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The restorative justice apparatus: a critical analysis of the historical emergence of restorative justice

Abstract

Drawing on Michel Foucault's theoretical reservoir, this paper conceptualises restorative justice as an 'apparatus', that is, a dynamic ensemble of elements whose emergence is related to the development of a distinctive political rationality (ethopolitics). This approach enables a multidimensional comprehension of restorative justice, since it targets both discursive and non-discursive elements, their power/knowledge relations and subjugating effects. Furthermore, the paper explores possibilities for an emancipatory restorative justice, against the subjective entrapment that the apparatus produces. Overall, this work aims to offer a theoretically engaged and critical scrutiny of restorative justice by using an underexploited analytical device – the apparatus – apt to make visible unexpected dimensions of this "new" frontier of western penality. This could enhance our understanding of the emergence and possible trajectories of restorative justice, by identifying risks and opportunities as well as tools for disentanglement from its most problematic institutional developments.

Keywords: Michel Foucault, Apparatus, Restorative justice, Ethopolitics, Subjectivation, Ethics

Introduction

Over the past forty years, restorative justice (RJ) has slowly emerged as a worldwide field of practice and research (Wood and Suzuki 2016). The amount of normative studies on what RJ 'ought to be' and empirical works on 'how it works' outnumbers the critical research on the links between RJ and broader political, cultural and social phenomena (Aertsen and Pali 2017; Pavlich 2005; Richards 2005, 2011; Woolford and Ratner 2007). This paper contributes toward addressing such a lack of theoretical engagement, by using a generative (and relatively underexploited) research device introduced by Michel Foucault, that is, the apparatus[1] (Foucault 1980[1977]). The apparatus is a 'grid of interpretation' (Dreyfus and Rabinow 1982, p. 121) which considers discursive and non-discursive objects (ideologies, scientific knowledges, ethical doctrines, legal devices and institutions) by connecting them in both conceptually and normatively productive ways, making visible their political conditions and subjugating effects. Through this analytical lens RJ is configured as a bundle of power/knowledge relations which facilitates the unfolding of a specific political rationality – ethopolitics (Rose 1996a) – which in turn reproduces RJ in distinctive ways. Furthermore, the very conceptualisation of RJ as a functional and strategic mechanism, urges critical scholars to envision alternative versions of RJ, which enact forms of active subjectivation.

The paper starts with a brief review of the Foucauldian concept of apparatus. It then reconstructs RJ as an apparatus, focussing on discursive and non-discursive elements, their connection and subjugating effects. The final part of the study draws on Foucault's later ethical reflections (1982, 1984a, 1997), in order to generate some preliminary insights into the emancipatory development of RJ. Overall, whilst this study does not aim to be exhaustive of RJ's themes and problems, it does intend to map out this field by reorganising its multiple aspects along the apparatus' lines. The reasons for choosing such an approach are as much epistemological as normative. This perspective, in fact, helps both to reformulate RJ by bridging dimensions often researched as separate and discrete entities, and to image forms of critical resistance to RJ's institutional developments (Hoy 2004).

There are three main limitations to the research. Firstly, the illustrative context is drawn from the UK and US, and therefore analyses and proposals apply only (or at least mainly) to such countries. A second limitation is that this work is an elaboration on theoretical, advocacy and policy material accumulated over the last forty years, and as such tends to be at times abstract and over-generalising. However, a major aim of this paper is to chart general patterns in the development of RJ (Garland 2001, p. viii). In

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[1] The French word used by Foucault 'dispositif' has been translated with 'apparatus' largely because this is the most common English translation within relevant scholarly literature (see Burchell 2008; Bussolini 2010).

light of this, abstraction and generalisation are useful heuristic tools for an insightful analysis. Finally, there is a paradoxical "side effect" in employing the apparatus as analytical grid: whilst this device is used to offer a non-linear and multi-dimensional representation of the research object, it may render this object conceptually smooth and politically cogent. In order to address this limitation, the paper considers contingent slippage points, tensions and gaps which disrupt the apparatus' workings, making its structure less stable and its action less compelling. Yet that "side effect" may eventually play a strategic role: to stimulate the search for further gaps and flaws within the apparatus, as a first step toward alternative and emancipatory reformulations of RJ.

The apparatus

The concept of 'apparatus' [dispositif] features both in books written by Foucault in the 1970s (notably The History of Sexuality volume 1) and in his lectures at the Collège de France delivered between 1977 and 1979. However, the most explicit definition of this methodological notion is given by Foucault in an interview released in 1977, whereby he describes the 'apparatus' as follows:

'What I'm trying to pick out with this term is, firstly, a thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions – in short, the said as much as the unsaid. Such are the elements of the apparatus. The apparatus itself is the system of relations that can be established between these elements. Secondly, what I am trying to identify in this apparatus is precisely the nature of the connection that can exist between these heterogeneous elements. Thus, a particular discourse can figure at one time as the programme of an institution, and at another it can function as a means of justifying or masking a practice which itself remains silent, or as a secondary re-interpretation of this practice, opening out for it a new field of rationality. In short, between these elements, whether discursive or non-discursive, there is a sort of interplay of shifts of position and modifications of function which can also vary very widely. Thirdly, I understand by the term "apparatus" a sort of – shall we say – formation which has as its major function at a given historical moment that of responding to an *urgent need*. The apparatus thus has a dominant strategic function' (Foucault 1980[1977], p. 194).

Invited to explain the 'apparatus of sexuality', Foucault states that this concept refers to a 'thoroughly heterogeneous ensemble' of discursive and non-discursive elements, connected by a power/knowledge infrastructure. This mechanism is both functional and strategic. The apparatus is functionally integrated insofar as its different components are in a ceaseless process of reciprocal alteration and 'readjustment' of their effects (Foucault 1980[1977], p. 195). The strategic aspect alludes to the apparatus' emergence as a 'response' to an 'urgent need', that is, to a historical conjuncture which enables the apparatus to arise. Methodologically, to organise certain phenomena as an apparatus, warrants the researcher to analytically embrace the mobile network in which knowledge and power reproduce themselves, cutting across a variety of singularities, at different epistemological and ontological levels. It also urges an exploration of the apparatus' capacity to bring into being something specific in a strategic fashion. Once the heterogeneous ensemble has been mapped out, in fact, the question is how this cluster of elements is deployed and for which purposes.

