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Harm and Repair:
Observing Restorative Justice in Vermont*

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Harm and Repair: Observing Restorative Justice in Vermont

Abstract:

This paper analyzes the decision-making process for negotiating reparative contracts with offenders in a restorative justice model. Based on a content analysis of videotaped Community Reparative Board meetings with probationers in Vermont, this paper (a) defines restoration as a core concept in restorative justice; (b) examines how boards identify harm to victims and community; (c) how they identify strategies to repair identified harm; (d) how often repair becomes a line item in reparative contracts; and (e) offers interpretation for situations in which harm is not identified and/or not repaired.

Restorative justice as both concept and practice has gained increasing attention in the last decade. Because of disparate sources of development within academia and in domestic and international practice, no consensus has emerged regarding its definition or boundaries. Theoretically, restorative justice has been associated with a variety of overarching concepts: the “balanced” approach (Bazemore and Umbreit 1994; 1995; Maloney, Romig, and Armstrong 1988); reintegrative shaming (Braithwaite 1989; Braithwaite and Mugford 1998); dominion and republican justice (Braithwaite and Pettit 1990; 1994); peace-making (Pepinsky and Quinney 1991); and the community justice ideal (Clear and Karp 1999). Practically, it has been associated with a wide variety of programs and peoples: Mennonites and Victim-Offender Reconciliation Programs (Zehr 1990); Maoris and Family Group Conferences in New Zealand (Hudson et al., 1996); the Reintegrative Shaming Experiment (RISE) in Australia (Strang et al. 1999); Navajo Justice in the United States (Yazzie and Zion 1996); sentencing circles by First Nation tribes in Canada (Stuart 1996); and Community Reparative Boards in the State of Vermont (Karp and Walther 2000). These lists of concepts and practices are merely illustrative, and by no means exhaustive. For general reviews of restorative justice, see Bazemore (1998), Braithwaite (1998) and Marshall (1998).

Is there a fundamental core around which restorative justice is organized? Given the wide variety of concepts and practices, as well as its quick emergence in the last decade, assuming consensus about what constitutes restorative justice is naive (Harris 1998). For some, it is a return to tribal justice and a rejection of retributive western legal practice. For others, it is a response to the needs of crime victims, who are typically ignored in current practice. For others still, it is an infusion of religious doctrine into secular jurispru-

dence. Tonry (1999: 4) notes, “part of the appeal of restorative justice, and one of its challenges, is that it attracts support from across ideological and political spectrums.” Thus, its emergence may not only be due to common desires across groups, but also, perhaps, masked differences.

Nevertheless, Bazemore and Walgrave (1999: 48) have advanced a parsimonious definition of restorative justice that may serve as a common reference point, albeit brief and necessarily abstract: “restorative justice is every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime.”¹ Following their lead, this study examines harm and repair as the core idea of restorative justice. No previous empirical study of restorative justice has examined the process of harm identification and its repair. Through observations of one program in action, I identify how participants in a restorative justice initiative attempt to repair harm—how they define harm caused by criminal offenses, how they negotiate agreements with offenders to repair harm, and what difficulties they face in fulfilling the central tenet of restorative justice. In this study, I analyze videotapes of probationers negotiating reparative contracts with victims and volunteers serving as community representatives. Through these tapes, it is possible to identify how participants articulate the damage caused by the offense, and how they develop strategies to repair it. The tapes also reveal how difficult this process can be, and several ways in which participants are unable to identify harm or to negotiate a strategy of remediation.

Defining Criminal Harm

If restorative justice repairs harm, then what is the nature of that harm? Fundamentally, restorative approaches are distinguished from retributive and traditional rehabilitation

approaches by their focus on sanctions that address the harm caused to victims and communities (Bazemore and Umbreit 1995). Harm can be defined by two variables: material vs. personal/relational harm, and private vs. public harm (see Table 1). First, material harm includes lost or damaged property or monetary losses such as lost wages. Material harm accrues to individuals, private businesses, or public spaces such as parks or schools. Personal/relational harm includes physical and emotional harm to crime victims, such as physical injury, anxiety, anger, or depression. Relational aspects include fractured relationships, weakened social bonds, increased fear, or diminished sense of community (Miethe 1995; Skogan 1990). A second variable distinguishes harm done to private citizens, business, or organizations, from harm done to communities, in the form of material damage to public spaces and places, reduced community capacity (Chavis 1998), or reduced collective efficacy (Sampson, Raudenbush, and Earls 1997). Perhaps, the most abstract of these elements is relational damage to community life, but this is nevertheless a central goal of community justice initiatives (Clear and Karp 1999).

TABLE 1 ABOUT HERE

Since restorative justice is sensitive to both process and outcomes, reparation of harm may occur as a result of stakeholders' participation in the decision-making process, and through the completion of negotiated tasks. Creating a forum in which their participation is meaningful is helpful to victims. Thus, restoration occurs as much in deciding what is to be done as it is in the fine print of the negotiated contract and the fulfillment of its terms. Several studies indicate that victims, for example, are highly satisfied by a justice process that includes them in the decision-making, and allows them to meet with (or confront) the offender directly (Schiff 1999; Strang et al. 1999). Restoration of victims, then,

is often defined by their inclusion in and satisfaction with the process. Emotional harm may be effectively addressed through such participation (Umbreit 1994). In sum, restoration may be defined by activities undertaken in order to repair material or personal and private or communal harms identified as direct consequences of a crime.

A broader conceptualization of restoration is not accounted for in this definition because it is beyond the scope of this study. But it should be understood as part of the broader philosophy of restorative justice. Restorative justice may serve not simply as an opportunity to repair harm, but to “add value”—to use the corporate jargon favored by John Gorczyk, Vermont’s Corrections Commissioner (Gorczyk and Perry 1998). Restoration includes not only reparation for specific criminal damage, but also restoration that measurably improves community life beyond its status quo prior to the offense.

Braithwaite (1998) suggests, as part of an “immodest theory of restorative justice,” restoration might include a wide variety of positive processes and outcomes that exist outside micro-level responses to isolated, incidental harms. First, this may involve restoring offenders by creating social support, integrative opportunities, and competencies (Maruna 2001). Second, this may involve rebuilding communities by renewing respect for and commitment to the criminal justice system; by fostering new social ties among community members; by enriching the deliberative democratic process; and by focusing attention on community problems so that broader institutional weaknesses, such as in schools or families, can be addressed. Again, analysis of restoration defined as such is not attempted here. Below, I advance two versions of the restoration, “thin” and “thick,” and I examine the restorative justice practices in light of each.

Restoration: Thick and Thin

The thin version of restoration can be defined as any positive act directed toward a crime victim and/or the affected community. In this version, criminal harm is offset by prosocial behavior. But, and this is why this version is thin, restoration is not necessarily linked to the offense. For example, a drunk driver who is required to volunteer at the local recycling center is restoring the community because he or she is making it a better place as amends for having made it a worse place. Commonly, a specified number of community service hours are negotiated without indicating where those hours are to be volunteered (except at a non-profit) or if the service is to be relevant to the offense. While this version is thin, it can still be contrasted with retributive justice where no reparative activity is undertaken, but instead, the offender is made to suffer some proportional punishment or harm (Clear 1994; Van Ness and Strong 1997). It can also be contrasted with rehabilitation where, again, no reparation is made, but the offender is provided services in order to reduce his or her recidivism (Bazemore, Nissen, and Dooley 2000).

