

G. Maglione, *Imaging victims, offenders and communities. An investigation into the representations of the crime stakeholders within restorative justice and their cultural context*, (2017) *International Journal of Law, Crime and Justice* <http://dx.doi.org/10.1016/j.ijlcj.2017.02.004>

Abstract

This work is a critical analysis of how the main crime stakeholders (victim, offender and community) are represented within policy and legal statutes on restorative justice. The paper starts by sketching out the legal and policy archive of restorative justice, focussing on the most recurrent normative representations of the victim, offender and community, and unearthing their theoretical underpinnings. The goal is to identify a range of typified features and to assemble them together by profiling the 'ideal stakeholders' of restorative justice. The research includes a comparison between the 'ideal' victim, offender and community, pinpointing any overlaps and differences. Finally, it interrogates the cultural context within which these representations have emerged historically, influencing policy and laws. By way of reconstructing and discussing what is taken for granted in restorative justice and its background, the aim of the work is to foster critical reflection on the normative dimension of a popular development of western penal policies.

Keywords

Restorative justice; Victim; Offender; Community; Michel Foucault; Nils Christie

1. Introduction

Building upon a recent body of work (Maglione, 2016; Maglione, 2017), this study offers a recognition and comparison of the most wide-ranging descriptions, implicit assumptions and typified images of the 'victim', 'offender' and 'community' within policy documents and legal statutes on restorative justice (RJ), produced in England and Wales between 1985 and 2015. Additionally, the research sketches out a historical contextualization of those normative representations. The questions which drive this study are: which images of the crime stakeholders are featured in the legal and policy regulations on RJ? Are there any recurrent representations of the 'victim', 'offender' and 'community' which orientate law- and policy-makers? What is the cultural background which encompasses those images? Within the scholarly literature on RJ, one of the few points around which there is a relatively widespread agreement, is that RJ is an open, rich and thick fabric of opinions, views, concepts and theories, none of which is epistemically predominant (Braithwaite, 1999; Johnstone, 2011; Marshall, 1999; Zehr, 2005). This work seeks to challenge that shared view, by means of reconstructing the taken-for-granted and unproblematic representations of the key actors of RJ (at least within the limited province of the RJ legal/policy regulations) (Christie, 1986; Christie, 2013). Through an approach informed by Foucauldian archaeology (Foucault, 1970; Foucault, 1972),

the paper begins by profiling the most authoritative representations of the crime stakeholders within RJ. This will lead to the identification of a range of recurrent and specific features, which will be woven into an 'ideal' model of the 'victim', 'offender' and 'community' in RJ (Christie, 1986). After a brief comparison between these models, the final section traces the cultural background within which they have emerged, from a historical perspective. The paper ends by drawing some implications and concluding reflections. The overarching aim of this study is to subject some of the underlying premises of RJ laws and policy to critical review and to offer analytical and conceptual tools for advocacy and scholarship on RJ.

2. Methods

Nils Christie identified in a well-known paper (1986) the key characteristics of the 'ideal victim' and, at least partially, of the 'ideal offender' in the media and policy. This work endeavoured to highlight some taken-for-granted assumptions (and problematic repercussions) of supposedly neutral technical languages. In RJ, 'offender' and 'victim' are complemented by a further (and distinctive) stakeholder, the 'community' (Braithwaite, 1989; Zehr, 2005). The goal pursued here, by adopting Christie's viewpoint, is primarily to reconstruct the implicit images of the three main crime stakeholders within RJ regulations¹ and to unearth their theoretical underpinnings. In order to achieve this goal, this research will draw upon Michel Foucault's archaeological approach, conceived of as a historical-critical inquiry into the organisation and production of discourse (Foucault, 1970: 168). The interpretation of this perspective advanced within this paper, is critically aware of the methodological limitations of the archaeological framework (Dreyfus and Rabinow, 1983: 79; Garland, 2013: 44; Rabinow, 2009: 30; Veyne, 2010: 54). Therefore, archaeology is understood pragmatically as a mode of delimitation and contextualisation of research objects (that is, discourses on the 'victim', 'offender' and 'community' in RJ) preliminary to any genealogical work on the power relations which intertwine discourses in context and their subjectivating effects (Howarth, 2002: 128).

The first step of the archaeological enquiry is to draw the 'archive' (Foucault, 1972: 145) i.e. the dynamic set of the discourses on the crime stakeholders within RJ. The paper will focus on legal statutes, policy documents and their underpinning theoretical assumptions, enacted in England and Wales between 1985 and 2015, explicitly regulating RJ processes². This step is

¹ National regulations from the Home Office and the Ministry of Justice were sampled by using the UK Government Web Archive; the search was limited to the criminal justice area (Home affairs, public order, justice and rights). The inclusion criteria were: the simultaneous use of the expression 'restorative justice' and the term 'community', 'offender', and 'victim'; the geo-historical context (England and Wales, 1985–2015). Only documents matching the search criteria were used. In one case, a statute with no use of the expression 'restorative justice' was considered too (i.e. Crime and Disorder Act, 1998) due to its well-known role as legal support for RJ practice (Crawford and Newburn, 2002). A number of international documents was also considered insofar as they have influenced the development of RJ in Europe, including the UK (Liebmann, 2007: 44–48), and as long as containing direct reference to 'community', 'offender', and 'victim'. A further case-by-case reduction was necessary regarding policy documents due to the space limitation of this article. The criterion used for this was the amount and "thickness" of the reference to the RJ stakeholders.

² In order to reconstruct the 'ideal stakeholders' of RJ within this geographical setting, also an examination of the North American theoretical literature on RJ has to be carried out due to the well documented intellectual exchanges between the two areas (Marshall, 1996: 23).

functional in that it reduces the complexity of a fluid, extensive and growing field that is RJ, by identifying a limited set of wide-ranging and deep-rooted representations of the crime stakeholders (Jørgensen and Phillips, 2002: 143). Clearly, this archive does not exhaust the RJ field which includes, for instance, also how practitioners and other stakeholders interpret and negotiate the meanings of the authoritative discourses.

