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## Chapter 2

### **Pushing the theoretical boundaries of restorative justice: Non-sovereign justice in radical political and social theories**

G. Maglione

*The novelty of the coming politics is that it will no longer be a struggle for the conquest of control of the State, but a struggle between the State and the non-State (humanity), and insurmountable disjunction between whatever singularity and the State organization.*

G. Agamben<sup>1</sup>

#### **Introduction**

This chapter is an exercise in political and ethical imagination<sup>2</sup>. It starts from the premise that the recent centralised institutionalisation of restorative justice has outstripped this field of its radical political-ethical potential. The process of incorporating restorative justice into legal frameworks, in fact, equates with the transformation of restorative justice into a mechanism of ‘sovereign’ justice which limits creativity, produces control and endorses hierarchical relationships. This chapter sets out to re-envision, although in a preliminary way, restorative justice as an emancipatory (non-sovereign) response to transgressions of modes of conducts, embedded in wider social, political and economic vulnerabilities. It advances the thesis that non-sovereign values can help imaging and practicing challenges against institutionalised restorative justice and, more broadly, against exclusionary forms of justice. A range of practical implications can be drawn from this normative exercise.

#### **Institutionalising restorative justice: a diagnosis**

Restorative justice has developed historically as a plurality of attempts to rationalise various practices (conferencing, mediation, circles) blossoming at the margins of criminal justice systems. Some of these practices have been increasingly regulated by the state and incorporated in legal frameworks since the 1990s (Aertsen, Daems and Robert, 2006). Similarly, certain understandings of restorative justice have been recognised and prioritised by the state, informing relevant policies and state-funded programmes (Van Ness and Strong, 2003). Three main (and empirically overlapping) approaches to restorative justice are widespread in the western world: ‘enfranchising the victim’, ‘transforming the offender’, ‘decentralising conflict management’ (Maglione, 2017b). The first two are characterised by a reformist-pragmatic approach to criminal justice and have been underpinning laws and policies on restorative justice widely. The third understanding resonates with a radical penal minimalist view, and, whilst often evoked and praised by critical scholars, today appears as a minor theoretical component of state-based restorative justice. The ‘enfranchising the victim’ approach revolves around the idea that restorative justice endeavours to produce safety and healing for the victim. The restorative encounter is regarded as a time and space where the consequences of a crime are discussed and addressed, restoring the emotional, social, symbolic and material relationships among direct stakeholders (i.e. victim, offender and

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<sup>1</sup> 1993, p.83, italics in original.

<sup>2</sup> I wish to thank Kirsty Boutle for her encouragement and support in writing this chapter.

community), with a specific emphasis on the victim's needs (Dignan, 2005; Strang, 2003; Strang and Sherman, 2003; Zehr, 1990). This view recognises the potential of the restorative encounter to enable participants to express emotions and achieve mutual understanding, healing and closure (Van Ness and Strong, 2003). The idea of 'transforming the offender' (especially youth offenders) is also integral to the restorative justice field. Within this perspective, restorative justice interventions seek to restore human interconnectedness, transforming not just actions which weaken interpersonal relationships, but also actors, focussing particularly on the offender's need for change. This approach is backed up by a normative critique of 'punishment as retribution', that is, of the idea of coercing the offender to endure pain commensurate with the gravity of the crime committed. Restorative justice competes with retribution insofar as it entails concrete actions toward transforming the offender through the encounter and the following material/symbolic repair of the harm caused to the victim (Braithwaite, 1999; Walgrave, 2003; Wright, 1996). Finally, the discourse of 'decentralising conflict management', originally resting on radical criminological premises (penal minimalism and abolitionism), stresses the role of community-based and non-professionalised alternatives to the "conventional" criminal justice. The idea of empowering direct stakeholders by devolving to them the competence to deal with the consequences of their conflicts is characteristic of this perspective.

### *Institutionalisation*

These different approaches have been translated into legislative measures, applicative guidelines, advocacy initiatives and institutional training programmes, with intersections, combinations and tensions. Some recurrent aspects characterise the institutionalisation of restorative justice.

