

Embodied victims: An archaeology of the 'ideal victim' of restorative justice

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Abstract

This article seeks to provide a historical-critical framework to reconstruct and discuss how the crime victim is portrayed within theoretical literature, policy and legal documents on restorative justice, with an emphasis on England and Wales. It first centres on a description of the most deep-rooted and wide-ranging discourses on the victim's characteristics within restorative justice. Once these features have been organized into an 'ideal' model, the article traces the conditions which fed into its development, that is, the cultural context within which this model has emerged. The overall goal is not to test the 'ideal victim' within restorative justice, but rather to explore how this methodological tool, within a historical and critical approach, might help to shed light on some taken-for-granted assumptions of restorative justice and their legal, policy and practical implications, thus contributing to the critical assessment of this acclaimed "new frontier" of contemporary penalty.

Keywords

Archaeology, conditions of possibility, ideal victim, Michel Foucault, restorative justice

Introduction

A recurrent explanation of the emergence of restorative justice (RJ) is that this way of thinking and doing justice has emerged as a response to the needs of the neglected party in criminal proceedings, that is, the victim (Braithwaite, 1999; Green, 2007; Johnstone, 2011; Walgrave, 2003; Zehr, 2002). Whereas restorative practices were initially more focused on (youth) offenders' needs (Eglash, 1977; Pemberton, Winkel and Groenhuijsen, 2007; Shapland et al., 2006a), in RJ today the victim is promoted to a new, central role (Dignan, 2005; Liebmann, 2007; Wright, 1996). Indeed, this elevation of the role of victims is a distinctive feature of RJ, perhaps the main difference with respect to "conventional" criminal justice (Pemberton, Winkel and Groenhuijsen, 2007; Walgrave, 2003; Zehr, 2002).

A fair number of academic analyses of the representations of the victim within RJ are available, some of them particularly valuable for their critical edge (Bolivar, 2010; Cunneen, 2010; Green, 2007, 2008; Pemberton, Winkel and Groenhuijsen, 2007, 2008; Van Dijk, 2009). However, these contributions are lacking a clear conceptual outline of the victim's identity within RJ (with the very partial exception of Pemberton, Winkel and Groenhuijsen, 2007 and Van Dijk, 2009), while methodologically, they are all characterized by the absence or limited presence of a historical perspective. Through an approach informed by Foucauldian archaeology (Foucault, 1970, 1972) this work tackles these two deficiencies in the critical literature. The article begins with a short review of the available critical appraisals of the victim's position within RJ. Then, as a first step of the archaeological work, it reconstructs and analyses the set of 'authoritative discourses' (i.e. the archive) on the victim within RJ (Maglione, 2013),

focusing on a specific geo-historical context (England and Wales between 1980 and 2015). The outcome of this investigation is the identification of a range of stereotyped victim features, which will be organized into a relatively coherent ideal model (Christie, 1986a). The next step consists of tracing back the history of the 'ideal victim' in RJ, identifying and examining its cultural underpinnings. Some implications and concluding remarks are also offered. Overall, the purpose of this enquiry is to enable a critical reflection on what is considered "natural" within RJ (e.g. the victim's identity), stimulating a close analysis of its taken-for-granted theoretical foundations.

There are three main limitations to the research. The first is of a geographical nature, insofar as a distinctive emphasis is placed upon England and Wales. As it will emerge, however, in order to fully appreciate the 'ideal victim' of RJ within this particular geographical setting, an examination of the North American (particularly US) theoretical literature on RJ also has to be carried out (Marshall, 1996: 23; Marshall and Merry, 1990: 7; Newburn, 1995: 232). Second, the article considers only RJ involving adults within criminal justice settings and applied through victim-offender mediation.¹ Lastly, this work is a theoretical elaboration on historical material and as such it runs the risk of being at times abstract and over-generalizing. That said, the main goal is to refine and apply certain analytical and conceptual tools (e.g. archaeology and 'ideal victim'), fostering critical scholarship on RJ. This will accordingly entail a relatively high level of abstraction and generalization, hopefully "compensated" by the generativity (Gergen, 2009) and critical edge (Foucault, 1996) of the approach used.

Critical Appraisals on the Victim in Restorative Justice: A Literature Review

The stereotyped victim within RJ has been already considered by a limited number of scholars, mainly from critical victimological and criminological perspectives. Crucial issues within these accounts are the concept of 'victim's needs', the overlaps between the 'ideal victim' of "conventional" criminal justice and that of RJ and the epistemological limitations of the definitions of victim within RJ.

As Bolivar (2010: 241) has noticed 'the inclusion of needs in RJ literature and the issue of victimization suggest two postulates: every victimization creates needs and meeting such needs is the only way to restore the well-being which has been lost'. She goes on stating that '[i]n this regard, the question arises whether it is possible to reduce the definition of victimization to the concept of needs and, if so, which kind of needs we are referring to here' (Bolivar, 2010: 241). The needs that RJ seems to consider are mainly the victims' 'expressed needs' (Kettner et al., 1999 in Bolivar, 2010: 242), that is, demands put forth within criminal proceedings. As Bolivar (2010: 242) further remarks,

Needs refers [...] to an approach which focuses on the ways to reach well-being, more than on the damage itself. In other words, it intends to create solutions and strategies. [...] However, the approach seems to be limited to victims who have recognized their own victim status and, consequently [...] to those who might already be on their way to recovery.

A similar concern is shared by De Mesmaecker (2010), who explicitly raises the question whether this 'ideal victim' of RJ represents all victims, because if it does not, RJ risks excluding some victims from its programmes.