The analysis proceeds inferentially: firstly, it draws the authoritative discourses from the relevant laws, policy documents and literature; then, it profiles the 'ideal' victim, offender and community from the those discourses, by piecing together the most recurrent stakeholders' representations emerging from the archive. At this point, it is possible to offer an interpretation of how those images have emerged historically (Richards, 2011). Legal and policy regulations, in fact, do not take place in a void; they carry a past with them and are influenced by a wide and stratified range of phenomena. Methodologically, this final step entails the detection and description of the contextual conditions – that is, conditions of possibility (Foucault, 1970: 168) – which have hypothetically contributed to create the “authority” of those idealised images, by influencing regulations and scholarship. The paper considers only cultural constructs taking place in the geo-historical context considered and whose languages show consistent overlapping resemblances with the key representations of the crime stakeholders in RJ. The assumption, supported by textual evidence, is that these phenomena have been rich reservoirs which have provided scholars, practitioners and policymakers with certain vocabularies, particular ways of making sense of crime and crime responses, orienting distinctive needs and interests in context (Maglione, 2016). The 'ideal stakeholders' are consistent with those vocabularies, appealing to new understandings of crimes, and responding to those needs and interests. Clearly, conceptual and practical differences between normative and theoretical discourses do exist (e.g. they are produced by different actors, for different audiences, for different purposes). However, the main point of this research is to challenge the boundaries between these different discourses, highlighting how the normative discourses recall only certain theoretical discourses which compose the wide field of RJ, and then to offer an overview of the contextual conditions which have likely facilitated such a convergence, in the relevant geo-historical context.

It should be clear at this point, that this work is not a conventional history of RJ (Daly and Imarrigeon, 1998; Gavrielides, 2011; Weitekamp, 1999). The paper does not aim to canvas a comprehensive 'historical picture for restorative practices' (Gavrielides, 2011: 15), neither to identify the wide range of factors (e.g. social movements, programs, cultural strands, etc.) which have diachronically determined the worldwide emergence of RJ as a global movement (Daly and Imarrigeon, 1998: 5) possibly rooted in ancient justice practices (Weitekamp, 1999: 75). This work is primarily a critical analysis of legislative and policy documents and then a contextualisation, from a historical perspective, of the normative discourses on the three main RJ actors (not on RJ in general).

There are four main limitations to the research. Firstly, the analyses that follow apply only to RJ in (both adult and juvenile) criminal justice settings and practised by mediation and conferencing. Secondly, this work is a theoretical elaboration on legal/policy material and as such tends to be at times abstract and over-generalising. However, the main goal is to discern

general patterns in representing the main stakeholders of RJ (Garland, 2001: viii). From this perspective, abstraction and generalisation are useful (and even necessary) heuristic tools. Secondly, this work aims to re-elaborate and apply certain analytical and conceptual instruments (i.e. archaeology and 'ideal stakeholder'), in order to foster critical research in RJ. This will involve a degree of simplification, which it is hoped will be rewarded by the productivity and provocation of the approach proposed (Foucault, 1996; Garland, 2001; Pavlich, 2005). A further limitation is that a gap exists between how laws and policies actually work and their declared aims. This work does not address the gap between 'law in the books' and 'law in action' (Pound, 1910), since it is not an empirical analysis but an investigation on the images of the crime stakeholders encapsulated in normative documents and their conditions of possibility. Lastly, the inferences from archaeological data (e.g. to draw the 'ideal community' from the archive) are always underdetermined and theory-laden, i.e. many (and even incompatible) readings of the same data are possible as well as driven by theoretical views (Morrison, 2011). The readings which inspire this paper are led by the intention of pointing out a lack in the RJ literature and identifying a direction for critical research, offering an analytical model which aims to provoke further reflection and debate.

3. Archival research: authoritative discourses on the crime stakeholders in restorative justice

The archaeological focus is posited on the fluid range of discourses which aim to regulate RJ in the relevant historical and geographical context, focussing on those directly related to the crime stakeholders' needs, interests and goals. Within each following section, legal/policy documents will be analysed, providing the exact indication of where the relevant stakeholder's attributes are drawn from; then, the possible theoretical underpinnings of the normative representations will be considered.

3.1. *Imaging the victim*

The re-establishment of victims' safety is a crucial discourse stretching across the RJ laws and policies (RJ Action Plan, 2012: 1; 2013: 4; Victims' Code, 2015: 51). It is routinely claimed that victims need a 'safe place', that is, a physical and emotional space which allows them to recover from the victimisation, offering healing and closure (RJ Strategy, 2003: 3.2; Victims' Code, 2015: 51). RJ interventions must primarily recognise victim's safety and security, both physical and emotional, as an opportunity to identify and articulate their personal needs (Johnstone, 2011: 52). Producing safety also involves the need to create conditions for effective restorative encounters, whose constitutive elements are 'meeting, narrative, emotion, understanding and agreement' (Van Ness and Strong, 2015: 100). It finally entails opportunities for reintegration as a range of actions aimed at fulfilling crime stakeholders' needs by focussing on safety, as much as on material, moral and spiritual help and care (EU Victims' Directive, 2012: art. 23; RJC UK, Best Practice RJ, 2011: 4).

The discourse on being heard includes the essential range of demands toward participation, inclusion, and direct expression of victims' experiences (Crime and Courts Act, 2013: schedule

16.2; EU Victims' Directive, 2012: art. 1, 3 and 10; Coe R. (99) 19: preamble; RJ Action Plan, 2012: 3; 2013: 2; 2014: 3; Victims' Code, 2015: 34). Victims in RJ are characterised by the need to communicate their emotions, to be compensated and to be empowered, i.e. their sense of autonomy and safety has to be restored (Offender Rehabilitation Act, 2014: 15.3.8). They need also to find answers to some fundamental questions such as why the crime happened to them, why they responded as they did, what to do in case of re-occurrence, as well as how to make meaning out of this tragic happening (Johnstone, 2011: 52; Zehr, 2005: 26–27). Victims want to understand their roles in the criminal justice process (and in RJ programs as well) including potential benefits and risks to themselves and offenders; they want to have as much information as possible about their case (UN Declaration Victims, 1985: 6.a). Being heard requires, as fundamental conditions, participating and being included in the justice process (RJC UK Best Practice RJ, 2011: 14). Looking at inclusion from the victim's perspective, RJ authors, advocates and policy-makers relentlessly emphasise information, presence in court and the opportunity 'to tell the criminal justice decision makers how the crime committed against them has affected them' (Van Ness and Strong, 2015: 69).

