Nomadic Justice? Restorative Justice on the Margins of Law

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P RACTITIONERS OF RESTORATIVE JUSTICE OFTEN DESCRIBE THEMSELVES AS OPERAT-
ing on the margins of the formal justice system. However, they differ with
regard to how they problematize this marginal status. Some embrace what
seems tantamount to a nomadic existence and view their outsider role as an
opportunity to challenge the norms and values of the criminal justice system;
others see greater inclusion in the formal justice system as their ultimate goal.
What is the basis of this claim to marginality?

In this article, we examine the tensions that exist within the restorative justice
movement as it seeks to construct for itself a collective identity and define its
broader goals. Our main contention is that the "marginal" status claimed by most
restorative justice practitioners, and their fears of cooptation, are more imagined
than real; indeed, restorative justice programs appear largely as "outsiders within"
the criminal justice system. Nonetheless, it may be possible for restorative justice
programs to pursue a specific form of nomadism — a politics defined by the
creation of "subaltern counterpublics" (Fraser, 1997) that would serve as the basis
for transformative interventions into the criminal justice system. In this manner,
a "transformative politics" of restorative justice would involve a distancing from,
and engagement with, the criminal justice system to challenge and rewrite the
retributive codes of this system without becoming a mere appendage to its normal
operation.

Nomadic Justice

The postmodern critique of the "will to totality" defined the dominant
paradigms of social theory (e.g., Marxism, Parsonian functionalism) and brought
into prominence the interpretation of social phenomena as decentered, frag-

mented, and marginalized. Liberated from the strictures of historical "truth" and "objectivity," many scholars attached themselves to the symbolism of the nomad (Braidotti, 1994, 1999; Brekhus, 1998; Guattari and Negri, 1985; Deleuze and Guattari, 1987). This entailed a symbolic recasting of the intellectual as a traveler, unfixed and open to new knowledges and experiences. Unlike the "universal subject" of Marxism (i.e., the proletariat), who was assumed to be at the forefront of social change, the nomad is portrayed as a free-floating entity who defies essentialized identification — a "trickster" who refuses and subverts the imposed meanings of hegemonic society (Harraway, 1992).

The academic fashion of "nomadology" roughly coincided with a growing awareness of the presence of new social actors in the political sphere. These "new social movements," such as the feminist, peace, environmental, and student movements (see Boggs, 1986; Habermas, 1981; Hirsch, 1988; Laclau and Mouffe, 1985; Offe, 1985), were viewed as being qualitatively different from the "old movements"; that is, many scholars argued that whereas the old social movements mobilized around issues of material well-being, the new movements were firmly rooted in the politics of culture and representation. Some have challenged facile distinctions between new and old movements (see Carroll and Ratner, 1995; Epstein, 1990; and Plotke, 1990), but the term "new social movements" does draw attention to a general shift in social movement goals away from the explicit articulation of grand narratives of societal transformation to political mobilizations directed primarily toward addressing the immediate concerns of everyday life. We believe that there are interesting parallels between the restorative justice organizations that have become prevalent in recent years and the concept of new social movements. Before examining this connection, however, we articulate the linkage between new social movements and the idea of the "nomad."

Theorists of the new social movements have embraced the image of the "nomad" to describe the actions of these new social actors (Melucci, 1989, 1994, 1995; Patton, 1988). According to Melucci (1989), new social movements are characterized by four features. First, these movements seek to challenge the dominant symbolic codes of society (e.g., forms of exclusion based upon sexual orientation) rather than reconfigure the distribution of material goods. For Melucci, the call for material redistribution may be an aspect of challenging societal codes, but it is not the defining criterion of the new social movements. Second, new social movements do not undertake collective action with a resolute focus on achieving broad societal change. Instead, these movements emphasize the form that their action takes, presenting this as a model for alternative lifestyles and social patterns. Third, new social movements exist as submerged networks in the realm of everyday life. They become visible in the public domain only when a major protest or media campaign occurs, but this does not mean that they are simply dormant or unproductive when they are not protesting; instead, their existence on the outskirts of formal political activity allows these movements to serve as laboratories for the

development of a counter-hegemonic culture of protest. Finally, new social movements draw connections between the micro-level existence of the individual actor and broader global occurrences such as environmental destruction, nuclear weapons development, and economic globalization. The combination of these four factors has led Melucci (1989) to describe new social movements as "nomads of the present" since they are entrenched in the everyday politics of the lifeworld rather than oriented toward the capture of political power. This lack of mainstream political ambition allows new social movements to exist as public spaces that are autonomous from formal political structures and to act as independent breeding grounds for new political and cultural ideas.

This nomadic character of the new social movements is crucial to Melucci's vision of democratic society. For him, social movements become self-limiting when they view success in terms of incorporation into, or control over, the dominant systems of society, such as the state. The price of political inclusion for social movements is the loss of their autonomy — the very quality that provides them the space necessary for a creative re-imagining of the social world.

> A necessary condition of democracy in this sense are public spaces independent of the institutions of government, the party system and state structures. These spaces assume the form of an articulated system of decision-making, negotiation, and representation, in which the signifying practices developed in everyday life can be expressed and heard independently from formal political institutions.... The main function of public spaces is that of rendering visible and collective the questions raised by movements. They enable the movements to avoid being institutionalized and, conversely, to ensure that society as a whole is able to assume responsibility (i.e., institutionally process) the issues, demands, and conflicts concerning the goals and meaning raised by the movements (Melucci, 1989: 173–174).