In a different, mainly historical, perspective, Van Dijk (2009) observes that the label of 'victim' consistently recalls, in western languages, the idea of a sacrificed individual for religious reasons. By applying the label of 'victim', we assign a social role of passivity, compassion and forgiveness (Van Dijk, 2009: 7). Van Dijk highlights how, also in RJ, the victim's label seems to be loaded with the same qualities of passivity and forgiveness, critically remarking on the gap between empirical work on victims' attitudes and the 'sacred texts' of RJ (2009: 22). The foundational texts on RJ, in fact, have seemingly ignored the available data on what crime victims want and who they are, perpetuating a 'socially constructed' idea of victim (Van Dijk, 2009: 22). He then argues for a paradoxical similarity between the 'ideal victim' of criminal law and the one of RJ: in both cases a social construction that entails passivity, elicits compassion and has a forgiving disposition. In a similar way to Van Dijk, Pemberton, Winkel and Groenhuijsen (2007) aim to provide RJ scholars and practitioners with a psychologically informed set of insights on crime victims' needs, which might then empirically substantiate the often sweeping statements about victims made by RJ scholars. Here, the snapshot of the 'ideal victim' of RJ they elaborate is of particular relevance: 'it is forgiving, not punitive, more interested in compensation than punishment, and symbolic compensation at that, part of the same community as the offender, not afraid of the offender, wanting and capable of full participation in the case' (Pemberton, Winkel and Groenhuijsen, 2007: 5).

Cunneen (2010) and Green (2008) offer a highly theoretical and critical reflection on the RJ language when it comes to the victim's representation. In Cunneen's perspective, victims and offenders are legal subjects who do not exist in a natural state separated from the social characteristics through which individuals live their lives (Cunneen, 2010: 132). To be a 'victim' or an 'offender' takes on meaning only in the context of social relations between people and within the broader institutions of society. In RJ instead, 'victim' (as well as 'offender') is often understood as an uncomplicated and homogeneous category of the self. There are no complexities: a person is either an 'offender' or a 'victim', and these universal categories appear to subsume all other possible identities (Cunneen, 2010: 132). Like the criminal law more generally, RJ narratives have tended to construct subjectivity as a binary field of either 'offender' or 'victim', with little attention to the profound difficulties that underpin these classifications, neglecting, for instance, how in oppressed or marginalized communities many victims may also be offenders (Cunneen, 2010: 133).

Similarly to Cunneen, Green (2008: 43) argues that it appears unclear 'how RJ differs from conventional social constructions of the victim and how it can provide a more victim-orientated perspective about how to best provide for different types of crime victims'. Green (2007: 184–185) emphasizes how RJ does not have 'its own concept of either victim or victimization' and thus lacks a foundation for challenging opposing claims. In this perspective, RJ seems to adopt pre-defined public opinion-based and ideologically led understandings of crime victims, proposing a way of doing justice for victims in the footsteps of "conventional" criminal justice. As Green maintains, RJ 'lacks its own epistemology. There are no distinctive forms of knowledge that give meaning to how restorative justice understands the victim' (2008: 43). In the same vein, Young (2002) claims that RJ tacitly endorses understandings of the victim characterized to be stereotypical, or at least, it assumes a uniformity of characteristics among the victims. Victims appear then in RJ as 'ageless, colorless, genderless, classless individuals' (Young, 2002: 146) often portrayed as discrete, identifiable 'flesh-and-blood' entities (Dignan,

2005: 167). This view directly recalls Pavlich's (2005) idea of the 'imitator paradox' of RJ: RJ is predicated as radically different or even alternative to "conventional" criminal justice, but is actually based on the same assumptions or foundations. It also resonates with the warnings put forth by Nils Christie (2013, 2015) regarding the 'dilution' of RJ within the penal apparatus (Christie, 2015: 109).

The preceding theoretical analyses of the stereotyped victim within RJ offer significant critical insights. What is partly lacking within those accounts is a thorough inquiry into the specific features of that stereotype as well as an historical exploration of how the victim's model has emerged within RJ. Foucauldian archaeology, as discourse-oriented historical analysis, combined with Christie's (1986a) 'ideal victim', allows for theoretically addressing both issues, providing useful interpretations that might enrich our current overall understanding of RJ's underpinnings.

Methodological Remarks

Christie (1986a: 18) defined the 'ideal victim' as 'a person or a category of individual who – when hit by crime – most readily [is] given the complete and legitimate status of being a victim'. Being a victim is not an objective phenomenon: '[i]t will not be the same to all people in situations externally described as being the "same". It has to do with the participants' definition of the situation' (Christie, 1986a: 18). In using the 'ideal victim' as a methodological tool, my goal is not to test or prove whether this concept (in the context of RJ) in "reality" exists (Van Wijk, 2013). Rather, my aim is explorative: to understand how the 'ideal victim' might help to shed light on current perspectives regarding the victim within RJ, raising new questions and drawing some implications. The 'ideal victim' is inserted here within a historical discourse-oriented framework inspired by the work of Michel Foucault (1970, 1972). My intention is to use archaeology as a historical-critical perspective (rather than a rigid set of methodological guidelines) (Garland, 2013: 44), so as to open up different possibilities of thinking and to generate new kinds of questions around RJ. Foucauldian archaeology is a form of historical inquiry into the production of discourse in terms of the conditions for its possibility (Foucault, 1970: 168). The main merit of this perspective is that it enables a sharp delimitation of research objects (that is, discourses) by making the process of their emergence historically intelligible and challenging their supposed naturalness (Howarth, 2002: 128).