The archive of RJ entails also a recurrent set of requests to the offender to actively engage with the victim (Justice for All, 2002: 4.12; Coe R. (99) 19: preamble; Victims' Code, 2015: 34), stressing the obligation toward the taking care of the victim's wellbeing affected by the crime's aftermath (Dignan, 2002). The recurrent claims of making amends, material and emotional reparation or restitution prominently feature within this discourse (Crime and Disorder Act, 1998: 4.1.67; Criminal Justice Act, 2003: 3.22; Criminal Justice and Immigration Act, 2008: 9.1.3; No More Excuses, 1997: 9.21). In restorative encounters, offenders are asked to take care of victims' needs, including the need to be heard and to see remorse as a condition for closure, forgiveness and reconciliation. This is supposed to impact on offenders more than formal prosecution and punishment, by giving them 'a positive motivation to reform and a feeling that society is ready to offer re-acceptance' (Marshall, 1999: 11–12).

3.2. Imaging the offender

RJ seeks to hold offenders accountable, in a genuine and proactive way, and to enable them to face the impact of the crime on others (Transforming Rehabilitation, 2013: 4.10). This idea of accountability is fundamentally linked to a certain concept of 'taking responsibility' (Miers et al., 2001; Zehr, 2005: 40). Responsibility means that 'offenders have an opportunity to [...] "own" their behavior. They can take direct responsibility for their actions by making amends to the person they 'victimized'' (Umbreit et al., 1996: 2). The active 'ownership in the outcome' (Zehr, 2005: 42) is highly characteristic of the RJ field, and conversely one of the purported differences with respect to "conventional" criminal justice, even more so in cases of youth offenders (CPS RJ legal guidance: 1; The Way Ahead, 2001: 17). This form of 'meaningful' (UN Basic principles RJ, 2002: preamble) or 'active' responsibility (Marshall, 1999: 6) is mobilised by the typical means of meeting the victim (Crime and Courts Act, 2013: schedule 16.12) and possibly the community representatives, as long as the offender has acknowledged the 'basic facts' of the case (Breaking the Cycle, 2010: 22; RJC UK Best practice, 2011: 4; RJ Strategy, 2003: 5.7; Victims' Code, 2015: 7.5).

The ideas of repairing the harm is a crucial pillar of RJ (Justice for All, 2002: 177; RJ Strategy, 2003: 4; RJC UK Best practice, 2011: 4). One of the main features of RJ is the focus on the harm caused by the offender to the material victim and to the larger community (Johnstone, 2011: 1; Marshall, 1999: 7; Zehr, 2005: 186). The harm (and therefore the reparation) is routinely conceptualised as either material or symbolic (Barnett, 1977; Eglash, 1977; Retzinger and Scheff, 1996; Sharpe, 2007). Material harms include physical damages to the direct and/or indirect victim/community. Symbolic harms refer to the breach of trust or more broadly of the interpersonal relationship between parties, by creating a sense of fear and lack of safety (RJ Strategy, 2003: 1.1). Different types of harm require different types of reparation. Reparation *stricto sensu* (i.e. the physical 'fixing' of what has been damaged or broken) compensation and restitution are the main forms of material reparations (UN Declaration Victims, 1985). Apology or community work are typical symbolic reparations because they are supposedly suited to mend the relational bond damaged by the crime (Braithwaite, 2000: 115). Furthermore, the active participation in RJ processes and the expression of remorse or atonement (RJ Strategy, 2003) are activities integral to symbolic harm repair. Even if conceptually distinguished, material and symbolic repair are often described as functionally linked (Johnstone, 2011: 97). Without the symbolic repair, in fact, it may be difficult to achieve agreement about material reparation (Daly, 1999: 15; Retzinger and Scheff, 1996).

RJ processes are not only meant to fulfil victims' needs and to enable reparation but also to deter the offender from committing future crimes, avoiding re-offending (Youth Justice and Criminal Evidence Act, 1999: 8.2a; Breaking the Cycle, 2010: 30; Facing Up To Offending, 2012: 4). The implicit idea is that RJ processes tackle and remove underlying offending causes, therefore reducing the likelihood to re-offend (Johnstone, 2011: 3). One of the most distinctive avenues for reducing re-offending within RJ is through the moral psychological process of 'reintegrative shaming', which is characteristic of many (but not all) RJ processes³ (Braithwaite, 1989; Walgrave and Aertsen, 1996). The aim of reintegrative shaming is to make offenders experience trauma from shame which derives from telling the story of the crime and listening to the victim. Once the trauma has been elicited, redirected and fashioned, the symbolic/material reparation can take place. This is the moment when the offender is required to commit himself/herself to changing his/her life, which obviously entails to avoid re-offending (Johnstone, 2011: 97). This is also said to depend on the meaningful involvement in the decision-making process and on the degree of genuine remorse experienced (RJ strategy, 2003: 3.7).

This discourse is directly linked to the complex idea of reintegration into the community (No More Excuses, 1997: 9.21; UN Basic principles RJ, 2002: 1.3). Reintegration in RJ means for the offenders 'paying their debt to society, putting their crime behind them and rejoining the law abiding community' (No More Excuses, 1997: 9.21). This calls for the offender's inclusion into a community-based positive moral order (Van Ness and Strong, 2015: 39) to be achieved (or stimulated) within the RJ meeting, symbolically (the fact of taking part) and psychologically

³ RJ interventions based on the theory of reintegrative shaming were introduced in the UK in the mid-1990s by the Thames Valley Police and have since been used by many other UK police forces 'so that in the UK, RJ has come to be identified for many years with Braithwaite's theory of reintegrative shaming' (Johnstone, 2011: 4).

