



# Restorative Justice in France: A Participatory Turn? Empirical Research on the Management of Victims' Participation

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Received: 22 June 2023 / Accepted: 25 January 2024 / Published online: 23 February 2024  
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## Abstract

In France, the increased attention to victims' experiences is undeniable. This attention is one of the many vectors of transformation of the modern judicial system. It has helped the development of restorative justice, which, in turn, reinforces greater awareness of victims in the justice system. However, does this increased attention to victims contribute to them participating more actively in today's criminal justice system? Following a literature review and a methodology section outlining three and a half years of empirical research, the discussion presents three key findings. (Section I) As managed by the central state, the integration of restorative justice into criminal justice opens a new hybrid space for victims; however, this space remains both state dependent and marginalized in many ways (number, space, legitimacy, etc.). (Section II) As a result of the relative indifference of the state, the development of this space relies on convinced and enthusiastic (para)legal professionals. Their role appears to be crucial. In this light, participation in restorative measures reflects more on the activity of these (para) legal professionals than on victims' demands and agency. (Section III) Finally, I focus on the participants: Do the victims experiencing these restorative measures share the perspectives of these intermediaries? Empirical data suggest a dissociation between restorative measures and criminal proceedings, implying that participation in restorative justice measures has little to do with participating in the criminal justice system, which is represented by the courts, lawyers, and judges. This is related to the modalities of restorative justice's institutionalization in the country.

**Keywords** Restorative justice · State · Victims' participation · Criminal justice

## Introduction

Restorative justice is both a broad set of practices and a replacement or reformist discourse regarding the contemporary penal system (Hudson, 2006; Lefranc, 2006). In France, these practices include victim-offender mediations, victim-offender encounters, family conferences, prison programs, and circles of support and accountability. Theoretically, they rely on the idea that justice should be oriented towards repairing the harm done, making offenders accountable, and "healing" victims (Daems, 2009). They also embody the belief that the path towards individual and social peace is through dialogue and through individuals expressing themselves, and their emotions (Richards, 2005). In other words, restorative justice's original frame of reference is neither

criminal law nor the repressive dynamics omnipresent in today's criminal justice system (Fassin, 2017; Pires, 2001).

In addition, the dominant discourse of restorative justice blames judicial institutions and the professionals who work in them for their verticality and the "stealing" of people's conflicts, an expression coined by criminologist Nils Christie (Christie, 1977). According to the early advocates of restorative justice, one key element to its success is participation: restorative justice is about "restoring victims, restoring offenders, and restoring communities as a result of the participation of a plurality of stakeholders" (Braithwaite, 2002). This is because, according to the "fundamental principles of restorative justice": "Victims, offenders, and the affected communities are the key stakeholders in justice." Thus, the "restorative justice process maximizes the input and participation of these parties in the search for restoration, healing, responsibility, and prevention" (Zehr & Gohar, 2003, p. 65).

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In France, since the vote on August 15, 2014, regarding “law n°2014–896 on the individualization of sentences and the strengthening of the efficacy of penal sanctions” [*Loi pour l’individualisation des peines et l’efficacité des sanctions pénales*], the Code of Criminal Procedure (CCP) ensures the possibility for any victim or offender to benefit from a restorative justice measure, at all stages of the procedure and for any type of crime.<sup>1</sup> Most of these measures are victim-offender encounters and victim-offender mediations,<sup>2</sup> called restorative mediations in France (Cario, 2021). In this country, these practices focus on harm to individuals (and not property offences), such as murder/attempted murder, sexual violence, road injuries, robbery with physical violence, and domestic violence.

In France, promoters of restorative justice present it as participatory justice, favoring victims’ voices and empowerment, unlike the criminal justice system, which they describe as unreachable, violent, and cold (Cario, 1997, p. 20, 2002, p. 11). Consequently, the law of August 15, 2014, could represent a turn in victims’ participation in the French criminal justice system. This article offers a critical examination of the practices put in place by this law. The question at the heart of this article is *what kinds of participation and what kinds of relations with criminal proceedings lie in restorative justice’s dominant practices in France*. To do so, this article adopts a sociopolitical perspective and examines the way the centralized French state assimilates civil society initiatives as a decisive variable

<sup>1</sup> The law defines restorative justice measures as “any measure enabling a victim as well as the perpetrator of an offence to participate actively in the resolution of difficulties resulting from the offence, and in particular in the reparation of prejudices of any kind resulting from its commission” (Article 10–1 of the Code of Criminal Procedure, personal translation).

<sup>2</sup> Victim-offender encounters typically bring together four victims and four offenders (inmates or on probation) to dialogue, in a circle, during one weekly meeting for five weeks. These encounters can happen in or outside of prison (in a civil society organization or communal venue considered neutral). Victims and offenders do not know each other but have experienced or committed the same types of crime (for the interviewees: sexual violence, domestic violence, robbery with violence, murder, and attempted murder). Before these five sessions, the two facilitators (most often a victim support worker and a probation officer) prepare each of the participants (listening to their stories, preparing them to tell it to others and face their reactions, defining their expectations, exploring the different scenarios that could happen and where to set boundaries, etc.). This preparation lasts for 5 or 6 months, with each individual being offered at least three preparatory meetings (more often, five or six). Two volunteer “members of the community” are also present during the sessions, to assist participants emotionally and socially and assist the facilitators in setting up the meetings. Colleagues of the two facilitators are also systematically involved to shuttle participants from their homes to the venue. As for restorative mediations, they consist in several similar preparatory meetings, either with the victim or the offender, with the possibility of a face-to-face meeting with the other person in mind, though this meeting does not often occur (around 10% of the time).

when considering the possibility of restorative justice, or any participatory mechanism, favoring victim participation within the criminal justice institution. However, this article’s most original contribution lies in the three and a half years of empirical research that supports its findings (described in the methodology section). This is the most significant empirical research ever conducted in France on this topic.