The first step of the archaeological enquiry is to reconstruct the 'archive' (Foucault, 1972: 145), i.e. the set of the 'authoritative discourses' on victims within RJ (Maglione, 2013: 71). Here 'discourse' equates to discursive practice: cultural formations institutionally situated, historically shaped, constructed (by people, institutions, etc.) and constructive of people's lived experiences, conducts, knowledges. The 'authoritative discourses' are not discrete and cohesive entities, with neat boundaries, but rather analytical concepts 'that the researcher projects onto the reality in order to create a framework for the study' (Jørgensen and Phillips, 2002: 143) of neglected dimensions of the phenomena under examination. As far as the construction of the 'authoritative discourses' is concerned, this proceeds inductively from the scrutiny of two different but interlinked sets of cultural artefacts: theoretical literature and policy/legal documents. The article will consider a wide range of founding texts for the RJ field and the RJ textbook literature published and circulating between 1980 and 2015 in the English context. The second set of material consists of relevant English legal and

policy documents produced in the same period. Surprisingly enough, as it will emerge, the theoretical insights incorporated into English legislation and policy documents seem often informed by North American scholarly contributions (which therefore need to be also analysed) to the field. I maintain that the commonly recognized (by RJ scholars and practitioners) foundational texts and the world-widely used textbooks (witnessed by the many editions) incorporated into policy/legal documents which challenge the criminal justice mainstream, define some of the main 'authoritative discourses' of RJ.

Once the archive has been drawn, it is possible to investigate how the 'ideal victim' as a cultural construct has emerged historically. Methodologically this analysis entails the detection of the contextual factors – that is, conditions of possibility (Foucault, 1970: 168) – which might have contingently contributed to create the authority of that stereotype, setting the conditions for *legitimately* being a victim within RJ. A condition of possibility is not a cause but a range of circumstances that enables the emergence of the object researched as a historical possibility. The actual emergence is contingent and dependent upon a wide range and theoretically unlimited set of stratified conditions (Elwick, 2012: 620). To think in terms of conditions of possibilities helps to include the agency of human actors as a historical force, as well as to make sense of the context within which historical objects emerge (Elwick, 2012: 620–621; Foucault, 1988: 257). In this way, it is attainable to reconstruct and criticize the cultural underpinnings of RJ, opening new possibilities of critical understanding and action (Dreyfus and Rabinow, 1983: xxvii; Foucault, 1986: 53).

Archival Research: The 'Authoritative Discourses' on the Victim

It is possible to identify at least three specific 'authoritative discourses' that shape the victim's identity in RJ: 'producing safety'; 'being heard'; and 'taking care'. These discourses share as a common stem the foundational idea that a crime is first of all 'a violation of a person by another person' (Zehr, 2005: 182; see also EU Directive 2012/29/EU: recital 9). This idea represents the condition of the predicated paradigm shift realized by RJ: from the idea of crime as 'an injury to the state' (Sutherland, 1949: 31) to the personalization of crime, now conceived as offence against a material victim (Johnstone, 2011: 52). It makes sense then, that the 'authoritative discourses' revolve not around the victim's interests, rights or entitlements, but *needs* – that is, essentials or natural requirements of the person harmed by a crime (EU Council Framework Decision 2001/220/JHA: recital 5; EU Directive 2012/29/EU: recital 43; Home Office, 2003: §2.9; Ministry of Justice, 2013 – RJ Action Plan 2013: 3).

Producing safety

RJ is supposed to address victims' needs by offering a space and time of safety and empowerment (Johnstone, 2011: 52; Miers et al., 2001: 22–24). As it has been routinely claimed, victims' safety is a critical priority in RJ (Ministry of Justice – RJ Action Plan 2012: 1; RJ Action Plan 2013: 4; Ministry of Justice – Victims' Code 2015: 51). RJ aims then at providing 'a framework that promotes the work of recovery and healing that is ultimately the domain of the individual victim', giving opportunities 'for remorse, forgiveness and reconciliation' (Zehr and Mika, 2004: 42). Victims need a safe place, i.e.

a physical and emotional space which allows them to recover from the victimization by offering the conditions for healing and closure (Home Office, 2003: §3.2; Ministry of Justice – Victims’ Code 2015: 51). Whether working with crime victims in the immediate aftermath of an incident or years later, RJ interventions must primarily recognize victims’ safety and security, both physical and emotional, as an opportunity to identify and articulate their personal needs (Johnstone, 2011: 52). ‘Producing safety’ involves also the necessity of creating conditions for effective restorative encounters, whose constitutive elements are ‘meeting, narrative, emotion, understanding and agreement’ (Van Ness and Strong, 2015: 100). It entails reintegration as a range of actions aiming at fulfilling a set of needs of crime stakeholders focusing on safety, as much as material, moral and spiritual help and care (EU Directive 2012/29/EU: art. 23; RJ Council UK, 2011: 4). RJ interventions ensure safety by focusing ‘first on crisis intervention and help with the trauma resulting from the crime and then on ongoing support as life is resumed in the new “normal” patterns, while coping with the resurgence of crisis symptoms from time to time’ (Van Ness and Strong, 2015: 117). The safety at stake is a sort of state of “immunization”, which is at the same time both backward-looking (from the emotional, physical and financial consequences of victimization) and forward-looking (from risks and dangers of future victimization).

Being heard

This discourse includes the essential range of demands towards participation, inclusion and direct expression of the victim’s experience (COE Rec. (99) 19: preamble; EU Directive 2012/29/EU: art. 1, 3 and 10; Ministry of Justice – RJ Action Plan 2012: 3; RJ Action Plan 2013: 2; RJ Action Plan 2014: 3; Ministry of Justice – Crime and Courts Act 2013: sch. 16.2; Ministry of Justice – Victims’ Code 2015: 34). Victims in RJ are characterized by the needs to communicate their emotions, to be compensated and to be empowered (Zehr, 2005: 27–28), by restoring their sense of autonomy and safety (Ministry of Justice – Offender Rehabilitation Act 2014: §15.3.8). Victims 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). ‘Being heard’ means participating and/or at least being involved in the justice process (RJ Council UK, 2011: 14). Victims want to understand their roles in the justice process (also in RJ programmes) including potential benefits and risks to themselves and offenders; they want to have as much information as possible about their case (UN Declaration for Victims of Crime 1985: art. 6.a). A major complaint, often raised by the RJ movement, is in fact that victims are not encouraged to feel part of the justice proceedings in their case. Since a core element of victim trauma is disempowerment, advocates of RJ claim that there should be as few limits on participation as possible (Achilles and Zehr, 2000: 15). Participation/inclusion entails the ‘opportunity for direct and active involvement of each party in the procedures that follow a crime’ (Van Ness and Strong, 2015: 67). Critical elements of inclusion are ‘invitation, recognition and acceptance of the interests of the persons invited, and willingness to adopt alternative approaches that fit individuals and their situation’ (Van Ness and Strong, 2015: 66).

