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Shame by Any Other Name: Lessons for Restorative Justice from the Principles, Traditions and Practices of Alcoholics Anonymous¹

Victoria Pynchon²

And the eyes of both were opened, and they knew they were naked; and they sewed fig leaves together and made themselves aprons. . . . And the Lord God called unto Adam, and said unto him, Where art thou? And he said, I heard thy voice in the garden and I was afraid, because I was naked and I hid myself.

Genesis, 3:7-10 (King James).

There was a guy with something like multiple sclerosis. A perpetual spasm forced him to perch sideways on his wheelchair and peer down along his nose at his knotted fingers. This condition had descended on him suddenly. He got no visitors. His wife was divorcing him. He was only thirty-three, but it was hard to guess what he told about himself because he really couldn't talk anymore, beyond clamping his lips repeatedly around his protruding tongue while groaning. No more pretending for him! He was completely and openly a mess. Meanwhile the rest of us go on trying to fool each other.

DENIS JOHNSON, *JESUS' SON* (1992).

Our marriage is a commercial for how normal we are when we're anything but.

Lester Burnham, *AMERICAN BEAUTY*, (DreamWorks Pictures 1999).

You can't save your face and your ass at the same time.

Alcoholics Anonymous Aphorism

1. This paper was inspired by and is dedicated to Andrew, who lost his battle with depression and shame in the summer of 2004.

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I. INTRODUCTION

Shame. We all know it in one form or another: tripping over absolutely nothing at the local mall, emerging from the restroom trailing a white flag of toilet paper, laughing last and loudest in a room suddenly gone silent, waving happily toward a friend only to realize we are beckoning to a complete stranger.

These are mild forms of shame – embarrassment if you will.³ Yet the feeling of sudden exposure makes us flush red in the face, temporarily lose coherence, and engage in an elaborate public pantomime in a futile attempt to regain our dignity. We look to see who is watching, pull the toilet paper quickly from our shoe and stretch our arms as if yawning rather than mistakenly greeting a stranger. We tell an off-color joke and no one laughs. As a result, we flush red and our hands become damp. Staring with mortification at the floor, we sheepishly mumble, “My friends thought it was funny.” Any little fig leaf will do. Like Adam and Eve in the Garden of Eden, we find ourselves naked, hear the voice of another and are suddenly afraid.

Because the painful experience of shame is believed to deter anti-social and criminal conduct, it has long been a staple of our criminal justice system. Its purpose has been to accomplish moral education about the wrongfulness of the crime and to prevent its occurrence through social and self-disapproval.⁴ The concept of “reintegrative shaming” was first introduced by restorative justice theoretician John Braithwaite as a means of distinguishing between shame that stigmatizes criminal offenders (and thus *increases* crime) from shame that condemns wrongdoing but forgives and respects the offender, thus *hopefully* reducing recidivism and *decreasing* crime.⁵

3. Shame, guilt and embarrassment have been categorized as the “self-conscious emotions.” Tangney, et al., *Shame -proneness, Guilt-proneness, and Psychological Symptoms, in SELF-CONSCIOUS EMOTIONS: THE PSYCHOLOGY OF SHAME, GUILT, EMBARRASSMENT, AND PRIDE* 349 n.1 (J. P. Tangney & K.W. Fischer eds., 1995) [hereinafter Tangney]. Embarrassment is a “shame-linked” emotion experienced without the disruption of thought or the emotional intensity of the more virulently felt constellation of emotions known as “shame.” MICHAEL LEWIS, *SHAME, THE EXPOSED SELF* 81 (1992); see also Christian Heath, *Embarrassment and Interactional Organization, in ERVING GOFFMAN: EXPLORING THE INTERACTION ORDER* 137 (Paul Drew & Anthony Wooton eds., 1988) (Embarrassment is at the heart of day-to-day social conduct, constraining the behavior of individuals by way of public responses to actions and activities considered problematic or untoward. Embarrassment thereby plays a critical role in “sustaining the individual’s commitment to social organization, values and convention,” permeating all of our dealings with others and informing the boundaries of individual behavior that formal and institutionalized constraints do not reach.).

4. John Braithwaite, *Reintegrative Shaming, Republicanism and Policy, in CRIME AND PUBLIC POLICY: PUTTING THEORY TO WORK* 191, 193 (Hugh P. Barlow ed., 1995) [hereinafter Braithwaite, *Shaming*].

5. John Braithwaite, *Shame and Criminal Justice*, 42 *CANADIAN J. CRIMINOLOGY & CRIM. JUST.* 281, 281-82 (2000) [hereinafter Braithwaite 2000].

In criminal ADR or “restorative justice” circles, the beneficial effects of “reintegrative” shame are meant to be accomplished by a “restorative justice conference” or “victim-offender mediation” [hereinafter “VOMS”].⁶ These VOMS bring together victims and their loved ones; offenders and their friends and family; and, caring members of the community for the purpose of discussing the consequences of the crime and what can be done to set it right.⁷ Guided by a restorative justice mediator, the parties are meant to engage in a process of respectful dialogue, resulting in the expression of accountability, remorse and apology by the offender; and, forgiveness by the victim leading to the participants’ entry into a restitution agreement.⁸

Restorative justice theorists and practitioners assert that censuring the offender’s criminal behavior and its deleterious effect on the victim without stigmatizing him will engender empathy for the victim and accountability in the offender, thus reducing recidivism.⁹ Whether participation in a single VOM can accomplish such far-reaching goals has been the subject of much debate in restorative justice circles.¹⁰ This paper suggests that a thorough understanding of the origins and effects of shame by restorative justice theorists and practitioners – together with shame-reducing VOM practices and post-offender shame-reduction “recovery” programs – are absolutely necessary if restorative justice is to achieve its rehabilitative goals.

II. A SHORT PRIMER ON SHAME, GUILT AND MORAL EDUCATION

A. *The Origins and Effects of Shame*

The word shame is derived from the Indo-European *skem* which means “to hide.”¹¹ Shame makes us want to hide – from ourselves, our God and our peers – making shame an existentially isolating state of mind.¹² Feeling shame makes

6. Braithwaite, *Shaming*, *supra* note 4, at 194.

7. Braithwaite 2000, *supra* note 5, at 293.

8. *Id.*

9. LAWRENCE W. SHERMAN & HEATHER STRANG, THE RIGHT KIND OF SHAME FOR CRIME PREVENTION, REINTEGRATIVE SHAMING EXPERIMENTS (RISE) 1 (Canberra: Australian Nat’l Univ., Working Paper, 1997), available at <http://www.aic.gov.au/rjustice/raise/working/risepap1.html>.

10. See section II, *infra*.

11. ONLINE ETYMOLOGY DICTIONARY (Douglas Harper, ed., 2001), at <http://www.etymonline.com/index.php?l=s&p=16>.

12. Unacknowledged shame perpetuates “entrapment in one’s own isolation,” creating further shame and increased isolation. ALLAN N. SCHORE, AFFECT REGULATION AND THE ORIGIN OF THE

a person “dejection-based, passive, or helpless,” causing the “ashamed person [to focus] more on devaluing or condemning [his] entire self” than upon his behavior.¹³ He sees himself “as fundamentally flawed, feels self-conscious about the visibility of [his] actions, fears scorn, and thus avoids or hides from others.”¹⁴

The shamed individual wants “to undo aspects of the self” whereas the guilt-ridden one wishes to undo aspects of his behavior.¹⁵ It is therefore not surprising that guilt tends to motivate restitution, confession, and apology, whereas shame tends to result in avoidance or anger.¹⁶ The psycho-biology of the constellation of emotions we call “shame” is innate.¹⁷

[It] produces a sudden loss of muscle tone in the neck and upper body; increases skin temperature on the face, frequently resulting in a blush and causes a brief period of incoordination and apparent disorganization. No matter what behavior is in progress when shame affect is triggered, it will be made momentarily impossible. Shame interrupts, halts, takes over, in-conveniences, trips up, makes incompetent anything that had previously been interesting or enjoyable.¹⁸

A state of cognitive shame follows this initial cluster of feelings.¹⁹ After the painful jolt of shame, we begin to search our “life scripts” for some way to integrate the shameful experience with our prior experiences, to make sense of the pain and disorientation caused by the sudden upset of a positive emotional state.²⁰

SELF: THE NEUROBIOLOGY OF EMOTIONAL DEVELOPMENT 248 (1994). See also, Simone Fullager, *Wasted Lives: The Social Dynamics of Shame and Youth Suicide*, 39 J. SOC. 291, 297 (2002) (Un-recognized shame generates an “unending spiral” of painful feelings of self-loathing).

