# Advancing Social Justice Through Conflict Resolution Amid Rapid Urban Transformation of the San Francisco Bay Area

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Perhaps the best way to sum up acknowledgements is to quote J.R.R. Tolkien's most famous and enduring work, *The Fellowship of the Ring*: "faithless is he that says farewell when the road darkens."

# ABSTRACT

Since the 1970s, communities throughout the United States have been enthusiastically adopting dispute resolution mechanisms outside the formal legal system. Emerging from the reparative turn in sociolegal studies and widespread social critique in the 1960s and 70s, alternative justice models have been theorized, developed, and implemented by scholars and affected communities. In particular, alternative justice – forms of conflict resolution outside the formal legal system – seek to subvert the formal legal system's disproportionate impact on marginalized communities by providing accessible, non-criminalizing, and inclusive conflict resolution. Advocates claim such models advance social justice by uplifting restoration rather than retribution, emphasizing democratic processes, and utilizing conflict resolution as a platform for individual and community empowerment and capacity building.

Fourteen months of ethnographic research with alternative justice practitioners and their clients reveals discrepancies between alternative justice theory and practice. In particular, complex political, economic, and social constraints embedded within a rapidly transforming urban environment make achieving broader impacts (e.g. empowerment, capacity-building) and allying with related social justice mechanisms particularly challenging at both the individual practitioner and organizational levels.

Situated at the intersection of anthropology, sociology, and legal studies, this dissertation contributes to theoretical understandings of informal justice theory and practice. By examining the ways informal justice is intricately interwoven into the fabric of everyday and state violence, the complex relationship between alternative justice

practice and contemporary social justice efforts, and the ways in which the mythico-history of alternative justice influences practice, findings presented herein can inform both theoretical and practical approaches to contemporary alternative justice.

# PREFACE

*"In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same."* – Albert Einstein

Despite the linear research model presented in textbooks and classrooms, I found myself following a decidedly non-linear research process. My journey, the journey that led me to the point of this writing, began in 2013 by seeking land demarcation markers in rural northern Uganda and ended among alternative justice practitioners and tenant rights activists in San Francisco. I returned from northern Uganda, the site of my first field project, prepared to conduct multi-sited dissertation research investigating land conflict in South Sudan and northern Uganda. In December of the same year, South Sudan erupted in civil war. The beginning of war was the end of my research – ethical concerns, safety considerations, and time constraints worked in tandem to push me from that research and towards something new (Reinke 2015).

By May 2014, I imagined, created, and implemented a new research project – a project born from my interests in conflict resolution and the resolution of pervasive societal issues, such as displacement and structural inequality embedded in legal processes. The crux of the pursuant work is an analysis of the myriad ways in which people conceptualize, implement, and attempt to achieve social justice through localized conflict and its resolution. Consistent with an ethnographic approach, the resulting data and analyses relies heavily upon narratives, experiences, perceptions, and understandings of research participants. Maintaining confidentiality is important in this line of work, especially considering ongoing debates concerning the role of confidentiality in mediation and conflict resolution processes outside a court of law. Thus, the names of

people, places, and events contained within this manuscript are either pseudonyms or have been selectively edited for the purposes of confidentiality. In some cases, quantitative data concerning the demographics, types of cases, revenue, and other statistics that practitioners ordinarily do not publicize, were not included.

The subsequent pages contain the stories of the author, practitioners, clients, and the general public by and for whom alternative justice was conceived and continues to exist. Parts of this dissertation read much like an ethnographic journey, leading the reader through the narratives, stories, and events that emerged and transformed the research. However, other pieces draw more strongly on alternative justice literatures and have the feeling of a social scientific journal article rather than a narrative written work.

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## LIST OF ABBREVIATIONS

| | |
|---|---|
| ADR | Alternative Dispute Resolution |
| AEMP | Anti-Eviction Mapping Project |
| BLM | Black Lives Matter |
| CMC | Community Mediation Center |
| NVC | Nonviolent Communication |
| OCC | Office of Citizen Complaints |
| PCRC | Peninsula Conflict Resolution Center |
| RJ | Restorative Justice |
| SEEDS | Services that Encourage Effective Dialogue and Solutions Conflict Resolution Center |
| SFCB | San Francisco Community Boards |
| SFPD | San Francisco Police Department |
| TL | Tenderloin |

# CHAPTER ONE: BEGINNINGS

*"Like sailing, gardening, politics, and poetry, law and ethnography are crafts of place: they work by the light of local knowledge."* -Clifford Geertz (1983, p. 167)

Chapter in Brief:

> As the first chapter of the dissertation, the pursuant text introduces a brief history of alternative justice and provides a framework for understanding contemporary practice in the San Francisco Bay Area. By discussing the myriad ongoing transformations of the urban environment and rising tensions in the region, this chapter frames the following chapter discussions and findings. In addition, data methods and analysis are discussed. The chapter ends with a brief discussion of chapter contents.

The San Francisco Bay Area has been the center for justice initiatives and programs since the 1970s, when the nation's first community mediation center was developed and implemented in the City of San Francisco. Since that time, the Bay Area has remained a generative space for innovation and the implementation of creative justice models that seek to augment, undermine, or otherwise subvert the formal legal system. These models, collectively termed "alternative justice" – those models and frameworks outside the formal legal system – seek to transform understandings and practices of justice from retribution (associated with the formal legal system) to restoration.

Since the emergence of alternative dispute resolution (ADR) as part of the reparative turn in sociolegal studies in the 1960s and 1970s, scholars have debated the ability of alternative justice frameworks to positively impact societal structures and relations. ADRs gained momentum during this period and into the 1980s as increased scrutiny of the legal system, especially for its disproportionate impact on marginalized racial groups, low-income and homeless peoples, non-English speakers, and women, emerged. As a result, ADRs were formulated as part of a suite of alternative justice

frameworks defined in direct opposition to the formal legal system, characterized as overburdened (Calkins 2010; Galanter 1985; Sykes 1969) and financially (Calkins 2010; Enslen 1988; Parris 2013) and temporally costly (Calkins 2010; Enslen 1988; Parris 2013). The legal system is further critiqued by alternative justice advocates for being overly complex and abstruse, its destructive tendencies, inability to creatively resolve conflict, and excessively harsh treatment of marginalized groups (Calkins 2010; Galanter 1985; Parris 2013).

Contemporary alternative justice theories and practices emerged from these critiques. Its advocates continue to emphasize the legal system's overly destructive nature, particularly its disproportionate impact on marginalized groups, focus on punitive rather than rehabilitative or restorative approach, and the inability of law to adequately disrupt and combat structural inequity (Mulcahy 2000). Since initial emergence and popularity, myriad alternative justice models have been created and applied in numerous political, economic, and sociocultural contexts throughout the United States and abroad. Alternative justice in its many forms is implemented in diverse contexts, including community-based and neighborhood justice in the US, justice for Indigenous populations and juveniles in Australia, and transitional justice processes throughout the world.

Analyzing the confluence of theory and practice – namely the ways alternative justice theory has been implemented into practice – reveals the contested, fraught, but interdependent relationship between the state and informal justice practice. In particular, this is an access point to view the relationship of informalism to formalized government, power (im)balances and flows between the state and civil society, and how alternative

justice practitioners are simultaneously embedded as subversive and agents of state power. Abiding debates about the ability of alternative justice models to subvert state power, their appropriateness in resolving particular types of disputes, and potentiality to promote positive social change continue in sociolegal studies, anthropology, and legal studies. The complexity of the San Francisco Bay Area's zeitgeist as a site of rapid urban transformation deriving from the technology and start-up booms, while renegotiating its identity as a region of progressive politics that is beset with widening gaps between the rich and poor and massive displacement of marginalized groups and its continued importance in creating and implementing alternative justice programs make it an ideal research site. In particular, it provides a unique opportunity to examine the current place and space of alternative justice in a rapidly transforming environment that is beset by rapid and uneven political, economic, and social change. In this introductory chapter, I present an outline of alternative justice, the complex relationships between justice, social activism, the contemporary political economic landscape of the Bay Area, and the research rationale, design, and analytical frame. At the conclusion of this chapter I briefly present descriptions of the ensuing chapters.

**I. Tech Boom, Housing Bust**

The rise of social movements in the Bay Area has occurred alongside the rise of the technology (herein after "tech") and start-up boom, colloquially referred to as the "tech boom" by residents. The Bay Area's close proximity to Silicon Valley, long-time focal point for technological innovation and its associated wealth, in addition to economic incentives for companies, as well as the attraction of San Francisco as a residence, have led to the rapid proliferation of technology and start-up companies in the city and nearby

areas. Perhaps a positive results of the tech boom, at least from a quantitative perspective, is the relatively low poverty rate of the Bay Area, 11.3% poverty in 2013 compared to 16.8% poverty rate in California as a whole and 15.8% in the United States at the same time (Silicon Valley Institute for Regional Studies 2015). Shrouded within these statistics, however, are a number of uncomfortable truths about everyday life in the Bay Area.

A major result of the tech boom is skyrocketing cost of living, particularly in San Francisco, Palo Alto, and Oakland. Residents, businesses, and non-profits are routinely "priced out" as rents increase as high as 40% from one lease term to the next (Murphy 2015).[1] Companies, organizations, and individuals that are priced out of the City of San Francisco often relocate across the Bay to Oakland, well known for its lower rents and cost of living. However, rapid growth associated with incoming residents, organizations, and businesses into downtown Oakland and nearby areas has led to steadily increasing costs and the subsequent displacement of longstanding residents. Communities hardest hit by displacement and subsequent movement are often minority racial and economic communities. Similar displacement processes are happening in the City as incoming residents disrupt socially-bound neighborhoods. For example, the Mission District, a historically low-income Hispanic[2] neighborhood in San Francisco, has been a major site of gentrification in recent years; skyrocketing rent prices and rapid development associated with incoming tech and start-up worker residents have pushed many long-time Mission residents out of the area.

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[1] Priced Out is a phrase associated with the tenant rights movement and activist efforts.
[2] In keeping with participant's preferences, the term "Hispanic" is used throughout the manuscript.

The result of a rapidly developing start-up and technology economy in the Bay Area, incoming tech and start-up workers have been characterized by long-term Bay residents as unwelcome and a nuisance at best, and incursion or invasion at worst. Conflict between incoming and long-time residents has led to protests that target special transit buses for technology employees,[3] evictions of Bay residents, and City Hall. The bulk of protests target the incoming residents and the companies they work for (e.g. Twitter, Facebook) as a way to protest gentrification. Gentrification is generally understood as a mechanism to change property relations, creating consumption spaces yielding higher ground rent (Smith 1979; Stehlin 2016). This is often done through streetscaping, reevaluating property value, and requires consideration of productive and unproductive consumption (see Stehlin 2016 for discussion). However, gentrification in the Bay Area represents something new – it is the production of urban space as a spatial expression of open innovation concepts (Stehlin 2016). While Bay Area politicians, especially those in the City of San Francisco, viewed as serving tech interests rather than the best interests of the people are also targeted, direct action focuses on high rise developments in areas of gentrification and transit buses for tech workers. Direct action refers to public forms of protest, such as demonstrations. In the Bay Area, activists utilize direct action in a number of ways. For example, they target the shadow transit system of buses that shuttle tech workers – identified as the gentrifiers – in and out of the City. Activists also target high rise apartment buildings, demonstrating against newly constructed productive spaces in gentrifying areas.

[3] This has been referred to as a "shadow transit system" (Stehlin 2016).

City of San Francisco Mayor Ed Lee, whose policies are associated with much of the ongoing housing crisis in the city, is a particularly vilified figure. The mayor is associated with the affluent and landed gentry of the City and has provided economic incentives for large tech companies and corporations to remain in San Francisco. For example, his generous tax breaks to Twitter in 2011 were provided in exchange for Twitter moving into the mid-Market neighborhood and maintaining their company headquarters in the City (see Figure 1). The deal resulted in the "revitalization"[4] of an area long considered the "skid row" and an area of urban blight. Revitalization arrived in

**Figure 1. Twitter Headquarters and NEMA Apartments, Mid-Market Neighborhood, San Francisco, CA.**

[4] Revitalization and gentrification are somewhat distinct processes: revitalization focuses on the community or area as a whole, whereas gentrification is a term related to incoming affluent residents who transform an area by moving into it. However, in the Bay Area, these terms rarely reflect these meanings and are politicized. Activists utilize the term "gentrification" to refer to incoming affluent residents, corporate businesses, and the subsequent community-level changes. However, politicians prefer the term "revitalization" or "urban renewal" as they have more positive connotations and refer to "cleaning up" particular neighborhoods.

the form of expensive coffee shops, high rise apartments, and market. However, Catholic Charities and other nonprofits serving the homeless and low-income communities being displaced are still located only a couple blocks away from Twitter HQ. While the city is rebranding mid-Market as an arts and business district, activists have responded by calling it the "dot-com corridor," and created Streetopia, a utopic festival and subsequent book of writings that reflect on gentrification and the way art can simultaneously aid and resist gentrification (Clarke 2015). As of yet, activist involvement has largely failed to preserve affordable housing or mitigate the increased policing associated with gentrification and criminalization of the homeless and low-income presence in the neighborhood. The influx of non-community members into low-income and culturally distinctive neighborhoods, widespread racialized displacement, and the lack of political voice among marginalized groups in the Bay Area continue as pervasive problems.

## II. Alternative Justice Amid Rapid Urban Transformation

Since initial implementation of alternative justice in the Bay Area during the 1970s, conceptualizations of justice have transformed alongside political, economic, and population changes. Social movements advocating the advancement of racial, economic, and environmental justice, such as Black Lives Matter (to acknowledge, uplift, and affirm the lives of all Black people),[5] Right to Rest (fight against criminalization of the homeless and homelessness),[6] and Priced Out (raising consciousness to widespread housing crises and advocating for tenant rights),[7] have swept through the region, sustaining the long

[5] See http://blacklivesmatter.com/ for more information.
[6] See the Western Regional Advocacy Project's page for more information: http://wraphome.org/civil-rights-campaign/.
[7] For example: http://ww2.kqed.org/news/series/priced-out.

history of progressive politics and social activism in the region. The existence of myriad social movements alongside alternative justice programs seeking to advance social justice provides an opportunity to critically examine the role of allyship in social justice efforts and the complex relationship of justice practice to contemporary social movements working towards similar goals. Rather than an individual identity, allyship is been defined as a lifelong process of working in solidarity with marginalized peoples (The Anti-Oppression Network 2016). Thus, acting out of responsibility, privileged individuals work with marginalized groups to challenge oppressive structures.

Social justice activists, including alternative justice practitioners advocating for an end to systemic inequality, emphasize the role of the tech boom in perpetuating and deepening economic, racial, and environmental inequity. The rapid influx of thousands of tech workers and their employers has dramatically altered the sociopolitical, economic, and physical landscape of San Francisco and its surrounding areas. This is further compounded by the explosion of start-up companies that, while fueling gentrification, are developing innovative solutions to economic, social, and technological problems.[8] These innovators reside in and around San Francisco, taking up valuable housing space, driving up the costs of living, and reshaping the look and feel of neighborhoods and communities. The result, especially among long-term and low-income residents, is pervasive feelings of panic, fear, and of being surrounded by and embedded within an unrecognizable urban landscape. Activists working for tenant rights and against poverty,

[8] Start-up and tech companies are often conflated under the term "tech," but in actuality they refer to different phenomena. While tech companies often have lots of financial capital, translating into higher pay for employees, ability to transit workers to and from work, and better fringe benefits, start-up companies have limited capital. Start-up workers typically work long hours for less pay and benefits.

homelessness, displacement, and property conflicts often reflect these concerns through their work. The current tensions are perhaps best expressed in a recent satirical and farcical article, published by San Francisco-based McSweeney's, about a fictional start-up called Knife:

> *Knife*, the company, is a disruptive idea that is *right* on the cutting edge. Users — in this case, me — simply brandish their knife to take money from neighboring tech workers. By leveraging hyper-local tactics, I am able to capitalize on the excess capacity of your incomes. And, unless you want to see me penetrate your market, you'll pay up. (Novak 2016)

Activists are pushing back against start-ups, tech companies, and their employees via written articles,[9] such as Novak's, protests and demonstrations, art installations, and mapping projects. In particular, activists are targeting three ongoing problems plaguing the Bay Area that contribute to rising racial, economic, and environmental inequity*:* 1) housing and displacement; 2) poverty; 3) disproportionate policing.

Housing insecurity and the potentiality of displacement are pervasive concerns in the San Francisco Bay Area. The tech industry boom and incursion of start-ups are considered the principal driving forces of skyrocketing cost of living. The rapid increase of living costs has driven many long-term residents, especially those living in trendy or affordable neighborhoods, out of the region. This phenomenon is referred to as Priced Out or #TheRentIsTooDamnHigh. For example, neighborhoods like North Beach (historically home to Italian and Chinese residents), the Tenderloin (also "TL;" home to

[9] Tony Robles, well-known activist in San Francisco, wrote a similar satirical piece about "Airdbd." The piece reflects ongoing tensions between City residents and the short-term rental company AirBnB, which is ostensibly contributing to widespread evictions and gentrification. It can be accessed here: http://www.poormagazine.org/node/5476.

predominantly African American and Vietnamese communities)[10] and the Mission District (historically low-income and Hispanic; see Figure 2), and have been disproportionately impacted by rising costs and incoming residents. By contrast, historically wealthy, White, and traditionally desirable neighborhoods, such as Nob Hill[11] and Pacific Heights, have been relatively less impacted by this trend. There are two

**Figure 2. Brogrammers Off the Block, San Francisco, CA.** Flyers requesting that all "brogrammers" leave the Mission District began appearing throughout the area in fall 2015.
**(**https://www.reddit.com/r/sanfrancisco/comments/3mdtkr/coworker_saw_this_sign_posted_at_5th_and_howard/)

[10] The extent to which the TL can be gentrified is up for debate; much of the property is owned either by the City or nonprofits, thus restricting gentrification. However, rising overhead costs are driving nonprofits out of the TL. "Uptown TL" is a new neighborhood created to mark the area of gentrification occurring between the Tenderloin and more affluent adjacent areas, such as Polk Gulch.

[11] Areas around Nob Hill, including Polk Gulch, Middle Polk, and Lower Nob Hill, have been dramatically impacted. Landed gentry occupy Pac Heights and Nob Hill and have greater pull in the political landscape, and are thus able to maintain control over their neighborhood's development.

primary reasons for this trend: first, low income and minority racial groups tend to rent rather than own, and second, longstanding wealthy landed residents have significant advantages in the current political climate. The disproportionate impact of urban development and influx of new residents falls along economic, racial, and political lines and continues to replicate structural inequalities.

Second, despite the veritable boom of industry in the city and the incoming money associated with it, poverty rates are still high and incoming wealth is not spread evenly across the landscape (O'Connor 2015). For example, the TL, considered the heart of the city and the site of City Hall, has a poverty rate of 50% (Silicon Valley Institute for Regional Studies 2015). This, in conjunction with criminalizing homelessness, has led to Right to Rest protests periodically held throughout the region. Right to Rest protests increased significantly during the 2016 Super Bowl (see Figure 3). Activists particularly

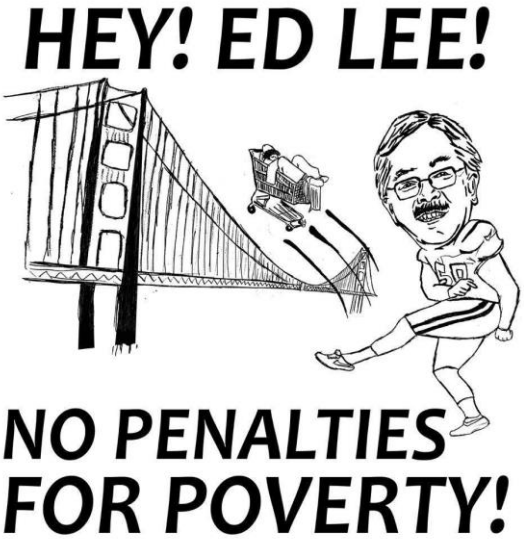


**Figure 3. Right to Rest Protests the Super Bowl.**
Art courtesy of the Coalition on Homeless and Lu Cia.

resent the rising number of sweeps striving to "clean up" the streets of the City; the sweeps displace the homeless from their makeshift shelters to other areas of the City. This is particularly salient as homeless individuals are thrust from shelter under overpasses during the cold and wet El Niño season. Time will tell if these protests will produce greater visibility and social support for the homeless in San Francisco.[12]

Third, activists point to the disproportionate treatment and policing of black and brown individuals and communities, the homeless, and drug users throughout the Bay Area (see Figure 4). Activists primarily focus on this phenomenon as it occurs in

**Figure 4. Gentrification = Police Brutality.** In zones of gentrification, increased policing criminalizes the homeless, low-income peoples, and racial minorities; many have examined the critical link between ongoing gentrification and increased police brutality. (http://www.focaalblog.com/2015/06/22/manissa-maharawal-shut-it-down-part-2/)

[12] Activists for the homeless have cited several shifts in the City of San Francisco's approach to the homeless in the weeks leading up to the Super Bowl, including: increasing militarization (high numbers of police on the streets, especially near Super Bowl City), more sweeps that remove the homeless, the homeless are receiving more citations from police demanding fines or appearances in court, illegal searches of property, and property confiscation (Noyes 2016; Paulas 2016).

gentrification zones, where increased numbers of police are "cleaning up the streets" (Hudson 2015; Rosenfeld 2015). As San Francisco's Board of Supervisors apologizes for recent police shootings and calls for federal investigation of Mario Woods' death (Waxmann 2016),[13] the police continue to disproportionately patrol and police marginalized communities, especially where they occupy areas of gentrification. The Anti-Eviction Mapping Project released findings from a research study analyzing 311 "quality of life" calls by neighborhood and type (AEMP 2015). Implemented in fall 2005 and launched in 2007, 311 in San Francisco provides a nonemergency service request infrastructure for residents, alleviating nonemergency calls to police stations (AEMP 2015). AEMP's findings demonstrate that spikes in the number and frequency of 311 calls are occurring in areas of rapid gentrification, such as the Mission District, South of Market, and the TenderNob (AEMP 2015). These findings reflect the "broken windows theory," namely that serious crimes flourish in places where disorderly behavior goes unchecked (Wilson and Kelling 1982). Disorder sustains and generates serious crime. Broken windows policing, then, is policing nonviolent and less serious crimes in order to prevent serious crime and reduce fear in the community. The disproportionate policing and removal of communities of color in zones of gentrification continue to be central components of activist struggles in the Bay Area. AEMP also mapped demographic data

[13] After stabbing a stranger with a knife, Mario Woods was discovered waiting at a Muni bus stop by police. Woods refused to drop his knife and was subsequently shot by five police officers. Mario's family requested a federal investigation; soon after, Mayor Ed Lee also called for a federal investigation. Supervisor David Campos also introduced a resolution that would declare Woods' birthday, July 22, "Mario Woods Remembrance Day." Since calls for an investigation were made, debates about whether there should also be investigations into the deaths of Alex Nieto and Amilcar Perez-Lopez have surfaced.

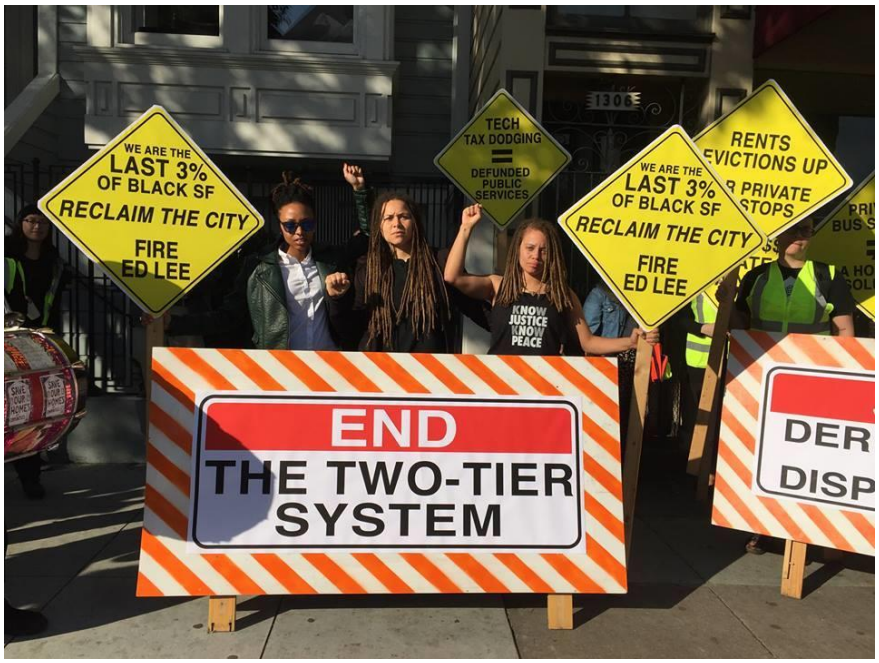


**Figure 5. Last 3% of Black SF.** Responding to displacement of African Americans from the City of San Francisco, protests call for a reclamation of the City from gentrifiers. Photo courtesy of Black Lives Matter Bay Area.

since the 1980s; findings indicate the slow removal of black and brown individuals and comunities from the City to its outer limits, leading to increased interest in examining the role of displacement in deepening structural inequity in the Bay Area (see Figure 5; Finamore 2016; Har 2016; and Nazarian 2015 for discussion).[14]

**III. The Place of Allyship in Alternative Justice**

The forces pushing marginalized groups out of the region are also affecting alternative justice practitioners. Full-time practitioners are often well-educated, holding degrees in conflict resolution or peace studies. Generally speaking, they adhere to the belief that conflict is a generative space for examining human difference and building commonality;

[14] See AEMP's 1980, 1990, and 2000 data on African American population density in the city and county of San Francisco.

having the tough conversations in conflict is therefore considered essential to building a better society. Thus, alternative justice practitioners can be found facilitating meetings, mediating disputes between neighbors or relatives, and restoring relationships between victims, offenders, and the community in formal legal contexts. These interests position practitioners to substantively contribute to social movements and actions clamoring to address inequality, displacement, and rapid changes in the urban environment.

However, the political, economic, and social transformations occurring throughout the Bay Area are also dramatically impacting the lives of practitioners and their work. Underpaid, unable to meet basic living expenses in areas where they work, practitioners working in San Francisco, Palo Alto, Berkeley, and Oakland often commute up to and over an hour to and from work. Increased commute times, shortages of staff, and increasing competition for few jobs are a result of shifting economic and political landscapes in the city – the same processes pushing marginalized communities further from population centers and relegating them to city limits.

Alternative justice organizations are typically nonprofits. They often struggle to meet the overhead costs associated with holding office space in locations easily accessible to mass transit and the marginalized communities they serve. To supplement costs, many organizations receive up to half of their annual income from government funding and grants (see SFCB 2015) in addition to relying on private donations and service fees from clients. The economic insecurity and uncertainty that attends grants and donations – funding that fluctuates from year to year – has pushed several alternative justice organizations to streamline and economize their services. San Francisco

Community Boards (SFCB) – the longest running community mediation center in the United States – once held several offices throughout the City, one for each community they served. This model allowed offices to be staffed with residents in that community, ensuring that staff spoke the language, understood local concerns, and that their identity would closely mirror that of the individuals in conflict. In many ways, this approach embodied justice of, by, and for the community. However, budget cuts and an inability to meet multiple rent costs pushed SFCB to consolidate into a single office now located in the TL. Similarly, Solutions that Encourage Effective Dialogue and Solutions Community Resolution Center (SEEDS), which serves Oakland and Berkeley areas, was created out the union of three organizations.