The thick version of restoration is defined as a positive act directed at the victim and/or the affected community that is specifically linked to the identified harm of the crime. What, specifically, has been damaged must be repaired under this model. This damage may be material, interpersonal, or communal. Any restoration that is insufficient to the task or tangential to the specified harm falls short of achieving this justice ideal. As such, identification of harm is crucial to assessment, as is the effectiveness of the strategy in repairing the damage done.

The Vermont Reparative Probation Program

This study analyzes Vermont's restorative justice program for adult probationers. The

program began in 1996 and has processed more than 5,000 cases (as of December 2000). Vermont is an important site for analysis because it is the only state to have implemented a restorative justice program statewide, and to mandate this through legislation. One component of this law is to “. . . implement the restorative justice program of seeking to obtain probationer accountability, repair harm and compensate a victim or victims and the community” (State of Vermont 2001).

The Reparative Probation Program is summarized as follows. Upon conviction of a minor offense, burglary or drunk driving for example, the judge will sentence the offender to probation with the condition that he or she appears before the local reparative board. The board convenes with the offender and attempts to work out a solution to the problem created by the offense. Victims and other affected parties, such as parents of a youthful offender, are invited to attend. Board meetings vary in length, but average between 35-40 minutes. The outcome of the meeting is a negotiated agreement, signed by the offender, specifying a set of tasks to be accomplished during a 90-day probationary period. Typically, offenders will return to the board for a mid-term review and a final closure meeting before discharge. Offenders who refuse to sign the agreement or fail to comply are returned to the court.

The board members seek to accomplish four goals with the offender. First, they wish to engage the offender in tasks that will help him or her to better understand the harmful consequences of the crime on victims and the community. This may entail asking the offender to listen to the victim’s account or to the reactions of victims of similar offenses. It may mean asking the offender to write an essay describing the harm that was done. Second, the board seeks to identify ways the offender can repair the harm to victims. Third,

they try to engage the offender in making amends to the community. Restitution to the victim, letters of apology, and community service may be required to meet these restorative goals. Fourth, the board works with the offender to find a strategy to reduce the likelihood of re-offending. This might include a wide variety of educational and counseling opportunities.

The typical board meeting is held in an informal conference room in a town hall, public library, or probation office. Boards vary in their formality, but all are much less formal than the courtroom setting. Meetings begin with introductions, proceed through a general review of the incident, and become task-oriented as they strategize over terms of the agreement. Some boards ask the offender to leave the meeting so that board members can have a short period of private deliberation. Lengthier descriptions of program features can be found in Dooley (1996); Karp (In Press); Karp and Walther (2001); Perry and Gorczyk (1997); and Walther and Perry (1997).

This study examines the most fundamental hypothesis about a restorative justice program—that it is indeed “restorative.” I ask, simply, what is restored by this program? What do board members attempt to achieve when negotiating restorative agreements with offenders? The working hypothesis is straightforward: Vermont’s Reparative Probation Program is an empirical demonstration of the core concept of restorative justice: it repairs harm. I seek, in the presentation of findings below, to test the validity of this hypothesis. In particular, I follow a standard empirical strategy of qualitative research which is to focus especially on disconfirming data (Maxwell 1996), presenting instances in which the program appears not to be restorative, and then offer some interpretation for such outcomes.

The operational definition of restorative justice, as either thin or thick, is specifically defined in terms of reparative agreements as Vermont community boards negotiate them. Although this study reports the outcomes of these agreements—whether or not the offender successfully fulfills the terms of the reparative contract—these outcomes are more dependent upon the offender than on program design. I am more interested here in examining the practice of the board in seeking reparative agreements than in the compliance of the offender in honoring them. In addition, this study does not measure the reparation of harm as a consequence of victim participation in the reparative board meeting. Interviews with victims following a board hearing might effectively measure the emotional healing process, and other studies have demonstrated the effectiveness of victim-offender mediation and conferencing to achieve this goal (Strang et al. 1999; Umbreit 1994). This study focuses on the negotiation of an agreement outlining the reparative tasks to be undertaken during the probationary period. Thus, it does not examine how the decision-making process itself might be restorative, but how the decision-making process results in a reparative agreement.

The Vermont Video Project

This study is based on a content analysis of videotaped community board meetings with probationers in Vermont. Recently, Brookes (1998) argued that there has been an “absence of research on the interactional processes involved within the victim-offender encounter itself” (p. 25) and as a result we know “almost nothing of the interactional processes by which victim and offender mutually create a restitution agreement” (p. 34). The Vermont Video Project provides a window into the interactional processes that have not yet received empirical attention, yet are crucial to understanding the nature of restoration

as defined by participants in the justice process. While prior studies have provided descriptive, theoretical accounts of restorative justice programs (e.g., Bazemore 1998, Braithwaite and Mugford 1998) and empirical studies of attitudes of participants and program outcomes (e.g., Strang et al. 1999), no studies have systematically analyzed the discourse of restorative justice practices, particularly how participants go about negotiating restorative sanctions.

Sample

During the data collection period, the Vermont Reparative Probation Program managed 42 volunteer community boards in 19 towns and cities across the state. I collected a total of 52 videotapes of board meetings with offenders, representing 29 different community boards in 17 townships.² Taping began in July 1998, and continued through August 1999. Permission to tape these hearings was obtained from the Department of Corrections and from the participants.³ Participants were assured that the tapes (and accompanying records) would be used for research and training purposes, and would not be made available to the general public. They were also assured that the research study focused on the decision-making process of the board, and not on them as individuals. As such, their names would be kept confidential in any research reports.

Under the program model, each town has one board, but boards in the larger towns and cities may be composed of several panels of different volunteers. Since panels are made up of different groups of people, I draw no distinction in this analysis between a board and a panel. Boards often hear two cases in one session, and when this occurred, I taped both cases. A few boards had no cases referred to them during the data collection period or held hearings at times I could not attend or, in one case, declined my request to

be videotaped. In sum, these tapes represent a wide variety of boards in the state, but provide a small window into each of them. My observations pertain to the behavior of boards in Vermont generally, rather than to the character of any particular board.

While this is a not a random sample, I can identify no factors that distinguish the types of cases that were videotaped from those that were not. There is no relationship between the schedule of videotaping and the courts' referral of types of cases to the boards or to the Department of Corrections' own scheduling of types of cases. Thus, this set of cases may be effectively categorized as a theoretical sample (Glaser and Strauss 1967) organized by the attempt to capture a wide range of boards and cases. The sample includes meetings with 16 female offenders (31%) and 36 male offenders (69%). This is comparable to the sex ratio (26% female) for all reparative probationers during the partially overlapping time period of May 1999 to April 2000 (Bahr 2000). Table 2 compares the offenses found in the study sample with all reparative cases in the comparison time period. The table provides evidence that the sample is representative of reparative probation cases more generally.

