RECONSTRUCTING RESTORATIVE JUSTICE PHILOSOPHY

Reconstructing Restorative Justice Philosophy

Edited by

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and

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ASHGATE

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Editors' Note and Acknowledgements

The editing of a book can be a very lonely process. However, this was not the case for this volume, which was put together precisely because we were able to build on new and existing friendships. In fact, our own friendship was cemented while the foundations of Restorative Justice for All, the first international institute on restorative justice were laid.

We originally had no plans to write this book, as it emerged from the discussions that took place at the First International Symposium of Restorative Justice, which was held in the small island of Skopelos, Greece in June 2012. The book's conceptualisation, the discussions that led to its writing through the holding of a Greek style ancient Symposium, its actual writing, editing and publication were the outcomes of many challenges that left all our fellow travellers transformed. Thus we felt that we had to capture our reflections and experiences.

The journey and thus the book would not have been possible without the support and love that we received from Nikos Kritsilis. He kept us focused and organised while he also offered free accommodation for some delegates in his resort 'Melody".

Many thanks also go to the Mayor of Skopelos, George Michelis, for sponsoring the opening ceremony as well as his special advisor Mrs. Rekka. We are grateful to the Greek Ministry of Culture and the Head of the Department of Archaeology in Thessaly, Volos, Mrs. Ingesiloglou, for entrusting us with the ancient ground of Asklepieion, where we held the closing Symposium ceremony. Thanks also go to Ifigeneia Kovani, the lyric singer, who sang the Orphic Hymns in closing the Symposium.

With no funding and only with a dream to put together something fresh and outside of the box and closed conference venues, we held our sessions on the top of the hills, on beaches, monasteries and ancient grounds. This would not have been possible without the generous sponsorship of Skopelos Holidays spa hotel, the Mojito bar and Caryatids restaurant, Kastani beach bar and the Union of hotel owners. Thanks also go to 'Dolphins of Skopelos' for sponsoring the Mamma Mia's excursions, the Restaurants 'Mousses', 'Gialos, 'kymata' and Nastas for the special dinner prices. We are also grateful to the artists Spyros and Vasso Kosmas for giving us their home, the Minoan Villa, where a special meeting took place. Ms. Kosma also painted the cover image of this book titled 'Chrysalis: the awakening of thought'. We are also thankful to Photogramma for the printing of the Symposium material, Spitalia, Katina and Aeolos hotel for offering some free accommodation to the delegates.

Special thanks go to two young and promising researchers, Ero Michael and Andriana Ntziadima. Ero acted as the Secretariat for the Symposium while Andriana helped with the Index of the book and some of its administration. We are also grateful to Jonathan O' Connor for editing some of the chapters and for his patience while this book was being put together. We are grateful to our publisher, Ashgate, Alison Kirk and her team, for their trust and professionalism. We thought that it was important that we work with a publisher who not only has a strong publishing record in our field, but who also shares our values.

Many thanks to the authors and those who attended the Symposium. They believed in our vision and without any financial support travelled long distances to spend over a week with us, their families and friends. We are also grateful to the authors who did not take part in the Symposium and for responding to our call diligently and professionally.

Last but not least, many thanks should go to our families, Sotiris and Georgia Kritsilis, Sophia, Pavlos and Angela Hadjipavlou, and our many friends and colleagues who put up with our stress, moaning and excitement.

Our ambition is that the book opens up a debate on new methods of writing on restorative justice. Creative and philosophical thinking that takes bold steps in moving outside of empirical evidence from the bottom up is still rare. Even less common are authors and researchers leaving questions unanswered. Much has been written on research trying to address questions of effectiveness and implementation. How often do we take the time to just ask and leave the reader to think freely and creatively?

The writing and editing of this book took just less than a year. At the time of writing this Note, we are back in the island of Skopelos. As we watch the shadows of last year, we reflect on what is to follow. The circle is now complete.

Professors Theo Gavrielides and Vasso Artinopoulou
Skopelos, Greece August 2013

Foreword

John Braithwaite

No one will be able to read this book without wishing they were there for the journey that gave it birth. Rich outcomes are enabled by richness of process. This book succeeds in drawing us into the journey of its travellers. The authors gathered at the Greek island of Skopelos to engage with a Greek Symposium method. The Symposium ethos is to discover deep relationships through love for thinking and the beauty of the mind. As Theo Gavrielides explains in Chapter 1, restorative justice is also an ethos, 'a way of living ... a new approach to life'. A unity of method and subject is evocative in this book, as is its contestation (as in the Maglione chapter). How can we but be drawn to a process that takes the participants from one location to another looking out on the Aegean Sea and the unspoilt natural beauty of Skopelos, from monastery to monastery, to the patio of a Minoan villa, complete with serene Orphic Hymns?

There are many dimensions to Howard Zehr's greatness as an inspiration for a restorative ethos. One of them is the way he urges us to understand our own biographies, how the way we think is shaped by our own culture, by the ways the natural beauty of our own country touches our souls and gifts us a love of place and meaning through belongingness. Brenda Morrison's chapter is about Zehr's idea of a journey of belonging. It is also true that we all become jaded by the daily struggles in our own land. And so we can be renewed by openness to be touched by the beauty of another, by the ideas of another culture, by wisdom preserved from their ancients. The journey of these pages may be no substitute for the relational engagement of being at Skopelos. Yet it is an inviting book that embraces those who imaginatively embark on the beautiful journey of the authors. Good writing also teaches us the art of love, the art of beauty. This is by welcoming us to experience wholeness through transformatively different eyes from our own.

The journey of the book traverses a great deal in an intellectually exciting way: Aristotle (with Artinopoulou and Gavrielides, Oudshoorn), Foucault (Maglione), legal pluralism and conflict of laws (Oudshoorn), paradoxes of power (Schiff), the philosophy of rights (Mackay, Sharpe, Morrison), of universal peace (Hadjipavlou), of co-opting the co-opters from below (Schiff), peacemaking circles (Zellerer), relationality and repair (Sharpe, Morrison), moral and spiritual injury (Mackay), social identity and interaction ritual theory (Hadjipavlou, Morrison), conflict resolution theory with Aboriginal peoples and beyond (Oudshoorn, Zellerer, Hadjipavlou, Morrison), teachings on how to live (Johnstone), restorative pain (Gavrielides), wholeness (Zellerer), among other themes. Prepare for a lot

of lens shuffling! Experiential engagement can also help us to escape the trap Gerry Johnstone warns of in his chapter, narrowing our vision to conferencing as a dominant technology and losing sight of the teachings of restorative justice. This book is a grand exercise in critical retrieval, revival, renewal of those teachings, ancient and recent.

There is a great, enduring core of restorative justice teachings that has an increasingly global quality about it. Equally, each local and indigenous version of it has rich particularity that we must continue to learn from and respect by describing it with the name its indigenous adherents use rather than calling it restorative justice. There is much in common between the holism of *shalom* in Christianity and Judaism that integrates justice, peace and relational reconciliation and *salam* that does this in Islam. Islam incorporates the deeper sense of the right of a victim family to forgive even murder if it is the family's wish to leave any punishment to Allah (as in ancient Greece). Pluralizing the religious foundations of rights is one reason why there is a lot of appeal in the more general proposal in Susan Sharpe's chapter to revise rights jurisprudence to include a right to relational repair. The right to relational repair would not be a positive right that the state is obliged to provide but (as in Islam) a negative right that no state should be able to preclude.

