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# *Communities at Large*: An Archaeological Analysis of the 'Community' Within Restorative Justice Policy and Laws

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**Abstract** Within the scholarly literature on restorative justice, the 'community', as a distinctive crime stakeholder, has been the target of extensive research. This work provides an original interpretation of the underlying images of the community within policy documents and legal statutes on RJ produced in England and Wales since 1985. The paper begins with an outline of the most recurrent representations of the community in relevant laws and policy, unearthing their theoretical underpinnings. The next step aims to infer from the general representations a range of more specific features, and to sketch out an 'ideal' model of community in restorative justice, whose cultural background is also outlined. As a final step, some critical reflections on the implications of the 'ideal community' are offered. By identifying what is taken for granted in laws and policies on restorative justice and its cultural context, this study aims to foster a critical "reality check" on this specific development of western penal policy, relevant for the restorative justice movement, at the international level.

## Introduction

The amount of studies on the 'community' in restorative justice (RJ) has become extensive (Bolivar 2012; Crawford 2003; Dzur 2003; Dzur and Olson 2004; McCold 1996, 2004; Pavlich 2001, 2004; Richards 2014; Rossner and Bruce 2016; Rosenblatt 2015; Vanfraechem 2007; Walgrave 2002; Weisberg 2003; Wood 2015), especially if compared to the (limited) number of works which focus specifically on the 'victim' and the 'offender' in RJ (Bolivar 2010; Green 2007; Maglione 2016; Pemberton et al. 2007; Van Dijk 2009). It seems that whilst RJ scholars, advocates and practitioners understand the latter labels as intuitive and taken for granted, the 'community' needs additional clarification. Overall, the

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scholarly literature has been trying to elucidate this fuzzy concept either by stipulating normative definitions, i.e. by offering descriptions of what the community in RJ ought to be, or, more recently, by investigating empirically how the community actually "works" in RJ processes.

Building on an emerging body of work (Maglione 2016), this paper offers a generative perspective on the community in RJ (Christie 2013). It consists of a critical recognition of the most wide-ranging descriptions, implicit assumptions and images of this crime stakeholder within policy documents and legal statutes on RJ enacted in England and Wales between 1985 and 2015. Additionally, the research includes a historical analysis of the cultural context within which those images have emerged. The questions which drive this study are: which images of the 'community' have been featuring into the legal and policy regulations on RJ? Is it possible to reconstruct a recurrent representation of the 'community' which orientates law- and policy-makers' activity? What is the cultural background which encompasses those images? Is it possible to re-envision the 'community' in RJ from a critical criminological viewpoint?

The paper begins with a reconstruction the most authoritative discourses on the 'community' within legal/policy regulations on RJ, by using an approach informed by Foucauldian archaeology (Foucault 1965, 1970, 1972, 1973). This analysis makes possible to single out a range of specific and recurrent features which will be reassembled into an 'ideal model' of community in RJ (Christie 1986). The next step inserts the 'ideal community' in the cultural landscape within which it has emerged historically. Finally, the paper offers a brief overview of potential practical implications alongside some concluding critical reflections on future directions for research on RJ. Overall, the purpose of this work is to subject some of the underlying assumptions of RJ to critical scrutiny, by exposing the images of this idea of justice which tacitly inform laws and policy. Along such lines, it becomes possible to generate critical insights for advocacy and scholarship on RJ beyond the British borders.

## Methodological and Theoretical Orientations

Some thirty years ago Nils Christie identified in a celebrated paper (1986) the key and implicit characteristics of the 'ideal victim' and of the 'ideal offender' in the media and policy. This work was a straightforward attempt to unearth some taken-for-granted assumptions (and problematic implications) of supposedly neutral technical languages.

In RJ, 'offender' and 'victim' are complemented by a further (and distinctive) stakeholder, the community. My goal, by adopting Christie's perspective, is first of all to unpack the implicit images of the community within RJ regulations[1] and to expose their theoretical underpinnings. The 'ideal community' of RJ, as a synthesis of those images, is a

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[1]  Internal regulations (produced by the Home office, Ministry of Justice, Crown Prosecution Service and RJ UK Council) 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'; the geo-historical context (England and Wales 1985-2015). 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. A number of international documents was also considered insofar as they influenced the development of RJ in Europe, including the UK (Liebmann 2007: 44–48), and as long as containing direct reference to the 'community'. A further case-by-case reduction was carried out due to the space limitation of this article. The parameter used for this was the qualitative and quantitative richness of the reference to the 'community'.

methodological tool. I do not aim to test or prove whether such a model in "reality" exists (Van Wijk 2013); rather, my aim is explorative: to understand how it might help to shed light on current understandings of the community within RJ. In order to achieve this goal, I 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). My interpretation of this perspective is critically aware of the other methodological approaches elaborated by Foucault during the 1970s in order to overcome the limitations of the archaeological framework (Dreyfus and Rabinow 1983: 79; Garland 2013: 44; Veyne 2010: 54). Therefore, archaeology is here understood pragmatically as a mode of delimitation and contextualisation of research objects (that is, discourses on the community in RJ) preliminary to the undertaking of genealogical works on the power relations which intertwine discourses 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 authoritative discourses on the community within RJ. I will focus on legal statutes, policy documents and their underpinning theoretical assumptions produced in England and Wales between 1985 and 2015, explicitly regulating RJ processes[2] (Maglione 2016). This step is functional to reduce 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 community (Jørgensen and Phillips 2002: 143). Clearly, this archive does not exhaust the RJ universe which includes, for instance, also how practitioners and other stakeholders interpret and negotiate the meanings of the predominant discourses[3] (which therefore need to be expounded).