Theoretically, restorative justice enshrined in legislation embraces a functionalist approach to crime (Walgrave, 2017, p.97). Crime is seen as a social pathology which needs to be neutralised. Restorative justice 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 unbalanced power relationships which contribute toward the definition of behaviours as crimes. Additionally, institutionalisation often involves the 'mainstreaming' (O'Mahony and Campbell, 2006), 'flat-pack[ing]' (Blagg, 2017) or 'mcdonaldisation' (Umbreit, 2001) of restorative justice. The centralised regulation, in fact, requires focussing on serving "conventional" justice goals, such as efficiency, by reducing costs and speeding up the process, as well as on the development of an evidence-based, "tick the box" approach to justice interventions. This may also have 'colonising' effects considering that, through policy transfer, restorative justice programmes are sold as a 'standardised, homogenised commodity' to non-western communities (Blagg, 2017, p.71).

Operationally, the main concern here is the co-optation of restorative justice by the "conventional" criminal justice procedures. Restorative justice institutional programmes normally require the offender's admission of responsibility/guilty plea as a condition to enter a scheme (see European Directive 29/12 — i.e. Victims' Directive). This is a form of endorsement of criminalisation processes led by law enforcement agencies and a paradigmatic example of restorative justice being 'defined in' (Mathiesen, 2015) "conventional" criminal justice with no chance (and no aspiration) to challenge the gatekeepers of criminal justice. Restorative justice works fundamentally as a penal mechanism. This means that it is about administering the consequences of a crime whose individual responsibility has been unambiguously decided. Additionally, 'penal' refers to a distinctive understanding of social relationships: dichotomic (victim vs. offender), focussed

on personality more than systems, on acts more than interactions, on blame-allocation more than conflict resolution (Hulsman, 1986). In the same vein, the incorporation of restorative justice in law has often been accompanied by the professionalisation and standardisation of restorative practitioners (Johnstone, 2012). This involves the creation of a new professional group which specialises in dealing with crime in a “restorative way” and/or at the creation of professional bodies overseeing the provision of restorative services (e.g. RJ Councils). Restorative practitioners are new experts with power of control both over the participants’ relations during the restorative encounter, and, following it, over the execution of the agreement reached during the encounter (e.g. the youth offender follow-up plans in England and Wales<sup>3</sup> or in Norway<sup>4</sup>). As Nils Christie sharply noticed (2015, p.111), with respect to the new restorative measures for youth offenders in Norway, ‘[t]he coordinator becomes a judge, a social worker and a police person in one role. There is not much room left for laypeople, the former core members of the boards’. A further element linked to the implementation of restorative justice is the ever-looming net-widening danger. Restorative justice seems to be applied fundamentally as a diversionary measure for youth offenders, or as a stand-alone penal option managed by external professionals to whom “low tariff” crimes are referred (Crawford and Newburn, 2003). This potentially opens up the cooptation of restorative justice services for a range of cases which would/could not be dealt with by state agencies due to their “minor” nature of low serious crime (Cohen, 1985). In short, restorative justice, ‘despite being based on progressive principles, by locating itself (as an alternative) within the criminal justice system, has found itself being increasingly used in a punitive manner and targeted at people who previously were, by and large, outside the grasp of penal law’ (Moore and Roberts, 2016, p.130). Furthermore, the legal regulation of restorative justice could be easily bent to coercive practices, for instance in cases such as the ‘restorative caution<sup>5</sup>’ or the imposition of pre-sentence ‘restorative requirements<sup>6</sup>’ in England and Wales. These measures lend themselves to police, judges or facilitators’ pressure especially on youth first time offenders, working as forms of “low level” responsabilisation of the offender (Crawford and Newburn, 2003). Lastly, institutionalised restorative justice revolves around idealised images of crime stakeholders overlapping with the criminal justice ideal actors (Christie, 1986). The victim appears as disempowered and vulnerable, the offender is presented as the harm-maker and wrongdoer ontologically distinct from his/her victim and the community is depicted as a pro-social parochial collective stakeholder (Maglione, 2017a).

#### *A diagnosis*

These rapid institutional developments have outstripped restorative justice’s radical theoretical aspirations (encapsulated in the original ‘decentralising-conflict management’ discourse), letting more conservative elements, indebted with “conventional” criminal justice, lead its development (Gavrielides, 2013). Restorative justice appears today as a ‘positive’ reform of criminal justice, an alternative justification of the penal consequence for a crime (Christie, 2013; Mathiesen, 2015; Pavlich, 2005) which lacks any ‘attitude to say no’ (Mathiesen, 2015) to “conventional” understandings of crime and punishment, and to develop a ‘non-penal real utopia’ (Scott, 2013).

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<sup>3</sup> Youth Justice and Criminal Evidence Act 1999, Schedule 4.

<sup>4</sup> Lov om konfliktrådsbehandling (National Mediation Act) 2014.