TABLE 2 ABOUT HERE

Coding

The analysis of the videotapes and corresponding paper records followed the general principles of inductive qualitative research (Glaser and Strauss 1967). I began the project by simply watching board meetings with an open mind, taking notes on issues that seemed to intersect with current concerns in the literature as well as noting “golden moments” in the videos—those that seemed to jump out as particularly illuminating or problematic. It was from this more general note-taking that preliminary hypotheses were

formed, preliminary classifications and typologies were created, and a strategy for systematic content analysis was implemented.

For all of the videotaped cases, paper records were collected. These records include (a) the police report describing the criminal incident and listing any victims and/or material harm such as loss or damage to property⁴, (b) the reparative contract as negotiated during the reparative meeting, and (c) a notice of discharge indicating successful or unsuccessful completion of probation. This study compares the identification of harm as articulated during the board meeting with its description in the police report, and examines the dialogue leading up to the contract, which is signed by the offender at the end of the reparative meeting.

Is Vermont's Reparative Probation Program restorative? According to the thin version of restoration, reparative agreements must contain positive actions directed toward victims and/or the affected community. Identifying "positive action" is subjective, but not difficult relative to the absence of any action whatsoever. This requires an analysis of the line items in reparative agreements. More important is to distinguish action that has a different intention than reparation. Since boards have four prescribed tasks to accomplish in the contract, and only two of these are restorative by definition, it is important to distinguish these from contract activities designed to help the offender understand the harm they have caused or those that are rehabilitative—both of which seek moral and social reintegration rather than restoration. Writing an essay on "why we should obey the law," enrolling in a GED program, or starting drug counseling would all be reintegrative, but not restorative. Community service work may be both since it improves the welfare of the community and provides an opportunity for the offender to enact a prosocial identity

(Bazemore and Maloney 1994).

To simplify the contract coding process, I included within the category “restorative” all activities that involved activities in which positive benefit would accrue to victims and/or the community. These include interpersonal reparations (apologies), material reparations (restitution), and communal reparations (community service). Activities designated “non-restorative” included all activities in which the direct beneficiary is the offender, such as those directed towards the offenders’ educational, therapeutic, or occupational development.

Three graduate students participated in the content analysis. Each was trained to identify relevant material and videotapes were divided between them for the extraction of relevant dialogue. This dialogue was then coded, and the coding was tested for reliability. Twenty code sheets were selected at random and reliabilities were tested for thirteen variables relevant to this analysis. Observer agreement was perfect for many of the variables and none obtained reliabilities less than .7 using Cohen’s kappa (Landis and Koch 1977). Disagreements in the coding were resolved by a collective review of the data and consensus-building. In addition to intercoder reliabilities, each coder cross-checked the videotape results with paper records, wherever possible. For example, harms identified in the videotaped discussions were compared with harms identified in the police report. In no case did the police report reveal a harm that was not video-coded.

The video coding strategy emphasized the stages in identification of harm and strategies for repair. First, we examined the discourse regarding the harm of the offense. All harms articulated by the victim, offender, or board members were coded and classified as material, personal/relational, and/or communal. Harm was also noted by coding any iden-

tification of victims. Second, all restorative activities suggested during the meeting were coded and classified as apology, restitution, or community service. These strategies were then compared with reparative tasks that appeared in the final contract. In listing harms and strategies, we made no value judgments regarding their plausibility as a likely consequence of the crime or their practicality as a remedy for the harm. Moreover, they were coded even if, during the proceedings, other participants challenged them. Therefore, we relied entirely on the participants' subjective interpretation as they articulate it to reveal the harm caused by the offense, as well as the range of strategies for repair.

Results

Table 3 provides a list of all restorative items in this sample's reparative contracts, distinguishing them by thin and thick restoration. The table also lists the offense, victim status⁵, material harm, and the outcome of the case. Outstanding material harm refers only to material harm not addressed by the time of the hearing. Several other cases involved material harm, but restitution was made prior to the offenders' appearance before the board.

TABLE 3 ABOUT HERE

Thin and Thick Restoration

In the examination of contracts, 44 of the 52 cases (85%) present evidence of restorative justice. Further, most contracts (83%) were completed and the probationer was successfully discharged. The eight cases that contain no evidence of restoration, even for the most liberal (thin) definition of restorative justice, serve as red flags. Four of the cases had a direct victim, yet no apology was negotiated. In addition to these eight, two other cases involved direct victimization that was not addressed by the reparative contract even

though other reparative tasks were required.

Because these data are not a random sample, it is impossible to draw a statistically accurate conclusion about these findings (to restate the most fundamental problem associated with qualitative research). They are reported here for illustrative purposes, and require validation with an appropriate sample. Nevertheless, the numbers are useful in that they serve to identify deviations from this study's hypothesis that the Vermont program is restorative. An important antidote to the problem of small, nonrandom samples is close analysis of discrepant data, for they are the most direct challenge to the null hypothesis or "the most serious threat to [its] theoretical validity" (Maxwell 1996: 90). Therefore, I will examine in some detail the causes for these discrepant cases later in this paper in order to identify how a restorative justice program can fail to be restorative.

The vast majority of cases, however, do appear to be restorative, and further analysis reveals the nature of restorative activity. The single most common restorative activity is community service; it was a part of 38 reparative contracts (73%). Service requirements ranged from 8 to 60 hours, and in one case, 100 hundred hours of service was required, but this determination came from the judge and not from the board.⁶ By definition, apologies and restitution are examples of thick restoration, since the substance of each must refer directly to the offense. Only with community service is it possible to engage in restorative activities that have no bearing on the offense. And, as the table makes clear, "thin" community service predominates, with only four occurrences of "thick" community service.

Thick restoration requires reparation of identified harm. All dialogue concerning the harm of the offense was coded, including statements of potential harm. Potential harm

becomes salient in cases such as drunk driving where the participants make statements such as, “you could have killed someone.” Actual harm and potential harm were coded with reference to the underlying distinctions between material vs. personal harm and private vs. communal harm. Reparative tasks were classified by their linkage to identified harm.

Thirty-six contracts (69%) had at least one task that was directly linked to an identified harm. However, most of these (26/36) also required reparative tasks that had no relationship to identified harm. Only 10 contracts (19%) required restorative activities that were always and only linked to specified harms. And even these did not necessarily address each and every identified harm. Thus, depending upon one’s perspective, the reparative boards are either very successful at restoration (thin=85%) or very unsuccessful (thick=19%). Most contracts contained restorative elements, and most of them had some linkage to specified harms, but few of them focused strictly upon repairing specified harms.

Linking Victim Harm and Repair

Although there may be many ways board members might work with offenders to address the emotional impact of the offense on victims, victim-offender mediation being the most prominent (Umbreit 1994), board members rely on having offenders write letters of apology. The symbolic gesture of an apology has been noted in the past as a fundamental component of reconciliation (Goffman 1967; Tavuchis 1991). Strang et al.’s (1999) research on family group conferencing in Australia reveals that victims often ascribe greater importance to apologies by the offender than to monetary restitution, and that the desire for apology is nearly universal among the crime victims they surveyed.

