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Outlining a Historical and Critical Ontology of Restorative Justice

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I. INTRODUCTION

THIS CHAPTER AIMS to outline a historico-philosophical investigation into the conditions of possibility of restorative justice (RJ), from a perspective informed by Michel Foucault's historical and critical project(s). Through the foucauldian lenses, RJ appears as a cultural formation constituted by three different but interlinked dimensions: 'a game of truth, relations of power, and forms of relation to oneself and to others' (Foucault, 1984: 387). Therefore, the focus of this work will be posited on historically reconstructing and critically problematising the 'true' discourses, power relationships and ethical 'potential' of RJ (Faubion, 2013). The reasons for choosing such an approach are as much epistemological as ethico-political: this perspective serves not only the purpose of diagnosing and defamiliarising the 'present' (what we take for granted or accept uncritically) of RJ but also of imagining specific forms of resistance to it (Hoy, 2004; Voruz, 2010). In this way it is possible to develop a critical tension which might make RJ a challenge to 'conventional' criminal justice,[1] from an epistemological, ontological and ethical viewpoint.

The first (archaeological) objective is to delineate the archive of RJ, ie to reconstruct and unpack the range of authoritative discourses which have shaped the 'thinkable and practicable' (Gordon, 1991: 3) about RJ over the last 30 years. The second (genealogical) aim is to critically appraise the power/knowledge embeddedness of the authoritative discourses on RJ, conceptualising their emergence within a wider context of socio-political transformations and technologies of power. The last (ethical) goal is to reflect

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[1] This is a shorthand expression which refers to the legal rationality developed in Western countries at least since the Enlightenment, implemented by public prosecution, trial process and criminal punishment justified by retributivist and/or rehabilitative philosophies.

upon the possibility of re-working RJ as a space for ethical practices as a form of critical resistance to the cooptation of RJ by subjugating forms of social control (Hoy, 2004). Along these lines it is possible to take a step toward the critical development of new opportunities in the theory and praxis of RJ, beyond the taken-for-granted *récits* on why and how RJ has emerged and works. There are two main limitations to the research. The first is of a geographical and chronological nature, insofar as a distinctive emphasis is placed upon the European (especially English) context in the last 30 years. Second, the analysis is to some extent 'biased' by my interest in RJ involving adults within criminal justice settings and applied through victim-offender mediation.

II. ARCHAEOLOGY, GENEALOGY AND ETHICS

The secondary literature mostly distinguishes three periods in Foucault's scholarship: archaeology, genealogy and ethics (Davidson, 1986; Scheurich and McKenzie, 2005), centring respectively on reconstructing the conditions of possibility for the emergence of certain knowledges (*savoir*), power relationships and subjectivities (Deleuze, 1995: 91–92). The links between these phases of inquiry are, however, a matter of contention, insofar as it is disputed whether they are theoretically and meta-theoretically interrelated or instead autonomous phases of the foucauldian research (the late Foucault himself (2000: 326) seems to endorse the first option, identifying that link in his interest in studying how 'human beings are made subjects'). In this work, archaeology, genealogy and ethics are considered as feeding into each other for epistemological and ethico-political reasons, not on the ground of any philologically 'correct' reading of the restless foucauldian journey (Valverde, 2008). Hence, the legacy of the archaeology is represented by the structural technique of focusing on both discourse and speaker as constructed objects. This being a necessary step to free ourselves from taking authoritative discourses as simply expressing the way things *are* (Dreyfus and Rabinow, 1983: xxvii).

The identification of discursive objects enables the raising of the genealogical questions: how are these discourses used? Which is their political ground? What role do they play in society? Genealogy moves from archaeology, intended as an attempt to unveil the conditions of emergence of certain discursive objects, how they have reached a status of truth, and how these truths are co-extensive of relations of power (Dean, 1994: 33). In this way it is possible to add a new level of critique to the analysis of the authoritative discourses, providing a counter-memory that helps to recreate the political conditions of their existence (Foucault, 1986: 53), opening up new possibilities of understanding and action. But the outcome of this process would not be sufficient if our goal was to identify forms of critical resistance

in and through RJ to subjugating forms of justice: 'if the world could not be changed by revealing the hidden matrices of discourse and practices, perhaps it could be changed by transforming ourselves, by inventing new modes of being subjects' (Voruz, 2010: 13). This means to advance a reflection on how RJ could offer spaces for dealing with conflicts by intensifying people's moral agency. The question is then how can RJ practices enable self-forming activities which work as forms of ethico-political resistance to the present, ie to the subjugating ways of dealing with social conflicts and harms? How can we nurture the capacity of RJ to be a critical (and self-critical) challenge to 'conventional' criminal justice?