<sup>5</sup> Criminal Justice and Court Services Act 2000, Section 56, and Code for Crown Prosecutors England and Wales, Sections 7 and 8.

<sup>6</sup> Crime and Courts Act 2013 England and Wales, part 2 of Schedule 16.

Looking more closely at the transformation of restorative justice into a state-based penal mechanism, this seems consistent with a range of broad neo-liberal/neo-conservative crime control strategies. First, the relationships between restorative justice and strategies of regulated responsabilisation as a form of crime control should be considered (Garland, 2001). Responsibilisation denotes cautious devolution of decision-making capacity to community-based actors, non-state agencies, non-governmental organisations as well as individual citizens to provide a distinctive type of security. The key aim of restorative justice is, in fact, the direct involvement of a plurality of stakeholders ('victims', 'offenders' and 'communities') (Pavlich, 2005, p.81) in order for them to take responsibility for producing their own security. This form of responsabilisation does not rule out the state, since restorative practices are often state-funded, led by state agencies and re-enact the state-based criminal justice language and mindset (dichotomy victim/offender, offender's admission of guilt as a condition to enter restorative justice programmes etc.) (Davis, 1992, p.25).

Additionally, restorative justice interventions seem to be set to perform a "hybrid" (i.e. beyond the public/private divide) way of crime control (Rose, 2001). Particularly, the production of a virtual arena – the 'community' – as the backdrop of restorative interventions, is an expression of this form of control. Restorative justice, in fact, is about imaging participatory decision-making processes to deal with crimes by (partly) devolving to victims and offenders the power to address the harm experienced, within and through their communities. The 'community', here, is an idealised backdrop for crime control and repression which justifies apparently new forms of controlling individuals and groups, different both from harsh punitive responses and failing rehabilitative instruments. Restorative justice is shaped as a "third way" community-based form of penal policy, whose cultural background is ostensibly alternative to both the criminologies of 'the self' and of 'the other' (Garland, 2001, p.15).

Finally, restorative justice appears integral to trends toward neutralising the moral, political and social character of crime (Rose, 1998, p.165). Restorative interventions result in de-activating the political/social content of a variety of problematics by installing a concept of crime stakeholder as an 'autonomous, individualized, self-directing, decision-making agent' (Rose, 1999, p.499). Here the goal is to offer individuals and groups new opportunities to participate actively in various arenas of action 'to resolve the kind of issues hitherto held to be the responsibility of authorized governmental agencies' (Burchell, 1996, p.29). Restorative justice understands crimes as personal choices, avoiding any problematisation of criminalisation processes. Crime is fundamentally a matter of interpersonal conflict or moral wrong deliberately inflicted by an emotionally immature offender, and to be dealt with by the same conflicting parties; the role of social determinants, structures or macro-relations of power in driving the criminalisation of those behaviours or the offender's actions, is obliterated. Restorative justice as a penal option, appears as an 'inclusive post-social justice' strategy (O'Malley, 2009), seeking to minimise harms, neutralise the public/social dimension of crimes and invest in cohesive and pro-social communities as politico-moral ideals.

### **Restorative justice between sovereign and non-sovereign relationships**

It is my contention that those institutional developments, underpinned by the strategies described above, configure restorative justice as a 'sovereign' mechanism of justice. 'Sovereignty', in political theory and public law, refers to a state's essential attribute, that is, the exclusivity of political obligation and the monopoly of legitimate violence (Austin, 1954; Hobbes, 2010; Weber, 2004). Differently from traditional political theory, this chapter conceives of 'sovereign' as a distinctive type of social relationship which informs not only

specific institutional frameworks, but circulates in the social realm tying individuals and groups together. These relationships have certain ontological, epistemological, anthropological and ethical characteristics which can be briefly (and ideal-typically) sketched out. From an ontological viewpoint, sovereign relationships rest on the overdetermination of both subjectivity and social relationships by considering them objective and not merely socially or ethically constructed. Social practices (for instance the defining of ‘victim’ or ‘offender’) are natural entities characterised by permanence, homogeneity and stability (Newman, 2010). Social phenomena are the inevitable and necessary consequence of antecedent states of affairs; they are marked by a destiny which unfolds historically towards supposedly better conditions (e.g. the indissoluble link between crime and punishment). This ontological outline ties in with a certain epistemological viewpoint, whereby sovereignty is marked by the idea that objective truth (e.g. the guilty plea or verdict’s “truth”), beyond intersubjective agreements and social constructions, exists and is achievable. Anthropologically, sovereign relationships are characterised by an underlying idea of subjectivity as fixed and stable (e.g. the offender as anthropologically different from the victim). Additionally, they are sustained by the Hobbesian negative view according to which the human condition has an inclination towards egoism, prevarication and violence. Ethically, the main characteristics of these relationships are hierarchy and centralisation; they lack reciprocity, offering minimal space for negotiation and transitivity.