(e.g. reintegrative shaming). One can map out two different forms of restorative reintegration: one into the micro-social community (material/psychological repair of the damaged social relationship with the victim) and another into the macro setting (dialogue with the family members or parties' networks).

Finally, the concerns around safeguarding offenders' rights within RJ processes constitute a relatively cohesive discourse across legal/policy regulations (Coe R (99)19: 3.8; Justice for All, 2002: 9.37; Criminal Justice Act, 2003: 22–23; RJ Strategy, 2003: Q20–21; UN Basic principles RJ, 2002: 13a–c) and scholarly works (Ashworth, 1993; Ashworth, 2002; von Hirsch et al., 2003). The offender in RJ remains a legal subject provided with rights (especially civil and human rights), entitled to safeguards and protections (Ashworth, 2002: 578). The main legal right routinely recognised to the offender is participation upon free consent (EU Victims' Directive, 2012: 2.1d; UN Basic principles RJ, 2002: 7). Other safeguards pertain to the right to consult with legal counsel, to the assistance of a parent or guardian, and to be fully informed of their rights (UN Basic principles RJ, 2002: 13a–c).

3.3. Imaging the community

One of the most specific attributes of RJ is that the community is routinely characterised as a distinctive crime stakeholder (RJ Action Plan, 2012: 3; RJ Strategy, 2003: 1.2; The Way Ahead, 2001: 2.3) differentiated both from the material victim and the offender as well as from the state (Ashworth, 2001; Braithwaite, 1999; Christie, 1977; Johnstone, 2011; Marshall, 1999; McCold, 1996; Zehr, 2005). The actual rise of RJ is often considered a response to the current state of affairs whereby criminal justice takes 'little account of the views of victims or the wider community' (No More Excuses, 1997: 9.38). RJ offers a time/space in which victims, offenders and the relevant communities can 'participate together actively in the resolution of matters arising from the crime' (UN Basic Principles RJ, 2002: 2) in order to meet the needs triggered by the offender's actions (RJC UK Best Practice, 2011: 2b.3; Justice For All, 2002: 2.7). The premise of this view is that crimes and crime responses are conceived of in terms of social conflict (Christie, 1977) taking place in (and against) the wider community (RJ Action Plan, 2012: 3; RJ Strategy, 2003: 1.2). Therefore, the community's role in RJ is not only to achieve reparation of harm and reduction of re-offending but also to 'reap the opportunities for moral development and community-building which criminal conflicts provide us with' (Johnstone, 2011: 119). RJ promotes through the new role assigned to the community a 'shift in the power related to who controls and owns crime in society - a shift from the state to the individual citizen and local communities' (Umbreit, 1994: 162).

It follows that the discourse on community involvement and participation is an essential component of RJ (Justice For All, 2002: 7.33) and as such a purported key difference with respect to the "conventional" criminal justice (Johnstone, 2011: 126). RJ, in fact, gives 'voice to victims and communities by bringing them into the process and involving them in the solution' (Justice For All, 2002: 7.33). There are two recurrent types of community involvement/participation in RJ: by inviting the direct stakeholders' networks; and/or by including community representatives (e.g. volunteer facilitators) (RJ Strategy, 2003: 1.2; Justice

For All, 2002: 7.33; Breaking the Cycle, 2010: 69). The first option requires that the community has to be involved because it is either victimised by the crime (victim's network) or it can contribute to attend to the consequences of a crime (offender's network). The participation of direct stakeholders' networks is expression of an 'inclusive approach' to crime control which aims to 'strengthen community involvement and confidence in the Criminal Justice System' (RJ Strategy, 2003: 34). The second option (to engage community representatives) is meant to enable community members to play a part in 'searching for local solutions and making the system more responsive locally' (CC-HO Strategic Plan, 2004–08: 99). Two assumptions seem to underpin this perspective (Johnstone, 2011: 125). The first is the idea of crime prevention through participation. RJ practices are deemed to 'increase awareness of the important role of the individual and the community in preventing and handling crime and resolving its associated conflicts' (Coe R. (99) 19: Preamble). Secondly, community involvement/participation is strategic to the 'creation of community capital' i.e. to 'the increase public confidence in the criminal justice system and other agencies with a responsibility for delivering a response to anti-social behaviour' (CPS RJ Legal Guidance). Involving the community in the 'handling of criminal conflicts between its members is seen as a way of empowering communities [...] i.e. developing its inherent capacity to regulate itself' (Johnstone, 2011: 125). The active involvement of local residents in the handling of criminal conflicts is one way of revitalising a sense of community among neighbours (Christie, 1977: 12).

A further feature routinely associated to RJ (as already mentioned) is the focus on repairing the harm/wrong caused by the offender in order to restore the relationships not only with the material victim but also with the larger community (Justice For All, 2002: 7.37; Code of Practice for Conditional Cautions, 2013: 2.26). The community, in fact, is harmed by the offender, who will be able to take responsibility only after "seeing" the impact of his behaviour on the 'victim/person/community harmed' (RJC UK Best Practice, 2011: 2b.3; Justice For All, 2002, 2002: 2.7). The community in RJ is therefore one of the recipients of the reparation required from the offender (Johnstone, 2011: 1; Liebmann, 2007: 24; Marshall, 1999: 7; Zehr, 2005: 186). Correspondingly, a central aim of RJ is 'To ensure that [the offenders] have the opportunity to make reparation, and agree a plan for their restoration in the community' (CPS RJ Legal Guidance), whilst victims and local residents in RJ have the opportunity to suggest what the reparation of the relevant harm should be (The Way Ahead, 2001: 2.70). In general, the ground for the idea of reparation to the wider community, is the conviction that the crime 'undermines the social bonds integral to strong communities' (The Way Ahead, 2001: Intro). Reparation is a means to heal those corroded bonds in the local space whereby crimes occur (Marshall, 1999: 6).