Looking at inclusion from the victim's perspective, RJ authors relentlessly emphasize 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; cf. Ministry of Justice –Victims' Code 2015: 28).

Taking care

The archive of RJ entails also a set of theoretical, advocacy and practical requests to the offender regarding an active and prospective responsibility towards the victim (COE Rec. (99) 19: preamble; Home Office, 2002: §4.12; Ministry of Justice – Victims' Code 2015: 34). This can be conceptualized as obligation towards 'taking care' of the victim's well-being impacted by the crime's aftermath (Dignan, 2002). The recurrent claims of making amends, material and emotional reparation or restitution prominently feature within this discourse (Home Office, 1997: §9.21; Ministry of Justice – Crime and Disorder Act 1998: §4.1.67; Ministry of Justice – Criminal Justice Act 2003: 3.22; Ministry of Justice – Criminal Justice & Immigration Act 2008: §9.1.3). Making amends includes apology, changed behaviour and restitution from offenders to victims (Davis, 1992; Shapland et al., 2006b: 63). All this has to lead to changed values and behaviour in the offender as well as possible restitution (material and/or symbolic) beyond the demands of punishment (Harding, 1982; Wright, 1982). It is often emphasized in RJ that the need for a symbolic statement about the legitimacy of the victims' status and the acknowledgement of the emotional harm experienced are critical issues neglected by "conventional" criminal justice (Johnstone, 2011: 66; Strang, 2003). Beyond the calculable material loss the victim may suffer, these emotional dimensions to the harm have consistently been ignored by criminal justice systems and, RJ advocates suggest, has to be redressed if the victimization experience is to be satisfactorily managed (Strang, 2003: 287). Indeed, RJ accounts often remark that victims may see emotional restoration as far more important than material or financial reparation (Strang, 2003: 287). This then remains a basic victims' need, but only along with the too frequently ignored symbolic reparation (Strang and Sherman, 2003: 23). When victims experience material harm, they usually want material reparation, and in the absence of any other available remedy, they will often take money for non-material harm as well (RJ Council UK, 2011: 8). RJ is predicated to provide a concrete alternative to this state of things, by offering opportunities of emotional restoration as the main and perhaps specific outcome for the victim (Johnstone, 2011: 94). This perspective is echoed by RJ scholars who clearly state that RJ processes deal with victims' emotional as much as material needs by enabling a form of active contribution from the offender's side (Marshall, 1999: 11–12). 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). The crucial topic of offender's reintegrative shame (Braithwaite, 1989; Shapland et al., 2006b: 65) elicited within RJ conferences, is a further expression of the new demands of care towards this actor, beyond retributive punishment and pain-delivery.

'Producing safety', 'being heard', 'taking care' are only some of the 'authoritative discourses' which compose the archive of RJ – the ones more directly related to the

victim's representation. At this point, it is possible to re-compose in an ideal framework the features of the victim emerging from the preceding discourses.

Outlining the 'Ideal Victim' of Restorative Justice

In the RJ archive, victims are often represented as a cohesive, united ensemble of people, a homogenous category, characterized by standard material, symbolic and emotional needs. This actor appears often dis-empowered, in search of participation, acknowledgement and empathy. Especially symbolic and emotional needs are routinely stressed. The victim is depicted as an emotional subject directly harmed by the offender, looking for healing, empowerment, transformation and relational recovery but still able to regain control over his or her life (then, relatively different from Pemberton, Winkel and Groenhuisen, 2007 and Van Dijk, 2009). To sum up the main features of this 'ideal victim' they are: (1) embodied; (2) emotional; (3) disempowered; (4) vulnerable; (5) resilient; (6) exclusive.

The concept of an *embodied* victim appears particularly fitting with the conceptualization of the victim's characteristics within the RJ archive. This idea refers to victimhood as emerging from 'physical, rather than [...] complex and corrupt social structures' (McCann, 2007: 391). The victim is in fact, thought as constituting a discrete material entity, a flesh-and-blood individual caught up in a trauma or hit by material suffering (McCann, 2007: 392). An 'embodied' victim is a human being victimized by a specific, clearly identifiable offender, not a social structure or organization, but a definite individual able to directly harm him or her. When the RJ 'authoritative discourses' focus on needs of listening and being listened to, of physical safety and material reparation, a link between the body of the victim, as natural entity, and his or her thoughts, feelings and behaviours is traced. This is because RJ explicitly uses an embodied language made of metaphors and figures of speech, above all promoting experiences grounded in perceptions of physical proximity and in actions related to enhancing or decreasing physical distance (Meier et al., 2012: 707) none of which have a correspondent in "conventional" criminal justice. The idea of the meeting between victim and offender, as shared physical space where flesh-and-blood human beings encounter each other, is an expression of this embodied language.

It is also possible to argue that RJ portrays *emotional* victims. RJ includes discursive practices centred on concepts such as 'healing', 'closure', 'forgiveness', 'reconciliation', all ideas which seem to fit with an understanding of victims' needs as revolving around emotions, moods, feelings. The discursive practice of prioritizing victims' affect seems a crucial feature of 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) which promotes an emotional awareness of greater consequence (Richards, 2011). However, the conduct of 'emotional' participants in RJ processes comes to be understood as in need of direction, paralleled by a purported increased responsabilization (Crawford and Newburn, 2003; Foucault, 1991).

