who should be recognised as the parties, what process will be most effective in achieving which outcomes. What if they are inseparable? What if the parties, the process and the outcomes are all one and are what we call community?

When there is an emergency, whether it is crime, a fire, or a serious accident, the police, the fire service or the ambulance service will erect a 'cordon sanitaire' to keep the public at a distance from the scene. This may be to protect evidence, to keep the public safe, to prevent contagion or to allow the professionals to do their work without distraction. This form of immunisation is justified by the exceptional circumstances⁵².

Crime becomes a justification for the state to activate an immune system long after the initial emergency is over. Perpetrators and victims are kept apart. In some cases, the perpetrators are confined in prisons awaiting trial. Those most affected by the harm caused by criminal behaviour are rendered passive and, in the case of most victims, invisible. When people become involved in a crime either as victim or perpetrator or their families and friends, they come to realise that their experience of the harmful incident

Morris, G. Maxwell (eds.), *Restorative justice for juveniles: Conferencing, mediation and circles*, Oxford-Portland, Hart, 2001.

⁵² G. Agamben, *State of Exception*, Chicago, University of Chicago Press, 2005.

is not important. The professionals within the criminal justice system attach to the crime meanings that are required by the law and by legal procedures designed to prosecute, to defend, to convict and to sentence. In doing so, they steal the conflict (Christie) and the narratives of those most affected⁵³.

Can the crisis of a crime also cause a rupture and an opening in the immune system? The harm and suffering associated with crime interrupt and disrupt the normal narratives of life. The existential difficulties that arise from this rupture cannot be effectively addressed by more police, by more prisons, and by building walls to exclude people.

The perpetration of harm by one person on another can be one way of bringing people together. This is because such actions are experienced as injustice. Sandel⁵⁴ has written that justice is intimately involved in the membership of a community, the obligations owed to it and the support available from it. Restorative justice is familiar with the idea of obligations. «When you commit a crime, you create a certain debt, an obligation, – to restore, to repair, to undo»⁵⁵. The critical importance of obligation resonates with Esposito's understanding of community. Restorative justice processes engage people in considering what obligations the person responsible for harming another could freely give and what obligations the others have towards the perpetrator.

Community is an empty container, a void that is neither 'proper' nor a property. Consistent with this, restorative justice theory would add 'without dominion'⁵⁶. When this 'community without community' is activated with people, it generates a network of relations, which is unconcerned with race, class, gender,

⁵³ A. Pemberton, P.G.M. Aarten, E. Mulder, *Stories as property: Narrative ownership as a key concept in victims' experiences with criminal justice*, «Criminology & Criminal Justice», XIX (4), 2018, pp. 1-17.

⁵⁴ M. Sandel, *Public Philosophy: Essays on Morality in Politics*, Cambridge (MA), Harvard University Press, 2005, p. 174-178.

⁵⁵ H. Zehr, *Retributive Justice, Restorative Justice*, in G. Johnstone (ed.), *A Restorative Justice Reader: Texts, Sources, Contexts*, Collompton, Willan, 2003, pp. 69-82, p. 79.

⁵⁶ J. Braithwaite, P. Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice*, Oxford, Oxford University Press, 1990.

sexuality, and culture. It is «an absolutely unrepresentable community»⁵⁷. It is an event made unique by specific people being with each other at a specific time and place.

Being with a person in the same space and for the same time provides an open space that separates the singularities of each person from each other revealing both the singular and the plural. The individuals simply come into contact. For Agamben this exposure prepares people for the opportunity to be in relationship and to communicate.

The restorative process as community is letting go temporarily of our need to immunise ourselves from others. It «binds individuals to something beyond themselves»⁵⁸. It is about difference rather than sameness, temporary space rather than permanent place, openness rather than closedness, the vulnerability of exposure rather than comfort. Community enables the exteriorisation of the inside. This links to the restorative process of externalising the harm so that the parties can *express* rather than *repress* the suffering that they have experienced. This suffering is singular, such as it is specific to the individual.

Community also becomes an activity, something people do rather than something people are in. The activity is communication and the struggle to establish connection across the space between. Community is about how to live equitably and in interdependence with an increasingly diverse range of others. Care, rather than interest, lies at the basis of community. Community is determined by care, and care by community. One may not exist without the other: «care in common»⁵⁹.

Restorative justice strives to include all those affected by an act of harm to be together in one place. The space where people meet must be consciously designed so as to resist the domination by the power of the system or the expert⁶⁰. As Hooks stated:

⁵⁷ G. Agamben, *The Coming Community*, Minneapolis, University of Minnesota Press, 1993, pp. 24-25.

⁵⁸ Esposito, *Terms of the Political*, p. 49.

⁵⁹ Ivi, pp. 25-26.

⁶⁰ Christie, *Conflict as Property*; Braithwaite, Pettit, *Not Just Deserts*.

I am located in the margin. I make a definite distinction between that marginality which is imposed by oppressive structures and that marginality one chooses as a site of resistance – as location of radical openness and possibility. This site of resistance is continually formed in that segregated culture of opposition that is our critical response to domination⁶¹.