This Foucauldian concept has been object of a sustained philosophical reformulation and critique. Gilles Deleuze and Giorgio Agamben have perhaps submitted some of the most original re-elaborations of it. Deleuze describes the apparatus as 'a tangle, a multilinear ensemble. It is composed of lines, each having a different nature' whose major aspects are 'Knowledge, Power and Subjectivity' (Deleuze 1992, p. 159). It is a machine 'to make one see and speak' (Deleuze 1992, p. 160), by determining the conditions for objects of knowledge to arise. 'Sovereignty', 'discipline' and 'control' are all apparatuses which manufacture the actuality of historical societies (Deleuze 1995, pp. 177–178). In a similar vein, Agamben (2009, p. 14) describes the apparatus as 'literally anything that has in some way the capacity to capture, orient, determine, intercept, model, control, or secure the gestures, behaviors, opinions, or discourses of living beings', with subjugating effects. Agamben maintains that our societies are assisting

a synchronic proliferation of apparatuses, which at the same time entrap the human bare life (Frost 2015).

Foucault, Deleuze and Agamben's understandings overlap insofar as they all yield a typically Nietzschean (Bussolini 2010; Raffnsøe et al. 2014) framework for analysing social complexity which foregrounds fluidity and relationality, crossing the boundaries between epistemological, ontological and normative levels of enquiry. However, divergences are also present. At least two differences should be briefly appreciated here, due to their relevance for the reframing of RJ which this paper seeks to advance. Firstly, the Foucauldian notion presented in 1977 does not directly contemplate the subjugating effects of this strategic mechanism, that is, it does not appraise how the production of subjectivities could contribute toward fulfilling the 'urgent need' which drives the apparatus' emergence. In Deleuze and Agamben, conversely, the issue of subjective entrapment is integral to their very definitions. Deleuze, in fact, emphasises 'subjectivity' as one of the three dimensions constitutive of the apparatus. Similarly, Agamben focuses on the apparatus' effect of 'entrapment' of the bare life, coherently with his previous works on the 'homo sacer' (Agamben 1998). Finally, whilst both Deleuze and Agamben also afford insights into how to resist or halt the apparatus, Foucault seems to lack 'creativity' on this point (Legg 2011, p. 131). Deleuze sees the apparatus as 'crucial for discerning possibilities for resistance and for the elaboration of new subjectivities' (Bussolini 2010, p. 102). Agamben instead, suggests to halt the apparatus by acts of 'profanation', that is, by deactivating 'the apparatuses of power and retur[ing] to common use the spaces that power had seized' (Agamben 2007, p. 77).

The Foucauldian notion of 'apparatus' can be rendered more conceptually generative and normatively creative by integrating the ideas of 'subjection to power' (Foucault 1982) and ethical 'care of the self' (Foucault 1986) elaborated by Foucault during the last stage of his intellectual journey. This operation could open up different dimensions of the phenomenon at stake, as well as a path for an emancipatory, political-ethical RJ. This would enrich the extant theoretical literature on RJ in a number of interconnected ways. Firstly, and more generally, the 'apparatus' as analytical prism has never been used to reconstruct and discuss RJ. This paper suggests that by using this approach it is possible to capture the multiple lines which constitute RJ, proposing a dynamic understanding of this subject still missing in much of the existing literature. Secondly, the paper endeavours to complicate the representation of RJ as a neoliberal form of justice (Pavlich 2005; Richards 2005, 2011; Woolford and Ratner 2007) by laying out an account whereby neoliberal and neoconservative elements are subsumed under a different political rationality (ethopolitics). Thirdly, by sketching out a preliminary normative path for the development of RJ, this work aims to complement the available Foucauldian literature on this topic, often more oriented toward the critique of RJ than the identification of new options (O'Malley 2009). Finally, the paper intends to give a (minor) contribute to Foucauldian studies, and namely to those positions which connect different domains within Foucault's work on normative/epistemic grounds (Valverde 2008). The combination between 'apparatus' and 'ethics', in fact, warrants both a re-configuration of RJ and the production of a type of knowledge which aims 'to cut', not only to understand (Foucault 1984b), that is, to resist the problematic evolvements of RJ and not only to decipher them.

3. A thoroughly heterogeneous ensemble of discursive and non-discursive elements

3.1 Discursive elements

The RJ apparatus is a fluid discursive field whereby scientific, philosophical and moral discourses juxtapose, intersect and conflict. Discourses are interpretations of the world 'built into linguistically performed practices' (Jäger and Maier 2016, p. 113) produced by social actors over time. Social actors mobilise discourses in order to make sense of themselves, their bodies, actions and relations (Foucault 1972, p. 46). However, this process does not necessarily entail critical appreciation of which discourse to "download" from the "cloud" of accessible interpretations of the world. People are exposed to discourses apparently natural and pervasive, which influence their cognitive and emotional architectures perfunctorily. Yet, resistance to such an influence is possible by seizing upon the very inconsistencies

within and across discourses, provided that actors have the (cultural, economic, etc.) resources to decode them. Within this framework, discourses are always political constructs, since the definition of the criteria for legitimating knowledge within the discursive order is linked with context-specific power relations. This means that the composition as well as the availability, stability, salience and authority of those interpretations depend on their relationships with larger economic and socio-cultural struggles, which in turn they contribute to shape. Finally, it is worth noticing that discourses are not cohesive entities but changing sets of overlapping and/or conflicting knowledges available at certain time in certain places, whose apparent cohesiveness is merely the result of the researcher's unifying gaze.