13. Nancy Eisenberg, *Emotion, Regulation and Moral Development*, 51 ANN. REV. PSYCHOL. 665, 667 (2000) (quoting T.J. Ferguson & H. Stegge, *Measuring Guilt in Children: A Rose by Any Other Name Still Has Thorns*, in GUILT AND CHILDREN 20 (Jane Bybee ed., 1998)).

14. *Id.*; see also MARIO JACOBY, SHAME AND THE ORIGINS OF SELF-ESTEEM: A JUNGIAN APPROACH 95 (1996) (Shame “sends us into isolation or retreat.”).

15. Eisenberg, *supra* note 13, at 668.

16. *Id.*; see also Miriam Chernoff, et al., *Toward Forgiveness: The Role of Shame, Guilt, Anger and Empathy*, 46 COUNSELING AND VALUES 26, 33 (2001) (“Guilt, in contrast to shame, serve[s] to engage individuals in a process supportive of resolution of conflict and forgiveness.”).

17. SCHORE, *supra* note 12, at 204.

18. See D.L. NATHANSON, SHAME AND PRIDE: AFFECT, SEX AND THE BIRTH OF THE SELF 209 (1992).

19. *Id.* at 316-17.

20. These “life scripts” are sets of “layered associations” concerning our personal size, strength, ability, skill (“I am weak, incompetent, stupid”); dependence and independence (“I am helpless”); ability to compete (“I am a loser”); sense of self (“I am unique only to the extent that I am defective”); personal attractiveness (“I am ugly or deformed”); sexuality (“There is something wrong with me sexually”); public presence (“I wish a hole would open up in the ground and swallow me”); and, wishes or fears about closeness (“I am not fit for human company; I am unloved and will be alone forever.”). *Id.*

Because our earliest experiences of helplessness relate to our size, strength and intelligence, only anger and its explosive cousin, rage, allow us to prove to ourselves and others that we are powerful instead of weak, competent rather than stupid, large rather than small.²¹ Thus do many shame-suffused individuals respond to chronic shame in an attack mode, particularly those who feel “endangered” by the depths to which their self-esteem has been reduced.²² Such individuals experience shame as a threat to their physical well-being and lack the ability to trust and rely upon others.²³

Shame thus serves as a barrier to one’s capacity to achieve empathy and develop conscience.

B. Guilt, Shame and Moral Development

1. Distinguishing Guilt from Shame

The distinction between guilt and shame in moral development is not a trifling matter of purely semantic interest.²⁴ Guilt arouses emotional discomfort in response to our transgressions against others.²⁵ By age two, children develop the ability to empathize with the feelings of another and by age three to evaluate their own conduct against objective behavioral standards.²⁶ As soon as we are able to experience shame and guilt, we instinctively attempt to regulate our emotional state by engaging in spontaneous acts of confession and reparation.²⁷ It is guilt, therefore, not shame, that discourages us from engaging in wrongdoing.²⁸

21. *Id.* at 365.

22. *Id.*

23. *Id.* at 66.

24. Tangney, *supra* note 3, at 343-44 (“The distinction between shame and guilt . . . is an important one. Numerous empirical studies [citations omitted] underscore that shame and guilt differ importantly along affective, cognitive and motivational dimensions.”).

25. Eisenberg, *supra* note 13, at 665; *see also* Tangney, *supra* note 3, at 344 (“With [guilt’s] focus on a behavior (rather than the self) comes a sense of tension, remorse, and regret. The person in the midst of a guilt experience often feels a press to confess, apologize, or make amends for the bad deed that was done . . . [B]ecause a behavior – not the self – is the object of approbation, the self remains mobilized and ready to take reparative action to the extent that circumstances allow.”).

26. Eisenberg, *supra* note 13, at 679.

27. *Id.* at 679-80.

28. *Id.* at 680 (Research has repeatedly shown that children who experience guilt offend less often than those who do not.); *see also* Tangney, *supra* note 3, at 344 (Guilt is adaptive, serving to “protect the self from unwarranted global devaluation, while at the same time keeping the door open for remedying the guilt-inducing behavior and/or making amends for its consequences. In a very real sense, then, guilt is a hopeful, future-oriented moral affective experience.”).

The primary differences between guilt and shame in regard to the development of empathic responsiveness to others and accountability for our own wrongful actions are shown by the following chart, drawn from the pioneering work of psychologist Helen B. Lewis:²⁹

GUILT	SHAME ¹
The actor feels badly about his transgression	The actor feels badly about himself
The act is bad	The self is bad
The actor's anger is localized in the wrongful act	The actor's anger is directed toward himself
The actor's "self" remains the locus of control, as well as of his feelings of guilt and regret	The actor sees himself to be an object of contempt and scorn
The actor's sense of self remains intact	The actor's sense of self is fragmented and enfeebled
The actor recognizes that he is actively involved in committing the transgression	The actor believes he is at the effect of the negative feeling and is unable to identify its source
The actor experiences little to no autonomic bodily feedback	The actor experiences considerable autonomic bodily feedback, including blushing, sweating and increased heart rate
The actor's negative emotional response results from fear of punishment in the event his wrong-doing is discovered	The actor's negative emotional response results from his perceived inability to live up to an ideal state and his fear that love will be withdrawn if that inability is discovered (i.e., isolation, abandonment)
The actor discharges hostility as righteous indignation. He is able to easily discharge that hostility by blaming another.	The actor attempts to discharge hostility as humiliated rage, which is often frustrated by feared loss of love
The actor's defenses include shifting blame to others	The actor's defenses include rage, contempt, withdrawal, avoidance, depression, envy, and self-contempt
The actor measures differences between himself and others to increase self-esteem	The actor measures differences between himself and others highlight his own deficiencies.

29. HELEN B. LEWIS, SHAME AND GUILT IN NEUROSIS 88, 90-91, 251-252 (1971).

Others deal with the wrongfulness of the act without isolating the actor.	Others uncomfortable in the presence of the shamed or humiliated individual.
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2. Rebuilding the “Interpersonal Bridge”

Shame not only affects an individual’s sense of his own value, it “acts as a powerful modulator of interpersonal relatedness and . . . ruptures the dynamic attachment bond between individuals.”³⁰ When an individual has broken this bond, he wishes to recapture the relationship as it existed before it turned problematic.³¹ Toddlers shamed by their mothers, for instance, naturally initiate appeals to repair the momentary break in the emotional bond resulting from the shame-inducing behavior.³² This process is called self-righting.³³ It is natural and universal.³⁴ The shamed toddler reflexively looks up at and reaches toward his mother.³⁵ Even a preverbal child will spontaneously express this need to be held in an attempt to reaffirm both self and the ruptured relationship, to feel restored and secure.³⁶

A healthy and responsive mother accepts and assuages the child’s painful feelings of shame, enabling the toddler to return to a normal emotional state, one in which love and trust are ascendant.³⁷ If the caregiver is “sensitive, responsive, and emotionally approachable,” especially if she uses soothing sounds, gaze and touch, mother and child are “psychobiologically reattuned,” the “interpersonal bridge” is rebuilt, the “attachment bond” is reconnected, and the experience of shame is regulated to a tolerable emotional state.³⁸

This series of events between child and caregiver has been termed the “positive socialization of shame.”³⁹ It permits the infant to “develop an internal representation of himself as effective, of his interactions as reparable, and of his

30. SCHORE, *supra* note 12, at 242.

31. *Id.* at 242-43.

32. *Id.* at 242.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 242-43.

38. *Id.* at 243.