The analysis proceeds inferentially: firstly it draws the authoritative discourses from the relevant laws, policy documents and literature; it then profiles the 'ideal community' from the authoritative discourses, by piecing together the most recurrent representations of community emerging from the archive. At this point, it is possible to offer an interpretation of how this ideal has emerged and sedimented historically (Richards 2011). Legal and policy regulations, in fact, do not take place in a vacuum, they carry a past with them and are influenced by a wide and stratified range of cultural phenomena. Methodologically, this last step describes the contextual factors—that is, 'conditions of possibility' (Foucault 1970: 168)—which have contributed to create the "authority" of that ideal model, by influencing regulations and scholarship. I have selected only cultural and socio-political phenomena taking place in the relevant geo-historical context and whose languages show overlapping resemblances with the key representations of the community in RJ. My contention, is that these phenomena have played the role of conceptual reservoirs for RJ scholars, practitioners and advocates, by providing them with concepts, theories, aims and goals, which have been used to shape the language of RJ. The congruency between the RJ language and the wider cultural and socio-political context has been one of the reasons for the increasing appeal of RJ (and the 'ideal community' in particular) to law- and policy-makers.

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[2] In order to reconstruct the 'ideal community' 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).

[3] The relationship between legal/policy and scholarly/practical discourses is complex and circular. The former discourses contribute to define/constraint the latter ones insofar as scholars and practitioners are required to work on laws and policies. However these scholarly and practical interpretations might likely influence law/policy-makers in turn, insofar as they become more authoritative and widespread, shaping the outcomes of legal/policy decision-making processes.

There are three main limitations to the research. Firstly, the analyses that follow apply only to RJ in both adult and juvenile criminal justice settings and practiced by conferencing. Secondly, this work is mainly a theoretical elaboration on legal material, and as such tends to be at times abstract and over-generalising. However, my primary goal is to discern general patterns in representing the community in RJ (Garland 2001: viii). From this perspective, abstraction and generalisation are useful (and even necessary) heuristic tools for a perceptive and conceptually innovative analysis. Secondly, I aim to re-elaborate and apply certain analytical and conceptual devices (i.e. archaeology and 'ideal community'), in order to foster critical research in RJ. This will involve a certain degree of simplification, which I hope will be rewarded by the productivity and provocation of the approach proposed (Foucault 1996; Garland 2001; Pavlich 2005). Lastly, the inferences from archaeological data (e.g. to draw the 'ideal community' from the archive) are always underdetermined and theory-laden, i.e. many (and possibly incompatible) readings of the same data are feasible as well as driven by theoretical views (Morrison 2011). My readings are led by the meta-theoretical intention to highlight what is lacking in the RJ literature and to identify a new direction for critical research, offering an analytical model (largely based on Foucault's and Christie's works) which aims to provoke further reflection and debate.

## Archival Research: Authoritative Discourses on the Community in Restorative Justice

It is possible to identify at least four main discourses on the community in RJ, spanning across laws and policy documents in the relevant context: (1) community as stakeholder; (2) community involvement and participation; (3) restoring communities; (4) reintegrating into the community.

One of the most specific attributes of RJ is that the community is characterised as a distinctive crime *stakeholder* (RJ Action Plan 2012: 3; RJ Strategy 2003: 1.2; The Way Ahead 2001: 2.3). In a situation of widely denounced definitional fuzziness surrounding this actor, what stands out consistently, is the conceptualisation of the community as a collective actor with an interest or responsibilities towards a crime (Ashworth 2001; Braithwaite 1999; Christie 1977; Johnstone 2011; Marshall 1999; McCold 1996; Zehr 2005). The actual rise of RJ is often considered a response to the current state of affairs whereby criminal justice takes 'little account of the views of victims or the wider community' (No More Excuses 1997: 9.38). A crucial difference between RJ and the "conventional" criminal justice is in fact that the community 'is incorporated into mainstream criminal justice practice only in abstract, highly formalized ways' (Dzur and Olson 2004: 93). RJ offers a time/space in which victims, offenders and the relevant community can 'participate together actively in the resolution of matters arising from the crime' (UN Basic Principles RJ 2002: 2) in order to meet the needs triggered by the criminal behaviour (RJC Best Practice 2011: 2b.3; Justice For All 2002: 2.7). The premise of this view is that crimes and crime responses are conceived in terms of social conflict (Christie 1977, 1982) taking place in (and against) the wider community (RJ Action Plan 2012: 3; RJ Strategy 2003: 1.2). Therefore, the community's role in RJ is not only to achieve reparation of harm and reduction of reoffending but also to 'reap the opportunities for moral development and community-building which criminal conflicts provide us with' (Johnstone 2011: 119). From this perspective, RJ promotes through the new role assigned to the community a 'shift in the power related to who controls and owns crime in society—a shift from the state