3.1.1. Justice stakeholding

'Victims', 'offenders' and 'communities' in RJ are consistently represented as *justice stakeholders*, that is, as active participants in the process of addressing the criminal behaviour, due to their "direct" stake in the crime and its aftermath (Johnstone 2011, p. 119). The rise of RJ is a response to the marginalisation of the direct stakeholders in favour of the state's empowerment, realised through conventional criminal justice (Zehr 2005). The state here is included by (partial) exclusion: it defines what a crime is and then, to some extent, it devolves the decisions on the consequences of crime to the direct stakeholders. RJ, in fact, assigns a critical decision-making role to those who take up the positions of 'victim', 'offender' and 'community', supposedly operating in this way a 'shift in the power related to who controls and owns crime in society – a shift from the state to the individual citizen and local communities' (Umbreit 1994, p. 162). This discourse rests on the premise that crimes are underpinned by interpersonal bonds which "belong" to relevant victims, offenders and communities. Therefore, the redress of the consequences of crime requires the direct involvement of those actors. The concept of offender-as-stakeholder is cast against the taken-for-granted representation of the offender's passive role on the stage of conventional criminal justice (Christie 1977; Zehr 2005). 'Stakeholding' here is predicated on an idea of direct responsibility (cf. Garland 2001; Pavlich 2005) which can be particularly appreciated by looking at the role of reintegrative shaming (Braithwaite 1989) within RJ. Shaming techniques are normally used to elicit active responsibility, by providing the offender with opportunities to disapprove the criminal act whilst exposing herself/himself to the emotional views of the other stakeholders, as a condition for the symbolic/material reparation to take place. As for the victim-as-stakeholder, this idea seems informed by academic victimology as well as by demands put forth by victims' movements. The victimological critique of the marginalisation of the victim in criminal justice (Marshall 1996, p. 23) and the advocated shift in focus from an old (based on victims' rights) to a new (based on victims' needs) way of appreciating and supporting crime victims (Maguire 1985; Mawby 1988; Newburn 1993), have become key categories in the language of RJ. Especially, the representation of the victim's needs to 'be heard' and 'speak out' seems driven by the victimological claim of victim empowerment (Garland 2001, p. 11). The concept of 'community-as-stakeholder' hinges on a number of philosophical and sociological speculations coalescing around different (and to some extent incompatible) declinations of the communitarian philosophy. Some cultural components stress the radical and humanitarian character of communitarian approaches to criminal justice (Bianchi 1994; Christie 1977; Hulsman 1986) whilst others the moralising role of communities in responding to crime (Etzioni 1993). Within the radical view, emphasis is placed on problematic situations/conflicts to be handled by involving those affected by them, reducing the role of the state in dealing with harm and wrongdoing. Hence, community-based measures can positively address the human repercussions of conflicts, letting stakeholders regain control over their lives. This approach diverges significantly from the conservative-moralising interpretation of 'community' in RJ. Here, the mobilisation of 'community' is deemed as a cure against the sterilisation of the social capital (Etzioni 1993; Giddens 1998) prompted by the combined action of conservative individualism and post-war social democracy (Driver and Martell 1997, p. 27). This understanding opens the way for the investment (symbolic and material) in the community as a site of the fight against both crimes and actions which embody a lack of respect/responsibility. From this perspective, RJ is expression of the moralisation of crime control, built around a common belonging to communitarian meta-values: priority to "insiders" over "outsiders", to collectivity over individuals as well as moral cohesiveness and cultural homogeneity.

3.1.2. Embodied encounters

This discourse comprises some of the normative propositions which drive direct stakeholders in dealing with the consequences of criminal behaviours (Zehr 2005). The encounter is the regulated setting which supposedly enables the re-establishment of victims' safety, both physical and emotional (Johnstone 2011, p. 52; Van Ness and Strong 2015, p. 100). Within the encounter, victims fulfill the need to tell their story and to find answers to some fundamental questions (e.g. why the crime happened to them, why they responded as they did, etc.) (Johnstone 2011, p. 52; Zehr 2005, pp. 26–27). Furthermore, the encounter is where the com-munity's involvement and participation is mobilised (Johnstone 2011, p. 126), that is, where the stakeholders' support networks actively engage with each other. As for the offender, the encounter offers a possibility to connect with the victim, to take responsibility after "seeing" the impact of her/his behaviours, and to "take care" of the victim's well-being impacted by the crime (Dignan 2002).

At the same time, the encounter is the space where the identities constituted by the RJ process may be contested, that is, whereby 'victims' and 'offenders' may attempt to negotiate or reject those labels as well as the duties and rights associated to them. The same could be said in relation to the social, economic and political characteristics of crime: while the structure of restorative encounters seems to ignore them, and to instead take the concept and the conditions of crime for granted, by "giving voice" to the direct stakeholders and their support networks, this very structure also allows for the possibility that these issues might come to the fore.

A further critical point is that dialogue and restoration cannot take place within the encounter without the support of an independent/third party who distinguishes appropriate issues from unacceptable ones, channelling communication toward restorative objectives. The facilitator/mediator, in fact, ensures the effective communication between stakeholders, by paraphrasing, acknowledging, translating/verbalising emotions, and synthesising ideas (Brigg 2003, p. 295), in this way, controlling the conflict's "warm side" (Richards 2011). This third party works as an 'architect of choice' (Thaler and Sunstein 2008), who reframes decisions and actions without directly coercing, but by inducing, guiding and nudging (Rose 2017, p. 307). The idea of encounter as free-but-regulated environment, is underpinned by a range of moral propositions which highlight stakeholders' personal responsibility. The focus on the victim's choice to engage with the restorative process as well as the accent on the offender's personal accountability and active responsibility are characteristics of the moral infrastructure of RJ, mobilised within the encounter (Zehr 2005). This is the time/space whereby autonomy is supposedly nurtured, conveying the message that norms of obligation, accountability and responsibility continually turn the subject back on itself. Victims and offenders are deemed to have the necessary moral and practical resources to engage in restoration, which is the outcome of their autonomous decisions. Yet, the facilitator's work is a condition for the encounter to be restorative, assuming that parties will not be able to find restoration by themselves, somehow conflicting with the justice stakeholding idea outlined above.

