

What Pollock and Rothko may have announced and Restorative Justice may have to deal with: sovereign victim culture.

Ronnie Lippens

Professor of Criminology
Keele University
ST5 5BG Staffs
United Kingdom
r.lippens@keele.ac.uk

Abstract

A close reading of EU Directive 2012/29/EU of 25 October 2012 (EU Member States to comply by 16 November 2015), "establishing minimum standards on the rights, support and protection of victims of crime", may reveal that a particular image of victimhood seems to be underpinning the text. This image projects victims as atomically separate entities who, clad in individual rights, may choose to 'make contact' (or not, as the case may be). An attempt will be made to argue that this image could be situated within a 'sovereign victim culture' that flourishes at the heart of what is often called 'control society'. The origins of this culture, it shall further be argued, could be traced back to the aftermath of the Second World War, when elements of it first emerged in work by artists such as Jackson Pollock and Mark Rothko. This culture is shot through with agony and as such threatens to undermine the conditions of possibility for transformative restorative justice.

Keywords

Sovereignty - Control Society - Victim Culture - Post-War Culture - Restorative Justice - Prophetic Art - Consumerism

Introduction

If restorative justice is not just about restoring what was (if ever that were possible of course) but, rather, about transforming what is, then it pays to contemplate the conditions of possibility for anything like successful restorative justice practices to take shape and develop. One could also phrase this negatively by asking if, in this day and age, there are conditions (whether cultural or otherwise) that make any attempt at transformative justice seem if not naive, then overly optimistic. In this contribution an attempt shall be made to explore this question from 'the outside'. By this phrase is meant not only that the author is not writing from within what is sometimes called the movement of restorative justice policymakers, practitioners and researchers, but also, and perhaps more importantly, that the focus will be on the broader cultural conditions within which this movement, of necessity, has to take shape and forge paths.

The starting point in this paper is EU Directive 2012/29/EU, "establishing minimum standards on the rights, support and protection of victims of crime" (available at <http://eur-lex.europa.eu/>). Replacing an earlier Council Framework Decision dating back to 2001 (i.e. 2001/220/JHA) the Directive compelled EU Member States to comply with its provisions by the end of 2015. In the Directive restorative justice is mentioned explicitly in two of its articles (i.e. articles 12 and 19). What is of interest here though is the image of victimhood that can be sensed in the text of the Directive. The word 'sensed' is used in this context because any encounter with images, or with *image*, is largely a matter of the senses. Such encounters are sensory rather than purely

cognitive or intellectual experiences. The text of the Directive as well as its explanatory guide document, include statements that hold that “the victim” is an “individual with individual needs”. He or she moves through “services” that “can be of benefit” to them. They are “free” to engage with those services or may “withdraw at any time” depending on their “interest”. The victim is in need of constant “safeguarding”. In fact, if necessary “conditions to enable avoidance of contact” between offender and victim should be put in place. That could include arranging “separate waiting areas”. In a document on victim rights that explicitly mentions restorative justice, such emphasis on separation and avoidance of contact does seem striking. The overall image of victimhood that seems to be appearing from the text of the Directive is one whereby the victim enters the scene as a monadic individual, hermetically separated from his or her surroundings, clad with the power of total sovereign control over his or her life choices, who wades through a stream of services or anything else that can be of benefit, and who chooses, like a real sovereign consumer, whatever he or she thinks is in their interest.

To repeat, this is just an image that can arguably be ‘sensed’ between the lines of the Directive. The extent to which actual victims of crime actually behave as the image suggests, or EU member states are now in the process, following the Directive, of implementing or reforming victim support and restorative justice systems and practices according to the outlines of the aforementioned imagery, is not the aim of this contribution. But a few words can be said. As to the theme of actual victim desire and behaviour, research seems to suggest that indeed many victims, although often exhibiting a pro-