A rights discourse that embraces Islam and *ubuntu* (Schoeman's chapter) can be part of a remedy to the feelings of exclusion of the Muslim world and of Africa from the power to infuse meaning into global discourses that Muslims and Africans sometimes see as Christian and Western. All authors in this volume emphasize the imperative to deal with power structures, that silence women, Aboriginal peoples, Africa, that hinder the implementation of restorative justice globally and locally. Along this journey, Maria Hadjipavlou's chapter reminds us that we must get better at acknowledging other traditions, that the distinction between *power over* and *power with* has roots in feminist theory, that leading thinkers of conflict resolution theory such as John Burton, Elise Boulding and Johan Galtung were diagnosing thoughtful strategies for countering power imbalance from the 1960s and earlier.

Shalom and *salam* share much with the holism of *ubuntu*, as evocatively explained in the Marelize Schoeman chapter. Yet *ubuntu* may be a richer communitarian vein for teachings about the opportunity crime creates for building social solidarity across a whole society than we find in western restorative justice writing. It embraces diverse spiritualities in a kind of village humanistic republicanism. I like very much Schoeman's citation of the Venda saying, '*Muthu u bebelwa munwe*' translated as a person is born for the other. It will also be an interesting journey for readers to learn of the strands shared between this African philosophy and Aristotle's Politics (328 BC). As the Epilogue sums up, the connections between Aristotle's theory on justice and restorative justice as a form of social justice recur throughout the volume. The sub-Saharan linguistic preference for replacing *ethics* and *morality* with *character* – something learnt through practical engagement with community struggles – also turns out in this book to have more in common with ancient Aristotelian thought than one might have supposed.

Storytelling becomes more fundamental to character formation than laws under the philosophy of *ubuntu*. Most Westerners would say there is no useful translation of this to urban western criminal justice. Yet perhaps my favourite insight of Western criminology is that you cannot change police culture by changing police rulebooks which police do not read (any more than we academics read university rulebooks). Police culture is a storybook, not a rulebook. To change police culture, you must change the stories police share in the lunch room and out in the patrol car. South African criminologist Clifford Shearing is one of the authors of this insight, with Canadian Richard Ericson. There is nothing so practical for a western criminologist as a good African philosophy.

It shocks me that it is so recent that I have learnt that *ubuntu* is, and has become, a formidably pan-African philosophical tradition, rather than just a Zulu and Xhosa tradition, as I had understood it in the past. More dominant in Western high theory is the Durkheimian argument that formal hard treatment creates more social solidarity than division. Yet, as Brenda Morrison's chapter points out, *ubuntu* has had an influence on the healing edge holistic restorative justice of Nova Scotia. This has been mediated for example through the relational theory of justice of Nova Scotian Jennifer Llewellan.

Just as many African societies have in *ubuntu* a richer philosophical foundation for thinking about social solidarity, so many Asian societies have more philosophically nuanced traditions for thinking about the role of shame in holistic criminal justice than we see in Western teachings. The West should be more open than it is to allowing itself to be enriched by those philosophical traditions, even more ancient than the rich ancient Greek thinking on shame (as in Plato).

This fine collection helps us renew and reconstruct the core of restorative justice teachings at their holistic philosophical foundations while also helping us to look at them with wider historical and cultural lenses. As the Epilogue reminds us, restorative justice lives and evolves in the hands of this generation of travellers on our planet. Our obligation, the Epilogue sums up, is not to be the kind of philosophers whose aim is to define restorative justice more carefully, because if we 'define water too narrowly', we prevent people from seeing its other properties. The practical journey for our generation is therefore to explore the character of restorative justice, through understanding its values and practices (and its internal tensions, as in Maglione). We serve the future better, our editors conclude, by being more interested in 'What happened?' than in 'What works?'. Congratulations to all the authors for sharing the journey back to Greece through their eyes. In each case we get an enriching reflection on the interdisciplinary character of restorative justice. Particular praise must go to Theo Gavrielides and Vasso Artinopoulou for their vision and entrepreneurship in assembling these wise travellers and pointing their compass for the journey.

John Braithwaite
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Preface

Howard Zehr

Depending on how one constructs the history of restorative justice – and like any story, various narratives are possible – the field has had more than three decades of development and application. From a few cautious local experiments for responding to crime it has expanded to a worldwide phenomenon with applications in many arenas beyond criminal justice. Whether all efforts being termed restorative justice are authentically that is another question – and one of the reasons a re-look at the underlying philosophy (or philosophies) of restorative justice dating back as far as Classical Athens is so timely.

Early experiments in victim–offender reconciliation in Canada and the United States during the 1970s are often identified as the beginning of the field, although the term restorative justice was not given to this work until the mid–1980s. Indeed, the field can be said to have emerged from practice more than theory. As one of the early articulators of the restorative justice philosophy, I often think of it as emerging from a desire to conceptualize and communicate what we were doing in practice.

Practice preceded theory or philosophy but of course those involved in the early experiments held a variety of ideological and philosophical commitments that shaped their efforts. In addition to a critical awareness of the limits of the criminal justice approach, these included a commitment to engaging the community, a belief in the power of dialogue and mediation, and a relational concept of human reality. Also included was an intuition about the power and importance of empathy, an intuition that is now being substantiated by neuroscience. For some of the early pioneers a Christian theology of peace and justice also provided an essential philosophical framework.

When telling the story of restorative justice, however, it is important to acknowledge that its roots actually extend much further into the past than the early experiments in North America, New Zealand, Australia and Europe. Indeed, many indigenous groups have traditions with restorative elements and these are deeply enmeshed in their worldviews. Their articulation and philosophical framing of these practices is very different to the way those of European ancestry articulate restorative justice. The members of the Navajo Nation in North America, for example, have a tradition that many view as essentially restorative but, given their long history of it, understandably prefer to use their own terminology. The reconstruction of restorative justice in the following pages is largely the reconstruction of the Western take on restorative justice with some influence

from these traditions. Part III of the book, Back to Basics for Restorative Justice, then helps to put this reconstruction in the context of Aboriginal peoples, African traditions of justice and Classical Greece.

As a result of how and where restorative justice emerged in the Western world, the prevailing philosophy (or maybe it is more accurate to say philosophies) has several characteristics that must be considered in a re-examination:

- Having been strongly shaped by practice, its theoretical underpinnings may be somewhat underdeveloped or lack coherence.
- Similarly, the field has developed somewhat eclectically, drawing on various traditions and approaches. This diversity is a source of strength but also may mitigate against coherence.
- Many of the most prominent articulators of restorative justice principles and philosophy have been men of European ancestry. As I often reiterate to my students and audiences, we are shaped by our biographies; no matter how aware of this I try to be, my history, my culture, my gender, my race and ethnicity shape how I think and what I do, and that is true for all of us. Consequently, there are inevitable cultural, gender and other biases in the way restorative justice is articulated and practised.
- Restorative justice philosophy developed as a mid-level theory. It was designed to address a variety of individual and group experiences of harm. However, many note that it has not adequately incorporated underlying issues of social justice, including racism and classism.
- Over the past three decades, I would argue, the dominant philosophy of restorative justice has often been tweaked but has not been fundamentally reoriented. This may point to the strength and resonance of the philosophy but it also warrants a fundamental re-examination.

A critical examination of restorative justice principles and philosophy is especially important because, arguably, the philosophy is more fundamental than specific practices for two reasons. A principled or philosophic approach allows restorative justice to be applied in numerous areas of work and life; indeed, many claim that they view it as a way of life. Second, as a philosophy, restorative justice provides an essential framework or yardstick by which to evaluate practices. This is important as the processes of co-optation and diversion that inevitably accompany social innovation increasingly impact restorative practices.