3.1.3 Enabling reparation

The '*enabling reparation*' discourse consists of a range of themes and problems elaborated by advocates, practitioners, policy makers, at the very core of RJ. It refers to one of the essential aims of the restorative encounter, that is, the repairing of harms caused by the crime (Wright 1982, 1996). This discourse rejects the retributive idea to coerce the offender to endure pain proportionate to the gravity of the offence, promoting instead reparation of the crime's harmful consequences. From this perspective, offenders are accountable in a proactive way, they are required to actively take responsibility (Miers et al. 2001) by repairing the harm. Reparation addresses both material and symbolic harms (Johnstone 2011, p. 1; Marshall 1999, p. 7; Zehr 2005, p. 186). It includes the offender's positive engagement with the community, since this is harmed by the crime (Johnstone 2011, p. 1; Liebmann 2007, p. 24; Zehr 2005, p. 186). In this way, the offender is "capacitated" to heal the social bonds which allegedly tie her/him with the community, whose cohesiveness is threatened by the criminal behaviour (Marshall 1999, p. 6). This discourse seems informed by at least two broad (and partly diverging) developments in criminological theory, that is, 'civilising criminal justice' theories (Wright, Blad and Cornwell 2013) and 'third way criminologies' (Hoyle and Noguera 2008; Hughes 2007). The first group of theories stresses civil justice measures (mainly mediation and restitution) as swifter, cheaper and more effective ways of doing justice, focusing on the harmful repercussions of

crimes. 'Civilisation' either means the general substitution of civil law for criminal law (Barnett 1977; Cantor 1976) or at least the more limited introduction of civil measures in order to improve the quality of criminal justice for victims and communities (Wright, Blad and Cornwell 2013). RJ here equates with reparation, understood as a specific technique of privatising both the consequences of and the way of dealing with crimes.

The second set of interpretations foregrounds the idea of crime as an effect of the progressive erosion of the moral fabric of local communities and families (Braithwaite 1989, 2002; Braithwaite and Pettit 1990; Duff 1992, 2000; Dzur 2003). The responses proposed for criminal behaviours are responsibilising interventions for offenders: punishment is a way of modelling social identities to be consistent with community values. A central target of these moral-communitarian analyses and interventions, is youth crime and deviance, whose supposed growth from the 1980s is regarded as a symptom of dying communities. Particularly, the focus is placed on "everyday" youth offenders, that is, de-responsibilised individuals lacking self-control and a clear moral compass (Muncie 1999). This image is recurrent within the reparation discourse, since the typical actors of reparation are described as immature youths who breach the interpersonal trust which ties them and the victim together, within a shared community (Muncie 1999; Newburn and Crawford 2003). From this perspective, RJ can be conceptualised as a third way response to the youth problem, beyond retribution and rehabilitation, centring on responsibilisation and requiring reparation.

3.1.4. Inter/intra-personal transformation
Finally, RJ is often represented by scholars, advocates and practitioners as a paradigm of personal *transformation*. Within this discourse, RJ is understood as an 'emotionally intelligent justice' (Sherman 2003) which can lead people to perceive and act upon the world and themselves in a restorative way, i.e. relying on peacebuilding through dialogue (Sullivan and Tifft 2001). The premise of this view is a relational understanding of humans (Johnstone and Van Ness 2007, p. 17), their natural interconnectedness which can be hindered by destructive behaviours. Transformation means victims' healing, offenders' reintegration and community-building. It entails the stakeholders' inclusion into a community-based positive moral order (Van Ness and Strong 2015, p. 39) to be achieved (or stimulated) through the restorative encounter, symbolically and psychologically. This discourse intertwines, as far as principles and goals are concerned, with a range of philosophical speculations and ethical doctrines (both secular and religious) concerned with the spiritual dimensions of crime and justice. Secular sources are the 'therapeutic', 'recovery', 'self-help' and 'New Age' movements who have supported the expansion of RJ as a form of healing and empowering justice (Richards 2005), particularly in the US. Namely, the focus on closure, healing, reconciliation and shared-humanity (Consedine 1995) as distinctive aims pursued by RJ, seems highly consonant with the claims put forth by self-help movements. Additionally, it resonates with a range of religious belief systems, particularly Mennonites and Quakers doctrines (Liebmann 2007). Their focus on non-violent responses to wrongdoing, spiritual reform and community-based justice mechanisms are consonant with RJ's tenets (Immarigeon 1994), as well as one of the conditions for the Mennonite and Quakers' long-lasting advocacy for the development of RJ (Marshall 1999).

The different representations of the crime stakeholders as well as of the ideas of 'encounter', 'reparation' and 'transformation', are all objects produced discursively. There are intersections and clashes between and within them which configure the apparatus as a "battlefield", whereby such disparate and, to some extent, incompatible objects compete for epistemic priority. Within the 'justice stakeholding' discourse, radical and moral communitarian approaches portray the 'community' in incongruous ways: a virtual site for democratic dialogue and a real entity characterised by moral cohesiveness. This latter interpretation resonates with third way approaches to crime control informing the reparation discourse whilst the former conflicts with victimological takes on victims' personal empowerment. The spiritual roots of 'transformation' are not completely coherent with the idea of a swifter and cheaper justice advocated by the 'civilising' perspectives on reparation. Moreover, the emphasis on disempowered victims collides with the focus on de-responsibilised youths, when it comes to define the main beneficiaries of RJ. Whilst these tensions are constitutive of the apparatus, they can be seized upon by social actors and used to hinder the unfolding of the apparatus itself (see sections 6.2 and 6.3). Furthermore, the consistency between only some of those objects and the current political

conjuncture deeply affects the legitimation and institutionalisation of some them and the silencing of others.

3.2 Non-discursive elements

RJ discourses are instantiated into legal and administrative documents, practices, venues and organisational forms by institutions. Institutions are social actors whose behaviours are typified over time, that is, enacted reiteratively up to the point to be perceived as material and stable components of everyday life (cf. Berger and Luckmann 1966). They act as 'system[s] of constraint' (Foucault 1980[1977], p. 198) which structure the social field, according to their specific intentionality. The process of institutionalising RJ is not a mere translation of discourses into "practice". It actually brings about new forms of knowledge, power and resistance which retroact on the discursive elements. Three main types of institutions should be explored here: conventional criminal justice institutions, communitarian institutions and RJ regulatory bodies.