A third stereotyped quality of victim is his or her *disempowered* nature. Disempowerment here refers to the individual status of not being able to develop or to find oneself hampered in exercising 'capabilities to overcome [...] psychological and intellectual obstacles and attain self-determination, self-sufficiency, and decision-making abilities' (Becker, Kovach and Gronseth, 2004 in Hur, 2006: 531). In RJ the emphasis seems mainly posed on the victim's psychological/individual

disempowerment (instead of social or political disempowerment). In order to be achieved, the victim's psychological empowerment requires internal strengths, while to realize political empowerment a person requires external conditions that will enable him or her to exercise new abilities (Gruber and Trickett, 1987). This recalls the individualized nature of the RJ 'ideal victim', the focus on agency more than on structural drives of his or her action, which is consonant with the embodied/emotional features.

A further characteristic is that of *vulnerability*. Here the emphasis is placed on victims' personal vulnerability which seems to result from an individual or group's quality, identity or status that shape susceptibility to being negatively affected by a crime. This concept of vulnerability is linked to an idea of victim characterized as less able to physically defend himself/herself, with lower perceived self-efficacy and higher perceived negative impact (Jackson, 2009). The victim's personal needs rooted in capacities for love, understanding and choice, are an object of interference or a threat to their fulfilment. The victim's anxiety, rage and fear appear linked to the frustration of personal needs related to the crime, generating a double loading of distress and pain. RJ offers an arena within which to re-elaborate the suffering caused by victimization, addressing the need of safety and protection.

Even if disempowered and vulnerable, the 'ideal victim' of RJ maintains a capacity to positively react to the victimization, showing a unique quality of *resilience*. This quality is expressed by the very choice of partaking in RJ processes, meeting the offender; expressing and mediating over needs and advancing requests; finally, prominently orienting the process outcome (e.g. by withdrawing or accepting apologies, compensation, etc.). Resilience entails the capacity to make and develop realistic plans keeping self-confidence and a positive outlook as well as using communication, problem-solving and self-management skills (APA, 2014). All these victim capacities seem to be taken for granted within RJ.

The last feature to consider is that the victim of RJ is *exclusive*, that is, defined as ontologically distinguished from the offender. The recurrent – stereotypical – conceptualization of the victim does not leave room for (social, personal, cultural) similarities or overlaps between his or her and the relative offender. Moreover, the idea of a victim/offender – that is, a subject who is at the same time harmed but also harming – does not seem compatible with the 'ideal victim' of RJ.

The 'ideal victim' of RJ exemplifies a two-faced subject: on one hand an agentic and resilient individual aware of his or her needs, constitutively striving for practices of choice and self-empowerment, continuously undertaking decisions and actions (Roberts, 2006: 57); on the other, a disempowered, flesh-and-blood discrete entity, in search of safety and recognition. RJ offers to this subject opportunities for choice, for autonomous solutions to victimization, investing in agency and neglecting macro-constraints of one's action as well as the fluid transactions between these two dimensions of a human's life.

Conditions of Possibility

Through the archaeological lenses, it is now possible to trace back the life-course of the 'ideal victim'. This means trying to understand from where that complex stereotype comes, or, more precisely, to historically analyse some of the contextual factors – or 'conditions of possibility' (Foucault, 1970: 168) – which have contributed to make

possible the emergence of that model. These conditions are not the historical/theoretical roots of RJ as such, but only some of the most salient components of the cultural background within which the 'ideal victim' makes sense in the historical and geographical context under analysis.

The first condition can be considered the rise of the 'victimhood' – or the 'return of the victim' as Garland (2001: 11) states – as academic subject and political resource which plays the role of crucial discursive pillar of RJ and directly contributes to build up its 'ideal victim' (Marshall, 1996: 23). As already mentioned, the direct involvement of crime victims in criminal justice, and the claim of meeting their needs, have become key categories in the language of RJ. This seems related to the consolidation and the popularization of victim movements' claims. 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). Also, the critical role played in Britain by the victims' rights campaigner Margery Fry (1951) in setting the scene for a victim-sensitive justice should be emphasized, paving the way for the emergence of RJ.

Such claims have been academically backed up by a new victimology, which advocated for a crucial shift from an old to a new way of understanding and supporting crime victims and conveyed by extensive media campaigns (Maguire, 1985; Mawby, 1988; Newburn, 1993). As Ben-David (2000: 66) emphatically claims 'the "old paradigm" (primarily addressing the victim's rights) can be observed as an expression of pure morality in relation to the victim, whereas the new paradigm (addressing the victim's needs) demonstrates consideration and care for morality'. Especially the ideal victim's features of 'embodiment' and 'vulnerability' seem informed and even shaped by the diffusion of the 'return of the victim' as academic and political (as well as media) phenomenon.

A second possible factor is the spreading and stabilization of the 'psy-discourse' during the second half of the 20th century (Richards, 2005; Rose, 1996). This phenomenon refers to the diffusion of the psychological language outside traditional therapeutic settings. This language has informed a growing range of criminal justice policies, particularly those designed to assist victims of crime. It is arguable that this discourse has contributed to make widely accepted that crime victims must be offered opportunities to tell the story of their victimization, express their pain, fear and/or anger about the offence and to 'be heard'. The 'disempowered' and 'emotional' nature of the RJ victim makes sense within the framework offered by the 'psy-discourse', which promotes the priority of emotions as a human dimension to be 'taken care of' in case of damages, losses and traumas experienced by victims.

A further underpinning for the 'ideal victim' of RJ is the emergence during the 1980s of the wide-ranging discourse of 'civilizing' criminal justice. This discourse contains at least three different but interlinked cultural components: the advocacy for restitution, compensation and mediation in criminal matters (Harding, 1982; Wright, 1982; Wright and Galaway, 1989); the appeal to the community as ideal place where to deal with the crime's aftermath (Braithwaite, 1989); and the interest around the abolitionist stance (Christie, 1977; Hulsman, 1986). In this articulated perspective, victims and offenders are thought of as entangled in social interdependencies which have a symbolic significance which takes precedence over individual interests (Braithwaite, 1989: 100). Crimes are problematic situations (Hulsman, 1986) or conflicts (Christie, 1977) to be mediated and handled involving direct stakeholders. Disempowered but still resilient

victims, through community-based measures informed by a civil law approach (Harding, 1982; Wright, 1982; Wright and Galaway, 1989), can positively react to criminal acts, regaining control over their lives.