In order to operationalise this methodological perspective, I will proceed as follows. First, I will identify and unpack the structure of the authoritative discourses which compose RJ's 'hard core' (Tamboukou and Ball, 2003), identifying the socio-cultural constructs which underpin the emergence of these discourses. Secondly, I will map out the political conditions for the possibility of RJ, ie the technologies of power which have facilitated the historical emergence of the authoritative discourses of RJ. Thirdly, I will reflect upon the possibility of constructing RJ encounters as spaces of ethical practice, aiming at imagining an expanded field of possible subjectivities and conducts available to people involved in social conflicts. Lastly, I will sketch out some conclusive reflections on this analytic approach and its findings, raising new questions for RJ.

Two methodological caveats are necessary here. First, I plan to work by revising (and maybe distorting) specific foucauldian research devices in order to open up different possibilities of thinking and to generate new kinds of questions on RJ. This means simplifying or reconsidering many aspects of the foucauldian legacy, without worrying about being faithful or unfaithful to any 'textbook' version of Foucault's meta-theory. Secondly, as David Garland has argued, there are potentially serious limitations to the use of Foucault's historical method. The main problem is that the foucauldian perspective is often (and paradoxically) accepted as offering a grand theory; that is, it is often accepted 'in a manner which tends to displace other interpretive accounts, rather than supplement them or add a new dimension to their explanation' (Garland, 1990: 199). Notably, Garland acknowledges that Foucault's work was not intended by him to be read as a totalising or complete analysis of any of his chosen subjects. In the same vein, my aim is not to merely replace existing accounts of the birth, meaning and application of RJ with another, opposing a different truth-account. The goal here, is to outline and problematise the processes which underlie and feed on the authority of some discourses on RJ, the ways these are contingently produced, the political conditions of their emergence, and the opportunities to re-imagine their ethical 'potential'. Ironically, such an effort might end up being as problematic as the functionalistic versions of history it contests. This is because a foucauldian-inspired study, as any form of knowledge,

normally produces power effects which the researcher might not be aware of; moreover, it is necessarily incomplete because it does not search for causes or origins, but for conditions of emergence which give rise to a myriad of more problems to be diagnosed and interpreted. Thus, the undertaking of research such as this is an inherently (and deliberately) subjective, shifting and unfinished enterprise. I believe that the reflexive awareness of these limitations can help to elide their detrimental effects on the critical aspirations of this work.

III. RECONSTRUCTING GAMES OF TRUTH

Foucauldian archaeology analyses the contingent and contextual conditions for the emergence of societal discourses, disregarding the consciousness of individual subjects as a precondition of discourse-making processes (Foucault, 1970; 1972; Howarth, 2002). From this perspective, the first step reconstructs the *archive*, ie the historical and dynamic set of discourses 'that governs the appearance of statements as unique events' (Foucault, 1972: 129), in all their interrelations and transformations (Foucault, 1991: 54). Here 'discourse' equates to 'discursive practice': cultural formations institutionally situated, historically shaped, constructed (by people, institutions, etc) and constructive of people's lived experiences, conducts, knowledges. I will be focusing on the range of discourses (within the RJ archive) which over the last 30 years have achieved an 'authoritative' status influencing, theory, policy and practice of RJ (Maglione, 2013). These authoritative discourses should not be considered as discrete and cohesive entities, with neat boundaries, but rather as analytical concepts 'that the researcher projects onto the reality in order to create a framework for the study' (Jørgensen and Phillips, 2002: 143) of neglected dimensions of the phenomena under examination. As far as the identification of these discourses is concerned, this proceeds inductively from the qualitative examination of two different but connected sets of cultural artefacts: a wide range of 'founding' texts for the RJ field and the 'textbook literature' on RJ produced between 1985 and 2015 in the English (and partially North American) context. I will select sources which have informed policy and law-making processes in the context chosen (England). I maintain that the commonly recognised (by RJ scholars and practitioners) foundational texts and the textbooks used world-wide (witnessed by the many editions) incorporated into policy/legal documents which challenge the criminal justice mainstream, define some of the main authoritative discourses of RJ. The crucial point of using an archaeological approach is to de-naturalise the somehow comforting idea of RJ encompassing very different opinions and views, arguing for the primacy of some recurrent and tacit ideas at the 'bottom' of the RJ field. Once the authoritative discourses have been outlined, it is possible to explore how