It is appropriate that this reconstruction of restorative justice is linked with the field of human rights. I have often argued that contemporary restorative justice can be seen as the best of many indigenous traditions combined with modern human sensibilities. But how do these human rights issues get articulated and put into practice in a restorative justice environment and philosophy?

And what does restorative justice have to say to human rights advocacy? My graduate students who come with backgrounds in human rights work often experience a sense of dissonance as they learn about restorative justice. They

recognize that so much of their human rights work was done in the punitive deterrence framework of the Western legal system, often combined with a commitment to public shaming. How does one incorporate a restorative justice perspective into this work? How would their work change and how do the two approaches mesh?

Fortunately, the authors in this collection address many of the issues identified above. Then, in their Epilogue – which arguably is not so much an epilogue as a philosophical reflection and synthesis pointing a way forward – editors Gavrielides and Artinopoulou propose a reconstructed philosophy of restorative justice that is much more expansive and inclusive, much less either/or, than the usual approach. There is a place for both structured and unstructured restorative justice, for both law and values, for state-sponsored, community-based, inner personal and interpersonal restorative justice. However, for the restorative justice movement to progress, they argue, first we must reconcile the internal tensions identified by the authors in this volume: conceptual, philosophical, political, personal. Their proposed reconstructed philosophy helps point a direction but, in addition, they suggest some rules for moving in this direction, asking those of us working in and advocating for restorative justice to redirect some of our energies.

The methodology the editors adopted for this volume is significant. Instead of limiting contributions to empirical analysis, they encouraged authors to write freely from a variety of sources and perspectives. To support this approach, the editors encouraged the development of relationships between the authors by bringing them together in an Ancient Greek-style Symposium. This value-based method of reflection and philosophizing on restorative justice is worth exploring further in a world where hard data and statistical information has become predominant, overshadowing the huge potential of deep and personal stories shared through dialogue as well as value- and arts-based approaches to research.

As the library recall notice says, this book is long overdue.

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Chapter 4

Problematizing Restorative Justice:
A Foucauldian Perspective

Giuseppe Maglione

Introduction

Over the past thirty years, restorative justice (RJ) has slowly emerged worldwide as a popular theory, a relentlessly growing field of research able to inspire concrete actions within (or outside) many criminal justice systems (Daly and Imarrigeon, 1998; Miers, 2001). Taking a closer look at the extensive scholarship focusing on RJ, two overall features can be emphasized. First, it is easy to detect the presence of multiple, shifting, conflicting discourses, even contradictory in nature, regarding its historical roots or main theoretical aspects (Zernova, 2007). Second, a careful analysis can equally easily identify several 'authoritative discourses' which act as shared truths on the historical emergence and theoretical justification of RJ (Daly, 2002). This work is a critical and historical contextualization of these main discourses on RJ from a perspective drawn upon the work of Michel Foucault, with a particular interest in the discursive objects which constitute the authoritative accounts on RJ, their social and cultural embeddeness. How are the vocabularies composed that make possible these authoritative discourses? Where are their historical roots? How have they become authoritative from an epistemic point of view (as in able to define the sayable and thinkable on RJ)? The main goal of this chapter is to address these questions, working out a critical and historical reflection. Foucault's methodological reservoir is conceived as a range of insights to be used, re-elaborated and overcome. As far as the specific research tools are concerned, I argue for a specific interpretation of the foucauldian historical analysis. This stance entails the functional integration (and then the overcoming) of archeological and genealogical approaches in order to diagnose the contingencies of 'one' present. According to this perspective there is no space for the search for static origins or causal explanation, or for the use of universals a priori grids of intelligibility. The goal is not to create *a grand récit*, but only to map out the life course of those discourses and their authority, from singular contingencies to authoritative, taken for granted, narratives on the emergence and justification of RJ.

Archaeology and Genealogy

Foucault's historical project can be described as an attempt to use the distant past in order to gain access to our present, the beliefs, practices and institutions which have reached the state of obvious truths. From this perspective the past is a medium for access to the present rather than a mere object of research or end point, while history is the historicization of our truths rather than the recording activity of a progressive and continuous flow of events. The secondary literature on Foucault used to distinguish three phases in his scholarship: archaeology, genealogy and ethics (Davidson, 1986). I will dwell briefly on the first two, by virtue of their direct methodological relevancy to my study.

Foucauldian archaeology, as a 'way of speaking' about history, analyzes the production of discourse in terms of the conditions for its possibility, excluding the primacy of the consciousness of individual subjects as a precondition of the discourse-making process. The general premise of this approach is that systems of thought and knowledge are governed by rules that operate beneath the consciousness of individual subjects and define a system of conceptual possibilities that determines the boundaries of thought in a given domain and period (Howarth, 2002). In the archaeology the first and main goal is the identification of the *discursive objects* working on their *archive*. In Foucault's framework an archive is composed of multiple and varying discourses, it is 'the law of what can be said, the system that governs the appearance of statements as unique events' (Foucault, 1972, p. 129). The archive then, is not just a passive collection of records from the past, it is an active and controlling system of enunciation. Archeological analysis, starting from the identification of the archive, seeks to describe the history of a specific discourse, the set of 'things said' in all its interrelations and transformations. This analysis forsakes preconceptions about historical unity or continuity, describing instead the processes of discourse in all their disruptions, thresholds, differences, and complex varieties. What must then be detected are the dynamics of formation, transformation and correlation of all the individual components of a discourse (objects, enunciative modalities, concepts and theoretical options), which control the fact that some things can be talked about and the prohibitions about speaking of other things (Foucault, 1991, p. 54). Examples of archaeology are *Madness and Civilization* (Foucault, 1965), which examines the cultural, legal, political and medical construction of discourse on madness in Europe, from the Middle Ages to the end of the eighteenth century. *The Birth of the Clinic* (Foucault, 1973) is a study of the emergence of the *medical gaze* related to epistemic shifts at the end of the eighteenth century. Lastly, in *The Order of Things* (1970), Foucault scrutinizes the underlying conditions of truth of specific scientific discourses that constituted what was acceptable, in an historical dimension.

Genealogy, like archeology, is a way of writing the history of certain objects. Its function lies in describing social phenomena detecting patterns between relations of power on the one hand, and norms, facts and systems of belief and knowledge on the other (Saar, 2002, pp. 231–33). The critical dimension of this

perspective rests on both its structural self-reflexivity and on its tension toward the understanding of the present, and expresses itself in deciphering those patterns, with a defamiliarizing attitude (Saar, 2002, p. 235). The overall aim of the genealogist is the historicization of truths, to explore how it is that some truths and knowledge have come to be accepted as unproblematic (Bailey, 1993, p. 120). Rather than seeking the *telos* of a particular concept, genealogy records the singularity of events outside of any finality, isolating the different scenes where they engage in different roles. In this framework 'discontinuity' becomes a category of historical analysis as well as the object of it, from 'the obstacle to the work itself' (Foucault, 1972, p. 9). In other words, rather than being reduced or manipulated to form a linear progression, discontinuities in the history of any phenomenon should be focused upon and explored. Foucault, in fact, believes that 'continuous' histories falsely represent the past as ascribing to a logical flow or pattern (Foucault, 1991, p. 2). He thinks that such histories of continuity obscure the material complexity of events, creating neat narratives from inherently chaotic structures. Another fundamental concept in the foucauldian genealogy is the theme of power. For Foucault, power simply 'produces reality; it produces domains of objects and rituals of truth' (Foucault, 1977, p. 194). Power operates in and through discourses (Gubrium and Holstein, 2000, p. 494), producing what is taken as knowledge or considered truth. The relationship of power and knowledge is neither unidirectional nor exterior. Instead they stand in an interior and reciprocal productivity: 'no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations' (Foucault, 1977, p. 27). The landmark of Foucault's genealogy, therefore, is the analysis of the mutual productivity of power and knowledge, centered on the everyday, mundane exercise of power rather than grand, all-encompassing explanatory models. This perspective is deployed in well-known books such as *Discipline and Punish* (Foucault, 1977) regarding the history of punishment and the disciplinary society or the *History of Sexuality I* (Foucault, 1978), a genealogy of the 'repressive hypothesis' in the explanation of the relationships between sexuality and bourgeois society.