I distinguished between two types of victims: direct and indirect. Direct victims suffered directly from the offense, such as by being assaulted or losing property. But boards often identify indirect victims and ask offenders to apologize to them. These victims include family members and friends of the offender who are inconvenienced, for example, by having to drive the offender around if his or her license was revoked, and criminal justice or medical professionals who needed to respond to the incident. Apologies to officers are sometimes required when the offender resisted arrest.

Of the 52 board meetings analyzed, 28 (54%) had direct victims. Another 19 cases had indirect victims identified during the meeting. Thus, 47/52 (90%) of the cases had either direct or indirect victims. In only 4 cases (8%) did a victim attend the board meeting (even though victims are routinely invited to attend in the program). In 34 of the 47 (72%) cases with victims, apologies were required in the reparative agreements.

Where material harm was identified, restitution to the victim to cover losses was frequently negotiated. Restitution is, perhaps, the most widely accepted technique of restoration in the criminal justice system (Benson 1998, Chapter 12), and is frequently assigned by judges that do not otherwise subscribe to restorative justice. Although many of the offenses caused material harm, restitution was often court-ordered or the offender had voluntarily returned or paid for material losses before the offender appeared before the board. In Table 3, I report the five cases where this harm had not been addressed prior to the board hearing. In each of these cases, restitution was negotiated. Thus, material harm, as identified during the board meetings, was conscientiously addressed in all of the 52 cases.

Community Harm and Community Service

As reported above, community service was assigned in 38 cases. Thus, it is the primary tool for repairing community harm, as is the case with other restorative justice initiatives (Bazemore and Maloney 1994). Community service is also the only reparative activity that can be either thin or thick. Therefore it requires further theoretical analysis in order to code it correctly.

Walgrave (1999) points out that community service may not be used as a restorative device; that it may alternatively be used as retributive punishment by assigning an unappealing or degrading task. Judicial shame penalties characteristically employ this form of service (Karp 2000). Service might also be used as a means of rehabilitation or reintegration by assigning tasks that address offender needs. Walgrave (1999: 139) defines restorative community service as “unpaid work done by the offender for the benefit of a community or its institutions meant as a compensation for the harm caused by an offense to that community.” This more general definition could apply to either thin or thick community service. To draw the distinction, I coded thick community service as any assignment that specifically responds to the identified harm.⁷

Although community service was a frequent item in reparative agreements, in only four cases was that service specifically linked to the offense. Because this is rare, it is valuable to include transcriptions from these cases that illuminate how the boards make the connection between harm and its repair. In one case, a high school student was arrested for drag racing at 130 mph down a busy urban thoroughfare.

Board Member #2: One of our goals, when we said we want to help you not to make the same mistake again, is that we'd work out some kind of a contract with you, something that you could do to repay, you know, the

community. Certainly, if there were victims, you would have much more to do. You were lucky nobody was hurt. But you took the time for the policeman to go, and I mean, they put their life in danger, too, when they go, when they travel at that speed. You, probably, you know, when you are young, you don't really think about that. But it's putting the policeman's life in danger when you do something like that. So what would, to you, what would be a way to pay the community back for what you have done and what potentially could have happened?

- Offender: First of all, I could probably apologize to the police involved.
- Board Member #2: That's a very good suggestion, a very good idea.
- Offender: I'm not really sure after that, I don't know how repaying something like that would go about.
- Board Member #2: Have you ever done community service?
- Offender: No, well, yeah, I've done community service, but not for anything like this.
- Board Member #3: For the school?
- Offender: Yeah.
- Board Member #1: Well how would you feel about explaining to your classmates what you did, and what could have occurred, or what you feel could have occurred?
- Offender: I could do that, yeah.
- Board Member #3: Do they have some kind of program at school?
- Offender: Program at school?
- Board Member #3: Driving programs?
- Offender: Drivers ed.?
- Board Member #3: Yeah.
- Offender: Yeah. I could appear as a guest speaker, I guess.
- Board Member #2: What school do you go to?
- Offender: [Name of high school].
- Board Member #2: That would be a great idea.
- Board Member #1: That's a great idea, I bet you'd be a good speaker too.

In this case, a concrete harm to the arresting officer was identified and an apology to him was planned. In the passage, and elsewhere, the risk to others was also implied and served as the justification for doing community service. Although it is impossible to reduce a specific risk that has since passed, assigning a service task that addresses the problem of reckless driving symbolically links the solution to the identified harm. Having the offender share his experience with others, they hope, will deter both him and others from engaging in the behavior and, therefore, reduce the community risk in the future.

In a second case where a successful link is made to the identified harm, a storeowner is asked to do a public service that will rectify her sale of alcohol to a minor.

Board Member #3: What sort of a contract are we going to do?

Board Member #1: Well, I don't know, do you belong to any organizations, retail associations, anything like that?

Offender: Vermont, VGA [Vermont Grocers Association].

Board Member #1: VGA? Do they have newsletters that they put out?

Offender: Yes, they do. In fact, they had an article on this topic of conversation tonight in their last bulletin.

Board Member #1: They did?

Offender: It's just about two weeks old.

Board Member #1: The only thing I can think of is maybe something like that.

Board Member #3: Something to be published in a...

Board Member #1: Uh, yeah, just laying out the experience, and I think maybe the idea of what's going on with your employee, what you are doing with that. Because it's an accident. . . I have a restaurant, and I've done it, and I've had people come in and you just don't know the age. But then on the other side. . . I'll have my employees come up to me and say, "You know, I'm serving this person," and I say, "Well how old are they?" "Oh, well, they look old enough." I said, "Well listen, they need to look"—I don't know what it is, 30? Is that what the sign says?

Offender: I don't know what it is on the alcohol, but on the tobacco it's 27.

Board Member #1: So, it's 35 on the alcohol, so I said, "You know, do they look 35?" "Well, no, they're not 35." So I said, "Okay then, you know." It's an accident that can be very simply dealt with. So, I think that maybe whatever is going on in the store and something for your community, which is, in one sense, your community is also the retail community.

As the conversation unfolds, the group locates the harm within the larger community context of problem drinking, with underage drinking as one expression of that. Easy access to alcohol is identified as the storeowner's contribution to the problem. While the board agreed with the offender that her intentions were honest, and that the instance was one of negligence, they sought a resolution that would address how easy it is for storeowners and their employees to commit this offense. The subject of her letter to the retail association newsletter would be to provide an account of her offense and an outline of the steps she had taken to reduce the risk of reoffense—a solution they hoped would be use-

ful to other storeowners.

Discrepant Cases

Earlier, I reported that eight of the cases had no restorative elements in the negotiated contracts or, in two cases, where direct victimization was not addressed by the reparative contract. What went wrong? Why would a restorative justice program produce outcomes with no restoration? Examination of these discrepant cases is not meant to be a distorted look at the emptiness of a nearly full glass. While most cases result in restorative contracts (and most contracts are fulfilled by offenders), much can be learned from cases that digress, for they may point toward more general weaknesses of the program or toward reforms that might serve the program as a whole. They may also point toward the fundamental challenges of operationalizing the restorative justice concept. Below I offer interpretation for these ten discrepant cases.