The last discursive component is – apparently paradoxically – the retributivist penal discourse (Duff, 1986; Von Hirsch, 1986). Here, the emphasis is put on public needs triggered by the crime and on universal claims regarding the human behaviour. This discourse embraces the Enlightenment's notion that a universal and transcendent rationality defines the formation of individual subjects (Hill, 2009: 2). It conceives of the subject as a transcendent and rationally self-interested individual, whereas reason and rationality are the unifying principle underpinning subjectivity. Moreover, it shows a typical dichotomizing attitude (Christie, 1986b: 95). The criminal-legal rationality is, in fact, based on a binary classification system 'both for evaluation of acts and for evaluation of persons. Acts become right or wrong – non-crimes or crimes – and persons criminals or non-criminals' (Christie, 1986b: 96). The 'exclusivity' of the 'ideal victim' seems finally linked to the dichotomic view integral to this discourse.

These seemingly unrelated (and somehow conflicting) discourses are pre-existing cultural, academic and political constructs, which delimit the space within which the 'ideal victim' of RJ has slowly emerged. This stereotype develops under specific discursive conditions, being defined by the juxtaposition, intersection and competition of those cultural constructs (Maglione, 2013).

Concluding Remarks: Beyond Archaeology

RJ seems to embrace a specific model of victim: embodied; emotional; disempowered; vulnerable; resilient; and exclusive. This ideal is only partially overlapping Christie's original model, which was mainly characterized by being as innocent and vulnerable as possible, both physically and socioeconomically (Christie, 1986a: 18–19). The 'ideal victim' of RJ appears as a bi-faced subject: on one hand, an agentic individual striving for self-empowerment, undertaking self-crafting decisions (not overlapping Christie's model); on the other, a passive flesh-and-blood entity, in search of safety and recognition (similar to Christie's ideal). This stereotype is historically grounded in a range of cultural formations, which represent some of the most deep-seated scholarly and political underpinnings of RJ. Particularly, the rise of victimhood as a political and academic (as well as media) phenomenon relentlessly spreading over the last 30 years in the western world, seems to have been a crucial condition for the emergence of the 'ideal victim' as well as of RJ as such.

A range of practical implications can be drawn from this study. The 'ideal victim' is likely to be used as a reference point by RJ practitioners, shaping their expectations towards participants. In turn, by guiding practitioners' work, it will also impact on participants' experiences. We could namely foresee a 'restraining' effect (Van Dijk, 2009) of this victim's model on RJ participants in terms of pressure towards adjusting to it.² This model may also influence lawmakers by informing their legal and policy documents (as indeed already seen). Further, a possible implication is relative to the scope of the 'ideal victim'. It is arguable that this model does not properly apply to many types of victims such as 'collective' victims of economic crimes, powerful victims or victims with shared responsibility. As a consequence, problems in terms of proposing and practising RJ for these categories of victims would likely arise. The effects of the 'ideal victim' within restorative practices are clearly in need of empirical research. The

goal of this article is only to draw a historical-critical and discourse-oriented framework able to offer inputs and tools to assess what the RJ movement might take for granted: who is the victim in RJ? More than conclusions, it is worthy at this point to raise further questions: is it possible to imagine a more inclusive 'ideal victim' in RJ? Do we see RJ discourses able to put in social and political context the positions of the 'victim'? How could they actually affect practitioners' and participants' experience? Which are the political underpinnings of such discourses? These questions mainly coalesce around political, ethical and practical issues, and require modes of analysis other than archaeology. However, they will likely benefit from the historical delimitation of research objects enabled by the archaeological investigation, as well as from its critical edge.

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Notes

1. In England and Wales the vocabulary of victim–offender mediation developed, at least at the beginning (late 1970s–early 1980s), independently from the RJ lexicon which was emerging in North America. These two vocabularies converged during the early 1990s, whereby victim–offender mediation came to be conceptually linked as a specific practice to RJ theory, partly due to the reception of Howard Zehr's work (Galaway and Hudson, 1990; Marshall, 1996; Wright and Galaway, 1989).
2. It is to be remarked that both practitioners and participants to RJ encounters are not passively shaped by the model of victim engrained in the RJ setting. Forms of resistance will likely take place as more or less elaborated attempts to re-negotiate that model or to critically discuss it.

References

- Achilles M and Zehr H (2000) Restoring victims. Restorative justice for crime victims: The promise, the challenge. Available at: http://www.rethinking.org.nz/assets/Newsletter_PDF/Issue%2019/03%20Howard%20Zehr.pdf.
- American Psychological Association (APA) (2014) The road to resilience. Available at: <http://www.apa.org/helpcenter/road-resilience.aspx>.
- Ben-David S (2000) Needed: Victim's victimology. In: Friday PC and Kirchhoff GF (eds) *Victimology at the Transition from the 20th to the 21st Century*. Monchengladbach: Shaker Verlag & WSVP, 55–72.
- Bolivar D (2010) Conceptualizing victims' 'restoration' in restorative justice. *International Review of Victimology* 17(3): 237–265.
- Braithwaite J (1989) *Crime, Shame and Reintegration*. Cambridge: University of Cambridge Press.
- Braithwaite J (1999) Restorative justice: Assessing optimistic and pessimistic accounts. *Crime and Justice: A Review of Research* 25: 1–127.

