

## RESPONSES

# Restorative justice, victims and the hermeneutics of suspicion

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Over the past four decades restorative justice has developed into a thriving field of study and an energetic reform movement, and this evolution has, as Jo-Anne Wemmers (2019) rightly observes, coincided with the growth of victimology. The agendas of victimology and restorative justice occasionally meet, and victimologists and restorative justice scholars at times join forces to increase policy impact. Such alliances should not surprise us because, as Wemmers highlights, advocates of restorative justice consider it 'a victim-friendly option, which offers victims more possibilities for participation, reparation and healing than the conventional criminal justice system' (Wemmers, 2019: 470).

However, so Wemmers warns, victims are not always at the centre of restorative justice, and there is a real risk of 'using victims in order to advance its own goals' (Wemmers, 2019: 470). The solution would be to engage with therapeutic jurisprudence which aims to 'reduce the harmful, anti-therapeutic effects of law, while enhancing the positive or therapeutic effects' (Wemmers, 2019: 470). In an earlier paper, with the title 'Can mediation be therapeutic for crime victims?', Wemmers (together with Cyr) had already explored to what extent restorative justice may help the 'healing process' of victims. The conclusion then was that there are indications that procedural justice facilitates 'healing' and that mediation contributed to the victims' well-being (Wemmers & Cyr, 2005; on this, Daems, 2010: 496). A central preoccupation of a victim-oriented restorative justice, then, is not merely preventing and reducing secondary victimisation but also recognising the impact on victims' well-being and promoting healing. Ultimately, as the title of her paper in this journal reveals, restorative justice could then become transformative justice 'as it capitalises on the opportunities offered by conflict by bringing individuals together in a process that encourages healing and growth' (Wemmers, 2019: 474).

The paper of Wemmers is brief yet ambitious: it is an invitation to rethink restorative justice and the way victims should be addressed in restorative justice practices. There is a lot to commend and applaud in Wemmers' paper. It outlines the contours of a future-oriented agenda, which hooks on a story about further emancipating victims and giving them voice. Victims should no longer be the 'evidentiary cannon fodder' for the conventional criminal justice system, as

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bemoaned by John Braithwaite, so Wemmers reminds us (Wemmers, 2019: 474). The time has come to break free from that somewhat marginalised role at the fringes of the criminal justice system, so vividly described two decades ago by Ezzat Fattah (1999) under the telling title *From a handful of dollars to tea and sympathy: the sad history of victim assistance*. Taking victims and their concerns seriously requires a different approach, which, for Wemmers, implies embracing the opportunity that therapeutic justice offers for restorative justice to become ‘more than just another justice mechanism’ (Wemmers, 2019: 474).

In this article I will offer a few comments from a more sociological perspective. I will first demonstrate, in a succinct manner, how the proposals of Wemmers seem to reflect and contribute to some wider societal trends that underpin the so-called emancipation of victims – a process that, in recent years, has come to be understood *inter alia* from Durkheimian, Girardian and Eliasian perspectives. From these three views, for different reasons, victims step out of the shadow and into the spotlight; and against such a background, it makes sense and it seems obvious to welcome and advance, without any reservation, Wemmers’ agenda, which is about making victims central to restorative justice and turning their emotional healing into its prime and ultimate objective.

However, the story does not end there: we will argue that we need to foster a ‘hermeneutics of suspicion’ about such stories of progress and cultivate an openness to different and, perhaps, somewhat less comfortable readings of these evolutions and reform agendas. This seems to be particularly necessary given the language used and the terminology applied. These proposals are about ‘healing’, ‘therapeutic effects’, indeed, about ‘therapeutic jurisprudence’. This is a particular idiom that not necessarily squares well with restorative justice’s focus on active participation and the ownership of conflicts; moreover, this is a language that can be – and is being – used in very different contexts that seem to be diametrically opposite to core values of restorative justice (Daems, 2010). Terminology can be open ‘to abuse and misleading expectations’, so the late Nils Christie (2013: 15) wrote in the inaugural issue of *Restorative Justice: An International Journal*: “... names are important. Names influence action. Names create expectations. Names can function as a cover up – hide some realities in what happens” (Christie 2013: 15). It is not our intention to question the good intentions of Wemmers and other advocates of reform using such language; rather, we aim to remind and illustrate how good intentions can have bad consequences, and in order to be prepared for such unintended consequences, we need to approach such developments with an open mind – engaging with different perspectives in the sociology of victimisation might be useful and essential to this end, so we will argue.