4. Discussion: outlining the 'ideal' victim, offender and community

From this archive, consisting of legal and policy documents bolstered by certain theoretical perspectives, it is possible to infer a range of more specific characteristics which applies to victims, offenders and communities in RJ. By way of assembling those images, one can profile the 'ideal' crime stakeholders around which RJ, in the relevant context, seems to be built around.

4.1. The ideal victim

The idea of an embodied victim appears particularly fitting with the representations of this crime stakeholder which underpin laws and policies on RJ (Maglione, 2016). An embodied victim is an individual victimised by a specific, clearly identifiable offender, not a social structure or organisation. The recurrent emphasis on the victim's needs of listening and being listened to, of physical safety and material reparation, entails a link between the victim's body, as natural entity, and his or her thoughts, feelings, and behaviours. The idea of the 'meeting' between victim and offender, as shared physical space where flesh-and-blood human beings encounter each other suffering, is a paradigmatic expression of this embodied language. It is also possible to argue that RJ portrays emotional victims. RJ includes concepts such as 'healing', 'closure', 'forgiveness', 'reconciliation', which all fit with an understanding of the victim's needs as revolving around emotions, moods, feelings. The discursive practice of prioritising victims' affect is a crucial feature of the RJ as such, often openly declared as one of the main differences with respect to "conventional" criminal justice. RJ is in fact an 'emotionally intelligent justice' (Sherman, 2003; cf. Richards, 2011). A third quality of the RJ victim is his or her disempowered nature. In RJ, the emphasis is mainly posed on the victim's psychological/individual disempowerment (instead of social or political disempowerment). Even if disempowered, the 'ideal victim' of RJ maintains a capacity to positively react to the victimisation, showing a unique quality of resilience. This quality is expressed by the very choice of partaking to RJ processes, meeting the offender; expressing needs and advancing requests; mediating over needs and requests; finally, prominently deciding the process outcome (e.g. by withdrawing or accepting apologies, compensation, etc.). The last feature to consider, is that the victim of RJ is exclusive, i.e. defined as ontologically distinguished from the offender. The recurrent normative representation of the victim excludes (social, personal, cultural) overlaps between him or her and the relevant offender. Moreover, the idea of a victim/offender, i.e. a subject who is at the same time harmed but also harming, does not seem compatible with the 'ideal victim' of RJ (Maglione, 2016).

4.2. The ideal offender

The offender in RJ is consistently represented as both a wrongdoer and a harm-maker. These two features are ontologically linked to each other: the harm caused is a wrong, i.e. an injury against the victim/community and a breach of the social pact. In contrast to the "conventional" criminal justice, RJ prioritises the harm over the wrong: the offender is first and foremost (but not solely) a harm-maker. Furthermore, the offender is neither "bad" nor "deprived" or "wicked". He or she appears instead as immature, a 'wayward child' (Wright, 1996), who requires to encounter the victim's pain in order to realise the impact of his or her actions, and to be held accountable. A distinctive feature of the RJ offender is that he or she is engaged in 'earning his redemption' (Bazemore, 1998), through symbolic and/or material actions. This moral(istic) process refers to the active work toward reintegration and maturation in order to fulfil the victim's and community's needs. The idea of 'earning redemption' also highlights how

in RJ the offender is enmeshed with the community's bonds and ties that once broken determine the offender's failure as a member, creating the need for self-redemption. This is because the offender is considered to share the same moral and community-based milieu as the victim. Additionally, there are two further recurrent features of the RJ offender, shared with the 'ideal victim' of RJ i.e. embodiment and exclusivity. The offender in RJ is assumed to be a clearly identifiable and definite individual able to harm the victim/community directly. The idea of offender as a corporation or a state, or any other disembodied entity, is difficult to be inferentially drawn from the archive; RJ is built around a human, flesh-and-blood offender. Finally, the offender is also exclusive, i.e. ontologically separated from the victim.

4.3. The ideal community

The community in RJ is routinely assumed as innocent (Maglione, 2017). The most diffuse normative descriptions of the community usually do not take into consideration the possibility that community relationships (namely family and peer-to-peer dynamics) can promote or facilitate criminal behaviours (Polizzi, 2011: 141), instead of refraining and deterring them. The idea, well-known in criminology (Sutherland and Cressey, 1947), that social networks can be "places" whereby deviant values are learned, rationalised and practised, is neglected. The RJ community is a local actor. In the archive, there is a consistent reference to the fact that the community surrounds the direct crime stakeholders, using a language which stresses the physical closeness and even intimacy. The inclusion of the local community is functional in building trust and cooperation in order to deal more effectively with crimes and antisocial behaviours. The community is typified as an alternative to the state. The state, as the actor traditionally in charge of dealing with crimes, is, in RJ, on one hand bypassed by the community (insofar as the formulaic rituals of the rule of law and the offender-centred penal retribution are obliterated), whilst, on the other, backs the community up, by funding RJ interventions, or establishing relays between RJ actors and traditional legal institutions (judges, parole officers etc.). In fact, hardly often it is envisioned a form of competition between these two actors (Pavlich, 2001). The state actually can (and should) work to support, fund and promote the community role in responding to crimes and antisocial behaviours. A further, recurrent theme within the RJ archive is that the community is weakened by a not clearly defined late modern social change. Nevertheless, it is characterised by a certain degree of resilience, which needs to be stimulated by appropriate interventions. The image of local communities' bonds being undermined by a chaotic array of issues prominently features the rhetoric of investing in local communities by promoting participation into decision-making processes, including in criminal matters. Lastly, the community is mostly described as a fusional network, with an assumed common understanding of social phenomena (i.e. the crime) and a sense of connectedness which allegedly plays a role in ensuring freedom and security in opposition to the state, the broader society and the market.