As one of the latest attempts to promote victim participation in France, the development of restorative justice sheds light on the question of victims’ participation management by the state. Following a literature review and a methodology section outlining the research process, the discussion presents three key findings. (Section I) As managed by the central state, the integration of restorative justice into criminal justice opens a new hybrid space for victims; however, this space remains both state dependent and marginalized in many ways (number, space, legitimacy, etc.). (Section II) As a result of the relative indifference of the state, the development of restorative justice relies on convinced and enthusiastic (para)legal<sup>3</sup> professionals. Their role appears to be crucial. In this light, participation in restorative measures reflects much more on their activity than on victims’ demands and agency. (Section III) Finally, I focus on the participants: Do the victims experiencing these restorative measures share the perspectives of these intermediaries? Empirical data suggest a dissociation between restorative measures and criminal proceedings, implying that participation in restorative justice measures has little to do with participating in the criminal justice system, represented by the courts, lawyers, and judges. This is related to the modalities of restorative justice’s institutionalization in the country.

## Literature Review

### Victims and Criminal Justice

During the late twentieth century, the social recognition and legitimacy of the figure of the victim became “obvious” (Lefranc et al., 2008). This partly stemmed from the discovery and moral conversion of trauma, which went from being used against war survivors to becoming a resource for legitimizing victim status—a process described as “a major anthropological event” in western societies (Fassin & Rechtman, 2007, p. 29). Politically, the increased attention to victims by the French criminal justice system has been

<sup>3</sup> By this, I mean both legal and paralegal professionals. Probation officers are legal professionals. Victim support associations’ professionals are paralegal professionals, partners to the public sector, funded and vetted by the ministry of Justice and the Courts. It is also the case of the two most important specialized restorative justice organizations in France, funded and vetted by the ministry of Justice.

clear since the first major modern reform of 1977, which created public funds to guarantee compensation for victims of infractions. Shortly after, the 1980s witnessed several public policies favoring victims' rights and victim support organizations (Pin, 2006). Since 2000, a succession of laws have strengthened and expanded victims' rights and the consideration of their interests.<sup>4</sup> One example of these developments is the granting of legal aid to all victims of the most serious offences, regardless of resources (law n°2002–1138 of 9 September 2002 on justice orientations). Another is that victims' have acquired the possibility to have their lawyer intervene in debates held before sentencing judges regarding the execution of the offender's sentence (law n°2005–1249 of 12 December 2005 on recidivism of criminal offenses).

As for participation,<sup>5</sup> victims' outsider position in the modern criminal justice system is embedded in the history of its construction. Criminal justice is explicitly designed to distance victims from public debates and the legal arena. Criminal law was built as a tool for modern states to monopolize conflict regulation, pacify social and political relations, and legitimize state power (Adam et al., 2014, p. 163). *In spite of the multiplication of victims' rights, the recognition of the injured parties in criminal proceedings remains limited essentially to the adhesion procedure ("constitution de partie civile"), which has been in force since 1906 (Leroy, 2002). The victims may file an adhesion procedure at any stage of the proceedings. The procedure itself consists of issuing a compensation claim as part of the criminal procedure. Then the criminal court decides on both the sentence and the outcome of the civil claim. More than that, the adhesion procedure gives victims the right to be informed of any developments during the proceedings and to have access to*

<sup>4</sup> The law n° 2000–516 of 15 June 2000 reinforcing victims' rights; the law n°2002–1138 of 9 September 2002 on justice orientations; the law n°2004–204 of 9 March 2004 on justice adaptation to the evolutions of criminality; the law n°2005–1249 of 12 December 2005 on the treatment of recidivism in criminal offences. For instance, this last law dictates that the nature, *quantum*, and regime of sentences ought to reconcile several imperatives, such as the protection of society and interests of the victim. "L'évolution du statut de la victime dans la procédure pénale" [*the evolution of victims' status in criminal proceedings*], an article published on "Vie publique", an informational website edited by the Legal and Administrative Information Service of the French Republic. URL: <https://www.vie-publique.fr/eclairage/287825-justice-levolution-du-statut-de-la-victime-dans-la-procedure-penale>.

<sup>5</sup> Participation, the fact of being part of something, may uncover different dimensions (active, passive, and other nuances) depending on the degree to which one's agency is exercised. The exercising of one's agency requires "social arrangements that permit all (adult) members of society to interact with one another as peers". Antonsdóttir (2018, p. 325). It applies to the criminal justice process, whatever the distribution of roles between peers.

the judicial file. For those who wish it,<sup>6</sup> the adhesion procedure gives them the right to be heard, whether on their own or through representation, at a dedicated time during the trial. *The rights encompassed by this procedure, as well as the scope of recognized damages and the definition of victimhood (which now includes relatives of victims, for instance), have been broadened since the 1970s (Pin, 2006).*

Nevertheless, the possibility for participation remains circumscribed to civil claims and relies heavily on legal representation. Criminal proceedings today are still, before anything else, a confrontation between the public prosecution (the state) and the accused, where the presence of the victim is secondary. Victimologists, as well as many victims encountered through my fieldwork (see the methodology section), remain critical of the process in terms of information, costs, delays, and interpersonal treatment (dialogue, listening, and empathy).<sup>7</sup> For example, being invited to speak does not necessarily mean being believed or acknowledged (Booth et al., 2018).

### Introducing the Political and Organizational Contexts of Restorative Justice's Measures

The increased attention to victims' experiences is undeniable. This attention is one of the many vectors of transformation of the modern judicial system (Daems, 2009; Rechtman & Cesoni, 2005) and has created favorable conditions for the development of restorative justice in France. In turn, restorative justice's expansion reinforces a greater awareness of victims in the justice system. However, *does this increased attention to victims contribute to them participating more actively in today's criminal justice system?* This article aims to go beyond identifying reasons for or obstacles to the participation of victims in restorative justice measures (van Camp, 2017) by introducing the political context in which this participation takes place.

In writing this article, I expand on previous work demonstrating that institutions constrain human agency (Barker, 2007) and that social and political context is a decisive factor in the modalities of victim participation in the criminal justice system (Laugerud & Langballe, 2017; Lefranc & Weill, 2023). However, these works do not tackle participation in relation to restorative justice.

To bridge that gap, this article builds on work from another field: critical criminology. There, restorative justice's assimilation by the state has been widely studied as a factor

<sup>6</sup> They may also not attend the trial and rely on their legal representation if they do not want to be present in Court (unless they received a subpoena to appear in Court).