3.2.1. Conventional criminal justice institutions
Police, courts, prisons and probation agencies have been involved in the deployment of RJ since the 1970s. Police have been one of the first agencies to practice RJ in the UK, by training officers to restorative interventions as well as by launching and running RJ services (Davis 1992). One of the reasons of such an appeal has been that RJ, as a policing option, is perceived as a cost-effective measure which fits with the community policing philosophy (ACPO 2011; Home Office 1997, 2009; Restorative Justice Council 2014). This police-led understanding adds at least one further layer to the discourses on RJ, that is, the idea of RJ as a street-level efficient conflict management option. RJ, in the police hands, is a de-formalised strategy for dealing with minor (often youth) crimes, characterised by lack of procedural safeguards and speedy proceedings. In a similar way, within court proceedings, RJ is conceptualised as a type of 'penal sanction' (Wood and Suzuki 2016, p. 149), insofar as responsibilising the offender replaces or complements retribution (Liebmann 2007; Marshall 1999). Here, reparation of the harm and reduction of re-offending are critical goals, whilst the ideas of encounter and transformation are downplayed.
As for penal institutions, whilst probation services have administered RJ programs since the 1970s, prisons are a more recent institutional arrangement whereby RJ has found some applications. In this context, RJ is a penal option additional to conventional punishment, that this, a condition for probation or an element of the sentence (Davis 1992). Probation services have especially advocated for transformative-reparative initiatives focussing on the offender's needs. Their attention on diversion, mitigation and offender education, have characterised since the 1970s reparative schemes for youth criminals (Liebmann 2007, p. 40) becoming a constant component of diversionary interventions (Davis 1992).
Courts and prisons seem to embrace a punitive version of RJ. Here, the role of the victim is downplayed, considering that often prison-based RJ programs consist of rehabilitation and other offender-oriented activities (Wood and Suzuki 2016, p. 151). This understanding enriches the discourses on RJ by pointing up issues such as public accountability, afflictive responses and community protection. At the same time, it provokes tensions, since, especially for police and courts, RJ resonates with managerial concerns (reduction of workload, speeding up justice process, etc.) (ACPO 2011) which are at odds with the transformative aims purported by scholars and advocates.

3.2.2. Communitarian and regulatory institutions
RJ discourses are deployed by a relatively wide range of communitarian institutions such as third sector agencies, non-governmental organisations, and voluntary groups working within and alongside criminal justice settings. Here, an important role is played in by victim support organisations. These groups have contributed to criminal justice reform and to the institutionalisation of RJ, with a number of actions ranging from the advocacy for a victim-sensitive justice (Fry 1951) to setting some early RJ services (Liebmann 2007; Rock 1990). Differently from conventional criminal justice institutions, these organisations have paid particular attention to the relational side of crime, supporting the transformative potential of RJ, in terms of fulfilling victims' needs. Historically, their support to the idea of 'repairing the harm' of crime has been wavering. Early reparative projects in the UK and US during the late 1970s

were seen with ambivalence by victims' organisations, due to their apparent link with probation-led offender-centred initiatives (Davis 1992). However, over the years, victims' associations have embraced RJ interventions, by designing them as victim-centred schemes which require the offender's admission of responsibility, denying any fact-finding role to restorative encounters. This viewpoint, partially overlapping with the 'stakeholding' and 'transformation' discourses, has been finally codified by the European Directive on Victims' Rights 29/12 (see art. 12 on RJ as victims' service). For victims' organisations, RJ is a peculiar penal mechanism which resembles the police and courts' appreciation of RJ, with one main difference: the goal here is to empower the victim more than responsibilising the offender or delivering swift justice.

A further category to be examined is the range of institutional bodies created to lead the practical implementation of RJ. These are the 'RJ councils' which oversee the definition and application of RJ training standards as well as the delivery of RJ services, exerting a form of control (for instance by RJ 'quality marks') upon this bottom-up model of justice. Examples can be found in the UK, US and Europe. They are mainly state-based institutions which deliver training and advocacy services, draft policy documents which, along with laws passed by parliaments, constitute RJ's macro-regulatory core. These subjects represent a "state-funded community", resonating with third way approaches to crime control.

The process of institutionalisation remodels RJ discourses. The issues of efficiency or punitiveness foregrounded by criminal justice institutions clash against (some of) the representations of what RJ shall achieve, put forth by victims' organisations and probation services. Victims' organisations champion a victim-centred discourse, which conflicts with the probation-led rehabilitative understanding of RJ focussed on youth offenders' needs. These frictions further complicate the RJ apparatus, by adding a layer of material knowledge which generates its own goals, draws on different or alternative justifications and retroacts on the discursive components. In light of this, reparation as a civilised justice measure finds an unexpected ally in the police's search for a swifter justice, within a context of increased managerialisation. The encounter, as horizontal space for dialogue, is re-modelled by the emphasis placed by victims' organisations on victim-centred RJ and collides with offender-sensitive positions. The democratic community represented by voluntary lay people, imagined by Nils Christie (1977), is silenced by third way criminologies, embodied by state-funded communitarian organisations.

4. The connection between heterogeneous elements

The discursive and non-discursive components outlined above, are connected in a distinctive way. The nature of this link is at the same time epistemological and normative. This connection enables the apparatus to create a programmable reality, by legitimating and reproducing certain epistemic objects and then by imposing ethical and political regularities on them. This internal drive, as it will be argued in the next section, responds to a contingent political need.