social attitude (Van Camp, 2016), tend to also harbour slightly consumerist desires for complete information –which should be ‘proactively’ provided by criminal justice officials- whilst at the same time reserving the right to ‘freely’ engage with the available Restorative Justice offer (Van Camp and Wemmers, 2015; see also Gavrielides, 2017, and *infra*). As to the efforts with which EU member states are actually implementing or reforming their Restorative Justice provision, and Victim Support provisions more broadly, and the nature of those changes (if changes there will be), it is, at the time of writing, too soon to tell. Member states are not required to submit their first reports on this issue before the end of 2017. But if previous experience is anything to go by it is likely that, although a certain common trend in systems and practices is likely to become discernible (Lauwaert and Aertsen, 2016), a wide diversity will also be noticeable. In fact, whereas authors such as Katrien Lauwaert (2013; 2015) have made a plea for Restorative Justice to be provided more extensively, and for “equal access” to be made possible at all stages of the criminal justice process, others, such as Theo Gavrielides (2016) value local difference much more positively, adding that if Restorative Justice is to have a future in Europe, it will have to focus a lot more on harnessing localised bottom-up processes, and less on top-down standardization.

The image of the sovereign victim-consumer, we shall argue below, is one of the manifestations of a new form of life which, it could be argued, emerged in the wake of the Second World War. Although this form of life generated the conditions of possibility for restorative justice to emerge at all, it now also harbours, after decades of radicalisation, the latter’s conditions of

impossibility. Those conditions of impossibility are now beginning to become dominant. This will be our first, overall thesis. Our secondary thesis holds that the work of artists such as Jackson Pollock (1912-1956) and Mark Rothko (1903-1970) may have announced these conditions of impossibility as early as 1950. What painters such as Pollock and Rothko, each in their quite differing ways, announced, was quite deep. They announced nothing short of the arrival of a new form of life at the heart of which one might be able to discern a radical and radically new default operational logic that shattered and replaced the one that had culturally dominated the best part of Modernity. The latter went roughly as follows: *if all else fails, submit, and sacrifice*. The new default logic, visible and 'sensed' for the first time in Pollock's and in Rothko's work, projects: *if all else fails, refute all foundation* (Lippens, 2015a and 2015b, 2016 and 2017).

Pollock's and Rothko's Announcement

It is hard to overstate the cultural impact of the Second World War. The experience of authoritarianism and its catastrophic consequences generated an anti-authoritarian mood and attitude, particularly in what we still call Western democracies. This mood and attitude are still very much with us. Underpinning this mood and attitude, however, was a deep, almost seismic shift whereby a particular form of life gradually replaced an earlier one at the heart of social and cultural life. The new form of life, full of distrust towards authoritarianism, and indeed authority as such, crystallised around the desire, or will, not to be dependent on law or code, *any law or code*. This

desire, or will, is a desire for, or will to absolute sovereignty, personal sovereignty. This desire, or this will, gradually came to form the kernel of a newly emerging form of life.

Let us be clear: this desire, or this will, dwells in the imaginary. Absolute sovereignty is imaginary sovereignty. It is also illusionary sovereignty. It certainly is paradoxical sovereignty: he or she who desires, or wills to be completely and utterly, absolutely independent from law or code, is, at the very least, dependent on the law and the code (and anything else, for that matter) that make up and support their desire for, or their will to sovereign independence. But this paradox is largely irrelevant for our purposes. The fact that the aspiring sovereign imagines him or herself to be sovereign is all that matters here.

He, or she, is sovereign who is able to escape or elude all law, and all code. There are two basic ways in which one could hope to escape or elude (in the imaginary, of course) all law and code. The first is one whereby the aspiring sovereign imagines him or herself diving in a kind of primordial zone, i.e. a zone before human law or human code (in short: before human civilization). This implies a strategy through which one attempts to 'become animal' (to evoke vitalist philosophical language, e.g. Gilles Deleuze's, 1994). The second strategy is one whereby the aspiring sovereign makes an effort to transcend and move beyond humanity as such, desiring to become, in a Nietzschean vein, *superhuman*. Pollock, one could argue, announced the first strategy; Rothko the second. Both are strategies that aim at establishing, or at least

accepting, what has been called by many the *post-human* moment in culture.