By remaining firmly entrenched on the margins of the political, Melucci suggests that new social movements can articulate the injustices experienced in the everyday lives of individuals and demand that they be remedied, without needing to accept institutionalization or cooptation as means to achieve political recognition.

Restorative Justice as a New Social Movement

Restorative justice has emerged in recent years as an alternative to the retributive practices of the criminal justice system. The term "restorative justice" assembles under its common heading a variety of practices, including victim-offender mediations, victim-offender reconciliation programs, family group conferences, sentencing circles, and community accountability panels. These alternative practices were introduced to address widespread complaints that retributive

justice is ineffective in combating crime, contributes to offender recidivism through the brutalization that occurs in prisons, and ignores the needs of victims, offenders, and communities. The conceptual underpinnings of the restorative justice alternative derive from ideas such as communitarianism (Etzioni, 1994), reintegrative shaming (Braithwaite, 1989), peacemaking criminology (Pepinsky and Quinney, 1991), as well as traditional Aboriginal philosophies of conflict resolution. In general, the common thread in these multiple influences is an emphasis on the collaboration of the victim, offender, and community in resolving the specific and gross harms caused by crime (Marshall, 1995; Presser and Van Voorhis, 2002).

The "paradigm shift" (Zehr, 1995) in criminal justice practices sought by proponents of restorative justice is described by some as a "movement" rather than a program or policy recommendation (Van Ness and Heetderks Strong, 1997). Daly and Immarigeon (1998) go so far as to suggest that restorative justice can be viewed as a "new social movement." Drawing on Jan Pakulski (1988), they identify three characteristics that restorative justice and new social movements share:

(1) A value orientation (rather than just an instrumental orientation) that is idealistic. Although the goals and values are secular, the new social movements "engender a spirit of moral crusade that resembles religious causes" (Pakulski, 1988: 249)

(2) A diffuse, non-programmatic character and an anti-organizational orientation. New social movements do not "commit supporters to any single program, tactic, or strategy; they have no single ideological orientation…no obligatory platform" (*Ibid.*: 250).

(3) An inclusive, amorphous structure. New social movements have "an open, public character; they reject the notion of membership, organizational division of roles, and functional hierarchy. The emphasis is on broad egalitarian participation and unselfish dedication..." (*Ibid.*: 250; Daly and Immarigeon, 1998: 29).

In our view, this characterization oversimplifies the restorative justice movement. Missing from this depiction of restorative justice is a sense of the extent to which this movement is marked by tensions and conflict with respect to the formation of its collective identity. Indeed, a social movement is rarely a uniform and cohesive body. Within the broad scope of a social movement, multiple social movement organizations often exist (see McCarthy and Zald, 1972, 1977; Diani, 1992) in competition with one another to "frame" (Snow and Benford, 1988, 1992; Snow et al., 1986) the issues and objectives that guide the movement's activity.

The competition between opposing visions of restorative justice is evident in the restorative justice movement in British Columbia. Elsewhere, we have identified two ideal-typical characterizations of the organizations that operate

within the boundaries of this movement (Ratner and Woolford, 2002). We describe one type of restorative justice organization as "governmentalist." Governmentalist programs typically function as local divisions of the criminal justice system and attempt to discipline and "responsibilize" (Burchell, 1992) offenders to deter them from future criminal activities. Although ostensibly based on community values, the goals of such programs closely resemble the social control interests of the neoliberal state. Moreover, the low cost of their largely volunteer-run operations appeals to politicians concerned with balancing state budgets. For example, in British Columbia, Attorney General Geoff Plant made the following statement with regard to restorative justice in B.C.:

> The value here, I think, is that not only can we create better solutions for individuals who may become involved in the criminal justice system, but we can in fact also save money. I think that across government we have opportunities to do things better and to do them less expensively. It's a marvelous opportunity. It does require real commitment at the community level, commitment by volunteers, commitment by systems experts to make these projects and programs work (Hansard, 2001).

Governmentalists respond to this neoliberal desire for cost savings by emphasizing the money saved by the criminal justice system when offenders are processed through restorative justice programs rather than the courts. In this sense, in contrast to Daly and Immarigeon's (1998) contention about the similarities between restorative justice and new social movements, governmentalist restorative justice practitioners are not averse to instrumental concerns and are willing to accept a degree of programmatic definition in exchange for increased state contributions to the maintenance of their operations.

A second category of organizations within the restorative justice movement we call "communitarians." In opposition to governmentalists, communitarians view restorative justice as a form of social justice tailored to meet the specific needs of the community in which it is implemented. For practitioners who adhere to a communitarian perspective, restorative justice programs need to maintain a careful distance from the formal criminal justice system to allow for community autonomy in the shaping of local justice options. This autonomy is difficult to maintain, however, because the police and the courts are the primary source for referrals for these programs. Moreover, the funding required by these programs, although relatively minimal, typically comes from criminal justice system sources. These factors lead to increased pressure on communitarian restorative justice practitioners to design their justice processes in a manner compatible with the formal justice system in order to secure vital referrals and funding.