Problematization: Combining Archaeology and Genealogy

In the mainstream literature there has been much debate about the relationship between Foucault's concepts of archaeology and genealogy (Scheurich and McKenzie, 2005). It has traditionally been said that Foucault's archaeological and genealogical periods are radically different from each other. Just as it is commonplace to distinguish 'between Picasso's Blue period and his Pink period' (Baert, 1998, p. 122), so there is Foucault's archaeology and his genealogy (Bevir, 1999, p. 347). On the other hand, this opinion is not the only interpretative option available and subscribed to by scholars. Some authors, in fact, have argued that archaeology, as Foucault's method of analyzing documents, is indissolubly

connected to genealogy, intended as a series of methodological prescriptions that guide the writing of history using the results of archaeology (Dean, 1994, p. 33).

In this work archaeology and genealogy are two research devices combined under the common project of the *problematization* of RJ (Bacchi, 2012). Problematization, as a concept elaborated by Foucault, is an overall methodological perspective which focuses on 'the set of discursive or non-discursive practices that makes something enter into the play of the true and false, and constitutes it as an object for thought' (Foucault, 1989, p. 296). Here discourse is a primary medium of human actions embedded in broader social contexts. Discourse is institutionally situated, constructed (by people, institutions, etc.) and constructive (of people's lived experiences, possibilities, ideas, theories and taken for granted truths). In this view, the legacy of the archaeology is represented by the structural technique of focusing on both discourse and speaker as constructed objects as a necessary step to free ourselves from taking the discourses and practices of this society as simply expressing the way things *are* (Dreyfus and Rabinow, 1983, p. XXVII). The identification of discursive objects enables the raising of genealogical questions: how are these discourses used? What role do they play in society? In the problematization, genealogy moves away from archaeology, intended as an attempt to chart the movement of particular discursive objects in order to unearth the conditions of our present realities. In this way it is possible to diagnose and criticize 'strong narratives', providing a counter-memory that helps to recreate the historical and practical conditions of their present existence (Foucault, 1986, p. 53), opening up new possibilities of understanding and action. In order to operationalize this methodological perspective, I will proceed as follows. First, try to identify and unpack the structure of the authoritative discourses which make up RJ (Tamboukou and Ball, 2003). Then draw up their 'surfaces of emergence', showing the relationship between the authoritative discourses and three main sociocultural constructs, identifying and describing them. In this fashion it is possible to chart the discursive and non-discursive dynamics in the production of authoritative accounts of RJ. Third, map out the common aspects, inner tensions and historical transformations within and between the authoritative explanations and rationalizations of RJ. Lastly, sketch out some conclusive implications of this analytic approach and its findings, raising new questions for RJ theory and calling for new models of explanation and justification.

Two methodological caveats are here necessary. First, the intention is to work out, revising (and maybe distorting) specific foucauldian research devices in order to open up different possibilities of thinking and to generate new kinds of questions on RJ. This means simplifying or reconsidering many aspects of the foucauldian legacy, without worrying about being faithful or unfaithful to the textbook version of Foucault's meta-theory. The second caveat concerns the acknowledgement of some intellectual debts. Kevin Minor and J.T. Morrison (1996) for instance, focusing on RJ, have taken into account the theoretical viewpoint expressed by Michel Foucault. George Pavlich's (1996) *Justice Fragmented: Mediating community disputes under postmodern conditions*, is a genealogical analysis of

community mediation in Canada, whereas his *Governing Paradoxes of Restorative Justice* (2005) applies Foucault's concept of governmentality to RJ. However, the contributions made by Kelly Richards (2005, 2009, 2011) are, in my opinion, the most interesting example of a foucauldian study of RJ. In my work I share with Richards both the methodological premises and the main goal. On the other hand, my application of the foucauldian perspective is quite different to Richards' The complementarity of archaeology and genealogy from the problematization's perspective, implies a specific kind of discursive analysis (very different from that one carried out by Richards) as a necessary preliminary step with respect to the genealogical enquiry. This main methodological divergence leads to different conclusions from Richards'.

Authoritative Discourses

The authoritative discourses that act as the main historical explanations and theoretical justifications for RJ are the material – *the archive* (Foucault, 1972, p. 145) – upon which I draw the problematization of RJ. By authoritative discourses I mean the scholarly and advocacy writings published since the late 1970s, which have achieved the status of landmark contributions to the worldwide spread of RJ theory and practice (Braithwaite, 1999; Sylvester, 2003). These discourses are usually the product of long-lasting action research related to the reform of criminal justice. They have blossomed in the attempt to rationalize some innovative criminal justice practices (such as victim–offender mediation) characterized by their borderline positions in the context of well-known strategies for dealing with crime and its aftermath. But notice that they are far from being a cohesive and consistent range of opinions; they should be thought of instead as a cultural construct, a living complex of founding myths and theoretical investigations that often conflict in their approach and outcomes. The relevance of analyzing this authoritative dimension of RJ is related to the fact that they have inspired the mindset of scholars, advocates and practitioners, defining the field of what can be said, discussed, evaluated and thought about RJ. They compound the normative backbone of the RJ world. The problem here is understanding its discursive structure and detecting the contextual factors that have contributed in creating the authority of those discourses.

Authoritative Explanations

One of the most rooted explanations of RJ's emergence is that it represents a response to the shortcomings (or even to the overall failure) of criminal justice systems in contemporary Western countries. As the British RJ activist Tony Marshall emphasizes (1995, p. 230) '[RJ] is a practice that contains the seeds for solving a new problem – the inadequacy of the criminal justice system itself, as it lurches from crisis to crisis, based on a primitive philosophy of naked revenge'.

In the same way, one of the forefathers of the RJ movement, Howard Zehr, claims that 'We know that the system we call "criminal justice" does not work. … We have known that for many years, and have tried many reforms, and they have not worked either' (1985, p. 1–2). Zehr is echoed by Robert Cario, well-known advocate of RJ in France, who states: 'The crisis of the Penal State is evident. The state has troubles maintaining its jealous monopoly of the repression' (2005, p. 11). The breakdown of the criminal justice system seems a tragic, objective fact. Among advocates of RJ we see widespread agreement that current systems of criminal justice are unacceptable on a theoretical level and, from an empirical point of view, ineffectual. Common criticisms include the system's inability to prevent crime, rehabilitate offenders and assist victims. Nevertheless, alternative or more moderate views are present in RJ literature. Gerry Johnstone (2003, p. 5.) for instance, claims that RJ advocates 'present us with a one-sided picture of the values that underpin conventional criminal justice'. He also argues that, despite its shortcomings, the contemporary approach to criminal justice does perform some essential functions with reasonable success. In much of the RJ literature, however, it is taken for granted that the emergence of RJ is a natural consequence of the failure of the criminal justice system (Cohen, 2001, p. 209).