<sup>7</sup> For a more precise and nuanced account of victims' level of satisfaction with the criminal justice system respectful of the heterogeneity of their expectations and experiences, I would recommend starting with Laxminarayan et al. (2013).

of transformation of restorative justice's original ambitions (Aertsen et al., 2006/2006). Restorative justice practitioners try to operationalize restorative justice discourses, and in the process, the balance between the ethical and the political rarely swings in the direction of the former. Restorative practices are deformed by the penal system which they most often integrate (Hudson, 2006; Lemonne, 2018). While restorative justice advocates enter the criminal justice system strategizing how to transform it from the inside, it is mostly the system that transforms restorative justice aspirations and practices according to its own operating logic (Boutellier, 2006; Lemonne, 2018; Pratt, 2006). This phenomenon is not new: previously ambitious and enthusiastic reform movements have followed the same path (Garland, 1985; Robinson, 2008). Among these, the 1980s mediation movement in France—an ancestor to restorative justice—started from outside the institution and during the 1990s, ended up being assimilated as a mere flow management tool (Bonafé-Schmitt, 1998; Faget, 2006).

Finally, this article benefits from previous work that shows how legal intermediaries influence litigants' experiences (Laugerud & Langballe, 2017; Pélisse & Talesh, 2018; Pillayre, 2020) and even more specifically, how practitioners of alternative justice mechanisms concretely weigh in on victim participation (Lefranc, 2022). Building on this, this article empirically demonstrates how the reality of restorative justice as a participatory device depends on the political and professional context in which it takes place.

## Methodology

This article draws on a multi-sited ethnography (Marcus, 1995)<sup>8</sup> of the restorative justice social world in France that I conducted as social science researcher between June 2016 and January 2020, under a doctoral mandate funded by Belgium's Fund for Scientific Research. The ethnographic nature of the research is found in the duration and regularity of the fieldwork. During that time, I immersed myself on a weekly basis in a world of restorative measures, including professional meetings and task forces, events, symposiums, forums, and trainings. I was sometimes just a direct observer and sometimes a "participant observer" (Atlani-Duault, 2009), for instance, when serving as a volunteer (a "community member") for one of the restorative justice programs I investigated. In all cases, I

<sup>8</sup> Following Marcus, I situated the ethnography of restorative justice in some of its distinct fragments. The nature of these fragments may differ, as is the case between a restorative justice program for domestic violence and an international colloquium in a cultural institution. This informed particular aspects of a complex object: a local or international dimension, a method of dealing with delinquency, a group seeking professionalization, etc. Marcus (1995).

negotiated the research component of my presence and participation. This social world is inhabited by progressive criminologists, criminal justice professionals, workers from victim support organizations, volunteers, men and women of faith, politicians, "victims," and "offenders"<sup>9</sup>; I observed them interacting with each other and I interacted with them. These informal exchanges are part of the ethnographic work, and so is the collection of a large number of documents to serve as primary sources. Among these documents are organizational documents and activity reports, final reports on restorative measures destined for the court, pamphlets, pictures, legal texts, transcripts of the debates held in the National Assembly on the penal reform of August 15, 2014, and press articles. I took notes in 45 field journals, which I then indexed on my computer both chronologically and thematically, emphasizing stories and anecdotes that crystallized these themes or disrupted them.

I combined this with the results of another qualitative method: comprehensive semi-structured interviews (Kaufmann, 1996/2014). Indeed, during the same period, I conducted 71 interviews with individuals involved in restorative justice in France in different ways. The average length of the interviews was 1h50. Interviewees included professionals from victim support organizations, prison services, restorative justice organizations, and criminal justice and political institutions. I conducted six of these interviews with victims of different crimes who had experience with a restorative justice program.<sup>10</sup> Each of these interviews started with an open question and consisted in walking a thin line between following the interviewee's thread of discourse and orienting them towards several themes of interest systematically brought up and regrouped in three parts. The first was biographical and began with me asking them to tell me about their background, for instance, or the environment they had grown up in. The second part was concerned with the respondent's daily professional life or daily life in general. The last part began with the question "When did you first hear about restorative justice?" and then I asked about the interviewee's experience of this type of measure as well as the criminal proceedings they had gone through or were going through at the time. On each occasion, I first announced the structure of the interview to

<sup>9</sup> In this article, I use the categories "victims" and "offenders" in use in the field of restorative justice to label participants. This article does not aim to question these categories. Nevertheless, the use of quotation marks (which I will not use going forward) should serve as a reminder that these remain constructed categories that should be questioned in order for the meanings and representations they convey to be understood. For a relevant example, see Antonsdóttir's work on the use of the term "victim-survivors". Antonsdóttir (2018).

<sup>10</sup> Because this special issue focuses on victim participation, I made the choice to leave out the offenders' perspectives in this particular article.

the interviewees. I transcribed and studied the interviews to bring out regularities, co-occurrences, and disruptive anecdotes.<sup>11</sup>

## A New Hybrid Space for Victims, Both State Dependent and Marginalized

### A State Dependent Practice

Since the late 2000s, restorative justice activists' strategy for legitimacy and expansion has involved not only inclusion in the law (obtained in 2014) but recognition and funding from the state. This quest for institutional integration is shared by a significant number of civil society initiatives in search of perennity in a state where this process remains difficult to bypass (Abbott, 1988). From the beginning, this strategy put the practice of restorative justice in high dependence on various components of the state: the ministry of Justice, its administrations (access to justice and victim support services, prison services, and the protection of juvenile services), and the local jurisdictions' authorities, as well as frontline professionals.

Indeed, their development immediately relied on preexisting professional groups, funded by the state, to constitute the frontline practitioners of restorative justice, namely probation officers and victim support workers (and afterwards, youth judicial protection officers). Instead of delegating restorative measures to a new and specialized professional group that would have needed more funding, the state relied on existing groups that already worked with victims and offenders. The Penitentiary Administration and the Youth Judicial Protection Administration did not unlock any supplementary means or encourage heads of services to relieve their agents of some of their workload in order to favour their involvement in restorative measures, and thus the possibility for citizens to access these measures. Still today, facilitating measures is presented as an additional workload these agents deliberately chose to take on.

The state chooses who is allowed to practice restorative measures and who is officially approved to train these facilitators.<sup>12</sup> The state also decides on the funding allocated,

<sup>11</sup> My analysis is also informed by an ongoing research project I am conducting that aims to study more specifically the effects of restorative justice measures on participants. I am currently conducting more interviews with participants of restorative justice measures (a dozen), both as victims and offenders. These are not yet fully analyzed, but they unavoidably contribute to my analysis. Research project "Les effets de la justice restaurative," 2020–2023, co-directed by the author and Sandrine Lefranc (CNRS, Sciences Po).