Communitarian practitioners of restorative justice often resist attempts to dilute the restorative thrust of their programs by seeking alternatives to dependence on the criminal justice system. For example, they open their processes to

accept referrals from local schools or the community, bypassing the mechanisms of the formal justice system. They also attempt to diversify their funding sources, looking to local community-based funding opportunities.[1]

This brief sketch illustrates a major split within the restorative justice movement, one that defies any simple characterization of restorative justice as being a "nomadic" new social movement operating solely on the margins of the criminal justice system. Indeed, the competing bodies within the restorative justice movement hold contrasting visions of where the movement should situate itself in relation to the criminal justice system. Governmentalists complain about their marginality and seek greater cooperation with the criminal justice system, so that their programs become an integral component of its operation. In contrast, communitarians celebrate their marginal status and view it as a means of greater procedural freedom. With this freedom, they envision restorative justice as an opportunity to construct new community values and social networks — or what they often refer to as "social capital" (Putnam, 2000) — in a manner that improves the livability of these communities for all their residents.

The Threat of Cooptation and the Illusion of Margins

Signs are beginning to appear that the Canadian state has accepted a governmentalist vision of restorative justice. For example, the forthcoming Youth Criminal Justice Act (YCJA) is written in a language that echoes the teachings of a conventional brand of restorative justice. It calls for the rehabilitation and reintegration of young offenders, suggests that youth justice processes be used to reinforce respect for societal values, encourages youth justice processes to repair the harm done to victims and the community, and recommends that measures taken against young offenders meet the specific needs of that person in a meaningful way. Moreover, Section 19 of the YCJA legislates the use of conferences for youth offenders at the discretion of a criminal justice system employee (e.g., a youth justice court judge, a police officer, a prosecutor, or a youth worker). To meet the requirements of this section, the province of British Columbia has appointed 10 youth probation officers to administer youth justice conferences. These conferences will involve the young offender, their victim(s), and selected members from each party's support network. Together, the conference participants fashion an agreement that the probation officer will bring to the judge overseeing the case. The judge has the option of replacing the criminal sentence with the conference agreement, adding elements of the conference agreement to a lessened sentence, or rejecting this agreement in favor of the standard punishment for the criminal offense.

This change in the administration of youth justice in Canada provides a degree of legitimacy to restorative justice practices. In fact, many governmentalist restorative justice practitioners view this as a first step in achieving broader acceptance of restorative justice. However, the governmentalists would like to see

YCJA referrals go directly to the established community programs that have dealt with "alternative measures" referrals for many years. In this respect, the strategy of the governmentalists is to present their restorative justice programs in a fashion that makes them more likely to fit the criteria of this Act. To achieve this goal, governmentalists are working to make judges and other criminal justice professionals aware of their programs so that these professionals will choose to send their referrals to community-based programs rather than to probation officers. In contrast, communitarian restorative justice practitioners are more suspicious of the inclusion of restorative justice principles in the YCJA. They argue that, since the earlier Young Offender Act was more vague with regard to alternative measures, it actually provided restorative justice programs with more freedom with regard to the way in which they operate, allowing them to shape their processes to fit the specific needs of the victim, offender, and community. For this reason, they are critical of the proposed increase in the involvement of probation officers and other criminal justice professionals in delivering restorative justice in B.C., arguing that this is another step in removing community stewardship of local justice processes.

The formalization of restorative justice practices is also evident in provincial criminal justice policy. In British Columbia, the Ministry of the Attorney General has developed a "framework" to guide the establishment of restorative justice programs within the auspices of the formal justice system. Through this framework, the practice of restorative justice is given specific (almost retributive) definition and codified in official terms.

> In criminal law, a restorative justice approach involves holding offenders accountable for their actions, with immediate and meaningful consequences, and healing for the individuals, families, and communities affected by crimes. These approaches [i.e., restorative justice and collaborative law] are not alternatives to the current justice system. Rather, they will be used to *enhance* the system, as new processes available within the formal justice system and in the community (Ministry of the Attorney General for B.C., 1998).

Communitarian practitioners of restorative justice worry that this framework will institutionalize restorative justice procedures in a way that restricts the flexibility of their activities. In their view, state interventions in the practice of restorative justice threaten to transform restorative justice into a mere "enhancement" of the criminal justice system — an addition to existing formal justice practices that serves to reinforce their legitimacy and overcome their weaknesses. They would prefer that restorative justice be rooted in the alternative values of local communities and thereby continue as an oppositional space from which criticisms of the formal system can emanate. Governmentalists, however, seek greater recognition from the provincial government with respect to their programs.

Their goal is to educate politicians on the benefits of restorative justice in order to encourage them to further institutionalize restorative justice practices.

The tension between governmentalist and communitarian views of the relation of restorative justice to the state was evident at a recent conference in the community of Chilliwack that brought together restorative justice practitioners from every region of British Columbia. At these meetings, governmentalist practitioners focused on how to increase funding for their programs, how to redesign their programs to meet the requirements of the new Youth Criminal Justice Act, how to effectively evaluate their programs to obtain data with which they can convince governments of the cost-saving potential of restorative justice, and how to mobilize the various programs in the province to present a united front that would secure greater inclusion in the formal justice system. Communitarians, who were in the minority at this meeting, were wary of increased state involvement in their programs. Although they desire greater funding for their programs, they did not want this funding to be tied to expectations that dilute the transformative value of restorative justice.[2] They were also skeptical about the prospects for forming a provincial restorative justice organization. While governmentalists argue that a province-wide organization will help promote a standardization of operations and training, as well as greater accountability for restorative justice programs, communitarians respond that standardization presents a serious draw-back. For them, any formalization of restorative justice practices prevents it from responding to the specific needs of victims, offenders, and communities.