Any institution, group or individual, when exerting top-down command over others, defining or limiting possibilities of being and becoming, is a sovereign machine. “Conventional” criminal justice institutions are a paradigmatic example of sovereign mechanisms, since they commonly re-produce the type of relationships seen above. In a similar vein, institutionalised restorative justice, when endorsing processes of criminalisation, labelling, allocation of blame and dichotomisation of social relationships, re-establishes and diffuses sovereign relationships.

### **Restorative justice as non-sovereign justice**

A possible way to deal with the transformation of restorative justice into a sovereign (penal) mechanism, consists of re-installing, at the core of this field, a generative combination of ethical work, political engagement and social resistance, that is, a commitment to non-sovereign values. ‘Non-sovereign justice’ is an open-ended political-ethical project of cultivating non-hierarchical and decentralised social relationships, outside a juridical framework (Newman, 2010, p.23). It is based on the idea of ‘ontological anarchism’ (Newman, 2016, p.xii) that is, on ‘a form of thinking and acting without an arché—in other words, without stable foundations or essential identities to determine its course’ (Newman, 2016, p.xii). Non-sovereign justice endeavours to suspend sovereign categories and techniques, since they crystallise social relationships in authoritarian ways and impose hierarchical order upon social indeterminacy. This approach is radical inasmuch as it advocates for subversive and re-significatory justice practices which seek to decentre social norms, and promote transformative sociality. It aims to address transgressions to people’s freedoms by offering opportunities to rethink social relationships and political obligations instead of re-establishing sovereign relationships. It is possible to lay out the main themes around which a non-sovereign restorative justice coalesces.

#### *Destituent*

Non-sovereign justice attempts to halt and deactivate the sovereign machine (Agamben, 2013) ‘by exposing the void that lies at the center of its articulating mechanism, the central

fiction that holds the machine together and keeps it running' (Attell, 2014, p.164). 'Destituent' means 'a withdrawal of support from the sovereign political order, without the desire to replace it with another sovereign political order' (Newman, 2016, p.288). By simply overthrowing the sovereign machine, in fact, this will reconstitute itself but in different forms or shapes whilst by destitution, that is, by halting sovereign relationships, new relationships will be created. Whilst the constituent power 'refers to the revolutionary capacity [...] to constitute a political order', the destituent power embodied by non-sovereign justice 'does not propose to found a new political order, but implies the suspension of all orders' (Newman, 2016, p.288). This would open a 'new political dimension' and 'the rediscovery of a form-of-life, the access to a new figure of that political life whose memory the Security State tries at any price to cancel' (Agamben, 2013).

From this perspective, restorative justice should be conceived of as a critique of both "conventional" criminal justice and the diffused 'penal' mentality, unveiling the contradictions at the centre of these sovereign structures. Restorative justice should expose the criminal justice's focus on acts more than interactions, personality more than systems, breach of social order more than broken human relationships. The mentality of 'pain delivery' (Christie, 1981, p.19), as antidote to the violated social order, should be contested as based on metaphysical illusions of sovereign control. This would be possible both by promoting restorative justice as a political movement advocating for an-archist forms of sociality and by re-thinking the very restorative process. There is a need for more localised, direct and non-representational forms of discussion of transgressions of people's freedoms as symptoms of 'communal inadequacies' (McKinney, 2012). Non-sovereign restorative processes should not be alternative (and apparently less punitive) penal consequences but conflict transformation practices, with no need of admission of responsibility as a condition to enter. The only "requirement" would concern the quality of the process: to neutralise sovereign relationships, that is, domination, hierarchy, violence. Additionally, restorative practitioners should not advocate for state laws or policy regulations. The legalisation, whilst on one hand appears to scale up restorative justice, on the other, ends up transforming it into a mechanism which reproduces authoritarian relationships. Such a critique has the potential to destitute the sovereign relationships that the "conventional" criminal justice advances, by contesting its dichotomic, de-contextualised and politically neutralising effects. In this way, restorative justice would open up spaces for reinventing social relationships (Critchley, 2007, p.113; Hoy, 2004, pp.89-90) beyond criminal justice institutions, practices and mentalities.