to the individual citizen and local communities' (Umbreit 1994: 162). This means that the community takes responsibility for the resolution and prevention of crime demands, given that punishment is not sufficient to "solve" the crime problem (Marshall 1992: 25). Through RJ, crime control is 'communized', because crime is 'a problem that has to be coped with by all the members involved and not by professionals who are in fact outsiders' (McCold 1996: 91). This local community control (McCold 1996: 91) enables communities to understand and act upon the underlying causes of crime, to promote community well-being and to prevent crime (UN Basic Principles RJ 2002: Preamble). In this articulated discourse, the community offers at the same time: a new setting wherein to reframe the crime and its consequences; a recipient of restoration along with the victim; and a collective response to crime alternative to state-based reactions (Pavlich 2004).

*Community involvement and participation* is an essential element of RJ (Justice For All 2002: 7.33) and as such a purported key difference with respect to the "conventional" criminal justice (Johnstone 2011: 126). RJ, in fact, gives 'voice to victims and communities by bringing them into the process and involving them in the solution' (Justice For All 2002: 7.33). There are two recurrent types of community involvement/participation in RJ: by inviting the direct stakeholders' networks; and/or by including community representatives (e.g. volunteer facilitators) (RJ Strategy 2003: 1.2; Justice For All 2002: 7.33; Breaking the Cycle 2010: 69). The first option entails that the community has to be involved because it is either victimised by the crime (victim's network) or it can contribute to attend to the consequences of a crime (offender's network). Only by including the relevant micro-communities, in fact, is it possible 'to discuss an offence, get answers to their questions, and agree how the offender can repair some of the harm caused' (CC-HO Strategic Plan 2004–08: 29) or more generally, to deal with the 'aftermath of the offence and any implications for the future' (Justice For All 2002: 7.32). The participation of direct stakeholders' networks is the expression of an 'inclusive approach' to crime control which aims to 'strengthen community involvement and confidence in the Criminal Justice System' (RJ Strategy 2003: 34). The second option (to engage community representatives) is meant to enable community members to play a part in 'searching for local solutions and making the system more responsive locally' (CC-HO Strategic Plan 2004–08: 99). Community involvement/participation, in fact, can also mean the inclusion of the macro-community, e.g. volunteers 'recruited from all sections of society and [with] good understanding of local cultures and communities' (Coe R. (99) 19: 22), and therefore who are able to represent wider community interests at RJ conferences (Liebmann 2007: 31).

The line of reasoning which lies behind these claims revolves around two conceptual poles (Johnstone 2011: 125). The first is the idea of crime prevention through participation. RJ practices are deemed to 'increase awareness of the important role of the individual and the community in preventing and handling crime and resolving its associated conflicts' (Coe R. (99) 19: Preamble). This type of justification is tied to a widespread aim of 'reconstructing criminal justice practice' (Dzur and Olson 2004: 94), in order to be 'responsive at every stage to the needs of the victims and the law abiding community' (The Way Ahead 2001: Intro). From this perspective, laypeople are thought of as better than criminal justice professionals at certain tasks, such as reintegration of offenders and communicating sympathy for victims. Secondly, involving the community in the 'handling of criminal conflicts between its members is seen as a way of empowering communities […] i.e. developing its inherent capacity to regulate itself' (Johnstone 2011: 125). In this view 'the more the public participates, the more it takes back the authority for social control ceded to the state' (Dzur and Olson 2004: 94). Citizens' engagement in RJ, in fact, 'can help develop strong and active communities. It can help improve community cohesion

[…] and a search for positive outcomes' (RJ Strategy 2003: 1.9). Community involvement/participation is then strategic to the 'creation of community capital' i.e. to 'the increase public confidence in the criminal justice system and other agencies with a responsibility for delivering a response to anti–social behaviour' (CPS RJ Legal Guidance). The premise of this justification is that 'crime has had an increasingly pervasive—and corrosive—effect on our society. It restricts basic civil liberties and undermines the social bonds integral to strong communities' (The Way Ahead 2001: Intro). Accordingly, we need to put resources into nurturing our 'killed neighbourhoods' (Christie 1977: 12) and to prevent the human community from dying by 'cynical selfishness' (Walgrave 2008: viii). The active involvement of local residents in the handling of criminal conflicts is one way of revitalising a sense of community among neighbours (Christie 1977: 12).