5. Comparing the 'ideal stakeholders'

The 'ideal victim' of RJ exemplifies an embodied, disempowered but resilient individual aware of his/her needs, in search of safety and recognition. The offender is routinely portrayed as a decision-maker who is required to take active responsibility for the wrong/harm caused; he or she is lacking in emotional understanding of the crime's human costs (which can be realised only by meeting the victim and the community). Finally, the 'ideal community' is characterised by a few and recurrent attributes: innocent, local, alternative to the state and the society, weak but resilient and fusional. A range of general considerations can be made of these idealised versions of the crime stakeholders. Firstly, in regards to the overlapping similarities between them. The main actors of RJ are commonly provided with a "material" existence. Victims and offenders are embodied, flesh-and-boned individuals, while the community is the local *gemeinschaft* which surrounds, metaphorically and actually, victims and offenders. A further critical point can be made. The ideal representations of the victim and offender reproduce some well-known and deep-rooted commonsensical understandings of these actors in "conventional" criminal justice. The "obvious" power imbalance between them (the offender is powerful, the victim is disempowered), the taken-for-granted ontological diversity between offending and victimisation as well as the implicit moral asymmetry between the victim and offender, compose a picture which emphasises differences and neglects the empirical nuances which often characterise actual individuals caught up in the criminal justice net. Additionally, the widespread representations across policy and legal regulations ignore the constructive effects of being labelled as a 'victim' and an 'offender'. These labels are neither morally neutral, nor epistemically objective or socially unproblematic (Christie, 1986). On the contrary, they project onto people specific features, interests, needs and goals, with powerful effects (Van Dijk, 2009). They contribute to the construction of people in ways which attribute motives that elicit and empower social control and punishment responses, and that make certain policy options acceptable (Coyle, 2013). RJ does not include any problematisation of those labels, an approach which seems to have been inherited from a legalistic understanding of crime, whereby the labels of 'victim' and 'offender' are crystallised and undisputed. A further consideration on the commonalities between the ideal stakeholders is that both victims and offenders belong to the same community, understood as a common moral and social micro-order. They are imbricated in the same fabric of moral, cultural and social values, beliefs, and views. There is no consideration of any possible radical disagreement over the very meaning of the crime, its role and function, nor of any of the values informing the justice process.

Another point to be made regarding the relationships between the 'ideal stakeholders' of RJ, concerns their gender and race. Apparently, the normative images of 'victim', 'offender' and 'community' in RJ, are colourless and genderless. There is no specific racial or gender-based characterisation of them in policy and legal documents. They are thought of as empty categories, adjusted to groundless normative models of human beings. However, it is possible to infer from those normative images some implicit (and problematic) assumptions which seem to underpin these colourless and genderless actors. The representation of the victim as disempowered and emotional seems to resonate with the deeply biased gendered representations of female victims of violent crimes in positivist criminology as well as in mainstream media, strongly criticised by feminist approaches (Carlen, 1985). The offender looks consistent with the model of youth male offender, an immature troublemaker, showing

how RJ continues to neglect the challenges raised within a race equality context (Gavrielides, 2014). The community, lastly, seems shaped around the idea of a seemingly Eurocentric *gemeinschaft*, or traditional family-like network, ignoring the criminogenic potential of social groups, especially if characterised by tight subcultural ties (Polizzi, 2011).

It should be finally noticed that the normative representations of the RJ actors are only partially overlapping with the findings of empirical research on them. The victim's image is in tension with the results of recent empirical analyses, whereby the 'fluidity' of this actor has been persuasively portrayed (Shapland et al., 2006; Shpungin, 2014). The normative model of the offender appears as significantly different (and at times even incompatible) from the empirical accounts of the offender's identities in RJ (Gavrielides, 2015), which show for instance overlaps with the victim position (and not their exclusivity). Similar to the idealised versions of the victim and offender, the legal/policy representation of the community is only partially coinciding with the findings of recent empirical studies on how this actor is actually shaped in RJ practices (e.g. the 'community's fusalional character is empirically controversial) (Rosenblatt, 2015).

It is arguable that the idealised representations of the crime stakeholders do not properly fit with many types of individuals with a stake in a crime. Collective victims of economic crimes, powerful victims, victims with shared responsibility, vulnerable offenders, offenders/victims, deviant communities as well as victims, offenders and communities which do not correspond to gender/racial mainstream assumptions, are types of stakeholders hardly consistent with the ideal images of RJ. Consequently, problems in terms of proposing and practising RJ for these categories of non-ideal stakeholders would likely arise⁴.

6. Conditions of possibility

At this point, it is possible to reconstruct the cultural and socio-political landscape (Foucault, 1970: 168; Gavrielides and Artinopolou, 2013) which has staged the rise of these idealised actors (and, along with other factors, of RJ in general) in the relevant geo-historical context.

The first condition can be considered as the rise of 'victimhood' – or the 'return of the victim' in David Garland's terms (2001: 11) – as academic subject and political resource which plays the role of a discursive pillar of RJ and contributes to shaping its 'ideal victim' (Marshall, 1996: 23). As already mentioned, the direct involvement of crime victims in criminal justice, and the claim of meeting the needs of crime victims, have become key categories in the legal/policy language of RJ. This seems to be a consequence of the consolidation of the popularisation of victim movements' claims (Fry, 1951). In this regard, it is worth recalling that the forerunner of English RJ services was the Victim Support Scheme set up in Bristol in 1974 which informed the creation of the Forum for Initiatives in Reparation and Mediation in 1984 (Liebmann, 2007: 38; Rock, 1990). Such claims have been academically backed up by a new victimology, which advocated for a crucial shift from an old (based on victims' rights) to a new (based on victims'

⁴ This analysis supports, from a different perspective, a range of available studies which have come to similar conclusions (Rosenblatt, 2015; Shpungin, 2014; Van Dijk, 2009).

needs) way of understanding and supporting crime victims and conveyed by extensive media campaigns (Maguire, 1985; Mawby, 1988; Newburn, 1993). Especially the ideal victim's features of 'embodiment' and 'vulnerability' are informed by the diffusion of the 'return of the victim' as academic, political and media phenomenon.