Reason 1: Administrative Necessity/Oversight

Four of the cases simply failed to negotiate a contract during the videotaped hearing. In one case, for example, the board discovered during the meeting that the offender had violated terms of probation and returned the case to court. In another case, the board questioned whether the case was appropriate for Reparative Probation and postponed the negotiation of the contract.

In some cases, it appears the board simply forgot to address the harm. For example, in one case, an underage male passed out drunk beneath a neighbor's window. When the neighbor discovered him, she called the police and an ambulance, believing him to be in serious danger. Attempting to get at the nature of the harm, one board member asked the offender, "So you were laying under her window, she woke up, and you were there. Can

you imagine how she felt?” As the discussion progressed, a contract was negotiated that included a donation to the ambulance company that rescued him, as well as an apology letter to the medics. Oddly, they did not ask the offender to apologize to the neighbor, who was by their assessment the most upset by the incident. I classify oversight as an administrative, rather than personal, failure because boards do not have procedures in place to ensure that identified harms are addressed in the contract.

Reason 2: Attribution of Responsibility

A second reason why restoration is not negotiated is that board members come to view the offender as a “victim” of the incident, and not responsible for making amends. At such times, the board develops a consensus that is diametrically opposed to the judgment of the court. This is possible simply because individuals form different opinions based on the same evidence, but particularly because the nature of the process of defining the incident is so different in the board setting than it is in the courtroom. In these minor cases, board members discuss the nature of the event in much greater detail, and also rely primarily on the offender for its interpretation when victims are not present.

In one case, an offender was convicted of assault—he had had a physical altercation with his 17-year-old stepson. Since the victim did not appear at the board meeting, the offender provided the sole account other than the police report. Perhaps his account was honest and accurate; perhaps it was woefully biased and manipulative. Whatever the case, his account convinced the board that his violent act was purely self-defense. For example, he stated, “I walk by him and he grabs me, apparently figuring he’s gonna throw me out of the house now. All I did was hold him off; I’m very capable of defending myself.” Such a claim comes to be accepted by the board, even though it conflicts with both the

police report, which provides the victim's account, and the judgment by the court. To reconcile this conflict, the offender provides an explanation that satisfies the board and portrays his guilty plea as an honorable act. "We would have sat there and had a mud sling, pointing fingers over who did what, why, when, how, and I just couldn't see going through that process only to prove that what I did was right." When the board comes to agree with the offender's point of view, his moral responsibility to make amends to the victim or the community is excused. The conversation then turns toward responding to the offender's needs as one who has been treated unfairly by the court (and his stepson), as the quotation below demonstrates. Thus, no restorative activities are negotiated.

Board Member #1: We have a couple of alternatives, one of them would be to return this case to the justice system and say—I'm not speaking now for the others, but I'm speaking for myself—it looks to us or it looks to me as though, basically, this father was the victim in this case. I'm personally, I feel personally, a little inclined to do that. But we could return it and there'd be certain alternatives because a judgment has been made and I assume those alternatives would be what they usually are—that you would be put on regular probation, report to a probation officer, and so on. Or, conceivably, as John said to begin with—it wouldn't be used in this case—but the third alternative in the justice system is to put somebody in jail. So having only those alternatives, the other thing that is open to us is to try to do something here in this case to work out with you what will be helpful to you as well as helpful to the family situation, which is a little different from most of the cases that we have. I'm inclined to want to hang on to this for that reason. . . because I'm a father and I feel for you. You've been putting up with a lot. My first inclination is to say, "Take care of this guy. Help him out. He's trying to bring a family together here."

Reason 3: Failure to Define Harm

A third reason why restoration does not occur is the difficulty boards have in defining the nature of the harm caused by the offense. This reason is particularly important because it may also explain the common failure of boards to engage in thick restoration.

Harm goes undefined for three primary reasons: victim absence, difficulty in quantifying

intangible harms, and normative disagreement.

When victims do not appear at the board meeting, the impact of the crime can only be speculated. Victim participation, in person or through a written impact statement, is crucial for a detailed articulation of the harm wrought by an offense. This is illustrated in the dialogue below. In this case, the young offender had stolen a wallet and made purchases with the victim's ATM/Visa card. He had grabbed the wallet from the victim's jacket while the two were attending an Aikido class. Present at this meeting was the direct victim and the Aikido instructor. Together, they were able to identify both the material and intangible harms caused by the theft.

Board Member #2: Okay, [offender's name], do you want to tell us—well maybe we'll hear from the victims first. Why don't you tell us why, what happened?

Victim #2: Well, working with [name of school], I teach Aikido and the [school] comes over to the Dojo three times a week and sometimes they have to do make-ups. So they come in the evenings with the adult classes and apparently what happened was that [offender's name] came over to do a make-up, saw a coat hanging in the hallway, and took the wallet and left. It was his wallet [pointing to Victim #1] and he left for Spain the next day without any I.D., so that's, then I understand it went further than that. But that's my, the breach of trust is where I'm injured.

Board Member #1: Could you tell us a little more about that, what that means for you, how it affects you?

Victim #2: Well at our Dojo, we are learning cooperative spirit and to have one apple turn it around is kind of bad, and it affects everybody. . . A Dojo is kind of a cross between a gymnasium and a church. We have a lot of training in positive spirit. . . We're not really competing with each other, we're there to work on ourselves. . .

Board Member #1: But this behavior would be inconsistent with that?

Victim #2: Very inconsistent, yeah.

Board Member #2: [To Victim #1] As a victim, do you want to tell us what happened and how it impacted on you?

Victim #1: My wallet was up in my coat upstairs and I ended up leaving for Spain the next day after it was taken. Things like international identification and stuff are things that I really needed.

Board Member #2: When did you realize the wallet was missing?

Victim #1: About an hour after I left the Dojo. Slowly I pieced it together.

Board Member #1: Could you explain a little bit what happened to you, what were the consequences of not having this identification?
Victim #1: With international identification you can save a lot of money on things. As an international student, you travel around, and there are a lot of places that will give you a good discount. I was lucky enough to have dropped my credit card at home before leaving. Luckily, I had that. If I hadn't, I don't know what I would have done.
Board Member #2: When did you get things back? Did you get things back?
Victim #1: No, I didn't really get any of it back. I had to get a new driver's license, a new UVM identification, and some other stuff.

It is clear from this dialogue that the presence of victims make the definition of harm a task that is feasible and concrete. Board members, working with the offender alone, could not have articulated these harms so clearly. When seeking restoration of community harm, small details become valuable tools, such as knowing that the Aikido instructor felt his dojo had suffered a "breach of trust." Repairing that harm may not be simple, but boards can, and often do, respond creatively to such challenges when they have successfully specified the problem to solve. Nevertheless, victims appeared in only four of the 28 cases (14%) with direct victims.