Another typical historical explication of the emergence of RJ, shared by a fair number of scholars and advocates, is that RJ has emerged due to the development of a new awareness of the victims of crime translated into a worldwide victims' rights movement (Shapland, Wilmore and Duff, 1985, p. 2). In this context, starting in the 1980s, RJ has been one of the new ways of dealing with the needs of crime victims. This interpretation is usually complementary to the failure of criminal justice and offers a solid ground on which the victims' rights movement has built up strong political claims and arguments for reform. The connection between these two explanations is probably that the crime victims' claims are shaped first of all as a criticism of the criminal justice system. Clarke and Davies (1994, p 169), for example, argue that 'the increasing use of victim offender mediation programs in Australia and throughout the world can be seen as … a shift in focus in the late 1980s and early 1990s to the rights of victims and the study of victimology'. Likewise, Zehr (2002, p. 15) states that 'the theory and practice of restorative justice have emerged from and been profoundly shaped by an effort to take … [the] … needs of victims seriously'. On the same line, as Antony Pemberton et al. claim (Pemberton et al., 2008) there seems to be little doubt that RJ is in the interest of victims of crime. In academic textbooks the two are often paired and legislation concerning RJ pays tribute to the position of crime victims. Assisting crime victims in their recovery is in fact widely considered to be a core element of any RJ intervention. Lode Walgrave (2003, p. 89), echoing this perspective, argues that RJ can be represented as a victim-centered approach to justice. This is because RJ does not marginalize the victim from the justice process while, at the same time, claiming to offer retribution on the victim's behalf. Instead, RJ recognizes the victim as a central stakeholder within the restorative process, and thus seeks to

provide them with a prominent role in shaping the justice process and in deciding upon a just resolution to the conflict (Walgrave, 2003, p. 90).

Along with the failure of the formal criminal justice system and the rediscovering of crime victims' centrality in criminal justice, it is possible to detect another *explanans* regarding the historical emergence of RJ theory and practice, deeply rooted in the RJ literature. The shared factors in the following explain the emergence of RJ: the need of the community to be recognized as a fundamental stakeholder in dealing with crime and its aftermath; its key role in ensuring safety and peace for victims and to foster binding social behavior in offenders; the necessity to be part of the criminal justice system and to escape from being a neglected actor. As Albert Dzur and Susan Olson have emphasized (2004, p. 92.), crime, for advocates of RJ, means more than a violation of the laws of the state and more even than harm to victims. To echo Nils Christie (1981, p. 11), crime is widely conceived by RJ advocates and scholars as a dysfunctional way of saying something and punishment is an equally dysfunctional way of answering. In this picture, the idea that the community has a stake in an offence apart from the victim's and that a larger social network might also be a harmed party, becomes a landmark of RJ. Considering the purely abstract, highly formalized ways in which the community is incorporated in mainstream criminal justice practice, many RJ proponents call for more public participation in the criminal justice process so that the harm to community is more clearly brought to the attention of the offender (Dzur and Olson, 2004, p. 92). Rather than the general claim that communal harm needs to be addressed the best reasons for public participation are more precise ones that link community participation to a better-functioning criminal justice system or other benefits to the community (Dzur and Olson, 2004, p. 92). As usual, the RJ literature is not as peaceful as it might appear, even when talking of community, different and deeply conflicting stances can be easily detected (McCold and Wachtel, 2002).

The claims of reforming the criminal justice system, giving centrality to victims and involving the broader community in dealing with crimes, are usually combined in RJ literature. This complex multifaceted account of recent RJ emergence clashes with one last, very common factor called upon in an explanation of RJ's emergence. This is the conceptualization of RJ's rise as the resurgence of a premodern way of dealing with conflict (Sylvester, 2003; Umbreit et al., 2005; Weitekamp, 1999). This claim, often repeated, has reached the status of a 'myth' (Sylvester, 2003) in RJ literature. John Braithwaite (1999, p. 2), for instance, has synthesized that 'restorative justice has been the dominant model of criminal justice throughout most of human history for all of the world's peoples'. On the other hand, we detect the presence in RJ literature of some sharp criticisms regarding the abovementioned perspective (Sylvester, 2003, p. 493). Some scholars, in fact, rather than seeing RJ as the primary form of criminal justice, describe it as a relatively recent approach to crime and its aftermath, begun in 1970s North America (Mulligan, 2009, p. 142). In this narrative, RJ is seen as a novel and innovative system (Sylvester, 2003, p. 494) which has come to influence

justice systems globally over the last three decades (Burkemper et al., 2007, p. 130). One thing must be noted. The 'never-ending' explanation of RJ potentially conflicts with previous ones insofar as they conceive of RJ as the answer to late-modern issues, such as the failure of criminal justice or the community's needs and the crime victims' satisfaction. On the other hand, this conflict is avoided when the claim that RJ is not a product of late modernity is used as a normative justification (RJ is acceptable because it revives ancient traditions) and not as a causal/descriptive explanation of RJ's emergence.

Authoritative Conceptualizations

A well-known archetypal conceptualization of RJ is given by the identification of similarities and differences of RJ with respect to criminal justice at large or penal punishment in particular (Roche, 2007, p. 75). Clearly, this complex range of positions intersects the historical explanations of RJ's emergence as an answer to the failure of contemporary Western criminal justice systems. Early proponents defined RJ as an alternative to the retributive principle informing criminal justice (Zehr, 1985, 1990). This dichotomy has become a standard approach defining RJ. Nevertheless, in more recent years criticisms have arisen against this perspective, deemed as a misrepresentation of a more complex relationship (Ashworth, 1993, 2002, 2003). In fact, various writers in recent times have reached a more positive (or at least more nuanced) view on retribution (Roche, 2007, p. 83).

Within this evolving context there emerges one of the main issues regarding the theoretical conceptualization of RJ, the question of the 'trigger event' (Woolford, 2009, p. 28) for restorative interventions, as in what makes the activation of a restorative practice necessary. As Andrew Woolford has emphasized (2009, p. 29), in RJ literature there are basically three possible (alternative) concepts of RJ trigger events: the *conflict* involving victim, offender and community as stakeholders; the *harm* caused by the offender; the *normative violation* (or the wrong) committed by the offender and suffered by the victim. The idea that the *harm*, rather than the crime, is the trigger event for a RJ intervention is quite common across the literature (Mika and Zehr, 2003, p. 135–152; Sherman and Strang, 2003). In other words, restorative practices respond specifically to interpersonal harms, that is, they address harms caused through interaction between two or more individuals (Woolford, 2009, p. 29). Other scholars, in a different vein, argue that crime is a form of legally categorized *conflict* and therefore they place RJ under the broad rubric of conflict resolution (Christie, 1977). In the RJ literature there is space for another interpretation, according to which RJ is concerned with *normative violations* (Ashworth, 1993). Norms are group's established behavioral codes that guide the activities of an individual belonging to the group. Any RJ intervention must, in this view, focus on these violations, aiming at restoring the balance altered by the wrong committed by the offender.