A further crucial feature of RJ is the focus on *repairing* the harm/wrong caused by the offender in order to restore the relationships with the material victim and the larger community (Justice For All 2002: 7.37; Code of Practice for Conditional Cautions 2013: 2.26). The community, in fact, is critically harmed by the offender, who will be able to take responsibility only after "seeing" the impact of his behaviour on the 'victim/person/community harmed' (RJC Best Practice 2011: 2b.3; Justice For All 2002: 2.7). The community in RJ is therefore one of the recipients of the reparation required from the offender (Johnstone 2011: 1; Liebmann 2007: 24; Marshall 1999: 7; Zehr 2005: 186). Correspondingly, a central aim of RJ is 'To ensure that [the offenders] have the opportunity to make reparation, and agree a plan for their restoration in the community' (CPS RJ Legal Guidance), whilst victims and local residents in RJ have the opportunity to suggest what the reparation of the relevant harm should be (The Way Ahead 2001: 2.70). The harm to be repaired (and therefore the reparation) is commonly conceptualised as either material or symbolic (Retzinger and Scheff 1996; Sharpe 2007). Material harms include physical damages to people or things whereas symbolic losses refer to the breach of trust or, more broadly, to the corruption of the interpersonal relationships between parties, by creating a sense of fear and lack of safety (RJ Strategy 2003: 1.1). Reparation to the community can be an alternative to the reparation to the victim, when this is not possible (No More Excuses 1997: 4.15; Crime and Disorder Act 1998: 67) or a further requirement/desideratum for the restorative process to be successful (UN Basic Principles RJ 2002: 11; The Way Ahead 2001: 2.3). This concept of reparation is considered to be characteristic in the overhauling of the juvenile justice system in particular (The Way Ahead 2001: 4), which is meant to ensure 'community safety' (The Way Ahead 2001: 1.5). In general, the ground for the idea of reparation to the community 'at large', is the conviction that the crime 'undermines the social bonds integral to strong communities' (The Way Ahead 2001: Intro). Reparation is a means to heal those corroded bonds in the local space where crimes occur (Marshall 1999: 6).

One of the key aims of RJ processes is to 'prevent reoffending by reintegrating offenders and victims back into the community' (UN Basic Principles RJ 2002: 1.3), in order 'to recreate a working community that supports the rehabilitation of offenders and victims and is active in preventing crime' (Marshall 1999: 6). *Reintegration* in RJ means for the offenders 'paying their debt to society, putting their crime behind them and rejoining the law abiding community' (No More Excuses 1997: 9.21). At the same time, it is also the very attendance of the RJ encounter which represents a symbolic moment of reintegration as re-acceptance of the offender within the civic dialogue. In this context, reintegration refers to the incorporation of the offender into a community-based prosocial moral order (Van Ness and Strong 2015: 39) to be attained (or at least encouraged) within the RJ meeting, symbolically (by partaking in the RJ process) and psychologically (e.g.

reintegrative shaming). We can map out two different forms of restorative reintegration: into the micro-social community (material/psychological repair of the damaged social relationship with the victim) and into the macro setting (dialogue with the family members or parties' networks). Restorative reintegration then, entails both the material engagement with the other stakeholders (victim and community) and the symbolic 're-entry' in the moral/legal order. This complex idea of reintegration is closely related to the responsibilities that the community holds when a crime occurs, both toward the victim and toward the offender (e.g. protection of victims, holding offenders accountable, providing local resources etc. (McCold 1996: 93)). Once again, this view is related to the assumption 'that crime has its origins in social conditions and relationships in community; crime-prevention is dependent on communities taking some responsibility' (Marshall 1999: 6).

These are only some of the authoritative discourses which compose the archive of RJ in context—the ones directly related to the community's image. At this point, it is possible to draw from these far-reaching and deep-rooted discourses a range of more specific traits of the community and sketch out their cultural roots.

## Profiling the 'Ideal Community' of Restorative Justice

In the RJ archive, the community is routinely characterised by a limited set of recurrent attributes. This actor appears as (1) innocent; (2) local; (3) alternative to 'state' and 'society'; (4) weak but resilient; (5) fusional; (6) genderless/colorless.

The first underlying feature to consider is the community's *innocence*. The community is a type of victim and/or an "external" stakeholder able to support the solution of the crime problem. The authoritative descriptions of the community usually do not take into consideration the possibility that community relationships (namely family and peer-to-peer dynamics) can promote or facilitate criminal behaviours (Polizzi 2011: 141), instead of refraining and deterring them. The idea, well known in criminology (Sutherland and Cressey 1947), that social networks can be sites whereby deviant values are learned, rationalised and practiced is neglected. Micro- or macro-communities are promoters of reintegration, surrounded by positive feelings and emotions. The community, by definition, encourages pro-social behaviour whereas criminal activities are mainly consequences of lack of control over people. The community's innocence goes hand in hand with the longing for a community-as-*gemeinschaft*, lately supplanted by lack of trust, crisis of endogenous control and spreading of loneliness. Additionally, the possibility that (both macro- and micro-) community involvement/participation might create room for the (re)production of stigmatising and marginalising dynamics toward the direct stakeholders is obliterated.