The importance of the location is that it provides a space where people can resist imposed ‘otherness’ and, if they choose, reclaim or reconstruct their own being and where community, even if only temporarily, can be created. In such conditions, they may imagine new possibilities.

In a restorative process what the parties have in common is the event of harm and the obligations that arise from it. They are different in terms of narratives, emotions, needs, questions and requests. Each of these differences are a potential source of contention. Restorative justice offers people the time and space to address issues that concern them. As Sennett wrote:

the good alternative is a demanding and difficult kind of cooperation; it tries to join people who have separate or conflicting interests, who do not feel good about each other, who are unequal, or simply do not understand one another. The challenge is to respond to others on their own terms⁶².

He adds that «people’s capacities for cooperation are far greater and more complex than institutions allow them to be»⁶³. The reality of restorative processes is that each party needs the other to listen to their narratives, to understand their emotions, to

⁶¹ B. Hooks, *Yearning: Race, Gender, and Cultural Politics*, Boston, South End, 1990, p. 153.

⁶² R. Sennett, *Together: The Rituals, Pleasures and Politics of Cooperation*, London, Allen Lane, 2012, p. 6.

⁶³ Ivi, p. 29.

answer their questions and to address their needs and requests.

Agamben⁶⁴ argues that modern political discourse is impoverished and instrumentalises language, draining words of meaning. Such is the exposure of crime in journalism and in the popular culture that those who are closest to an actual incident struggle to think about it or to articulate the experience without using the thin language of the media. Restorative practices are based upon dialogue or communicative action⁶⁵ rather than the strategic action of politics. Arendt describes this distinction:

Power is actualised only where words are not empty and deeds not brutal, where words are not used to veil intentions but to disclose realities, and deeds are not used to violate and destroy but to establish relations and create new realities⁶⁶.

It is important both that people are supported by processes that enable them to sustain a sense of coherence of meaning when struggling to resolve conflict between their self-interests and their need to live equitably with others. Meaningfulness, perhaps the most important component to individuals engaged in addressing conflict, is not a fixed commodity to be found, understood and appropriated. It emerges through dialogue; «that flow of meaning, that encounter with existence outside of itself that I define with the word *communitas*, which refers the constitutively open character of existence»⁶⁷.

The preparation and dialogical processes of restorative justice enable people to express themselves and to tell their stories in a structure and language of their own choosing and to listen to and question others' narratives. Out of this process meanings and new

⁶⁴ Agamben, *The Coming Community*.

⁶⁵ Habermas, *The theory of communicative action*.

⁶⁶ H. Arendt, *The Human Condition*, Chicago, University of Chicago Press, 1958, p. 200.

⁶⁷ Esposito, *Terms of the Political*, p. 61.

narratives emerge that are thicker⁶⁸ than any broad political discourse could muster. In community people are present with each other. While in the immunised system of criminal justice people are apart and represented by professionals' discourses whose aim is to maintain order rather than reflect the complex reality of lived experience. As Esposito states:

The community isn't anything else except the border and the point of transit between this immense devastation of meaning and the necessity that every singularity, every event, every fragment of existence make sense in itself. Community refers to the singular and plural characteristic of an existence free from every meaning that is presumed, imposed, or postponed; of a world reduced to itself that is capable of simply being what it is: a planetary world without direction, without any cardinal points. In other words, a nothing-other-than-world. It is this nothing held in common that is the world that joins us [*communari*] in the condition of exposure to the most unyielding absence of meaning and simultaneously to that opening to a meaning that still remains unthought⁶⁹.

Restorative processes are designed to enable people affected by harm to suspend the very general public discourses of crime and punishment that immunise them from their obligations to each other and to speak more personally and specifically about their actual experience of suffering or perpetrating harm. Through this the parties may find that they are being in a new community. As Gadamer writes:

To reach an understanding with one's partner in a dialogue is not merely a matter of total self-expression and the successful assertion of one's own point of view, but a

⁶⁸ C. Geertz, *The Interpretation of Cultures*, New York, Basic Books, 1973.

⁶⁹ Esposito, *Communitas*, p. 149.

transformation into a communion, in which we do not remain what we were⁷⁰.

This does not mean that differences are extinguished, but that relations have become different.

The participative nature of restorative justice means that the parties are active in undoing injustice and in restoring the obligations that people owe each other. In this way justice is not a commodity offered by professionals in the system but an experience that emerges out of being with others in dialogue. The communal nature of this experience rests on people making themselves accountable for the obligations that they have freely accepted towards others. If they have failed to keep their commitment to these obligations, they commit to restore them without any expectation of remuneration. In this experience of community through restorative justice people make themselves accountable rather than are made accountable.