39. *Id.* at 246.

caregiver as reliable.”⁴⁰ If a mother repeatedly fails to participate in this interactive reparative stage, the child begins to believe that his emotional needs are unacceptable and shameful.⁴¹ Chronic empathic failure leaves the child stuck for long periods of time in a state of withdrawal.⁴² The effect of post-shame withdrawal also includes negative cognitive-emotional patterns that color all subsequent subjective experience.⁴³ The child concludes that he is helpless and the future hopeless.⁴⁴ He comes to believe that he is deeply flawed and that all of his experiences arise from his deficiencies.⁴⁵

Importantly, when shame goes unacknowledged, “it is almost impossible to mend the bond.”⁴⁶ The natural resulting inclination to hide one’s misdeeds “creates further shame, which creates a further sense of isolation.”⁴⁷ Thus, while shame in the absence of a consistently repaired interpersonal bridge creates pathology, repair teaches emotional self-regulation, creates “secure attachments” and leads to the development of empathy and conscience.⁴⁸

3. Guilt and Shame in the Development of Moral Character

Understanding the differences between guilt and shame make even ordinary attempts to apologize and mend relationships damaged by careless, selfish or unkind acts, easier to understand and manage. Use as an example the revelation that a spouse has had an affair. The anger, even rage, of the betrayed partner in this scenario is both understandable and familiar to all of us. A typical shame-suffused unfaithful spouse would more readily respond with shame-based confessions of powerlessness and helplessness than a guilt-ridden partner (“I couldn’t help myself; I’m bad through and through; I wouldn’t have done it if I were able to stop myself, but I was helpless against my desire”) or aggression (“if you weren’t so involved with your work, if you weren’t so cold and distant,

40. *Id.*

41. *Id.* at 247.

42. *Id.* at 247-48.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 248.

47. *Id.*

48. Research in child development shows that “securely attached” toddlers readily separate from their primary care-taker to check out novel environments, freely and easily share with their parental figure on an emotional level and are readily comforted when distressed, returning easily to play. NATHANSON, *supra* note 18, at 232-33. This early “secure attachment” forms the necessary basis for healthy, stable and satisfying personal relationships in adulthood. JOHN H. KENNELL, BONDING: BUILDING THE FOUNDATIONS OF SECURE ATTACHMENT AND INDEPENDENCE 192 (1995) (“Without a secure base established in infancy, humans from childhood throughout adult life may develop and cling to the belief that the world is unstable, and that they cannot safely trust others.”).

if you satisfied my needs more often, I wouldn't have had to seek solace in the arms of another").⁴⁹ Not only are these shame-based confessions unlikely to lead to a change in the unfaithful spouse's behavior, they are almost certain to further anger the betrayed spouse who likely wishes, at a minimum, an acknowledgement of wrong-doing, accountability, sincere apology and a promise not to offend again.

A typical guilt-based confession would have an entirely different focus. The guilty party, knowing himself to be the "locus of control," is far more apt to hold himself accountable for wrongdoing once it has been discovered.⁵⁰ Guilty expressions of remorse would include "I'm sorry; I know I could have behaved better but I chose to ignore my better judgment" or "I have felt you to be distant and cold and I do feel my needs are not being met, but I understand that is no excuse for this bad behavior." An individual who feels in control of his actions is more likely to *feel accountable* for them, and therefore, more likely to accept responsibility for them, apologizing and attempting to make amends.⁵¹

These distinctions between guilt and shame, as well as the circumstances encouraging and discouraging them should be kept in mind when evaluating the claims for and criticisms of restorative justice theory and practice.

III. CLAIMS FOR AND CRITICISMS OF REINTEGRATIVE SHAMING

Because North American families who condemn wrongdoing while sustaining relationships of love and respect are more likely to raise law-abiding citizens, restorative justice theorists hope that VOM practices doing the same thing will accomplish the task of offender rehabilitation.⁵² Although some believe the jury is still out on the question whether restorative justice practices are capable

49. Tangney, *supra* note 3, at 344 ("[R]esearch . . . indicates that shame can engender a hostile, defensive type of anger [citations omitted] presumably aimed at a real or imagined disapproving other.").

50. *Id.* ("The person in the midst of a guilt experience often feels a press to confess, apologize or make amends for the bad deed done.").

51. *Id.* at 344-45 ("[G]uilt fosters an adaptive, constructive orientation toward others, whereas shame invokes a number of processes that are likely to be detrimental to interpersonal relationships" such as shame's tendency to "interfere with other-oriented empathic concern." Guilt, on the other hand, "appears to enhance other-oriented empathy.").

52. Braithwaite 2000, *supra* note 5, at 285 (Families that fail to discipline misbehavior, as well as those that reject the misbehaving child and impose "harsh, unreasoning and punitive" sanctions are more likely to raise children who engage in criminal behavior than those that condemn wrong-doing but respect the wrong-doer.).

of reducing recidivism,⁵³ others believe the evidence already in has proven restorative justice practices unequal to the task.⁵⁴

Reports of post-VOM offenders' propensity for recidivism are mixed. Some indicate that recidivism *increased* for VOM participants in comparison with those participating in traditional criminal justice proceedings.⁵⁵ Other studies have shown small, but "insignificant" reductions in recidivism.⁵⁶ Where a correlation between restorative justice practices and rehabilitation has been shown to exist, the connection has been explained as "only incidental and as a byproduct of its principal objectives of compensating the victim and avoiding incarceration for the offender."⁵⁷

These disappointing results have been attributed to both the failure of a single VOM conference to work offender transformation and to the lack of strength, love, trust and respect in the communities to which offenders are returned.⁵⁸

Those who focus on the lack of community resources claim that "corrective" shaming sanctions can convey the moral content its adherents promote only if family and communal bonds are revitalized and a more robust sense of interdependence and communal responsibility is developed in the communities to which offenders are "restored."⁵⁹

Those who concentrate on VOM practices suggest that offenders will be unable to achieve the requisite empathy and accountability unless more attention is paid to the pre-offense injuries *they* have suffered.⁶⁰ Unless harm to offenders is acknowledged during VOMs, these critics argue, they will be unable to accept responsibility for their actions or assume true accountability for the harm they have caused.⁶¹ These commentators contend that only if VOM processes include expressions of understanding for the *offender's* deviant behavior will the way be opened for him to acknowledge harm done to others.⁶² In the absence of such empathic responses, they contend, the offender will more readily move

53. *Id.* at 294.

54. Toni Massaro, *Shame, Culture and American Criminal Law*, 89 MICH. L. REV. 1880, 1936-37 (1991) [hereinafter "Massaro"].

55. Richard Delgado, *Goodbye to Hammurabi: Analyzing the Atavistic Appeal of Restorative Justice*, 52 STAN. L. REV. 751, 765 (2000) [hereinafter "Delgado"].

56. DANIEL VAN NESS & KAREN H. STRONG, *RESTORING JUSTICE* 10 (1997).

57. Delgado, *supra* note 55, at 761.

58. Braithwaite 2000, *supra* note 5, at 291 ("Reintegrative shaming, according to the theory, will be more widespread in societies where communities are strong, where citizens are densely enmeshed in loving, trust and respectful relationships with others."); Massaro, *supra* note 54, at 1922-23.

59. Massaro, *supra* note 54, at 1922-23.

60. *Id.*

61. *Id.*

62. *Id.*

toward resentment than empathy – simmering from the further insult that the victim’s injuries are being addressed while his own continue to be ignored.⁶³

Much depends, of course, upon the selection and training of VOM mediators. These individuals must be capable community-builders, with strong skills in openness and availability to others, including an ability to affirm the humanity of others regardless of the nature of their wrongful actions.⁶⁴ This paper suggests, however, that no matter how empathic the mediator, unless VOMS include at least one successfully “restored” offender, the perpetrator is likely to remain mired in shame and thus unable to escape the defensiveness, resentment and denial that prevents true reconciliation.⁶⁵ It further suggests that in the absence of a moral post-VOM offender community, the goals of reducing crime and recidivism will remain elusive.

There is, however, a solution with proven effectiveness. For the past sixty years, the program of Alcoholics Anonymous has been achieving moral education and community reconciliation using the “right” kind of shame – which in this author’s opinion means no shame at all.

IV. EMBRACING OFFENDER “IDENTITY” – TAKING THE STIGMA OUT OF THE LABEL

Braithwaite suggests that labeling criminal offenders as such “will actually reduce crime when the labeling is respectful and focused on the act rather than the person and where disapproval is terminated by ceremonies of forgiveness and apology.”⁶⁶ Others contend that labeling is inherently stigmatizing and

63. *Id.*

64. These qualities are known as *ubuntu* in Africa. DESMOND TUTU, NO FUTURE WITHOUT FORGIVENESS 31-32 (1999). A person with *ubuntu* is open and available to others, affirming of others, does not feel threatened that others are able or good, for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are. *Id.*

65. JOHN OWEN HALEY, AUTHORITY WITHOUT POWER: LAW AND THE JAPANESE PARADOX 136 (1991) (studies have found that offenders “relieve distress experienced after committing a crime harmful to others by justification, derogating the victim and denying responsibility or restitution.”); see also Braithwaite 2000, *supra* note 5, at 285 (“[H]arsh, unreasoning and punitive discipline combined with rejection of the child” is “particularly criminogenic.” (quoting ROBERT SAMPSON & JOHN LAUB, CRIME IN THE MAKING AND TURNING POINTS THROUGH LIFE 122 (1995))).