Another explanation for the inability to define harm is that intangible harms are difficult to quantify. Because a drunk driving offense typically involves neither material damage nor a specific victim, it is difficult for board members to identify what harm was actually caused, if any. A common offense that comes before the boards is underage drinking. Here, not only is it difficult for the boards to define harm, but they also often have difficulty expressing why the statute exists.

When they cannot define harm, they certainly cannot repair it. As mentioned earlier, community service is frequently assigned, but rarely is it done with attention to the offense. The illogical sequence of events is made transparent in the following exchange during a board meeting with a drunk driver.

Board Member #1: Let's go through the contract and then a maybe a question or two will come up along the way. Restoring and making whole the victim, what do we got for that?

Board Member #3: Can you identify any victims?

Offender: Me?

Board Member #3: You?

Offender: No.

Board Member #1: Yeah, not a specific person.

Board Member #2: Certainly not, none that can be identified.

Board Member #1: What did the cop say, pretty cooperative? Sometimes they...

Offender: The one that caught me?

Board Member #1: Yeah, the one that busted you.

Offender: Yeah.

Board Member #1: You were okay?


Offender: Yeah.

Board Member #1: Uh, let's come back to this. Community work service, making amends to the community. Who's got a number?

Board Member #3: 15.

Board Member #1: 15 hours?

Initially, the offender tentatively advances the idea that he, himself, is the victim, an idea wholly accepted by board members in another case, and in another town. But these board members do not buy this idea and identify neither victim nor harm. Restoration then becomes a line item to be filled in without discussion of its purpose or relation to the incident. That community service becomes an arbitrary punishment cannot be better symbolized than by the board member's question, "Who's got a number?"

The preceding illustration shows the difficulty boards have in identifying harm in victimless, minor offenses. Sometimes, however, boards and offenders work together to justify normatively ambiguous laws, as the following dialogue demonstrates. In this  case, a college student was arrested for drinking underage.

Board Member #4: Why do you think this law exists that you broke?

Offender: This law exists mainly because of, people feel that it is best for everyone, for anyone under 21 not to drink because of things in the past. People might go out and drive, and we've had plenty of occasions in the past, especially in Springfield—we've had people go out, underage people go out, and drink and get in accidents. And it also just

gives you, makes people more healthy, not drinking under 21. Also, it gets less involvement in criminal issues—usually when you are involved in underage drinking there are usually other criminal activities going on around you, so this is to get you away from these criminal activities to steer you on a better path.

Board Member #6: Let me ask you another question. You spoke of yourself as the victim, and that is not our primary concern. Our concern is the community. Let me tell you something that is very true, and it happened to a neighbor, and I would like you to relate it to talking about the community as the victim. An eighty-year-old man, whose wife had a heart condition. And the neighbors, underage drinking, very loud, woke up the elderly couple in the middle of the night, with the drinking. And at one point, one of the people that had been drinking threw a can of talcum powder through the window, through the screen, on a hot summer evening. And sure enough, the wife had a heart attack that night and they had to rush her to the hospital. Now that is not what happened in your case. With the advent of alcohol and the circumstances, you said the community was the victim. Well, it was in the case that I'm mentioning and perhaps not that far removed from the potential.

Offender: Yeah, I can definitely see the potential.

The preceding quote illustrates how boards attempt to define community harm when no individual harm is obvious. The common strategy is to link the behavior with potential risk—what might have happened based on prior incidents. Moreover, the board takes the opportunity to reflect on the underlying rationale for the law, using the forum as an educational opportunity. By asking, “why do you think this law exists?,” the board enables the offender to shift roles from law-breaker to law-maker. Alternatively, the offender may challenge the law’s legitimacy.⁸ Presumably, if he or she can make an effective case that no harm was done, the offender will be relieved of responsibility.

Reason 4: Conflicting Agendas

A final reason that contracts have no restorative activities is that even when harm is identified, it is often difficult to repair it. In a quote above, an Aikido instructor described the “breach of trust” caused by the offender. The board pondered, but failed to articulate

a strategy to rebuild this trust. The failure to identify a strategy of repair also occurs when the task of defining a restorative activity becomes conflated with the task of defining reintegration strategies. At times, board members disagree with one another over their mission, one placing emphasis on restoration while the other on reintegration. In two cases, this conflict is transparent (although only one of these cases resulted in a contract with no restorative elements).

In the first **case**, a young woman was arrested for possession of alcohol as a minor. She had been a passenger in a car with a drunk driver. As in other similar cases, the board had trouble identifying the harm she had caused, especially since she was not the driver. But the offender suggested, “I’m not really a role model” for her peers. Following up on this, one board member recommended that the offender demonstrate positive role modeling by hosting a “video party” where a video describing the effects of drunk driving would be shown. However, a second board member focused not on restoration, but on whether the activity will effectively change the offender’s behavior—a reintegrative objective. She proposed an alternative activity that is solely reintegrative, and the contract ultimately reflected this change in direction. The dialogue below illustrates the dialectic between restoration and reintegration.

Board Member #3: I have a suggestion with that in mind. Get twelve of her best friends together and have a video party. And show it. . .

Board Member #4: My problem with that is the same thing I felt watching the video. It’s a good video and it’s probably effective on some people. I don’t think it has an effect on this girl. She’s already watched it. For me, it’s the same thing. It’s a video; it’s not real life. Kids today, not just kids, are sitting there watching stuff all the time and it’s just stuff on the screen. And what I wrote down early on is she must find a real person, not a video, who has lost someone to a drunk driver and interview that person and sit down and have a heart to heart.

Board Member #2: She just gave you the ticket right there [Offender had described a friend who was hospitalized because of drunk driving].

Board Member #4: Right, and that's what I said, she gave us what we needed. I'd like to see her go spend some time with her friend in the hospital in Hanover, and then have to write that up.

Because the board members had different agendas, and the more persuasive one focused only on reintegration, the restorative activity was lost. Part of the issue is that harm is difficult to identify. Another part is the strong temptation of board members to "fix" offenders rather than to fix the problems the offenders have caused.

In the following dialogue, a disagreement between board members reflects the restoration/reintegration dialectic clearly, and reinforces my earlier argument that boards have difficulty defining the purpose of community service when it is not linked to the offense. Here, a discussion that begins with an apparently simple decision about how many hours to assign for community service digresses into a philosophical debate about the purpose of community service and its relevance to restoration and reintegration. The offender had provided alcohol to his teenage sons for a party.

Board Member #1: I'm on a completely different wavelength. I think what you are talking about is how much we give him [number of service hours]. I think what we should be talking about is what he gives us. Therefore, it has nothing to do with time; it has to do with the quality of his time.

Board Member #2: I think time's a factor, too.

Board Member #1: No, I don't think so.

Board Member #3: Well, we have to deal with something concrete in order to write a contract and have an agreement about what is going to be done. Because quality we can't know about or he can't know about it until he does it. And even when he does it, we're not necessarily going to know what the quality was. We may never know that.

Board Member #4: The point is, is his experience going to have some transformational effect? [To offender:] This isn't punishment. This is an attempt to transform your attitude about alcohol and children. [To others:] The quantity of time isn't important and how he comes back and reports to [us] will indicate the degree to which it is taken.

