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The political rationality of restorative justice

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Giuseppe Maglione

Edinburgh Napier University, UK

Abstract

This article investigates the political conditions that have enabled the development of restorative justice, in England and Wales, over the last 40 years. By applying a governmentality approach, it conceptualizes the emergence of restorative justice as a response to distinctive political problematics, enacted by a range of governmental technologies and driven by a combination of competing political rationalities. In so doing, the article seeks to shed light on the assemblage of ambivalent principles and values that constitute restorative justice by linking them to conflicting political contingencies. This could have implications in understanding both the fragmentary growth of restorative justice in England and Wales, and, more generally, the political roots of restorative justice policies, programmes and practices beyond the British borders.

Keywords

Ethopolitics, governmentality, Michel Foucault, restorative justice

Introduction

Criminologists have extensively explored the political context of restorative justice from a range of theoretical and normative angles (Braithwaite, 1999; Dignan, 2005; Hoyle and Cunneen, 2010; Johnstone, 2011; Marshall, 1996; Newburn and Crawford, 2003; Woolford, 2009; Wright, 1996). This article can be located within the limited province of the literature that applies a governmentality-oriented analysis to this subject (Lippens, 2015; O'Malley, 2009; Pavlich, 2005; Richards, 2011). From this perspective, it offers a historically grounded, critical investigation into the conditions of possibility of

Corresponding author:

Giuseppe Maglione, School of Applied Sciences, Edinburgh Napier University, Sighthill Campus, Edinburgh, EH11 4BN, UK.

Email: G.Maglione@napier.ac.uk

restorative justice. The article revolves around the idea that the historical emergence of this field in England and Wales over the last 40 years, has been gradually possible due to the parallel rise of *ethopolitics* (Rose, 1996b, 1999a). This is a combination of ‘political rationalities’ (Foucault, 1982, 1991, 2008) which informs the regulation of ‘economic activity, social life and individual conduct’ (Rose and Miller, 1992: 174) by shaping in distinctive ways individual and social freedoms, identities and desires.

The article starts by describing the methodological and theoretical orientations that drive this work. After drawing a working definition of restorative justice, it maps out a number of context-specific political issues and relative responses (i.e. problematics) and political processes and practices (i.e. technologies) relevant to the rise of this model of justice. The article then distils the rationalities that characterize this political landscape, and their subjectivizing effects. Some conclusive reflections are also offered. In taking this approach, I hope to deepen the understanding of the development of restorative justice by linking the emergence of this ‘new’ frontier of contemporary penalty to specific political mentalities. This could have implications both in terms of reframing the patchy growth of this field in England and Wales and of re-thinking the political conditions of restorative justice policies, programmes and practices, beyond the British borders.

Methodological and theoretical considerations

Governmentality is an analytical grid that aims to reconstruct the ‘reasoned way of governing best, and at the same time, [the] reflection on the best possible way of governing’ (Foucault, 2008: 2). This framework is concerned with how governmental practice (i.e. process of ‘direct[ing] [...] the conduct of others’ (Foucault, 1982: 225)) is problematized and rationalized by social and individual actors (Foucault, 1991: 87). Governmentality considers a domain much broader than state-based juridical operations by connecting the regulation of social and collective conducts with epistemological, moral and ontological issues. In this way, it opens up new spaces of political contestation, beyond the critique of state politics. From this perspective, the governmental practice is investigated in terms of *problematics of government*, that is, by focusing on the fluid set of predicaments and responses related to economic, social and individual action, contingently elaborated by a plurality of actors (Rose and Miller, 1992: 174). The second step is to explore the implementation of responses to such political problems. This entails an outline of the *political technologies* that ‘shape, normalize and instrumentalize the conduct, thought, decisions and aspirations of others in order to achieve the objects they consider desirable’ (Miller and Rose, 1990: 8). From examining these two dimensions it is possible to infer those *political rationalities*, which, through strategic combinations (Rose et al., 2006: 88), drive the governmental practice (Rose and Miller, 1992: 175). Problematics, technologies and rationalities are reconstructed by piecing together scientific knowledges, ethical doctrines and legal/policy narratives on the matters (problematics), modes (technologies) and logics (rationalities) of government, circulating in the relevant context and encoded in a variety of texts (Miller and Rose, 1990: 4). From this analytical viewpoint, the article argues that ‘restorative justice’ emerged when marginal criminal justice practices ‘crossed’ a certain epistemological/political threshold. That is, when their language, assumptions and justifications became consistent with pre-existing cultural formations integral to specific ways of directing the conduct of others. Such an