The individual and organizational pressures from rapid urban transformation have deleterious effects on alternative justice practice and the ability to create and sustain relationships between organizations, groups, social movements, and activists. As organizations feel the economic pressures of rising costs, they supplement their income by raising the costs of conflict resolution skills training. Basic trainings required to become a practitioner cost asmuch as $800 and two full weekends of time; optional advanced trainings cost between $20-40. Despite high numbers of trained practitioners, organizations often have difficulty maintaining an active pool of practitioners who reflect the diversity of the Bay Area. The juncture of organizational and individual pressures affecting alternative justice practice and ongoing urban transformations is illustrated in recent community meetings between the city of San Francisco and Mission District community leaders.

**Figure 6. No Monster in the Mission.** In response to proposed development, termed the "Monster in the Mission," protesters take over City Hall. (http://plaza16.org/tag/no-monster-in-the-mission/)

Mission residents requested the community meetings in the wake of rapid development and subsequent displacement of long-term residents (see Figure 6). Activists stalled the "Beast on Bryant" and "Monster in the Mission" developments,[15] but locals wanted to ensure that future development would need community-based support.[16] Unsurprisingly, community meetings between the City and community leaders were not going well: language barriers, high intensity emotions, and an inability to find common ground consistently stymied the talks. An alternative justice facilitator was requested with the purpose of keeping meetings on task and facilitating effective communication. When

[15] The "Beast on Bryant" is a development of 274 luxury apartment units (47 would be below market rate; 40 affordable housing units are required by the City's inclusionary housing mandates) on the 2000 block of Bryant Street in the Mission. Similarly, the "Monster in the Mission," at 16th and Mission Streets, is a complex with 345 units.

[16] November 2015 elections resulted in a failure to halt market-driven development in the Mission; community dialogue with the city, however successful, will not result in the desired goal: an end to gentrification.

an experienced facilitator was introduced, however, their identity as a White non-community member – despite their desire to serve as an ally and intermediary – only served to incite the community further. That the facilitator's identity seemed to mirror the City leaders and the gentrifiers was considered unwelcome and thoughtless, at best. The center contracted to find a facilitator went back to the drawing board and, after much searching and several weeks, was still unable to locate a Mission District resident that was qualified to serve as a facilitator. Instead, an affluent Hispanic woman, though not a Mission resident, was contracted.

This case demonstrates the complex interrelationships of gentrification, alternative justice, and the political and economic challenges facing the City and its residents. Alternative justice practitioners are increasingly drawn into ongoing social movements pushing back against the rapid influx of tech and start-up companies and their employees saturating the Bay Area. The skyrocketing rent, ineffective approaches to poverty and displacement, and the tensions that result between newcomers and long-time residents, the destitute and the wealthy, the activists and the silent majority pervade the region. Alternative justice practitioners, themselves emphasizing their framework's ability to positively impact social relations and communities are theoretically well-positioned to address many of these pervasive issues. However, practitioners fail to meet the meaning of true allyship – the ongoing process of supporting and uplifting marginalized groups. It is precisely because of rapid urban transformation, with its political, economic, and social effects, that alternative justice practitioners in the Bay Area have consistently failed to embody allyship and substantively contribute to social

justice in the region. These myriad tensions are revealed through ethnographic research conducted in 2014 and 2015.

## IV. Research Design, Methods, and Analysis

### *Research Questions and Rationale*

Alternative dispute resolutions (ADRs) emerged as part of the reparative turn in sociolegal studies during the 1960s and 1970s and gained momentum among scholars, practitioners, and the general public during and since the 1980s. Sustained interest in these approaches is due, in part, to its emphasis on combating perceived failures of the formal legal system, especially where it disproportionately impacts marginalized groups, such as low-income, homeless, non-English speakers, racial minorities, and LGBTQ communities. The result is a suite of alternative justice models, practices, and philosophies defined in direct opposition to the legal system.

However, despite its initial theorization and implementation as wholly informal alternatives to the formal legal system, alternative justice in nearly all its popularized forms has consistently created and maintained complex relationships with the formal legal system. The procedures, rituals, power dynamics, and discourse pervading alternative justice programs and processes often derive from state law (Merry and Milner 1995). For example, although ADRs were envisioned as alternatives to the legal system, they have since become a formalized feature of the law: ADRs are often court-mandated and lawyers now specialize in the field. ADRs community-based cousins, including community mediation and restorative justice, have undergone similar transformations from informal to semi-formal and in some cases have become colonized by the legal system entirely. The juncture of the informal and formal – what I term the informal-

formal justice nexus – became the central feature of my first venture into the field in 2014.

Primary research questions driving inquiry during the initial seven months of research (June-December 2014) included: in what ways does the formal legal system pervade informal conflict resolution and vice versa? What are the effects of working in the informal-formal justice nexus on justice practice? Is this space considered generative of individual and social justice by clients and practitioners? These research questions derive from longstanding debates examining the effects of formalizing informal or alternative justice processes.

During the first fieldwork phase, I worked closely with practitioners in both formal and informal contexts. I observed their conflict resolution processes, assisted in daily office and operational activities, and attended trainings. I sat alongside individuals who were coming into being as practitioners, learning and being enculturated into practice with them. All of these activities were integral to gaining entrée into the community of practice, a community that is sometimes close knit and at other times disparate, a community where resources are often difficult to procure and so maintaining boundaries of practice and geography become paramount.

Working within the context of alternative justice, which includes alternative dispute resolutions (ADRs), restorative justice (RJ), and community mediation to name a few, poses particular challenges for anthropologists. I had to navigate the difficult political, economic, and social context of the Bay Area; a context that creates complex relationships between practitioners across the region who are striving for the same

economic and human resources. NGOs and nonprofits themselves have internal and external politics that make research difficult, but working with practitioners within what I will later present as the "informal-formal justice nexus" requires particular sensitivity to their needs, the conflicting goals they negotiate, and the requirements of working with legally-binding cases.

During the first phase of fieldwork, Black Lives Matter and tenant rights movements became more visible throughout the Bay Area. These two social movements fundamentally shaped data collection and the pursuant research questions driving the second research phase in 2015. When I embarked on the second stage of fieldwork (May-November 2015), research questions included: how do alternative justice practitioners define and seek to advance social justice through their practice? Do practitioner-defined goals and conceptualizations of justice differ from client understandings? How do practitioners understand and reflect upon their work during rapid change stemming from displacement and social movements?

These research questions build upon the first phase of research and recent literature in alternative justice debates. The ability of alternative justice to act as a mechanism of social intervention (Mulcahy 2000; Neves 2009; Pavlich 1996; Weinstein 2001), as part of a social movement (Adler 1987; Adler, Lovaas, and Milner 1988; Coy and Hedeen 2005; Merry 1982), and platform for advancing social justice (Mulcahy 2000; Packer 2012; Pavlich 1996; Weinstein 2001) have been variously debated by scholars. However, the relationship of practitioners to the social movements they are often embedded within or surrounded by and how the zeitgeist affects the ways in which

practitioners define and seek to advance social justice has yet to be adequately explored. This realization developed during the course of my first session in the field as social movements grew nationwide and rapid change was dramatically altering the physical, social, political, and economic landscapes of the Bay Area.

Working with practitioners requires particular sensitivity to their mission and goals, which often inspire their daily office activities, while providing them with measurable outcomes and recommendations for practice. In two words: mutual benefit. I gain from their conversations: this work pushes my own professional development and career forward. However, working with practitioners means that I am privileged to cultivate relationships with practitioners and, in many ways, have an obligation to piece together data in ways that will help inform decision-makers and research participants of the multitudinous ways practice can be improved. I provide data-driven recommendations in the concluding chapter.

***Data Collection***

Dissertation research was conducted in two phases: Phase 1 (June-December 2014) and Phase 2 (May-November 2015), for a total of approximately 14 months of ethnographic research. While the first phase examined alternative justice and its practitioners as part of the informal-formal justice complex, the second phase investigated how alternative justice practitioners and their clients imagine and attempt to actualize social justice via broader impacts. Given ethnographer's unique ability to reveal and untangle complex patterned practices and their nuances, ethnographic methods were selected for this project. Building upon the trouble-case approach to legal anthropological inquiry, elaborated on below, methods utilized to explore these topics included participant

observation, non-participant observation, semi-structured interviewing, and case-based interviews. Because of the close relationship between data collection and analysis in the inductive framework of inquiry, grounded theory was used for data analysis. What follows is a brief discussion of the trouble-case method, followed by description of the data collection methods and analysis.

My research builds upon a long history of legal anthropological engagement with the "trouble case" method or approach: analyzing how the law operates by following disputes or "trouble cases" (Donovan 2008, 19; Moore 1969; Nader 1965). Originally advocated by Karl Llewllyn and E. Adamson Hoebel, the trouble-case method was considered groundbreaking in its disruption of two traditional legal anthropological methods:[17] ideological and descriptive methods of exploring law and legal processes (Twining 1968). An ideological approach to the study of "law stuff" examines the ideal behavior, such as examining codes, statues, and norms. Most notably, Isaac Schapera's research among the Tswana and subsequent book, *A Handbook of Tswana Law and Custom* (1955), continues to be the classic example of an ideological approach to investigating law. Descriptive approaches seek to discern norms based on behavior. Bronislaw Malinowski is best known for utilizing this approach in *Crime and Custom in Savage Society* (1985), wherein he extracts legal principles based on behavior.

Each approach to the study of law and legal processes has advantages and disadvantages. The first approach, ideological, focuses only on case law or ideal patterns of rules and norms and is, therefore, poorly suited to the study of law and legal processes

[17] See Kenneth A. Warner (1987) *Trouble-Cases and Socio-Legal Processes* for more information about the impact of Hoebel and Llewellyn's work.

in contexts without written or regular legal rules (Donovan 2008, 90-91; Leaf 2006, 1434). Further, ideological approaches are also not effective at tracking change in behavioral norms that fall outside written norms or rules. The second, descriptive, emphasizes substantive law, what people actually do, rather than procedural law. While this corrects for the ideological approaches failure to encapsulate behavioral change, it can lead to overgeneralizations based upon observed behavior and fails to account for case law, precedent, or written legal rules and procedures (Donovan 2008, 90-91; Leaf 2006, 1434). The trouble-case method tracks disputes throughout their lifecycle: from inception to its resolution and after effects of resolution (Donovan 2008, 19), with the purpose of discovering "instances of hitch, dispute, grievance, trouble; and inquiry into what the trouble was and what was done about it" (Llewellyn and Hoebel 1941, 21). While this method has been critiqued for its emphasis on "trouble" rather than identifying harmony or the everyday, the resulting data is holistic in that it illuminates not only causal motivations for seeking resolution to the conflict, but also includes dialogue throughout the process before conflict resolution processes have taken place, during the resolution, and subsequent contact after justice mechanisms have concluded their work.

The trouble-case method was utilized primarily for non-participant observation. In the context of the research presented herein, this method allowed me to work closely not only on conflicts and their resolution, but also alongside practitioners – stakeholders that are rarely included in research on alternative justice. Throughout fourteen months of research, I worked alongside practitioners to perform case intake, development, and conflict resolution, including surveys after conflict resolution to assess their level of

satisfaction with the process. I assisted individual practitioners and programs with approximately two hundred cases during this time.

***Methods***

Four methods were utilized for research: participant observation; non-participant observation; semi-structured interviewing; and narrative case-based interviewing.

Participant observation entails participation in and observation of research participant activities, events, and practices. Conducting participant observation allows greater understanding of everyday experience that moves beyond formalized interaction in interviews or other staged interactions (Kearns 2010, 245). Kluckhohn describes participant observation:

> conscious and systematic sharing, in so far as circumstances permit, in the life-activities and, on occasion, in the interests and affects of a group of persons. Its purpose is to obtain data about behavior through direct contact and in terms of specific situations in which the distortion that results from the investigator's being an outside agent is reduced to a minimum. (1940, 331)

This method led me to offices, short-term housing, and public spaces for participant observation. I conducted participant observation in a variety of contexts, including alternative justice training events (complete participant), anti-eviction and -gentrification protests (participant observer), and daily office activities at several nonprofits in the Bay Area (complete participant). The primary purpose of participant observation was to observe firsthand experiences of evictions and associated activism, in addition to sharing in the daily lives and experiences of alternative justice practitioners. As a fieldworker, practitioner, and volunteer office worker, I had the pleasure of learning alongside individuals who were coming into being as practitioners: we took basic and advanced trainings, attended lectures, and awareness events together. In many cases,

these individuals were subsequently interviewed and I was able to participate and observe in both their training and then observe their practice. When taken together, participant observation illuminated discrepancies between the everyday practices of alternative justice professionals and their ideological position with regards to justice models. Participant observation also revealed problematics of allyship in the San Francisco Bay Area, opening a space to analyze the disjuncture between justice practice and ongoing displacement and inequality.

Non-participant observation (complete observer) is the observation of research participant activities, events, and practices, without the researcher's direct participation in those activities. This method was utilized in situations where participation would have been inappropriate, including conflict resolution processes (e.g. mediation, restorative mediation, facilitation). I observed approximately 150 cases during the research phases; many of these processes were facilitated, mediated, or otherwise led by the same practitioners I observed during training, awareness, and public events. In this way, I was able to see some practitioners from their basic training to their practice. Many of the cases observed took place in more formalized office spaces that are specifically dedicated to the everyday work of conflict resolution.[18] Given ongoing gentrification and rapid transformation of the region, it is unsurprising that approximately half of the cases researched were related to property disputes, evictions, or construction (e.g. home owner's association, building development). The remaining half was primarily comprised of relationship or communication breakdowns (e.g. divorce; custody; housemates). This

[18] Further discussion of the role of space in alternative justice will be presented in Chapter 5.

distribution reflects those of alternative justice programs throughout the San Francisco Bay Area.[19]

Semi-structured interviews are one-on-one interactions with research participants that follow some pre-set questions, but allow for an open conversation and two-way communication between the researcher and the participant (Bernard 2011, 157-158; Singleton and Straits 2010, 266). Given the diverse nature of alternative justice practices, semi-structured interviewing provided the most flexibility to tailor interviews to the individual experiences and background of practitioners and clients, while also maintaining some standardization to facilitate the grounded theory approach. While some interviews were conducted via Skype or Google Hangout, the vast majority of interviews were done in person at a location of the interviewees choice. Often practitioners did not feel comfortable being interviewed in their place of work or practice and requested private meetings away from their workspace or even their city. Many interviewees chose places where their words could barely be overheard by people at the next table and audio recordings could only be transcribed by careful listening. Practitioners typically requested to meet at restaurants, coffee shops, parks, and even the Ferry Building. These informal spaces of conversation stood in stark contrast with the formalized office and practitioner spaces where the everyday work of alternative justice takes shape. The close knit and often collaborative nature of their work with other practitioners in the field and nonprofits

[19] Not all alternative justice programs allow public access to demographic information, types of cases, and other service statistics. As a result, this statement reflects observations from fieldwork and statistics I was able to view as a researcher. To protect confidentiality, any program statistics not readily available to the public are not specifically referenced; where these data are available to the public, they are used for discussion and analysis. For an example of an annual report that indicates a breakdown of case type, see San Francisco Community Boards' 2015 Annual Report: http://communityboards.org/wp-content/uploads/2010/10/Community_Boards_Annual_Report_FY2014-15.pdf.

working on similar projects made anonymity and confidentiality of paramount importance.

Closely associated with purposive sampling, where the investigator selects units representative of the population, case-based narrative interviewing specifically targets participants based on their experiences with the topic in question. This methodological approach is similar to other case-based techniques, such as life or oral histories, in that its purpose is to understand and compare individual experiences (Riessman 2008). In particular, case-based narratives can serve as political work in communities: "the social role of stories—how they are connected to the flow of power in the wider world—is an important facet" within narrative approaches and theories (Riessman 2008, 8). In this research context, narratives are deployed by practitioners and their clients for particular ideological, political, and economic purposes. Case-based narrative interviewing, therefore, allows space to draw out these narratives and for subsequent analysis. Participants were solicited for this type of interview based upon their identity as practitioners. A diverse group of practitioners with varying levels of experience, theoretical and practical engagement, were solicited. Narratives illuminating definitions of "success" and broader impacts were sought throughout interviews, revealing how practitioners define success, empowerment, capacity-building, and the values and principles they emphasize through their practice. This also provided an opportunity to examine how they situate their justice practice in a rapidly transforming urban environment.

### *Data Analysis*

Grounded theory was utilized for constructing methodology and for data analysis. Pioneered and championed by Barney Glaser and Anslem Strauss (1967), grounded theory methods are systematic, but flexible methods for data collection and analysis whose aim is to discover causal explanations – theories – from the data itself (Bernard 2011, 435; Charmaz 2014, 1). The benefit of grounded theory is inherent in the consistent interaction with both data and emerging analysis (Charmaz 2014, 1). Grounded theory can thus incorporate emergent understandings during the course of research and allows the researcher to respond to change that impacts participants and the project more generally (see Singleton and Straits 2010, 385). This approach incorporates a constant search for patterns in data while concurrently providing explanatory models for those patterns (Singleton and Straits 2010, 385). Grounded theory was particularly useful for this project as it allowed flexibility to respond to emerging social movements, such as Black Lives Matter and tenant rights, and situate their existence alongside alternative justice practice.

## V. Following Chapters

Anthropology is, in many ways, well suited to analyzing domestic justice practices. Legal anthropology "came home" in the 1980s and 1990s; researchers such as Laura Nader, Sally Engle Merry, and Carol Greenhouse began to ask questions about the relationship between law and society, legal processes and state power, and bring their anthropological theoretical lenses and analyses to contexts in the United States. This dissertation builds upon this history of legal anthropological research at home by examining the ways in which alternative justice practitioners embody allyship for and against the state and its

associated violence.

This manuscript presents a data-driven analysis of contemporary alternative justice practice that spans disciplinary boundaries. Through this work, I contribute an outline of what I call the "informal-formal justice nexus" – a theoretical contribution to anthropology, sociology, and legal studies that urges us to examine the juridical gray space where informal and formal conflict resolution, practices, processes, and practitioners meet and struggle over the meaning and substance of justice. By examining alternative justice practice through this lens, we can begin to analyze the ways in which the shadow carceral state enters the everyday lives and practices of ostensibly informal justice practitioners. Further, this work examines the ways in which both the informal-formal justice nexus and social movements shape the role of alternative justice practitioners as allies in the quest for social justice. By locating informal justice practices within the complex and shifting landscape of the Bay Area, a longtime generative space for justice practices, we illuminate how alternative justice practitioners and organizations navigate social justice movements and the political economics of allyship both with movements and the state.

The first chapter introduces alternative justice as it relates to formal law and legal processes. Alternative justice advocates routinely cite the deleterious effects of state law in order to better claim that their practices are restorative and empowering, rather than retributive and destructive to individuals and their communities. Therefore, the first chapter introduces the problematics of state law and alternative justice's ensuing promises and response. Particular attention is given to the continuum of violence and the

ways alternative justice seeks to disrupt state violence through its work. Finally, alternative justice itself is critically examined and emergent justice models are discussed.

The second chapter utilizes contemporary and preeminent scholarly works in the field of alternative justice to deconstruct and critically analyze the implications of the field's "history." A highly modified version of this chapter was presented at the 2015 Southern Anthropological Society Annual Meeting in Athens, GA and was awarded an honorable mention for their Graduate Student Paper Prize. The chapter first familiarizes the reader with the history of alternative justice, which I refer to as its mythico-history, as it has been constructed and passed down orally and via textual materials (e.g. toolkits for practice, scholarly works). Following this discussion, implications for contemporary alternative justice practice are discussed at length, utilizing primary and secondary data to illustrate how the mythico-history affects practice. Although the origin story of alternative justice has been discussed by scholars in terms of the myths it perpetuates, cooptation and commodification of ostensibly Indigenous practice, and role as colonizing ideology, researchers have yet to mobilize both secondary and primary data to examine the mythico-history's implications for both theory and practice.

Chapter three deconstructs what I call the incorporeal dimensions of alternative justice: practitioner-defined goals such as empowerment and capacity-building. Deconstruction and discussion illuminates definitions of social justice and how practitioners situate their work within a rapidly transforming environment. Conceptualized as the "incorporeal" of alternative justice, broader impacts are presented by practitioners as the stuff that matters – the ideas and impacts that will not only

transform an individual during a conflict resolution process, but will also impact their communities. For those familiar with related frameworks, such as transitional justice or peacebuilding, goals such as empowerment, capacity-building, and healing will seem familiar in both terminology and meaning (or lack thereof). The purpose of this chapter is to provide meaning and substantive examples of how practitioners imagine and define these broader impacts to manifest in individuals and communities as they work towards advancing societal relations.

The fourth chapter utilizes a single case study as a departure point to examine how power deriving from the self and physical space of conflict resolution inevitably shapes the process and outcome of alternative justice processes. Cloaked in "neutrality," practitioners often fail to identify their role in perpetuating power asymmetries. By examining how power manifests in both space and the self, this chapter goes beyond a debate concerning neutrality and contributes understandings of how contemporary experiences, training, and processes in alternative justice serve to foster power asymmetries in the conflict resolution space.

Subsequent to this discussion, chapter five examines practitioners as allies in the quest for social justice, situating contemporary practice within macro-level processes of social movements and the political and economic zeitgeist of the San Francisco Bay Area. Drawing upon the dramatic changes wrought in the region as a result of changing demographics, political power, industry, and ongoing protests for social change, this chapter critically examines the relationship of alternative justice to social justice movements and the relationship of practitioners to activism. Situated within literatures

debating the efficacy of alternative justice practitioners as agents of social change, this chapter challenges discourse championing the ability and extent to which alternative approaches to conflict resolution can adequately serve marginalized groups.

The final chapter, Chapter 6, concludes the work, drawing out overarching themes and the primary findings. Findings indicate that the mythico-history of alternative justice results in homogenous approaches to conflict resolution throughout time and space, while promoting mythical imaginings of "community" and "Indigeneity." Second, findings indicate that the practitioner often embodies the structural violence in society and the formal legal system that they seek to disrupt. This is particularly challenging for practitioners working at the nexus of informal and formal legal processes. Further, rapid urban transformation has dramatically impacted practice: practitioners and their organizations are constrained politically and economically. These constraints often result in lack of allyship with organizations, individuals, and social movements working towards similar goals of social justice. The work concludes by discussing implications for the future of alternative justice that extend beyond the San Francisco Bay Area throughout the United States.

## CHAPTER TWO: SPECTRUMS OF JUSTICE MODELS AND PRACTICES

"*I'm trying to stay away from trouble everyday, but it's hard when the things you need.*
*Picture looking at your babies in the face when they hungry and they need to eat.*
*I'm trying not to do wrong, but they won't let me do right.*
*Even though I done changed my life,*
*Criminal records what they judging me by*." – Akon, "Trouble Nobody"

Chapter in Brief:

> Alternative justice was popularized and widely implemented in the 1970s to the present day in response to social and scholarly critique of the state's monopoly on justice. In particular, alternative justice advocates emphasize the legal system's physical and structurally violent nature that disproportionately criminalizes, incarcerates, and impacts low-income and racial minority communities. However, alternative justice has itself become complicit in formal legal processes, leading to the creation of emergent models, such as transformative justice. From alternative justice as social critique to its complicity in state violence to emergent justice models, this chapter charts the history of alternative justice, situating its place in the contemporary juridical field.

### I. A Justice System in Crisis

Alternative justice theory and practice in the United States emerged in the 1970s as a response to social, political, and economic critiques of formal juridical processes.[20] In particular, critiques emphasize law and legal processes of social control that disproportionately target low income and minority racial communities. That formal law and legal processes are physically and structurally violence pervades the literature (Alexander 2012; Beckett 1999; Gilmore 2007; Tonry 2004; Wacquant 2000).

Following these critiques, I utilize Scheper-Hughes and Bourgois' "continuum of violence" to conceptualize the multifaceted, interdependent, and long-term ramifications of state violence (2004). The continuum is comprised of physical, structural, and symbolic violence. By incorporating structural violence as a point of inquiry alongside

[20] State justice is variously referred to as "formal," "retributive," and "legal processes" in the literature. For the purposes of this manuscript, insofar as it seeks to delineate state forms of justice and alternative justice, such models will be referred to as "formal," "formalized," or "state" law and legal processes.

physical violence, we can see the myriad ways violence manifests in everyday experiences of law and the legal. Described as "sinful" social structures (Galtung 1969), structural violence refers to the systematic ways in which groups are marginalized and disempowered (Farmer 2004). Thus, we see not only violence's physical ramifications, but can begin to analyze its meaning, power, and make visible the ways it reproduces itself (2004). Physical violence manifest in the state is perhaps the most visible – disproportionate and violent policing, profiling, and sentencing results in mass incarceration, death penalty, and the school-to-prison pipeline. However, physical violence manifest in these spaces and processes is also a form of structural violence; by examining legal structures and processes as a form of structured and physical violence, we can discern systematic social machineries of oppression (see Farmer 2004).

Disproportionate treatment of communities of color by the state is certainly not a new phenomenon – from the genocide of Native Americans, to slavery, Jim Crow, and the New Jim Crow (Alexander 2012), racial minorities have been a consistent target for disproportionate racialized policing, sentencing, and incarceration. Mass incarceration, caused by the War on Drugs, "three strikes and you're out" laws, zero tolerance policies, and disproportionate policing have received particularly strong critiques in the literature, recent social movements, and the general public. These policies have resulted in extraordinarily high rates of incarceration – the highest in the world – that do not reflect the rate of crime (ACLU; Justice Policy Institute 2000; King, Mauer, and Young 2005) or changes in overall population growth (King, Mauer, and Young 2005). While the US has

only 5% of the world's population, it claims 25% of the world's prison population (ACLU 2011).

Many scholars cite the War on Drugs as a pivotal moment in contemporary legal practice, because racial minorities are "the principal targets in the "war on drugs," the burden of drug arrests and incarceration falls disproportionately on black men and women, their families and neighborhoods. The human as well as social, economic and political toll is as incalculable as it is unjust" (HRW 2009). Since 1970, the prison population in the United States has risen 700% (ACLU); African Americans are incarcerated at a rate of 6.6 times the rate of Whites (Justice Policy Institute 2000). While only 1 in every 106 White males 18 years of age or older is incarcerated, one in 15 Black males of the same age are incarcerated (ACLU 2011).

Disparate incarceration based upon race is particularly visible when we examine statistics on drug use and imprisonment as a result of the War on Drugs. Between 1960 and 1990, the incarceration rate in the US quadrupled and the emphasis on criminalizing crack cocaine, associated with racial minority users, further criminalized black and brown individuals (Alexander 7; Tonry 2004). Although all racial groups in the United States have similar rates of drug use, Black drug offenders are particularly targeted; at a nationwide level, from 1980 to 2007, Black arrest rates were 2.8 to 5.5 times higher than that of Whites (HRW 2009). Further, 67% of convicted felony drug defendants are sentenced to jail or prison and African Americans are more likely to be arrested for drug possession; the effect is mass incarceration along racial lines (HRW 2009). Thirteen percent of the Black adult male population has lost the right to vote because of their

involvement in the criminal justice system (Justice Policy Institute 2000). For many, "the laws had written into the penal code breathtakingly cruel twists in the meaning and practice of justice" rendering state law, legal processes, and actors physically and structurally violent spaces (Gilmore 2007). The result of a decade of bipartisan effort to reduce racial disparities in the legal system derived from crack cocaine sentencing laws, Congress passed the Fair Sentencing Act (FSA) in 2010. In the following year, the FSA guidelines were retroactively applied to individuals sentenced before the Act was implemented (ACLU 2015a). The physical and structural violence embedded in formal law and legal processes manifests nationwide; California is no exception. In 2006, for every 100,000 Black residents, California arrests 3,150 for drug offenses as compared to 1,029 arrests per 100,000 White residents; Black arrests occur at a 3.1 rate higher than White arrests (HRW 2009).