Most readers will be familiar with Jackson Pollock's signature style 'drip technique' paintings. Pollock achieved this particular painting style around the year 1950. It is sometimes thought that, in his drip paintings, Pollock wanted to express or represent chaos. But that is not the case. In fact, Pollock was adamant that, instead of expressing chaos, his paintings were all about control, absolute control, complete and utter control. *Becoming animal*, Pollock rarely spoke about his work, or about anything else for that matter (and that should not come as too big a surprise in light of what is about to follow). However, he did manage to convey the message that 'control' takes centre stage in his signature paintings (on this, see also e.g Lippens, 2010 and 2011a). Like the painter himself, Pollock's aspiring sovereign tries to achieve absolute sovereignty by frenetically escaping from anything that appears to emerge as a structure with its own law or code. Some commentators go so far as to claim that Pollock's aspiring sovereign aims to escape even the sheer laws of nature and gravity (on this point, see Cernuschi and Herczynski, 2008). Like Pollock during his painting, the aspiring sovereign here moves from one twirling eddy to the next. None shall be allowed to stabilize and project its law and code. Sovereignty, in Pollock's work, is a constant flight from all law and code, from all structure. It is precisely through this constant fleeing that Pollock's aspiring sovereign hopes to attain total, absolute control, and to achieve absolute sovereignty (however imaginary, illusory and paradoxical this hope may be). This is not a million miles from what the French

philosopher Georges Bataille (1897 – 1962) was writing about a few years after Pollock's drip paintings had entered the post-war cultural scene. In his work on *Eroticism* (1957), Bataille, who had previously been thinking about the notion of sovereignty (1954), introduced the idea of *continuous life*. One can achieve sovereignty in continuous life. Continuous life is life in a zone where the boundaries between supposedly essential differences have dissolved. In dissolving the boundaries between the aspiring sovereign's own self, on the one hand, and primordial nature, on the other, that is, by not allowing his or her self to be captured by any law or code whatsoever, the aspiring sovereign lives his or life in pure continuity with the world. This aspiring sovereign, then, is on a continuous flight from the strictures of functionality. He or she is constantly and frenetically trying to elude all structure, and all stricture, that human civilization incessantly generates. Here again: this flight is a highly paradoxical one. Indeed, he or she who is desperately trying to elude capture by civilization's functionalities is ... captured by them.

Unlike Pollock, Rothko did talk and write a lot about art, his own paintings included (e.g. Rothko, 2006). A Nietzsche-scholar and art critic of some renown, Rothko achieved his signature style also around the year 1950 (see e.g. Lippens 2010, 2012). In his paintings the oblong shapes that seem to be floating against a backdrop that keeps them apart, despite some tentative fraying at their edges, are, Rothko wrote, "entities" that move around in the world, "unabashed", and unbound by morality or the "familiarities" of everyday life. Ever the Nietzschean, Rothko elsewhere added that his paintings hint at the inescapable "tragedy" and "doom" that characterize

human life, and the desperate attempts made therein, to attain *superhuman* detachment and sovereignty. The “entities” in Rothko’s paintings do not show any internal structure or partition. Clearly, they have not been captured by law or by code. There is a hint of agony and desperation to be noticed though in the slight differences of the hues (caused by minute variations in the thickness of the applied paint) within each of the floating entities. Drifting in imaginary splendid superhuman isolation, Rothko’s aspiring sovereign reflects upon the world. He or she however keeps their distance, and is no longer willing to spend any of their primordial potential in anything that even vaguely resembles engagement with or commitment to the law or the code of a joint project. This may remind us of the case (theorized by French philosopher Paul Virilio in 1981) of Howard Hughes, the industrialist and Hollywood mogul who at some point in his life actually decided to live such a life of completely detached, reflective isolation, painfully saving, in the process, all of his potential, including his urine. Rothko’s aspiring sovereign is on a constant flight from the structures and strictures of the world, and from civilization’s functionalities therein in particular. He or she travels on imaginary roads towards pure reflection. In their imaginary world their selves, like Rothko’s entities, have been emptied and transformed into reflecting chambers that float around in the world, far away from the law and code of others.

The Emergence of Control Society

It can be argued that Pollock and Rothko, each in their own way, were harbingers of a new form of life. This is a form of life that crystallizes around the desire for, or will to absolute sovereignty. And that desire or will is all about achieving control, total, utter and complete sovereign control (however imaginary, illusory and paradoxical any such endeavour may be, of course). One could call this form of life 'control society'. Philosophers such as Gilles Deleuze (1990) have used this notion before, albeit in a slightly different context. For Deleuze, 'control society' is the form of life and governance that, in late modernity, has (as Foucault had it) come to replace 'disciplinary society' as the dominant mode of *governmentality*. In the contribution at hand the phrase is used to indicate the seismic cultural shift that occurred in the wake of the Second World War and that saw the birth of a new form of life, i.e. the form of life of aspiring sovereigns who imagine their total escape from law and code, and who harbour a desire for, or will to absolute control (see also Lippens, 2011b).