4.1 Epistemological work
The RJ apparatus performs a characteristic epistemological work. This activity consists in the creation of a knowledge which weaves together discursive and non-discursive elements, strategically. This 'restorative knowledge' is *needs-based*, *functionalist*, *dichotomic* and *embodied*.
In RJ, stakeholders' actions are conceived of as 'needs-based' (instead of based on e.g. interests or rights), that is, driven by basic wants rooted in human nature, valid beyond space and time, gender, ethnicity and socioeconomic status. RJ, in fact, 'relies on clear guiding principles that are not related to any one particular ideology or religion but instead represent universal principles about human interactions' (Bender and Armour 2007, p. 253). From this viewpoint, legal violations are conceptualised as the expressions of non-functioning interpersonal relationships. These engender harmful consequences on people and "belong" to those harmed (victims, communities) and harming (offenders). Such relationships trigger natural needs of participation, mainly articulated by the demand of having a say in managing the crime consequences. However, such a process can only run after the offender's admission of responsibility, since RJ is not about fact-finding but about controlling the relational impacts of crimes. Clearly, this excludes any critique of criminalisation, requiring just a re-

framing of the meaning of crime: from an offence against the "crown" to an interpersonal harm which ought to be addressed. It is irrelevant under which (political, cultural, moral, aesthetic) circumstances behaviours are labelled as crimes, whilst it is plain that they trigger needs of participation or stakeholding. It is simply accepted that certain actions are criminal, implicitly endorsing both law-making and law-enforcement.

RJ shows a functionalist appreciation of crime (Walgrave 2017, p. 97). Crime is seen as a pathology, a bad and wrong behaviour, which ought to be neutralised. RJ aspires to "cure" this pathology, healing the victim and transforming the offender, whilst neglecting both the emancipatory potential of transgressions of established legal frameworks and the power relationships which contribute toward the definition of behaviours as crimes.

RJ envisions the relationships between victims and offenders as dichotomic, that is, as oppositions between parties individually responsible of their actions. This entails the correlative definition of power relations, between the same actors, as essentially oppressive, unbalanced and binary, but also depending on their will/choice, and therefore amenable to resolution/transformation. Restorative settings aim at countervailing supposed power imbalances between parties, "restoring" harmony, bringing transformation and reparation. However, power relations are re-established by the very dualistic way RJ frames victims and offenders, before, during and after the encounter.

Crime stakeholders are fashioned as clearly identifiable individuals. The idea of "disembodied" crime stakeholders (e.g. corporations or states) is hardly compatible with the RJ apparatus; RJ addresses (and reproduces) human, flesh-and-blood individuals (Maglione 2016, 2017a, 2017b). Yet, these embodied subjects do not appear to have any specific gender, ethnicity or socioeconomic status, which paradoxically resonates with enlightenment-based images of criminal justice actors. Their body is an emotional entity, strongly idealised. Additionally, they are consistently represented as fixed and exclusive. Victims, offenders and communities are constructed as ontologically different, overlaps or resemblances are excluded. Offenders are modelled as "everyday" rule-breakers whilst victims are structured as vulnerable and disempowered subjects, although still resilient and in search of reparation. Communities are depicted as local even parochial entities, opposed to both statual and societal institutions. This knowledge around crime stakeholders underlines their being morally deprived but morally responsible: they are emotionally involved and psychologically affected; for this reason they are in need of being directed from outside (by the facilitator). However, if the encounter does not achieve restoration, it will be their own responsibility.

4.2. Normative work

This plan of reality, populated by embodied stakeholders tied by dichotomic bonds, is subjected to ethical/political regulation. This regulation in turn, supports the production of those objects, in a circular, although not frictionless, way. Such dynamic consists of imposing values, channelling flows of desire and activating exclusionary mechanisms. Since between and within epistemic objects there are tensions, contradictions and inconsistencies, their submission to the ethical/political regulation is productive of unforeseeable consequences, discontinuous and problematic as well.

The apparatus imposes upon crime stakeholders a certain type of *freedom* rooted in a morally cohesive community. Victims and offenders' freedom, in fact, can be exerted only against the backdrop of a community-as-moral-stabiliser. Here 'community' is not a place but a shared normative background, a form of objective 'common sense' (Rose, 2017, p. 314) which makes possible the encounter between "everyday" victims and offenders. The combination between freedom to choose and morally cohesive communities engenders a tension, considering that 'the choice' is not just a matter of individual dispositions and preferences, but a decision filtered by the community's moral fabric. In RJ, the encounter, reparation of harm and personal transformation are all moral choices which seek to mend natural relations of trust and interdependency wounded by crime. These choices are mediated by a 'moral order [which] cannot rest on legal codes enforced and upheld by guardians; it is embodied and taught through the rituals and traditions in the everyday life of communities' (Rose 2001, p. 9). 'Freedom' here is converted into 'liberty', that is, a regulated, morally dense self-realisation toward which individual subjectivities are pressured to comply with (Rose 2017, p. 313).

This ethical/political regulation is both productive and repressive. The apparatus channels people's interests and desires of justice into restorative encounters in order to sublimate the crime's emotional side, into "constructive" demands toward the offender. At the same time, it obliterates deeper and

broader economic, social and political power relations which underpin the very definition of what a crime is. The idea of empowering individual autonomy and self-control lies at the heart of this ethical regulation with political import, insofar as it fashions a self-controlling member of the body politic. The implicit definition of victims and offenders as emotionally loaded and lacking self-control parties calls for a certain type of normalisation. The restorative encounter, in fact, aims to induce liberating effects of self-inspection and self-regulation, whilst it underscores the duties of emotionally charged (and therefore in need of direction) subjects. Additionally, the apparatus activates exclusionary mechanisms, mainly by preventing the participation of possible stakeholders who do not fit the ideal actors constructed by RJ discourses. This can happen before or during the encounter. Collective victims of economic crimes, powerful victims, victims with shared responsibility, vulnerable offenders, offenders/victims, deviant communities will hardly "benefit" from RJ interventions, since they do not match the normative models of stakeholders drawn by the apparatus (Maglione 2016, 2017a, 2017b). Furthermore, parties who during the encounter refuse to comply with the identities required by the restorative framework, may be deemed as unsuitable and referred back to the conventional criminal justice process.