emergence is not a historical end-point, but rather is best understood as an ongoing process that is shaped by political clashes and alliances, drawbacks and advances.

A range of governmentality-oriented explorations of restorative justice have been published since the early 2000s (Lippens, 2015; O'Malley, 2009; Pavlich, 2005; Richards, 2011). Building on that literature, this work targets a specific geo-historical domain (England and Wales, 1975–2015) with a long history of practices and a significant growth of policy/legal regulations, administrative bodies, funding and services in the restorative field. It also uses the relatively under-exploited concept of 'ethopolitics' (Rose, 1996b, 1999a), purposely re-elaborated (Garland, 1997; O'Malley, 1999), as an analytical scheme to understand the political underpinnings of restorative justice.

Restorative justice: A meta-definition

In this article, restorative justice refers to a dynamic field of ideas, values and principles produced by academics, advocates and practitioners, since the early 1980s, concerning why and how to deal with crimes. Following Johnstone and Van Ness (2007a: 1) it is possible to reduce this field into three highly comprehensive 'conceptions'. The 'encounter conception' highlights the active participation of relevant stakeholders ('victim', 'offender' and 'community') in order to manage the consequences of criminal behaviour (Johnstone and Van Ness, 2007b: 9). Restorative conferences enable the expression and discussion of the emotional, social, symbolic and material issues at stake, in a bid to restore relationships (Zehr, 1990). The 'reparative conception' (Johnstone and Van Ness, 2007b: 12) refers to an understanding of how to deal with crimes and their consequences, based on the idea of repairing harms (Wright, 1982, 1996). This approach is critical of the retributive idea of coercing the offender to endure pain supposedly proportionate to the gravity of the crime committed. Instead, it emphasizes community-based reparation of the crime's harmful consequences. Finally, in the 'transformative conception' (Johnstone and Van Ness, 2007b: 15), restorative interventions lead people to perceive and act upon the world and themselves in a restorative way; that is, relying on peace-building through dialogue (Sullivan and Tift, 2001). The premise of this view is a relational understanding of humans (Johnstone and Van Ness, 2007b: 17), their 'natural' interconnectedness which can be hindered by destructive and antisocial behaviours.

These three main conceptions cover the majority of values, aims, goals, metaphors, storylines and stakeholders' images produced and mobilized, with intersections and tensions (Maglione, 2014), by policy-makers, practitioners, reformers. In England and Wales, restorative justice programmes (Davis, 1992; Shapland et al., 2006), regulatory bodies' documents (Restorative Justice Consortium, 2004; Restorative Justice Council, 2011, 2015) and policy and legal texts (Home Office, 1997, 2002; Ministry of Justice, 1998, 1999, 2003, 2008, 2013) apply and combine these conceptions in several ways. Due to the diversity of values underpinning them, restorative justice appears as an ambivalent assemblage of aspirations, aims and goals. The reasons for such an entanglement are multiple. Historically, the development of local reparative programmes since the late 1970s, promoted by both victim and offender's movements (Davis, 1992: 31), combined with theoretical and practical developments from the USA, Australia and New Zealand (Marshall, 1999: 14), has contributed towards the composite nature of the restorative field in England and Wales. However, since the way societies

envison and enact responses to crimes is a constitutively political matter (Foucault, 1977), there is a need to consider the political dimension of such a dynamic entanglement, in order to deepen the current understanding of the development of this approach to crime (Pavlich, 2005).