- Christie N (1977) Conflicts as property. *British Journal of Criminology* 17(1): 1–15.
- Christie N (1986a) The ideal victim. In: Fattah E (ed.) *From Crime Policy to Victim Policy: Reorienting the Justice System*. Basingstoke: Macmillan, 17–30.
- Christie N (1986b) Images of man in modern penal law. *Contemporary Crises* 10(1): 95–106.
- Christie N (2013) Words on words. *Restorative Justice: An International Journal* 1(1): 15–19.
- Christie N (2015) Widening the net. *Restorative Justice: An International Journal* 3(1): 109–113.
- Crawford A and Newburn T (2003) *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice*. Cullompton: Willan.
- Cunneen C (2010) The limitations of restorative justice. In: Cunneen C and Hoyle C (eds) *Debating Restorative Justice*. Oxford: Hart Publishing, 101–189.
- Davis G (1992) *Making Amends: Mediation and Reparation in Criminal Justice*. London: Routledge.
- De Mesmaecker V (2010) Identifying the victim in restorative justice: Reflections on ‘the ideal victim of restorative justice’. Biennial Conference of the EFRJ, Bilbao, 17–19 June. Available at: <https://lirias.kuleuven.be/handle/123456789/300004>.
- Dignan J (2002) Restorative justice and the law: The case for an integrated, systemic approach. In: Walgrave L (ed.) *Restorative Justice and the Law*. Cullompton: Willan, 168–190.
- Dignan J (2005) *Understanding Victims and Restorative Justice*. Berkshire: Open University Press.
- Dreyfus HL and Rabinow P (1983) *Michel Foucault: Beyond Structuralism and Hermeneutics*. Chicago, IL: University of Chicago Press.
- Duff A (1986) *Trials and Punishments*. Cambridge: Cambridge University Press.
- Eglash A (1977) Beyond restitution: Creative restitution. In: Hudson J and Galaway B (eds) *Restitution in Criminal Justice*. Lexington: DC Heath and Company, 91–100.
- Elwick J (2012) Layered history: Styles of reasoning as stratified conditions of possibility. *Studies in History and Philosophy of Science* 43(4): 619–627.
- Foucault M (1970) *The Order of Things: An Archaeology of the Human Sciences*. New York: Pantheon Books.
- Foucault M (1972) *The Archaeology of Knowledge*. New York: Pantheon Books.
- Foucault M (1986) *The History of Sexuality, Vol. III: The Care of the Self*. New York: Pantheon Books.
- Foucault M (1988) The concern for truth. In: Kritzman LD (ed.) *Michel Foucault: Politics, Philosophy, Culture. Interviews and Other Writings, 1977–1984*. New York: Routledge, 255–267.
- Foucault M (1991) Governmentality. In: Burchell G, Gordon C and Miller P (eds) *The Foucault Effect*. London: Harvester Wheatsheaf, 87–104.
- Foucault M (1996) What is critique? In: Lotringer S (ed.) *Foucault Live: Collected Interviews, 1961–1984*. New York: Semiotext(e), 41–81.
- Fry M (1951) *Arms of the Law*. London: Gollancz.
- Galaway B and Hudson J (eds) (1990) *Criminal Justice, Restitution and Reconciliation*. Monsey/Cullompton: Criminal Justice Press/Willan.
- Garland D (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press.
- Garland D (2013) What does it mean to write a ‘history of the present’? Foucault, genealogy and the history of criminology. *Quaderni fiorentini per la storia del pensiero giuridico moderno* 42: 43–57.
- Gergen KJ (2009) *An Invitation to Social Construction*. London: SAGE.
- Green S (2007) Restorative justice and the victims’ movement. In: Johnstone G and Van Ness D (eds) *A Handbook of Restorative Justice*. Cullompton: Willan, 171–191.
- Green S (2008) In the name of the victim: Manipulation and meaning within the restorative paradigm. Available at: http://www.apav.pt/pdf/Victims_Mediation_EN.pdf.
- Gruber J and Trickett EJ (1987) Can we empower others? The paradox of empowerment in the governing of an alternative public school. *American Journal of Community Psychology* 15(3): 253–371.

- Harding J (1982) *Victims and Offenders*. London: Bedford Square Press.
- Hill FD (2009) Restorative justice: Sketching a new legal discourse. Available at: <http://www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/ILH/frank-hill.pdf>.
- Howarth D (2002) An archaeology of political discourse? Evaluating Michel Foucault's explanation and critique of ideology. *Political Studies* 50(1): 117–135.
- Hulsman L (1986) Critical criminology and the concept of crime. *Contemporary Crises* 10(3–4): 63–80.
- Hur MH (2006) Empowerment in terms of theoretical perspectives: Exploring a typology of the process and components across disciplines. *Journal of Community Psychology* 34(5): 523–540.
- Jackson J (2009) A psychological perspective on vulnerability in the fear of crime. *Psychology, Crime and Law* 15(4): 365–390.
- Johnstone G (2011) *Restorative Justice: Ideas, Values, Debates*. London: Routledge.
- Jørgensen M and Phillips L (2002) *Discourse Analysis as Theory and Method*. London: SAGE.
- Liebmann M (2007) *Restorative Justice: How It Works*. London: Jessica Kingsley Publishers.
- McCann BJ (2007) Therapeutic and material <victim>hood: Ideology and the struggle for meaning in the Illinois death penalty controversy. *Communication and Critical/Cultural Studies* 4(4): 382–401.
- Maglione G (2013) Problematizing restorative justice: A Foucauldian perspective. In: Gavrielides T and Artinopoulou V (eds) *Reconstructing Restorative Justice: Philosophy, Values, Norms & Methods Reconsidered*. Farnham: Ashgate, 67–90.
- Maguire M (1985) Victims' needs and victim services: Indications from research. *Victimology: An International Journal* 10(1–4): 539–559.
- Marshall T (1996) The evolution of restorative justice in Britain. *European Journal on Criminal Policy and Research* 4(4): 21–43.
- Marshall T (1999) Restorative justice: An overview. Available at: <http://www.homeoffice.gov.uk/rds/pdfs/occ-resjus.pdf>.
- Marshall T and Merry S (1990) *Crime and accountability: Victim/offender mediation in practice*. London: Home Office.
- Mawby RI (1988) Victims' needs or victims' rights: Alternative approaches to policy-making. In: Maguire M and Pointing J (eds) *Victims of Crime: A New Deal?* Milton Keynes: Open University Press, 127–137.
- Meier BP, et al. (2012) Embodiment in social psychology. *Topics in Cognitive Science* 4(4): 705–716.
- Miers D, Maguire M, Goldie S, et al. (2001) *An exploratory evaluation of restorative justice schemes*. London: Home Office.
- Newburn T (1993) *The long-term needs of victims: A review of the literature*. London: Home Office.
- Newburn T (1995) *Crime and Criminal Justice Policy*. London: Longman.
- Pavlich G (2005) *Governing Paradoxes of Restorative Justice*. London: Glasshouse Press.
- Pemberton A, Winkel FW and Groenhuijsen MS (2007) Taking victims seriously in restorative justice. *International Perspectives in Victimology* 3(1): 4–14.
- Pemberton A, Winkel FW and Groenhuijsen MS (2008) Evaluating victims' experiences in restorative justice. *British Journal of Community Justice* 6(2): 98–119.
- Richards K (2005) Unlikely friends? Oprah Winfrey and restorative justice. *Australian and New Zealand Journal of Criminology* 38(3): 381–399.
- Richards K (2011) Restorative justice and 'empowerment': Producing and governing active subjects through 'empowering' practices. *Critical Criminology* 19(2): 91–105.
- Roberts C (2006) 'What can I do to help myself?': Somatic individuality and contemporary hormonal bodies. *Science Studies* 19(2): 54–76.
- Rock P (1990) *Helping Victims of Crime: The Home Office and the Rise of Victim Support in England and Wales*. New York: Oxford University Press.