As said, this desire for, or will to absolute control often manifests itself in an unrelenting flight from all law and all code. Those who allow themselves to be captured by law or code, any law or any code, could never be in control, and could therefore never be sovereign. On the road to absolute control, to absolutely sovereign control, the aspiring sovereign acquires a deep sense of ambivalence. In his or her imaginary world, on his or her imaginary road, nothing is fixed anymore. Those who were friends only yesterday may today have become enemies and competitors. And vice versa: yesterday's foes may, today, prove to be potential allies. This comes as no surprise to

sociologists who have been able to establish the very significant instrumentalism in relationships and friendships in late modern times (e.g. in Hall, et al., 2005). To the aspiring sovereign, the external world appears as a string of situations and contexts that need to be controlled –merely controlled, not transformed- according to the exigencies in the *hic et nunc*. Whereas in a previously dominant form of life the default operational logic went something like *If all else fails, submit and sacrifice*, the aspiring sovereign is –*all else failing*- no longer willing to submit to anything or anyone, or to sacrifice anything to anything. He or she is no longer prepared to sacrifice to law, to code, to tradition, to social convention, to the past, to the future, to nature, to biology, to Utopia, or to anything else that suggests a ‘must’, an ‘ought’ or a ‘should’. In the form of life and governance that we have called ‘control society’ the default operational logic is this one: *if all else fails, refute all foundation*. The aspiring sovereign harbours a very serious distrust of foundations, principles, dogma and all things supposedly fixed. His or her time is now. His or her space is here. His or her world is the *situation* here and now. On the road to absolute control though the aspiring sovereign notices hindrance and experiences irritation everywhere. The tiniest of bumps on the road become insufferable, totally unbearable. There can be neither submission, nor sacrifice, however small, on the road to total sovereign control. In this form of life, life is perpetual agony. It is there, on this very road, that the aspiring sovereign becomes an ‘eternal victim’. He or she experiences ‘victimization’ everywhere they go. In their desperate attempt to elude all the law and all the code of the world, that very world keeps

encroaching upon them. The aspiring sovereign who chose to deploy the *becoming animal* strategy experiences 'victimization' from discontinuous elements (dixit Bataille) that keep disturbing his or her imaginary dreams of total continuous control. In the 'superhuman' strategy, the aspiring sovereign is constantly irritated by 'victimizations' from forces and elements that keep impacting upon his or her detached reflecting bubble.

The form of life lived by aspiring absolute sovereigns has, in the course of the decades, spawned its own parody: consumer culture. Wading through floods of consumer commodities and images, sampling and selecting and trying some, only to discard them again according to the demands of the situation in the here and the now, and fashioning and re-fashioning his or her self in the process, the aspiring sovereign achieves an illusion of control. It is mere illusion though. The consumer-sovereign actually submits him or herself to the law and to the codes of a deeply pervasive consumer culture. The illusion of sovereignty in consumer culture masks the submission and the sacrifice of the self to the law and codes embedded in image and commodity. Here the aspiring sovereign's agony takes a particular form. It expresses itself, as Zygmunt Bauman argues in *The Art of Life* (2008), in an endless litany of consumerist desires and disappointments.

At this point we should make a connection with the image of victimhood which we were able to 'sense' in the text of EU Directive 2012/29/EU. In the Directive the victim appears as a monadic consumer of resources that he or she may, or may not, decide to sample. In one of his recent papers Theo Gavrielides (2017) asks the question 'what victims want'. His empirical data

suggests a broad and quite consistent consumerist attitude that seems to be prevalent among both 'victims' and 'offenders' (and why indeed would there be a difference here?). Research by others has, in addition, noted a quite significant desire for, or will to 'empowerment' in victims engaged in restorative justice practices. While this should not surprise us (sovereign aspiration and 'empowerment' go well together) it could also be stressed, once more, that the aspiring victim-sovereign's thirst for empowerment is ultimately and paradoxically underpinned by and dependent on regulatory processes that aim to 'produce and govern active subjects' while at the same time attempting to produce and govern *through* active subjects (Richards, 2011).