<sup>12</sup> "Facilitators" is the term designating the practitioners who accompany the participants throughout the process of restorative measures,

which remains low.<sup>13</sup> Consequently, from the beginning, opportunities to access measures have varied depending on local conditions and individual good will. The state's choices maintain restorative justice in a precarious situation in many regards. In the words of a former Minister of Justice, the government "gave the green light" to an initiative that "came from outside" because "why not, after all, it doesn't seem to cost too much, I won't be asked to account for it because it hasn't been fully tried and tested, so why close yourself off to an idea"; however, it did not generate a proactive public policy or dedicated budget (interview with Jean-Jacques Urvoas, former Minister of Justice who signed the first policy guidance on restorative justice in March 2017, August 2017).

In this context, the most significant piece of public policy from the state has been the Policy guidance of March 15, 2017 applying to the implementation of restorative justice, written by the ministry of Justice's central administration. Three years after the enforcement of article 10–1 of the Code of Criminal Procedure, this policy outlined a precise legal framework for restorative justice measures.

This text, as well as later articles related to restorative measures in the Code of Criminal Procedure, inhibit participants' agency. In the state's framing of restorative justice, various legal professionals have the power and the responsibility to control, to evaluate, and to select participants. For instance, the policy guidance of March 15, 2017, insists on the controlling power of the prosecutors and judges leading the case. They are to approve or veto measures according to their "relevance." Under the part of the policy guidance on the "implementation of the measures," is a section on the "selection of participants" that insists the judicial authorities should be the origin of

Footnote 12 (Continued)

from conducting preparatory meetings through facilitating (or mediating) the victims-offenders encounters or restorative mediations. The training approved by the state to be a restorative justice facilitator is mandatory and carried out by workers from two restorative experts organizations approved by the state.

<sup>13</sup> As stated before, the Penitentiary Administration and the Youth Judicial Protection Administration do not provide any extra resources for restorative justice. Yet their agents represent more than half of the restorative justice practitioners. In that context, they stretch their professional time beyond extra billable hours to carry on while maintaining their regular tasks, in an already overloaded professional routine. Griveaud (2022). Only the Victim Support Administration (SADJAV) did dedicate a specific budget to restorative justice. In 2021, the budget dedicated to restorative justice was €408,000. These figures should be compared with the €32.1 million earmarked for victim support under program 101 of the SADJAV in 2021. They therefore represent 1.27% of the budget dedicated to victim support. Just under half would fund the French Institute for Restorative Justice (IFJR) and the Association for applied research in criminology (ARCA). The rest is dedicated to victim support organizations applying for funding for restorative justice programs.

the proposal of the measure. The criteria designating what is appropriate, relevant, or feasible remain undefined and left to their professional appreciation.<sup>14</sup> In summary, following these legal dispositions, offenders and victims cannot initiate the measure and have a limited say in determining if it is relevant for them. Only the legal professionals they face throughout the procedure have this power.

## A Marginal Practice

While in other countries restorative justice measures may divert from or replace court proceedings and have a sentencing value, this is not the case in France. Instead, these measures are facultative and supplementary (or “complementary,” to use the term used by restorative justice advocates), framed by the state and controlled by judges, taking place separate but parallel to the criminal proceedings.

As such, restorative justice has evolved into a new and hybrid space in France. Although restorative justice is enshrined in the Code of Criminal Procedure, it does not have any real impact on criminal procedures. Magistrates control these measures and they remain parallel but separate to the investigation, trial, and sentencing enforcement phases. Restorative measures are integrated in the criminal procedure and confined to a border space, both inside and outside. This hybridity casts restorative measures aside: because they are not standard procedural acts, magistrates are afraid they will interfere with ongoing proceedings and are often reluctant to authorize them during the pre-sentencing phase. Consequently, most practices are implemented at the post-sentencing stage, as stated by a senior official from the Victim Support Administration of the ministry of Justice, and member of the Restorative Justice National Committee—a committee gathering various administrations of the ministry to supervise the development of restorative justice in France:

The law makes no distinctions in terms of offence or stage of proceedings, but the ministry of Justice wanted to draw attention to a certain number of situations where direct encounters were taking place, particularly in the areas of domestic violence and radicalization, and especially in the pre-sentencing phase. [...]. The two main avenues are the post-sentencing phase and the dismissal of cases. In the pre-sentencing phase, I’m not lying to you, we’re very cautious. In the pre-trial phase, let’s make sure that victims are treated with dignity, that their complaints are taken into considera-

tion, and then we’ll see about the restorative justice, in my opinion.<sup>15</sup>

The number of beneficiaries of these measures reflects this marginality. Since the beginning of their deployment, 981 participants, offenders and victims,<sup>16</sup> have benefited from restorative justice measures (Griveaud & Lefranc, 2024).

Additionally, the position held within the criminal justice system by restorative justice practitioners reflects this marginality. In the words of a practitioner I interviewed in 2019, “*working as a [restorative justice] practitioner is getting slapped in the face almost every day.*”<sup>17</sup> Restorative justice organizations and (para)legal professionals that practice restorative measures are confronted with that powerlessness on a regular basis. The organizations are not in a position of power with regards to the ministry and the jurisdictions they are funded by; similarly, the professionals are not in a position of power with regards to the magistrates they work with or even their own management. Moreover, the professional groups restorative justice encompasses—victim support workers and probation officers—are dominated by actors from within the penal field (Larminat, 2014). Blockages are frequent, notably when practitioners ask judges that a ban of contact between the offender and the victim would be temporarily lifted, when they ask them for a victim’s contact information, or when they request temporary leaves from prison for the offender to take part in a measure. Blockages are also frequent whenever practitioners start facilitating measures in matters of sexual and domestic violence (paradoxically the most common type of case handled by restorative justice in France). Just recently, in the south of France, a prosecutor stopped several mediations for which participants were already being prepared individually, without further explanation. Yet the Court he works at is a pilot site for a national experiment in restorative justice led by the ministry of Justice.<sup>18</sup>

The tight control of different components of the state (the central administration as well as local jurisdictions) on

<sup>14</sup> Also in art. D1-1-1 of the Code of Criminal Procedure, created by article 7 of decree n°2020–1640 of December 21, 2020, prosecutors, judges, and presidents of courts “shall propose, when this measure is feasible[,]” a restorative justice measure to the victim or the offender.