Disproportionate policing is also present for juveniles, leading to a phenomenon known as the school-to-prison pipeline. The school-to-prison pipeline refers to a trend wherein children are funneled from schools into the juvenile and criminal justice systems. Many of the children subject to the pipeline have histories of neglect, poverty, abuse, or disability (ACLU 2015b) and a disproportionate number are racial minorities. For example, 70% of students arrested in-school are referred to the police for in-school incidents are Black or Latino and 40% of expelled students are Black (Amurao 2013).

National outcry against the pipeline and its associated police brutality grew in fall 2015, when a video emerged of a 16-year-old African American student sitting in her

school desk was put in a headlock and thrown to the ground by a police officer.[21] Police officers have become a fixture in public schools, particularly in the wake of school shootings. However, police also have an expanded role beyond public safety as an enforcer of school discipline. For example, the young woman who was violently pulled from her desk was cited with "disturbing schools" – a vaguely defined misdemeanor crime. Minor infractions are criminalized and the criminalization of youth, like that of adults, is also racialized. According to the ACLU, "nearly one in four Black secondary students is suspended" and "close to *one in three* Black secondary students with a disability is suspended" (2015b, emphasis original). For example, cited for blocking traffic while walking through a shopping center parking lot, two African American students in Antioch, CA were expelled from school (ACLU 2009).

However, truancy is not limited to minor infractions in and out of the classroom, such as "disturbing schools," but also includes absences. Over 75% chronic attendance problems are attributed to low-income students (OAG 2015). In 2014-2015, nearly 20% of African American and Native American elementary students were chronically absent; these statistics compare to only 8% of Whites and 3.7% of Asian students during the same time (OAG 2015). Furthermore, 90% of elementary school students with severe attendance problems (missing 36 days or more of school per year) are low-income (OAG 2014). As a result, truancy laws disproportionately impact low income and racial minorities, while simultaneously failing to address the underlying causes of truancy.

[21] The Officer on the scene, Ben Fields, has been named in two other federal lawsuits for unreasonable and excessive force and unfairly targeting African American students, respectively.

In California, a child is “habitually truant” once they miss school with unexcused absences and/or are tardy six times in one school year. The school can then refer the child to the district attorney’s office for legal action. Depending on the age of the child, the parents and the child may be liable. Parents can be prosecuted for failing to compel a child to attend school or by contributing to the delinquency of a minor (Penal Code § 272). In 2010, California legislature approved SB 1317, “Parental Crime for Chronic Truancy,” which makes chronic truancy – defined as unexcused school absence for 10% or more of school days in one school year – a misdemeanor punishable by a maximum $2,000 in fines, one year of imprisonment, or both. The parent or legal guardian of the child is in violation of the law if they fail to “reasonably supervise and encourage” school attendance. Thus, parents of chronically truant children, 75% of which are low-income, become responsible for paying up to $2,000 in fines and incarceration of up to one year.

In response to the disproportionate treatment of communities of color in society, especially with regards to police brutality and the school-to-prison pipeline, the social movement Black Lives Matter (BLM) was created and has grown to worldwide prominence. BLM strives to affirm and uplift the humanity, lives, and contributions of Black individuals. BLM protests have been staged throughout the nation in protest of racial policing and police brutality. In the Bay Area, the social movement gained traction in Berkeley and Oakland, areas historically known for social organizing and activism. Oakland is currently undergoing widespread gentrification spurred by increasing cost of living in Berkeley and the City of San Francisco – businesses and locals have been moving to Oakland, pushing low-income and racial minority communities out of the area.

Black Lives Matter particularly took hold of the Bay Area subsequent to the deaths of Mario Woods and Alex Nieto. These deaths exist not as individual incidents of state violence, but are embedded within a violent relationship between the state and state justice and black and brown communities.

Seeing the state through the lens of the continuum of violence also allows us to begin seeing what Beckett and Murakawa call the "shadow carceral state," whereby the state expands its power and control through legal hybridity and institution annexation (2012). The authors challenge longstanding practices of examining criminal legal punishment and the state's function in this limited context as a mechanism to analyze the dynamics of punishment and society. Instead, they suggest examining that understanding the "nature, operation, and effects of carceral state power requires attention to the subterranean politics and covert institutional innovations that, along with more overt policy developments, shape penal practices and outcomes" (2012, 3). While the disproportionate effects of the state and state control of "justice" was constructed by examining state institutions and their role in marginalizing communities, I build on other critical criminological perspectives to examine the myriad ways in which the state inserts and reproduces itself outside of formalized institutions and in the everyday practices and life of ordinary citizens.

In Chapter 1, for example, I presented data from the Anti-Eviction Mapping Project on 311 calls in zones of gentrification. In particular, calls adjacent to gentrifying areas, such as those near the Twitter tax break zone mentioned previously, are for "cleaning:" cleaning up the streets by removing the homeless and those in poverty. Since

a disproportionate number of homeless and low income peoples living the City are non-White, it leads to an increased policing of peoples of color. Many scholars and activists emphasize the role of the state in this context: where the City creates these mechanisms for police to insert themselves and criminalize individuals who are not acting violently or illegally. However, I propose that we instead look at the individuals making those calls as a mechanism to see the everyday violence of the state. In this example, then, we can begin to see the ways in which broken windows theory and policing play a part in not only shaping the efforts of police departments, but the ways in which implementation of 311 and similar mechanisms push civilians to police each other and, thus, bring the state and its violence into everyday contexts.

This example illustrates the ways consideration of the continuum of violence and the shadow carceral state illuminate the everyday experiences of individuals under state control and the ways ordinary citizens become a vehicle for and embody the state. Thus, individuals are disproportionately affected not just once they are arrested or imprisoned, but their everyday life is pervaded by the shadow state as it is enacted by both its formalized actors as well as everyday relations and people. These complex relationships become evident in conflict resolution processes ostensibly set up as "alternatives" to the state and its justice system.

**II. Alternative Justice: Savior to a Failing System?**

Recognizing emergent failures of the formal legal system, lawyers, scholars, and the general public clamored for alternative approaches to conflict resolution that would repair and subvert the harms of extant formal law and legal processes. Alternative justice thus emerged in the 1970s as a suite of justice mechanisms that offer conflict resolution

outside the formal legal system. Sociopolitical movements, including civil rights and the feminist wave, contributed to the gaining momentum and traction for conflict resolution models considered "alternatives" to formal law and processes (Merry and Milner 1995; Parris 2013). "Alternative" models are thus defined and constructed in opposition to the formal legal system, which critics characterize as destructive to individuals and communities, imbued with the physical and structural violence of the state, overburdened, overly abstruse, and inflexible in process and outcome (Calkins 2010; Enslen 1988; Galanter 1985; Parris 2013; Sykes 1969). By situating justice in informal contexts, rather than as a state function, alternative models (also termed "informal" or "popular") resolve conflict outside the violent spaces of formal legal processes and without criminalizing disputants. By reducing criminalization and its associated effects, marginalized communities that are particularly affected by state surveillance and violence have greater access to equitable justice. Thus, alternative justice is characterized as subverting state violence, especially where it disproportionately impacts minority and low income communities. By removing the state's monopoly on justice, alternative justice processes are mechanisms to exact individual and broader scale change in society.

Modern-day alternative justice in the US emerged in the early 20th century as arbitration became a normative component of the formal judicial system. In the 1970s, arbitration became embedded in a broader suite of justice practices known as alternative dispute resolutions (ADRs), to include mediation and negotiation as well as arbitration. Lawyers and judges clamored to introduce ADRs throughout the country, quickly normalizing these practices in legal processes. For example, Former Chief Justice Warren

Burger states “for many, trials by the adversary contest must in time go the way of the ancient trial by battle and blood” and further that the legal “system is too costly, too painful, too destructive, too inefficient for a truly civilized people” (Burger 1984, 66). Proposed as alternatives to litigation, ADRs thus sought to replace adversarial and state-centric processes with less costly and destructive conflict resolution mechanisms. While arbitration and negotiation remain wholly formal, requiring specially trained lawyers, mediation may be either formal or informal. Mediation is often court-mandated (requiring a lawyer), but may also exist as an alternative to formalized legal processes, such as community mediation.

ADRs initially gained popularity as its advocates sought to reform disputing ideology by leveraging the cultural capital of “harmony.” Laura Nader characterizes the shift from litigation to ADRs as a movement that traded justice for harmony (Nader 1993). ADRs are “not a universally desired improvement, but rather an often coercive mechanism of pacification” (1993, 1). ADR advocates emphasized the models’ emphasis on disputant ownership of conflict resolution, the less time and monetary costs required, and the flexibility in process and outcome for parties as compared to litigation. However, Nader questions the intensity of ADR advocacy among formal law practitioners. Judges, such as Warren Burger, and firm partners – those with the greatest wealth, power, and prestige in the legal world – were strong proponents of the adoption and proliferation of ADRs. The asymmetries of power and regularized process of “climbing the ladder” of legal employment incentivized widespread adoption of ADR practices among lawyers (Nader 1993). Practitioners in these contexts were often coerced into accepting ADRs

(harmony) and rejecting litigation (disharmony).[22] The result of these ideological and practical pushes for widespread implementation and adoption of ADRs is that these frameworks are now normalized in and outside the courtroom. They are by far the most practiced conflict resolution models in the United States, and practitioners such as attorneys, community peacebuilders, and those embedded within nonprofits can be found in nearly every city.

Coercive harmony is but one part of several scholarly debates about the purpose, nature, and potentiality of ADRs. What are the ramifications of taking particular types of cases out of litigation and into the private, confidential sphere of ADRs? Court-mandated mediations, for example, are often utilized for family disputes, such as divorce and child custody. Relegating domestic disputes to the private sphere, where case precedent cannot be created, has been problematized (Hoffman 1994; Johnson, Saccuzzo, and Koen 2005; Lefcourt 1984; Tishler et al 2004). Concerns have been substantiated by data; for example, child support cases resolved via ADRs result in lower monetary awards than those that reach litigation (1994, 21).

ADRs were formal law's way of attempting to resolve over-litigiousness and a costly and overburdened legal system. However, other mechanisms emphasizing harmonious responses to conflict,[23] but premised on conflict resolution entirely outside the realm of state control have since risen to prominence. In particular, two alternative

[22] Although Nader utilizes the term "coercive harmony" to refer to the pressures pushing formal legal actors to accept ADRs and contribute to their rapid proliferation, I will redefine this term in later chapters as it applies to coercing disputants to communicate and behave in particular ways deemed "harmonious" by practitioners.

[23] The concept of "harmony" will be discussed further in Chapter 3.

justice models have become popular throughout the US: community mediation and restorative justice.

In 1976, the first community mediation center in the U.S. was implemented in San Francisco by Raymond Shonholtz. Redefining justice as of, by, and for the people rather than of, by, and for the state, community mediation reimagined conflict as a generative space for restoring relationships and cultivating conflict resolution skills, such as effective communication. Community mediation thereby leverages conflict and subsequent resolution processes as mechanisms of individual and community-level empowerment.[24] While court-mandated mediation tends to be evaluative – whereby the mediator has control over the conflict resolution process and outcomes – community mediation is facilitative or transformative (see Figure 7). In a facilitative model, the mediator follows relatively standardized structure and process, but allows the parties to have control over the pace, content, and outcomes of the conflict resolution process. In a transformative context, the parties have control over the structure, content, and outcomes;

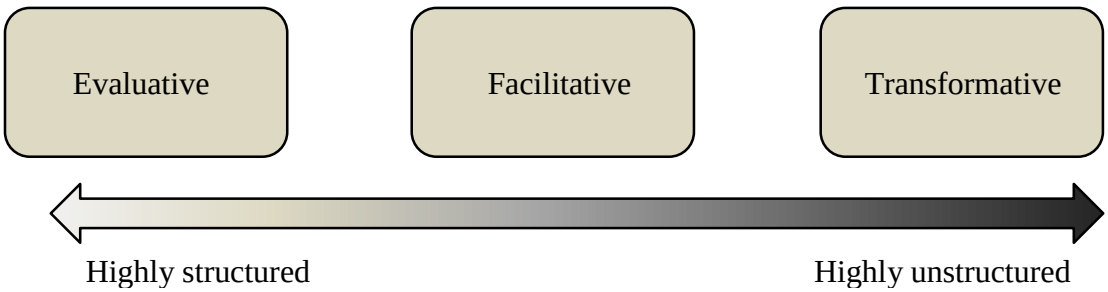


**Figure 7. The Spectrum of Mediation Practice.**

[24] The term "community" is commonly used throughout alternative justice literatures. This term will be critically unpacked in Chapter 3.

this provides the most personal empowerment and least mediator intervention. Since initial inception in the City of San Francisco, this model of conflict resolution has been replicated throughout the Bay Area and the United States. The model used by SFCB and created by Shonholtz is considered archetypal and can thus be found in many different contexts and communities.

Similar to community mediation, RJ emphasizes the importance of addressing conflict and utilizing it as a space to examine deeper individual and community needs. Restorative justice (RJ) rose to prominence after Howard Zehr's seminal work *Changing Lenses* was published in 1990. Zehr proposed that in order to reach substantive justice we need to focus on restoring relationships between individuals in conflict and their communities. RJ emphasizes addressing harms, needs, and obligations in conflict at both the individual and community levels. RJ in particular has been implemented in a number of contexts, including schools, prisons, the judicial system, transitional justice, and in wholly informal contexts as a community-based response to conflict.

Both community mediation and RJ situate conflict as a central space for learning, skills building, and individual and macro-level empowerment. That individuals in conflict can learn effective communicative techniques and then proceed to teach those to others in the community is a central component to alternative justice ideology. Transcending the micro-level (individual) to transform the macro-level (community and society) is at the heart of how alternative justice intends to combat macro-level justice issues, such as over-litigiousness, mass incarceration, and the school-to-prison pipeline. Therefore, along with normative programs in cities and neighborhoods, alternative justice programs have

also been implemented in prisons and schools. For example, the Insight Prison Project (IPP) was founded in 1997 at San Quentin State Prison. Their focus is on creating perceptional awareness (insight) to "produce 'a change of heart' from reacting impulsively to making conscious choices" (IPP). Similarly, the Oakland Unified School District (OUSD) implemented RJ "to build community and respond to student misconduct, with the goals of repairing harm and restoring relationships" (OUSD 2016). Both of these programs are examples of ways in which alternative justice practitioners are actively working to address pervasive societal problems.

**III. The Informal-Formal Justice Nexus**

Despite the initial desire to create alternative justice models that exist entirely separate from formal law and legal processes, ADR, community mediation, and restorative justice practitioners now consistently work within formal legal spaces. According to practitioners working within what I call the informal-formal justice nexus, there is potentiality in implementing alternative justice processes into formal legal systems – changing such systems and their associated violence from within. The confluence of informal and formal justice led Woolford and Ratner to suggest that reference to "informal" justice is overstated; instead, they refer to such approaches as part of the "informal-formal justice complex" (2010). The informal-formal justice complex is defined as the "cultural, economic and political relations within the juridical field through which adversarial/punitive and conciliatory/restorative justice forms coexist and modify or reinforce one another, despite their seeming competition" (2010, 7). According to their description, the complex is not a site of contest or struggle for juristic domination, but rather is a space of coexistence where punitive and restorative justice practices work

together to define and push the barriers of justice practice (2010, 7). Evoking images of formal and informal processes working in tandem and harmony to reach mutual goals, this conceptualization in some ways reflects that of practitioners working within the complex. Practitioners envision their role as ambassadors and implementers of harmony, carving out spaces in formal legal processes for reparation, restoration, and healing in the hopes that these spaces will grow to impact the entirety of the legal system.

Instead, however, I refer to what Woolford and Ratner characterize as a "complex" as a "nexus." That practitioners often view this nexus as a space for juridical creativity and flexibility, it is also a space rife with legal, political, and economic conflict and struggle. Thus, what I call the "informal-formal justice nexus" can be envisioned as a juridical gray space in which disputants, practitioners, and communities strategically maneuver to meet particular needs. While practitioners working within the nexus attempt to combat institutionalized violence with each case they work, the everyday forms of state violence are often neglected and may be perpetuated through alternative justice practice. Thinking about the relationship of alternative justice to state justice as one embedded within a nexus of political, economic, ideological, and social conflicts and aims provides a new way of imagining the myriad ways in which the state's continuum of violence and the shadow carceral state are replicated and reproduced by alternative justice practitioners working within the juridical gray space. Within the fields of sociolegal studies and critical criminology, this theoretical contribution can be employed to analyze the manifestation of everyday state violence within otherwise radical political and alternative practices that are ostensibly in opposition to the state and its monopoly on

justice. The informal-formal justice nexus provides anthropologists with a critical examination of the ways normalized state violence pervades in new and ever transforming ways, morphing into people, practices, and relationships and thus replicating itself in the everyday work of justice. More importantly, envisioning these juridical gray spaces as a nexus is envisioning the complex realities of practitioners, communities, nonprofits, and the state itself, all of whom compete for resources, clients, and the meaning of justice itself.In the nexus, parties in conflict are faced with a number of competing or coexisting conflict resolution options. For example, they may engage in community mediation first and then proceed to a court of law. In other cases, they may engage RJ practices as a court-mandated component of the legal process or as part of their sentencing. The conflicts emerging within the nexus occur both between the state and informal processes and practitioners, but also between the parties in conflict and the practitioners with whom they work. For example, while disputants often seek out the most effective and efficient mechanisms to resolve their immediate conflict, practitioners reach for different goals, such as empowering individuals in conflict and building their conflict resolution skills.

Critical examination of the nexus provides an ideal window into ascertaining the relationship of the state and its formal legal system to the informal and alternative justice models. The nexus is also indicative of the multiple ways alternative justice permeates and is permeated by the state and its everyday violence. By examining the intersection of formal and informal justice processes, we can examine the ways in which alternative justice – defined in opposition to the state – and its advocates – often ideologically

opposed to state justice – mobilize the language, rituals, and procedures of formal law in their work (Merry and Milner 1995). For example, RJ practitioners often use terminologies such as "victim" and "perpetrator" when working within the informal-formal justice nexus, reflecting state-determined binary identity categories. However, we can also begin to see the myriad ways in which ostensive "alternatives" – those completely divorced from the legal system – are politically and economically embedded within the nexus as well. For example, San Francisco Community Boards (SFCB), a community-based mediation program, received 55% of its 2015 funding from government grants, such as the State of California's Dispute Resolution Programs Act (1986). Further, 33% of their referred caseload comes from police and city/county organizations (SFCB 2015). Despite initial creation and implementation as alternatives to a failing formal legal system, alternative justice in its many forms has since become an integral part of the informal-formal justice nexus and is one half of an interdependent relationship with the state.

**IV. From Restoration to Transformation**

Although some scholars and practitioners choose to work at the informal-formal justice nexus, others have vilified the formal legal system and any collusion with it. The result is entirely new justice models that seek not just to restore relationships or repair harm, but to transform the societal relations and systems of oppression that contribute to conflict and violence (Kelly 2010, 49; Kim 2010, 195). Termed "transformative justice," the framework is used to address the continuum of violence – symbolic, structural, and physical (Scheper-Hughes and Bourgois 2004) – at the individual and community level. Whereas other forms of alternative justice, such a restorative justice and community

mediation, emphasize repairing and restoring relationships, democratic justice processes, empowerment, and healing, transformative justice proponents question who and what is being restored, whether restoration is the appropriate response, and promote wholly individualized approaches to conflict and violence (Kelly 2010, 48-9). Advocates identify the formal legal system as not only fueling criminalization and cycles of violence in communities, but of constructing, perpetuating, and symbolizing violence and community conflict (Kelly 2010, 49-50). Violence perpetuated at the state level becomes embedded in everyday community relations; these relations must be unmasked, deconstructed, and discussed before individual incidents of violence and conflict can be adequately resolved.

Transformative justice challenges the hallmarks of antiviolence literature: victim-perpetrator binaries, community, and safety. Advocates of the paradigm reject binary constructions of identity (Kim 2011/2012, 21). For example, the victim-offender or male-female binary does not adequately account for the human experience and often operates as a silencing mechanisms (2011/2012, 21). Transformative approaches deconstruct these binaries, allowing for manifold understandings of how people interact with the world around them. Transformative projects also emphasize community as a site of imperfection, rather than of healing or nonviolence. That community itself and the systems of oppression operating within communities must therefore be transformed is central to the transformative justice model (2011/2012, 196). Finally, the model's proponents cite that only a privileged few have the possibility of safety after violence or conflict (Kim 2010, 205; Kim 2011/2012, 16-7). A myopic focus on victim safety may be

misplaced and indicative of bias in antiviolence literatures and practices (2011/2012, 16-7).

Transformative justice practices, therefore, allow anyone concerned about violence to begin the conflict resolution process, even if the victim is unwilling to participate (Kim 2011/2012, 20). Practices are much more flexible, allowing individual tailoring of processes to the needs of participants and the community. Advocates emphasize community empowerment as a desired outcome, focusing on mitigating contributing factors to community violence. Common practices include narratives of conflict and resolution, mapping ally networks, and incorporating role-playing (Kim 2011/2012, 21-2).

Transformative justice has gained some traction in the Bay Area, but is unlikely to reach mainstream consciousness. The goal of transformative approaches is, at this point, not necessarily to reach broad audiences, but rather to remain grassroots, small-scale, flexible to community and individual needs, and reflective of community ideology, norms, and needs. Such programs typically espouse "radical" politics, reject the formal legal system, and often align themselves with social movements working towards the same goals. In many ways, the creation of transformative paradigms is a replication of previous models before it – seeking to transform the meaning and substance of "justice" into a radical new form.

When considered as part of the history of alternative justice, the question becomes: will transformative justice, the radical emergent alternative, maintain its radicalness or follow its predecessors and succumb to broader forces? Since the inception

of alternative dispute resolutions, the first prominent alternative justice practice in the United States, in the 1960s and 1970s, ADRs promised to relieve an overburdened court system, provide greater access to justice, and reduce criminalization of groups disproportionately targeted by the formal legal system. However, ADRs became formalized – they are now court-mandated, require lawyers with specialized training, and are often quite costly processes. Similarly, community mediation sought to provide truly democratic community-based justice, but high training costs to supplement nonprofit funding and increased alliance with police have raised similar concerns about the ability of this frame to provide adequate justice and subvert societal violence. RJ has undergone a similar process. Popularized in the 1990s by Howard Zehr, RJ has been implemented in formal legal systems throughout the world, raising concerns about the continued conflation of informal and formalized justice processes and infusion of state power and violence into alternative conflict resolution. In each case, alternative justice models were initially created as innovative forms that promised to repair, restore, or heal individuals and communities in conflict. In particular, practitioners worked with marginalized groups who are often disproportionately impacted by state violence. However, over time, each of these models, pushed by economic, political, and social forces, has also grown closer to the formal legal system itself, believing that by working within the system, it can transform it. If transformative justice is to gain wider popularity, we must also ask ourselves if it will share the same fate as its sociolegal siblings.

# CHAPTER THREE: DECONSTRUCTING THE MYTHICO-HISTORY OF ALTERNATIVE JUSTICE

*"Here we must try to reconstruct the influence of myth upon this vast landscape, as it colours it, gives it meaning, and transforms it into something live and familiar. What was a mere rock, now becomes a personality; what was a speck on the horizon becomes a beacon, hallowed by the romantic associations with heroes; a meaningless configuration of landscape acquires a significance, obscure no doubt, but full of intense emotions."*
- Bronislaw Malinowski, *In Tewara and Sanaroa—Mythology of the Kula* (1922)

Chapter in Brief:

> After alternative justice gained initial popularity as a potential mechanism to heal broken legal systems and provide accessible and culturally-appropriate justice to marginalized groups, critics have variously debated its relative efficacy, outcomes, and ability to subvert the legal system it often works in collusion with. Utilizing ethnographic data to critically examine long-standing and emergent debates arguing the relative advantages and disadvantages of alternative justice, this chapter analyzes how practitioners and scholars have constructed the framework's mythico-history. The chapter then critically deconstructs this mythico-history to explore implications for contemporary theory and practice. The mythico-history lends legitimacy to alternative justice by extending temporality and spatiality of justice practices, placing retribution (associated with criminal legal systems) in a dichotomous relationship with restoration (characterized as a universal desire or need), and drawing upon homogenous conceptualizations of Indigenous justice practices and processes. Furthermore, this narrative uses ethnographic writings from the early to mid-twentieth century to characterize Indigenous practice, reflect nonviolence as "natural," and the universality of restorative approaches to conflict resolution. In this chapter I argue that the history, which I call a mythico-history, of alternative justice has been constructed to lobby for political, economic, and social support of such frameworks.

## I. Introduction

Alternative justice frameworks have gained popularity since the 1970s, when the Civil Rights Movement and subsequent reparative turn in sociolegal studies increasingly scrutinized alleged failures of the formal judicial system. Sociopolitical movements, such as feminism and civil rights for marginalized groups, contributed to the rising popularity of models deemed "alternatives" to the formal legal system (Merry & Milner 1995; Parris 2013). As a result, alternative models often construct their principles, ideologies, and

practices upon perceived and actual failures of the judicial system, especially as it relates to criminal cases.

Since the 1970s, three primary justice models gained and sustained popularity in the United States. Alternative dispute resolutions – defined as voluntary or court-mandated conflict resolution strategies that settle conflict outside litigation – were widely implemented throughout the 1970s and 1980s. ADRs quickly became formalized; these processes are often court-mandated and a lawyer typically serves as arbiter, negotiator, or mediator. Community mediation, the second model to gain widespread popularity, is an informal community- or neighborhood-based approach to conflict resolution. First implemented in San Francisco in 1976, this model identifies conflict as a generative space for discovering and discussing difference, while cultivating empowerment and building capacity.[25] The third model, restorative justice, rose to consciousness among scholars and practitioners after Howard Zehr's seminal work *Changing Lenses* (1990). RJ has gained such widespread popularity that a simple Google search for "alternative justice" invariably results in links to restorative justice programs rather than sites, articles, and programs that demonstrate the variety and variability in alternatives to the formal legal system.

Despite their philosophical and practical differences, alternative justice models, by attempting to mitigate the violence that imbues the formal legal system, are all considered potential platforms for advance social justice. According to advocates, alternative justice programs offer greater access to justice for marginalized populations,

[25] The terms "empowerment" and "capacity building" are used throughout the literature and by practitioners. These will be critically discussed in Chapter 4.

culturally-sensitive justice processes for Indigenous groups, and repair individuals and communities in conflict. For example, Weinstein, a practitioner-scholar of community mediation, states that alternative justice "allows parties to create meaningful justice for themselves as individuals and for broader and socially complex community issues as well" (2001, 251). San Francisco Community Boards, the longest-running community mediation program in the United States, similarly claims to act as a "beacon of hope to those in dire need of resolution" (SFCB 2015, 3). In each of these examples, practitioners emphasize the power of restoration rather than retribution in sustainable conflict resolution. Restoration, it is argued, is central to the human need for justice, whereas retribution – characterized as the cornerstone of contemporary formal legal practice – is antithetical to the very notion of "justice" itself. Retributive practices are represented as extant in the state justice system; by homogenizing notions of "retribution" and conflating it with state justice, alternative justice advocates point to its failures as failures associated with retribution, rather than the state. Thus, mass incarceration, zero tolerance policies, broken windows policing, overcrowding, and the school-to-prison pipeline become problems manifest not because of state violence, but because of retributive justice and it's institutionalized and everyday violent effects. By offering alternative definitions, practices, and processes of "justice" that are based on restoration rather than retribution, alternative justice practitioners and their supporters thus believe that they can advance social justice among the marginalized communities with whom they work.