6. *An exemplar of activating community*

This is a case study from the ALTERNATIVE research project on restorative justice and intercultural conflict⁷¹. In a working-class community in Belfast two neighbours were in dispute. One is a longstanding, local resident and the other is an eastern European family. The dispute arose in the summer when many local people sit and have parties in their gardens and when local people celebrate their cultural and political identity through putting up flags. The eastern European family complained about weed killer and rubbish coming into their garden and some bunting or tickertape blowing in the wind and falling over the fence into their property. The local woman complained that they were not respecting her

⁷⁰ H-G. Gadamer, *Truth and Method*, 2nd rev. edition, London, Sheed and Ward, 1989, p. 341.

⁷¹ T. Chapman, K. Kremmel, *Community in Conflict in Intercultural Contexts and how Restorative Justice can Respond*, in B. Pali, I. Aertsen (eds.), *Restoring Justice and Security in Intercultural Europe*, Abingdon, Routledge, 2018.

culture. Other residents in the street were supporting the local woman. There was a risk of an escalation into violence. The house and car of the eastern European family was damaged maliciously and a house in the street occupied by another foreign family was vandalised. Other immigrants assumed that the foreign nationals were victims of xenophobia.

A worker from a local community organisation, who had been trained in restorative practices, was asked by a representative of the east European community to intervene. The worker visited the foreign family first to listen to their story. He said that he just wanted to understand their perspective and was not taking responsibility for dealing with the complaints. They told him about their grievances. They had called the police, but no action was taken. He then visited the other person and heard her account of the events.

Having listened to both sides of the story the worker called a meeting inviting the local politician, another community activist, two police officers, neighbourhood wardens, the local woman and her supporters, the east European family, another family from the same country to support and a family from another country who lived in the same street. During the meeting everyone had the opportunity to give their version of the events and question each other. It was agreed that both neighbours had valid perspectives and interests and that, although it had an ethnic dimension, it was a simple dispute between two neighbours. The local people invited the foreign families to a street party and asked them to bring their food to the barbecue to share with the others. People shook hands and committed to be better neighbours in future. All parties agreed that it had been a just process, which succeeded in avoiding violence and in improving the security of the street.

This story illustrates that a restorative process can be effective in not only resolving conflict but also improving community relations. The first reaction to the conflict took the form of immunisation. The system's response through the police was ineffective as at that stage no crime had been committed. Then several acts of vandalism were committed by local people with the intention of retaliating and/or intimidating. This led both the local

community and the foreign nationals to define the conflict as cultural or racist. This would have both politicised and escalated the conflict and would probably have resulted in violence.

The restorative response framed the dispute according to the obligations that neighbours have to each other rather than crime or cultural conflict. All those affected by the harmful nature of the conflict came together in one place for a period of time to talk about what had happened and what to do about it. The communicative action focused on the real issues of a specific situation rather than the general political discourse of foreign immigrants.

Just as harmful actions towards another are irreversible⁷², the harm caused can be irreparable. Agamben writes:

The Irreparable is that things are just as they are, in this or that mode, consigned without remedy to their way of being. States of things are irreparable, whatever they may be: sad or happy, atrocious or blessed. How you are, how the world is – this is the irreparable⁷³.

The needs that arose from this harmful dispute were not of a material nature that can be repaired or compensated. They were existential values such as justice, safety, and respect, which are required for conviviality. Commitments to be good neighbours were made freely and hospitality was extended to the newcomers.

This process will not eliminate inter-communal conflict. It provides an exemplar of what is possible through community, Ferrara refers to as «the force of *what is as it should be* or the force of the *examples*»⁷⁴. An exemplar can open people to the possibility that how they have conceived of community can be different. It broadens people's horizons⁷⁵. Agamben asserts that such examples are exemplars of the coming community.

⁷² Arendt, *The Human Condition*, p. 237.

⁷³ Agamben, *The Coming Community*, p. 90.

⁷⁴ A. Ferrara, *The Force of the Example: Explorations in the Paradigm of Judgment*, New York, Columbia University Press, 2008, pp. 2-3 (author's italics).

⁷⁵ Cf. Gadamer, *Truth and Method*.

7. *Conclusions*

The great questions facing Europe include: how can we be more hospitable without generating hostility? How can we live together in peace, with respect and with conviviality? These questions cannot be answered solely through politics. Governments can create and resource and protect the space in which different peoples *live and be* together. Community, in this sense, is not a constant state or a place or a set of common interests or an identity. Nancy, Agamben and Esposito seek to transform community from identity and belonging (being-in) to community that generates more democratic, open and fluid relationships with others (being with). For Agamben, this is a community of singularities, fragments: it is «of a being whose community is mediated not by any condition of belonging [...] nor by the simple absence of conditions [...] but by belonging itself»⁷⁶.

Community is a practice of people being with others in one place for a specific time to speak about their obligations to each other. Restorative justice is one means of activating community when people come together to find just resolutions to injustice and harm. In this sense community is not a place of arrival, such as a home which is warm and safe. It is a place from where one departs, having resolved one's obligations, to get on with one's life after an unpleasant interruption.

⁷⁶ Agamben, *The Coming Community*, p. 85.

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