These differences, drawn from the restorative justice community in British Columbia, demonstrate that the future of restorative justice is a contested topic within this movement. Moreover, the polarization tendency within the restorative justice movement has given rise to untenable conceptions about the position of restorative justice in relation to the state and the criminal justice system.

First, governmentalists and communitarians hold misperceptions about the likelihood of cooptation. Their hopes or fears are based on a model of cooptation witnessed in the formalization and bureaucratization of diversion (Cohen, 1985). Like restorative justice, the movement to introduce "alternative measures" and "diversion" into the formal justice system kindled hope among criminal justice researchers and practitioners for a brief period, until these processes became domesticated and co-opted to supplement the social control machinery of the state. However, cooptation of this order is less than inevitable given the demise of the welfare state and the ascendancy of neoliberal governmentality. The neoliberal strategy of "governing at a distance" (Miller and Rose, 1990, 1995; Rose, 1993, 1996) signals a shift from earlier trends toward *assimilating* alternative programs to serve the interests of governance. Now, neoliberal governance provides alternative programs with a degree of autonomy and freedom, but on the assumption that the self-regulation of these programs will correspond to the rationality of the market. In fact, the rationality of the market helps to shape the self-regulation

implemented by alternative justice programs by creating a competitive field in which different alternative programs struggle to present themselves as meeting the requirements of this market logic (e.g., in terms of cost-effectiveness and expediency), in order to secure state and private financing. In this rivalrous environment, governmentalist programs of restorative justice, in particular, can play a role in the neoliberal governance of community by carrying technologies of discipline and technologies of self into communities without taxing state resources. In other words, they perform the work of government by extending the reach of neoliberal socialization deeper into the community without necessitating a physical expansion of the machinery of the criminal justice system.

Given the role that governmentalist programs already play in meeting the objectives of governance, and the distinctively marginal character of communitarian programs, the state has little motive to structurally incorporate restorative justice programs. Therefore, the governmentalists' desire to obtain the legitimacy conferred by incorporation in the formal justice system, and the communitarians' fear that the state is seeking a means to assume control over their radical programs, do not appear entirely realistic in the current political context. Instead, the federal and provincial governments are likely to maintain their tenuous relationship with restorative justice programs, promoting the principles of restorative justice when it is politically useful, but not in a manner that requires a meaningful expenditure of criminal justice resources. In this sense, governments need not commit to an overarching punishment narrative, and can embrace restorative or retributive justice depending on the prevailing political atmosphere. That is, in one context a government may congratulate itself for its commitment to community-oriented, reintegrative justice programs, while in another they may seek political profit by claiming to be "tough" on crime and by contributing resources to punishment. Indeed, "pastoral" (Pavlich, 1996), "exclusionary" (Young, 1999), and militarized forms of crime control often exist side-by-side in modern societies.

More important, since restorative justice programs have been successful in enlisting local volunteers and finding community donors, the federal and provincial governments feel no compulsion to increase funding to these programs to any significant degree. As it stands, these governments receive the benefits of governmentalist restorative justice programs that responsibilize and reintegrate community offenders without having to commit substantial resources to their operations. Moreover, any dramatic resourcing or funding of these community-based programs would only increase the ability of these programs to challenge the formal criminal justice system. However, if governments maintain these programs in their current deprived state, restorative justice programs will amount to little more than a useful, cost-effective appendage to the criminal justice system. This is certainly preferable, in the eyes of governments, to providing restorative justice programs with the capacity to sustain an oppositional challenge to a retributive-based criminal justice system.

Second, the distance between governments and restorative justice programs should not be viewed as evidence of the "nomadic" or "marginalized" character of these programs. To some extent, descriptions of restorative justice programs as "marginalized" represent a romantic vision that conflates the practitioners of these programs with those who are truly marginal to the criminal justice system — offenders. Communitarian restorative justice practitioners, in particular, often attempt to identify with this latter population by claiming a common marginality. However, this claim hides the disparity between the two parties. This desire to construct a sense of homology between the "dominated dominants" — that is, members of the dominant classes who possess significant cultural capital, but are marginalized because of their beliefs — and those dominated in a more absolute sense (e.g., the "offender" subjects of the criminal justice system) disguises the fact that practitioners of restorative justice are, in socioeconomic terms, situated more closely to the professionals of the criminal justice system than they are to its subjects (Bourdieu, 1991; Pels, 1999).

Communitarian practitioners of restorative justice often go so far as to claim an outlaw status. At times, they speak of themselves as visionaries or rebels, threatening to topple the structure of the criminal justice system. Yet, many of these individuals derive from positions within, or in close propinquity to, the criminal justice system. Their association with, and knowledge of, the criminal justice system provides them with legitimacy when they contest or criticize the operation of this system. Practitioners who lack this legitimacy are often dismissed as "idealistic" and their programs are less successful in obtaining police or court referrals, leaving them incapable of exerting much influence on the criminal justice system. Communitarian practitioners are also prone to making dramatic statements about how they would be better off without government funding or referrals; however, one is unclear as to how they would maintain their programs if they were completely disconnected from state resources.