Sovereign Victim Culture and Transformative Restorative Justice

Submitting to the law and codes of consumer culture provides the aspiring sovereign with an illusion of control. His or her outlook on life thus becomes reactive. He or she no longer aims at transformative change, and the culture that emerges out of this is therefore largely non-communicative. This is not a new insight. Five decades ago already, authors such as Guy Debord (1967) noted the fact that in the then emerging consumer culture, or the *society of the spectacle*, as it was called, the consumption of commodity-image is, at heart, a non-communicative process whereby isolated consumers –however much they may be in physical proximity to each other- consume the spectacle alone. More recently, the French sociologist Michel Maffesoli (1988) analysed the trend, in late modern culture, towards *neo-tribalism*. In a neo-

tribal age consumers only need affective proximity during consumption. They are reluctant to engage in genuine communication. Genuine communication is potentially transformative communication and that is what late modern consumers, on their way to *becoming animal*, have no need for. In his novel *Elementary Particles* French novelist Michel Houellebecq (2010) for example depicts the end point of this cultural drift into neo-tribalism: a world peopled by monadic entities who only get together to indulge in mute hedonistic consumptive exchanges that play out at the most basic biological, indeed merely physical level (the level of "elementary particles", that is).

If this applies to the consumer-sovereign, it does so also to the life of the aspiring sovereign as such. He or she has become reactive. He or she is no longer interested in transformative change, and is therefore non-communicative. The aspiring sovereign may decide to engage in lots of chatter. But more often than not, this chatter will not be aimed towards transformative change, and will therefore not constitute real, genuine communication. The aspiring sovereign has lost all interest in transformative change. He or she is no longer willing or prepared to sacrifice anything to change, or to future. His or her time is now. Living in the present, in the moment even, he or she no longer needs future. In this form of life aspirations do not often go beyond the *precautionary* desire, or will, to simply block off anything that is undesired. The aspiring sovereign is content just to control the situation that he or she finds himself in, and to 'safeguard' their own 'interest' in the process (to evoke once again the language in Directive 2012/29/EU).

It could be argued that, well into the 21st century, this development is now threatening to undermine the conditions of possibility for anything like transformative restorative justice to be able to emerge at all. Let us qualify this statement. The form of life that has sovereign aspiration at its heart is of course not completely dominant in contemporary culture. And its default operational logic (i.e. *if all else fails, refute all foundation*) is only a default logic. It kicks in *if all else fails*. There is in everyday life exchanges always a level of interaction whereby actors agree to jointly work towards common goals. What can be argued though is that in an age of sovereign aspiration, or in 'control society', such interactions and decisions are now quite often underpinned by a default operational logic that lurks somewhere in the background, and that could take over if all else fails. But that means that everyday interactions and decisions have become contingent, at least to some extent, on this possibility really actualizing. They have, in other words, acquired a much more strategic or even instrumental character. Let us also remind ourselves that at the time of its emergence, in the wake of the Second World War, this form of life and its corresponding default logic were part of the conditions of possibility for anti-authoritarian models and movements to take shape. Those included, roughly from the early 1970s onwards, informal conflict resolution models and the broader restorative justice movement. Today however the sovereign aspirations and operational logic within 'control society' have radicalised to such an extent that what used to be conditions of possibility are now gradually threatening to turn into conditions of impossibility. The challenge for the restorative justice movement

now becomes to think through forms of restorative justice practice that on the one hand connect onto sovereign aspiration and the desire for, or will to control that comes with it, and use those as a resource, but that, on the other hand, also require and stimulate genuine communication. Genuine communication is communication that is geared towards achieving common goals. Only when people engage collaboratively in joint efforts, with their sights trained on common goals and futures, will they experience the need to communicate genuinely. Only then will they be inclined to make an effort to understand each other's plight, and gauge each other's potential.