The RJ community is a *local* actor. In the archive there is a consistent reference to the fact that the community is "surrounding" the direct crime stakeholders, using a language which stresses the physical closeness and even intimacy. The normative accounts of RJ are underpinned by an image of neighbourly and parochial community. It is the local community which will be involved in identifying and implementing solutions to the crime problem, whilst taking care of victims and offenders. The inclusion of the local community is functional to build trust and co-operation in order to deal more effectively with crimes and antisocial behaviours. The local community is aware of needs, interests, beliefs and dangers which threaten the social order and is therefore able to offer remedies or support in the determination and application of solutions responsive to the direct stakeholders'

situation. This perspective does not problematise that people living close to one another does not necessarily mean that they have much to do with each other. There may be little interaction between neighbours but also within the same family (Lee and Newby 1983: 57) as well as a non pro-social interaction.

The community in RJ is typified as an *alternative* both to the 'state' and to the 'society'. The community is as much the ideal actor by as the virtual space within which crime responses are identified and implemented. The state is distant from people's real needs and interests. This is also portrayed as the main backdrop of the "conventional" criminal justice and especially of the overly formulaic rituals of the rule of law and the offender-centred penal retribution. However, hardly often is it envisioned by the mainstream RJ a form of competition between these two actors (Pavlich 2001). The state actually can (and should) work to support, fund and promote the community in responding to crimes and antisocial behaviours. The RJ community is also alternative to the society, as context for the crime response. Here the reference is especially to expert-led socio-rehabilitative interventions on offenders. The community is not made of experts detached from people's needs, but from individuals who share the same victims' and offenders' concerns, fears, troubles, needs and interests. From a more general perspective, the society is different to the community because it is less localised, with blurred boundaries because of it being too inclusive, large and complex. It should also be added that the community is an alternative to any private space of conflict regulation which could be imagined as an other possible backdrop for crime responses. Thanks to the community, RJ can be represented not as a further attempt to privatise conflicts, but as a communitarian model of crime response.

A further, recurrent theme within the RJ archive is that the community is *weakened*, by a not clearly defined late modern social change. Nevertheless, the community is defined by a certain degree of *resilience*, which needs to be stimulated by appropriate interventions. The image of local communities' bonds being undermined by a chaotic array of issues prominently features the rhetoric of investing in local communities by promoting participation into decision-making processes, also on criminal matters. The progressive "death" of the community can be countered only by the community involvement/participation in social, political and economic business. A nostalgic longing for a (nearly) lost neighbourly community shines through the RJ normative accounts. When the focus is placed on the micro-community, it is the desire to reinvest in genuine close relationships based on shared beliefs, interests and worldviews that is emphasised. However, as already mentioned, the community still holds a degree of resilience. The potential to re-take control over social issues (e.g. crime) has to be stimulated by certain interventions: funds, focussed regulations and more generally the creation of room for re-expanding the community capital, constrained by the hypertrophic growth of the state or by the individualistic logic of late modern societies.

The community in RJ is mostly described as a *fusional* network, with an assumed common understanding of social phenomena (i.e. the crime) and a sense of connectedness which allegedly plays a role in ensuring freedom and security in opposition to the state (and with CJ as its expression), the broader society and the market. This community is about sharing: environment, intents, beliefs, places, resources, preferences, needs, and risks, affecting the identity of the participants and their degree of cohesiveness (Van Ness and Strong 2015). As Bolivar has noticed (2012: 17) this representation embodies what has been called in community psychology 'sense of community' i.e.: 'membership (feelings of belonging), influence (sense of mattering on the part of the individual towards the community and vice versa), integration (individual needs are met through their participation in

the group) and shared emotional connections (commitment and the perception of sharing history, places or experiences)'.

The final attribute to consider is that the community, in the normative documents on RJ, appears as *genderless/colorless*. There is not any specific racial or gender-based characterisation of the community in policy and legal documents. It seems that it has been thought as an empty category, adjusted to groundless normative models of human beings. This 'ideal community', seems implicitly shaped around the idea of an eurocentric *gemeinschaft*, or traditional family-like network, ignoring the criminogenic potential of social groups, especially if characterised by tight subcultural ties (Polizzi 2011). This appears, once again, consistent with the groaning comments on how RJ (in theory as in normative documents) continues to neglect the challenges raised within a race equality context (Gavrielides 2014).

The 'ideal community' of RJ consists of an innocent, local, alternative to 'state' and 'society', weak but resilient and fusional actor, genderless and raceless. This representation shares some elements with the ever-looming rhetoric of laypeople's involvement in criminal justice, and is actually characterised by a range of similarities with it (e.g. focus on local dimension or pro-social role of the community). Nevertheless, this ideal image holds specific features (e.g. innocence, fusional character) and arises in a relatively contemporary socio-political and cultural milieu, which now needs to be sketched out.