Board Member #2: Are we saying that twenty hours would have more motivational factor than thirty?

Board Member #4: No, not necessarily. We think that twenty will certainly, at least by the time we see him next time, have created enough experience that

he can report back to us what it means to him. It will either be persuasive or not.

Board Member #1: Let's set up a hypothetical. The hypothetical is that I suggested that he put in some time—I said five. I could have said one, I could have said twenty. It doesn't matter. And he comes back and reports that he has become an assistant scout leader working with young kids. And he's absolutely enthralled with it. And we realize that here's a guy who is going to spend a lot of time for the rest of his life invested in community service. What's the point of asking him to do six more hours. He's accomplished what we wanted him to accomplish, which is a sense of responsibility to the community. It has nothing to do with whether he puts in ten minutes or ten hours. So I think that if we want to say, "We value your transformation," then we have to do it by what we say. If we say, "We want you to bundle in twenty hours and we don't care what your attitude is, we just want you to put in twenty hours," then we are talking out both sides of our mouth.

Board Member #2: I can't wholly agree with that. What I heard [Board Member #3] say is that in fairness to him, we need to establish in the coming sixty days what the maximum of our expectations will be so that thirty days from now we don't hand him something that is unfair.

Board Member #3: That's true. And I also think we can hope it will be transforming. But it may not be. We can't say, "Well you weren't transformed, you weren't converted, you weren't this or that, so back to jail or court you go." I don't think we can do that. We can't dictate what the psychological results of their being here [will be]. We can hope to come up with a good contract that will be helpful to you [offender], but there's the other segment of the reparative to the community. There is a give-back. People are here to give back to the community. It may be difficult, and they may not like everything they do, and it may not teach them anything, but they have given something back. Doing community service gives back to the community even if, in the end, the person isn't changed. I don't think we can dictate that if they're not changed and they don't take some test that proves to us they've changed, they fail.

While these board members debate the task at hand, their arguments lean either toward the relevance of restoration (even if unpalatable to the offender) or toward reintegration (even if little restoration occurs). Although both are on the agenda for boards, sometimes they lose sight of this, treating them as mutually exclusive, rather than as complementary and additive tasks to be delineated. In the zero-sum game, sometimes restoration is the loser.

Conclusion

This paper examines the dynamic exchange between offenders, victims, and community board members engaged in negotiating restorative justice agreements. I have examined the nature of restorative action and asked why it is that restoration sometimes fails to be negotiated in a program specifically designed to promote it. Several conclusions can be made about the challenges of implementing the restorative justice concept.

First, critics of restorative justice worry that citizens, with loose guidelines, will not fulfill the basic justice tenet that like offenders should be treated equally (Feld 1999). Evidence from this project suggests that this is often true; offenders who are convicted of the same crime are often sanctioned differently. Critics believe the source of disparity will be prejudice and discrimination, however, I do not observe this *per se*. Rather, the source is rooted in the complexity of the sanctioning task. Boards seem to treat each case as an independent event, assessing the unique impact of the offense, and determining the sanction accordingly. In this view, varied responses to similar offense categories are appropriate, since the same type of offense can have different effects on victims and the community. However, variation is not always desirable. Boards fail not when they treat similar cases differently, but when they repair harm in some cases, and not others.

Second, Vermont's community reparative boards typically negotiate reparative agreements that require apologies, restitution, and community service. This is true for 85% of the cases in this study. Most cases, therefore, fulfill at least the thin criterion for restorative justice. 69% of the contracts had restorative elements that were linked to the harm caused by the offense, however, only 19% of the cases consistently linked harm and repair. While apologies and restitution are always linked to the harm, community service

rarely is, and the few positive illustrations reported here can serve as a model for future service work and for a program that aspires to the thick version of restorative justice.

Third, restorative justice is often ill-defined, particularly among practitioners. Most important, the distinction between thick and thin restorative justice should be explored by program managers because dissatisfaction by some with the achievement of thick restorative goals may be explained by the complacency of others for achieving only the thin version of the concept. In Vermont, the thin standard is frequently met, while the thick version is only partially fulfilled. Moreover, as one reviewer pointed out, there is no reason to constrain the definition of thick restorative justice. Future research might examine other ways in which restorative activities may serve multiple ends. For example, community service may respond to the immediate communal harm of the offense, but may also help reintegrate the offender and strengthen community capacity.

Fourth, harm is often ill-defined, making its repair difficult. This may be caused by low victim involvement and the difficulty of defining intangible, communal harms such as the risk created by drunk driving (in the absence of an accident). Lack of victim involvement makes the definition of harm inherently speculative, and may bias a board's understanding of the crime in favor of the offender's perspective. Increasing victim involvement may be essential to reparation of harm. Victimless offenses, such as with many drunk driving arrests, and normatively ambiguous offenses, such as underage drinking, provide a disincentive to the task of defining harm because the harm may be perceived as trivial to both board members and offenders. Unless boards are trained to specifically consider these issues, they may simply avoid the task altogether.

Thick restoration is not possible when boards have not defined the harm. Restorative

activity may occur, but it must be coincidentally related to the impact of the offense if a board is unable to specify in what way the offense adversely affected the victim and/or the community. That boards do not prioritize this activity represents a major obstacle to restoration. Even if individual board members make such a link in their own minds—interviews with board members would help clarify this—their failure to articulate the link to the participants makes the reparative tasks appear arbitrary, and therefore, less legitimate. But remedy is not impossible. Linking harm and repair may be facilitated by explicit activities, such as creating a list of harms and possible repair strategies on a chalkboard. Though simple, I have never observed this occurring in practice.

Fifth, failing to link harm and repair may lead to retributive contracts, such as using community service as “punishment,” by assigning hours of labor arbitrarily without articulating how this labor makes amends for an identified harm. An important distinction was drawn between the four community service activities that were linked to the harm and the 34 other service activities found in the contracts, a distinction that further distinguishes thin and thick restoration. All of the “thick” activities were project-based (appear as a guest speaker, create a public service announcement, etc.), focused on a task that responded to the community harm. When the link was not made, community service was always defined in terms of personal preference or convenience, e.g., offender likes working with kids, or lives near a particular service agency. Most important, service was defined by the assignment of hours, e.g., 30 hours at the food bank.

I argue that such an approach is inherently arbitrary, since it is impossible to determine how many hours would qualify as adequate restoration. This problem does not arise when the activity is project-based, because the symbolic link supercedes the need for

careful temporal accounting. To justify the assignment of hours, board members, like judges, rely on offense severity, and the activity parallels the retributive ethos—the offender will be proportionally burdened. It is not difficult to imagine that under such circumstances, offenders will view an assignment of service hours as punishment rather than as a legitimate obligation, and as commensurate the assignment of an equivalent number of hours in jail or dollars fined (Kahan 1999). This is conjecture, of course, for these data cannot provide evidence for this claim—post hoc interviews with offenders would be necessary. However, it is clear from these data that the assignment of service hours is highly variable for equivalent offenses from one board to another. This suggests either local variation in assessment of the seriousness of particular offenses or, more likely, confusion over the meaning of community restoration when it is not linked to the offense.