5. Responding to an urgent need

The RJ apparatus pursues an overarching objective from which it is possible to infer the 'urgent need' driving this machine. It aims to develop self-controlling subjects, characterised by a regulated autonomy and responsibility, rooted in the normative ideal of morally cohesive communities. This is achieved by re-aligning individual ethos with political aims, and namely, by spreading moral discourses of responsible behaviour and constructing subjects as ethical citizens who take responsibility for their own well-being (McKee 2008). *Ethopolitics* is a style of government (Rose 1996a; Rose and Miller 1992) which interpellates people's ethos, i.e. how individuals problematise their everyday lifestyles choices (Chandler and Reid 2016, p. 47). Here, the focus of political regulation is placed on people's inner life, divesting attention from the external world of social practices and institutions. Ethopolitics concentrates on segments of population politically qualified and culturally homogeneous, which in turn it contributes to shape. In ethopolitics, traditionally neoliberal themes such as individual responsibility, securitisation and managerialism intersect with neo-conservative issues such as the moralisation of crime control and idealisation of pro-social communities and families (O'Malley 2009). This combination is less stable as it could appear, since there are tensions between individual freedom, self-interest and collective morality.

Ethopolitical technologies regulate in specific ways individuals and groups who appear as insiders (Maglione 2018a, 2018b). Their transgressions can be represented as dysfunctional relationships between discrete subjects to be dealt with by needs-based restoration instead of expressive punishments, situational controls or radical social reform. The RJ apparatus contributes toward the ethopolitical government in a number of interlinked ways (Rose 1996a; Rose and Miller 1992).

RJ de-socialises security and securitises personal safety (Schuilenburg 2012, p. 75). This means that RJ constructs security as a negative/private state of immunisation from risk and dangers (Burke 2002). Individuals are required to take action (i.e. to responsibilise themselves) in ensuring their own security-as-safety (Flint 2003), by neutralising dangers and risks for their individual well-being. This state of security can never be achieved; life cannot be completely secured, without killing life itself, and dangers cannot be exorcised without re-evoking them. Therefore, securitisation is a program in endless tension, targeting fluid lifestyles more than material conditions of security (Chandler and Reid 2016). However, this form of responsibilisation (Burchell 1996; Garland 2001; Pavlich 2005) seems directed only to certain types of offenders, victims and communities. Offenders who breach the interpersonal trust which ties them and the victim together, victims ontologically distinguished from the offender and pro-social communities can access responsibilisation strategies. Offenders of "special concern", victim/offenders and "disorderly" communities, instead, will be likely targeted by state-centred (muscular) control strategies.

Further, RJ interventions operate a hybrid (i.e. beyond the public/private divide) style of crime control (Rose 2001). Particularly, the production of a virtual space – the community – as a stage of RJ interventions, is an expression of this mode of control. RJ, in fact, is about imaging participatory

decision-making processes to deal with crimes, by devolving to victims and offenders the power to address the harm experienced, within and through their communities. Again, such a site is not available to any offender or victim. It requires "community membership", i.e. the alignment with an idealised citizen marked by homogeneity, regulated deviance, and belonging. This position appears underpinned by the knowledge created and promoted by the third way criminologies with their drive toward the identification of new settings for doing control for those offenders (and perhaps victims) who are not of "special concern".

Finally, RJ neutralises the political, social, and economic character of crimes (Rose 1998, p. 165). RJ interventions deactivate the political/social content of a variety of problematics (Browsher 2017), installing a concept of crime stakeholder as an autonomous, self-directing, decision-making agent (Rose 1999, p. 468). It neutralises 'the political claims held by these subjects and replace[s] them with the therapeutic need for reconciliation and healing' (Renner 2015, p. 1110).

To claim that RJ responds to ethopolitical needs entails both that RJ supports the unfolding of ethopolitics and that ethopolitics facilitates the institutionalisation of certain versions of RJ. The moralising understanding of community, the idealised versions of crime stakeholders, the third way control exerted by the facilitator over participants, the aims of RJ institutional bodies and the partnership between these and conventional criminal justice institutions, have become authoritative within the apparatus due to their consistency with ethopolitical imperatives. Conversely, other components of the RJ apparatus (e.g. radical democratic communities, encounters as dispute resolution arenas, critique of criminalisation, etc.) are de-legitimised, since they are conflicting with ethopolitical needs. By the same token, RJ for disenfranchised and deprived groups is epistemically silenced and marginalised. However, these de-legitimised versions of RJ might still thrive whereby ethopolitics is less developed or countered by other political rationalities.

6. Subjective entrapment and critical resistance

6.1 Subjection

As Deleuze and Agamben suggest, subjective entrapment is integral to the apparatus. This idea, although absent in the Foucauldian definition of the apparatus, resonates with the concept of 'subjection' elaborated by Foucault in the early 1980s (Foucault 1982). This concept refers to 'the submission of subjectivity' to external authorities (Foucault 1982, p. 212), that is, to the process by which people internalise and reproduce norms of conduct and identities devised by other social actors. Subjection becomes domination when those norms and identities are naturalised by external actors in pursuit of their own goals. This results in silencing different or alternative ways of being, becoming and doing, and therefore in limiting people's freedom. The RJ apparatus is a subjugating machine, since both its epistemological and normative activities are oriented toward producing subjectivities consistent with ethopolitical imperatives (Rose 1990, p. 213). Operationally, this happens by organising a milieu (i.e. the restorative encounters) within which certain knowledges and behaviours are encouraged whilst other are disqualified. Within these spaces, ethopolitical dynamics let subjects play their freedom whilst structuring their conduct (Lazzarato 2015; Rose 1996b). Individual freedom becomes the very instrument through which individuals are directed (Lorenzini 2018). This process shapes subjects constitutively engaged in managing the outcomes of their life and continuously aspiring to empower themselves (Read 2009; Roberts 2006). The 'injunction to be active' (Lazzarato 2015, p. 187) fuels a host of passions which are consonant with the neoliberal mentality: shame, resentment, guilt and fear. However, these are (incongruously) countervailed by the micro-moral scaffold provided by the communities which are supposed to ground the restorative subject, emphasising localism, organicism, cohesion, loyalty. Shaming techniques here play an exemplary role, since they encapsulate both sides of this incongruent subjection process. They 'individualise structural deprivation' whilst 'reimagining of the "rational individual" or of "homo economicus" as an emotional being' (Soldatic and Morgan 2017, p. 114) rooted in idealised communities (Davies and Chisholm 2018).