However, despite its popularity, alternative justice has become the subject of extensive debate between advocates and opponents (Daly 2002; Daly and Stubbs 2006;

McAlinden 2011; Merry and Milner 1995; Mulcahy 2000; Nader 1993; Neves 2009; Richards 2004; Van Ness 2002; Zehr 2002). The most enduring debates concern the relationship of the state to alternative justice programs (Baskin 1988; Coy & Hedeen 2005; Morrill and McKee 1993; Mulcahy 2000), the appropriateness and efficacy of restorative models in gendered violence cases (Cesaroni 2001; Daly 2006; Daly and Stubbs 2006; Fawley and Daly 2005; Hopkins et al 2005; Koss 2014; Koss et al 2003), satisfaction rates among disputants (Alberts et al 2005; Charkoudian 2010; Goulding and Steels 2013; Morrill and McKee 1993), cost savings as compared to the legal system (Charkoudian 2010), and whether service organizations are achieving their broader impacts (Pincock 2013; Reinke 2015). However, despite the popularity of alternative justice models and the continued proliferation of debates in the literature about their relative merits, less energy is expended to present a thorough and nuanced view of the history and development of these justice frameworks. Instead, advocates have constructed a one-dimensional history – a history dependent upon normalizing community-based and restorative practices and universal definitions of "justice" in an effort to promote these as the only viable answer to failing judicial systems. Critics of the alternative justice model have rarely deconstructed this history and, where this has been the primary subject of inquiry, they have yet to explore the implications for the contemporary juridical field. As revealed through secondary data and 14 months of ethnographic fieldwork in the San Francisco Bay Area, this paper presents the mythico-history, as narrated by practitioners and scholars. By showing how the narrative is constructed through their own words, and then proceeding to critically deconstruct the history, implications for practice are

revealed.

**II. Background**

Alternative justice encompasses a family of conflict resolution tools that bring together disputants, their supporters, and the community to address the harms, needs, and obligations created by conflict. Situating understandings of alternative justice within ancient, Indigenous, and religious contexts, early advocates, termed "evangelicals" by Mulcahy (2000), created models and practices that have been adopted by scholars and practitioners throughout the world. Homogenized as nonviolent and harmonious, Indigenous groups such as the Maori, First Nations peoples, Native American, and African groups ostensibly serve as the source of contemporary alternative justice practices and as evidence attesting to the innateness of restorative practices (see Restorative Works 2014). The contextualization of these models within ostensibly ancient human traditions leverages the cultural capital of a harmonious human past and has helped alternative justice models achieve widespread popularity. Since its inception and popularization, proponents have created and then proceeded to pass down the framework's history via written records and oral history. The history is narrated in introductory sections of publications, toolkits for practice, public relations materials for organizations, and training events for new practitioners.

The "history" that advocates have constructed carries with it many of the attributes constituting a myth, insofar as it is a "partial truth, a distorted characterization that requires correction by historical or contemporary evidence" (Daly 2002, 56-7) and that the "truth" of the myth and its construction stands in juxtaposition with the "truth" historical and contemporary evidence presents (Daly 2002;Engel 1993; Tauri 2014). The

narratives are told with emotion and imbued with particular meanings. By conveying the "origin" of justice practice and philosophy, the narratives connect temporally, geographically, and culturally distant and distinct practices so that ostensibly core human values expressed through cultural norms of legal process and practice can be easily identified for the reader, listener, and decision-maker (see Engel 1993). Thus, I refer to what advocates define and present as the "history" of alternative justice and critics have defined as an origin story (Daly 2002) as a "mythico-history," a blending of myth and history that produces particular truths for the reader or listener. The mythico-history, once constructed, is used as a tool to garner funding as well as political and social support for the framework.

Scholars have carefully deconstructed the mythico-history as it is told through written materials, paying particular attention to the political purpose such narratives serve. For example, Richards points to the need for the creation of such mythico-histories, stating that the histories implicitly and explicitly make alternative justice "appear as a 'natural' and unproblematic, and at times 'miraculous' and panacean paradigm of criminal justice" that has been rediscovered by contemporary advocates (2004, 2). Further, the implications of the myth for perpetuating mistaken notions of dichotomous relationship between retribution and restoration have been discussed (Daly 2002). Importantly, the mythico-history and associated proliferation of alternative justice and especially RJ theory and practice serves as yet another example of a "historical tendency for the criminal justice sector to indigenise Eurocentric crime control processes" (Tauri 2014, 44). Thus, not only are Indigenous practices presented as a homogenous

whole by advocates, but the process of mobilizing conceptualizations of Indigeneity to perpetuate the globalization of co-opted practices also perpetuates processes of colonization (Tauri 1998; Tauri 2014; see Havemann 1988; Victor 2007).

Anthropologists have engaged alternative justice from numerous perspectives. Some question the portrayal of alternative justice frameworks as locally controlled, grassroots, and able to subvert state authority. For example, Laura Nader states that these models are not usually "locally controlled or bottom-up in origin, but rather movements that originate in centers of power and then try to connect with local populations for purposes of control" (Nader 1995, 435). Further, the conflation of "community" with non-violence and harmony, with the underlying assumption that peace is morally imperative, has been extensively debated (see Colson 1955; Mulcahy 2000).[26] Anthropologists have also critiqued restorative advocates for misuse of ethnographic data in piecing together and portraying the mythico-history (see Daly 2002; Merry & Milner 1995; Richards 2004). However, the deconstructions and critiques of the alternative justice and its origin myth have thus far failed to mobilize primary data alongside secondary written sources, nor have they discussed the implications of the mythico-history for both theory and practice. I proceed to reconstruct the narrative of alternative justice history, as told by its pre-eminent scholarly advocates and practitioners, then deconstructs the mythico-history to reveal implications for theory and practice.

[26] Archaeological and bioarchaeological research provide numerous examples countering the argument that humans have been historically and prehistorically nonviolent. For example, although the interpretation of data is debated, the recent discovery of a prehistoric massacre site located in what is now Kenya seems to provide further evidence that past groups living in community with one another were not necessarily inherently peaceful or nonviolent.

## III. Constructing the Mythico-History

Following the tradition of alternative justice advocates, I present the mythico-history as advocates have constructed it. The mythico-history is narrated with additional phrases to facilitate clarity while I pass down the origin story.

According to advocates of restorative justice, "restorative justice in North America has arisen out of various sources such as [I]ndigenous practices of First Nations people, a discontent with the justice system, and a need to meet the needs of victims" (RJ Online 2014). Elmar Weitekamp, longtime alternative justice theorist, draws on ethnographic materials from the early to mid-twentieth century to argue that "restorative justice has existed since humans began forming communities" (1999, 81) and that it "has been the dominant model of criminal justice throughout most of human history for all the world's peoples" (Braithwaite 1999, 2). During ethnographic research, one participant expressed the belief that restorative mediation "has existed since the dawn of time" (Interview 2014). Another claimed that restorative mediators operate in the same capacity as the "village elder" from past societies (Interview 2015). According to a popular online learning network for practitioners, alternative justice practice "echoes ancient and indigenous practices employed in cultures all over the world, from Native American and First Nation Canadian to African, Asian, Celtic, Hebrew, Arab and many others" (Restorative Works 2014). Alternative justice practice is thus presented as the natural state of human beings throughout the world despite geographic, temporal, or cultural considerations, so "while the modern articulation…has emerged in the past 30 years, the underlying philosophy and ethos resonate with those of ancient processes" (van Ness 2005, 1).

Further, the ideal locus of justice is presented as the community-level. The depiction of humans as inherently preferring a community-driven model of justice premised on non-violence and harmony is central to the construction of the mythico-history. In this context, peace becomes conceptualized as a universal moral imperative, with nonviolence and harmony conflated with community. Thus, alternative justice is considered a "reincarnation" of humanity's innate preference for peace, harmony, and nonviolence; and community is the driving force for these concepts (Gavrielides 2014, 217). As a result, colonialism, with its introduction of retributive practice and massive displacement of peoples across the world, is presented as force that interrupted the natural state of justice. Colonialism forcibly implemented retribution rather than restoration and is thus responsible for the widespread use of retributive, rather than restorative, practices today. However, advocates note that the natural, traditional state of justice can successfully return, with the implication that colonialism has no lingering effects: "ironically, 150 years after the traditional Maori restorative praxis was abolished…youth justice policy is once again operating from the same philosophy" (Braithwaite 1999:99). It is a form of irony that humans have rediscovered restorative processes throughout the world (van Ness 2005, 1) and are returning to "methods and forms of conflict resolution that were practiced some millennia ago by our ancestors who seemed to be much more successful" (Braithwaite 1999, 93).

The origin myth depicts restorative practices as politically, economically, and ideologically acceptable responses to crime and deviance, with the purpose of gathering support for program implementation in communities, schools, and the legal system.

Widespread support for restorative approaches to conflict, deviance, and crime pervades even the U.S. Department of Justice: "crime damages people, communities, and relationships. If crime is about harm, then the justice process should emphasize repairing the harm" (OVC 2000, 3). For some advocates, the origin myth is also a rallying point to stave off calls for professionalization or further alliance with the formal legal system. For example, during a debate about whether to professionalize mediation practices (including community and restorative mediation) – a process that would require yearly certification, education, and fees, not unlike requirements for lawyers – one participant commented that professionalization is unnecessary, given that humans have been successfully practicing mediation for all of our history. Restorative practices, the foundation of alternative justice, are thus presented as innate human skills. The mythico-history reflects the popular opinion of many practitioners I have worked with in the San Francisco Bay Area, scholarly advocates, and organizational programs offering training and services.

The mythico-history is also expressed by scholars who often uncritically replicate the story at the beginning of publications, toolkits, and presentations. This construction is popular because it lacks temporal or spatial considerations and nuance, creates visions of human universality, and the enduring nature of non-violent and gentle Natives. By drawing on dichotomous constructions of conflict and harmony, restorative justice is presented as the obvious alternative to problems plaguing contemporary judicial systems. What follows is an analysis of this myth and discussion of its implications for both theory and practice, followed by a concluding section. My findings indicate that alternative justice advocates, by leveraging the cultural capital of "harmony", presented restorative

as natural and normative, homogenizing Indigenous peoples and practices, and conflating community with nonviolence, utilize the mythico-history as a tool for particular political, economic, and social gains.

## IV. Deconstructing the Mythico-History: Implications for Theory and Practice

There are four primary themes embedded in the mythico-history: a) restorative practice as natural and normative; b) a dichotomous construction of conflict and harmony; c) homogenous representations of Indigenous peoples throughout time and space; and d) the conflation of community with nonviolence. By normalizing restorative practices, situating conflict and harmony as diametrically opposed, homogenizing Indigeneity, and conflating community with harmony, the mythico-history that advocates present via their oral and written materials is compelling. The origin story is compelling because of its simplicity, strategic depiction of human history that is filled with cultural capital, and the use of binary oppositional categories for conceptualizing justice. By presenting restoration and retribution in this manner, it leads readers and listeners to conclude that alternative justice is the only rational approach to crime and deviance. This section deconstructs the four primary themes of the narrative presented above, discussing implications for both informal justice theory and practice.

### *Restorative Justice as "Natural"*

First, restorative practices are presented as a natural and normative part of the human experience. Ethnographic sources from the early to mid-twentieth century are leveraged to prove the naturalness of restorative forms of justice, depicting alternative justice models as normative, natural, and unproblematic. For example, Weitekamp, in addition to relying on Hammurabi's Code and the Laws of Ethelbert of Kent, also cites E. Adamson

Hoebel's 1954 *The Law of Primitive Man* as evidence of the naturalness of restoration. Weitkamp's work primarily cites Hoebel's depiction of Inuit punishments for homicide; the offender in Inuit society would care for the widow and children of the male victim, thus claiming responsibility for their action and becoming accountable for the crime committed (Richards 2004, 4; Weitekamp 1999, 76). These actions, in addition claiming accountability, serve to restore balance to the community and address kin relationships. *The Law of Primitive Man*, while discussing nonviolent accountability, also details revenge killings, which, as they are presented by Hoebel, happen at least as frequently as restorative practices (see Gavrielides 2011; Weitekamp 1999). Revenge killings were considered a right of the victim's loved ones; avenging the dead and "winning back" a piece of themselves that had been taken away through the death of a loved one (see Darwent and Darwent 2014; Fossett, 49; Qitsualik 2000). However, alternative justice advocates leverage Hoebel's account to bolster arguments for the naturalness of restoration, conveniently failing to mention the violence embedded in the same work. More recently, in his ambitiously titled article "Restorative Practices: From the Early Societies to the 1970s," Theo Gavrielides (2011) endeavors to trace restorative practices from early societies to the mid-20$^{th}$ century. In addition to using Hoebel's work, Gavrielides also draws upon Elizabeth Colson's research among the Nuer to illustrate the importance of restoration over retribution (Gavrielides 2011). According to Gavrielides, the roots of restorative justice are "ancient, reaching back into the customs and religions of the most traditional societies" (2011, 3). Gavrielides' work replicates a common theme among alternative justice advocates: in constructing the mythico-history, advocates act

from a place of privilege in choosing which traditions to recognize and, in so doing, "have only scratched the surface of anthropological literature and…have been highly selective in the examples expressed" (Sylvester 2003, 12). By conflating restorative practices throughout time and space and utilizing particular cases to bolster their argument, alternative justice advocates depict restoration as a universal cultural trait and need for justice.

Practitioners have acted on this first theme of the mythico-history, the supposed universality and naturalness of restorative practice, by developing toolkits, guidelines, and processes that could, according to practitioners, be applied universally with little or no modification. During ethnographic fieldwork, practitioners repeatedly stated that restorative practices are central to the human experience of and needs for conflict resolution and have existed since the dawn of time. Belief in the innateness of this approach led to widespread adoption of restorative principles and practices; that restoration is fundamental to the human experience of and need for justice is utilized as cultural capital to leverage support for implementing alternative justice programs and practices. After initial implementation in San Francisco in the 1970s, restorative mediation practices proliferated throughout the United States and are now widespread, implemented as both formal and informal practices (Shonholtz 1995). Practitioners mobilize claims to universality in literature, toolkits, and guidelines claiming to support the direct transference of practices between disparate communities. Observation indicates that practitioners rarely vary their practice, even when cases originate in communities with different linguistic, cultural, religious, and historical backgrounds. When asked to

provide specific historic examples of restorative practices, practitioners were often only able to reflect on scholarly works they read, which privileges particular histories and perspectives. Scholarly constructions of the mythico-history thus derive from places of privilege – the privilege to choose which histories to pass down and the privilege of scholarship over practice – and these are instrumental for practitioners developing tools needed to implement just models in the field.

The assumption of universal applicability to disparate contexts is also evident at the individual practitioner level. Although scholars and practitioners discuss the potentially damaging effects of power asymmetries during conflict resolution (Charkoudian and Wayne 2010; Gavrielides 2008), they assume that alternative justice is applicable equally everywhere and to everyone, regardless of cultural association, religious preference, age, gender, sexual orientation, or ethnic or racial identities (see Gavrielides 2014 for discussion). Claims that restorative justice predates retributive justice and that the former, rather than the latter, is fundamental to the human experience eradicates the need to debate the appropriateness of restorative processes for different cultural, religious, or ethnic groups. Instead, alternative justice is characterized as an appropriate mechanism for all groups and a way to bridge difference. Thus, restorative centers, organizations, and practitioners operate in diverse contexts, including at the community level, as part of formal legal systems, and in post-conflict peacebuilding and transitional justice contexts. Practitioners pick up justice practices from one location and displace them into different contexts, assuming, based on knowledge that restoration is universally accepted and normative, that restorative practices will succeed in any time

and any place.

***Retributive versus Restorative Justice***

Secondly, restorative practices, the foundation for alternative justice models, are presented as half of a dichotomous relationship with retributive justice. Restoration is defined in opposition to retribution, which forms the basis of many criminal legal systems throughout the world. Retribution refers to an emphasis on punishing, rather than rehabilitation or restoring relationships between individuals in conflict. Retribution is characterized as the epitome of destruction, wreaking havoc on individuals and their communities, while restoration is presented as a harmonious constructive approach to conflict resolution. Practitioners are instructed to deploy this juxtaposition in their practice. For example, during training for prospective mediators, trainees were told that if the parties are at an impasse and it appears they will be unable to resolve their conflict, the mediator should allude to the potential of the dispute to end up in a court of law. The reminder of the failed formal justice system sends disputants into a fear-driven desire to resolve conflict in the restorative process rather than through retributive means. By juxtaposing retributive (associated with the destructive formal legal system) and restorative (associated with community, harmony, and Indigenous practices) as mutually exclusive models, alternative justice advocates paint a bleak picture of the formal legal system, while also arguing that restorative approaches are the only suitable and natural way to achieve justice. By creating and perpetuating the relationship of harmony and conflict as a dichotomy rather than a spectrum of human practice, it then becomes easy for readers, decision-makers, and the public to choose harmony (restoration) over conflict.

The need for this juxtaposition has been described as "a highly misleading simplification, which is used to sell the superiority of restorative justice…To make the sales pitch simple, definitive boundaries need to be marked between the *good* (restorative) and the *bad* (retributive) justice" (Daly 2002, 59, emphasis original). The resulting dichotomous portrayal or binary opposition of justice models presents a choice between the *good* or the *bad*, the restorative or the retributive (see Levi-Strauss 1984). The dichotomous construction also instills legal homogeneity, rather than reflecting justice as a multifaceted arena that incorporates various approaches, philosophies, and practices. Thus, not only is the human history of justice oversimplified, but the present is represented as restricted to two diametrically opposed options (Daly 2002, 59). Rather than implementing a spectrum of justice practice, this portrayal emphasizes the need for restoration in lieu of retribution.

In practice, the dichotomous conceptualization of retribution and restoration is maintained in toolkits, guidelines, and training processes. Practitioner texts and trainings present alternative justice models in their ideal form: envisioned as the "antithesis of state law: natural, collaborative, and personal in contrast to the artificial, combative, and impersonal world of state law" (Merry and Milner 1995, 4). Although these models are often still characterized as antithetical to retributive justice they are increasingly implemented as part of formal legal systems which embody the very retributive characteristics alternative justice advocates seek to combat or subvert. For example, in the state of California, restorative practices are a formalized component of many K-12 schools and juvenile justice systems. These practices and processes attempt to combat

criminalization of truancy and to divert youth from imprisonment at a young age, thus disrupting the school to prison pipeline. In many cases, practitioners working at this nexus of restorative and retributive justices use restorative processes to focus on victims' rights (OVC 2000; Interview 2014). One practitioner emphasizes the importance of using restorative practices to involve the victim in judicial processes:

> the ideal outcome…is that the victim gets what he or she needs. Did their watch get found? Did their car get restored to them or paid for if there were damages? Has safety been addressed for the victim? Has security been addressed? Is the threat over? Is the stalking going to stop?[27]

In this context, restoration is defined as the restoration of property, safety, and security to the victim; it is often considered an added bonus, rather than a primary goal, if relationships to between the victim, offender(s) or the community can be restored. Restorative processes, especially where they exist within or in close relationship with the formal legal system, are often criticized for overemphasizing victim rights. For example, the formal legal system recommends utilizing restorative processes to address victim rights and facilitate active participation in justice processes. The Office for Victims of Crime, a division of the Department of Justice, states: "crime damages people, communities, and relationships. If crime is about harm, then the justice process should emphasize repairing the harm" (OVC 2000, 3). In particular, it emphasizes alternative justice's potential to address victims' needs, community needs, and processes of reparation, restoration, and healing through active participation of all stakeholders in justice processes (OVC 2000, 3). Through the introduction of restorative practices, the formal legal system is being reshaped into a potential platform for restorative justice and

[27] Interview 2014.

reparation, rather than retribution. Advocates of this integrative approach hope to transform punitive legal systems from the inside out by prioritizing victim- and community-centered approaches to crime and social deviance, focusing on reparation and restoration rather than retribution.

The dichotomous relationship between restoration and retribution is also problematized in practice when viewed relative to political and economic support for alternative justice programs. Funding and support for many programs often derive from the formal judicial system and political institutions. For example, San Francisco Community Boards received 33% of its cases via referrals from formal institutions, such as police[28] and city and county government (SFCB 2015). Furthermore, government grants, largely from the Dispute Resolutions Protection Act, accounted for 55% of SFCB's annual revenue in 2015 (Ibid). Similarly, the Peninsula Conflict Resolution Center (PCRC) received 64% of its annual revenue from city, county, and school district contracts (PCRC 2013:10). In turn, the legal system utilizes alternative justice organizations to lessen the burden on the formal legal system. Close relationships between justice practitioners, lawyers, and police further complicate and blur the lines between the formal and informal, retributive and restorative. The resulting relationship is complex and somewhat antagonistic, but often protocooperative. Practitioners working at the intersections of restorative and retributive justice often work with the incarcerated, police, lawyers, judges, and social services. Many alternative justice practitioners are

[28] Police referrals are a subject of some contention among alternative justice practitioners. Police regularly receive informational trainings from alternative justice organizations and are directed to hand out alternative justice program information when they are unable to assist residents. For example, police may show up hours after a noise complaint, at which point they are unable to help the caller.

volunteers and belong to any of the aforementioned categories. Blurred lines between formal and informal conflict resolution results in difficult decision-making: how can practitioners operating at this nexus of practice adapt their restorative processes to fit within the parameters of a retributive system?

***Homogenous Representations of Indigenous Peoples and Practices***

Building on the first and second themes, the third theme of the mythico-history is the temporal, geographic, and cultural homogenization of Indigenous peoples. Indigeneity is at once conflated with prehistoric or ancient peoples, while also implicated in the depiction of all culture groups as analogous. Indigenous conflict resolution models, regardless of locale and time-depth, are represented as universally harmonious, communal, and non-violent. Advocates deploy this imagery to depict alternative justice as deeply embedded in human history, regardless of local histories, religious practices or ideology, cultural norms, language, or other differentiating features. For example, Braithwaite characterizes restorative models as "the dominant model of criminal justice throughout most of human history for all the world's peoples" (1999, 2). By the same token, Howard Zehr identifies the importance of harmonious relationships and interconnectedness between human beings as a cultural universal: "for the Maori, it is communicated by *whakapapa*; for the Navajo, *hozho*; for many Africans, the Bantu word *Ubuntu*" (2002, 19-20). Continued homogenization of groups, including reference to First Nations, Africans, and other generalized categories for what are, in fact, diverse groups geographically, temporally, culturally, politically, and socially, provides legitimacy to these justice advocates by presenting peoples in all corners of the world as working towards a central goal: restorative practice. This feeds the conceptualization of restorative

practices as universally applicable and, in practice, advocates often replicate practices and apply them in widely disparate contexts, despite differences in culture, religion, ethnic or racial identity, socioeconomic status, and other factors.

In addition to divorcing culture, space, and temporality from their histories, the resulting depiction also perpetuates the "noble savage" or "noble Native" stereotype by representing Indigenous groups as nonviolently and harmoniously resolving conflict. These homogenized interpretations of Indigenous conflict resolution are created by settlers and their governments, continuing historical exploitation of Natives and ongoing processes of colonization (Tauri 2014). Furthermore, this extends the privilege non-Indigenous peoples have through their ability to pick and choose aspects of a culture they find most appealing or useful. As Richards (2004) has noted and analysis of the mythico-history reveals, scholars and practitioners are careful to pick and choose only those examples that suit their needs, while ignoring evidence of other dispute resolution practices. The ensuing construction presents Natives and their practices as universally gentle, harmonious, and non-violent. The homogenous construction further erases complex cultural histories, appropriate Indigenous practices, and commodifies ostensibly Indigenous crime control practices (Havemann 1988; Tauri 1998; Tauri 2014; Victor 2007).

In places where restorative practices are implemented as part of the formal legal system, such as in the United States, New Zealand, and Australia, Native practices are homogenized, co-opted, and commodified for a global market. In these contexts, restorative processes are implemented in state justice systems as a response to the

overrepresentation of Indigenous peoples in courts and jails (Tauri 2009). In New Zealand for example, Maori peoples make up 14.5% of the total population, but are 50% of the prison population (Tauri 2009, 3). In the wake of cultural revitalization and renaissance movements among the Maori since the 1970s, Maori peoples began to call for addressing violence embedded in the formal legal system (Jackson 1988; Tauri 2009). Unwilling to provide sovereignty for legal matters, but needed to respond to increasing Indigenous activism and addressing the overrepresentation issue, the nation-state responded by "indigenizing" the justice system: transforming the juvenile system in particular by implementing family group conferencing, an ostensibly Maori-based justice practice and philosophy (Tauri 2009). Indigenous commentators have noted the irony of nation-states implementing Indigenous practices – the practices they sought to eradicate in recent history – into their settler colonial governments (Palys and Victor, 2005; Tauri 2004). By selecting a few cultural elements deemed relevant, the state continues to colonize Native groups (see Tauri 2009). Thus, implementation often perpetuates state violence against Indigenous communities – the very communities which inspire contemporary alternative justice advocacy and practice.

Despite claims that restorative practices are culturally appropriate for Indigenous groups – especially those which ostensibly inspired contemporary justice practice – Indigenous peoples tend to have relatively low rates of satisfaction with such programs (see Tauri 2014 for discussion). For example, scholars note that Maori peoples are dissatisfied with Family Group Conferencing (FGC), implemented by the 1989 New Zealand Government Children, Young Persons, and their Families Act (Tauri 2014, 42).

Based on the notion that "family group conferencing was a gift from the Aboriginal people of New Zealand, the Maori" (Ross 2009, 5), the Act's purpose was to address institutional racism in crime control and provide culturally sensitive justice mechanisms for Indigenous peoples. Nancarrow cites the potentiality of creating culturally appropriate mechanisms for Native groups, but that "current models…do not meet the criteria necessary to fulfill the hopes of Indigenous women" (2010, 143). Although Zehr (2002) and other alternative justice advocates claim their practices are culturally sensitive and appropriate responses to crime that can empower rather than disenfranchise Indigenous groups, Indigenous scholars and communities rebuke such statements. Instead, low rates of satisfaction may reflect deep-seated resentment, distrust, and the ongoing violence between Indigenous groups and states. Since the state continues as a locus of structural and physical violence against Indigenous groups – often through the judicial system – it is unsurprising that Indigenous peoples are reluctant to engage state-sponsored justice programs. In this context, co-optation and globalization of Indigenous practices by settler-colonial governments is yet another example of ongoing colonization and structural violence inflicted on Indigenous groups by the state.

***Concepts of Community and Collaboration***

Community as place and ideological construct has a special role in alternative justice. Community is both a key component of justice processes, a primary recipient of its benefits, and the site where interests are shifted away from the state and towards alternative loci of justice (Richards 2014). Alternative justice is often depicted as community-based justice – created, driven, and populated by the community and its members. It is therefore imbued with the community's collective ideas, culture, language,

and norms. The conflict resolution space, therefore, becomes a site of individual and community empowerment in addition to a space where members can affirm or renegotiate those norms. In alternative justice literature, "community" is a taken-for-granted term presumed to be both spatially and socially bound; it is limited both geographically and by who is "in" and who is "outside" the community. Whether community is defined geographically or socially, there are a number of problematic assumptions and implications. For example, if community is defined geographically, then justice programs are restricted to particular areas on the landscape, leading to "justice by geography" – when you leave one community for another the rules, procedures, norms, and values may be vastly different (Ashworth 2002). If community is socially bound, who is included as a member of the social? According to some, community is a support network of individuals; thus, community may be relationally defined, rather than located on the landscape (Rubin 2010).