### *Radically Democratic*

Non-sovereign justice acknowledges the unequally distributed vulnerability, as a political and social phenomenon, characterising affluent western democracies (Butler, 2009, p.25). It claims attention toward those who struggle to mobilise themselves, because of being disenfranchised, poor and disadvantaged due to the effects of normalised practices of everyday sovereign apparatuses. This requires the recognition of structurally deprived groups and individuals as actors whose agency is mutilated or limited by political, social and economic processes. As Judith Butler suggests, there is a need to acknowledge and address the condition of 'precarity' as a form of socio-economic and political vulnerability imposed on certain individuals and groups as well as to accept the vulnerability which pertains to every human being (i.e. 'precariousness') (Butler 2009). The attempt to deny 'precarity' produces violence since subjects 'immunize itself against the thought of its own precariousness' by asserting 'its own righteous destructiveness' (Butler 2009, p.48). Conversely, the acknowledging of human vulnerability will prevent the violent immune

response: ‘Mindfulness of this vulnerability can become the basis of claims’ for non-violent solutions (Butler 2006, p.29). From this perspective, non-sovereign justice promotes, as a form of resistance to sovereign relationships, the mobilisation of precariousness against precarity, the common state of human vulnerability against the socio-economically produced marginalisation.

The way to produce such results within restorative justice, is to promote restorative encounters as political-ethical spaces which recognise precariousness and critique of precarity, by stressing and encouraging dissent and contentious claims in order to mitigate sovereign control. There are not such things as ‘victims’, ‘offenders’ and ‘communities’ but people, more or less deprived or wealthy, gendered and racialised, to be recognised and addressed. In restorative encounters, the ‘problematic situations’ (Hulsman, 1986, p.73), i.e. the conflict and harm, would become the material for ethical and political reflection. Individuals would be allowed to rethink the moral relationships questioned or broken by their behaviours, beyond juridical frameworks, and recognise them as related to wider social, economic and political vulnerabilities. It is not the consequences of a ‘crime’ but the criminalisation process to be the object of discussion. In fact, radically democratic restorative justice would critically engage ‘with the relations that: define specific forms of wrongdoing; enable the conditions from which subjects respond as wrongdoers; frame subjects to be considered as the wronged; and generate and sustain identities for both individuals and communities in context’ (Pavlich, 2017, pp.306-307). This also means criticising “mainstreamed” restorative justice insofar as it individualises conflicts by downplaying their intertwined political, social, and cultural drives. From this viewpoint, this approach denounces how restorative justice constitutes parties as victims and perpetrators necessarily in need of reconciliation and healing, overwriting ‘other subject positions held by the people’ (Renner, 2015, p.1110).

### *Infinitely demanding*

From the previous themes, it follows that non-sovereign justice recognises that justice can be only relational since humans depend on uncontrollable relationships with others, and as such are vulnerable to the other (Kelz, 2015, p.3). Non-sovereign justice puts forth an ‘ethical appeal that seeks to overstep the boundaries of one’s community or personal affiliations’ (Kelz, 2015, p.6), but at the same time it considers the political and social conditions of precarity. From this angle, ethics is understood as a primary responsibility for the other, instead of as individual accountability for its past actions (Kelz, 2016, p.91). Non-sovereign justice poses, to quote Simon Critchley, an ‘infinite demand’ (2007) of the other that calls on us to act in the name of our ‘responsibility to the other, in response to particular injustices and conditions of distress’ (Kioupkiolis, 2011, p.698). In Critchley’s view, this ethical inflection, inspired by Emmanuel Levinas’ ethics of an infinite responsibility to the other, facilitates encounters with multiple singularities which could not be contained within a single collective structure. This ethical approach has the potential to articulate ‘a demand which is not arbitrary but universal in scope and it is energized by a feeling of anger at a situation of global injustice’ (Kioupkiolis, 2011, p.698).

The goal of ‘infinitely demanding’ restorative encounters would be primarily to offer a chance to engage in an activity of ‘questioning and adjusting of thought and action in relation to notions of human good and harm’ (Christie, 2005, p.40). They would not just be an opportunity of ‘norm clarification’ (Christie, 1977), but political-ethical occasions of norm-creation. This is possible if restorative encounters are safe and experimental fora, 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 others. These spaces would allow for critical activities and reflections which aim to intensify our relation with ourselves and with others. This work is as much ethical as political, considering that it is ‘not an exercise in solitude, but a true social practice [...] an intensification of social relations’ (Foucault, 1986, p.53). At stake here, is the creation of new micro-moral codes as a political act, critically resisting the limited range of possibilities available to those involved in social conflicts and harms, offered by the “conventional” criminal justice but also by “mainstreamed” restorative justice.