66. Braithwaite 2000, *supra* note 5, at 288.

likely to *increase* recidivism.⁶⁷ In response to these claims and criticisms, we turn to the example of Alcoholics Anonymous, which teaches that self-labeling in a supportive community of “recovering” offenders can speed reconciliation between the perpetrator and the larger community.⁶⁸

Because we live in a culture saturated in alcohol and drug “recovery” stories,⁶⁹ it is difficult to recall the time when “alcoholism was considered hopeless by the medical profession and a moral failing by almost everyone.”⁷⁰ This, of course, is much how criminal offenders are considered today.⁷¹ Although AA aids members in coming to terms with their specific moral failings, the *condition of alcoholism* is re-conceptualized in AA practice as being beyond the alcoholic’s control and therefore undeserving of shame.⁷² Only by *embracing one’s identity as an alcoholic*, i.e., as a person who has lost the ability to control his drinking, is the alcoholic able to regain the “locus of control” by becoming abstinent and pursuing the physical, emotional and spiritual solution offered by AA practice.⁷³

Although this transformation occurs over time and through many different AA practices, it commences with one’s willingness to identify one’s self as an alcoholic.⁷⁴ By so doing, the alcoholic is not only able to reinterpret his life

67. Massaro, *supra* note 54, at 1919 (“Labeling theorists believe that the[] negative consequences of stigmatizing offenders outweigh any benefits.” “Specifically, they argue that by labeling an offender ‘deviant’ -- which shaming sanctions clearly try to do -- the state may produce ‘secondary deviance,’ or criminal acts that are a result of the labeling.”).

68. Davis & Jansen, *Making Meaning of Alcoholics Anonymous for Social Workers: Myths, Metaphors, and Realities*, 43 SOC. WORK 169, 178-79 (1998) [hereinafter “*Making Meaning*”] (suggesting that there are many “extended” meanings embedded in one’s self-identification as an alcoholic, including the assertion that despite one’s alcoholism, the AA member is “sober today and participating in [AA] to help [his] mental, spiritual and physical recovery.”).

69. See generally KATHLEEN S. LOWNEY, *BARING OUR SOULS: TV TALK SHOWS AND THE RELIGION OF RECOVERY* (1999) [hereinafter “*BARING SOULS*”].

70. Davis & Jansen, *Making Meaning of Alcoholics Anonymous for Social Workers: Myths, Metaphors, and Realities*, 43 SOC. WORK 169, 170 (1998) [hereinafter “*Making Meaning*”] (These were the existing attitudes in 1935 when late-stage alcoholics Bill Wilson and Dr. Bob Smith joined together to create what is now known as Alcoholics Anonymous.).

71. Members of the public categorize offenders as people with anti-social temperaments and dispositions. JULIAN V. ROBERTS & LORETTA J. STALANS, *PUBLIC OPINION, CRIME AND CRIMINAL JUSTICE* 31 (1997). The public therefore appears to attribute crime not to external circumstances (such as provocation or loss of a job) but the personality attributes of the offender. *Id.* This “once an offender, always an offender” view is likely to affect large numbers of people, especially in the United States where state information systems carry criminal record information on fifty million individuals. *Id.*

72. GEORGE H. JENSEN, *STORYTELLING IN ALCOHOLICS ANONYMOUS: A RHETORICAL ANALYSIS* 115 (2000) [hereinafter “*STORYTELLING*”].

73. *Making Meaning*, *supra* note 70, at 175 (When people with similar problems join together for the purpose of solving them, they feel empowered and able to control some aspect of their lives, particularly where the help is not given to them from the outside.).

74. *Making Meaning*, *supra* note 70, at 178-79.

through the values of the AA community, but to *keep his former identity alive* while at the same time acquiring a new identity as a *recovering alcoholic*.⁷⁵

As the alcoholic tells his story *as* an alcoholic, he reaffirms an identity with his or her former self (I am the person who did these things, the person who takes responsibility for these things) even as he or she creates (with each retelling) an increasing sense of distance from that self. One may, during the moments of confession, bring yet another aspect of one's ego, one's sense of shame or remorse about past events, before God and an audience so that it has less power over him or her. The speaker reaffirms his or her present persona, his or her identity as a recovering alcoholic, which entails membership within a community, which is an identification with a future self, the self that the speaker promises to become.⁷⁶

It is therefore with pride rather than shame that an AA member introduces himself as an alcoholic.⁷⁷ This greeting has been said to have various "extended" meanings depending on the context in which they are said, including:

1. I have faced the reality that I am an alcoholic who cannot control my drinking;
2. I have suffered and caused others to suffer just as have other alcoholics;
3. I do not acknowledge the shame other people attach to alcoholism;
4. Though an alcoholic, I am not drinking today but am rather pursuing my own (and my fellow alcoholics') mental, spiritual and physical recovery; and,
5. Even though I am not drinking today, there is a part of me that remains immature, self-centered, egotistical and superficial, i.e., the "alcoholic personality" in me, that sometimes operates to harm myself and others. I claim this part of myself instead of trying to hide it by pretending to be perfect.⁷⁸

These positive reinterpretations of one's alcoholism serve to relieve shame for both speaker and listener.⁷⁹ Neither is forced to continue denying his condi-

75. STORYTELLING, *supra* note 72, at 115.

76. *Id.*

77. Some people, in a likely attempt to further reduce the shame of alcoholism, introduce themselves as "recovering alcoholics" and some as "grateful recovering alcoholics." See e.g., Byron Roberts, *Golden Age: AA Celebrates 60 Sober Years*, INSIGHT ON THE NEWS, June 26, 1995, available at www.questia.com/PMqst?a=o&d=50000310303 ("At meetings, speakers introduce themselves - 'My name is Sarah and I'm a grateful recovering alcoholic' - and then they launch into . . . stories [that] are often grim, [but] laced with irony and self-deprecating humor and laughs. . . . [A]s one AA member says, 'no matter how miserable and agonizing the stories are, they all have a happy ending because you're hearing them at an AA meeting.'").

78. *Making Meaning*, *supra* note 70, at 178-79.

79. *Id.*

tion, nor his misdeeds.⁸⁰ Rather, he is encouraged by the community of alcohol “offenders” to “come clean” and rejoin the human race.⁸¹

A similar course of self-identification and “offender” community support could be pursued by “graduates” of the restorative justice process. After all, the repeated acknowledgement that one is an alcoholic is no more or less the repeated admission that one has chronically offended. The condition of alcoholism, like the “condition” of being an ex-offender is “concealable stigmas.”⁸² Having such a stigma “means that otherwise routine self disclosures can place one at heightened risk for negative sanctions, which others are likely to regard such disclosures as highly – often inappropriately – intimate, and that reciprocity of disclosure is difficult to maintain in a personal relationship.”⁸³ Difficult as it might be, the positive affirmation of a concealable stigma, such as “I am gay,” “I am an alcoholic” or “I am an ex-offender” is an important component of the process of identity formation and psychological health.⁸⁴

The fact that alcoholism is sometimes considered a “disease” over which one has no control, does not distinguish it in a material way from criminal offending as an *identity*.⁸⁵ By now it is well understood that AA’s references to alcoholism as a “malady,” an “illness” and an “allergy” are largely metaphoric.⁸⁶

80. Concealing one’s alcoholism, like hiding other stigmatic self-identifications such as homosexuality, has negative consequences to one’s physical health and social relationships.

81. Annette R. Smith, *The Social Construction of Group Dependency In Alcoholics Anonymous*, 23 J. DRUG ISSUES 689, 698 (1993) (“The alcoholic must dismantle negative self-concepts . . . from the knowledge of harm his . . . drinking has done to others and the negative labeling and control strategies imposed by society.” *Id.* AA accomplishes this goal by “encourag[ing] full disclosure of [his] ‘wrongs’ in order to have them demystified, where they can then be ‘righted’ by ‘making amends’ and embarking on a more spiritual path which includes helping others.”); *see also Making Meaning*, *supra* note 70, at 179 (reinterpreting the alcoholic experience as spiritually bankrupt gives meaning to a “past filled with degradation and chaos and [creates] hope for . . . a different future.”).