## 1 Emancipating victims: three stories of progress

How to make sense of the emancipation of victims? There are at least three explanations on the market of ideas that would offer some support for the agenda of Wemmers; all three are, coincidentally, formulated by Dutch scholars. First, in a long series of publications, Hans Boutellier (e.g. Boutellier, 2000, 2004; for a

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discussion, see Daems, 2008a: chapter 4) has addressed the question: What binds us together in a fragmented world? Where can we still detect sources of morality? For Boutellier the victim of crime has become the central figure in the morality of a postmodern culture. Secularisation, then, does not lead to a decrease but rather to a displacement of moral demands from the community to the victim. The question of Richard Rorty – ‘Are you suffering?’ – moves to the centre in such a ‘victimalised’ morality. We can disagree about everything, but when confronted with suffering and humiliation, we will draw a line. Indeed, as Boutellier (2019a: 60) repeats in his latest book *A criminology of moral order*, ‘we morally organise our life around the idea of victimhood’; the victim ‘creates an opportunity to generate moral consensus in a morally divided and fragmented world’. Boutellier has been consistent and steadfast in this Durkheimian functionalist reading of why the victim of crime has become such a key figure in our society (even though, more recently, he seems to have become less optimistic, drawing attention to the pitfalls and risks of identity politics; see Boutellier, 2019b; Daems & van Stokkom, 2019).

Second, in his inaugural lecture for the chair of ‘Victimology, human security and safety’, delivered on 24 November 2006 at the University of Tilburg, subsequently published and also elaborated to a (Dutch-language) book *Slachtoffers als zondebokken* [Victims as scapegoats], Jan van Dijk (2006, 2008a, 2008b, 2009) offers a different reading, inspired by the work of René Girard. Van Dijk aims to answer the question: Why have victims been living in the dark for such a long time? Why do they play a marginal role in the criminal justice system? Van Dijk pays special attention to the origins of the word ‘victim’, which refers to a sacrificial animal (this is particularly revealing in his mother tongue (Dutch): *slachtoffer*). In Christian cultures victims are expected to be passive and forgiving – like Christ – for the sake of stability and peaceful coexistence. As Palaver (2013: 544) notes: ‘The true Christian spirit contradicts vengeful lamenting and is beyond all resentment’. Criminal justice, then, is a ‘ritual sacrificing the victim’s interest through symbolic exclusion on behalf of the community’ (Van Dijk, 2009: 6). Here we see the inspiration of René Girard: the victim of crime has throughout history served as a scapegoat who is sacrificed to keep the peace. The emancipation of victims, then, is about shedding off the straitjacket of forced role expectations that flow from the victim label; it is about liberating victims from the constraints imposed by Christian culture. Van Dijk illustrates this with the stories of some celebrity victims (Ger Vaders, Sabine Dardenne, Natascha Kampusch, Mukhtar Mai, Terry Waite, the McCanns, Diana Lamplugh, John Tulloch and Hank Heijn), and it also makes him plead for further expanding hearing rights and for a more prominent front-stage role for victims in the criminal justice system.

Third, in his historical-sociological study *Trauma en beschaving* [Trauma and civilisation], Frank Hermans (2010) discusses the rise and expansion of care for victims of traumatic events, using Norbert Elias’ work on the civilising process. His approach is particularly interesting as most work from an Eliasian framework in criminology deals with the (decline of) violence or changes in punishment (see e.g. Franke, 1990, 1995; Garland, 1990a; Pratt, 2002; Spierenburg, 1984, 2013);