Restorative justice is a new and evolving concept with much experimentation underway in the field. Vermont's Reparative Probation Program is a pioneer among them. Because of its novelty, it is both fascinating and necessary to closely observe what the process actually looks like in practice. While the bottom line may ultimately rest on traditional quantitative indicators such as recidivism rates or restorative justice outcome indicators, such as the level of victim participation and/or compensation, it is too soon to judge these new programs on such outcome criteria alone. For if we do not know how well the implementation describes programmatic goals, we cannot say why a program is a failure or success. The data here define some of the challenges inherent in programmatic success, as well as illustrate the enormous creativity of those who are immersed in the day-to-day realization of community justice.

¹ A more comprehensive definition is given by Zehr and Mika (1998: 51-53), yet its core still focuses on harm and repair. This definition is articulated in the form of an outline of dimensions, with the following as primary: “Crime is fundamentally a violation of people and interpersonal relationships; Violations create obligations and liabilities; Restorative Justice seeks to heal and put right the wrongs.”

² A few more meetings were taped, but the hazards of technology precluded their ultimate use.

³ Although permission was obtained in each case, board meetings are public meetings and no permission to tape is technically required.

⁴ Police reports could not be obtained for two cases.

⁵ Similar offenses may or may not involve victims. For example, the youth is often considered a victim by board members in cases of “furnishing alcohol to a minor.” But there is not victim in Case 29, for example, because the offender was the subject of a sting operation.

⁶ The program model does not envision judges adding requirements to the probation order except that they should appear before the reparative board. However, judges do not always follow the rules. This is particularly problematic when probation orders contain retributive components that clearly conflict with the spirit of the program.

⁷ Bazemore and Maloney (1994) argue that community service can also be linked to the offense by having the assignment be victim-driven. The link is established when victims play a crucial role in deciding where or what service is to be done. This is problematic, however, for while it may address victim needs, the service may not be addressing community harm. I believe it is desirable to define these tasks separately; victims may still contribute to the community repair discussion, but that discussion needs to be focused on repairing community harm.

⁸ Braithwaite (1989:11) argues that a “moral educative normative theory of social control aspires to put the accused in a position where she must either argue for her innocence, admit guilt and express remorse, or contest the legitimacy of the norms she is accused of infringing.”

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Table 1: Typology of Harm and Repair

	Private	Communal
Material	<u>Examples of Harm</u> stolen or damaged property medical costs for injuries	<u>Examples of Harm</u> stolen or damaged property graffiti
	<u>Examples of Repair</u> restitution free labor to victim	<u>Examples of Repair</u> restitution community service to clean graffiti
Personal/ Relational	<u>Examples of Harm</u> emotional distress personal injury	<u>Examples of Harm</u> civic withdrawal drunk driving/unsafe roads
	<u>Examples of Repair</u> apology victim offender mediation	<u>Examples of Repair</u> community service to build community, e.g., community garden community service with MADD

Table 2. Representativeness of Offenses in Sample.

Offense	Study Sample		Reparative Probation Cases	
	July 1998-August 1999		May 1999-April 2000	
	N	%	N	%
Driving Under the Influence	16	31	487	22
Theft/Fraud	12	23	310	14
Underage Drinking	8	15	434	20
Assault/Harassment/Disorderly	7	13	186	8
Furnishing Alcohol to Minor	4	8	60	3
Misc. Driving	4	8	351	16
Marijuana Possession	1	2	84	4
Other	0	0	270	13
TOTAL	52	100	2191	100

Table 3. Classification of Harm and Repair for Sample.

Case	Offense	Direct Victim	Outstanding Material Harm	Thin Restoration	Thick Restoration	Outcome Success
1	Driving Under Influence	Yes		Community Service	Apology	Yes
2	Misc. Driving			Community Service		Yes
3	Theft/Fraud	Yes			Apology	Yes
4	Assault/Harassment/Disorderly	Yes				Yes
5	Furnishing Alcohol to Minor	Yes		Community Service	Apology	Yes
6	Driving Under Influence			Community Service		Yes
8	Theft/Fraud	Yes		Community Service	Apology	No
9	Assault/Harassment/Disorderly	Yes				Yes
10	Underage Drinking	Indirect		Community Service	Apology	No
11	Driving Under Influence	Yes		Community Service	Apology	Yes
12	Underage Drinking			Community Service		Yes
13	Underage Drinking			Community Service		Yes
14	Theft/Fraud	Yes		Community Service	Apology	Yes
15	Misc. Driving			Community Service		Yes
16	Assault/Harassment/Disorderly	Yes		Community Service	Apology	Yes
17	Misc. Driving	Indirect			Apology, Community Service	Yes
18	Underage Drinking	Indirect		Community Service		No
19	Driving Under Influence	Indirect		Community Service	Apology	Yes
20	Theft/Fraud	Yes			Community Service	Yes
21	Driving Under Influence	Indirect		Community Service	Apology	Yes
22	Assault/Harassment/Disorderly	Yes				Yes
23	Driving Under Influence	Indirect				Yes
24	Underage Drinking	Indirect		Community Service		Yes
25	Theft/Fraud	Yes	Yes	Community Service	Apology, Restitution	No
26	Driving Under Influence	Indirect		Community Service	Apology	Yes
27	Underage Drinking	Indirect				Yes
28	Theft/Fraud	Indirect		Community Service	Apology	Yes
29	Furnishing Alcohol to Minor	Indirect			Community Service	Yes
30	Driving Under Influence	Indirect				No
31	Assault/Harassment/Disorderly	Yes				Yes
33	Theft/Fraud	Yes		Community Service		No
34	Assault/Harassment/Disorderly	Yes		Community Service	Apology	Yes
35	Theft/Fraud	Yes	Yes	Community Service	Apology, Restitution	No
36	Underage Drinking	Indirect				Yes
37	Misc. Driving	Yes			Apology	Yes
40	Driving Under Influence	Yes			Apology	Yes
42	Underage Drinking	Yes	Yes		Apology, Restitution	Yes
43	Furnishing Alcohol to Minor	Yes			Apology	Yes
44	Driving Under Influence	Yes		Community Service	Apology	No
45	Driving Under Influence	Indirect		Community Service	Apology	Yes
46	Driving Under Influence	Yes		Community Service	Apology	Yes
47	Driving Under Influence	Indirect		Community Service	Apology	Yes
48	Possession of Marijuana	Indirect		Community Service	Apology	Yes
49	Driving Under Influence	Indirect		Community Service	Apology	Yes
50	Driving Under Influence	Indirect		Community Service	Apology	Yes
52	Driving Under Influence	Indirect		Community Service	Apology	Yes
53	Theft/Fraud	Yes		Community Service	Apology	Yes
54	Assault/Harassment/Disorderly	Yes		Community Service	Apology	Yes
55	Theft/Fraud	Yes	Yes	Community Service	Apology, Restitution	Yes
56	Theft/Fraud	Yes	Yes		Apology, Restitution	No
57	Theft/Fraud	Yes		Community Service	Apology	Yes
58	Furnishing Alcohol to Minor	Yes			Apology, Community Service	Yes