The notion of 'sovereignty as control over emergence' may help us to think such forms (see also Lippens, 2012). This notion leads us away from the two more dominant ones, i.e. those that imagine sovereignty to reside in attempts to escape or elude all law, and all code, or in attempts to attain total and absolute independence from the world. Above we discussed two such strategies, i.e. Pollock's *becoming animal*, and Rothko's *superhuman* strategy. Both, as we have seen, are highly illusory and indeed paradoxical strategies: if the aspiring sovereign reached his or her illusory goal of absolute sovereignty and absolute control, they would in the same instant also lose all sovereign capacity. Sovereignty and control, or sovereign control, could never be absolute. Sovereign control can only be achieved in emergence, that is, in the process whereby the new is brought into the world. It can only emerge in and through a *creative* process. But here it becomes clear that any sovereign control that emerges in a creative process could never be

absolute, or total. It will always be partial. Creative action requires the aspiring sovereign to actively engage with the world, and in that very engagement all hopes for total, absolute control should be relinquished. Sovereign control, then, is only possible –and always partial- if and when it results from engagement in a creative process. All other forms of sovereign aspiration are paradoxical and ultimately self-defeating. They only lead to endless cycles of agony.

It is not easy to imagine restorative justice practices that accommodate both aforementioned requirements. It may very well be that our imagination falters here. This would not come as too big a surprise if indeed the argument developed above makes any sense at all. Although it may be safe to say that the invention of and experimentation with transformative forms of restorative justice practice are best left to those who are already engaged in restorative justice initiatives, there is one insight that this contribution would like to emphasize, and that is that, if it is indeed the case that there is radical sovereign inspiration 'out there', then there is no point in ignoring or discarding it. The better option is to use it, and work with it. One way of doing this is to harness this sovereign aspiration in creative joint projects that aim at bringing newness, or change, to ways of living together, whether at the local level or beyond. The very process of creation itself should then require the parties involved to genuinely communicate with an eye on the common goal. This is, admittedly, a tall order. Moreover, it would not be advisable to present this option as a law or a code which has to be submitted to. Aspiring sovereigns are no longer willing, *all else failing*, to submit or sacrifice to

anything or anyone. That said though, one would hope that there may be scope for attempts to persuade aspiring sovereigns that real sovereignty – always partial- can only reside in the creative transformation of the world, and the ways of life in it, and that this in turn requires genuine, communicative engagement with others in joint, common projects. In restorative justice this would mean that aspiring sovereigns engage in collaborative efforts to bring newness into the world through changing the ways in which people's lives relate to one another, and through working jointly on finding new common ground, producing it, maintaining it or, if possible, extending it. It is on the collaborative and communicative road to such goals that real sovereignty –sovereignty over the emergence of the new- can be experienced, or 'sensed'. 'Control' is to be found only in communicative engagement *with* the world, not in the relentless flight *from* it.

Conclusion

In this contribution we started from a close reading of EU Directive 2012/29/EU “establishing minimum standards on the rights, support and protection of victims of crime”. A particular image of victimhood seems to be underpinning the text. This image projects victims as atomically separate entities who, clad in individual rights, may choose to ‘make contact’ (or not, as the case may be). An attempt was made to argue that this image could be situated within a ‘sovereign victim culture’ that flourishes at the heart of what is often called ‘control society’. The origins of this culture, it was argued, could be traced back to the aftermath of the Second World War, when elements of it first

emerged in work by artists such as Jackson Pollock and Mark Rothko. This culture is shot through with an obsession with sovereign control and with resulting agony and as such threatens to undermine the conditions of possibility for transformative restorative justice. One way out of this conundrum could be to think through forms of restorative practices that on the one hand use sovereign aspiration in late modern culture as a resource while, on the other, also stimulating transformative communication. We have tried, however incompletely perhaps, and lacking most certainly, to suggest that restorative justice could offer a space for such attempts to marry sovereign aspiration with genuine, transformative communication. This space, it has been argued here, resides in the experience of joint, collaborative endeavours whereby those involved in restorative justice practices are invited and encouraged to work together on changing –transforming indeed- their worlds, and on creating new ways of sharing common ground. It is in such efforts, we hope –possibly against hope- that aspiring sovereigns will be more likely to replace self-destructive forms of sovereign life, and the agony that comes with them, with ones that, granted, are less absolute, but, on the other hand, also more liveable.

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