### *Ethically reflexive*

Non-sovereign justice provides opportunities to develop subjectivity whilst limiting subjection, that is, the unilateral and top-down shaping of one’s conduct, which characterises sovereign relationships<sup>7</sup>. Michel Foucault defines ethics as the ‘reflexive practice of freedom’ (1997, p.281), i.e. the intentional self-forming activities (the ‘care of the self’) of an individual in order to ‘subjectivise’ herself, becoming in this way a moral subject (Foucault, 1986). The word ‘subject’ here entails two different meanings: ‘subject to someone else by control and dependence; and tied to his own identity by a conscience or self-knowledge. Both suggest a form of power which subjugates and makes subject to’ (Foucault, 2000, p.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, i.e. the active self-fashioning ethical work. Subjectivation is the attempt to create 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. Non-sovereign justice is not grounded on and 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 a transformative and relational practice of subjectivation (i.e. ethical fashioning of oneself) whose condition and outcome is freedom toward others.

Restorative justice should provide spaces free from the ethical coercion to conform to idealised models of “law abiding citizens”. Ideas such as ‘victim-led’ or ‘offender-led’ interventions, and practices such as ‘restorative cautions’ or the guilty plea as conditions to enter restorative schemes, are extremely problematic, insofar as being informed by sovereign coercion. Those spaces should be free in the sense of rejecting the normalising labels offered by “conventional” criminal justice (e.g. ‘victim’ and ‘offender’) as well as of critically re-thinking the labels provided by authoritative discourses of restorative justice (‘healing’, ‘empowerment/disempowerment’, ‘reconciliation’ etc.) (Maglione, 2017b). Therefore, the issue at stake is to think on how to shape restorative justice encounters as pluralistic and creative environments where participants’ ethical work can take place, addressing proper responses to ‘the other’ and to their precariousness (Infinito, 2003, p.155). The ‘care of the self’ would be practiced as resistance to that which threatens to control one’s identity, considering conversely freedom as the formation of the self (Infinito, 2003, p.158). As David Hoy argues, this strategy of desubjugation consists not in our finding our true subjectivity behind ideological masks, but in de-subjectifying ourselves, of purging the selves produced by sovereign and authoritarian forces, in order to become different from the way we normally are (Hoy, 2004, p.103). This is not only desubjectification of individual subject identities, but of collective, communal, or social subject identities, avoiding entrapment by externally

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<sup>7</sup> I have widely developed this point in Maglione, 2017b.

imposed and limiting subjectivities, activating human capacities for self-creation (Infinito, 2003, p.159).

### **Conclusions: restorative justice to come**

This chapter is a preliminary effort to envision restorative justice as a critique of sovereign relations. Whilst it provides an up-to-date review of a contested area in this field (i.e. the institutionalisation of restorative justice), it mainly aims to sketch out a restorative justice “to come”, informed by certain political and ethical values. The paper starts by outlining a quite bleak picture of “institutionalised” restorative justice, as a sovereign form of justice which neutralises conflicts, limits creativity and generates hierarchical relationships. Conversely, the non-sovereign perspective offers ‘the possibility to establish new, creative forms of political engagement’ (Kelz, 2015, p.10), fostering the emergence of new forms of relations between people (Lechte and Newman, 2013, p.134). Non-sovereign restorative justice involves the creation of ethically reflexive and radically democratic arenas for norms-production and contestation of social, economic and political harms which feed in individual transgressions. The overarching goal is to ‘form a community without affirming an identity’ (Agamben, 1993, p.86) by detaching individuals from the normalised identities imposed by “conventional” criminal justice as well as by institutionalised restorative justice. Operationally, a non-sovereign restorative encounter would not be a time and place whereby the “penal” consequences of the responsibility crystallised by the criminal justice process are decided, but a space where the criminalisation and its wider context are discussed. The outcome would not be individual ‘closure’ or ‘reconciliation’ but ethical reflection and critique of the conditions for individual transgressions of people’s freedom as well as political action to address them, beyond the encounter. In order to further develop theoretically and implement this approach a number of actions should be taken. The next step is to focus on the decriminalising and de-penalising restorative justice, that is, working toward a restorative language truly different and independent from the “conventional” criminal justice idiom, in a bid to re-envision restorative encounters as something better than criminal justice.

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