they have historically emerged. Methodologically this analysis (which will be complemented by the genealogical inquiry) entails the detection of the contextual factors—that is, conditions of possibility (Foucault, 1970: 168)—which have contingently contributed to create the 'authority' of that stereotype, setting the conditions for a *legitimate* RJ (Elwick, 2012: 620).

Various attempts have been made to reduce the complexity of RJ's views and understandings, for instance, distinguishing between 'civilisation', 'communitarian' and 'moral' theses (Dignan, 2005: 95) or between 'encounter', 'reparative' and 'transformative' approaches (Johnstone and Van Ness, 2007: 1). In my view, RJ is cultural formation composed of at least three main (and empirically overlapping) discourses which constitute the core of the RJ archive: 'disenfranchising the victim', 'transforming the offender', 'decentralising conflict management'. While the first two are mainly characterised by a reformist-pragmatic approach to criminal justice, the third is more related to a radical-abolitionist view. These different discourses have reached in different times and places an authoritative status, featuring in legislative measures, applicative procedures, advocacy initiatives and training programmes, with intersections, combinations and tensions.

If we look at the English context especially, it is the first discourse which seems particularly authoritative, informing the majority of relevant policy and legal documents enacted during the last 15 years.[2] The 'disenfranchising the victim' discourse seems constituted by three pivotal ideas. The idea of 'producing safety' stresses the active participation of victims, offenders and community in order to manage the conflict that ties them together, as a condition to achieve empowerment and reconciliation. The restorative encounter is regarded as a time and space where the different issues at stake can be identified, discussed and addressed, restoring the emotional, social, symbolic and material relationships among the conflict stakeholders, with a specific emphasis on the victim's needs (Strang, 2003; Strang and Sherman, 2003; Zehr 1990). This view includes, then, the necessity of a meeting, the development of a narrative which enables the participants to express and address emotion; a moment of mutual understanding; and an agreement which seals the convergence of the interests of victim and offender by giving them the ability to guide the outcome (Van Ness and Strong, 2003: ch 4).

The 'taking care' perspective refers to a theory of reparation and prevention of crimes and their consequences, based on the idea of repairing harm with healing effects. This view discards the basic and deep-seated retributive

[2] This discourse informs the Restorative Justice action plans and Progress Reports released by the Ministry of Justice from 2012 onwards, in which they deal with RJ, the Crime and Courts Act 2013 (para 2.16), the Offender Rehabilitation Act 2014 (para 15.3.8) and the Code of Practice for Victims of Crime (October 2015) (para 34). At the European level, EU Directive 2012/29/EU (art 12) is a clear example of that discourse.

idea to address a crime by coercing the offender to endure pain quantitatively related to the gravity of the crime committed. The retributive stance has to be replaced by a restorative one, ie a concrete action toward the material and/or symbolical repair of the harm caused to the victim instead of punishment to the offender (Braithwaite, 1999; Walgrave, 2003; Wright, 1996).

The idea of 'transforming relationships' is also crucial. RJ is in fact identified as a cultural perspective which can inform concrete systems of dealing with conflictual relationships in everyday life (Sullivan and Tifft, 2001). RJ must be regarded as a way of life and a mindset which might lead us to understand ourselves and others and to behave in a 'restorative' way, ie relying on peace-building through dialogue and agreement. The premise of this view is a relational understanding of humans (Johnstone and Van Ness, 2007: 17), the 'natural' interconnectedness which can be hindered by destructive and antisocial behaviours. RJ interventions must aim, then, at restoring such interconnectedness, transforming actions which threaten or weaken interpersonal relationships.