Although the substantive definition of "community" and thus "community-based" approaches to justice is unclear in alternative justice literature, the conflation of community with nonviolence is deeply embedded in all the constructions. Advocates continue to tout the potentiality of their models in undoing, or at least avoiding, the problems pervading legal systems by constructing an ideology that "opposes violence and promises peaceful resolutions of conflict by drawing on the authority of an allegedly harmonious community" (Merry and Milner 1995, 6). Constructed in part from the noble Native stereotype, reference to practitioners as "village elders," and negative impacts of state control (e.g. overrepresentation of low-income and minority racial groups in

criminal systems), community becomes characterized as a space lacking inequality, violence, or civil strife.

For example, Martha Weinstein states that the community mediation programs, a form of alternative justice, reflect the community: "its volunteers are representative of those who live there; the problems that find their way to mediation mirror problematic community issues. The values espoused…are ones we aspire to in an egalitarian society in which all are welcomed, valued, and honored" (Weinstein 2001, 252). The contemporary concept of "community" serves in this context as a modern index to human historical experience (Shonholtz 1987, 46; see Fitzpatrick 1995). Assumed historic and prehistoric experience form a contemporary analog that envisions "community" as a space of pure egalitarianism, embodying nonviolent values where all individuals are equally welcomed and honored. Similarly, Sally Engle Merry touts the promise of community-based programs, stating that by counteracting anomie, alienation, and fear, they provide "a mechanism for people to communicate with each other, breaking down hostilities founded on misunderstanding," and thus, "even if the actual number of disputes resolved is small, the improvement in the quality of neighborhood life would be great" (Merry 1982, 187).

In practice then, alternative justice practitioners must manage multiple roles and embody particular values. Practitioners should be nonviolent (physically, emotionally, mentally), embedded in or at least reflective of the composition of the community and its values and norms, and should operate as community-builders. As community-builders, practitioners work towards increasing community self-awareness, building conflict

resolution capacities, fostering collaborative problem-solving, and empowering communities to take control of their own problems and solutions (see Lowry 1995). However, there are two problematic assumptions embedded in this perspective: first, that practitioners are members of the communities they serve and second, that communities are a haven from violence.

In the context of alternative justice in the Bay Area, programs were initially introduced in the late 1970s as community-based, whether defined as socially or geographically bound. For example, San Francisco Community Boards was implemented with multiple offices, one in each neighborhood they served. Offices were staffed with individuals from that neighborhood, generally ensuring that staff spoke the local language, understood societal norms, and were familiar with the particular needs of the community. However, funding cuts to programming caused SFCB to close several of its offices and eventually to consolidate into one office with a handful of full and part-time staff, an army of volunteers, and continual funding concerns. Similar forces created SEEDS, SFCB's sister organization across the Bay.

Second, communities are rarely the haven from violence and inequality that alternative justice proponents envision. By contrast, studies have demonstrated that when communities control justice, progressively harsher punishments may be levied, including mob justice and floggings (see Burman and Schaerf 1990 for example). Previous experience conducting research in northern Uganda illuminates gendered violence, often perpetrated by community members, friends, and family in the absence of civil conflict (Reinke 2016, forthcoming). According to Rubin's work, many are "extremely concerned

about community attitudes, a lack of understanding…and a paucity of community competence to administer justice" (Rubin 2010, 89).

Alternative justice is inherently a collaborative experience – practitioners work with organizational staff to offer services, services which are voluntarily sought by clients who collaborate with each other across conflict boundaries to resolve a problem. It may perhaps be more useful for practice to consider collaborations rather than communities. Thus instead of relying on homogenous statements such as "the community" or "practitioners reflect the community," we can focus instead on the diversity inherent in local places and tease out the who, when, where, and why of collaboration.

**V. Discussion**

Alternative justice continues to gain traction throughout the world and is implemented in numerous contexts, including post-conflict peacebuilding and transitional justice processes, truth and reconciliation commissions, criminal and civil cases, and as informal and formalized legal processes throughout the world. Particularly, scholarly advocates and practitioners have constructed a history of these justice models that suits their ideological, political, and economic needs: presenting justice as binary, restoration as normative and universal to human beings, homogenizing Indigeneity and relying on conceptualizations of the "noble" Native, in addition to conflating community with nonviolence and harmony.[29]

Ethnographic works from the mid-1900s were utilized as a basis from which to

[29] Discussion of the relative merits of alternative justice in addressing societal problems and providing constructive solutions will be presented in Chapter 6.

argue for the creation and widespread implementation of alternative justice practices and processes. Colonization thus continues through the cooptation of not only practices and processes and through the homogenization of diverse groups, but also through the simplification of ostensibly "primitive" and "prehistorical" communities that then become the origins for contemporary alternative justice practice (see Fitzpatrick 1995). The result is an array of problematic assumptions about the ability to replicate ostensibly one size fits all justice practices throughout the world and in all contexts. This is further compounded by creating binary oppositional categories that pit retribution against restoration, rather than identifying a spectrum of justice practices. Similarly, by associating restoration with community-based approaches to justice, the idea that communities may be potential sources of violence is silenced and a depiction of human history that is harmonious and nonviolent is leveraged for particular gains.

The resulting narrative, frequently utilizing misinterpretation and misrepresentation of ethnographic, historical, and contemporary accounts of dispute resolution, presents restorative justice as natural, authentic, and the inherent state of human beings. Particularly, constructing a dichotomous relationship between conflict (retribution) and harmony (restoration), homogenizing Indigenous practice, and misuse historical and contemporary materials to prove its naturalness, is integral to the construction of a compelling, yet problematic, argument for the importance and necessity of restoration in the contemporary period.

## CHAPTER FOUR: THE INCORPOREAL

*"I say to any creature who may be listening, there can be no justice so long as laws are absolute. Even life itself is an exercise in exceptions."* -Capt. Picard "Justice" (*Star Trek: The Next Generation* 1987)

Chapter in Brief:

> Alternative justice practitioners in the San Francisco Bay Area often state that their primary goal in conflict resolution is to "bring humanity back into the room." By focusing on "humanizing" disputants, practitioners emphasize the emotional power of conflict and conflict resolution to fulfill broader impacts, such as empowerment and capacity-building. This is considered integral not only for resolving the immediate conflict, but for building stronger communities and advancing social justice. Further, although these goals are intended for the parties present in the conflict resolution space, practitioners assume that disputants will carry forth the empowering and capacity-building experience into their communities, thus positively reshaping societal relations. Analysis of practitioner-defined goals (e.g. empowerment, capacity-building) illuminate discrepancies in how conflict resolution and its relationship to the community is conceptualized. This chapter critically analyzes the substantive meaning of practitioner-defined broader impact goals.

### I. Introduction

Considering alternative justice's birth from the fires of critical critique of retributive legal systems and the associated approaches to crime and deviance, it is perhaps unsurprising that the definition and goals of alternative models continue to be in opposition to formal judicial institutions. Alternative justice practitioners often seek to compensate for failures of the legal system, focusing on active participation of people in conflict, informality, and the ability of face-to-face contact and conversation between parties to empower and build conflict resolution skills. The emphasis on defining goals in opposition to processes and practices of formal legal systems also helps support their quest for political and economic support from the general public, donors, and political decision-makers. Embedded within alternative justice theoretical debates and principles guiding practice is the desire to

achieve broader goals that directly impact the individuals in conflict, but also effect the community level.

Broader impacts are often framed as individual and community empowerment and capacity building. For example, San Francisco Community Boards' mission is "to empower communities and individuals" by providing and promoting "peaceful, collaborative conflict resolution" and espousing values of inclusivity, fairness, accessibility, continued learning, and capacity-building (SFCB 2010). SFCB's sister organization across the Bay, Services that Encourage Effective Dialogue and Solutions Conflict Resolution Center, seeks to capitalize on conflict as an opportunity for dialogue, growth, and to cultivate common ground by exploring inclusivity, diversity, and effective dialogue (SEEDS CRC 2014). The Peninsula Conflict Resolution Center's (PCRC) mission is to empower individuals, groups, and institutions by building and strengthening relationships and reducing violence (PCRC 2014). These three organizations are the largest and most well-established conflict resolution service organizations in the San Francisco Bay Area, serving the city of San Francisco, Oakland and Berkeley, and San Mateo, respectively. Each espouses the core purpose, values, and principles of alternative justice – active participation of all parties, promoting effective dialogue, utilizing neutral third-parties as mediators, facilitators, or circle keepers[30] – and each is working towards individual and community goals of empowerment, capacity-building, and healing.

Scholars across disciplinary boundaries investigating justice processes throughout the world are likely familiar with these goals. "Empowerment," "capacity-building," and

[30] A circle keeper is the steward of the restorative circle process, a space for healing and connecting with individuals in conflict. In this context, a circle keeper keeps the space respectful and safe.

“healing” are frequent topics and concerns in peacebuilding, conflict resolution, and justice practice and literature, despite variations in geographic, temporal, and theoretical context. For example, “legal empowerment” has become an increasing topic of interest in post-conflict justice literature (Kurze et al 2015; Waldorf 2015); the ability to build capacity within conflict resolution contexts has gained recent interest among scholars (Arai 2015; Pincock 2013); the United Nations provides principles of empowerment for women (UN 2011); and peacebuilders have addressed the role of healing in post-conflict processes (Parent 2011; Tursunova 2008; Swatsky 2005). However, these goals are often ambiguously defined and, therefore, difficult to assess. Where they are defined, it is often in theoretical and subjective ways.

During the first seven months of ethnographic fieldwork in the San Francisco Bay Area in 2014, I frequently encountered these incorporeal terms – empowerment and capacity building – in the context of practitioners’ desire to “bring humanity back into the room.” This phrase repeatedly inserted itself into conversations, trainings, and interviews. Practitioners characterize the process of humanizing as one that empowers, builds the capacity, and heals disputants, with broader implications for their communities. This characterization is reflective of scholarly and practitioner debates that define a major hallmark of practice as “initiating, facilitating, and educating for collaborative community relationships to effect positive systemic change” (see Charkoudian and Bilick 2015, 236 for discussion; National Association for Community Mediation 2015). However, in providing little substantive definitions for these goals and often failing to provide guidelines on their successful operationalization, scholarly and practitioner

advocates also manage to make assessing their successes and/or failures to reach broader impacts a challenge.

The goals of alternative justice processes are multi-pronged: a) empower disputants; b) build communication and conflict resolution skills; c) humanize the parties. In particular, these goals are directed towards disenfranchised populations ordinarily marginalized by the formal legal system; these groups often include the homeless, low-income, non-native English speakers, and racial minorities. In the broadest sense, the process ideally provides an opportunity for individuals typically marginalized by the formal legal system to take ownership and control of their conflict, to actively participate in its resolution, and work towards amenable solutions without threat of imprisonment or further criminalization by the justice system. The successes of alternative justice have been widely documented in the literature, however "success" is often measured by disputant satisfaction and rates of dispute resolution (see Goulding and Steels 2013 for example), rather than by measures that calculate empowerment and capacity-building – the two primary broader impact goals of alternative justice (see Pincock 2013 for discussion).

Based on ethnographic research conducted in 2014 and 2015 in the San Francisco Bay Area, this chapter critically examines the ideological and substantive definitions of "empowerment" and "capacity-building." By focusing on these practitioner-defined goals, we can begin to operationalize these terms and examine whether practitioners are meeting their goals. In this chapter, humanizing and the two broader impacts it entails – empowerment and capacity-building – are deconstructed to illuminate the myriad ways

these terms shape the practice and outcome of alternative justice processes.

**II. "Bringing Humanity Back into the Room"**

Drawing from theoretical perspectives based on stereotyping and outgrouping (see Linville et al 1986), individuals in conflict often cease to recognize one another as humans with complex emotions, thoughts, and needs. Conflict may exacerbate existing stereotypes (Rouhana 2000, 306), leading to feelings that one party is out to get the other: they are the enemy. For the alternative justice practitioner, humanizing becomes a mechanism to break down the walls of insider versus outsider, us versus them, and creates a bridge to recognizing similarities and building rapport between parties in conflict. Humanizing is thus considered one of the most important immediate goals in alternative justice processes and an important step towards personal and community empowerment and capacity-building. Practitioners highlight how this process manifests through language. For example, instead of using a person's name, a disputant might instead call them *that* neighbor, *that* woman, or utilize name-calling. The individual is dehumanized and presented as an object blocking the path to something the opposing party wants or needs. Thus, the alternative justice practitioner intercedes to rehumanize both parties – to make them rediscover each other's and their own humanity in the midst of conflict.

Practitioners often frame the goal of humanizing disputants in juxtaposition to formal legal outcomes and goals. Whereas black letter law demands discussion of harm and obligation in legal terms and provides restitution in particular pre-determined ways, alternative justice practitioners prompt discussions of feelings and hopes that go beyond the events that transpired, the notion of restitution, and legally-defined categories and

obligations. For practitioners, the process of conflict resolution is about "having the hard conversation, the crucial conversation, about what needs to happen now and why are we here? Where is the harm? What needs to be addressed?"[31] These discussions go beyond restoring a stolen vehicle or conducting community service to fulfill tangible or material obligations after harm, and move towards restoring relationships between the parties and encouraging them to consider alternative perspectives and viewpoints in the conflict. The role of the practitioner, therefore, is to encourage this discourse, reframe toxic statements, discern commonalities between the parties, and draw out emotions to reach the roots of the conflict.

For example, Charlie Spiegel, a community mediator with SFCB, discusses a case between a homosexual couple without kids and a heterosexual couple with two children who were neighbors in an apartment building (Community Boards 2014a). There were noise complaints from both parties and objections to property left in hallways. Tensions between the neighbors built until the police had been called several times and the neighbors were videotaping each other's actions in the shared public spaces. According to Spiegel, during the pursuant mediation, the mother of the small children said "I want your family (meaning the gay male guys) to be respected as much as my family is." Charlie reflects on the mediation, citing the importance of having her repeat her statement, ensuring the other party heard her validation of their family structure and the importance of mutual respect. According to Charlie, this was the transformative moment in the mediation process – when the parties could begin to let go of their anger, rather

[31] Interview, 2014.

than holding onto it, and work towards solutions (Community Boards 2014a).

Similarly, Dylan Miles reflects on a mediation between two individuals who lived in the same house together, but were having a seemingly intractable communication breakdown:

> [the two parties] had very different communication styles: one person was very detail-oriented, but didn't speak very much…and the other person was not very detail-oriented and, in fact, thought details were boring, but…spoke much longer and with much more emotional content…And they walked in and…you could feel the tension in the room. After a while they were able to see that all that was happening was they had two different styles of communicating: that one person's terseness wasn't actually intended to be an insult and the other person not paying attention to details was not a slap in the face. So they started to see you know, we're actually just two different people and none of this is intended as an attack on the other. (Community Boards 2015)

Once the difficult emotions are worked through for all the parties and commonalities are drawn out by the practitioner, the parties begin to see each other as more than just the objects that harmed them or the objects in the way of happiness or peaceful living, but as human beings with similar desires, hopes, and fears. This process is termed "humanizing" and often takes the phrase "bringing humanity back into the room."

Humanizing is part and parcel of two other practitioner-defined goals: empowerment and capacity-building. Empowerment emphasizes the need to build self-confidence and to give disputants control over their conflict resolution process and outcome. Capacity-building is often defined as skills acquisition – building their skills in effective communication and conflict resolution. Both of these are considered important goals of alternative justice, because they defy normative legal system impacts and they will transcend the individual-level and impact the community-level. For example, state legal systems emphasize outcomes-based approaches to justice (e.g. monetary award;

imprisonment), while alternative justice is process-focused, emphasizing the role of conflict resolution processes in empowerment and building the capacity of the parties.

**III. Empowerment**

Empowerment is a key component of the ethos of alternative justice models. Supporters (van Wormer 2004; Restorative Justice Network 2004), sympathizers (Hudson 2003), and critics (Ashworth 2002; Roche 2004) of alternative justice models all deploy empowerment discourse (often uncritically) in their writings. Empowerment thus exists and operates as a form of cultural currency that has significant power emanating from its near universal acceptance and presumed positive connotations (see Richards 2011). Practitioners embedded in on-the-ground realities of daily practice emphasize the need for the individual and collective empowerment of systematically disempowered and marginalized groups. As a result, practitioners attempt to reach groups disproportionately affected by mass incarceration, the school-to-prison pipeline, and those whose claims are ordinarily overlooked by the formal legal system. Through the empowering process of alternative justice, the goal is for these individuals gain self-confidence, rediscover their own and one another's humanity, and begin to see and understand other perspectives of the conflict and their positionality (see Aertsen et al 2011). For advocates, alternative justice models entail "empowering citizens with responsibility for matters that over the past few centuries came to be viewed as state responsibilities" (Braithwaite 2002, 564). Similarly, Shonholtz states: "one of the great promises of community justice has long been its potential to reawaken citizens to their power as disputants and dispute resolvers" (1995, 205). In many ways, then, empowerment becomes imbued with meanings associated with democracy, freedom, reclamation of control, and individual and

collective identity.

Although practitioners are concerned with individual empowerment, they are striving to positively impact "the community." By challenging dominant ideologies, alternative justice is political, in that it confronts oppression and domination, demands emancipation, and uplifts the right to meaningful justice processes that actively involve parties and the community (González 2015). Just the presence of alternative justice programs is considered transformational for some advocates (Weinstein 2001). The individual empowerment gained during conflict resolution is carried with the parties back into their community, consequently contributing to community-level empowerment and advancing societal relations. Thus, "with each interaction, each step, and each transformation, there has been a slow and steady change in some of our institutions as well" (Weinstein 2001, 252).

However, critics have raised concerns about the potential of alternative justice to achieve individual or community empowerment. Some believe that the way empowerment is defined and operationalized by practitioners is reductionist, denying the ability of participants to advance societal change (Aertsen 2011). Instead, it restricts understandings of empowerment to individualized notions of active participation and increased self-confidence (Aertsen et al 2011; Richards 2011). In the process of empowering the disempowered and socially marginalized, alternative justice may result in increased abilities to govern the once ungovernable, making them visible to the state and its agents (Richards 2011). Further, where participation in alternative justice is court-mandated, individuals may be choosing between alternative conflict resolution or further

criminalization by state; this renders empowerment via active participation ineffective at best and raises serious questions about the nature of "voluntary" consent and participation (Community Boards 2015; see Richards 2011 for discussion).

Regardless of the context in which alternative justice operates, empowerment discourse is often deployed without substantive or operational meaning. For example, SFCB's mission states that "the purpose of Community Boards is to empower communities and individuals with the strength, skills, and resources needed to express and resolve conflicts peacefully and appropriately for their culture and environment" (SFCB 2010). How do practitioners operationalize strength, skills, and resources for the parties in conflict resolution? How do practitioners ensure that these will also reach the community at large? The ambiguity inherent in the academic and practitioner literatures has led to myriad understandings of "empowerment" and the best practices for achieving this goal. However, the common thread among practitioners and scholars is the conflation of empowerment and participation (see Richards 2011; Roche 2002).

The relative amount of individual empowerment a party might receive in conflict resolution is framed as in a direct relationship to the amount of involvement and control they have throughout the process.[32] The result is a spectrum of personal empowerment.[33] Alternative justice processes are considered to facilitate the highest level of personal empowerment achievable in conflict resolution: disputants are actively involved in the process and construct their own outcomes. In this context, the practitioner exists as a

[32] The term "receive" is utilized here instead of "achieve," a term perhaps more naturally associated with the concept of empowerment, to reflect the contestation often present between practitioners and the parties. This discussion will be expanded upon in Chapter 5.
[33] The spectrum of empowerment is perhaps best illustrated in Shonholtz (1995, 206).

facilitator or mediator, rather than an evaluative arbiter or negotiator with specific outcomes in mind. Following this perspective, litigation, closely associated with formal law and legal processes, has the least potential for personal empowerment: disputants have little control over the process and are discouraged from participating or interacting with one another. Despite close relations between informal and formal justice practices and processes, practitioners often point to the disempowering experience of litigation, noting the inability of the parties to speak for themselves, directly to one another, or to control the conflict resolution process and subsequent agreements. By contrast, alternative justice models emphasize the active participation of all disputants, their ability to control the resolution process and the outcomes.

Despite the importance of personal empowerment to practitioners, it became clear during research with clients that, while many appreciate the ability to actively participate, create, and define the parameters of agreements and resolutions, their goal is to resolve the immediate conflict. The individualized desire to return to a place without fear, where they could control their environment, or have good (or at least non-harmful) relationships with the other party is paramount. When reflecting on their goals for conflict resolution, it is common to hear parties state that their hope is to resolve the immediate conflict. This often entails restitution or reparation, returning to a peaceful state of existence, or restoring relationships. It is rare for parties to focus on needing individual skills in communication or conflict resolution or that they want to empower their communities. The tension between practitioners' focus on broader impacts and clients' emphasis on short-term and individual impacts often leads to communicative barriers between

practitioners and the parties.[34]

**IV. Capacity-Building**

In the context of alternative justice, capacity-building typically refers to skills acquisition – expanding the ability of parties to understand alternative perspectives, improve their communication in conflict, and consider individual interests and various positionalities (Pincock 2013). These skills are taught by the practitioners and learned through the conflict resolution process, but it is expected that these acquired skills will remain with disputants, who utilize them when encountering future conflicts. To fulfill this impact, practitioners utilize a number of communicative tools, such as reframing, discovering commonality, encouraging empathy, and focusing on needs and obligations. Many practitioners employ nonviolent communication (NVC) in conflict resolution processes, focusing on building effective communication with a foundation in NVC. NVC strives to replace blame, shame, guilt, and threatening language with communication that expresses observations, feelings, needs, and requests.[35] Regardless of the particular philosophical perspective they espouse, all practitioners set and exemplify effective communication in the midst of conflict.

According to one Basics of Mediation training participant, the most important take away from the program was that "words matter" (Community Boards 2014b). Communicative skills training is considered one of the most important components of conflict resolution and it begins at the outset of conflict resolution processes, when practitioners set guidelines or rules for communication. The purpose of the guidelines is

[34] This tension will be deconstructed and analyzed in Chapter 4 "Spaces of Conflict and Contest."
[35] See Marshall B. Rosenberg's *Nonviolent Communication: A Language of Life* for a theoretical and practical guide to NVC.

to emphasize the importance of discursive respect. Common rules include no interruptions, foul language, name-calling, or statements meant to devalue, dehumanize, or harm the other party. Instead, parties are encouraged to focus on "when you do X, I feel like Y" statements. The added benefit of reframing statements into "when you say/do X, I feel Y" is that disputants consider other perspectives, feelings, and needs stemming from the conflict. Rules for communication are enforced throughout the conflict resolution process; disputants are continually reminded to speak their emotions without utilizing words, phrases, and tones that practitioners define as disrespectful or as potential roadblocks to effective communication. The rules themselves are guided by the core principles of alternative justice, but are individually tailored and enforced by the practitioners in the room. The result is little standardization for what effective communication means and the level of emotional expression tolerated.[36]

In addition to setting rules for communication, practitioners also model idyllic communicative practices. Practitioners utilize active listening techniques, such as clarifying, restating, reflecting, summarizing, and reframing. For example, a practitioner may say "If I'm understanding you correctly, you are saying…" to ensure they are both understanding what a party is communicating, while reassuring the parties that they are being heard. They encourage the parties to apply these techniques as well, prompting them to rephrase toxic statements, reflect upon each party's perspectives, and summarize their needs and interests. By neutralizing accusatory and negative language, individuals

[36] Bias easily pervades conflict resolution processes via these communicative guidelines and rules. More information on the ways bias impacts practice via communication and ground rules will be provided in "Spaces of Conflict and Contest."

in conflict can reduce the likelihood of triggering strong emotions that will derail their attempts to resolve the conflict at hand.

Returning to Dylan Miles' mediation of conflict between two housemates that were having difficulty communicating, he emphasized the importance of not only having them recognize their differences, but developing the skills to work with those differences in productive ways:

> The thing that I loved about that mediation in particular was that they were able to not only take it to that level of the relief of seeing oh wow, we're just actually, we're just different, but neither one of us is right or wrong, but they then actually made use of their differences to come up with a plan for how to deal with a third person who they wanted to negotiate with and assign tasks to each other according to their preferences and according to their skills. So not only did they stop seeing their differences as bad, they made good use of them. (Community Boards 2015)

Fulfilling capacity-building by emphasizing effective communication also requires considering positionality and other perspectives in conflict. Practitioners work with the parties to deconstruct us versus them mentalities and to envision what it might feel like to be in the other person's situation. In particular, practitioners make the link between needs and actions as a way to draw out commonalities, while highlighting difference. For example, they may emphasize that Party A felt disrespected and therefore took their anger out on Party B in an effort to gain respect. The need (respect) would be emphasized, because Party B likely understands the need to feel respected, although they may disagree about the mechanism or strategy by which to achieve it. Thus, Party B reconsiders their positionality and may be inclined to say "yes, I can see how they may have felt disrespected by my actions;" this reaffirms Party A's feelings and becomes a point of commonality between the two parties. This is further illuminated in Dylan Miles'

narrative: emphasizing the parties' shared feature (family) and the need to respect one another's family became a platform from which they could transform anger and work towards solutions that would fulfill the divergent needs of the disputants. Practitioners often work from commonalities to deconstruct us versus them perceptions and build skills in understanding different perspectives and towards creating resolutions to conflict.

The ultimate goal of capacity-building is for the parties to effectively communicate with each other without the practitioner's assistance and to reflect each other's positionality. For example, when a party states "I'm sure it was frustrating for you to hear my dog barking late into the night," the practitioner will often interrupt, asking them to repeat themselves, thus ensuring that all parties heard the speaker's statement. This is considered an important step in alternative justice – it is evidence that the parties are beginning to consider alternative positions and perspectives on the conflict and are displaying empathy. It is especially important for parties who may be entrenched in their position to hear that others in the room are beginning to consider and take up other positionalities. This can relieve an otherwise intractable conflict.

**V. Practitioner Goals at the Informal-Formal Justice Nexus**

Regardless of the context in which they work, empowerment and capacity-building are the two principal goals for alternative justice practitioners. However, for practitioners embedded within or working closely with the legal system – at the nexus of informal and formal justice complexes – the ability to achieve voluntary active participation and build conflict resolution skills is a particularly difficult challenge. In many cases, individuals have been to court, are already sentenced or incarcerated, and alternative justice processes may be court-mandated. Alternatively, defendants may have an option to

participate in alternative justice or receive retributive punishment (further criminalization).

Debates about the relationship of informal justice to formalized systems are robust and complex. Scholars have cited the multitude of problems that implementing alternative justice in such contexts can pose, such as co-optation of informal justice by the state (Merry and Milner 1995); further entrenchment of state power in communities (Merry and Milner 1995); dilution of alternative justice's rights-based approaches to conflict resolution (McAlinden 2011); and ability to ensure active and voluntary participation for court-mandated processes (Asmussen 2015; Rubin 2010). However, for practitioners working in this field, the potential benefits of transforming the legal system from the inside outweighs the negative (Fitzpatrick 1988; Henry 1985; Weinstein 2001).