Closely related to the issue of the trigger event is the theoretical topic of restoration, its meaning and relationship with criminal justice, as a distinctive feature

of RJ. The practical ways of applying the vague idea of restoration discussed in the literature are numberless. Nevertheless, the concepts of restitution and reparation appear to be the most recurrent and theoretically relevant. Restoration is usually defined by activities regarding material or personal and private or communal harms, loss and wrongs, shaped usually as restitutive and/or reparative actions (Karp, 2001, p. 730). As for the restitution, the works of Albert Eglash (1958), Gilbert Cantor (1976) and Randy Barnett (1977) are considered key contributions. Eglash's *creative restitution* theory in dealing with crimes, is a perspective based on the idea that the offender, even if self-determined, must be guided toward the restitution, and related constructive acts for a victim or community. Cantor argues for the civilization of offender treatment, which entails restitution and compensation through manageable installments with the agreement of the parties. Barnett analyzes the breakdown of criminal justice as a Kuhnian crisis of the old paradigm of punishment. Barnett's proposal is to overcome the crisis by adopting a new paradigm based on restitution. Within RJ theory it is largely agreed that doing justice involves reparation (Van Ness and Heetderks Strong, 2003; Zehr and Mika, 1998). According to Wright (1991), it seems that the roots of reparation in RJ must be searched for in Margery Fry's *Arms of Law* (1951, p. 124–26), an inspirational and seminal book for the RJ movement. Although it is possible to say that the idea of reparation is basically a must in RJ literature, it must be acknowledged that this concept is shaped, worked out and applied in many different ways. Basically, two different concepts of reparation can be found: material and symbolic/emotional (Retzinger and Scheff, 1996, p. 316). As important as material reparation (for instance monetary compensation) can be in enabling a victim to recover from the effects of a crime, symbolic reparation can be even more significant (Sharpe, 2007, p. 28). This particular form of reparation has apology and forgiveness as a core sequence. In fact it is considered a condition for generating the repair and restoration of the bond between victim and offender, severed by the offender's crime.

Lastly, the relevance of concepts such as shame, love, relationships or healing and forgiveness in RJ literature, is something which cannot be overlooked when we talk of its theoretical features. Indeed, this relational dimension (see Susan Sharpe in Chapter 9), or warm side, is one of the most striking aspects of both scholarly and practice-oriented writings on RJ. Jim Consedine (1999, p. 41) stresses how 'Fairness, truth honesty compassion, respect for people are the basic tenets of an acceptable morality that flows from justice and seeks to protect and enhance the common good'. While Judah and Bryant (2004, pp. 1–6,) argue that 'RJ is holistic, inclusive and affirming of the dignity and worth of every human being'. Well-known authors Zehr and Toews (2004 p. IX), emphasize that 'Restorative values can be distilled to two key underlying values – humility and respect. Furthermore, we should approach our work with wonder'. As Annalise Acorn argues (2004, pp. 18–22), RJ theory tries to mediate and harmonize the two presumptively conflicting realms of love and justice, offering a vision of justice as 'tough love'. Acorn contends that RJ also places an extraordinary amount of faith

in the idea that compassion itself, when extended toward and effected between victims and wrongdoers, will have an overwhelming and magically transformative power in the direction of justice. It requires we build better, more respectful, more mutual relationships than those that existed prior to the wrong. It reaches toward an idealized state of right relationships, as its model of the just.

Surfaces of Emergence

From the main authoritative discourses, RJ emerges as an answer to different (and often conflicting) needs, such as those expressed by the crisis in criminal justice, the growing awareness of the crime victims' movement and the claim to be involved in dealing with crimes raised by the community. At the same time, the theoretical main issues faced up to by RJ discourses seem to be drawn essentially from an oppositional comparison to criminal justice; the concept of restoration, the trigger event for RJ interventions (or its object), the relational side of RJ. Through a foucauldian lens it is now possible to cast a critical glace over the authoritative accounts of RJ, problematizing the assumptions that are taken for granted and the obvious truths. This means first of all analyzing their discursive structure and their 'surfaces of emergence' (Foucault, 1972, p. 41). In this perspective, the authoritative accounts seem made not of privileged objects, but rather a dispersal of many objects which compound their basic vocabulary. These objects do not exist before their emergence under certain complex, relational, discursive conditions, and are therefore not defined by their internal, conceptual nature, but by their exterior relations, their triangulation or juxtaposition with other objects. The question, at this point, is to trace back the surfaces of emergence of the objects which constitute the authoritative discourses, the pre-existing fields, normative to some degree, which allow RJ authoritative discourses to define what they are talking about (thereby creating apparently definite objects of discourse) and how. These surfaces are not the historical/theoretical roots of RJ as such, but only the conditions of possibility of the authoritative discourses on RJ, the discursive space from which they come into being.

Victimology and Victim Surveys

The first surface is represented by new knowledge of the victims related to the consolidation of victimology as a scientific and academic discipline and the set-up of new criminological research tools (like victim surveys).

Victimology studies data that describe phenomena and causal relationships associated with victimization, including the victim's experience, its aftermath and the actions taken by society in response to victimization. Therefore, victimology comprises the study of precursors, vulnerabilities and events leading to the victimization (Dussich, 2006, p. 130). Victimology originated with the early writings of Benjamin Mendelsohn (1976) and Hans von Hentig (1948) and became

a 'normal science' in the early 1970s. In fact, specific educational programmes for university students interested in understanding victimization and training courses for practitioners wanting to facilitate victim recovery were created in this period.

There was also a growth in this period in the use of victim surveys as a new research device in criminology. A victim survey is a periodic data collection and analysis process within the general population usually conducted by a government entity to study information about crime victims, regardless of whether or not they reported their victimization to the police (Dussich, 2006, p. 131).

This scientific and academic framework has worked as a surface of emergence for both historical and theoretical authoritative discourses on RJ in different ways. This means that the new scientific knowledge on the victims of crime, the identification of their needs detected by victim surveys, combined with the claims of grassroots victims' organizations has opened a fundamental discursive space for the emergence of those discourses on RJ. The empirical and victimological evidence on the involvement of crime victims and their expectations and satisfaction of criminal justice have become key categories in the language of RJ. This is not a natural phenomenon but the consequence of the consolidation and popularization of victimological research. A clear example is the crucial and taken for granted concept of victim participation in RJ processes, quite evidently derived from the victimological research. Even more interesting is how the victimology has informed the category of victim and the concept of victim–offender relationships within the authoritative discourses on RJ. A victim is contextualized, characterized by emotions such as fear and loss of control, in need of empowerment, vulnerable, this is the victim's identity in the authoritative discourses, seemingly drawn from victimological research findings. Likewise, to conceive of the relationship between victim and offender as a dynamic one, including strong emotions and needs to be readdressed, primarily the need to speak out, to talk of the crime's consequences, again seems to be a legacy of victimology and victim surveys.

Abolitionism, Communitarianism, Refeudalization of the Public Sphere

The second surface of emergence is given by the articulation of three different but synchronic discourses:[1] penal abolitionism (especially institutional abolitionism); the rebirth of communitarian philosophy in the late 1970s; and discourses on the refeudalization of the public sphere.
Penal abolitionism is not merely a theory of decarceration, but an approach, a perspective, a methodology, and most of all a way of seeing (Ruggiero, 2011, pp. 1–2). There is clearly an abolitionist element in the proposition that the state centralized administration of penal justice should be replaced by decentralized forms of autonomous conflict regulation (Christie, 1977). But in a general formulation it can be suggested that abolitionists advocate new ways of dealing

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1   Due to limited space my account of these discourses lacks the analytical depth such a topic deserves.

with undesirable behavior, and in doing so they situate themselves in an original position within the debate around RJ.

Communitarianism finds the sources of social cohesion in shared assumptions so deeply engrained in everyday life that they do not have to be articulated: in folkways, customs, prejudices. (Lasch, 1994, 92). In communitarian perspectives individuals are densely enmeshed in interdependencies which have special qualities of mutual help and trust (see Chapter 14). The interdependencies have a symbolic significance in the culture of group loyalties which takes precedence over individual interests (Braithwaite, 1989, p. 100). Communitarianism can be taken to stand for a highly socialized view of people in which their moral position can be understood only in terms of their social relationships.