- Rose N (1996) *Inventing Ourselves: Psychology, Power and Personhood*. Cambridge: Cambridge University Press.
- Shapland J, et al. (2006a) Situating restorative justice within criminal justice. *Theoretical Criminology* 10(4): 505–532.
- Shapland J, et al. (2006b) Restorative justice in practice. The second report from the evaluation of three schemes. Available at: https://www.shef.ac.uk/polopoly_fs/1.7831/file/RestorativeJustice2ndReport.pdf.
- Sherman LW (2003) Reason for emotion: Reinventing justice with theories, innovations, and research. The American Society of Criminology 2002 Presidential Address. *Criminology* 41(1): 1–38.
- Strang H (2003) Justice for victims of young offenders: The centrality of emotional harm and restoration. In: Johnstone G (ed.) *A Restorative Justice Reader: Texts, Sources and Context*. Cullompton: Willan, 286–293.
- Strang H and Sherman LW (2003) Repairing the harm: Victims and restorative justice. *Utah Law Review* 1: 15–42.
- Sutherland E (1949) *White Collar Crime*. New York: Dryden Press.
- Van Dijk J (2009) Free the victim: A critique of the western conception of victimhood. *International Review of Victimology* 16(1): 1–33.
- Van Ness D and Strong HK (2015) *Restoring Justice*. Cincinnati, OH: Anderson.
- Van Wijk J (2013) Who is the 'little old lady' of international crimes? Nils Christie's concept of the ideal victim reinterpreted. *International Review of Victimology* 19(2): 159–179.
- Von Hirsch A (1986) *Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals*. Manchester: Manchester University Press.
- Walgrave L (ed.) (2003) *Repositioning Restorative Justice*. Cullompton: Willan.
- Wright M (1982) *Making Good: Prisons, Punishment, and Beyond*. London: Burnett Books.
- Wright M (1996) *Justice for Victims and Offenders*. Winchester: Waterside Press.
- Wright M and Galaway B (eds) (1989) *Mediation and Criminal Justice: Victims, Offenders and Community*. London: SAGE.
- Young R (2002) Testing the limits of restorative justice: The case of corporate victims. In: Hoyle C and Young R (eds) *New Visions of Crime Victims*. Oxford: Hart, 133–172.
- Zehr H (2002) *The Little Book of Restorative Justice*. Intercourse, PA: Good Books.
- Zehr H (2005) *Changing Lenses: A New Focus for Crime and Justice*. Scottdale, PA: Herald Press.
- Zehr H and Mika H (2004) Fundamental concepts of restorative justice. In: McLaughlin E, Fergusson R, Hughes G, et al. (eds) *Restorative Justice: Critical Issues*. London: SAGE, 40–43.

Legal and policy documents

International

- COE Recommendation (99) 19 concerning mediation in penal matters.
- EU Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.
- EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.
- ### *England and Wales*
- Home Office (1997) *No more excuses*. White Paper. London: Home Office.
- Home Office (2002) *Justice for all*. White Paper. London: Home Office.
- Home Office (2003) *Restorative justice: The government's strategy*. A consultation document on the government's strategy on restorative justice. London: Home Office.
- Ministry of Justice (2012) *Restorative Justice Action Plan for the Criminal Justice System in England and Wales*.

Ministry of Justice (2013) Restorative Justice Action Plan for the Criminal Justice System in England and Wales.

Ministry of Justice (2014) Restorative Justice Action Plan for the Criminal Justice System in England and Wales.

Ministry of Justice, Crime and Disorder Act 1998 England and Wales.

Ministry of Justice, Criminal Justice Act 2003 England and Wales.

Ministry of Justice, Criminal Justice & Immigration Act 2008 England and Wales.

Ministry of Justice, Crime and Courts Act 2013 England and Wales.

Ministry of Justice, Offender Rehabilitation Act 2014 England and Wales.

Ministry of Justice, Code of Practice for Victims of Crime October 2015 England and Wales.

Restorative Justice Council UK, Best Practice Guidance for Restorative Practice 2011.

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