With respect to the concept of empowerment and fulfilling the broader impacts of alternative justice, scholars have variously debated the role of the state in undermining empowerment (Boyes-Watson 1999; McAlinden 2011; Merry and Milner 1995) or citing the need for formalized state standards in order to fulfill empowerment goals (Braithwaite 2002, 564; McAlinden 2011). Others cite the potentiality of state co-optation of alternative justice, undermining the ability of alternative models to successfully subvert the state and emancipate the disempowered from state control. When conceptualized in this manner, the practitioner serves as "a representative of the moral code of his or her society and is never thought to function without reference to the dominant value system or previous decisions in similar cases" (Merry 1982, 174). Still others point to the role of alternative justice in making visible to the state the very marginalized individuals and

communities they seek to empower, rendering them governable (Richards 2010). In the broadest sense, it is clear that there is a lack of consensus on the relationship of the state to alternative justice processes, particularly insofar as the relationship affects the ability of such models to reaching broader impacts for individuals and communities.

The complex and often competing considerations for practitioners working at the nexus of informal and formal justice raises particular challenges for achieving broader impacts. Instead of emphasizing the importance of individual and collective empowerment and capacity-building, practitioners operating in the informal-formal justice nexus often focus on areas where the formal legal system typically fails: victims and perpetrators.[37] Of central concern is making the parties visible and heard and emphasizing acknowledgement and redemption. In informal justice models, perpetrators are often given an opportunity to speak directly with the victims, their family, or members of the community they harmed. It can be discovered through these processes that the perpetrator has particular needs that should be addressed, such as mental health, addiction, or poverty. They may learn how to acknowledge wrong-doing in the hopes of gaining redemption and healing. Victims are also able to confront perpetrators, to speak on their own behalf, and actively participate in the process. Justice processes at the nexus thus that have twofold goals: to fulfill victim's rights and give voice to the perpetrator. One practitioner working at the nexus of informal and formal legal processes

[37] Although alternative justice practitioners prefer to utilize neutral terminology such as "disputant" or "parties," individuals working alongside or with formal legal systems often shift discourse to "victim" and "perpetrator" categories. This in part reflects the language utilized by the formal systems with which they work, but also allows practitioners to emphasize their role in advocating for rights-based approaches to conflict resolution (e.g. victim's rights).

characterizes victim's rights as follows:

> did their watch get found, did their car get restored to them or paid for, has safety been addressed for the victim, has security been addressed, is the threat over, is the stalking going to stop…this is a victim rights opportunity; the victim in the…courts has no voice, there is no jury and there is rarely advocacy. There is very rarely any kind of testimonial. The family is in the back [of the courtroom] weeping. The neighbor is in the back shaking in his boots. There's no input. So the victim rights piece is when the victim has a voice in the outcome of what happens; that doesn't mean it will happen that way, but it's a huge piece.[38]

The second component of practice is the perpetrator and fulfilling their needs and obligations:

> The second piece is what does the perpetrator get out of this? We're trying to reduce recidivism, that's a huge one. We're addressing repeat offending behaviors. A mediation might discover that in addition to a victim needing his or her needs met, the perpetrator has major anger management issues, needs substance abuse counseling, or needs to go into a witness relocation program. Those can also be determined in the meeting. But if that perpetrator faces the music, wow! The chance for him or her to hear from the victim, a forgiveness piece if that's relevant, a chance to see that there is no further threat– because may have been reacting to something – there can be tremendous comfort, they have seen they are accountable, they have acknowledged, they have accepted, they are redeemed, they are visible, and that they have been in some way given an approval for a good act. They have stepped up and faced the music.[39]

Many of the concerns and considerations for practitioners working at the nexus are the same as for their counterparts working in wholly informal contexts: emphasizing participation in justice processes, focusing on needs, and getting to some of the underlying causes of conflict. However, practitioners working in these contexts face additional structural restrictions and ethical considerations.

Structurally, their work must adhere to the overarching rules, procedures, and expectations of the formal legal system. To fulfill these obligations, agreements and

[38] Interview 2014
[39] Interview 2014

resolutions must meet the court's requirements and expectations in addition to meeting the parties' needs. Practitioners in the informal-formal justice nexus must simultaneously address the needs and obligations of both victims and perpetrators, while considering community concerns. For example, will imprisonment of the perpetrator further exacerbate community problems? The outcomes of an alternative justice process occurring in the nexus must not appear to be "too soft" on perpetrators, lest a judge rule the case outcome unacceptable. Further, the informal-formal justice nexus makes it unclear as to whether practitioners can assure victims' safety and standards while ensuring perpetrators receive procedural safeguards and just outcomes (Hudson 2002). By working with the victim, perpetrator and, perhaps, their families, the role and presence of the community is greatly lessened. Some research indicates the potential of informal-formal justice work to positively impact communities (Berman 2004), but systematic studies of long-term impacts have yet to be conducted. Further, by working with victims and perpetrators, plaintiffs and defendants, practitioners are instrumental in either reinforcing or destabilizing these identities and unraveling their deeper meanings.

## VI. Discussion

Fundamentally, definitions of empowerment and capacity-building and the desire to humanize disputants are reflections of the personal beliefs and values of the practitioners themselves. Whereas some practitioners emphasize respectful communication as a way to build skills and maintain a calm equitable resolution process, others emphasize the need for parties to maintain control of the process, thus empowering them to resolve their own conflict. Practitioners take with them into the conflict resolution space notions of "humanizing" that include empowerment and skills building. Although cloaked in an aura

of neutrality – provided at least in part by their expertise and knowledge – they extend their ideology about what skills are important for disputants to learn and what empowerment should ideally look like onto the parties. Through communicative techniques, such as reframing and reflecting, practitioners seek to rehumanize participants, exemplify effective communication, and empower them to respond to future conflicts.

This is further complicated for practitioners working at the nexus of the informal and formal justice systems and processes. For these practitioners, allowing parties to maintain control over the process and ensuring voluntary participation is not always possible. Instead, practitioners become beholden not only to the parties, but also to the courts. Thus, processes and resolutions must be considered acceptable to multiple stakeholders with competing interests and needs, including alternative justice colleagues, the parties, and the formal legal system. As a result, many practitioners in the informal-formal justice nexus shift their focus and discourse towards emphasizing victim and perpetrator rights – an often overlooked component of the formal legal system. It is from this angle that practitioners believe they can exact lasting change within retributive judicial systems.

Regardless of the relative formality or informality of approach, the individual empowerment parties gain from alternative justice processes is thought to be carried back with them into the community, leading to grassroots positive social change. Although critics have questioned the extent to which alternative justice programs can advance social justice, practitioners and advocates stand by their techniques and the belief that

alternative justice can transform individuals and society as a whole.

## CHAPTER FIVE: SPACES OF CONFLICT AND CONTEST

*"The place of justice is a hallowed place."* – Francis Bacon

Chapter in Brief:

> The conflict resolution space is a site of contest and conflict between disputants and practitioners. Although practitioners cling to "neutrality," research demonstrates that they are actively setting agendas and determining what "justice" will look like (via empowerment, capacity-building, and humanizing) throughout the dispute resolution process. The pursuant asymmetrical power dynamic results in conflict resolution that undermine their promise to provide equitable, empowering, and capacity-building justice processes to disputants. In this context, not only are practitioner-defined goals, such as empowerment, unmet, but, where conflict resolution impacts ordinarily marginalized groups, structural violence embedded in society also pervades the justice process. In this chapter, one particular conflict is deconstructed to illuminate the role of the mediator and how their identity, background, and understanding of and expectations for the conflict resolution process influences its outcome and the potentiality of achieving an empowering resolution.

### I. Introduction

Community mediation continues to be one of the most pervasive forms of community-based conflict resolution in the United States. Its domestic popularity can be traced to Raymond Shonholtz, founder and former president of the San Francisco Community Boards Program. Inspired by the popularity of alternative dispute resolutions, the program was implemented in the City in 1976 and pioneered community mediation as an alternative justice model. The model has been replicated throughout the Bay Area and United States more generally. Since initial inception and popularization, community mediation has been the subject of much debate. In an edited volume that specifically utilizes SFCB as platform to debate the potentiality of popular justice models, Sally Engle Merry, Neil Milner, Laura Nader, and Raymond Shonholtz, among others discuss the possibility of alternative approaches to conflict resolution to fulfill the public's need

for justice (1995). Others have argued for and against the ability of community mediation to promote social justice (Charkoudian & Bilick 2015; Morrill & McKee 1993; Mulcahy 2000; Neves 2009; Weinstein 2001). Community mediation advocates and critics have also debated the possible influence of the state and state power on informal justice practice, and the ability of such models to subvert the inequalities that pervade state structures (Baskin 1998; Cobb 1997; Pavlich 1996). Recent literature examines the role of funding, boards of directors, and program sustainability on the conflict resolution process and the future of community mediation (Corbett & Corbett 2011; Gazley et al 2010). However, some of the most sustained debates in mediation literature focus on the relative role of the mediator as a powerful figure in conflict resolution processes (Geram 2009; Hanycz 2005; Morris 1997). While the literature and training materials for practitioners emphasize the mediator's role as a neutral third-party operating in an impartial and unbiased manner, my findings support those of researchers arguing that the mediator instead enters the space as a powerful figure.

Building upon debates about the nature of power imbued in the self and space, this chapter utilizes a case study from ethnographic research in 2015 to investigate the community mediator's practice and power dynamics in conflict resolution. As practitioners shape the process, goals, and communicative ideology affecting dispute resolution, practitioners operate within a space of power to either subvert or reinforce structural violence embedded within the legal system and the broader societal relations alternative justice seeks to transform. In this context, the space of conflict and contest is reimagined as mediator and disputants, rather than party versus party.

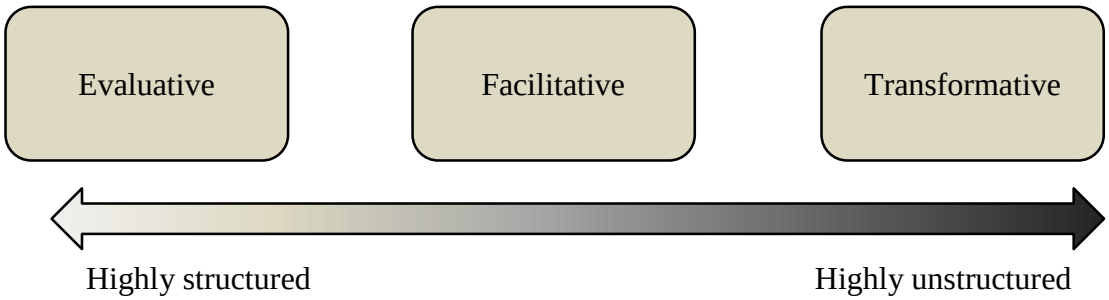


**Figure 8. The Spectrum of Mediation Practice.**

## II. Background

Gaining popularity as part of the suite of alternative dispute resolution practices, contemporary mediation is diverse in theory and practice. In the broadest sense, mediation can be defined as a conflict resolution process whereby a neutral third-party assists disputants (parties in conflict) in resolving their conflict. However, the term and accompanying definition is relatively generic, referring to diverse resolution models, philosophies, processes, and goals. Mediation practices can be divided into three primary types that are situated along a spectrum from highly structured (evaluative) to highly unstructured (transformative) (see Figure 8). In an evaluative mediation, the mediator has the most control over the conflict resolution process and outcome; evaluative mediations are often court-mandated and mediated by a lawyer. Facilitative mediations, although standardized in structure and process, allow the parties to have more control over the pace, content, and outcomes of conflict resolution. In this context, disputants may control much of the discussion and the resolutions, but do not control the process itself. Opposing evaluative approaches, transformative mediation allows the disputants to have control over both the process and the outcome of mediation. This spectrum is often represented

by alternative justice practitioners as progressing from little or no personal empowerment (evaluative) to most personal empowerment (transformative).

In contrast to their legally-binding mediation counterparts, community mediation practitioners are situated somewhere along the facilitative to transformative end of the spectrum. Facilitative and transformative mediations are more flexible in process and outcome, allow disputants to have greater ownership of the mediation and resolutions, and can be readily adapted to fit context-specific or individual needs. That these types of mediations allow for flexibility, disputant ownership, and greater inclusivity is what makes the models more attractive to non-legally binding mediation contexts, such as community mediation.

When compared to the formal legal system, there are many potential benefits of using community mediation to resolve conflicts. Since community mediation is typically facilitative or transformative, community mediation is much more flexible both in process and outcome. The process and outcomes can be modified and adapted to meet the particular needs of disputants, mediators, or the service program. Community mediation also costs less in both time and money: some programs and practitioners offer free services that can take as little as two weeks from initial contact with a practitioner or center to the mediation. Decreased financial and temporal costs means greater access to justice for individuals who cannot afford adequate legal representation in a court of law or need a quick resolution to their conflict. This may be especially important in time sensitive cases, such as impending eviction, work relationships, or family disputes. In the community mediation context, mediators fulfill a facilitative or transformative role, rather

than an evaluative capacity. Whereas the formal legal system often prohibits direct contact between the parties and restricts their participation in legal processes, community mediators promote the active participation of all parties and maintain flexibility in conflict resolution process and outcome, shaping it to the needs and wants of the disputants. The above is an ideal representation of the purpose, goals, and dynamics of community mediation; however, these theoretical ideals are not often achieved in practice.

Defined in opposition to the formal legal system, community mediation is typically non-judicial and agreements constructed in community mediation contexts are rarely legally binding.[40] However, the state determines the limits and constraints of confidentiality, an important component of conflict resolution processes. Thus, changes to confidentiality clauses that affect legally-binding mediation[41] also affect community mediation practice. Guaranteed confidentiality, especially in states where mediators are not mandated reporters, has a number of implications. During data collection, it became clear that confidentiality was especially important where actions criminalized by the state either directly or tangentially impacted the case under discussion. In many cases, parties would ask for a reaffirmation that confidentiality would be maintained before discussing illegal activities such as drug use, illegal tenancy, and violent crimes. While community

[40] Agreements made in this context can be taken to a lawyer and made legally-binding, but this is a service that community mediators do not commonly offer in house.

[41] Legally-binding mediation emerged as part of the suite of alternative dispute resolution practices in the 1960s and 1970s. According to Calkins, the practice "was once considered archaic…It has since risen from its phoenix ashes to become the predominate process of dispute resolution today" (2010, 358). The basic structure of mediation served as the inspiration for community and neighborhood mediation programs throughout the United States.

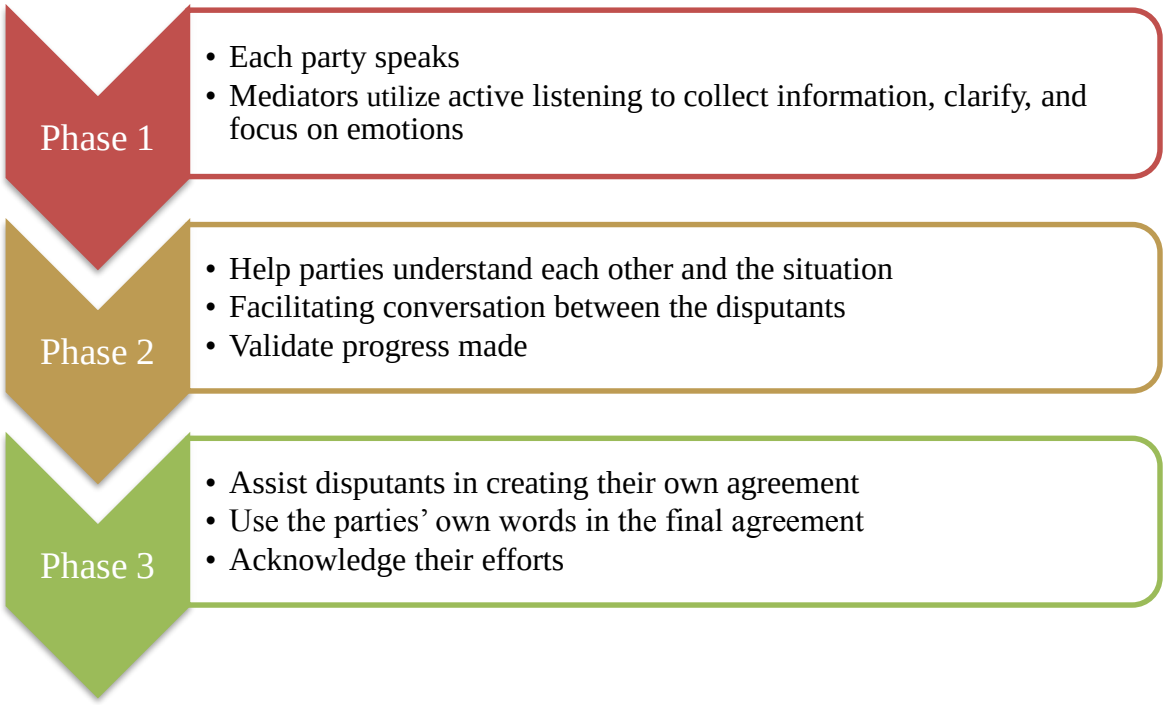


**Figure 9. The Three Stage Model of Community Mediation.**

mediation provides a non-criminalizing space for conflict resolution outside the formal legal system, the state itself affirms the right to confidential dispute resolution and determines the role of the mediator as mandated reporter.

**III. The Three Phase Model of Mediation**

Raymond Shonholtz developed the three phase model of community mediation in 1976 with the creation and implementation of SFCB; this model is now considered archetypal and has been replicated throughout the country (see Figure 9). The figure above is my depiction of the three phase model developed by Shonholtz. The three phase model is predominately used by community mediation centers (CMCs), particularly those employing a facilitative or hybrid facilitative-transformative approach to conflict resolution. This model utilizes anywhere from one to three mediators, with a two or three

mediator model being most common in the Bay Area. According to practitioners, the purpose of multiple mediators is to reflect diversity in identity, skill set, training, and perspective. In practice, the multiple mediator model also allows a tag-team approach to enforcing rules and allows a mediator who is stuck or having difficulty communicating with a particular disputant to take a step back as another mediator steps forward to assist. The three step multiple mediator model is common, but is tailored to organizational or programmatic needs. What follows is a brief description of the phases and their purpose.

Prior to mediation, the mediators sit together (often for the first time), introduce themselves, and discuss their training and conflict resolution background. The period of time just before the mediation is critical – it is an opportunity for the mediators to get to know one another, form a team, and become familiar with each other's peculiarities of practice. For example, if a lawyer is sitting on the mediator panel, they may discuss the relationship of their legal practice to their mediation philosophy; they may request their fellow mediators stop them if their approach becomes evaluative or if they begin offering legal solutions to the conflict. Similarly, mediators trained in nonviolent communication (NVC) may request particular communicative guidelines for the resolution process. After the mediators have time together, the parties are brought into the space and the three stage process begins.

Just before beginning the three phase process, everyone introduces themselves. Confidentiality, the model's process, and communication guidelines or rules are then discussed. Communicative rules embody particular ideologies of "effective"

communication.[42] Generally, these rules usually consist of no swearing, name-calling, or other harmful language the mediators determine to be disrespectful or potentially destructive. These rules are enforced throughout the mediation by the mediators. Rules and reinforcement serve to build disputant capacity in effective nonviolent communication, to think critically about what they say and how they express themselves, and to constructively communicate difficult emotions. These rules are created and enforced by the mediators and, as a result, may vary widely from one mediation panel to another. Disputants also have the option to introduce their own guidelines, adding to the rules set by mediators. For example, one disputant who practices NVC asked that this be instituted in their dispute resolution process.

The purpose of phase one is fact discovery, drawing out emotions, and connecting similarities between the parties. Phase one consists of disputants speaking only to the mediator(s). During this stage the mediators draw out the disputants' narratives, discovering only the facts they need in order to understand the situation, and delving into emotions in order to ascertain what gave rise to the conflict and how it escalated. For example, one disputant is concerned about a work truck that is taking up a lot of parking space on the street, while the other maintains that there is no other place to park the truck. A mediator may delve deeper into the issue and discover that the work truck is problematic to the first disputant not only because the truck takes up valuable curb space, but also because it does not "fit in" with the neighborhood. At this point, the mediator may choose to engage the two disputants in a deeper discussion of what "fitting in"

[42] A thorough example of mediation rules is provided by John Ford in *Peace at Work: The HR Manager's Guide to Workplace Mediation* (2014).

means and how that reflects their conception of an ideal neighborhood. It is also during phase one that some mediators will employ caucusing or other mediation techniques.[43] Once the mediators feel they have discovered the roots of the conflict, the parties have told their narratives and expressed their feelings, they will move to phase two.

During phase two, disputants are directed to face one another and speak directly to each other, rather than directly to the mediators. If disputants continue to speak directly to the mediators, it is taken as a sign that they are not ready to speak directly to one another yet. In this case, the mediators will return to phase one. During phase two, the mediators continue to enforce whatever communication rules they set previously (e.g. no cursing, name-calling), and may emphasize the usefulness of NVC when speaking directly to each other. For example, many mediators recommend "when you do X, I feel Y" statements and the clear expression of observations, emotions, and needs, rather than evaluative statements. For example, a mediator might recommend rephrasing "you are very loud in the apartment at all hours of the night" with a statement such as "the noise coming from your apartment at night keeps me awake. I feel frustrated, because I go to work early in the morning and haven't been getting enough sleep. I'd like us to make a plan for how we can keep the building quiet at night." In this example, the evaluative statement is replaced with a specific statement that reflects the individual's observation (noise), feeling (frustration), and need (plan for quiet). The inclusion and enforcement of

[43] Caucusing is a particular technique utilized in mediation whereby mediators hold separate meetings with each party. The use of caucusing in community mediation varies widely by service program and practitioner. Whereas many court-mandated or legally-binding mediation processes regularly utilize caucusing, many community mediation programs do not recommend caucusing as the purpose of their work is to facilitate conflict resolution between the disputants in the room.

these communicative techniques builds the capacity of disputants to effectively communicate difficult emotions in non-triggering ways. A successful phase two is when disputants directly express how they feel and what they would like their relationship to look in the future. This phase is considered particularly crucial for building conflict resolution and communication skills.

After disputants have spoken directly to one another, the mediators will move to phase three: facilitating the creation of an agreement or resolution. This is a critical stage for fostering empowerment as disputants are given the space to set the terms and guidelines while formulating their own agreements. Whereas legally-binding conflict resolution (e.g. evaluative mediation; court of law) are focused on an outcome-oriented approach – reaching a resolution or agreement – alternative justice practitioners are guided by a different set of goals. Therefore, although phase three is ideally characterized by agreement or resolution setting, if a resolution is not reached by the parties the mediation is not necessarily considered failed or unsuccessful. As long as the parties are able to actively participate in the process, build skills in communication and conflict resolution, and are able to speak to one another peacefully with the potentiality of reaching a resolution in the future, the mediation is considered successful. Community mediators' role in phase three is to suggest the parties work towards an agreement, working collaboratively and speaking to one another to create measurable and realistic goals with specific time limits for enforcement.

The three phase model presented above represents the ideal practice for many CMCs following a facilitative model of conflict resolution. In many cases, this model

appears to work effectively in resolving conflict, however the model also perpetuates societal power asymmetries.

## IV. Power Dynamics in the Mediation Space

Community mediation, restorative justice, and other alternative justice models lack the performative power of courtrooms and formal legal processes: there is no judge with stylized uniform, no police or security, no gavel, no physical separations between the parties, no one speaking on a disputant's behalf. Despite this relative informality, the alternative justice conflict resolution space still becomes imbued, sometimes subtly and at other times overtly, with power in a number of different ways. My findings reveal that from the mediators to the conflict resolution space itself, power becomes manifest in the self and the physical space of dispute resolution.

### *Power Manifest in the Self*

The mediator has power deriving from their actual and perceived skills, knowledge, and expertise. They are often regarded with respect by disputants who have voluntarily (albeit sometimes reluctantly) come to the conflict resolution space. Parties recognize that the mediator has training or skills they typically lack. Working within a community-based context, the mediators' power is not backed by the state, but is ideally backed by the community itself.[44] In this setting, the mediator is a representative and agent of the community, not the state, creating an ostensibly clear delineation between state and its associated violence and the power of community. As previously discussed, the mythico-history depicts the community as a socially or geographically-bound space for nonviolence, harmony, and peace. During the conflict resolution process, the mediator

[44] Where alternative justice is funded by the state, this may be a contested point.

becomes an advocate for this depiction, propagating particular ideas about "appropriate" (and inappropriate) ways to resolve conflict and foster relationships.

The community mediator has power to guide the conflict resolution process, set and enforce rules during the mediation, and otherwise coax, push, or influence disputants, while operating as a representative of the community, its values, and its needs or desires. Instead of a neutral third-party as it is ideally envisioned and defined, the mediator becomes an influencing voice, advocating for changing conflict narratives, and pushes both sides to stay at the table to, eventually, reach a resolution. It is the mediator who defines the parameters of communication and what a "successful" skills building and empowering process might look like. Lastly, they have the power to impose their conception of what humanity means as they strive to reach broader impacts for the parties in the room and the broader communities they represent.

Disputants also have power, although the relative amount will differ depending on the mediator. Alternative justice processes are voluntary;[45] disputants have the power and control to leave at any time and community mediation processes cannot continue without all parties present. Although parties do not have the power to craft the process, they can shape or even determine the goals and outcomes. At the outset of a community mediation event, it is common for disputants to be asked "why are you here? What are you looking to get out of this experience?" These questions not only give the mediators a sense of

[45] There are court-mandated alternative justice processes which are typically implemented as part of the sentencing process in a court of law. In this context, most individuals are given an option to partake in an alternative justice process or receive punishment via the formal legal system. The parameters are set by the judge. In community mediation, participation is voluntary and not court mandated although the courts may recommend participation in some form of alternative justice before pursuing further court processes. Thus "voluntary" is subject to interpretation and differentiation depending on the context.

what disputants are expecting, anticipating, and hoping for from the process, but also cede some of the power from the mediators to those in conflict. This, for many mediators, is a critical moment for information gathering, delineates formal legal processes from informal conflict resolution, and sparks the empowerment process.

***Power Manifest in Space***

Far from a peripheral concern, the space of conflict resolution is another component of the complex power dynamics during the resolution process (see Figure 10). In formal law, this precedent has been well documented. For example, even where formal legal spaces are less opulent, offices and chambers achieve physical separation from normative spaces and furniture, stairways, reception desks, and non-legal staff that occupy the place of formal law work in tandem to achieve a rarefied atmosphere that is somehow set apart from the everyday (see Blair and Harris 2012; Faine 1992). According to Blair and Harris

**Figure 10. The Place and Space of Conflict Resolution.**

(2012), the spaces of conflict resolution "have been pivotal to the endeavours of those within the sector" of informal justice (2012, 8). Alternative justice service organizations, including community mediation centers (CMCs), may hold processes in their own offices, community spaces, or within police departments. As depicted in the previous figure, offices designated for resolution processes often take on a professional atmosphere – boardroom tables, leather office chairs, dry erase boards, and location in downtown spaces close to formal legal centers. For example, SFCB has an in-office conflict resolution space that is professional with a lovely waiting area, shiny office table, and several office chairs. Thus, alternative justice spaces often reflect and perform professionalism rather than the informality and accessibility undergirding their justice philosophy. The table, chairs, and atmosphere of a conflict resolution space often resemble a board room and, in an effort to maintain neutrality, the space is reserved for the organization and is not open to the community.