## Conditions of Possibility

At this point, it is possible to delineate the historical background of the 'ideal community', i.e. to trace out the cultural phenomena—or 'conditions of possibility' (Foucault 1970: 168)—which have contributed to the progressive emergence of that model (and, along with other factors, of RJ in general), in England and Wales over the last 30 years.

The first condition of possibility is the spreading of the *second wave of communitarianism* during the 1990s and its inclusion in the New Labour's criminal policy repertoire (Hoyle and Cunneen 2010: 34). This approach, by assuming a permanent tension between state, individuals and society, promotes social responsibility and policies meant to stop the erosion of communal life in an increasingly fragmented society (Etzioni 1988, 1993, 2001; Selznick 2002). Communitarianism criticises the political liberalism for eliciting atomistic tendencies in society with detrimental social and psychological effects as well as the political left for depriving local communities of power, whilst strengthening centralised bureaucratic structures. This perspective finds resonance with the sociology put forth by Putnam (2001), whose language shares a wide range of overlapping similarities with RJ laws and policy, especially as far as the community's role is concerned (e.g. reference to community capital; investment on community ties; interpretation of crimes as expression of community's weakening, etc.). In this view, informal social ties are weakened in the second half of the last century, resulting in a situation of more isolation, cynicism and anomie as well as of detachment from civic life and deprivation of the social networks and communities. What is needed in order to tackle with this gruesome state of affairs is to promote social capital, i.e. the dynamic net of tangible and intangible resources (such as social connections) which produce norms of reciprocity and trustworthiness (Putnam 2001: 19). This moral, political and sociological interpretation of contemporary society (originally developed in the USA) penetrates into the UK politics of law, crime and disorder in the 1990s, inspiring community-based interventions on anti-social behaviours for instance

and more broadly paving the way for the investment (symbolic and material) on the community as a site of fight against crime, also emphasised in RJ.

*Civic and neighborhood renewal* has been an increasingly important theme of British politics starting from the late 1990s. In this period to invest in civic and neighborhood renewal has been 'an attempt to address not only the decline in representative democracy, but also to give individuals and communities confidence in the public realm, thereby improving their sense of community' (Blaug et al. 2006: 7). The promotion of a more direct neighbourhood governance has been justified by the idea that improving public services' responsiveness and engaging people in the identification and implementation of services, creates cohesion and prevents social conflicts as well as crimes. More recently, this idea of cautious devolution of power from central to local government has been encapsulated by the idea of a 'new localism' (Stoker 2007). This discourse does not only entail the (limited) horizontal redistribution of power across a range of actors, but it also involves a significant trend toward the responsibilisation of those actors (namely individuals and communities) as a form of preventive governance of risks and dangers (Garland 2001: 124). Individual citizens and communities are prompted to take responsibility for their own security; they are encouraged to distribute among themselves the concern to create 'livable' spaces, namely reducing crime opportunities (Garland 2001: 125). The idea of local community self-help or community involvement/participation in fighting against anti-social behaviours seems to be informed by this discourse.

Shifting the focus on *stricto sensu* criminological discourses, we should consider the development of a range of intellectual responses to the 'crimino-legal crisis' (Young 1996) of late 1980s in the UK. These reactions have been relatively multi-faceted and articulated (Garland 2001: 137). What is relevant for the emergence of the 'ideal community' (and of RJ as such) has been one of those responses: the rise of what we might call *third way criminologies* which include cultural strands as different as left realism and civic criminologies (Hughes 2007: 23; Squires 1997). Left realism's emphasis on demarginalisation, pre-emptive deterrence and minimal use of prisons, has contributed to stimulate a new attention toward community-based multi-agency interventions as well as to recognise the critical function of local co-ordination of crime control strategies (Lea and Young 1984). Civic criminologies, based on the idea of crime as an effect of the progressive erosion of micro-moral ties localised in discrete communities (Braithwaite 1989, 2000, 2002; Braithwaite and Pettit 1990; Duff 1992, 2000; Dzur 2003), have promoted social integration and civic participation in dealing with crime control. The concept of 'community' here represents a combination between the notion of 'civil society' offered by the left and the idea championed by contemporary civic republicanism of community as a means by which to arrest liberal individualism (Dzur 2003). Victims and offenders are thought of as being entangled in social interdependencies which have a symbolic significance which takes precedence over individual interests (Braithwaite 1989: 100). This "third way" *episteme* does not contemplate psychosocial corrections or tough punitive reactions, but, often, moralising and responsibilising interventions (Hoyle and Noguera 2008) led by non-professionals within the relevant community (e.g. RJ voluntary practitioners).