<sup>15</sup> Online seminar hosted by the French Institute for Restorative Justice, with Claire Strugala, magistrate, senior official from the Victim Support Administration of the ministry of Justice, and member of the Restorative Justice National Committee, April 15, 2021.

<sup>16</sup> Of these participants, 51% are victims, according to the intermediary report on the national experiment for restorative justice, French Institute for Restorative Justice, 2023.

<sup>17</sup> Interview with a restorative justice coordinator from the French Institute for Restorative Justice, August 2019.

<sup>18</sup> Intermediary report on the national experiment of restorative justice within a jurisdiction situated in the south of France, French Institute for Restorative Justice, 2023. This is partly the result of a common dead end in judicial policies: in the end, magistrates remain independent from the ministry of Justice. It just so happens that restorative justice professionals are accountable to both magistrates and the ministry.

restorative justice shapes its development in many ways. In the end, restorative justice has opened a new space in the criminal justice system, where it functions as an outsider from within, without money, recognition, or influence, and without many beneficiaries. Nevertheless, as marginalized as it is, this space does exist. In the second and third sections of this discussion, I examine these practices in action and the experiences in that space of the victims of crime. If restorative justice is designed as a participatory mechanism, what kind of participation are we talking about exactly? Spontaneous or passive? Participation in criminal justice or the measures themselves? In practice, restorative justice measures show a number of ambivalences regarding participation.

### The Ambivalences Between Intermediaries' and Victims' Participation in Restorative Justice

The first ambivalence in terms of participation in restorative justice lies in the degree of recruitment employed by intermediaries in France, a process that needs to be understood to grasp the empirical reality of victims' participation in such measures. The current debate on how to offer restorative justice to victims—in a pro-active or protective manner (Wemmers & van Camp, 2016)<sup>19</sup>—does not really fit my fieldwork observations. These approaches are described as participant oriented. In France, at the time of my investigation (2016–2020, that is to say the early stages of restorative justice's development), participants were “recruited,” to quote the term used by field practitioners. This “recruitment” of participants was oriented more towards conducting measures than towards answering expectations emerging from the victims of crime. Practitioners asked colleagues from victim support organizations and probation offices for ongoing files fitted to a restorative process and called entire lists of past victims/offenders registered by their organization to see if anyone was interested, and stopped whenever they had enough people interested to set up a victim-offender encounter. Still today, the main driving force behind the deployment of restorative justice in the country remains the enthusiasm of its practitioners, ahead of the demand emerging from victims.

<sup>19</sup> In the pro-active approach, there is a systematic dissemination of information to all victims, which allows them to decide for themselves if they want to participate. In the protective approach, only victims actively asking to meet with the offender are informed about restorative justice measures, to reduce any risk of secondary victimization. Wemmers and van Camp (2016).

### A Proposal Made by Practitioners in Search of Meaning and Wanting to Help

This is in great part the result of the general context of circulation and information about restorative justice in the judicial system that tends to rely only on restorative justice activists. In practice, police officers, judges, and prosecutors do not inform victims of their right to choose restorative justice measures. First, they are unlikely to know these measures exist (this is demonstrated by the entirety of my fieldwork). Second, even if they are aware of these measures, they will not necessarily transmit the information. In the absence of systematic information as well as popular representation of restorative justice,<sup>20</sup> the right of victims to these measures remains widely unknown. In this context, the information relies on probation officers and victim support workers invested in the development of restorative justice in France. These intermediaries are in direct and sustained contact with victims and offenders. These intermediaries, depending on their own personal convictions, are the ones who inform victims of their right to these measures.

Finally, the intermediary employs one of two techniques in the recruitment process: orientations and call campaigns, that practitioners name “phoning” (the term is used in English). Orientations depend on (para)legal professionals but not necessarily on those facilitating the measures. This means that colleagues from within victim support organizations (a psychologist, for instance) or the prison service (other probation officers uninvolved in restorative justice) may inform people of the possibility of restorative justice measures with their colleagues who are specifically trained to facilitate measures. They may also inform their trained colleagues that they have met a person who might be interested. For victim-offender encounters, which was the majoritarian practice at the time of my doctoral investigation, the usual way is to call one by one victims and offenders registered in the database of the victim support organization or probation service. This is still the case today. Then, to evoke the victims' part in restorative justice, the term “recruitment” is used systematically. More often than not, practitioners simultaneously use and discard this term: “*I don't like this term, but it means what it means*” (Interview with a facilitator, 2019).

<sup>20</sup> From 2014 to 2022, the daily regional press regularly issued articles on the topic of restorative justice. However, only four national press articles, two documentaries, and a fiction film can be accounted for. Radio and television interventions have occurred but are rare. This changed with the recent success of the French film, *Je verrai toujours vos visages*, which depicts two restorative measures and stars several well-known actors. Released in March 2023, the film sold more than one million tickets and was number one at the box office during its first week. Still, our sociopenal culture does not facilitate representations of dialogue with serious crime offenders, and research has shown France to be settled in a “punitive moment”. Fassin (2017).

This recruitment process can be overwhelming because it takes a lot of time, energy, and phone calls to secure participants. Indeed, generally speaking, victims do not seem to be in a rush to participate, and of that population, the measures seem to appeal to only a few. A conversation I had with a restorative justice practitioner in 2018 really captures this idea:

After a day-long meeting of the French Restorative Justice Platform [a space that brings together different restorative justice practitioners in France], I go out for a coffee with a restorative justice project manager from the nonprofit sector who was present at the meeting. It has been eight months since she took up her job at that time. Quickly, she starts to tell me about her disillusionment and the difficulties she faces.

She tells me: "I'm up to one hundred and ninety-four phone calls trying to find victims for the victim-offender encounters we're setting up here, for two 'yesses'. Moreover, they can retract by then. Some of them told me 'ok' but afterwards, as the meeting is in another department and it takes a lot of time, people more or less quickly withdraw their 'ok'. There are days when I make more than a dozen calls..."