The representation of the 'ideal stakeholders' shows interesting overlapping similarities with the debate on the feminisation of justice which takes place between 1980s and 1990s in English-speaking countries (Daly, 2002; Fergusson and Muncie, 2010; Smart, 1989). This rather conceptually blurred controversy regarding the absence of a different (female) voice (Heidensohn, 1986; Harris, 1987) or the reproduction and maintenance of gendered power relations in criminal justice (Daly, 1989) has contributed to stage the emergence of RJ in general and the representations of victims and offenders in particular. The academic discussions on the contraposition (perhaps sometimes oversimplifying (Daly, 1989)) between a "masculine" (based on rights, fairness, formality and equality) and "feminine" (stressing reformation, co-operation, informality and reparation) ethical reasoning (Gelsthorpe, 2004: 19) have paved the way for a re-thinking of the meanings and effects of "conventional" criminal justice (namely penal retribution). From this viewpoint, restorative and relational justice, or the concept of reintegrative shaming, have often been conceptualised as more "caring" ways of doing justice. This is because they prioritise care and well-being, by focussing on the crucial nature of interpersonal relationships (Fergusson and Muncie, 2010: 96). The distinctive emphasis on taking care of the victim's wellbeing and on emotionally-aware processes as restorative outcomes, echoes the debate on the "feminine" ethical reasoning in justice matters. This does not entail an endorsement of the 'myth' of RJ as a more feminine justice (Daly, 2002). It means instead to point out the overlapping similarity between some terms of that debate with the legal/policy language used to regulate RJ.

A further component of the cultural landscape at stake, is the development of a range of intellectual responses to the 'crimino-legal crisis' (Young, 1996: 3) of late 1980s in the UK. These reactions have been relatively multifaceted, including for instance the development of the 'criminologies of self' and of the 'criminologies of the other' (Garland, 2001: 137). What is more relevant to the emergence of the 'ideal stakeholders' (and of RJ as such) has been another expression of that response: the rise of what might be called 'third way criminologies' which include cultural strands as different as left realism and civic criminologies (Hughes, 2007: 23; Squires, 1997). Left realism's focus on demarginalisation, pre-emptive deterrence and minimal use of prisons, has contributed to elicit a renewed attention toward community-based and multi-agency interventions as well as to recognise the vital role of local co-ordination of crime control strategies (Lea and Young, 1984). Civic criminologies, based on the idea of crime as an effect of the progressive erosion of the moral fabric of local communities (Braithwaite, 1989; Braithwaite, 2000; Braithwaite, 2002; Braithwaite and Pettit, 1990; Duff, 1992; Duff, 2000; Dzur, 2003), have consistently advocated for civic participation in dealing with crime control. The concept of 'community' here connects the notion of 'civil society' offered by the left and the idea promoted by contemporary civic republicanism of community as an instrument to limit liberal individualism (Dzur, 2003). Victims and offenders are thought of as being enmeshed in social interdependencies whose symbolic significance takes priority over individual interests (Braithwaite, 1989: 100). The offender, in particular, is conceptualised

as breaching the interpersonal trust which ties him or her together with the victim within a shared community. This 'third way' episteme does not propose psychosocial corrections or harsh retribution, but community-based moralising and responsabilising interventions (Hoyle and Noguera, 2008), often led by laypeople (e.g. RJ voluntary practitioners from the community).

The community safety program has also likely informed the normative representation of the 'ideal stakeholders'. This discourse in the UK has been an attempt to go beyond the social and situational crime prevention (Lacey and Zedner, 1995). While crime prevention is usually understood as a specific police responsibility, community safety instead refers to greater participation from the wider community in preventing crime (Morgan, 1991). The focus is posited on the promotion of partnerships between the public, private and voluntary sectors to identify and implement community-based measures against crime (Hughes, 2007: 73). The community safety discourses encourages people, communities and organisations to partake in situational and social crime prevention activities, as well as to reduce certain types of crime and the fear of crime (Morgan, 1991). This approach was absorbed by New Labour's Crime and Disorder programme even if with tensions and inconsistencies (Crawford, 2004; Gilling, 2007). Promoting the idea of citizens as 'partners against crime' and that the state agencies 'must devolve power and share the work of social [and crime] control with local organizations and communities' (Garland, 2001: 205) is critical for the development of ideas underpinning RJ and especially for the concept of 'restoration' through active participation. The ideological support for this approach was, at least partially, the second wave of communitarianism during the 90s in the English-speaking world (Hoyle and Cunneen, 2010: 34), and its inclusion in New Labour's criminal policy repertoire. This response consists of investing in the community as a moral infrastructure of human character (Etzioni, 1993). This moral, political and sociological interpretation of contemporary society (originally developed in the USA (Etzioni, 1988; Etzioni, 1993; Etzioni, 2001)) penetrates into the UK politics of law, crime and disorder in the 90's, inspiring community-based interventions on anti-social behaviours for instance and more broadly paving the way for the investment (symbolic and material) in the community as a site for the fight against crime.

A final (and less recent) underpinning of an 'ideal stakeholders', is the emergence during the 1980s of the wide-ranging and fluid discourse of 'civilising' criminal justice (Bottoms, 2003: 84). This discourse contains at least two different but interlinked cultural components: the advocacy for restitution, compensation and mediation in criminal matters (Harding, 1982; Wright, 1982; Wright and Galaway, 1989) and the growing interest around the abolitionist stance and its implications for dispute settlement (Bianchi, 1994; Christie, 1977; Hulsman, 1986). In this articulated formation, crimes are thought of as problematic situations or conflicts to be mediated and handled by involving the direct stakeholders. The offender and the victim, through 'civilised' and community-based measures, can positively manage the human consequences of criminal acts, regaining control over their lives.