The *community safety discourse* is integral to the cultural landscape within which the 'ideal community' of RJ emerges. This discourse has been an attempt to go beyond the social and situational crime prevention alternative (Lacey and Zedner 1995) and even if somehow 'decentred by New Labour's more specific crime and disorder and youth justice proposals' (Squires 1997), has deeply impacted on crime control in the UK from the late 1990s. While crime prevention is usually understood as a specific police responsibility, community safety instead refers to greater participation from the wider community in

preventing crime (Crawford 1997, 2004; Gilling 2007). The focus is posited on the promotion of partnerships between the public, private and voluntary sectors to identify and implement community-based measures against crime (Hughes 2007: 73). This narrative encourages people, communities and organisations to partake in situational and social crime prevention activities, as well as to reduce certain types of crime and the fear of crime (Morgan 1991). The idea of citizens as 'partners against crime' and that the state agencies 'must devolve power and share the work of social [and crime] control with local organizations and communities' (Garland 2001: 205) are crucial for the development of the language which grounds RJ and especially for the representation of community according to the ideal standards as seen above (e.g. the idea of local community engagement/participation, the point of community control over crime).

A further, and less recent, condition for the 'ideal community' of RJ, is the emergence during the 1980s of the fluid discourse of 'civilising' criminal justice (Bottoms 2003: 84). This discourse contains at least two different but interlinked cultural components: the advocacy for restitution, compensation and mediation in criminal matters (Harding 1982; Wright 1982; Wright and Galaway 1989) and the growing interest around the abolitionist stance and its implications for dispute settlement (Bianchi 1994; Christie 1977; Hulsman 1986). In this articulated formation, crimes are thought of as problematic situations or conflicts to be mediated and handled by involving the direct stakeholders. The offender and the victim, through 'civilised' and community-based measures, can positively manage the human consequences of criminal acts, regaining control over their lives. This discourse has 'captured the imagination of academics and radicals' even though with little sustained impact on government and institutional policy (Garland 2001: 104). However, it has represented a relevant pre-existent cultural platform upon which the RJ language in general and the representation of the community in particular, have relied on (e.g. by drawing the idea of community as alternative to the state and the idea of less punitive reaction to crimes).

To conclude, it should be noticed that to overemphasise "recent" underpinnings might be theoretically and empirically inadequate. This is because "past" intellectual models, are often deeply ingrained in criminal policy, practice and culture. The focus on reintegration into the community, for instance, even though uniquely conceptualised in RJ, still resonates with certain correctionalist perspectives of rehabilitation *extra moenia* (Cavadino and Dignan 2007: 131). Additionally, the idea of criminal justice as entailing participation and deliberation by laypeople has deep historic roots (Gibbs and Kirby 2014). In England and Wales, the involvement of lay participants, as a form of horizontal distribution of authority and the search for substantive justice (Lacey and Zedner 1995: 311), dates back to the ancient practices of participatory democracy at the heart of traditional criminal justice based on the notion of 'judgement by one's peers' (Crawford 2004).

On the whole, these cultural and socio-political phenomena compose the pre-existing milieu within which RJ (and its 'ideal community') has slowly emerged.[4] This landscape is particularly characterised by the New Labour endeavour to "break" with conservative criminal policies during the late 1990s (Muncie 2004: 279). The focus on a stereotyped community can be read as an expression of this project. However, it would be problematic to consider RJ and the 'ideal community' a legacy of the the New Labour's thinking. A

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[4] It is worthy acknowledging that one of the main differences between the British and the North American context regarding RJ is that in the latter the 'community' often resonates with quasi-anarchist ideas of self-government probably mediated by the Mennonite tradition, while this discourse seems relatively silenced in the UK.

range of factors (restitution movements, deep-seated claims for laypeople's participation in criminal justice, etc.) were in place way beyond the rise of that political paradigm. The point of reasoning in archaeological terms, is in fact to offer a reconstruction of the most salient historical layers upon which the 'present' is contingently built upon and 'to disentangle the conditions of its history from the density of discourse' (Foucault 1973: xix). Clearly, other local and global, legal, social and political factors have also played a role, but it falls beyond this paper's scope to investigate all of them.

## The 'Ideal Community' of Restorative Justice: Critical Implications and Critical Reflections

The 'ideal community' is likely to be used as a starting point by RJ practitioners, influencing their expectations toward participants or even as a benchmark to select "suitable" communities. Thus, by informing practitioners' work, it will likewise affect participants' experiences, in terms of exerting pressure toward adjusting to the ideal (which might in turn trigger forms of resistance). Moreover, a possible implication is relative to the scope of this 'ideal community'. It is arguable that this model does not properly suit several types of social groups who might have a stake in a crime (e.g. future or past generations, anti-establishment groups, deviant communities, etc.). Are there "right" or "wrong" communities? Should practitioners disallow "wrong" sorts of community to partake in the RJ process? There is a danger that in promoting community participation in RJ, one is promoting the inclusion of specific types of communities which match the ideal model (innocent, local, alternative to 'state' and 'society', weak but resilient, fusional, genderless/colorless) whilst silencing other forms of collective stakeholders.