The underpinnings of the discourse of 'disenfranchising the victim' are multiple, intersecting and different. The first ground is related to the consolidation of (general) victimology as a scientific and academic discipline combined with the emergence of crime victims' movement(s) in contemporary Western societies. The rise of 'victimhood' as an academic subject and political resource plays the role of crucial discursive pillar of RJ. The victimological 'necessity' of the involvement of crime victims in criminal proceedings and the political claim of meeting the expectations of crime victims have become key categories in the language of RJ proponents. This is not a 'natural' phenomenon, but the consequence of the consolidation of mainstream victimological research and the popularisation of victim movements' claims (Walklate, 2012: 180). A second component to be considered is the so-called 'psy-discourse' and its spread during the last two decades (Rose, 1998; Richards, 2005). This phenomenon refers to therapeutic languages which have informed a range of criminal policies emerging in recent years, particularly those designed to assist victims of crime, seemingly working as the secularised version of the action of religious groups involved in penal reform. It this way, it has now become widely accepted that crime victims must be offered opportunities to tell their stories of victimisation, express their pain, fear and/or anger about the offence, and 'be heard'. The final underpinning is the discourse of the crisis of 'conventional' criminal justice. Here the emphasis is on the endemic failing of criminal justice and the penal response in particular, which is no longer able to fulfil the public needs triggered by crime. The criminal justice rationality shows a typical dichotomising attitude (Achutti, 2011: 10–11; Christie, 1986: 95), expressed by a binary classification system 'both for evaluation of acts and for evaluation of persons' (Christie, 1986: 96). This rationality is implemented by institutions

and practices which are said not to be working but at the same time cannot be completely overcome without evoking the demon of anarchy or an abolitionist utopia.

IV. MAPPING OUT RELATIONS OF POWER

Genealogy, like archeology, is a way of writing history. But if archaeology is meant to re-construct and isolate certain discourses, genealogy aims at describing the patterns between relations of power and those discursive objects, describing how they have become true or unproblematic (Bailey, 1993: 120; Saar, 2002: 231–33). What is distinctive of Foucault's genealogical work is to consider discourses interpenetrated by power, adding then a fundamental layer (the critique of power relationships) to his historical project (Foucault, 1978; 1984). Power is a productive, ubiquitous set of precarious trans-individual relations which entail the possibility of freedom and resistance; it operates in and through discourses (Gubrium and Holstein, 2000: 494), producing what is taken as knowledge or considered truth (Foucault, 1977: 27).

From a genealogical perspective, the rise and spread of the authoritative versions of RJ has been possible due to the parallel emergence of a specific set of technologies of power[3] inscribed in the framework of the advanced-liberal paradigm (Pavlich, 2005; Rose, 1996; 1999a). These technologies shift government from questions of rational administration of the population to those of individual everyday morality, from taking care of collectivity to empowering individual responsibilities of self-control, over-emphasising individual agency at the expense of structural constraints (Pathak, 2014: 1–2). These technologies of power make RJ a fully 'thinkable and practicable' object (Gordon, 1991: 3), they are the RJ's political conditions of possibility.

There are three main technologies of power which have made the emergence of RJ (specifically the discourse of 'disenfranchising the victim') possible. First, the emergence of a certain technology of security. This can be conceptualised as the qualitative transformation of the processes of social protection (safety) within those of individual defence (security), through a panoply of instruments which aim to predict and thus prevent dangerous events (Foucault, 2007: 93). It expresses the 'unrelenting de-socialisation of security and the growing securitisation of personal safety mainly conveyed through the increasing use in different *milieus* of society of a wide range of techniques designed to ensure a safe and secure future' (Schuilenburg, 2012: 75).

[3] This expression refers to 'technologies imbued with aspirations for the shaping of conduct in the hope of producing certain desired effects and averting certain undesired ones' (Rose 1999a: 52).