Finally, it should be noticed that to overemphasise recent underpinnings of the 'ideal stakeholders' (and of RJ in general), might be theoretically and empirically inadequate. This is because "past" intellectual models, are often ingrained in criminal policy, practice and culture.

The focus on reintegration into the community, for instance, even though uniquely conceptualised in RJ, still resonates with the correctionalist idea of rehabilitation. Additionally, the idea of criminal justice as requiring participation and deliberation by laypeople has deep (and well-known) historic roots in England and Wales (Crawford, 2004). Finally, the claims of safeguarding the offender's rights are clearly informed by the due process core of the “conventional” criminal justice discourse.

6.1. Dynamic relationships

The cultural context within which the ‘ideal stakeholders’ arise is stratified and multifaceted. The relationships among the different components outlined above, are multiple and intricate: competition, conflict, overlap, intersection. In order to draw the dynamic landscape within which the ‘ideal stakeholders’ make sense, it is necessary, as Foucault claims, to take two further steps integral to the archaeological analysis. The first is to consider the ‘group of relations’ (Foucault, 1972: 44) between the discourses which make possible the ‘ideal stakeholders’. The second step is then to analyse the ‘authorities of delimitation’ (Foucault, 1972: 44), i.e. the subjects which contribute to produce those discourses, and to name and define the idealised key actors of RJ (Maglione, 2013). As far as the groups of relations are concerned, it should be noticed how victimhood discourses partially overlap with the claims of the ‘civilisation’ movement, insofar as the latter advocates for restitution and compensation to the victim. At the same time, the ‘civilisation’ thesis also promotes mediation as a community-based approach to crimes, which has often been looked with suspicion by victims' movements due to the creation of a problematic symmetry between victim and offender. Additionally, the focus on victims' needs is in (partial) tension with the unalienable rights of the offender, conceptualised (and safeguarded) in the “conventional” criminal justice discourse. The relationship between victimhood discourses and the ‘feminisation of justice’ debate is instead of reciprocal integration. The concept of victims' active participation in justice processes, and the necessity of an emotionally intelligent and caring approach to both victims and offenders, are recurrent points in both those two discourses. The second issue to address here, is “who” has the authority to delimit, designate, name, and define the ‘ideal stakeholders’ in RJ. Who has the ‘right to speak’ about the victim, offender and community in RJ? These authorities are human groups which are able to produce an expert knowledge of RJ, organising the field in which the legitimacy or not of a particular account of RJ appears and is contested. From this perspective, the crime victims' movement is one of the strongest voices in the construction of the ‘ideal victim’. Similarly, religious organisations (especially Quakers, Mennonites) have had a relevant role in the creation of the authoritative conceptualisations of RJ in England and Wales (Marshall, 1999: 9). A specific academic category – criminologists – has played a role in the setup and development of those narratives. The criminologists' ‘institutional site’ of speaking is characterised by one main aspect: their expert position with respect to both the victim and the offender. It should be noticed that criminologists – along with some criminal justice actors (probation officers, sometimes judges) – have also been the main subjects shaping the offender's representation in RJ. A subject which is instead missing, among those who have produced the knowledge on RJ, is an offender's' movement. Lastly,

New Labour's endeavour to “break” with conservative criminal policies has been an important factor in facilitating the emergence of the idealised versions of the community as well as informing the active role of victims and offenders in RJ. The epistemic authority of the main accounts on the ‘ideal stakeholders’ in RJ, expresses itself in defining what can be talked about, who can speak and how. Its conditions are specific discourses, cultural constructs, which have gradually made those accounts acceptable as a part of our collective imaginary of dealing with crimes.

In sum, these discourses compose the pre-existent environment within which the ‘ideal stakeholders’ of RJ have slowly emerged. These ideal models develop under specific discursive conditions, being therefore defined not by their internal nature, but by the overlap, intersection and conflict between those cultural constructs (Maglione, 2013). Clearly, other global, local, social and political factors have also featured within that background, but it falls beyond this paper's scope to investigate all of them.

7. Conclusions

The development of RJ depends (also) on policy and legal frameworks put in place by relevant authorities. The choices of law- and policy-makers might fundamentally ‘impact how we think about and produce’ (Coyle, 2013: xix) RJ. Additionally, if we leave unchallenged the assumptions, images and representations that populate legal and policy documents, we run the risk of handing to a few actors the power to shape RJ, in ways which might drastically differ from many of the commitments and values which have characterised (but lately silenced) the RJ movement since its inception (e.g. inclusiveness, informality, grassroots nature, challenge to legal definitions, etc.) (Coyle, 2013: xix). From this perspective, this paper reconstructs and discusses the idealised images of the key actors of RJ as well as their historical context, by identifying the conceptual reservoirs upon which RJ has been built. This study argues that the legal/policy representations of the RJ stakeholders are “rooted” in a relatively specific socio-political and cultural context, characterised by new communitarian claims, the ‘return of the victim’, the investment in community as a site of crime control and as a partner for responding to anti-social behaviours and crimes. Also, this work supports the findings of empirical studies which have persuasively pointed out the differences between the theory of RJ and its practical implementation (Shapland et al., 2006; Shpungin, 2014). A range of implications can be briefly sketched out from the present study. The ‘ideal stakeholders’ are likely to be used as models to orientate RJ practitioners' work. This will end up shaping their repertoire of techniques and actions, the procedures to assess the quality of their work as well as their expectations towards the actual participants. Thus, by directing practitioners' work, they will likewise affect participants' experiences, in terms of exerting pressure toward adjusting to the ideal (which might in turn elicit forms of resistance). A final implication concerns the possibility to challenge the theoretical underpinnings of the ‘ideal stakeholders’. Is it possible/desirable to imagine different ‘ideal’ victims, offenders and communities? Which could/should be the model to propose to policymakers and legislators when drafting laws on RJ? Based on which values and commitments? These are all questions that are in need of further empirical and theoretical

research and even more so of normative reflection, all of which may benefit from the investigation set out in these pages.

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