We continue talking. She wonders whom she's doing this for if the victims don't want to be in it [I paraphrase]. To illustrate, she reports some of the reactions she has to deal with sometimes. She says: "When I phoned victims on the 2017 list [of a victim support organization], I received some violent stuff... like 'that's bogus your thing,' 'why am I going to go meet people like that,' 'we don't have the same values,' stuff like that..."

(Field notes, notebook 36–7, November 26, 2018)

Although this case is one of the more extreme,<sup>21</sup> this type of disillusionment appeared numerous times throughout my fieldwork. There is a large gap between facilitators' enthusiasm and their targeted beneficiaries.

Yet some (para)legal professionals trained to facilitate restorative measures continue to actively try to make restorative justice work. To quote a facilitator who is convinced that the current criminal system is a dead-end: "it has to work". These intermediaries do this work because they believe it transforms people's lives. They also believe it transforms their own lives. While interviewing these intermediaries, restorative justice was described as a

"gut feeling," an obvious choice, a source of motivation, a promise of meaning in their work, and a way out of the daily contradictions they experienced while facing the people they follow. Indeed, all the para(legal) professionals involved in restorative justice considered the judicial institution they worked for unjust and perceived their daily professional lives as distorted by the rationalization and managerialization of judicial activity. In that context, restorative justice allows them to escape their frustrations and match their aspirations, at least temporarily (Griveaud, 2022).

On that note, what I find striking, after spending time studying restorative justice, is that its first beneficiaries are not necessarily the ones you might imagine. At this stage of restorative justice's development in France, its beneficiaries are less often victims, offenders, and community members than the judicial and para-judicial intermediaries who implement restorative measures. Indeed, the number of (para)legal professionals trained in restorative justice by the French Institute for Restorative Justice (IFJR) and the Association for Applied Research in Criminology (ARCA) is much more significant than the number of beneficiaries. Between 2014 and 2018, they reported 1,339 trainees (for 74 participants). In 2019, 520 professionals were trained (for 141 participants) and in 2022, the number was 341 (for 293 participants). As a result, intermediaries are more numerous than participants and they spend more time invested in restorative justice measures than victims and offenders do.

### The Relational Dimension of Entering a Restorative Measure

After a difficult recruitment phase, the role of probation officers and victim support workers in securing participants becomes even more decisive. They must build up the engagement of the participant by explaining the measures and creating a relationship of trust.

The following interview excerpt illustrates a common discourse on the entry process into the measure. Typically, after a first phone call, and if he is interested, the beneficiary takes part in an informational meeting, and then, if he is still interested, to several preparatory meetings. At the end of this preparation process, he participates to the encounters themselves, which is one weekly meeting for five weeks. In this excerpt, participation is about following the flow managed by the two facilitators. I asked Maély,<sup>22</sup> a victim who had participated in victim-offender encounters, when she first heard about restorative justice. She started by telling me what happened to her: how her friend was murdered in front of her, and how she spent hours in the hospital, then hours at the police station, without sleeping or eating.

<sup>21</sup> We do not know much about the rate of interest in restorative measures within the victims of crime, besides the result of an experiment in which a hundred victims of domestic violence who had previously solicited a local victim support organization had been contacted by phone. The experiment showed that 10% of the people contacted had at least a first in depth interview with facilitators. Activity report, French Institute for Restorative Justice, 2021.

<sup>22</sup> All names are pseudonyms.



Delphine: Oh, you ended up spending the night at the police station...

Maély: Yes, but well. That's where I come to your question. There I was told to go and see an association that helps victims, so I went. Unfortunately, there, a person gave me a card, and said "I'll call you back, I'll call you back," then for two years no one called me back. I didn't see anyone. Then two years later people call me, and I said how come they're only calling me now, when I'd seen someone and they never called for two years. But it was not the same person. They called me for restorative justice. I didn't know what it was, not at all.

They explained to me who they were and for what purpose they called me. I said that I was interested but I, I, I panicked a little bit because I didn't know what I was getting into. I asked myself questions, I was interested in what they had to tell me, and then I was ready to meet them. Then they explained things to me, why they were there and what they were part of. So I told them that what I didn't want was to meet my own offender. To meet other offenders, uh, I still had... I wasn't quite sure about that yet...

Afterwards, they proposed several meetings during which it really went very well, first to set up the mechanism, to explain to me several times what it consists of and that I should prepare myself to join this mechanism in the right manner. They used explanations that were very rational, not complicated at all, and that I assimilated well.

Delphine: Who were the people who called and prepared you?

Maély: People from the probation office and the local victim support organization. [pause] Very nice people anyway. [I sensed by her tone she meant that their professional identity did not matter]. I admit they are wonderful people who do their work well and who are well adapted to what I... to me. At the beginning it was vague for me, I didn't really understand what I was getting into. And then they reassured me about all that, they explained things in the right way and they convinced me with what they told me, and I said to myself, "yes, why not?"

(Interview with Maély, 2020)

In this excerpt, Maély's discourse shows signs of the work of explanation and conviction done by the facilitators. When the phone call starts, she is first irritated by the fact that she is hearing from a victim support association so late after the murder of her friend. Then she is frightened at the thought of seeing her perpetrator; she refuses to see her perpetrator and is scared at the thought of seeing any perpetrators at all. She is hesitant but accepts the proposed appointments. She

was "convinced" by the "perfectly rational explanations, not complicated at all, which [she had] assimilated well." Part of her follows the flow and concludes: "why not?" However, part of her voluntary adherence comes from the fact that she feels reassured by the personalities of the facilitators—she trusts them. Indeed, in this progressive conviction, her perception of the interlocutors seems important: she insists that they are "*very nice people anyway ... wonderful people.*"

This support was always an element spontaneously put forward by respondents. They praised the facilitators' personalities, benevolence, and professionalism.

[I asked Héloïse about her first exchanges with the facilitator of the measure] And afterwards, she spoke to me about the prison and about the number of meetings. She told me that she was going to be reachable by phone. In any case, it reassured me to have her on the phone and I felt, I think that's also why I participated, I felt that she was really trustworthy.

(Interview with Héloïse, 2020)

The role of these intermediaries between restorative justice and its target audience is crucial. There is a relational dimension to entering the measure. It is not possible to enter a measure spontaneously in a context where the information is solely in the hands of the professionals. Because these intermediaries want to practice restorative justice and believe it is helpful, their role and influence in the process is crucial.