The restorative subject is not only a micro-moral entrepreneur but also an emotional consumer of justice (Bauman 2007). RJ is about gratifying victims' desires of emotional justice and satisfying offenders' wants of putting things right. It is not surprising, from this perspective, that the success of RJ services

is often measured in terms of stakeholders' 'satisfaction' (Shapland et al. 2007; cf. O'Mahony and Doak 2017). There is neither room for interrogating the providers of justice-services and reparation-products, nor chance to reflect on the social impact of consuming them. The only (binary) option available is accepting/not accepting the restorative scheme, and even when the choice is to accept, consumers will still go through the selective assessment carried out by the facilitator. The enfranchisement dispensed by the restorative framework is partial, and here lies the core of the restorative subjection. As already mentioned, (entrepreneurial/consumeristic) choices can be exercised only within a proceduralised framework informed by moral-communitarian values which represent the normative core of RJ. Additionally, only those with community membership can benefit from this inclusive style of penal control (O'Malley 2009).

6.2 Subjectivation
To think of RJ in these terms urges the critical researcher to envision challenges to such subjective entrapment. The overall goal, here, is to sketch out a strategy to counter ethopolitical *subjection* with political-ethical *subjectivation*, understood as a collective practice of problematising individual conduct toward the other (Foucault 1984a, 1997). Such a 'counter-conduct' (Foucault 2007, p. 259) would connect social and individual, politics and ethics as a form of resistance against the way ethopolitics structures people's conduct, generating creative prospects for re-inventing subjectivities.
Ethics is defined by Foucault as the 'reflexive practice of freedom' (1997, p. 281), that is, the intentional range of activities aiming to transform an individual into a moral subject (Foucault 1986). The process of subjectivation consists of a transformative and relational practice whose condition and outcome is freedom. In Foucault's view, the activity of ethical fashioning is constituted by four formal elements, whose contents are subject to historical variation: the ontological element or 'ethical substance', the deontological element or 'mode of subjection', the ascetic element or 'ethical work', and the teleological element or 'telos' (Foucault 1984a, pp. 353–355). It is the 'ethical work' or 'care of the self' which can create opportunities for critical disentanglement from the apparatus' subjection. The 'ethical work' is a continuing activity rather than an adherence to pre-established moral codes, which brings the ethical self into being and can be practiced only when there is sufficient freedom which, conversely, is the result of engaging in the practices of 'care of the self'. Freedom is not some end state achieved by eluding all manners of restriction; rather, to be free is to be involved in effecting change in the world, and to be an ethical being is to be a social actor (Infinito 2003, p. 157). From this angle, RJ spaces should afford possibilities to reflect upon the process of criminalisation instead of passively endorsing the subjugating labels imposed by conventional criminal justice (e.g. 'victim' and 'offender') as well as to critically re-think the labels propounded by authoritative discourses of RJ ('healing', 'empowerment', 'closure', etc.). RJ should provide arenas to problematise commonalities and differences, challenges and constraints, both at individual and social levels, that parties experience in their pursuit of justice when their needs are obliterated or threatened. RJ should allow possibilities for re-imagining forms of cohabitation, in non-violent and dialogical ways, whereby differentials of power are openly considered. This is as much an ethical *as* a political and social practice 'inclusive of a relation to others', the generation of new 'way[s] of being together, of being-with-others' (Revel 2009, pp. 48–49), that is, a collective subjectivation. This understanding of ethics, in fact, 'both forbids a return to individualism (such as the idea of the individual as the free entrepreneur of him/herself) and resists every temptation towards the naturalization, substantialization or essentialization of the self' (Revel 2009, pp. 48–49). Thus, restorative arenas would turn into political sites with a strong anarchist bent, aiming to challenge 'objectification, hierarchization or control' (Revel 2009, pp. 48–49) of conduct engendered by the apparatus. As David Hoy contends, this strategy of 'desubjugation' does not consist in finding our "true" self behind ideological masks, but in re-inventing ourselves, by contesting the selves effected by the forces of conformism, and then by engaging in creative practices of subjectivation (Hoy 2004, p. 103). This is not only a crafting of individual selves, but of collective, communal, or social subjectivities, avoiding entrapment by externally imposed and naturalised identities. Apparatuses will continue to operate and engender as much subjection as spaces for resistance which could be shaped as political-ethical in an endless game 'of resistance and power, subjectivation and objectification, strategies of liberation and subjection, substantialization and the logic of becoming' (Revel 2009, pp. 48–49).

7. Conclusions

RJ, through the lenses offered by the apparatus, appears as a relational, heterogeneous and constantly changing tangle of power/knowledge relations, productive of plans of reality which form subjectivities. This network responds to a specific historical and contingent need, the ethopolitical government of certain segments of population, in western affluent states. The RJ apparatus, in fact, is both a mechanical and a strategic system which contributes toward the functioning of the ethopolitical rationality. This is characterised by hyper-individualising and de-politicising dynamics staged against an idealised community. The RJ apparatus does not deliver "justice" for everyone. It addresses (and reproduces) specific actors tied by embodied, natural and dichotomic relations, that is, everyday offenders and innocent victims. The need for envisioning forms of disentanglement from this network emerges as an imperative for the critical researcher. This need can be addressed by drawing upon Foucault's ethics, and namely his conceptualisation of the ethical self-fashioning as political practice, which generates insights into forms of individual/social critical resistance to the apparatus. From this perspective, the goal of restorative encounters would be to offer a chance for engaging in an activity of 'questioning and adjusting of thought and action in relation to notions of human good and harm' in order to carry out 'work on the self and consideration of how to be and act in relation to others' (Christie 2005, p. 40). The self-ethical fashioning is 'not an exercise in solitude, but a true social practice. The care of the self [...] appears then as an intensification of social relations' (Foucault 1986, p. 53). The path suggested for an emancipatory RJ is to invest in RJ practices as radically democratic arenas which politicise conflicts by linking personal challenges with political contradictions, discussing criminalisation and stressing the social and cultural character of harms. The outcome would not be individual healing or empowerment, but ethical reflection and critique of the conditions for individual transgressions of people's freedom as well as political action to address them, beyond private encounters.

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