In sum, restorative justice practitioners are best understood as "outsiders within" (Pels, 1999) the criminal justice system, and communitarian practitioners are the most marginal of this internally marginal group. This does not mean, however, that cooptation and incorporation are ever-present threats to the autonomy of restorative justice programs; instead, governments tend to watch over these programs "at a distance," influencing them only indirectly, such as through funding and referral requirements. This provides restorative justice programs with a relative degree of autonomy from the formal criminal justice system, but this autonomy is always confronted by the imperatives of operating in a social context characterized by insufficient state resources. In this setting, the competition for resources and funding engaged in by restorative justice programs acts as a form of program self-regulation, driving governmentalists, in particular, to tailor program requirements so they better fit the neoliberal rationality of modern government.

Creating Subaltern Counterpublics:
Between Formalization and Marginalization

For restorative justice programs to fully utilize the limited autonomy available to their programs, practitioners must move beyond simplistic conceptualizations of marginalization and cooptation.[3] In particular, in endeavoring to establish public spaces in which individuals can enact new justice norms and in which new justice values can flourish, restorative justice practitioners need to recognize that locating programs within "the community" is not a sufficient guarantee for creating open and democratic dialogue. Indeed, the idea of the "community" is one of the most problematic notions in the lexicon of restorative justice (McCold and Wachtel, 1999; Pavlich, 2001), as it is often assumed that democratic communicative networks naturally exist, or can be easily formed, within the geographical confines of a community. For example, Pavlich (2001: 57) states that, for restorative justice practitioners,

> ...the community is conceived as a non-coercive space that regulates autonomous individuals through freely chosen, agreed-to and peaceful relations.... The community, thus defined, stands opposed to coercively engineered state control by creating domains of free association that empower members to develop common, agreed-upon ways to regulate themselves.

However, it is entirely possible that the mode of regulation implemented in a community may be the result of an imposed and restrictive vision of what the community is, including prescriptions as to who belongs and who does not belong within its social space. For this reason, Pavlich, drawing on the work of Derrida, recommends that deconstruction and dissociation, in contrast to community and unity, be utilized as alternative frames for describing the goals of restorative justice.

> This interpretation of deconstruction does not entirely jettison unity, but emphasizes the importance of disrupting any given unities, totalities, purportedly fixed identities, etc. Such disruptions are crucial elements for any attempts to open identities up to others, and to confront ethical responsibilities to others (Pavlich, 2001: 63).

Following this advice, restorative justice could achieve a form of nomadism by setting the community in a context of becoming — never fixed and final, but rather self-reflective, open to alternative calculations of the social, and responsive to those who have been excluded.

Pavlich's analysis is instructive in its rejection of totalitarian definitions of community life (a problem evident in many governmentalist restorative justice programs). However, a concern remains that restorative justice programs that are engaged in a cycle of self-reflexivity and becoming will be little more than self-

indulgent and escapist in their orientation. As such, they would have limited impact on the pervasive norms and values of the criminal justice system. The opportunity is lost to create oppositional spaces within civil society, where new ideas can arise and have an impact on hegemonic systems of action. Returning to Melucci's (1994) understanding of "new social movements," one can argue that an essential element of social movements such as restorative justice is their capacity for "cultural innovation" that can spread beyond the political-cultural space in which these movements form. However, Melucci's work fails to provide any clear guidance as to how these public spaces can be expanded to spread the movement's concerns to a broader audience (Bartholomew and Mayer, 1992; Scott, 1990). The inviolability of the extra-institutional space envisioned by Melucci seems little more than a recipe for the permanent marginalization and trivialization of new social movement challengers to dominant social codes. Melucci's emphasis on the exteriority of social movement politics is particularly problematic with respect to a movement like restorative justice, which aims to effect serious changes in state policies concerning the administration of criminal justice. We argue, therefore, that to bring its everyday dialogic practices of relationship-building to a wider public, restorative justice must try to occupy an oscillating space that encompasses strategic interventions into the criminal justice system, but one that also offers a creative refuge from its hegemonic force.

Seemingly missing from Melucci's analysis is an adequate understanding of "civil society" — the space in which new social movements operate (Cohen, 1985). Habermas (1999: 366–367) says of civil society:

> …its institutional core comprises those nongovernmental and non-economic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the lifeworld. Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how societal problems resonate in the private life spheres, distill and transmit such reactions in amplified form to the public sphere.

As part of a movement operating within the realm of civil society, restorative justice programs can serve as public arenas of citizen discourse in which citizens can gather to discuss matters of public concern. Restorative justice, in its ideal sense, brings together community members, victims, and offenders — all of whom would likely go unheard in the formal justice system. The inclusion of these voices in a public dialogue about justice enables the justice process to extend beyond the mere consideration of the "criminal event" and to consider the deep-rooted social factors that led to the crime (e.g., poverty, racism). Thus, restorative justice programs have the potential to provide an opportunity for a counter-hegemonic discourse to develop in opposition to longstanding social injustices. The danger presented by neoliberalism, however, is that these public spaces will be subtly

colonized by the interests of the global market, preempting substantive dialogue, and restorative justice programs will be dispersed to compete with one another and socialize citizens to the non-conflictual standards of this new economic order. In this sense, the public spaces of restorative justice risk becoming spaces for the creation of hegemonic consent to an overarching neoliberalism.