When the normative space is scheduled, many programs will use local resources and spaces, such as community centers or police department offices. Returning to the previous example, SFCB will hold conflict resolution processes at the police station a couple of blocks from their offices if their normal in-office space is unavailable. The normative complexity of managing power dynamics is compounded when conflict resolution is held within police stations. It is generally ill-advised to hold informal justice processes in formalized legal spaces and should only be used when absolutely necessary. Civilian-police officer conflict resolution processes stand as the exception to this norm. In the City of San Francisco, the Office of Citizen Complaints (OCC) manages conflicts

between citizens and police officers. When a citizen lodges a complaint about a San Francisco Police Department (SFPD) officer, the OCC will bring them both into mediation.[46] However, the officer is on duty during the mediation and therefore enters the space in full uniform. This, in addition to the mediation's location within the SFPD, creates complex power dynamics that the mediator must grapple with before the mediation can begin. Despite location or type of case, all alternative justice processes are beset by complex power dynamics that change as frequently as mediators and disputants. The following case is illustrative of the complexities of managing power dynamics in the mediation space. Further, this case illuminates how identity and communication become a vehicle for structural violence and the perpetuation of inequality through practice.

**V. Case Study**

The typical community mediation in the Bay Area includes anywhere from one to three mediators, with two and three mediator panels being the most common. Returning to Figure 9, the mediators sit on the far side of the table and the parties on the other side, facing the mediators. White boards and paper are available to both mediators and the disputants for drawing, writing thoughts, or keeping track of rules and agreements. In 2014, two mediators arrived and began briefing each other before their scheduled mediation began. The volunteer mediators each self-identified as White, had at least a Bachelor's degree, and were trained by the same organization. Each has relatively little mediation experience, but discussed previous practice, personal challenges they face in mediation, and peculiarities of practice. Laughing here or there, they shared prior

[46] See the City and County of San Francisco's website for further information: http://sfgov.org/occ/mediation.

experiences and personal information about their ongoing lives external of mediation. The time spent bonding before mediation begins is critical – the women could discern commonalities in practice and in life experience, creating a more cohesive team before heading into the conflict resolution process.

When the mediators were ready, the parties were brought in. Two self-identified African American women living in a public housing community, they worked for social justice nonprofits in the same neighborhood, but had difficulty working together effectively. Their inability to work collaboratively spilled over into the community, inciting gossip. The parties identified rampant gossip as inhibiting their ability to look like a team to the community, thus undermining their work efforts, while also exacerbating their already poor relationship with one another. At the outset of the mediation, each party stressed the importance of working through as much as they could in the limited time available, knowing they may require another mediation as a follow-up.

The mediation progressed through the first two phases, with each woman explaining their positionality and expressing how they have been affected by the conflict. They agreed on the need to resolve their issues so they could work more effectively in the community. Concerns about encroaching gentrification on their public housing community and the associated increase in violent crime that affects their children became commonalities. Both parties expressed concern about the spike in violent crime that prevented their children from safely walking to school and had far reaching negative impacts in the public housing community. Further, both parties cited gentrification – encroaching affluent residents – as a major contributing factor to increasing violence.

Their mutual need to address community violence and positively impact the lives of residents became commonalities used by the mediators as a platform for determining resolutions and agreements. Through a difficult and tearful mediation, the disputants came to an agreement: they would speak to each other civilly and stop gossiping about one another. They defined "civilly" as saying "hello" rather than ignoring each other, asking how each other is doing, and saying "goodbye." Part performance, being civil was defined as preventing the creation and perpetuation of gossip in the community and working towards becoming a team in the community. Further, they agreed to have a follow-up mediation that could delve deeper into some of the gossip and other issues that had pervaded the community, but stemmed from their conflict. At the time of this first resolution process, they did not feel they could commit to developing a deeper relationship.

At the point of constructing agreements, one of the mediators seemed perplexed and concerned. Finally, she spoke up: "so the agreement is fake?" The disputants looked confused; one responded "no, it's just what we can do right now. We'll come back in another mediation and work through some of the other stuff later." But the mediator pressed on "it's a fake agreement, I mean it's not a *real* sustainable agreement." The parties grew silent and shifted in their chairs; they looked from each of the mediators, to each other, and finally sat in silence and stared down at the table. The mediator repeated this sentiment in variations for a couple minutes amid the growing silence and discomfort until the other mediator managed to get the disputants to focus on finalizing their agreement.

## VI. "Fake" Agreements, Real Silencing

Despite the importance of understanding the ways in which culture, race, class, background, and experience impact individual beliefs, values, and understandings of and in conflict, there is still little alternative justice literature addressing these topics and the way identity permeates and influences practice. Although much ink has been spilled charting the effects of gender on and in conflict resolution processes, "research and practice within the context of race are almost nonexistent" (Gavrielides 2014, 216). The same can be said for class, culture, age, and life experience. This is particularly problematic as alternative justice was initially implemented as an alternative to formal legal systems that disproportionately impact racial minorities and low-income communities. Despite concerns about bias, practitioner trainings dedicate little time and energy towards addressing bias and how to overcome bias in the conflict resolution space. During basic conflict resolution training, budding practitioners typically only spend about two hours considering bias and the role of identity, power, and privilege in mediation.

Bias is especially evident when we critically evaluate communication in conflict resolution processes. Practitioners set rules and guidelines for communication and enforce those rules throughout the mediation. Many of the practitioners observe generally accepted guidelines that prohibit foul language, name-calling, and purposefully incendiary statements or comments. Despite some commonalities among practitioners, the guidelines themselves indicate the particular beliefs and values of the practitioner – beliefs and values which are then pressed upon the parties. Not only the guidelines, but the way rules are enforced is another window into the power dynamics manifest and

biases operating within the conflict resolution space.

Based on the theoretical and philosophical frames guiding the construction and implementation of alternative justice programs, we might suppose that the conflict resolution models implemented in informal and community-based contexts will supersede sociolegal relatives (e.g. formal law) in terms of sensitivity, inclusivity, skills building, and empowerment. However, as the previous case study demonstrates, examining practice allows us to better discern the dynamics between mediator and parties and, thus, its potentiality to achieve practitioner-defined goals. Although legally-binding processes are critiqued for their role in perpetuating the failures of the legal system, such as the inability to successfully include marginalized groups in meaningful ways, community mediation also fails to combat these problems.

Cloaked in neutrality, mediators impart not just their conflict resolution skills and knowledge upon the parties, but also their personal beliefs about what skills are considered important to learn and what an empowering process and outcome looks like. They implicitly and explicitly impress upon disputants' particular ways of knowing, thinking, and communicating. Returning to the previous case study, when the mediator called the parties' agreement "fake," she did so with the understanding that any resolution short of a sustainable, measurable, and realistic agreement that has a sense of temporality is unacceptable. Further, she believed that it was an untenable agreement – a resolution built upon just being "civil" cannot last, even until the next conflict resolution process takes place. Prior to the mediator's statements, the two women were animated, talking about the possibilities of resolving their conflict in the interim, and were excited about

the potential of working together without gossip and tension interfering. However, the result of the mediator's dissatisfaction and the particularly insensitive way it was communicated to the parties was silence and further marginalization of two parties who were beginning to work collaboratively to solve a shared problem.

From her perspective, the mediator was emphasizing the need to consider not just a short-term "band-aid" solution to a deep-seated problem, but to consider the long-term ramifications of failing to address the roots of conflict. The community mediator was building a particular set of skills for the parties, including: to consider the potentiality of maintaining a surface-level resolution to their conflict and the need to reveal and work through the underlying emotions that erupted into community-level struggles. However, the mediator's own need to address conflicts in particular ways restricted her ability to draw on the core strength of alternative justice – its inherent flexibility – to provide what the parties needed in that moment. In that moment, the disputants clearly stated their need for a resolution, no matter how short-term or unsustainable. They needed to work towards social justice more effectively, to present a united front in the community, and to expend energy in resolving violence in a gentrifying community rather than fighting one another. The lack of flexibility attends bias, but is also reflective of alternative justice's poorly defined goals. Where practitioners are not provided substantive examples and understandings of what the broader impacts of practice are in their idyllic form (e.g. empowerment and capacity-building), they are often unable to model and strive to reach those goals. The result is forms of communication that may contribute to, rather than reduce, conflict in the resolution space.

***Respect***

About twenty trainees sat in a semi-circle around two conflict resolution trainers. The trainers played the roles of parties in conflict as the trainees subbed in and out as mediators, assisting the "parties" in resolving what appeared to be an intractable conflict. Midway through the conflict resolution process, one of the parties called the other's family bastards and drunkards; the offended party – a large man – immediately yelled back angrily in response. One of the mediators instantly laid a hand on the table in front of the offended party and asked them to quiet down: "there's no yelling in here; if you want to express your anger, that's okay, just express it more appropriately."

What does it mean for emotional outbursts in the form of yelling, crying, or other emotional displays to be curbed during conflict resolution? What would it mean for a party who is yelling to be censured, but not the party calling their family rude names? Censuring certain behaviors in the conflict resolution space is part of a desire to build capacity in conflict resolution skills. Words, statements, and tones that could trigger the other party are quickly censured by the practitioner, who cites the importance of respecting each another and communicating intense emotions in effective ways. The notion of "respect" is one that repeatedly enters the conflict resolution space and is considered a central component of maintaining an effective process. During training the concept is brought up repeatedly: respect for the parties, for other practitioners, for oneself. Practitioners are taught to include respect or its synonyms (i.e. civility or civil disagreement) as part of their ground rules – guidelines set at the beginning of a conflict resolution process for the parties and the mediator.

That respect has been lost in a relationship, leading to a conflict that has gotten

out of hand to the point of needing a neutral third-party conflict resolution practitioner, is central to many alternative justice processes and practices. This is precisely the case in the previous example – two women failed to address one another respectfully, fueling gossip in the community that eventually made it impossible for them to work effectively with one another. In order to adequately humanize, empower, and build capacity, therefore, it becomes the practitioners goal to also bring respect back for all parties involved. However, much like "empowerment," respect and civility are subjective terms. Their substantive meanings can vary widely from individual to individual, community to community, culture to culture, and it "is exactly these kinds of nuanced values which, masquerading as 'norms' and 'rightness', so often underpin conflict and need exposing and exploring" in mediation practice (Graham 2015). In failing to expose and explore communication differences practitioners miss a valuable opportunity to delve deeper into the substance of appropriate communicative skills building. In policing emotions and demanding adherence to particular ideologies of "respect" and "civility" parties are reminded of the power dynamics in the room. Rather than ideological difference serving as a place from which to deconstruct the nuanced meaning and, therefore, provide an avenue for deeper discussion and meaningful revelation, terms become a space to reinforce the mediator's power. For practitioners, there is a danger that those "who are attached to the notion of 'respect' will not only be less creative, engaged and dynamic in their responses to high conflict moments; but will also run the risk of using 'respect' as a disguise for projecting their own values on to parties" (Graham 2015). Practitioners often unknowingly utilize these categories and terms to impress particular ways of knowing

and communicating that may homogenize, rather than celebrate diversity, and deepen structural violence rather than subvert it.

Observation of conflict resolution processes upholds the idea that practitioners, consciously or unconsciously, deploy the notion of "respect" or "civility" as a way to perpetuate their own ideology, values, and notions about appropriate behavior in conflict. In many ways, this is a reflection of their training which provides only two or three hours of instruction in recognizing their bias, privilege, and the ways these enter the conflict resolution space. This policing of language, tone, and volume in communicative moments between the parties is a potential avenue to discuss the power of the practitioner's presence in shaping the process and outcome of the conflict resolution, but also serves to highlight the bias practitioners' bring into the room. Returning to the training exercise, the trainee was faced with a large angry man who repeatedly banged on the table and yelled. From an outsider's perspective, it was clear that he felt the other party, a woman, was receiving more of the practitioner's time, attention, and empathy. However, the practitioner, faced with what she perceived as an angry and potentially violent man, was repeatedly sanctioning his behavior, while failing to sanction the other party's slurs and violent language. In another sense, the policing of emotion becomes another potential interpretation of "coercive harmony," pushing parties to adhere to particular standards of nonviolence and harmony in conflict resolution processes (see Nader 1993 for example). Thus, the mediator becomes the enforcer, rather than peacemaker or peacebuilder, enforcing communicative rules in particular ways that reflect their biases.

***Theory versus Practice***

The discrepancy between the philosophical and theoretical underpinnings of community mediation which, ideally, should drive practice reflects, at least in part, a gap in discourse between theoreticians and practitioners. Practitioners, often volunteers with training that meets the minimum state requirement, are rarely trained in diversity, inclusion, effective cross-cultural communication, or other important components of their work. Although they are often well-meaning and strive to advance social justice for marginalized groups through their work, their biases inherent shapes the mediation. This becomes particularly problematic when the identities and beliefs of the mediator do not reflect that of the parties. Returning to the original example, consider the mediator calling the parties' agreement "fake." The parties were visibly uncomfortable and uneasy with the statement, but, despite an initial counter, did not continue a sustained attempt at deconstructing the misinterpretation. Instead, they attempted to move past it quickly, avoiding confrontation, avoiding a discussion of what "fake" might mean to the mediator versus the disputants. This becomes a reinforcement of mediator power, rather than a moment of critical reflection and a learning opportunity. The reinforcement of power was compounded by the second mediator, who maintained silence throughout the exchange. There was a critical moment when the second mediator could have either silenced the first mediator or opened conversation up to discuss what her co-mediator meant by characterizing the agreement as "fake." Instead, the second mediator chose silence, and the mediation in many ways came to reflect the ongoing struggles of marginalized groups: the silencing, intimidation, and a decision to "move on" instead of grappling with underlying issues. This dynamic, where individuals with power (mediators) dominate the process, rather

than ceding control to marginalized groups (the parties), is also reflective of wider concerns in the Bay Area. In a region where racial and economic minorities are experiencing mass displacement and further disenfranchisement, the alternative justice process has the potential to reinstate some semblance of control over one's life and to provide a space to resolve conflict in constructive ways.

In many ways this dynamic derives from the divergent identities of the parties – low-income, African American women – and that of the mediators – White, affluent, highly educated women. However, it also reflects the overarching themes manifest in the mythico-history and theoretical debates of alternative justice. By blaming the state and its associated judicial processes as violent, maintaining extreme power asymmetries, and consistently disenfranchising low-income and minority groups, alternative justice practitioners can avoid critical discussions of the ways power differentials manifest in their own conflict resolution processes. In many ways, the barriers to entry as a paid or volunteer mediator also serve to ensure that individuals with greater privilege, rather than members of the marginalized communities they ostensibly serve, become practitioners. Thus, the structural violence concerning who has control of conflict resolution processes and a determination of what the desirable outcomes are still remains largely in the hands of privileged groups.

## VII. Discussion

The discrepancy between theory and practice that results in a failure to fulfill broader impacts is not a new story in alternative justice. Alternative dispute resolutions (ADRs), developed as part of the sociolegal reparative turn, also promised to offer greater access to justice, alleviate the formal legal system, and provide marginalized groups with an

inclusive justice process that would be sensitive and flexible to their needs. However, research conducted over the past few decades reveals that ADRs rarely fulfill their goals. Instead, by taking cases out of the formal legal system, ADRs may be responsible for a lack of precedent. Further, the continued professionalization of the field to the extent that lawyers are the only individuals considered capable of negotiation, arbitration, and court-mandated mediation, has limited the ability of community members to remain involved and actively participate in disputes. The focus on outcome-oriented approaches to conflict resolution and the concurrent professionalization of the field has undermined the potentiality of ADRs to fulfill the needs of marginalized communities.

Despite its emphasis on empowerment, capacity-building, and inclusivity, community mediation continues to replicate many of the structural inequalities besetting marginalized groups in daily life. The result is conflict resolution processes that often fail to fulfill their broader impacts, but also reinforce the judicial system's deleterious effect on marginalized groups. Mediators have the power to control the process and outcome of dispute resolution, but this power should ideally be tempered with an understanding that the disputants should have ownership of the outcomes of mediation. This is particularly problematic when the identity of the mediators does not reflect that of the parties. The identity discrepancy can lead to misunderstandings about what "justice" ideally looks like and the ways in which people interact productively on a daily basis. The insistence on creating particular types of resolutions that are considered acceptable, or maintaining types of communication that the mediator considers non-destructive can quickly derail the ability of mediators to empower the parties.

# CHAPTER SIX: ALLYSHIP IN ALTERNATIVE JUSTICE

*"A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury."* -John Stuart Mill

Chapter in Brief:

> Building on previous chapters, and using a conversation with a mediator critiquing Sandra Bland as a platform for discussion, this chapter examines the alternative justice practitioner as ally in social justice efforts. As scholars debate the ability of practitioners to substantively contribute to social justice and unraveling systemic inequalities, practitioners themselves continue to emphasize their role in dismantling pervasive social inequity. Research reveals that political and economic tensions affecting individual practitioners and the organizations with whom they work are key factors pushing practitioners from meaningful allyship with social movements working towards the same social justice goals. Economically, lean times for alternative justice organizations have pushed a focus on service delivery rather than advancing broader impacts, while simultaneously forging closer relations with the formal legal system. Concurrently, organizations rely on political decision-makers to help determine the future of their work, rather than looking to the communities they serve as sources of support. Bridging discussions of Black Lives Matter with alternative justice practitioner conceptualizations of allyship and social justice, this chapter critically examines the nexus of nonprofit and practitioner allyship amid an emergent social movement.

## I. Introduction

Rob and I sat outside the bistro, enjoying a light lunch and good conversation. Conversation wove through discussions of work and recent newsworthy events towards imagining what the Bay Area might look like in a few years. A conflict resolution practitioner, Rob is a mediator, part-time instructor, and entrepreneur. Caught between skyrocketing cost of living, a job market saturated with practitioners, and a concurrent dedication to creating and maintaining a justice practice that is equitable and accessible, but simultaneously provides a sustainable living, Rob's story is illustrative of many practitioner experiences in the region.

Conflict resolution practitioners in the San Francisco Bay Area face unique

challenges posed by the contemporary political, economic, and social zeitgeist. Since the 1970s, alternative justice advocates in the region have been at the forefront of imagining, creating, and implementing innovative justice models. The region birthed the first community mediation center in 1976 and continues to generate groundbreaking nonprofits that creatively combine extant justice models and resolution practices to fashion new forms. These forms are ideally envisioned as sustainable alternatives to the formal legal system, characterized as failing to provide justice, a panopticon that marginalizes and disempowers minority communities, and powerful social institution that maintains a monopoly on state-sanctioned violence. Thus, defined in opposition to the legal system, alternative justice models are characterized by their creators and advocates as accessible, nonviolent, safe, reflective of the needs of all parties, fair, and a mechanism for healing and democracy.

This portrayal initially gave rise to alternative justice, fueling its popularity amid the reparative turn and sociopolitical turmoil of the 1960s and 1970s. More specifically though, alternative justice can be thought of as an umbrella term that encapsulates a wide variety of justice models. Some of these models flirt with the line between the informal and formal while others are completely divorced from anything easily defined as "formal" justice practices or processes. It is the dedication to creating accessible, safe, and equitable justice processes, especially for groups ordinarily marginalized by the legal system that differentiates alternative justice from formal justice. In this sense, it is the

**Figure 11. Eviction Protest for Theresa and Silvio.**

allyship of alternative justice programs and practitioners with the marginalized communities they serve and dedication to disrupting the legal system that drives their work.

During the first phase of research in 2014, several social movements took hold of the Bay Area. Black Lives Matter seeks to affirm Black lives and contributions in the face of oppression and systematic violence. The tenant rights movement (see Figure 11; also referred to as Priced Out and the #TheRentIsTooDamnHigh) seeks justice for the wrongfully evicted, attempts to support rent control, and to combat disproportionate treatment of low-income, non-native English speaker, and racial minority tenants. The third major social movement in the Bay Area involves groups against criminalizing homeless (e.g. Right to Rest). Despite greater coverage during the 2016 Super Bowl,

Black Lives Matter and tenant rights remain the two most prominent movements in the Bay Area, regularly getting media attention, seeking inclusion in political debates, and occupying face-time in everyday conversation.

Black Lives Matter, as it exists in the Bay Area, quickly rose to national prominence in the wake of a series of protests demanding justice for police brutality. Protests spilled over (and occasionally originated within) Oakland, but remained eerily far from the city of San Francisco. Justice practitioners, eager to discuss tenant rights issues such as no fault evictions – issues that are often reflected in their own personal struggle to make ends meet amid rising costs – were reticent to discuss Black Lives Matter and specifically concerning racial inequality in any great detail. That is, until Rob.

Rob was animated and passionate about his work, dedicated to the concept of accessible justice and expanding the conflict resolution mechanisms available to the public. He explained how, over the course of several years, he had discovered and cultivated a niche in the otherwise saturated conflict resolution market. Working to address inequalities as start-ups morph into corporate cultures, Rob emphasizes the usefulness of alternative justice in addressing workplace bias and discrimination, especially as small companies begin to develop and implement relevant policies related to workplace treatment and conflict. Amid thousands of practitioners, from lawyers to circle keepers, Rob had created and developed a sustainable living while providing a service he perceived as fulfilling a desperate need. Start-up founders – the initial creators and developers of the company and primary economic beneficiaries – are overwhelmingly White (82%) and founding groups are predominately all male (89%) (Kroll 2013). As

start-ups grow and employ a more diverse workforce, they typically encounter growing pains related to creating inclusive environments and providing appropriate mechanisms for addressing workplace conflicts (see Blue 2011 and Cutler 2015). Rob was particularly concerned about creating more inclusive work environments for the young diverse workforce flooding the Bay Area market. It was inspiring to hear his story, see his enthusiasm, and share his vision of a brighter future through alternative justice.

Rob grew quiet and, after a brief lull, our conversation suddenly shifted away from the potential of alternative justice to positively contribute to the Bay Area. Rob asked, "what do you think of the Sandra Bland case?" Sandra Bland, a 28-year-old Black woman and member of the Black Lives Matter campaign, was pulled over for a minor traffic violation on July 10, 2014. Conflict between Sandra and the officer ensued, escalated, and ended with Sandra thrown to the ground and arrested. Video footage from the officer's dashcam and a bystander went viral, although the dashcam footage was reportedly edited to depict a different sequence of events. Sandra Bland and her case quickly rallied Black Lives Matter support. This support was further strengthened by her untimely death in police custody on July 13, 2014, just three days after her incarceration. All this began with a failure to signal a lane change.

When Rob asked what I thought of the case, I immediately turned the question around: "well, what do you think of the case?" He responded without missing a beat. "I mean, I'm not saying she deserved it [the treatment], but she should have known better. We give the police power you know? And by giving them that power we agree to be bound by it." Rob, like many conflict resolution practitioners espouses the virtues of

resolving conflict outside the panopticon and realm of formalized state power. They cite its deleterious effects on marginalized communities, the short- and long-term harm it can cause disputants and communities, and its costly nature in terms of both time and money. However, despite his firmly held beliefs about the negative characteristics and effects of the legal system, Rob also firmly believes in the power citizens give the state and its actors.

Rob's story sparked my interest in linking the role of alternative justice practitioners as allies, particular in the increasingly informal-formal justice nexus – those gray spaces where formal law and institutions meet the informal alternative justice models and practitioners with whom I so often work. Is it possible for models and practitioners working in informal spaces to advance social justice? What are the factors affecting practitioners' ability to effectively ally with marginalized communities and the social movements striving towards similar goals?

**II. Alternative Justice, Social Justice**

Examining the contemporary relationship of alternative justice to social justice movements and activism requires considering its recent historical roots. When alternative justice first emerged in the United States in the 1960s and 1970s, it was quickly implemented as part of societal critique of the formal legal system, state power and authority, and the disproportionate impacts these have had on marginalized communities in the nation. During this time, critique of the War on Drugs and its mass incarceration of minority racial groups, the impact of incarceration on relatives and communities, and the long-term effects of disproportionate policing and incarceration on marginalized communities gained traction both among scholars, practitioners, and the general public.

Scholars and activists searched for potential frameworks to subvert these effects and to provide greater access to sustainable justice programs that would not further criminalize marginalized communities.

The result was political, economic, and social support for alternative justice programs. Created out of the fires of critique and a desire to achieve social justice through conflict resolution, these programs promised radical change that would alter the very definition of justice. By deploying terms saturated with cultural capital such as "empowerment," alternative justice advocates defined their practice and philosophies as juxtaposed to the formal legal system, embodying social justice, and as mechanisms through which to fight social injustices. This framework has resonated; alternative justice practice is widespread. Further, Black Lives Matter now features "restorative justice" as a guiding principle (Black Lives Matter 2016). Through SFCB, Raymond Shonholtz reconceptualized conflict as a powerful space in which to redefine justice; he chose to view conflict as a productive site for analyzing difference and, therefore, building empowered and effective communities and individuals. According to Martha Weinstein, community mediation advocate and practitioner,

> there is no doubt that community mediation can lead to societal transformation and creation of peaceable communities. It is in sharing our stories, evaluating the lessons learned, and measuring the depth of our achievements that we can acknowledge the deeper value of community mediation as a conduit for societal justice. (2001, 259)

These examples share a desire to subvert the formal legal system's monopoly on justice which, with its high financial, temporal, and human costs, is deemed inherently unjust and ineffective. Notably, the alternatives proposed by the majority of practitioners and

social justice organizations continue to take the form of the oldest and most reputable models, including alternative dispute resolutions (ADRs), community mediation, and restorative justice (RJ). However, while still largely defined in opposition to the formal legal system, these models are often court-mandated or contractually required.

The evolution of alternative justice from wholly informal to being implemented as part of the legal system may be considered inevitable to critics citing the progression of ADRs from envisioned as wholly informal to formalized state practices (Ashworth 2002; Boyes-Watson 1999; Roche 2002), but proponents cite their ability to work closely with or within the formal legal system in an effort to transform it from the inside out (Ashworth 2002; Daniels 2013; McAlinden 2011; Morris 2002). By incorporating their alternative practices, processes, and the philosophies that underpin them, alternative justice advocates claim they can spur change in courts, prisons, and among lawyers and judges. Thus, alternative justice and its practitioners have evolved from promoting radical new justice alternatives that are staunchly opposed to judicial systems, to implementing their practice within the very legal system it once sought to subvert. The result is complex relationships between practitioners, clients, communities, and the formal legal system itself.

To return to Sandra Bland and Black Lives Matter, the San Francisco Bay Area remains largely supportive of the social movement, but only insofar as "supportive" is defined as tentative acceptance and little pushback against the social movement. A longstanding site of progressive politics and fights for equality and social justice, the region is generally receptive (or at least not antagonistic towards) social justice

movements. However, even in this space saturated with a long history of progressive politics, genuine allyship with social justice movements is problematic. For example, most protests originated within Berkeley, Oakland's wealthier and whiter neighbor. At the onset of protests, Black Lives Matter demonstrators in the Oakland-Berkeley area were primarily associated with the University of California-Berkeley. University affiliates carry particular privileges and are less likely to be arrested and assaulted by police. Privileges are physically carried in the form of student ID cards, differentiating their identity from that of local residents. This privilege and the symbolic nature of protests originating in Berkeley but marching into Oakland – physical movement on the landscape that mirrors ongoing gentrification displacing low-income and predominately African American Oakland residents – makes public demonstrations more difficult to situate in the context of genuine allyship.[47]

Despite their own close historical relationship with social justice movements, such as the access to justice movement and reparative turn that sought to increase access to equitable justice practices for marginalized groups and combat physical and structural state violence, alternative justice organizations and practitioners appear reluctant to align with contemporary social justice movements sweeping the Bay Area. It came as a surprise that I encountered few practitioners vocalizing support for social movements, especially considering that the role of alternative justice is to redefine and renegotiation the very definition of justice and, in doing so, seek to subvert structural violence and build safer, more inclusive communities. For example, Merry states that "the process of

[47] "Genuine" allyship here can be contextualized with the following piece in *Everyday Feminism*: http://everydayfeminism.com/2013/11/things-allies-need-to-know/.

settling cases itself plays a crucial role in redefining and enunciating the rules of the society," placing the practitioner in a position of power to either reinforce and enunciate the dominant discourse, rules, and norms, or to subvert them (Merry 1982, 174). This was evidenced in Chapter 5, "Spaces of Conflict and Contest," as the mediator sought to define and enunciate the dominant rules outlining a feasible, tractable, and sustainable resolution.