In discussing the structural transformations of the public sphere, Jürgen Habermas (1989) clarified that while the market helped create the initial space for civic engagement, it also constantly threatened to colonize public spheres through privatization. He referred to this phenomenon as the 'refeudalization of the public sphere', a process in which the newly created public space would succumb to commercial pressures and reorganize along familiar power hierarchies (Habermas, 1964, p. 49–55). What is particularly interesting is the refeudalization of social decision-making since decisions were removed from public scrutiny (parliaments, boards and so on) and placed within the realm of private spaces (private commercial businesses). Secondly, it is a communicative form that is part of what has been called a refeudalization process as public spaces, whose regulation was previously subject to public scrutiny (through parliaments, public boards and so on), are shifted into private ownership. The growing privatization of public space has spread to a number of sectors, ranging from the airwaves and educational sites to shopping malls. These privatized spaces are designed for commercial profit, not the facilitation of public debate, and the new owners have no vested interest in allowing their private spaces to be used for social dialogue. Several categories of the discourses mentioned above enter the authoritative accounts on RJ, lending out specific discursive elements. The concept(s) of community and its role in restorative discourse seems to emerge from the combination of the idea of community as an alternative to the state in dealing with social conflicts (abolitionism), the idea of social interdependency worked out within communitarian perspectives, and the necessity to resist the privatization/ refeudalization of public spheres through investment in the revitalization of 'life worlds'. Community here appears as a kind of antagonist to the state but also to the social atomization processes caused by the privatization of public spaces. In the authoritative discourses the binary opposition between the state (and the criminal justice system as its expression), and a radically different, independent and even alternative virtual space is considered evident and unquestionable. Even if in the authoritative discourses different conceptualizations of community are present, in general this basic conceptual configuration is recurrent and taken for granted. In this perspective, different versions of the 'trigger event' also appear related to that complex discursive combination. The concepts of conflict and damage particularly

seem rooted in the idea of a problematic situation, an expression which replaces – in the abolitionist view – the identifying expressions such as offence, crime and criminal act. At the same time the traditional means of state intervention in conflict, appear to be an invasion of the community's domain, an attempt at colonization, able to cause damage and social loss (Christie, 1977).

Spiritual Groups and Psychological ethos

A third surface to be taken into account is given by the vocabulary of spiritual groups and reformist criminal agencies engaged in reconciliatory perspectives since the 1970s and the spreading of the 'Psy-ethos' in the last two decades (Richards, 2005). Most scholars credit the Mennonite Church in Canada with the first initiatives regarding RJ implementation. Today, the Mennonite Central Committee's US Office on Crime and Justice provides information and resources on ministry to victims and offenders, victim–offender reconciliation/conferencing, RJ, the death penalty and other related issues. It also coordinates workshops, research material on restorative justice principles and application, provides consultation to people involved in victim–offender reconciliation/conferencing programs (VORPs) and develops educational and training materials on various crime and justice issues. This is just an example of the direct involvement of a religious group in the reform of criminal justice, analogue discourses might be done for other groups such as Quakers and Catholics. As I will argue, especially when we analyze the conceptualization of the warm side of RJ, we can see the presence of discursive objects, concepts and themes drawing upon the speeches of those religious leaders involved in the reform of criminal justice.

Besides the presence (historically rooted) of religious groups in the criminal justice system, we can observe a similar reforming role played by counselling and therapy experts in the last three decades. Indeed, therapeutic language has informed a range of criminal justice policies that have emerged in recent years, particularly those designed to assist victims of crime, in a way working as the secularized version of the action of religious groups involved in criminal justice reform. It has come to be accepted that crime victims must be offered opportunities to tell the story of their victimization, to express their pain, fear and/or anger about the offence, and to be heard. The popularization of concepts such as self-help, empowerment, healing and being heard act as the surface of emergence for many conceptualizations and justifications for RJ. Many of them often give great importance to the stakeholders' direct expression of emotions and feelings. The goal is to create a space and time for the acknowledgement of deep sentiments, stimulating constructive inner dynamics which allow stakeholders to mirror emotional experiences, heal from inside the personal, emotional and spiritual losses produced by the crime. At the same time there is an emphasis on the relevance of being heard as a complementary need to the expressions of internal states. Both the concept of a direct expression of feeling and the claims of being heard are drawn upon the discursive reservoir of religious movements

and therapeutic programs. What is here reproduced is a kind of confessional relationship between the stakeholders, organized by those responsible for the restorative process (such as a mediator or facilitator). This is a basic schema in both secularized and religious ways of dealing with conflicts.

Authorities of Delimitation and Grids of Specification

It it not enough just to identify the discursive space within which the main explanations and justifications of RJ arise. As Foucault said, 'This formation [of discourse] is made possible by a group of relations established between authorities of emergence, delimitation, and specification' (Foucault, 1972, p. 44). Accordingly, it is necessary to take into account at least two other elements which give us a more accurate account of the formation of authoritative discourses on RJ. The authorities of delimitation must be considered. Who has the authority to delimit, designate, name, and define RJ's objects? Who has the right to speak in the authoritative accounts on RJ? These authorities are groups able to produce expert knowledge of RJ, organizing 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 appears one of the strongest voices in the construction of authoritative discourses on RJ. Similarly, religious leaders (Quakers, Mennonites) have had a relevant role in the creation of authoritative conceptualizations of RJ. The professional psychological expertise involved in criminal justice reform is another significant authority of delimitation. Lastly, a specific academic category represented by criminologists has played a role in the set-up and development of those narratives. Their institutional base for speaking is characterized by one main aspect, their primary respect for the object of the offender. An authority which is clearly missing among those who have produced expert knowledge on RJ, is that which speaks on behalf of the offenders. There is not an offenders' movement as there is a victims' one. Therefore, who discursively creates the needs of the offender in RJ? The question is easily answered: criminologists, psy-experts and religious leaders. Their accounts of offender's needs and views are not balanced by the presence of a group directly lobbying the offender's claims. The difference is therefore that victims' needs are elaborated by a specific interest organization and then filtered by the scientific knowledge of criminologists, psy-experts and religious leaders whereas the offender's perspective is entirely shaped by these authorities. Probably the only counterbalance in the definition of the offender's identity in the authoritative accounts on RJ is embodied in the human rights movement which has slowly come to deal with RJ initiatives. In this subject it is possible to see a potential authority of delimitation able to create a narrative on the offender quite divergent from the victim's movement perspective (see the part II of this book).

The *grids of specification* are the systems by which RJ is described, separated, and classified. In this regard, the authoritative explanations appear to be built

on the opposition between continuistic/non-continuistic histories whereas the conceptualizations are based on the core comparison with criminal justice. In many authoritative explanations, the events, developments, and inventions regarding RJ seem to be linked in a continuous and necessarily progressive evolution. It is a linear history consisting of a series of events, progressing or regressing in a certain direction, usually culminating in the belief that the current period of time is somehow fundamentally unique from and superior to any other period of time (Weitekamp, 1999). Additionally, in the discussion of RJ origins, events are often considered as agents that can bring about other historical events. In this causal perspective, we see RJ as the product of a genetic connection between specific phenomena (the cause, like the breakdown of criminal justice) under certain conditions (like the emergence of a crime victim movement) that gives rise to or causes something else (RJ). On the other side we detect the presence of non-continuistic histories which stress the innovation brought by RJ, its link to the late modernity of Western societies. The authoritative conceptualizations always appear to be built with reference to the criminal justice system, intended as a complex mindset, an ensemble of professionals, institutional structures and expert knowledge. This reference can be critical and oppositional or constructive and positive, in other words RJ is conceptualized as alternative or complementary (to different degrees) to criminal justice. Looking at the explanatory authoritative discourses as integral to a specific grid of specification, can be emphasized as a last aspect. RJ is often considered a functional answer to a specific crisis or lack or needs. Accordingly, it is possible to define these accounts as functionalist. Underlying the authoritative explanations is the idea that social reality is a complex system whose parts work together to promote stability. In this perspective, when a deficiency or a surplus is present in social reality, natural reactions come into being to fill the gap or eliminate the excess. This idea more or less underlines the rise of RJ: a critical situation (breakdown of criminal justice) asks for a solution (the rise of RJ).