In British Columbia, the development of the restorative justice movement appears to have followed a temporal process in which, initially, the conceptual machinery of restorative justice presented itself as a challenge to the formal criminal justice system. Systemic reactions occurred that sought to re-equilibrate the status quo by either isolating and marginalizing restorative justice, or assimilating it to the rationality of the criminal justice system. These reactions provided the impetus for a polarization within the restorative justice movement. Communitarians accepted and even reveled in their marginalization, viewing this as the path to maintaining community empowerment. Governmentalists appropriated the label of restorative justice, in some cases attaching it to their already existing diversion or victims-rights programs in hopes that this fashionable label would bring more attention (and resources) to their organizations. Now the dilemma facing the restorative justice movement is one of avoiding deracination and emerging from this polarization to claim a "relatively autonomous" position in relation to the criminal justice system so that the reverberations of the restorative alternative can be felt therein.

In sum, the colonization of restorative justice is not a necessary outcome. Indeed, it is plausible to suggest that the limited autonomy provided to restorative justice programs by the de-governmentalization of the state can be used to create "subaltern counterpublics" that "are parallel discursive arenas where members of subordinated social groups invent and circulate counterdiscourses, which in turn permit them to formulate oppositional interpretations of their identities, interests, and needs" (Fraser, 1997).[4] The inclusion in restorative justice counterpublics of those who are truly marginalized from the criminal justice system — the victims, offenders, and community members whose voices are seldom heard in formal justice processes — opens these public arenas to new discursive potentials and to new understandings of community life that recognize the injustice of exclusionary norms. However, these spaces need to be more than reclusive zones where the boundaries of community life are called into question; they must also function as the developing grounds for oppositional activities that will have effect beyond the communities in which they exist. This requires an activist politics that goes beyond emulating the ideals of the restorative justice movement in a retreatist fashion. According to Llewellyn and Howse (1998), a transformative relation to the broader social order is an essential element of restorative justice. In their view,

> restorative justice forces us to revisit this question and ask exactly what it is we think ought to be done in response to wrongdoing. Restorative

> justice, properly understood then, means much more than a "tinkering" with current practices. Restorative justice is a different conception of justice and as such requires us to reexamine our very assumptions about justice (Llewellyn and Howse, 1998: 12).

If restorative justice programs hope to achieve this goal, they cannot be located entirely within or outside the criminal justice system. Instead, they must move strategically between these two spaces, utilizing whatever leverage they can find to brook instability, obtain needed government resources, and employ them to secure their own autonomy. Leverage of this sort will not result from pandering to governments to compete for resources that politicians are typically reluctant to authorize. In contrast, it can only be built by creating a groundswell of popular support for the alternative values embodied in restorative justice and by persuading governments that effective social control (e.g., lower rates of recidivism and preventive crime control) cannot be achieved without well-endowed restorative justice programs.[5] This will require an adversarial politics largely incongruous with the collaborative thrust of restorative justice, but it is only in this manner that restorative justice can create for itself the space in which a subaltern counterpublic can flourish and challenge systemic injustices.[6]

In conclusion, there is a different sense of nomadism to which restorative justice can aspire. This nomadism moves between the margins and the formal justice system — the two spaces where the communitarians and the governmentalists are respectively stuck — acting instrumentally when need be, but also maintaining the integrity of its symbolic challenge to dominant social codes. By remaining planted in both spaces, restorative justice can achieve more than escapism or cooptation — it can begin a gradual "war of position" (Gramsci, 1971) to counter the hegemony of the criminal justice system.

NOTES

1.   First Nations traditional programs appear especially skillful at maneuvering among multiple funding sources to maintain their program autonomy. One First Nation restorative justice program in the lower mainland, for instance, sought funding from the Aboriginal Healing Foundation, a body that provides Aboriginal communities with money to help them address the impact of residential schools, rather than rely solely on the Aboriginal Justice Directorate, which has more funds to offer, but also stricter guidelines that potentially limit community flexibility with regard to the design and maintenance of their restorative justice process.

2.   The meaning of the term "transformative" varies in the sociological and dispute resolution literatures. In Nancy Fraser's (1997) sociological explanation, affirmative remedies provide minor "surface reallocations" of recognition and redistribution to appease the harmed party and secure their inclusion in the dominant social order. Transformative remedies, in contrast, radically overhaul the economic and symbolic social structures that brought about social injustices. This idea of transformative justice overlaps with Slaton, Woolpert and Schwerin's (1998) concept of "transformational

politics." In their view, transformational politics is an emergent paradigm in the social field that describes a broad array of social activity. This type of politics emanates from the lifeworlds of individuals in local settings that seek to rewrite the dominant order by transforming their everyday lives and challenging unjust social structures. In this sense, the goal of a transformational politics is to connect the personal and the political so as to effect widespread societal change. In the dispute resolution literature, the notion of "transformative" is evident (although in a limited fashion) in the work of Bush et al. (1993), who propose the practice of "transformative mediation" as a vehicle for encouraging individuals in conflict to rethink the adversarial manner in which they engage in disputes. They contend that mediation should transform the everyday sensibilities of individuals engaged in conflict, and that the sum of these individual changes can bring about broad social transformations that result in a less conflictual society. Although there are important differences between these various interpretations of transformative change, they all emphasize the need to challenge fundamental social structures ingrained in individual behavior.

3.   This assumes that governmentalists and communitarians possess "pure" motives with regard to their dedication to the cause of restorative justice. However, it is likely that some, especially among the governmentalists, perceive restorative justice as a new segment of the criminal justice market in which they hope to anchor professional careers. Other practitioners are likely attracted to restorative justice because they see it as a means by which they can "humanize" their involvement in the criminal justice system and lower anxiety about working in retributive, and oftentimes oppressive, institutional structures.