82. PSYCHOLOGICAL PERSPECTIVES ON LESBIAN, GAY AND BISEXUAL EXPERIENCES 272 (Garnets & Kimmell eds., 2002).

83. *Id.*

84. *Id.*

85. One is *not*, of course, an “offender” or an “ex-offender” but an individual who has been convicted of committing a crime. Nevertheless, society stigmatizes such individuals as *being* ex-offenders, which often leads those individuals to incorporate offending into their own self-conception. Bruce G. Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 ANN. REV. SOC. 363, 375 (2001), <http://www.questia.com/PM.qst?a=o&d=5001041349> [hereinafter “*Stigma*”]. As some commentators have suggested:

To the extent that stigmatized groups accept the dominant view of their lower status, they are less likely to challenge structural forms of discrimination that block opportunities they desire. Further, direct discrimination reinforces the belief among stigmatized groups that they will be treated in accordance with stereotypes and therefore reinforces processes like those explicated in the context of modified labeling theory and the stereotype-threat concept. *Id.*

86. *Making Meaning*, *supra* note 70, at 176; *see also* HIGH ANXIETIES: CULTURAL STUDIES IN ADDICTION 99 (Janet Farrell Brodie & Marc Redfield eds., 2002) (Although AA uses a discourse of disease to account for alcoholism, the program does not suggest any medical or therapeutic “cure” or “treatment” for the problem; it offers instead a “spiritual solution.” In this sense, AA’s discourse

The “condition” of active alcoholism is understood as the maintenance of a false spiritual economy of pride, control, dominance, and centrality.⁸⁷ The “condition” of active offending can be similarly understood and its stigmatizing features reduced or nullified by disclosure among fellow sufferers who are most likely to possess the necessary ability to be supportive, encouraging, empathetic, and nonjudgmental.⁸⁸

Whether acknowledging one’s status as an alcoholic, criminal offender, or sinner, the repentant individual directs his attention outward toward others, recognizing and accepting his own fallibility, vulnerability, dependence, and relatedness to others.⁸⁹

V. THE CASE FOR INCLUDING A “RECOVERING OFFENDER” IN THE VOM PROCEEDING

At least one commentator has recognized that AA is the “one institution in our society that recognizes shame.”⁹⁰ This recognition does not, however, mean that “[s]hame is an integral part of many of the exercises required by AA.”⁹¹ On the contrary, AA principles, traditions and practices that deal with shame, serve

does not treat alcoholism literally as a disease: disease functions in AA discourse as a rhetorical trope, a metaphor for the alcoholic’s condition).

87. *Making Meaning*, *supra* note 70, at 175; see also DAVID R. RUDY, BECOMING ALCOHOLIC: ALCOHOLICS ANONYMOUS AND THE REALITY OF ALCOHOLISM 135 (1986).

88. Research on stigma has demonstrated that self-disclosure is an effective strategy for reducing the stress associated with concealment and for enhancing one’s self-esteem if done in an atmosphere of trust and understanding. *Stigma*, *supra* note 85, at 380.

89. Francis J. Schweigert, *Moral Education in Victim Offender Conferencing*, 18 CRIM. JUST. ETHICS 29, 36 (1999), available at http://www.findarticles.com/p/articles/mi_hb3009/is_199906/ai_n7652405. The recognition of human fallibility not only serves to reduce both self-loathing and grandiosity, but also reconnects recovering members to the human community. *Id.* AA reminds its members that:

No one among us has been able to maintain anything like perfect adherence to the ... principles [of the twelve steps]. We are not saints. The point is that we are willing to grow along spiritual lines. The principles we have set down are guides to progress. We claim spiritual progress rather than spiritual perfection.

ALCOHOLICS ANONYMOUS, THE STORY OF HOW MANY THOUSANDS OF MEN AND WOMEN HAVE RECOVERED FROM ALCOHOLISM 60 (4th ed. 2001) [hereinafter “BIG BOOK”].

90. THOMAS J. SCHEFF, HONOR AND SHAME: LOCAL PEACE-MAKING THROUGH COMMUNITY CONFERENCES (Conference Paper, 1997) published at www.soc.ucsb.edu/faculty/scheff6.html.

91. *Id.* As one commentator has noted, because the “language of AA is the language of narrative and metaphor, it is easily misunderstood outside the context of lived experience and of the meaning-making of the membership as a whole” *Making Meaning*, *supra* note 66, at 172.

to relieve the alcoholic of shame's many debilitating burdens, including isolation, suspicion, anger, anxiety and, of course, addiction.

The intense shame of alcoholism is understandable. The disease is characterized by a complete loss of control over drinking that becomes more debilitating over time.⁹² As alcoholism progresses, the alcoholic begins to drink ever-greater quantities in an increasing array of circumstances.⁹³ Alcoholism's downward progression leads to social disability.⁹⁴ Excessive tardiness or drunkenness at work may lead to employment termination.⁹⁵ Alcoholism's destructive effects on relationships often precipitate the dissolution of friendships and marriages.⁹⁶ Decreased personal and professional productivity create financial problems that commonly lead to foreclosure, bankruptcy, eviction and often homelessness.⁹⁷ The association between excessive alcohol consumption and crime, including violent crime, is well documented as are the deadly effects of late stage alcoholism.⁹⁸

Despite the quite obvious devastation caused by alcoholism, most alcoholics maintain a remarkable capacity to deny the problem and resist treatment.⁹⁹ Like the active alcoholic living in a state of chronic shame and denial, the crimi-

92. HANDBOOK OF SOCIAL WORK PRACTICE WITH VULNERABLE AND RESILIENT POPULATIONS 67 (Alex Gitterman ed., 2001). The defining feature of alcoholism is the "loss of control" over drinking – meaning that alcoholics cannot reliably predict when they will stop drinking once they start nor how much they will consume once they have begun. *Id.* It is for this reason that alcoholics say "it is the first drink that gets you drunk." *See, e.g.,* <http://www.12steps.org/12stephelp/shortreads/WISE.htm>, one of the hundreds of web sites recounting AA folk sayings, aphorisms and slogans.

93. As reported by one hospital web site; late stage alcoholism includes an obsession with alcohol that excludes all other concerns; often involves round-the-clock drinking despite an inability to keep down the first drinks in the morning; causes the alcoholic to become phobic of crowds and public places and to be suffused with remorse and guilt, which can only be alleviated by more drinking. *See* COLUMBIA UNIVERSITY COLLEGE OF P & S COMPLETE HOME MEDICAL GUIDE, at <http://www.diabetic-help.com/sxalcworksinbody.htm>. Homelessness often ensues, as do terminal medical conditions such as cirrhosis of the liver. *Id.* The late stage alcoholic begins to suffer from severe withdrawal symptoms if alcohol is withheld, including the shakes, delirium tremens, and convulsions. *Id.* Without hospitalization or residency in a therapeutic community, late-stage alcoholics usually succumb to insanity and death.

94. *Id.*

95. BIG BOOK, *supra* note 89, at 31.

96. *Id.*

97. BAUMAND & BURNES, A NATION IN DENIAL, THE TRUTH ABOUT HOMELESSNESS 17 (1993) ("Alcoholism continues to be the most significant problem connected to modern homelessness." The "general consensus is that approximately 40 percent of homeless adults have significant alcohol problems.").

98. *See generally*, Randi Cartmill & Robert Parker, *Alcohol and Homicide in the United States 1934-1995 - or One Reason Why U.S. Rates of Violence May Be Going Down*, 88 J. CRIM. LAW & CRIMINOLOGY 1369 (1998) (There is a statistically significant correlation between alcohol consumption and homicide. *Id.* at 1375-76).

99. MEN HEALING SHAME: AN ANTHOLOGY 6 (Robert Bly, ed., 1995) (suggesting that denial is a means of reducing the shame of alcoholism).

nal offender is likely to remain in denial unless the painful experience of shame can be reduced to tolerable levels.¹⁰⁰ Whether the presence of an offender's (often baffled, hurt and frustrated) family and "friends" at VOM conferences can serve this purpose is questionable.

It is more than a little curious that in the same article citing research demonstrating that criminal behavior is often produced by rejecting families who punish a child with stigmatizing sanctions, Braithwaite recommends VOM participation by the offender's family to reduce shame.¹⁰¹ Assuming such families have not experienced a radical transformation by the time their criminal member is diverted to a VOM, it seems unlikely that they will approach him with the compassion, understanding and respect necessary to achieve "reintegrative" shaming.¹⁰²

AA experience, together with the considerable research on the reasons for its efficacy, teaches us that the best ally in the struggle to come to terms with a long history of misdeeds is another miscreant.¹⁰³ In AA's "Big Book," AA co-founder "Dr. Bob" describes the profound effect his first meeting with the newly sober Bill W. had on his own quest for recovery.