Participation in restorative justice measures should not be understood as a spontaneous act or a demonstration of agency from the victims of crime. Rather, it should be thought through along with practitioners' ambivalences towards the participation of victims' (and offenders'). In the next section, I investigate participating victims' views of the process. In their perspective, restorative justice does not really give access to participating in criminal procedures beyond the measures themselves. This is partly because of what I have already described: restorative justice measures are kept as hermetically as possible from the proceedings. This is also due to the fact that participants do not necessarily associate the measures with the criminal justice system, and in any case, never associate them with the investigation and trial phases. Not all victims of crime feel invisible or persecuted throughout the criminal proceedings, but most victims entering restorative measures have a bad experience with criminal proceedings. For some, restorative justice becomes a way to deal with the aftermath of these proceedings. However, if lack of participation in the criminal justice system fuels restorative justice, the reverse is not true: restorative justice does not fuel participation in criminal justice.

## Participating Victims' Experiences and the Criminal Justice System

Intermediaries and victims<sup>23</sup> do not see restorative justice through the same lens. Intermediaries were trained by restorative justice experts to be facilitators. During this training, they were taught the theoretical principles of restorative justice and its critique of criminal justice (I have done this training myself). They understand the modalities of its integration in France theoretically and practically. They are working within the criminal justice system. They are the ones in contact with prosecutors and judges to obtain authorizations to proceed with measures. Victims, however, do not see much of this behind-the-scenes work. They only experience the measures themselves. During this process, they have no tangible connection with the judicial institution, which they have mostly associated, during interviews, with the courts, lawyers, and judges.<sup>24</sup> They have no idea of the replacement discourse restorative justice promotes in academic circles. They have very little idea of the context of its emergence and the modalities of its integration in the criminal justice system in the country.

It is not surprising then, that during our interviews, participants did not emphasize empowerment or agency in the same manner that theoreticians and practitioners do. They did not view their experiences this way, whereas practitioners constantly insisted that it is “their space [the participants’]” to ask their questions, to take back control on what happened to them, and that they can quit at any time during the process (Field notes taken during debriefings of preparatory meetings to a restorative measure, 2023). Even

<sup>23</sup> A clarification: referring to victims as a homogeneous entity does not make sense in light of victimization surveys conducted around the world and, notably, in France. Zauberman (2015). They show different profiles of victimization and different responses to it, as well as different expectations towards criminal justice from those who chose to file a complaint and/or an adhesion procedure. Statistically, people who have suffered property damage are mostly looking for compensation from the judicial system, whereas those who have faced personal injuries describe it as a call to the state for the culprit to be punished and the violence not to be repeated. Zauberman (2005).

In the scope of this fieldwork (and representative of restorative justice in France), restorative measures participants as victims were all faced with serious and personal offences (murder, violent home jacking, road felonies resulting in paralysis and handicaps, sexual and domestic violence). They all filed a complaint. They all described frustration, misunderstandings, and pain when it came to the various stages of the criminal proceedings, where they were asked to tell their stories and justify themselves but felt tested more than heard. They were from various socioeconomical backgrounds and territories, mostly women, and their most common feature was being relatively isolated socially, whether prior to the events, as a result of them, or both.

<sup>24</sup> This representation excludes probation officers, whose work is very poorly known in France and associated with inmates' assistance. Larminat (2014).

with the term “justice” being present in “restorative justice,” participants did not describe their experience as a way of seeking justice but rather as an experience of “care.”<sup>25</sup> They did not spontaneously associate it with the criminal justice system (which was different from the offenders). When they did, they dissociated their representation of the criminal proceedings and the restorative justice process, but sometimes used the restorative justice process to reconcile themselves with the criminal proceedings.

### A Social Experience of Care and Recognition

What happens, according to participating victims, during a restorative measure? While the stories told in the interviews varied and described varying degrees of positive impact on participants, what came through most strongly was gratitude for the facilitators and their support.

In describing her experience, Maély puts first the relief she found in the very fact of being accompanied by the facilitators, of no longer being alone:

Delphine: What do you remember about this experience today? [Interviews were held a year after their experience]

Maély: Their support, the well-being they brought [she is talking about the two facilitators]. The well-being because until now, they are people who are still interested in how we are doing, how things are going. They have not abandoned us and for us it is important, I have progressed a lot. I have less ... Regarding my guilt in this story, well today I can say to myself “It’s not my fault” whereas if I wouldn’t have had their support, I could have remained closed in on myself, and frankly I might not be here anymore.

(Interview with Maély, 2020)

Facilitators give them lots of time. Between the preparatory meetings, the measure itself, and any additional services,<sup>26</sup> dozens of hours are devoted to each person, which is no longer commonplace in public service.

Facilitators offer consideration and an attentive ear, which are in short supply. As one respondent who took part in a restorative measure explained to me shortly after the trial for her rape, “*There’s a feeling of follow-up. It’s not like ‘let’s go to court’ and then it’s all wrapped up and the victims and perpetrators are left on their own.*”

<sup>25</sup> “Care” is understood as a set of social practices and policies associated primarily with solicitude, but also with caring, assistance, support, and concern for others. Ledoux (2013).

<sup>26</sup> One example of these additional services is a restorative justice facilitator accompanying a participant to the trial of their case for support, while also working with them in parallel with the restorative justice process.

They also offer a form of unconditional welcome and recognition. The facilitators never question what they say: they believe the victims and empathize with them. In this way, they offer the recognition victims say they are systematically looking for, from loved ones, society, and the legal system. Furthermore, while the participants do not associate the facilitators with criminal justice, as they do with judges, they do associate them with the state. Indeed, that the measure is free leaves no doubt that they are benefiting from a public service delivered by state-subsidized agents. As a result, in addition to social recognition, there is also a form of institutional support and recognition.

Restorative justice also offers social resources for breaking out of isolation, with facilitators, volunteers, other people with similar experiences, and even offenders and victims who share a desire to reflect and exchange ideas. Finally, unlike other alternative dispute resolution methods, such as family mediation, everything is free.