4.   Subaltern counterpublics are different from reformist movements by virtue of their oppositional and counter-hegemonic relationship to dominant societal patterns and processes. The aim of these counterpublics is to transform, rather than ameliorate, the hegemonic social order. In that regard, our intent is not to prescribe the justice norms that should emanate from these publics, since to do so would contradict our version of nomadism, which we have explicated as a spatial, rather than substantive, argument. The key issue is one of creating uncolonized spaces (not subject to governmentalist limitations) from which novel and transformative ideas about social justice can sprout and have an effect on the broader public.

5.   Recidivism rates are a metric that often attracts the interest of government. However, the short life of poorly funded restorative justice programs makes it difficult for these programs to measure recidivism with any accuracy.

6.   Concrete tasks that restorative justice programs might take on would include subverting the practice of "net-widening" — the application of restorative processes to minor offenses that would otherwise be ignored by the criminal justice system — and constructing helping-networks within local communities that assist members in creating crime prevention and community sustainability based on values that are dialogically achieved and open to revision.

REFERENCES

Bartholomew, Amy and Margrit Mayer
     1992   "*Nomads of the Present*: Melucci's Contribution to 'New Social Movement'
                    Theory." *Theory, Culture & Society* 9: 141–159.
Boggs, Carl
     1986   *Social Movements and Political Power: Emerging Forms of Radicalism in the
                    West*. Philadelphia: Temple University Press.
Bourdieu, Pierre
     1991   *Language and Symbolic Power*. Translated by G. Raymond and M. Adamson.
                    Cambridge, MA: Harvard University Press.

Braidotti, Rosi
    1999   "Response to Dick Pels." *Theory, Culture & Society* 16,1: 87–93.
    1994   *Nomadic Subjects*. New York: Columbia University Press.
Braithwaite, John
    2000   "The New Regulatory State and the Transformation of Criminology." *British Journal of Criminology* 40: 222–238.
    1989   *Crime, Shame and Reintegration*. Cambridge, U.K.: Cambridge University Press.
Brekhus, Wayne
    1998   "A Sociology of the Unmarked: Redirecting Our Focus." *Sociological Theory* 16,1 (March): 34–51.
Burchell, Graeme
    1992   "Liberal Government and Techniques of the Self." *Economy and Society* 22,3 (August): 267–282.
Bush, Robert, A. Baruch, and Joseph P. Folger
    1993   *The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition*. San Francisco: Jossey-Bass Publishers.
Carroll, W.K. and R.S. Ratner
    1995   "Old Unions and New Movements." *Labour/Le Travail* 35 (Spring): 195–221.
Cohen, Jean L.
    1985   "Strategy or Identity: New Theoretical Paradigms and Contemporary Social Movements." *Social Research* 52: 663–716.
Cohen, Stanley
    1985   *Visions of Social Control: Crime, Punishment and Classification*. Cambridge: Polity Press.
Daly, Kathleen and Russ Immarigeon
    1998   "The Past, Present, and Future of Restorative Justice: Some Critical Reflections." *Contemporary Justice Review* 1: 21–45.
Deleuze, Giles and Félix Guattari
    1987   *A Thousand Plateaus: Capitalism and Schizophrenia*. Minneapolis: University of Minnesota Press.
Diani, Mario
    1992   "The Concept of Social Movement." *The Sociological Review* 40,1: 1–25.
Epstein, Barbara
    1990   "Rethinking Social Movement Theory." *Socialist Review* 20,1: 35–65.
Etzioni, Amitai
    1994   *The Spirit of Community: The Reinvention of American Society*. New York: Simon & Schuster.
Fraser, Nancy
    1997   *Justice Interruptus: Critical Reflections on the "Postsocialist Condition."* New York: Routledge.
Gramsci, Antonio
    1971   *Selections from the Prison Notebooks*. Translated by Q. Hoare and G.N. Smith. New York: International Publishers.
Guattari, Félix and Toni Negri
    1985   *Communists Like Us: New Spaces of Liberty, New Lines of Alliance*. New York: Semiotext(e).
Habermas, Jürgen.
    1999   *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Translated by William Rehg. Cambridge, MA: The MIT Press. [c1992].
    1981   "New Social Movements." *Telos* 49 (Fall): 33–37.
Hansard
    2001   *Official Report of the Legislative Assembly*. Third Session, 37th Parliament, Volume 3, Number 12, Monday, February 25; at www.legis.gov.bc.ca/ hansard/37th3rd/h20225a.htm.