[Bill] was a man who had experienced many years of frightful drinking, who had had most all the drunkard's experiences known to man, but who had been cured by the very means I had been trying to employ, that is to say, the spiritual approach. He gave me information about the subject of alcoholism which was undoubtedly helpful. *Of far more importance was the fact that he was the first living human with whom I had ever talked, who knew what he was talking about in regard to alcoholism from actual experience. In other words, he talked my language. He knew all the answers, and certainly not because he had picked them up in his reading.*¹⁰⁴

This ability of recovering alcoholics to "reach" those searching for sobriety is well recognized.¹⁰⁵ The same should be true of "recovering" offenders. Braithwaite himself recognizes that non-stigmatizing shaming is more likely to

100. *Id.*

101. Braithwaite 2000, *supra* note 5, at 285, 287.

102. *Id.*

103. BIG BOOK, *supra* note 89, at 180.

104. *Id.* (emphasis added).

105. *See, e.g.* Smith, *supra* note 81, at 693 (Resocialization of the alcoholic requires the presence of "significant others with whom he must establish strongly affective identification" leading to the formation of a partnership "in significant conversation change.").

occur if done by someone with whom the offender identifies.¹⁰⁶ Moreover, at least one commentator recommending that former parolees serve as lay supervisors for the recently paroled does so based upon the “ample evidence” that those with similar experiences more quickly generate trust and understanding.¹⁰⁷

In addition to assisting the offender in dropping shame’s defenses at VOM conferences, “recovering” offenders can model empathic responsiveness for the victim.¹⁰⁸ After the victim and her supporters tell their story of the harm suffered as a result of the crime at issue, the recovering offender can introduce himself as such, respond empathically to the victim and tell his own story of offense and recovery. Thus would the desired “meta” or “master” narrative of recovery begin to be told to offender and victim alike.

This narrative tradition has a long and successful history of inducing moral behavior and reintegrating “wrong-doers” into society. The “meta” or master narrative of recovery into which AA members “fit” their own individual stories follows the general theme of losing control, hitting bottom, realizing alcohol is the problem and beginning a process of change with abstinence at its core.¹⁰⁹ At bottom, the AA “recovery narrative” permits all listeners to recognize their interconnectedness – a recognition with which shame profoundly interferes.¹¹⁰ Such narratives also enable the teller to normalize his own experience, assisting him in becoming accountable for the harm his behavior has caused to others.¹¹¹

106. Braithwaite, *Shaming*, *supra* note 4, at 69 (shaming is likely to be less effective if those shamed tend to be different from those doing the shaming).

107. VILLA V. BONDESON, *ALTERNATIVES TO IMPRISONMENT: INTENTIONS AND REALITY* 236 (1994).

108. Empathy has been variously defined. For our purposes it suffices to say that a person experiences and exhibits empathy when she experiences and responds to distress in others by feeling distress herself and attempting to diminish the pain felt by others. MARK H. DAVIS, *EMPATHY: A SOCIAL PSYCHOLOGICAL APPROACH* 9 (1994) (“As role-taking skills develop, this other-oriented distress increasingly becomes a form of true compassion for others.” Empathy fosters altruism and enhances social success.)

109. DANNY M. WILCOX, *ALCOHOLIC THINKING: LANGUAGE, CULTURE AND BELIEF IN ALCOHOLICS ANONYMOUS* 77 (1998). As anthropologist Wilcox explains,

Although each individual will have personalized variations, the general theme [of the AA recovery story] is one of losing control, first over drinking, then over other aspects of everyday existence. This is followed by an awareness that a problem exists, but a continuing denial that the problem is ‘alcoholism.’ Finally, the ego structure that displaces, minimizes, and rationalizes the behavior collapses due to the massive accumulation of empirical evidence gathered over an extended period of time by the individual (citation omitted). Once this collapse takes place and the individual ‘hits bottom,’ the process of change has begun and it is possible to recover.’

Id.

110. *Id.* at 120.

111. Susan Stephenson, *Narrative, Identity and Modernity*, Discussion Paper for ECPR Workshop “The Political Uses of Narrative” (March 29-31, 1999), at <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/mannheim/w22/Stephenson.PDF#search=narrative,%20identity%20and%20modernity%20and%20stephenson>.

The power of such narratives is already a part of restorative justice theory and practice. The VOM process is meant to open with each party telling their story, followed by a conversational narrative where each participant speaks with feeling, thereby personalizing victimization and loss.¹¹² Expressions of anger, fear and understanding are also expressed, as a result of which empathy is established.¹¹³ The victim is not required to develop a positive view of the offender (and perhaps vice versa) but merely an understanding of the victim's plight.¹¹⁴ Finally, consensus is reached, everyone agreeing upon restitution by the offender to "make things right."¹¹⁵

The power of identification to assist in this difficult conversational narrative is once again demonstrated by the experience of Alcoholics Anonymous. For some, the feeling of identification and empathy is so strong that it seems like magic or, at a minimum, the result of a benevolent conspiracy.¹¹⁶ At an AA meeting observed by the author in New York City in the winter of 2004, a young man expressed this sentiment by way of the following story:

I was at the end of my rope and called information to get AA's telephone number. After reaching AA and talking with a woman who answered the telephone there, she recommended that I attend a meeting in midtown Manhattan. The man who spoke at that meeting seemed to be speaking about my own experience. Because it seemed impossible that he would know how I felt, I was convinced the AA woman "called ahead" to tell the group I was coming and described my situation so that the speaker would be certain to address the issues that concerned me. It was many months before I remembered this thought and realized how ridiculous it had been.¹¹⁷

If a single VOM conference is meant to have a similarly profound effect on the offender, it seems foolish not to adopt some of the proven techniques of Alcoholics Anonymous. Having a recovered offender present at the conference would, *at a minimum*, increase the chances that the shamed perpetrator will be

112. VAN NESS, *supra* note 56, at 69-70.

113. *Id.*

114. *Id.*

115. *Id.*

116. See Victor Witter Turner, *Symbolic Studies*, 4 ANN. REV. ANTHROPOLOGY, 145, 159 (1975), available at <http://www.jstar.org>. Though not magic, it is more like folk medicine than western "treatment." *Id.* "The healing rite in 'folk' or 'tribal' medicine is seen to be more than the typing and labeling of diseases and symptoms and the restoration of health. It is rather the mobilization of efficacy through symbolic action for restoring internal integrity to the patient and order to his community." *Id.*

117. Author's Observation, Midtown Manhattan AA meeting, January 2004.

enabled to drop his defenses long enough to respond to the victim *and to his own shameful history* with sincere compassion and remorse.¹¹⁸

VI. CREATING A POST-OFFENDER RECOVERY COMMUNITY

In the absence of “decentralization of authority, revitalization of family bonds and communal bonds, and a more robust sense of interdependence and responsibility to others,” many commentators think reduced recidivism is not a realistic goal of restorative justice practices.¹¹⁹ Only if offenders can be introduced into strong communities where “citizens are densely enmeshed in loving, trusting or respectful relationships with others” can the benefits of restorative justice practices endure over time.¹²⁰ Moreover, to truly “restore” the offender to such a “strong” community, he must be given the opportunity to engage in community “activities that embody the moral tradition and can be practiced over the long term, throughout a member’s lifetime.”¹²¹

Virtue fostering community activities have been described as complex and made up of many component activities; as having standards of excellence by which its members can be judged; as being valued for their ability to provide for the health, enjoyment, prosperity and good functioning of the community; and, as being respected for the qualities of character those who practice them must have in order to do well.¹²² Indeed, research has shown that “collective efficacy, defined as social cohesion among neighbors combined with their willingness to intervene on behalf of the common good is linked to reduced violence.”¹²³

Communities of alcohol “offenders” that meet these standards are available for study by restorative justice practitioners in Alcoholics Anonymous meetings all over the country. More importantly, post-offender programs modeled on AA’s “twelve steps” are already at work.¹²⁴ The development and support of more such programs by those interested in restorative justice practice is critical

118. MICHAEL TONRY, *THE HANDBOOK OF CRIME AND PUNISHMENT* 334 (2000) (including in VOMs “people who enjoy maximum respect and trust on both the offender’s and the victim’s side, we maximize the changes that shame will be dealt with in a reintegrative way.”).