Thresholds and Diffractions

The epistemic authority of the main accounts on historical emergence and theoretical justification of RJ expresses itself in defining what can be talked about, who can speak and how, the thinkable and sayable regarding RJ. Its roots are related to other specific discourses, cultural constructs which have gradually made acceptable those authoritative accounts, as a part of our collective imagination in dealing with crimes.

  At this point two last remarks must be made. The first regards the dynamic construction of the authoritative discourses. The surfaces of emergence are static factors, the problem is to set them in motion in order to understand how the authoritative accounts have become possible. The second remark regards the relationship within and between the surfaces, which so far appear isolated and

inactive entities. Starting from this second point, it has already been mentioned how the new criminological knowledge on victims shapes the identity of the two main actors of RJ theory. Victim and offender seem to find their needs, claims and identities in the victimological research, which hands out its categories and an overall perspective to the authoritative rationalizations of RJ. At the same time a particular tension emerges between the categories of victim and offender as conceptualized in the authoritative accounts. As already mentioned, while the presence of a crime victim movement filters the identity of victim worked out by the victimological research (and the crime victims' movement), the absence of an offenders' movement defines a lack which potentially affects the role of the offender in RJ theory and practice. This gap marks a tension between the categories of victim and offender in the authoritative accounts, which expresses itself in a less nuanced offender identity, usually depicted as just the counterpart of the victim, the other silenced by expert discourses which speak on his/her behalf, asking to be ashamed, restoratively punished or pushed toward reparation. The existence of epistemic tensions is not only integral to the same surface of emergence but can also be detected between them. This is the case in the relationship between abolitionist/communitarian discourses and victimological knowledge. What can easily be distinguished is the presence of a 'point of diffraction' which characterizes this relationship (Foucault, 1972, p. 65). In fact, victimological research takes for granted what abolitionism accounts deeply deconstruct: the concept of crime (overdetermined in victimology and deconstructed in abolitionism). Similarly, the abolitionism/communitarian view clashes with the spiritual/ therapeutic perspective. In the first discursive construct, deprofessionalization and communitarian regulation of problematic situations are unquestionable points. On the other hand, the spiritual/therapeutic discourses imply the strong and regulative presence of experts, creating a vertical way of regulating social conflicts, which, as a consequence of this expert intervention, become inner conflicts. This epistemic shift in knowing the conflict is a relevant point of diffraction between those two surfaces of emergence. These kinds of tensions have implications for authoritative discourses on RJ. For instance, the contraposition between the different concepts of trigger event or the various declinations of restoration seem to be related to the tension abovementioned. The distinction between conflict, harm, normative violation or restitution and reparation, the link with the punishment and the criminal justice, are all dependent on different (and divergent) kinds of knowledge which ground the different authoritative discourses.

The second remark is about what Foucault calls the 'thresholds of emergence' and its application to the authoritative accounts on RJ (1972, p. 186). These thresholds are the historical phases faced up to by a discourse in order to achieve its epistemic authority (or scientificity). Foucault identifies four thresholds: positivity, epistemologization, scientificity and formalization. In the case of the authoritative discourses, we can consider the positivities as the borderline innovative practices of dealing with crimes that, in the 1980s became the target of the rationalization carried out by the authoritative discourses on RJ (such as

the Kitchener experiment). Slowly, a system of forming statements explaining and justifying those practices can be discerned. This is the hard core of many authoritative discourses, characterized by a low level of abstraction and a strong procedural attention drawn to practices such as victim–offender mediation or family conferencing. The epistemologization, like the development of a refined epistemic authority and of specific discursive objects and themes, is related to the retrieval of particular theoretical writings which originally were not meant to contribute to RJ at all. This is the case of the sacred texts of RJ, the seminal contributions which have represented the hard core of the authoritative discourses. Authors such as Nils Christie, Randy Barnett and Albert Eglash, widely considered as pioneers in RJ theory, wrote independently and way before the birth of the restorative movement, accordingly ignoring its claims. Only since the 1980s did the advocates of RJ start to reframe those writings, taking possession of them as the forefathers' words on RJ. In this way the authoritative discourses on RJ have gained a more structured and refined epistemic authority, as in a theoretical pedigree certified by the scientific reputation of the forefathers. The scientific threshold is then reached by the emergence of new criminological knowledge on the crime victims combined with therapeutic expert knowledge (as a secularized version of the spiritual/religious one) on the needs of victims and offenders. The formalization threshold is lastly attained through the growing legal codification of many authoritative accounts on RJ (Marshall, 1999; Daly and Hayes, 2001; O'Brien, 2008). This is probably the uttermost certification of the authority of those accounts in defining (normatively) the possibility of what can be said and done in the RJ field.

What must be stressed regarding these thresholds is that they are not regular and successive historical stages. Neither are they definitive and necessary phases in the evolution of the authoritative discourses. In fact, antagonistic accounts are often put forward, destabilizing the earlier epistemic authorities. These thresholds are instead the living and magmatic history of authoritative accounts on RJ, a dynamic ensemble of institutions, practices, academic arguments and practical experiences contingently linked together and synchronically interacting which give to the RJ edifice that appearance of a multifaceted, shifting and conflicting reality.

Conclusions

In this work I have tried to describe some heterogeneous articulations of phenomena which have contributed to make possible the authoritative discourses on RJ. Working out an analysis which detects and combines discursive and non-discursive elements, the vocabulary, as a social and historical living reservoir of words and actions, upon which the authoritative discourses are built, has been unveiled and described. The consolidation of the victimology, the combination between abolitionism, communitarian philosophy and Habermasian perspective,

the action (and popularization) of the psy-experts as a secularized version of the religious groups involved in criminal justice reform, have played a crucial role as discursive reservoirs from which authoritative explanations and rationalizations of RJ have drawn their own discursive objects, concepts and strategies. A common meta-theoretical structure of those discourses has also emerged based on specific authorities of delimitations and grids of specifications. Lastly, several internal tensions within and between those authoritative discursive constructs have been displayed, as well as the dynamic construction of their epistemic authority.

Of course, this picture of is only a partial one. Many other aspects could have been identified and analyzed (such as the presence of other authoritative discourses and different surfaces of emergence). Many other questions could have been taken into account (like which kind of subject the authoritative discourses depict and contribute to creating? What the possible embeddeness of the authoritative accounts are in power/knowledge relationships?). This is material available for new, desirable research on RJ.

Nevertheless, at least one general and insightful remark can be conclusively drawn. As a consequence of the problematization carried out, the authoritative discourses have lost their appearance of third, detached and impartial attempts to portray the objective features of RJ, its history and main theoretical issues. They are now deeply rooted in other specific discourses, contextual accounts which feed their objects, concepts and strategies. The authoritative discourses now appear an effect of a number of historical contingencies, linked, juxtaposed and sometimes conflicting. The authority of those discourses which has made RJ a possible and acceptable approach to criminal justice in contemporary Western societies is not a natural quality or an essential attribute. This authority 'is a thing of this world: it is produced only by virtue of multiple forms of constraint … is to be understood as a system of ordered procedures for the production, regulation, distribution, circulation and operation of statements' (Foucault, 1980, p. 131). Bearing in mind this grounded idea of epistemic authority, maybe new spaces for critical and alternative accounts on RJ will emerge more easily.

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