

Contents lists available at [ScienceDirect](https://www.sciencedirect.com)

# International Journal of Law, Crime and Justice

journal homepage: [www.elsevier.com/locate/ijlcrj](http://www.elsevier.com/locate/ijlcrj)

INTERNATIONAL
JOURNAL OF
LAW
CRIME
AND
JUSTICE

## Imaging victims, offenders and communities. An investigation into the representations of the crime stakeholders within restorative justice and their cultural context



Giuseppe Maglione

School of Applied Sciences, Edinburgh Napier University, Sighthill Campus, Edinburgh EH11 4BN, UK

### ARTICLE INFO

#### Article history:

Received 1 October 2016

Received in revised form 24 February 2017

Accepted 28 February 2017

Available online 11 March 2017

#### Keywords:

Restorative justice

Victim

Offender

Community

Michel Foucault

Nils Christie

### ABSTRACT

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

© 2017 Elsevier Ltd. All rights reserved.

## 1. Introduction

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

E-mail address: [G.Maglione@napier.ac.uk](mailto:G.Maglione@napier.ac.uk).<http://dx.doi.org/10.1016/j.ijlcrj.2017.02.004>

1756-0616/© 2017 Elsevier Ltd. All rights reserved.

1986). After a brief comparison between these models, the final section traces the cultural background within which they have emerged, from a historical perspective. The paper ends by drawing some implications and concluding reflections. The overarching aim of this study is to subject some of the underlying premises of RJ laws and policy to critical review and to offer analytical and conceptual tools for advocacy and scholarship on RJ.

## 2. Methods

Nils Christie identified in a well-known paper (1986) the key characteristics of the ‘ideal victim’ and, at least partially, of the ‘ideal offender’ in the media and policy. This work endeavoured to highlight some taken-for-granted assumptions (and problematic repercussions) of supposedly neutral technical languages. In RJ, ‘offender’ and ‘victim’ are complemented by a further (and distinctive) stakeholder, the ‘community’ (Braithwaite, 1989; Zehr, 2005). The goal pursued here, by adopting Christie’s viewpoint, is primarily to reconstruct the implicit images of the three main crime stakeholders within RJ regulations<sup>1</sup> and to unearth their theoretical underpinnings. In order to achieve this goal, this research will draw upon Michel Foucault’s archaeological approach, conceived of as a historical-critical inquiry into the organisation and production of discourse (Foucault, 1970: 168). The interpretation of this perspective advanced within this paper, is critically aware of the methodological limitations of the archaeological framework (Dreyfus and Rabinow, 1983: 79; Garland, 2013: 44; Rabinow, 2009: 30; Veyne, 2010: 54). Therefore, archaeology is understood pragmatically as a mode of delimitation and contextualisation of research objects (that is, discourses on the ‘victim’, ‘offender’ and ‘community’ in RJ) preliminary to any genealogical work on the power relations which intertwine discourses in context and their subjectivating effects (Howarth, 2002: 128).

The first step of the archaeological enquiry is to draw the ‘archive’ (Foucault, 1972: 145) i.e. the dynamic set of the discourses on the crime stakeholders within RJ. The paper will focus on legal statutes, policy documents and their underpinning theoretical assumptions, enacted in England and Wales between 1985 and 2015, explicitly regulating RJ processes.<sup>2</sup> This step is functional in that it reduces the complexity of a fluid, extensive and growing field that is RJ, by identifying a limited set of wide-ranging and deep-rooted representations of the crime stakeholders (Jørgensen and Phillips, 2002: 143). Clearly, this archive does not exhaust the RJ field which includes, for instance, also how practitioners and other stakeholders interpret and negotiate the meanings of the authoritative discourses.

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

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

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

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

Download English Version:

<https://daneshyari.com/en/article/5123817>

Download Persian Version:

<https://daneshyari.com/article/5123817>

[Daneshyari.com](https://daneshyari.com)