The participants' accounts of their experiences of restorative justice programs showed that they saw the restorative measures as therapeutic measures, despite being run by legal and para-legal professionals who are not psychologists. In other words, for them, the device had a "care" function, similar to therapy. When I asked them what they retained from their meetings, one said: "*It was extremely liberating for me because I was able to say things, to talk about the doubts I have about my childhood.*" Another said: "*it's just that psychologically... I got an answer, and I see on the other side how it goes. I see that it wasn't necessarily programmed.*" In the following excerpt of an interviewee with a third one, the words she uses (underlined) really emphasize this therapeutic dimension.

Delphine: [She had just told me about hesitating a lot before deciding to go through with the process] what gave you the final push?

Florence: In my head I thought, since I had no one around to help me... anyways... I said to myself that maybe these people could help me, because I had also experienced a post-traumatic shock and I couldn't get out of all that. I couldn't get out of this problem and I felt very bad about myself. Really, psychologically, I was not well at all. I told myself that maybe through this I would have answers to my questions and maybe it would help me psychologically.

(Interview with Florence, 2020)

The stories that victims told about their experiences in restorative justice measures are partly reminiscent of the therapeutic process. I understand this as a manifestation of a contemporary broadening of the judicial function, not unlike other researchers (Daems, 2009).

At the same time, participants described the time of the measure as a relational experience. It represented a rare

moment of consideration and recognition of their experiences and selves by public civil servants or associative workers funded by the state. In that sense, restorative justice is a helping hand offered in the deteriorating landscape of the welfare state system (Bonelli & Pelletier, 2010). These factors point to a state that delegates to these (re) motivated workers the task of looking after its citizens, after or alongside the difficulties experienced during criminal proceedings.

## A Tenuous Link with Criminal Justice

If victims interviewed talk about therapy and psychological follow-up early and spontaneously during interviews, they do not often elaborate on a link with justice or the criminal justice system.

Some do. They take advantage of the many preparatory meetings with practitioners to ask questions about past proceedings and try to resolve any misunderstandings and anger about them. In this way, the facilitators act as a follow-up service for the criminal justice system.

Amongst our interviewees, most did not make a connection between their experience of a restorative justice measure and the justice system. Lya confessed that she did not ask herself if the judicial institution was involved. I asked her, in the course of the conversation, if it was an initiative of the association or the judicial institution, and she replied: "*uh... good question [she smiles] ... I don't know about that... In any case, the facilitator was from the local victim support association.*" My interaction with Héloïse was similar; I again tried to bring justice into the conversation at the end of the interview.

Delphine: And is there a link between restorative justice, this system, and traditional criminal justice?

Héloïse: Uh... no, it's a really interesting question, but I didn't think of it... In relation to justice, uh... Well, since I'm a little angry with justice, it's true that I associate it, I really associate it with the local association for victim support.

(Interview with Héloïse, 2020)

In practice, for the few victims who enter restorative justice measures, the accounts of their experiences do not always fit the discourse that promotes restorative justice. Above all, the victims stress the relational and care function. Far from any link with the judicial institution or feeling of justice, what they all expressed was a desire to feel better, move forward in life, and master to the best of their ability the psychic traces of the event.

Participation in a measure does not equal participation in the criminal justice system, though its shadow is always there. For instance, Maély stated that what she would remember is "they [the facilitators] have not abandoned us" [last excerpts quoted]. This should be put in relation with her

experience of the criminal proceedings: “I’ll tell you frankly, I find the justice system to be totally negligent. One has the impression of not being listened to, one hardly ever sees the lawyers, the magistrates. One wonders what is going on, one is put aside, that’s it.”

For victims participating in restorative measures, the link between restorative justice and criminal justice is tenuous, more tenuous than for the practitioners promoting restorative justice as a way to make criminal justice a little less unjust. At best, it gives them an opportunity to understand better the difficulties they experienced during the criminal proceedings. Sometimes, they completely dissociate the restorative measures they engaged in from the judicial institution. In any case, evidence suggests that restorative justice promoters’ ambition to foster victims’ participation in justice has failed to overcome the persistent imperviousness of the criminal justice system to these practices and ideas.

## Conclusion: A “Baby Steps” Management of Victims

“Victims’ powerlessness in relation to the criminal justice system encourages them to take positive action in various areas of their lives, and to mobilize resources outside the justice system in order to take charge of their recovery” (Cyr & Wemmers, 2011). Access to restorative justice measures (which vary depending on the locality, circulation of information, and commitment of local professionals) as a free public service may represent a new resource for victims in this respect. These resources are enshrined in the Code of Criminal Procedure and the workings of the judicial institution. However, it is not likely to change their experiences of criminal proceedings or how they participate in it. This resource is an afterthought, a Band-Aid on the wound caused by the criminal proceeding, reserved for those among the victims who entered the criminal justice system.

Restorative justice is one of the latest illustrations of the regular expansion of victims’ rights. As such, its institutionalization documents how the judicial institution may at the same time acknowledge and contain this expansion and the participation of victims within the criminal justice system. The assimilation process of restorative justice by the state has resulted in a double framing of the victim participation theoretically proposed by restorative justice, from a legal and political standpoint and from a professional one. I understand that process as a containment strategy of a reformist ambition, giving a green light to the creation of an original place for victims in the criminal justice system and marginalizing them at the same time. This containment is facilitated by the fact that in France, the state is highly centralized and its tasks highly professionalized. This case study illustrates the “baby steps” management of victims and public

institutions’ strong capacity to resist change while always being in motion, to ensure their perennity and continuous legitimacy (Lascoumes, 2006).

In most of the European countries where restorative justice is currently being deployed, the strategy of entryism of restorative justice has not led to any particular break with the existing criminal justice system or any real moderation of its pre-existing logics (Aertsen et al., 2006/2006; Lemonne, 2018). At most, it represents an “extra touch of soul” to criminal justice (Griveaud, 2022). In France, proof of this may be found in the concomitance of its development with “the most repressive period in its recent peacetime history” (Fassin, 2017, p. 9), marked among other things by the piling on of security and repressive measures and an ever-increasing incarceration rate.

**Funding** The doctoral research leading to this article was supported by the Fund for Scientific Research (Belgium).

## Declarations

**Competing interests** The author has no competing interests to declare that are relevant to the content of this article.

**Informed Consent** Informed consent was obtained from all individual participants included in the study.

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