Harraway, Donna
    1992   "Ecce Homo, Ain't (Ar'n't) I a Woman, and Inappropriate/d Others: The
                Human in a Post-Humanist Landscape." J. Butler and J.S. Scott (eds.),
                Feminists Theorize the Political. New York: Routledge.
Hirsch, Joachim
    1988   "The Crisis of Fordism, Transformations of the Keynesian State and the New
                Social Movements." *Research in Social Movements, Conflicts, and Change*
                10: 43–55.
Laclau, Ernesto and Chantel Mouffe
    1985   *Hegemony and Socialist Strategy*. London: Verso.
Llewellyn, Jennifer J. and Robert Howse
    1998   "Restorative Justice: A Conceptual Framework." Paper prepared for the Law
                Commission of Canada.
Marshall, Tony F.
    1995   "Restorative Justice on Trial in Britain." *Meditation Quarterly* 12,3: 217–231.
McCarthy, John D. and M.N. Zald
    1977   "Resource Mobilization and Social Movements: A Partial Theory." *American
                Journal of Sociology* 82,6: 1212–1239.
    1972   *The Trend of Social Movements in America: Professionalization and Resource
                Mobilization*. Morristown, NJ: General Learning Corporation.
McCold, Paul and Benjamin Wachtel
    1999   "Community Is Not a Place: A New Look at Community Justice Initiatives."
                Contemporary Justice Review 1: 71–85.
Melucci, Alberto
    1995   *Challenging Codes: Collective Action in the Information Age*. Cambridge:
                Cambridge University Press.
    1994   "Social Movements and the Democratization of Everyday Life." J. Keane
                (ed.), *Civil Society and the State: New European Perspectives*. London: Verso.
    1989   *Nomads of the Present: Social Movements and Individual Needs in Contempo-
                rary Society*. Philadelphia: Temple University Press.
Miller, Peter and Nicolas Rose
    1995   "Political Thought and the Limits of Orthodoxy: A Response to Curtis."
                British Journal of Sociology 46,4 (December): 590–597.
    1990   "Governing Economic Life." *Economy and Society* 19,1 (February): 1–31.
Ministry of the Attorney General for British Columbia
    1998   "Restorative Justice Framework." Downloaded February 8, 2002; at
                www.ag.gov.bc.ca/public/98003.htm.
Offe, Claus
    1985   "New Social Movements: Challenging the Boundaries of Institutional
                Politics." *Social Research* 52,4: 817–868.
Pakulski, Jan
    1988   "Social Movements in Comparative Perspective." L. Kriesberg and B. Misztal
                (eds.), *Research in Social Movements, Conflicts and Change*. Greenwich: JAI
                Press: 10; 247–267.
Patton, Paul
    1988   "Marxism and Beyond: Strategies of Reterritorialization." Cary Nelson and
                Lawrence Grossberg (eds.), *Marxism and the Interpretation of Culture*.
                Urbana and Chicago: University of Illinois Press.
Pavlich, George
    2001   "The Force of Community." Heather Strang and John Braithwaite (eds.),
                Restorative Justice and Civil Society. Cambridge: Cambridge University
                Press: 56–68.
    1996   *Justice Fragmented: Mediating Community Disputes Under Postmodern
                Conditions*. London: Routledge.

Pels, Dick
    1999   "Privileged Nomads: On the Strangeness of Intellectuals and the Intellectuality
                    of Strangers." *Theory, Culture & Society* 16,1: 63–86.
Pepinsky, Harold E. and Richard Quinney (eds.)
    1991   *Criminology as Peacemaking*. Bloomington: Indiana University Press.
Plotke, David
    1990   "What's So New About New Social Movements." *Socialist Review* 20,1: 81–
                    102.
Presser, Lois and Patricia Van Voorhis
    2002   "Values and Evaluation: Assessing Processes and Outcomes of Restorative
                    Justice Programs." *Crime & Delinquency* 48,1 (January): 162–188.
Putnam, Robert D.
    2000   *Bowling Alone: The Collapse and Revival of American Community*. New
                    York: Simon & Schuster.
Ratner, R.S. and Andrew Woolford
    2002   "The Persistent Verticality Problem in Restorative Justice." Presented at the
                    73rd Annual Meeting of the Pacific Sociological Association, Hyatt Regency
                    Hotel, Vancouver, B.C. (April).
Rose, Nicolas
    1996   "Government, Authority, and Expertise in Advanced Liberalism." *Economy
                    and Society* 22,3 (August): 283–299.
    1993   "Governing 'Advanced' Liberal Democracies." A. Barry, T. Osborne, and N.
                    Rose (eds.), *Foucault and Political Reason: Liberalism, Neo-liberalism and
                    Rationalities of Government*. UCL Press: 37–64.
Scott, Alan
    1990   *Ideology and the New Social Movements*. London: Unwin Hymann.
Slaton, Christa Daryl, Stephen Woolpert, and Ed Schwerin
    1998   "What Is Transformational Politics?" Stephen Woolpert, Christa Slaton, and
                    Ed Schwerin (eds.), *Transformational Politics: Theory, Study, and Practice*.
                    Albany: State University of New York Press.
Snow, D. and R.D. Benford
    1992   "Master Frames and Cycles of Protest." A.D. Morris and C. McClurg Mueller
                    (eds.), *Frontiers in Social Movement Theory*. New Haven: Yale University
                    Press.
    1988   "Ideology, Frame Resonance and Participant Mobilization." *International
                    Social Movement Research* 1: 197–217.
Snow, D.A., E.B. Rochford, S.K. Worden, and R.D. Benford
    1986   "Frame Alignment Process, Micromobilization, and Movement Participation."
                    American Sociological Review 51: 464–481.
Van Ness, Daniel and Karen Heetderks Strong
    1997   *Restoring Justice*. Cincinnati: Anderson Publishing Co.
Young, Jock
    1999   *The Exclusive Society: Social Exclusion, Crime and Difference in Late
                    Modernity*. London: Sage Publications.
Zehr, Howard
    1995   "Justice Paradigm Shift? Values and Visions in the Reform Process."
                    Mediation Quarterly 12,3 (Spring): 207–216.