At this point the question could be raised whether one can/should challenge the image of the 'ideal community'. It is indeed possible to envision a community in RJ which is radically different/alternative to the normative ideal seen above. This reflection is desirable insofar as the critique of the 'ideal community' opens up spaces for reinventing emancipatory social relationships in and through RJ (Hoy 2004: 89–90). The main issue with the community of RJ is, in fact, that it consists of a normalised identity (based on implicit and unproblematic assumptions) which constitutively excludes, restrains and reduces the uniqueness of the singular actors which are supposed to "compose" it (exactly like any essentialist 'community'). As Cunneen and Goldson (2015: 145) acutely remark 'restorative justice overlooks the likelihood of it becoming precisely what it claims to oppose: a practice that excludes individuals because they are without community or without the *right* community'. Additionally, this normative community implicitly endorses the imposition on individuals of the same binary classifications of 'right' and 'wrong' and 'victim' and 'offender' which belong to "conventional" criminal justice, reducing the chances of cooperative relationships between individuals with a stake in a crime. The 'ideal community' is "just" another stakeholder entangled in the thin mesh of the mainstream RJ, whereby legal and non-legal (moral, psychological, spiritual) categories constraint participants in order to enfranchise them from the conflict/crime (Richards 2011).

It follows that the starting point for re-envisioning the community in RJ, should be a critique of the community as a horizontal network based on the normative idea of 'having something in common'. This is an essentialist view that 'erases differences, contradictions, and forms of being and belonging' (Devadas and Mummery 2007), and as such, performs a distinctive type of violence by excluding and including *certain* singularities. An alternative

model of community (or at least the premises of it) can be elaborated by de-structuring the very ontology of the ideal one. The shift at stake is from an idea of community as a fictional actor ontologically built upon the exclusion of differences, to a community as an unfinished process of becoming, whereby belonging does not entail identity (Elliot 2011: 260).[5] Such a fluid and contingent community would represent a challenge to the rigid boundaries imposed on RJ actors by legal labels. This community, in fact, is not an actor but a 'a battle or struggle to establish linkages, connections and relations' (Devadas and Mummery 2007) against the coercive restrictions of the legal frameworks within which RJ is often, problematically included. Such a community cannot be inserted in legal/policy documents on RJ. It cannot be normatively regulated insofar as it is not a stakeholder to be involved/coopted but a possible general *aim* for RJ interventions. To produce community equates with doing RJ as a form of critical resistance to the domination of legal frameworks (Hoy 2004: 92) and the essentialist images of family-like social networks which disguise the exclusion, reduction and restriction of human possibilities and obliterate the 'antagonistic structural divisions (particularly those deriving from class, 'race', gender, generation) that give rise to deep contradictions in the social order (inequality, poverty, social and economic injustice)' (Cunneen and Golson 2015: 145). Such a community cannot be offered to policy/law-makers, but can be embraced by RJ practitioners and advocates, who might represent a crucial resource for a (self)critical RJ. Practitioners can in fact, in the short term, interpretively re-negotiate the meanings of law/policy documents on RJ in light of an emancipatory and critical idea of community, resisting the dangers of the 'ideal community'. Critical advocates, in the long term, can campaign for forms of RJ which do not reproduce the distortions of legal frameworks and do not endorse the selective enforcement of "suitable" stakeholders performed by legal actors (e.g. police and prosecutors). From this perspective, the radical components or the RJ movement (abolitionism and anarchism) can be re-discovered in order to fulfill the desiderata of an emancipatory RJ.

## Conclusive Remarks

Policy documents and legal statutes on RJ (informed by relevant scholarly literature) embrace an ideal image of community: innocent, local, alternative to 'state' and 'society', weak but resilient, fusional, genderless/colorless. The very existence of an underlying image of community across normative documents which shape the RJ landscape in England and Wales, challenges the claim that 'community' cannot be defined a priori (Johnstone 2011: 127; McCold 1996: 91), which sounds more as a normative than a descriptive statement. This research shows quite the opposite, as far as legal statutes and policy documents are concerned. The 'ideal community' emerges historically in a specific sociopolitical and cultural context, marked by new communitarian claims, the investment in community as a site of crime control and as a partner for responding to anti-social behaviours and crimes, in a situation of crisis of representative democracy during the late 1990s. This model of community presents itself with a wide array of problematic issues, insofar as it is built on the exclusionary myths of a foundational modern community. This article sketches out different conditions to re-envision the community in RJ, based on the

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[5] This understanding is clearly influenced by the works of Giorgio Agamben, Maurice Blanchot and Jean-Luc Nancy.

idea of a contingent and fluid community as an aim of RJ intervention and not as a stakeholder.

This study seeks mainly to provoke discussion around the possible, taken-for-granted and implicit representations of the community in RJ. It is hoped that the critical-historical delimitation that has been provided by this research, might now be utilised to inform further theoretical and empirical studies that aim to critically rethink the underpinnings of RJ.

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