that is, it deals mostly with offenders, not with victims. How can we explain the rise and expansion of a system of specialised care to deal with the emotional consequences of traumatic events since the mid-nineteenth century? How to explain what Hermans refers to as the origins of a 'trauma regime'? His story unfolds in four large episodes: (1) a growing anxiety about railway accidents and concern about the consequences of such accidents for victims (particularly in terms of psychological trauma) in Great Britain (1850-1914); (2) the impact of World War I, with large numbers of soldiers requiring special medical treatment and mobilisation through a veterans' organisation (American Legion) to facilitate medical and psychiatric care for (ex)soldiers and securing financial support (1914-1940); (3) the expansion of a trauma regime in the United States, in the wake of World War II and its aftermath, particularly in terms of large-scale psychiatric care for traumatised soldiers (1940-1960); (4) a struggle for recognition of different groups of victims, in the wake of the Eichmann process (1961), the Vietnam War (leading to the inclusion of PTSD in *DSM-III* in 1980) and the gradual disclosure of traumatic experiences suffered by victims of crime such as sexual abuse and domestic violence (from 1960 onwards). According to Hermans (2010) traumatic events have increased in size and severity, and intrusions of the private sphere are felt to be more shocking. Growing interdependencies also imply that the effects of traumatic events have increased, a process he refers to as 'psychologisation'.

These three accounts offer different explanations for the emancipation of victims: for Boutellier we need to understand the emancipation of victims against the background of the integrative and consensus-generating function of victimisation in a secular society; for van Dijk it is rather about a painstaking process of breaking free from the shackles of a Christian culture where victims were too readily sacrificed in pursuit of public justice and social peace; for Hermans sensitivity for the victims' plight needs to be understood against the background of changing sensibilities and attitudes towards victimisation over the *longue durée*. However, despite these differences, the conclusion one may feel tempted to draw may sound somewhat similar: from these three accounts the emancipation of victims can be seen as a story of progress, which needs to be continued in the nearby and distant future and which therefore fits well with the reformers' objective to change things for the better. The victim-centred approach towards restorative justice advocated by Wemmers and the idiom in which such proposals are formulated then appear as logical and self-evident: such a victim-centred restorative justice could help to further strengthen cohesion and solidarity in a fragmented world and confront offenders with (and make them address) the suffering they have caused to the victim; if victims are no longer required to be passive, docile and forgiving, then restorative justice could support the process of freeing victims from the role expectations imposed by Christian culture; a victim-centred approach of restorative justice focusing on healing can become part and parcel of a growing 'trauma regime' where mental health issues have moved to the centre of attention.

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## 2 Questioning progress: the hermeneutics of suspicion

In *Freud and philosophy* Paul Ricoeur (1970) referred to Marx, Nietzsche and Freud as the ‘three masters’ of the ‘the school of suspicion’: ‘If we go back to the intention they had in common, we find in it the decision to look upon the whole of consciousness primarily as “false” consciousness’ (Ricoeur, 1970: 33). Marx, Nietzsche and Freud therefore were thinkers:

who taught us to regard with suspicion our conscious understandings and experience, whether the deliverances of ordinary psychological introspection about one’s desires (‘I really want to be rich!’), or the moral categories political leaders and ordinary citizens apply to themselves and the social world they inhabit (‘an inheritance tax is an immoral death tax!’). ‘Beneath’ or ‘behind’ the surface lay causal forces that explained the conscious phenomena precisely because they laid bare the true meaning of those phenomena: I don’t really want lots of money, I want the love I never got as a child; survivors have no moral claim on an inheritance, but it is in the interests of the ruling classes that we believe they do; and so on (Leiter, 2004: 74).

Within criminology the notion of a ‘hermeneutics of suspicion’ has been used in particular in debate on the sociology and history of punishment. In a review essay discussing Pieter Spierenburg’s Elias-inspired book *The spectacle of suffering* (1984), David Garland (1986: 307) argued the following:

In their various ways, theorists such as Rusche and Kirchheimer, Michel Foucault, and his predecessor Friedrich Nietzsche, brought to bear a ‘hermeneutics of suspicion’ which relentlessly reduced penal philosophies, reforming ideals and ethical values to the harder currencies of economic interest or the will to power.

Garland linked this ‘hermeneutics of suspicion’ to a tradition of critical scholarship that aimed to question some taken-for-granted ideas about reform and progress in penal history. Indeed, shifting the focus to issues of power and repression helped to question explanations of penal change in terms of reform, progress, humanitarianism or benevolence (Daems, 2011, 2019a).

As Cohen and Scull argued at that time, such studies had a very different focus:

scepticism about the professed aims, beliefs and intentions of the reformers; concern with the analysis of power and its effects; curiosity about the relationship between intentions and consequences; determination to locate the reform enterprise in the social, economic and political contexts of the period. The problem of maintaining the social order ... becomes dominant (Cohen & Scull, 1983: 2).