119. Massaro, *supra* note 54, at 1936.

120. Braithwaite 2000, *supra* note 5, at 291.

121. Schweigert, *supra* note 89, at 37.

122. *Id.*

123. Braithwaite 2000, *supra* note 5, at 292 (quoting Sampson, Raudenbush & Earls, *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 *SCIENCE* 918 (1997)).

124. Ethan G. Kallet, *Twelve Steps, You’re Out (Of Prison): An Evaluation of “Anonymous Programs” as Alternative Sentences*, 48 *HASTINGS L.J.* 129, 152 n.131 (1996); *see also* Lisa Loving, *Treatment Program Helps Keep Convicts From Returning to Jail: N.E. Portland Group Offers Counseling, Job Assistance to Ex-Cons*, PORTLAND SKANNER, Feb. 21, 2001, available at <http://www.highbeam.com/library/doc3.asp?DOCID=1P1:79639967&num=1&ctrlInfo=Round10%3AProd%3ASR%3AResult&ao=&FreePremium=BOTH>.

if it is to be given a fighting chance to replace – or even to exist as an adjunct – to traditional criminal proceedings.

The “morality inducing” and community enhancing principles and practices of Alcoholics Anonymous are long-term and on going.¹²⁵ A recovering alcoholic’s first AA meeting, like the first of the twelve steps of recovery, begins a long process of self-reflection, accountability, reparation, confession, contrition, amends and community service.¹²⁶ The criminal offender, like the alcoholic, has inevitably engaged in many acts of misconduct, all of which burden the conscience and continue to keep him in a state of shamed estrangement from his fellows. Although AA literature promises relief from this pervasive sense of self-loathing, the desired results are not guaranteed absent the alcoholic’s rigorous application of its “twelve steps” of recovery.¹²⁷

A. Initiation Into a Twelve-Step Community

When the alcoholic first encounters the AA community, “older” members reach out in an effort to restore the “interpersonal bridge” that has been severed by years, perhaps decades, of shameful alcohol abuse.¹²⁸ They applaud, shout “welcome” and assure the newcomer that he has “come to the right place.”¹²⁹ They offer to provide the newcomer with “temporary” sponsorship so he can immediately begin “working the steps.”¹³⁰ Meeting directories and AA literature are made available free or at low cost and invitations to subsequent meetings

125. WILCOX, *supra* note 109, at 26, 29, 66.

126. *Id.* at 21.

127. BIG BOOK, *supra* note 89, at 83 (promising “a new freedom and a new happiness” if the alcoholic is “painstaking” about taking a thorough inventory of one’s misdeeds and making amends for them all).

128. WILCOX, *supra* note 109, at 59 (“The newcomer is immediately accepted and supported by the AA community with very little reservation. . . . They are encouraged to not drink, come to meetings, and read the Big Book. If they do these things, they are optimistically reassured that “things will get better.” . . . Newcomers are told that they must accept their limitations as human beings and submit to a power greater than themselves. It is relatively easy to modify one’s behavior in relation to drinking and become more honest, sociable, competent, energetic, and optimistic as a result of not being intoxicated and out of control.”).

129. Author’s observation in Los Angeles and Sacramento Counties, California; London, England; New York City; Phoenix, Arizona; Las Vegas, Nevada; and, Toronto, Ontario AA meetings 1994 through 2005.

130. *Id.*; see also Smith, *supra* note 81, at 702 (recommending temporary sponsorship for new AA members who are not naturally “affiliative”).

with other members are extended.¹³¹ “Newcomer chips,” signaling the new member’s commitment to stay sober “one day at a time” are given to great acclaim and shouts from the audience to “keep coming back.”¹³²

This out-pouring of enthusiastic hospitality can, of course, feel more threatening than welcoming.¹³³ If the newcomer is not up to the burst of welcome wagon *bonhomie* greeting his arrival on survival’s shore, he may sit quietly as often as he wishes and for as long as he wishes, getting to know his new community by simply listening to the stories it tells. The hopeless and shamed person, who has been hiding his alcoholic behavior for years, even decades, is not required to be unceremoniously and humiliatingly revealed.¹³⁴ Rather, he is permitted to sit quietly in a meeting and hear, perhaps for the first time, another alcoholic tell the newcomer’s story as his own.¹³⁵ Eventually, the newcomer will gain the courage to tell his own story without shame.¹³⁶

B. *The Moral Education of Working the Steps*

If the alcoholic is willing to “work the steps” outlined in the twelve steps of recovery, he enters into a further process of moral education and social affiliation that “restores” him to a more or less ideal restorative community.¹³⁷ As the Big Book explains:

131. Author’s observation in Los Angeles and Sacramento Counties, California; London, England; New York City; Phoenix, Arizona; Las Vegas, Nevada; and, Toronto, Ontario AA meetings 1994 through 2005.

132. *Id.*

133. Smith, *supra* note 81, at 694-95.

134. WILCOX, *supra* note 109, at 21-22.

135. Wilcox describes the beneficial effect of AA “recovery stories” from his own personal experience as follows:

As I entered the meeting place, I observed the other people sitting around waiting for the meeting to begin. There were only six to eight people in the room when I entered. At least half of them extended cordial greetings and two of them introduced themselves. A strong feeling of guilt and embarrassment was present. . . . When I walked through the door, I had no intention of accepting “total abstinence” After listening to the speaker for an hour that morning, I had heard enough similarity between the story he told and my own experience to accept a desire chip, a small metal token symbolizing the desire to quit drinking. Extremely inspired by the possibilities of abstinence, I was able to not take a drink for about a week.

Id.; see also Smith, *supra* note 81, at 696 (stressing the importance to the process of group affiliation of hearing one’s own drinking story told by another).

136. WILCOX, *supra* note 109, at 21-22.

137. Those steps are: 1. We admitted that we were powerless over alcohol -- that our lives had become unmanageable. 2. Came to believe that a Power greater than ourselves could restore us to sanity. 3. Made a decision to turn our will and our lives over to the care of God as we understood Him. 4. Made a searching and fearless moral inventory of ourselves. 5. Admitted to God, to ourselves and to another human being the exact nature of our wrongs. 6. Were entirely ready to have God remove all these defects of character. 7. Humbly asked Him to remove our shortcomings. 8.

[We must] launch ... out on a course of vigorous action, the first step of which is a personal housecleaning, which many of us had never attempted. Though our decision [to stop drinking] was a vital and crucial step, *it could have little permanent effect unless at once followed by a strenuous effort to face, and to be rid of, the things in ourselves which had been blocking us. Our liquor was but a symptom* Putting out of our minds the wrongs others hand done, we resolutely looked for our own mistakes. Where had we been selfish, dishonest, self-seeking and frightened? Though a situation had not been entirely our fault, we tried to disregard the other person involved entirely. Where were we to blame? The inventory was ours, not the other man's. When we saw our faults we listed them. We placed them before us in black and white¹³⁸

The moral accounting created by the recovering alcoholic “working” Step Four is not simply a record of “bad deeds” committed. It is a means to put one’s actions in perspective and to enable the alcoholic to create a new moral order from the ashes of his life.¹³⁹ By way of Step Four, the AA member can mitigate his harsh self-condemnation while nevertheless taking responsibility for his misdeeds. Indeed, in making amends, the Big Book advises AA members to be “sensible, tactful, considerate and humble *without being servile or scraping.*”¹⁴⁰ Only after putting his faults down in “black and white,” admitting his wrongs honestly and becoming willing to set matters straight, does the alcoholic begin to learn “tolerance, patience and good will toward all men.”¹⁴¹

Made a list of all persons we had harmed, and became willing to make amends to them all. 9. Made direct amends to such people wherever possible, except when to do so would injure them or others. 10. Continued to take personal inventory and when we were wrong promptly admitted it. 11. Sought through prayer and meditation to improve our conscious contact with God, as we understood Him, praying only for knowledge of His will for us and the power to carry that out. 12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all of our affairs. BIG BOOK, *supra* note 89, at 59-60.

138. *Id.* at 63-70 (emphasis added). This is the work that is prerequisite to the “promises” quoted below. *Id.* at 83.