The security at stake is then the negative/private state of immunisation from risk and dangers, as the advanced-liberal product of the celebration of a 'gated' freedom (Bauman, 1998), closely related to the retrenchment of the welfare state. As Anthony Burke contends, we should see security as 'an interlocking system of knowledges, representations, practices, and institutional forms that imagine, direct, and act upon bodies, spaces, and flows in certain ways—to see security not as an essential value but as a political technology' (Burke, 2002: 3). These technologies set in motion a particular political dynamic, empowering specific political actors, and building up strategies and instruments for making responsible subjectivities. From this viewpoint, RJ makes sense as a de-centralised strategy of providing security relying on the stakeholders' (victims, offenders and communities) capability to take care of themselves. In fact, RJ advances the fundamental claim to invest in interventions on crimes which emphasise the direct involvement (ie responsibilisation) of stakeholders. RJ is about imagining participatory decision-making processes to deal with the causes and consequences of crimes, by empowering 'victims' and 'offenders' within and through their 'communities' to address the harm experienced. The actors of RJ are at the same time providers and recipients of security as immunisation from crime's consequences. Moreover, RJ services are community-based entities, posited between the private and the public, representing the community's effort to responsibilise itself as actor/user of security.

The second technology to be considered is what we might call 're-feudalisation' of governance. This expression refers to a political technology which works toward the hybridisation of public and private governance in advanced-liberal regimes, engendering a specific 'third way' of exercising authority and control over a wide range of social issues, first of all crime and deviance. Particularly, the appeal to 'community' as a site of governmental authority in both Europe (a typical case was the 'third way' politics during Blair's mandate in England) and North America, seems to be a crucial expression of this political technology. The re-feudalisation of governance, with its reference to family and community as crucial spaces of government, as well as politico-moral ideals (Rose 1999b: 487) resonates with the emphasis in RJ on empowerment by participatory decision-making and on the role of a consensual community to manage moral order.

The last technology is the process of psy-individualisation, which involves 'a plethora of indirect mechanisms that can translate the goals of political, social, and economic authorities into the choices and commitments of individuals' (Rose, 1998: 165), contributing to governing 'at a distance', via the re-definition of individuals' subjectivity. It works by installing, through the diffusion of psy-techniques, a concept of the human subject as an 'autonomous, individualised, self-directing, decision-making agent at the heart of policymaking' (Rose, 1999b: 499). This technology offers individuals, groups and communities new opportunities to actively participate in various arenas

of action 'to resolve the kind of issues hitherto held to be the responsibility of authorized governmental agencies' (Burchell, 1996: 29). Here, individuals, groups and communities are 'encouraged freely and rationally, to conduct themselves' (Burchell, 1996: 29), and to become '"experts of themselves", to adopt an education and knowledgeable relation of self-care in respect of their bodies, their minds, their forms of conduct and that of the members of their families' (Rose, 1996: 59). Individualisation through psy-discipline integrates the de-socialisation of security and the emergence of hybrid arenas (and actors) of governance. The success of RJ is therefore linked to the simultaneous emphasis on a communal network which surrounds and supports the 'victim' and 'offender' in dealing with the crime and individualisation of responsibility for individual actions. 'Victim' and 'offender' are in fact deemed to have the necessary psychological, moral, symbolic and practical skills to engage in the restoration of the relationship harmed by the crime, which is the outcome of their deliberate decisions. They are the only ones who can repair, compensate or apologise for what happened.

There is a further dimension of the technologies of power, which needs finally and briefly to be pointed out. Insofar as these technologies are the political conditions of possibility for the emergence of RJ, they also impact on the actual functioning or restorative processes by conveying a certain idea of subject to be projected on the actual users. They potentially contribute to make RJ (as expressed by the authoritative discourses) a system for shaping self-surveillant and emotional subjects, obliged to be free. Self-surveillance implies the stipulation that individuals might be dangerous to themselves, due to being emotionally 'driven'. At the same time they are portrayed as free and responsible individuals, able to make choices. They need then to constantly survey themselves, only in this way can they enjoy a wide range of possibilities in dealing with conflicts, insofar as their emotions are liberated but harnessed, enfranchised but controlled.