Such questioning of whig histories of punishment proved to be particularly useful, as Garland pointed out:

As a reaction to uncritical moral histories of penal progress, this sceptical revision was necessary and illuminating, bringing to the surface important social and political aspects which had previously been hidden. (Garland, 1986: 307)

However, so he continued, this also had some unfortunate consequences:

this emphasis upon the implicit strategies of social control and domination which operate through punishment has hidden the important role which cultural values and sensibilities play in giving shape and limits to the penal measures which may be deployed. (Garland, 1986: 307)

Scholarship on punishment and control had become too suspicious: 'social control' had become a 'hammering concept' (Cohen, 1989) and the sociology of punishment 'a rather one-sided analytics of control and domination' (Garland, 1990b: 3). Indeed, the late Pieter Spierenburg pointed out how quickly the 'good guys' of yore turned into the 'bad guys' who were now 'indifferent to the fate of convicts and bent on creating opportunities for economic gain' (Spierenburg, 1987: 439).

Within scholarship on victimisation and restorative justice, the opposite sometimes seems to happen; that is, at times there seems to be too little suspicion. To some extent this should not surprise us as victimology and restorative justice are very much oriented towards action (Fattah, 1980, once wrote about a 'victimology of the action'); a lot of energy is directed towards changing lenses and changing the world, towards moving forward from outdated models of dealing with crime and victimisation. Indeed, for that reason restorative justice is sometimes perceived as one of the few promising developments that can counter more exclusionary tendencies in contemporary cultures of control, and such developments therefore also complexify dystopian projections of the future that lies ahead of us (Zedner, 2002; on this, Daems, 2008a: 58-63). This also implies, naturally, that some accounts about the emancipation of victims – in particular those inspired by Durkheim, Girard and Elias, which were discussed in the previous section – are more attractive and more comfortable from a reformer's point of view.

However, just like punishment in general (on this, see Garland, 1990a), it would, from an analytic perspective, be unfruitful to understand such processes exclusively from the angle of progress; moreover, from a practical perspective, it may also be unwise as one risks transforming the science of victims and victimisation into a 'cyclopic victimology', that is, a victimology that uses its one eye to improve the position of victims of crime and to move them to the centre of criminal or restorative justice systems but that misses a second eye to identify unintended consequences and that remains blind to the risks and dangers involved (Daems, 2008b, 2019b).

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There are good reasons why a healthy dose of suspicion is to be welcomed. A decade ago, we drew attention to some remarkable parallels between a victim-centred restorative justice philosophy and the debate on capital punishment (Daems, 2010: 501-503). Indeed, also the most punitive sanction promises to 'heal victims' and bring 'closure' for relatives. The death penalty is regarded

as a policy intended to serve the interests of the victims of crime and those who love them, a personal rather than a political concern, an undertaking of government to serve the needs of individual citizens for justice and psychological healing. (Zimring, 2003: 49)

Both constructive (restorative justice) and destructive (capital punishment) responses to crime seem to be rooted in the very same culture. According to Cesoni and Rechtman (2005) 'psychological reparation' has become a new function for criminal justice procedures and sanctions; for Gros (2001, 2006) a new way of thinking about punishment has emerged, which is about enabling victims to mourn, to recover, to cure. What are the consequences of such developments for the dynamics of restorative practices such as mediation or conferencing? What does this imply in terms of expectations for the offender as victimiser and for how victims are depicted and imagined? How do such developments relate to a politics of law and order (on this, see Daems, 2010)?

In order to increase sensitivity for such questions and to foster an hermeneutics of suspicion restorative justice scholars could usefully tap into some of the resources offered by the sociology of victimisation: How do victims and victimisation (and, by implication, a victim-centred restorative justice) relate to questions of solidarity and power, cohesion and polarisation, market and identity, politics and democracy? (Daems, 2020). My response to Wemmers' thought-provoking paper, then, is not intended to stifle reform or feed immobilism. It is rather an invitation to keep that second eye open in order to avoid transforming victimology into a 'cyclopic victimology'. Engaging with different strands within the sociology of victimisation – including those strands that deal with identity, power and politics – will be helpful to this end.

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