139. Smith, *supra* note 81, at 698. As Smith notes:

The alcoholic must . . . dismantle negative self-concepts that he or she has adopted from the knowledge of harm his or her drinking has done to others and the negative labeling and control strategies imposed by society. The basic AA methodology for this is to encourage full disclosure of these “wrongs” in order to have them demystified, where they can then be “righted” by “making amends” and embarking on a more spiritual path, which includes helping others. This process is embodied in Steps 4 through 12.”

Id.

140. BIG BOOK, *supra* note 89, at 83. This echoes reintegrative shaming’s goal of focusing on the criminal act rather than on the criminal offender. That we can take responsibility without shame is repeatedly emphasized in the Big Book. This particular paragraph of the Big Book ends by advising that “[a]s God’s people we stand on our feet; we don’t crawl before anyone.” *Id.*

141. *Id.*

The AA member does not acknowledge these “sins” alone nor store his “inventory” in a bottom drawer, continuing to hide his shame. Rather, Step Five makes quite explicit the need to admit these wrongs to another human being.¹⁴² This step is the first opportunity to be freed from one’s shameful secrets¹⁴³ and any continued resistance to group participation.¹⁴⁴ By reading their inventory to sponsors who have “been there,” members recognize they are fallible rather than evil.¹⁴⁵ They come to understand that they can set right many, if not all, of the things they put wrong.¹⁴⁶

Steps Five, Six and Seven (admission, confession and contrition) are followed by “ceremonies of forgiveness” of the type recommended by Braithwaite.¹⁴⁷ In Step Seven, members humbly ask that a higher power remove all character defects so that they may be of service to others.¹⁴⁸ After they have admitted, confessed, and, repented, members make an “eighth step” list – this time naming the people who they have wronged and to whom they are willing to make direct or indirect amends.¹⁴⁹ It is no accident that making amends does not take place in AA practice until the ninth step. “Many newly abstinent [AA members], overcome by shame and guilt, attempt some version of [the amends] step prematurely and find themselves in emotionally turbulent waters they are not prepared to navigate.”¹⁵⁰

By the time a member brings his “eighth step” list to his sponsor, member and sponsor have already done a great deal of work together. Trust has been built.¹⁵¹ Now they agree upon the details of the restitution.¹⁵² For those victims

142. *Id.* at 59.

143. *Id.* at 62 (As a result of sharing our moral inventory with another, we “emerg[e] from isolation through the open and honest sharing of our terrible burden of guilt [which] brings us to a resting place where we may prepare ourselves for the following Steps toward a full and meaningful recovery.”).

144. Smith, *supra* note 81, at 696 (“[T]he development of a dyadic, significant-other relationship serve[s] as an initial impetus for beginning the process of integration” into the AA group.).

145. “Often it was while working . . . Step [Five] with our sponsors or spiritual advisers that we first felt truly able to forgive others, no matter how deeply we felt they had wronged us. Our moral inventory had persuaded us that all-round forgiveness was desirable, but it was only when we resolutely tackled Step Five that we inwardly *knew* we’d be able to receive forgiveness and give it too.” ALCOHOLICS ANONYMOUS, *THE TWELVE STEPS AND TWELVE TRADITIONS* 58 (1981) [hereinafter *TWELVE AND TWELVE*].

146. *Id.*

147. *Id.* at 72; *see also* Braithwaite 2000, *supra* note 5, at 282.

148. *BIG BOOK*, *supra* note 89, at 59.

149. Step Eight requires the alcoholic to make a list of “all persons [he] had harmed and became willing to make amends to them all” and Step Nine to “[m]ake direct amends to such people wherever possible, except when to do so would injure them or others.” *Id.* at 59.

150. Joan Ellen Zweben, *The Therapist’s Role in Early and Ongoing Recovery*, in *TREATING ALCOHOLISM* 221 (Stephanie Brown ed., 1995).

151. GUEST & PARKER, *THE CLINICIANS’ GUIDE TO 12-STEP PROGRAMS: HOW, WHEN AND WHY TO REFER A CLIENT* 5 (1999).

152. As the “Big Book” says,

who are dead or untraceable, amends must be indirect.¹⁵³ So-called living amends are required under these circumstances.¹⁵⁴ Members vow to be generous where once they had been selfish, faithful where treacherous, honest where deceitful.¹⁵⁵ They agree to practice “restraint of pen and tongue” lest they lash out too quickly or too harshly at those they love.¹⁵⁶

For other wrongs, making amends is direct and simple, if not easy. Money is paid back, even if it takes years.¹⁵⁷ If a crime was committed, after much contemplation and discussion with sponsors, friends and family, some members consider confession to the authorities and may serve jail or prison time as a result.¹⁵⁸

Members do not stop there. Recognizing that God will not relieve them of human fallibility, a commitment is made in Step Ten to continue to take personal inventory and when wrong to promptly admit it.¹⁵⁹ Members keep their own side of the street clean and try not to take a broom to anyone else’s.¹⁶⁰ They do not “take another person’s inventory.”¹⁶¹

Finally, members agree to “be of service” to others. “Being of service” is not only repeatedly stressed in the AA community, it is recognized as one of the most effective avenues to achieving lasting sobriety.¹⁶² Many opportunities exist for members to serve others – from making the coffee or setting up chairs at a

There may be some wrongs we can never fully right. We don’t worry about them if we can honestly say to ourselves that we would right them if we could. Some people cannot be seen — we send them an honest letter. And there may be a valid reason for postponement in some cases. But we don’t delay if it can be avoided. We should be sensible, tactful, considerate and humble without being servile or scraping.”

BIG BOOK, *supra* note 89, at 83.

153. *Id.*

154. *Id.*

155. TWELVE AND TWELVE, *supra* note 145, at 93.

156. *Id.* at 91 (“Nothing pays off like restraint of tongue and pen. We must avoid quick-tempered criticism and furious, power driven argument.”).

157. *Id.* at 84.

158. *Id.* at 79-80.

159. *Id.* at 84.

160. *Id.* at 77-78.

161. *Id.*

162. Studies have shown that *being* a “twelve-step” sponsor increases the chances that a substance abuser will still be abstinent a year after discontinuing drug use. Friend, et al., *Helping Other Alcoholics in Alcoholics Anonymous and Drinking Outcomes: Findings from Project MATCH*, 65 J. STUD. ON ALCOHOL 766, 770 (2004). Some have suggested that the correlation between sponsorship and an increased likelihood of abstinence arises from greater treatment involvement and motivation for lifestyle change. *Id.* Another study found that the total amount of time spent in community-related helping was significantly related to length of sobriety. *Id.*

meeting, to becoming a sponsor one's self, assisting even newer members in working the steps. Through these twelve steps, AA achieves the moral education and esteem building necessary for a productive norm-abiding life in a community of mutual trust and respect.

As the "promises" contained in the Big Book assure the recovering alcoholic,

If we are painstaking about this phase of our development, we will be amazed before we are half way through. We are going to know a new freedom and a new happiness. We will not regret the past nor wish to shut the door on it. We will comprehend the word serenity and we will know peace. *No matter how far down the scale we have gone, we will see how our experience can benefit others.* That feeling of uselessness and self-pity will disappear. We will lose interest in selfish things and gain interest in our fellows. Self-seeking will slip away. Our whole attitude and outlook upon life will change. Fear of people and of economic insecurity will leave us. We will intuitively know how to handle situations which used to baffle us. . . Are these extravagant promises? We think not. They are being fulfilled among us – sometimes quickly, sometimes slowly. They will always materialize if we work for them.¹⁶³

VII. CONCLUSION

The challenge of restorative justice, then, is the same as the daily challenge of being human in community with others. If we invite offenders to assist their brethren when they step up to the restorative justice plate, they will give their fellows courage, strength and heart. If we encourage those offenders to go forth and sin no more, we should also encourage them (and us-for who among us is not an offender?) to band together in a mutual aid society of support and service.

This challenge is long-term and on-going. It involves us all. Humanity is still striving to hear and attend to the lesson given to us more than 2,000 years ago. We have all sinned and have fallen short of the glory of God. We are all in need of redemption. Not a single one of us can cast the first stone. We seek forgiveness by forgiving: love and compassion, by loving and giving; strength by acknowledging our weakness; and integrity by uncovering our shame. If we reveal ourselves in all our human fallibility, we can stop pretending and move toward the process of loving and healing. After all, the Judeo-Christian tradition that begins with shame in the Garden ends with revelation. We reveal and we heal.

Are these extravagant expectations? We think not. "They will always materialize if we work for them."¹⁶⁴

163. BIG BOOK, *supra* note 89, at 83.

164. *Id.* at 84.