V. ENVISIONING FORMS OF CRITICAL RESISTANCE

Archaeology and genealogy bring to the fore and historicise the authoritative discourses on RJ, showing their political embeddedness. RJ appears, now, as a complex field where only certain discourses play the role of main reference point for policy, legislation and practitioners. These authoritative discourses are rooted in a specific political context, the advanced-liberal regime. RJ is neither a open conglomeration of views and positions nor a politically neutral entity, as often appears in the accounts of RJ movement scholars and practitioners. However, defamiliarising the present without imagining possibilities to critically resist it, would mean to reduce the ethico-political capacity of this overall project to a 'mere' epistemological enterprise. Does the presence of authoritative stances in RJ doom us to passively comply

with them? Does the advanced-liberal 'nature' of mainstream RJ compel us to re-enact that governmentality? Is there any alternative to the idea of subject embodied by the authoritative discourses? As already stated, one of the main features of the genealogical analysis is that power and resistance are thought as co-extensive (Foucault, 1978: 95). From this perspective, within the authoritative discourses as well as within the advanced-liberal regime, lie the very conditions for destabilisation or even subversion. What I am interested in here is not the general plan of this form of resistance, but the critical resistance which lies in an ethical realm and aims at problematising societal discourses with subjugating effects (ie 'conventional' criminal justice but also the same authoritative discourses of RJ). If this historical ontology aims at nourishing a critical (and even self-critical) tension in RJ, we need to envision RJ processes as an opportunity for re-creating ethical selves as an alternative to the lack of genuine moral communication between parties and normalisation of identities within 'conventional' criminal justice, as well as to the unproblematic assumptions of the same authoritative discourses of RJ. The goal of this reflection is not to dictate a new account of what one ought to do, but to imagine alternatives to certain forms of subjugation[4] by reflecting upon the conditions to dissolve normalised identities, thus, opening up spaces for reinventing social relationships (Hoy, 2004: 89–90).

Foucault defines ethics as the 'reflexive practice of freedom' (1997: 281), ie the intentional self-forming activities (the 'care of the self') of an individual in order to 'subjectivise' itself, becoming in this way a moral subject (Foucault, 1986). The word 'subject' in Foucault's work entails two different meanings, with critical implications for his ethical theory: 'subject to someone else by control and dependence; and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to (Foucault, 2000: 331). The first connotation refers to being subjected to someone else but also to intentional and not subjective discourses; the second meaning refers to the activity of subjectivation, ie the active self-fashioning ethical work. Subjectivation aims at creating productive freedom, by choosing to shape new truths about oneself, detaching oneself from the normalised identities imposed by others, generating new possibilities of being and becoming. Foucault's ethics then, does not establish a 'fixed' human nature or a 'true' self to be enshrined in moral codes (which would end up promoting another form of domination). The self is instead a ceaseless process of becoming within a cultural and social context, rather than a passive being. Accordingly, ethics is conceptualised as

[4] The domination carried out by 'conventional' criminal justice (and paradoxically endorsed by certain RJ discourses) consists in subjugating individuals to binary classifications of right and wrong and victim and offender; imposing and enforcing normalised identities linked to those labels; using pain delivery as a normal vehicle to re-establish an assumed social order; denying genuine moral communication with individuals and between them.

a transformative and relational practice of subjectivation (ie ethical fashioning of oneself) whose condition and outcome is freedom. In Foucault's view, these ethical relations which can actively contribute to shape our selves are 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, 1984: 353–55). I propose to use this framework as a blueprint for envisioning the ethical 'potential' of RJ, ie the possibility for RJ to be a space of subjectivation and not of subjugation. The ethical substance is the material or aspect of self that is morally problematic, taken as the object of one's ethical reflection, and transformed in one's ethical work. In the case of RJ encounters, the ethical substance consists of the 'problematic situations' (Hulsman, 1986: 73), ie the conflict and harm which represent the object of the ethical reflection and transformation. The mode of subjection is the way in which the individual establishes its relation to the moral code, recognises itself as bound to act according to it, and is entitled to view its acts as worthy of moral valorisation. The mode of subjection is, as Foucault refers to it, the 'deontological' or normative component of ethics. In RJ, this component consists of the outcome of the encounter, the decision to converge toward a common understanding of what happened and why, as well as to agree to a collaboratively created action plan. In order to get to this point it is necessary to carry out what Foucault calls the 'ethical work', ie the self-forming activities meant to ensure one's own subjection to a moral authority and transformation of oneself into an autonomous, ethical agent. The goal of this overall process is its 'telos', ie the ideal mode or state of being toward which one strives or aspires in one's ethical work, which in RJ could be, *inter alia*, repairing the harm of being 'subjected' to societal forces that seek to define subjectivity for individuals.