Reflecting concerns raised over Black Lives Matter (see Dixon 2015 for example), some alternative justice practitioners, such as Rob, remain skeptical of the movement's ability to spur substantive change in society, their positionality and tactics, and the lack of inclusivity for non-cisgender and non-heteronormative individuals. However, others see allyship with social movements and activists as a potential source of strength – building relationships with social actors and strengthening political ties that may push policy-makers and the general public to consider alternative perspectives on social conflict and work towards advancing societal relations. Despite their desire to reach broader impacts of empowering and building the capacity of individuals and communities, thus advancing social justice for marginalized groups, alternative justice practitioners rarely ally with social movements and programs attempting to actualize the same goals. Rob existed as an aberration insofar as he was willing to discuss BLM and the racial politics embedded in the region; other practitioners were reticent to discuss the social movement or its potential relationship with their own work in the conflict resolution space. This silence echoes the silence of mediators failing to address communicative difference and asymmetries of power within the conflict resolution space

itself, as seen in Chapter 5.

In 2014, I was working as a volunteer at a conflict resolution center in the Bay Area. Joe, a barrel-chested solidly built man with unclean and shabby clothes visited the shiny downtown center looking for assistance with a housing issue: “I need help. I’ve got this neighbor and he’s just doing drugs and bringing people over and he’s so loud! I can’t take it anymore. What are you going to do for me? Cause I need this issue resolved." Joe lives in single-resident occupancy (SRO) housing – a form of affordable housing that only houses a couple tenants per room and offers limited or shared access to full kitchens and bathrooms. Joe looked at me earnestly, waiting for me to respond and offer assistance. Joe believes his neighbor is a drug addict, solicits prostitutes frequently, and has “ratchety” friends. We chatted about the neighbor’s behavior, Joe’s perceptions, and how he had responded to the problems thus far. Joe had received no assistance from the SRO management and did not want to call the police. I helped Joe as much as I could and referred him to a few tenant rights groups that might be of more assistance, at least insofar as getting some support from the housing company.

After Joe left my supervisor asked how the meeting went and I reflected on Joe’s stories and how it links to other property conflicts we have seen in the past few months. My supervisor then recommended that we utilize a safe word for when we feel unsafe or uncomfortable with walk-ins. I had not mentioned feeling uncomfortable or unsafe with Joe; in fact, I found Joe to be pleasant, if frustrated and angry by his current predicament. Upon reflection, it occurred to me that it took Joe and my supervisor’s reaction to Joe to realize that by and large programs and services were not reaching the marginalized.

Instead, we helped the landed resolve property disputes and tree maintenance issues. We assisted couples in separations or communicating more effectively. We tried to resolve roommate and housemate conflicts. Before Joe, I had rarely encountered a case that involved individuals living in an SRO, Section 8 housing, or the projects. The somewhat jarring juxtaposition of the barrel-chested man living in an SRO with the professional tailored surroundings revealed the unanticipated twists and turns the research had taken – from increasing access to justice and working towards social justice for the marginalized to keeping their organizations and practices alive amidst political, economic, and social turmoil in the Bay Area.

What pulls practitioners to work with the landed, the middle class, the more fortunate? What pushes practitioners from feeling comfortable working with the Joe's in the Bay Area? When working with practitioners and framing questions in this manner, it quickly becomes clear that there are a number of structural constraints – political and economic – that inhibit their ability to effectively ally as they work towards advancing social relations. In particular, rising cost of living for organizations and practitioners, the politicization of organizations, and the contentious politics of the Bay Area act as barriers to substantive allyship that uplifts marginalized voices and works towards equitable and accessible justice processes.

**III. Economic Constraints**

If we follow the money, the hotly debated relationship between alternative justice programs and the formal legal system becomes clear as it exists in practice. The economic constraints pushing alternative justice nonprofits to align more closely with the formal legal system is one avenue for examining its concurrent uncomfortable and

tenuous relationship with social movements.

The continued relationship between alternative justice programs and the formal legal system has been extensively debated among practitioners and scholars. Some argue that close relationships between the formal and the informal may compromise the neutrality and integrity of alternative justice practice (Charkoudian and Bilick 2015; Hedeen and Coy, 2000), while others "view this level of coordination and institutionalization as the field's greatest promise" (Hedeen 2003, 109). The coordination and institutionalization is characterized by a high rate of referrals from the formal legal system and the funding received from government and the courts. Concerns about high referral rates from the legal system is substantiated by my fieldwork in 2014 and 2015. SFCB receives 18% of their caseload via SF Police Department referrals, 15% via City and County Agencies, and 7% of referrals from legal services organizations (SFCB 2015). When taken together, this accounts for a higher percentage than word of mouth referrals, which account for 26% of their caseload (SFCB 2015).

Close relationships are also evident via economic ties between alternative justice programs and the government and court systems. For example, SFCB receives 55% of its funding from government grants. Government grants often include financing through the State of California's Dispute Resolution Programs Act (1986). One practitioner characterized it as a unique relationship, in that DRPA funds alternative justice programs to lessen the burden on the court system, but the more cases taken out of court, the less funding there is for DRPA to provide alternative organizations. The result is an oddly protocooperative and parasitic relationship: organizations and practitioners seek to

subvert state power through alternative justice, but simultaneously rely on the state for funding, while the formal legal system relies upon alternative justice to divert cases from court, but loses income from court fees in the process, lessening their ability to financially support alternative frameworks.

Despite funding from government grants, such as DRPA, many alternative justice programs are experiencing economic difficulty, particularly amid rising rent costs in the region. Limited funding and rising overhead costs means shrinking staff numbers, low salaries for full and part time staff, and reliance on volunteers and unpaid interns. Practitioners regularly make well below the median income needed to live in the Bay Area. PayScale compares the cost of living in the city of San Francisco with the national average; overall cost of living 63% higher than the national average, with housing at a stunning 198% higher than the national average (PayScale 2016). However, practitioners, even those who have been in practice for several years, earn well below the necessary salary.[48] In search of more affordable living, practitioners commute up to an hour and a half each way to and from work. Practitioners consistently identify low pay and high commute times as a primary work-related grievance. Further, there are few full-time staff at conflict resolution centers, placing caseload burdens, organizational responsibilities, and event planning on a small number of people. According to one practitioner, "the administrative requirements of running…[an] organization become priorities" rather than fulfilling the core mission and values of their work.[49] Compensating for these grievances,

[48] Salary information is not publicly accessible; known salaries are excluded from discussion in order to protect the confidentiality of informants.
[49] Interview, 2014.

practitioners repeatedly reference the "greater good" of their work – their capacity to serve the underserved – as the impetus for job satisfaction and retention. Maintaining job satisfaction rests upon providing accessible services for marginalized groups, however, increasing costs of training, geographic restriction, and reductions in staff available to assist clients, results in a reduced ability to meet the needs of the marginalized communities practitioners ostensibly serve.

Rising cost of living is also affecting alternative justice organizations, typically classified as nonprofits and regularly experiencing financial difficulty. SFCB, like its sister organization SEEDS in Oakland, has dwindled from an organization with offices in several target communities and neighborhoods to a single office with a few full and part-time staff and army of volunteers. Subsequent to its consolidation, SFCB was located in the heart of the Mission District, historically populated by low income and Hispanic groups; however, rising rent prices spurred by rapid gentrification of the Mission pushed SFCB to the edge of the Tenderloin (hereafter the "TL"), an area historically populated by African American and Vietnamese communities. Pursuant to the move, the TL is now experiencing the pressures of gentrification from neighboring affluent areas, namely Lower Pacific Heights, Nob Hill, and middle Market. Rising overhead costs is a common malady for nonprofits in the Bay Area, and led to Proposition J on the November 2015 ballot. The ballot question reads as follows:

> Shall the City establish a Legacy Business Historic Preservation Fund, which would give grants to Legacy Businesses and to building owners who lease space to those businesses for terms of at least 10 years; and expand the definition of a Legacy Business to include those that have operated in San Francisco for more than 20 years, are at risk of displacement and meet the other requirements of the Registry? (SF Elections 2015)

The local measure was approved with approximately 57% of voters voting “yes” and 43% voting “no” (SF Elections 2015). The result of the measure remains unclear, as the requirements to obtain Legacy Business status are finalized and put into application. SFCB, having existed in the city and county since 1976, was supportive of the measure, which will recognize that “longstanding, community-serving businesses can be valuable cultural assets of the City” (Board of Supervisors 2015, 1).

Organizational funding is also derived from private donations and fundraising events. Donations are solicited in several formats, but it is the primary job of the Board of Directors to build community support, maintain good relationships with decision-makers, and generate a pool of repeat donors. Given this role, Board members tend to be long-term residents, relatively affluent, well-educated, and connected with decision-makers throughout the target communities. The donors Board members solicit are important as they supplement limited and uncertain grant funding and income generated from service fees. However, the creation and growth of a Board can put nonprofits in a somewhat precarious position: the organization must marry its goals, mission, and daily functions with the ideological stance of its Board members. Nonprofits, in balancing their mission and practice, must also balance their relationships with Board members in addition to cultivating relationships with similar nonprofits in the region.

**IV. Political Constraints**

Not only are nonprofits beset by economic challenges, but they exist within contested and challenging political environments as well. Alternative justice nonprofits must balance the needs of Board members, the communities they serve, and manage relationships with

other nonprofits and practitioners working in the same field. The larger and more established the organization, the higher the political stakes. This is particularly true as larger organizations become firmly embedded in broader political economies and cultivate dynamic, rather than passive, relationships with political and market systems (see Grønbjerg 1998).

Returning to Proposition J, a business must meet each of the following three criteria in order to qualify: 1) must be in operation for 30 years without a break to exceed two years; 2) must contribute to the identity of a particular neighborhood; 3) must be committed to continuing the features or traditions defining their business (Board of Supervisors 2015, 2). SFCB urged support for the measure, stating:

> San Francisco is a world-class city known for independent and historic small businesses. But our legacy restaurants, bars, retail stores, galleries, and nonprofits have never been more at risk. Over the past 15 years, San Francisco commercial rents have risen by 256%. Otherwise healthy businesses that act as anchors…are being closed down for good. Proposition J addresses this pressing issue. (SFCB 2015)[50]

Businesses must be nominated by the City's Board of Supervisors members or the mayor. Once nominated, the organization is subject to scrutiny by the Board of Supervisors, who must approve their application. Organizations with extant connections to local policy-makers have a clear advantage in getting consideration and approval from the Board. Nonprofits with a large sitting Board of Directors may have greater potential of pushing through the bureaucratic process of achieving recognition under Proposition J more quickly than smaller, grassroots, or loosely organized organizations.

Nonprofits are embedded within this larger political field, but are also beholden to

[50] San Francisco Community Boards, e-mail message sent to author, October 26, 2015.

micro-level politics. The Board of Directors is a common source of political debate and struggle within organizations. Individuals on the Board often have their own ideas and concerns that may or may not align with the original mission, goals, and intent of the organization. Board members may not agree with the creation of innovative new programs and may block creative new programming that seeks to positively impact individuals and communities. Generally speaking, the larger and more established the organization, the larger the Board of Directors. It is perhaps unsurprising that larger organizations tend to be more conservative in developing new programs, projects, and goals, especially where they have been successful.

**V. Allyship**

Aligning with social movements is often considered risky: movements are often short lived, highly unpredictable, and politically divisive, placing political and economic support at risk. For organizations with diverse staff and political and economic supporters, allyship with social movements risks alienating donors, staff, politicians, and economic supporters. Conversely, smaller organizations with fewer overhead costs and less reliance on diverse actors to support their work have less to risk in allyship. In the Bay Area, my findings make it clear that small groundbreaking programs on the cutting edge of justice innovation were quick to affirm and support emergent social movements, whereas older and more established organizations have yet to do so, even where their goals and impacts align with the goals of social movements.

In the context of Black Lives Matter, therefore, it is unsurprising that small, grassroots, and more radical approaches to conflict resolution were quick to affirm and support the movement. In particular, transformative justice programs – built upon the

belief that systems, society, and individuals must transform (not just be restored) before sustainable justice can occur – continue to lead dialogue addressing structural violence. Emerging and cutting edge justice programs, unlike their more established cousins, shy from generic "social justice" terminology, such as empowerment and healing, opting instead for specific and substantive statements that directly address equality, justice, and the role of conflict resolution in our society. They take an active stance in unraveling the inequity embedded in social structures and relations, emphasizing the role of individual communities and neighborhoods in perpetuating inequality, not just the state. For example, Philly Stands Up! a Philadelphia based collective states: "we believe that our work must be linked to broader movements—both locally and abroad—seeking to confront…displays of systemic violence" as a core point of unity (Philly Stands Up). The Bay Area Transformative Justice Collective (BATJ) actively participates in public discussions addressing how the justice system operates in communities, encouraging radical dialogue among affected groups, artists, and educators about the nature of justice and how to propel their communities towards sustainable conflict resolution. BATJ presents at the INCITE! Women of Color Against Violence conference which brings together radical feminists of color working to end violence against women, trans people of color, and their communities. In their presentation, BATJ offered transformative possibilities for the long-term rather than short-term solutions (BATJ 2015). Public affirmations of social justice initiatives are specific in nature, clearly staking a claim that is often presumed political and defining otherwise monolithic and ambiguous terms such as "empowerment." The specificity of their missions, goals, and statements is due, in

part, to their small size; few individuals with similar beliefs, values, and perspectives drive these programs, in contrast to their larger and more established cousins that often lack the political discourse of their younger counterparts.

Larger alternative justice programs focus on service delivery rather than engaging in social movements or activism. By contrast, their smaller counterparts are often younger organizations that developed from the fires of inquiry and injustice, and seek to generate, not just support social movements. This life cycle is visible in the history of larger nonprofits themselves. When first established, Community Boards sought to radically challenge the formal legal system, altering the very definition of "justice" in a society embroiled in racial injustice, mass incarceration, and the war on poverty. However, mired in an economic and political maze while attempting to supplement grant income with donations, SFCB now rarely develops and implements new programs, participates in social movements, or stakes a political standpoint on issues affecting residents. This slow transition over time from radicalism to a weak radicalism, the result of several push and pull factors working in tandem, is evident both in the organization itself and the individual practitioners it employs.

**VI. Discussion**

The narratives of Rob, Community Boards, Joe, and my supervisor represent the potential effects of working towards social justice in a tenuous political and economic environment. Both individual practitioners and the organizations with which they work make a series of decisions impacting their ability to align with or maintain distance from social movements working towards similar social justice goals. The effects of rapid urban transformation and associated political and economic changes in the Bay Area have been

far-reaching. In the case of social movement-nonprofit allyship, examining the nexus of individual practitioner and nonprofit organizational decision-making reveals the impacts of urban transformation on the conflict resolution field. Working alongside practitioners like Rob reveals the micro-level constraints practitioners experience in their daily life, including low income, high commute times, and a saturated practitioner market. These constraints work to inhibit their ability to put effort towards other goals, such as social justice and allyship with social movements. Similarly, examining nonprofits such as Community Boards reveals the impact of skyrocketing cost of living, limited funding, and increasing number of political actors determining the daily activities and impacts. These serve to restrict the nonprofit's activities and the practitioners who work within these contexts. Instead, circumstances push them to work with the landed, the middle class, with those who can afford a small service fee or might be interested in paying for further training outside of the conflict resolution process. It is at this juncture – between the individual and the organizational – that the links between social inactivism and urban transformation becomes clear.

## CHAPTER SEVEN: EMERGENT ENDINGS

"*We need to tell stories to each other about who we are, why we are here, where we come from, and what might be possible."* -Alan Rickman

Does Rob, the alternative justice entrepreneur, exemplify or obscure the relationship between emergent social movements and alternative justice practice? Does the practitioner working at the nexus of the informal and formal embody new ways of constructing the state or of combating it? These stories, when bound together and taken as part of a whole – the totality of alternative justice as it is practiced – demonstrate the ways in which practitioners implement theoretical constructs it in ever more complex environments. In the Bay Area, alternative justice programs and practitioners face economic, political, and social struggles and strictures that limit their ability to fully realize the philosophical and theoretical meanings of alternative justice. The ensuing compromises are made knowingly or unknowingly and the resulting practice, when observed, is a representation of the many decisions individuals and organizations have made throughout years of practice.

Since the emergence of alternative justice in its many forms, the San Francisco Bay Area has been the center for such initiatives and programs. It remains a generative space for innovative conflict resolution: a space where new forms are created to augment, undermine, or subvert the formal legal system. It remains a space where individuals, like Rob, hope for a brighter future, but often fail to actualize their hopes. In such a complex, contested, and rapidly evolving space, what is the future of justice? What does the past and current predicament of alternative justice programs and their relationship to the practitioners working within them and the social movements surrounding them, tell us

about the future?

Utilizing ethnographic techniques, this dissertation critically examines alternative justice practice – both as wholly informal practice and at the informal-formal justice nexus – and its relationship to social justice and social movements in a rapidly transforming urban environment. The findings in this manuscript demonstrate the interdependence of alternative justice and the state, placing contemporary informal justice practice within the informal-formal justice nexus. The economic and political pressures of working in a rapidly evolving urban environment transform alternative justice practice and its ability to combat social inequity.

In the Bay Area, the tech boom has fundamentally altered the political, economic, and social landscapes, dramatically transforming the urban environment. The result of rapid proliferation of tech and start-up companies and their employees, marginalized groups are systematically pushed out of the region. Gentrification of the Mission District, Tenderloin, and Oakland have led to shrinking low-income and African American populations (AEMP 2015). In the midst of this crisis of displacement, the Last 3% movement was recently born; referring to the last 3% of African Americans still living in the City of San Francisco, it is reflective of broader processes of displacement in the region and the widening gap between the rich and poor. Cost-of-living increases are compounded by broken windows policing and affordable areas transforming into trendy areas.

Quantitatively, rapid urban transformation and its associated gentrification appears successful: the Bay Area has a poverty rate of 11.3% compared to the 16.8%

poverty rate in California and 15.8% in the United States (Silicon Valley Institute for Regional Studies 2015). However, qualitative data reveals the daily struggles that residents face. Sudden evictions, rent increases, the conversion of affordable housing into high rises, and shift from long-term to short-term rentals are reshaping the urban landscape. Even I faced a sudden compulsory move from the Bay Area just three weeks before my official move-out date. The daily stresses of skyrocketing cost-of-living and precarious housing environment have pushed practitioners and the marginalized communities they ostensibly serve further out of the region.

Alternative justice practitioners commute over an hour to an office that does not have enough income to support an adequate number of full-time staff. As a result, practitioners are often overburdened, handling their caseload, fundraising, event planning, trainings, and the daily operations of the office all while underpaid and subsequently unable to make ends meet. Full-time employees are continually training new volunteers and interns, relying on ever more short-term, volunteer, and student workers to handle daily tasks such as case intake and filing. As precarious economics affect practitioners, it also affects organizations. Alternative justice organizations are typically nonprofits and non-governmental organizations relying on unsustainable or uncertain funding sources to maintain annual operation. These organizations often turn to government funding, such as DRPA, and supplement these funds with private or corporate donations, training and service fees. The formal legal system, in the form of grants, funds alternative justice to divert cases from their dockets; nonprofits become dependent upon this funding, relying on the very system they originally sought to

challenge or subvert.

The formalization and professionalization of alternative justice derives in part from the political, economic, and social zeitgeist of the Bay Area, but is reflected in wider trends as well. Meetings held in the City of San Francisco sought to discuss the costs and benefits of professionalizing practice. Standardizing practice to prevent justice by geography (Ashworth 2002), maintain training requirements for practitioners to ensure parties get the best possible services, and certification by a central body are integral to this push. However, the costs of maintaining certification and meeting training requirements (up to $800 for basic training and two weekends of time) may also mean that marginalized groups will be excluded from becoming practitioners, further undercutting the ability of otherwise community-based alternative justice processes to remain of, by, and for the community. The cost and time barrier and relatively little cultural sensitivity and bias-awareness training practitioners receive is reflected in Chapter 5. Formalizing the terminology and practice of alternative justice may lead to more systematic justice processes across the landscape, preventing the justice by geography phenomenon, but it may also serve to create a class of "educated" conflict resolvers that perpetuates the structural violence inherent in the state juridical field itself. The question of what we lose and gain by formalizing justice processes and collaborating with the formal legal system will continue being debated as RJ and community mediation continue to proliferate and transformative justice gains traction.

## I. Moving Forward

In many ways, this manuscript highlights the potential pitfalls of alternative justice practice, highlighting how structural violence is often unknowingly perpetrated through the practitioners and the ways in which practitioners may ally with social movements or with the state. However, alternative justice has made major contributions to social justice over the past few decades.

One of the most successful forms of alternative justice is restorative justice in schools. In this context, RJ provides non-criminalizing conflict resolution for truancy, in-school conflicts, and behavioral problems. Some schools put students in charge of these programs, placing justice in the hands of peers instead of school or police authorities. For example, after implementing RJ into Los Angeles, CA schools in 2013, the school district (LAUSD) reports that expulsions are down by 50% (LA School Report 2016). Further, days of instruction lost because of suspensions have decreased by 92% (2016). Implementing RJ into schools thus reduces the number of students expelled and suspended from school, which disrupts the school-to-prison pipeline while also saving school districts money (2016).

Successful examples of implementation and service delivery can be used as analogs for other forms of practice. Schools implementing RJ are sensitive to training not just teachers and administration, but also students. This focus on horizontal implementation across the student body, rather than vertical implementation by authority figures, is one reason RJ in schools is so successful. Thus, I recommend that practitioners implement alternative justice in ways that subvert, rather than contribute to, power asymmetries and inequalities.

The process of subverting asymmetries of power and structural inequalities also applies to those processes firmly situated within the informal-formal justice nexus. For practitioners working in this nexus, managing power differentials between formal institutions and actors and those that are the subject of their work is a particular challenge. Many practitioners are conscious of the individual power dynamics between powerful and disenfranchised parties, however they often fail to recognize the influence of these dynamics in the structure of their organization and daily activities. Practitioners, therefore, can pay particular attention to the ways in which their communication perpetuates the state and its violence. For example, it is important to avoid binary identity categories, such as "victim" and "perpetrator." By avoiding these labels, practitioners can delve into the complexities that may push a "perpetrator" to commit crime; this was highlighted by the practitioner working the nexus who strives to understand whether the "perpetrator" has anger management issues or needs witness protection (see Chapter 2). Further, structural violence is embedded within each person as well; attuning practitioners to the ways violence is entrenched in everyday life and interactions will further prepare them to subvert, rather than reinforce, inequalities within the conflict resolution space.

**II. Conclusion**

Through the chapters in this dissertation, we can begin to see how alternative justice theory manifests as practice both informally and at the informal-formal justice nexus. In chapter two, we critically examined the spectrum of justice practice: from formalized approaches to wholly informal frameworks. However, further analysis demonstrates that

alternative justice itself is often situated within what I term the informal-formal justice nexus – the gray space where formal and informal legal processes meet, coexist, and conflict.

The third chapter utilized preeminent scholarly works to critically analyze implications of the field's constructed history. Deconstruction revealed the inherent biases and cultural capital of what I call the mythico-history and the revealing implications for contemporary practice. Leveraging the cultural capital of "harmony" and critiques of formal law and legal processes, while relying on a mythical history of Indigeneity and Indigenous practices, and conflating community with nonviolence, alternative justice advocates have successfully implemented their frameworks in a variety of diverse contexts.

Chapter four examined the incorporeal – those broader impacts without tangible definition. By deconstructing "empowerment" and "capacity-building" we begin to see how practitioners imagine the impact of their work and ability to advance social justice. Otherwise empty terms, "empowerment" and "capacity-building" exist within alternative justice practice as mechanisms for ceding power and control in conflict resolution processes, while also impacting the "community." By training disputants in conflict resolution skills, such as effective communication, and empowering them to resolve their own disputes, alternative justice practitioners consider their work as impactful beyond the individual level.

The fifth chapter examined the power asymmetries perpetuated in the alternative justice conflict resolution space. Investigating the role of physical space and

communicative techniques, scholars can readily see the ways in which alternative justice fosters and perpetuates conflict asymmetries. In particular, homogenized conceptualizations of "respect" and "civility" emerge as relatively meaningless terms strategically deployed by practitioners. Use of these terms and the identity of practitioners themselves may serve to reinforce, rather than to subvert, the structural violence manifest in society and state justice.

Finally, chapter six examines the role of the practitioner as ally in social justice and the relationship of individual practitioners and the organizations with which they work to social movements. Despite the overlap in goals and philosophies underpinning social movements, such as Black Lives Matter, and alternative justice programs, such as Rob's work, there is often little collaborative work between informal justice practitioners and social movements. In the Bay Area, economic barriers to individual practitioner and organizational collaborative enterprise include skyrocketing cost of living, difficult procuring funding for programs, and a reliance on state funding. Similarly, the politics of reliance on current political actors, such as Mayor Ed Lee, and the politics of meeting the state's justice requirements all serve as barriers to substantive allyship.

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## VITA

Amanda J. Reinke was born to her parents, Dr. Saundra J. Reinke and Col. Earl R. Reinke, Jr., in Montgomery, AL on October 17, 1989. They were surprised she was a girl as they were told they would have a boy. It was in the early 1990s, when her mother was stationed in Seoul, South Korea, that Amanda discovered her love for kimchi and gimbap. As a child, Amanda enjoyed gardening, bugs, eating, and reading fiction – hobbies and enjoyments that continued into adulthood. Having completed the degree requirements, most notably jumping through a burning ring of fire, Amanda graduated high school in 2007 and attended the University of Georgia. It was during this time that she realized her love of crepes, thanks to Pauley's. Not knowing what to declare as a major, but recognizing the culturally constructed need to be decisive rather than "undecided," Amanda chose the first intriguing major in the College of Arts and Sciences list: Anthropology. After a year and a half, Amanda was decidedly not enjoying Anthropology; however, a course with Dr. Angela Bratton caused her to fall hopelessly in love with the discipline. After learning from the great Dr. Bram Tucker and working in an entomology lab for three years, Amanda graduated from UGA in 2011 with a B.A. in Anthropology. She then attended the University of Tennessee-Knoxville for her graduate education, where Amanda discovered her love of the California burrito and Basil Hayden's whiskey. By way of a conclusion, selections of Amanda's favorite song are offered – a reminder of the work yet to be done.

"Well, you wonder why I always dress in black
Why you never see bright colors on my back
And why does my appearance seem to have a somber tone

Well, there's a reason for the things that I have on.

I wear the black for the poor and the beaten down
Livin' in the hopeless, hungry side of town
I wear it for the prisoner who is long paid for his crime
But is there because he's a victim of the times…

…Well, there's things that never will be right I know
And things need changin' everywhere you go
But 'til we start to make a move to make a few things right
You'll never see me wear a suit of white.
-Johnny Cash, "Man in Black"