Of these four components, the 'ethical work' probably needs further elaboration and clarification due to its critical role. The 'ethical work' or 'care of the self' is a dynamic and continuing activity rather than an adherence to a pre-established system of moral codes. This activity brings the ethical self into being and can be practised 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 manner of restriction; rather, to be free is to be involved in producing change in the world, and to be an ethical being is to be an actor (Infinito, 2003: 157). RJ's spaces should then, as far as possible, be free spaces, ie alien to external coercion (*ergo* the impossibility of any restorative punishment), but also free in the sense of rejecting the normalising labels offered by 'conventional' criminal justice (eg 'victim' and 'offender') as well as of critically re-thinking the labels offered by authoritative discourses of RJ ('healing', 'empowerment/disempowerment', 'reconciliation', etc). Therefore, the issue at stake is to

reflect on how to shape RJ encounters as free, pluralistic and creative environments where participants' ethical work can take place, addressing proper responses to 'the other' (Infinito, 2003: 155). The 'care of the self' would be practised as resistance to that which threatens to control one's identity, considering conversely freedom as the formation of the self (Infinito, 2003: 158). As David Hoy argues, this strategy of *désassujettissement* ('desubjugation') consists not in our finding our true subjectivity behind ideological masks, but in de-subjectifying ourselves, of purging the selves produced by the forces of conformism, in order to become different from the way we normally are (Hoy, 2004: 103). This is not only desubjectification of individual identities, but of collective, communal or social identities, avoiding entrapment by externally imposed and limiting subjectivities, activating human capacities for self-creation (Infinito, 2003: 159).

From this perspective the goal of a restorative encounter would primarily 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. It entails work on the self and consideration of how to be and act in relation to others' (Christie, 2005: 40). This is possible if restorative encounters take place within a space which is safe and experimental, where individuals can participate in the ongoing production of themselves with and in front of others, and where they can be both witness to and resource for the experiments of other selves. This space would allow for critical activities and reflections which aim at intensifying our relation with ourselves and also with others. The 'working out' of our ethical self is 'not an exercise in solitude, but a true social practice. The care of the self—or the attention one devotes to the care that others should take of themselves—appears then as an intensification of social relations' (Foucault, 1986: 53). To stipulate a list of exhaustive technologies of the self to be embodied within RJ processes in order to allow the 'ethical work' within, would be against the very basic idea of a non-subjugating ethics and would commit the very harm to individuals it seeks to overturn. At stake here is not the creation of a new moral code but of the conditions for critically resisting the limited range of possibilities available to those involved in social conflicts and harms, offered by 'conventional' criminal justice but also, foreseeably, by the 'mainstream' RJ.

VI. NOT TO CONCLUDE: THINKING RESTORATIVE JUSTICE OTHERWISE

The historical and critical ontology I have proposed consists in using Foucault (more than offering a 'correct' interpretation of his work) in order to reconstruct the truths (archaeology) and the political embeddedness of RJ (genealogy). Furthermore, this project is complemented by the normative envisioning of RJ as an ethical space alternative to

'conventional' criminal justice, and critical of the same authoritative discourses which reify that unique way of thinking and dealing with social conflicts and harms. Framed in this way, RJ finds its conditions of possibility in certain socio-cultural constructs and technologies of power. Being scaffolded by authoritative discourses does not entail necessary subjugation to them. Being thinkable in an advanced-liberal regime does not necessarily imply that RJ is doomed to re-enact that governmentality. Re-working RJ as an ethical space means to structure it as a free and safe space for detaching individuals from the normalised identities of 'conventional' criminal justice, as well as of the RJ authoritative discourses (both informed by advanced-liberal imperatives). The provisory outcome of this inquiry, in fact, is the appreciation that RJ should be different not only from 'conventional' criminal justice but also from itself, ie from its authoritative discourses which threaten its ethical 'potential' as a space for resisting predetermined ranges of possibilities of being and becoming. Turning RJ not only against the mainstream way of dealing with social conflicts and harms, but also against its own taken-for-granted forms, will likely nourish a self-critical attitude which might make RJ 'un lieu de réflexion incessante, de recherche et d'expérience, de transformation' (Foucault, 1981).

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