The political dimension of restorative justice in England and Wales

The development of restorative justice can be conceptualized as a specific effect of certain political technologies. It is, in other words, a response to heterogeneous problematics of government, informed by an incoherent, contingent and strategic combination of political rationalities (i.e. *'ethopolitics'*) (Rose, 1996b, 1999a). The actors of this dynamic are individuals, groups and agencies engaged in daily meaning-making, problem-generating and problem-solving activities which aim to make people amenable to direction, in order to attain desirable objectives. Due to the changing composition of governmental actors and their context, unexpected convergences and conflicts are routinely engendered (Rose et al., 2006: 98). As a consequence, political technologies deploy unfinished and inconsistent responses to the problematics at stake (O'Malley, 1999: 182). As the article will argue, the emergence (and inner structure) of restorative justice is an expression of these fragmentary responses.

Political problematics

'Everyday youth offenders' and the end of the 'excuse culture'. Over the last three decades, the political configuration of the youth crime 'problem' has resulted in specific ways of thinking and doing. 'Juvenile delinquency', once understood as a transient condition, that could be addressed by needs-based tools, during the 1970s became a distinctively harmful criminal activity, exemplified by the young 'mugger' who does not outgrow crime and whose actions are often destructive (Pitts, 2001: 9), requiring restrictive measures. As a result, in the late 1970s, the welfare principle was paralleled by an authoritarian approach, linked to conservative political preferences and epitomized in England and Wales by the Criminal Justice Act 1982 and 1991 (Muncie, 1999: 153). In the second half of 1990s a further shift occurred, in the political rendering of both the juvenile delinquent and of responses to this problematic. The image of 'welfarist' juvenile offenders, although sedimented in the practice of penal institutions such as probation services, lost its grip on media and political discourses. Additionally a new representation of 'everyday' youth offenders gradually featured in public debates (Garland, 2001). This category consisted of de-responsibilized youths who breach the interpersonal trust that ties them and their victim together, within a shared community (Maglione, 2017a, 2017b). Their actions require formal consequences that involve also parents and the community at large.

To respond to these young 'ideal offenders', a new strategy slowly emerged, characterized by a combination between authoritarian instruments and a community-based re-moralizing ethos (Muncie, 1999, 2006; Newburn and Crawford, 2003) and informed by the ambiguous rhetoric of ending the 'excuse culture' (Home Office, 1997). Measures contained in the Crime and Disorder Act 1998 and in the Youth Justice and Criminal

Evidence Act 1999 such as the abolishment of the *doli incapax* and curfew measures (for the incorrigible youth delinquents), parenting orders, reparation orders and youth offenders panels (for the everyday youth offenders), typified the purported solution to the youth crime problem.

The (incoherent) goals pursued were: to responsabilize within the community, to strengthen controls, to promote alternatives to custody, as well as to diffuse a culture of early prevention and support for everyday youth offenders (Home Office, 2002). The production of this web of narratives, overlapping yet opposing, was the effect of the combined activities of third sector agencies, criminal justice scholars, reformers and practitioners, as well as governmental bodies. These actors and their discourses around youth offenders, played a critical role in the emergence of restorative justice. For example, the ‘three Rs’ (responsibility, restoration and reintegration) policy that informed New Labour’s early agenda on (everyday) youth offenders (Home Office, 1997, 2001b) was originally elaborated by a third sector agency, the National Association for the Care & Resettlement of Offenders (NACRO) (Green, 2014; NACRO, 1997). This plan established the youth’s acceptance of responsibility for the harm, the reparation of its consequences and then the reintegration in the community as the pillars of youth justice interventions.

In a similar vein, probation services’ emphasis on diversion, mitigation and offender education, were injected at the heart of reparative initiatives for youth criminals (Liebmann, 2007: 40) becoming a constant component of diversionary interventions (Davis, 1992). Additionally, exchanges with youth justice practitioners from the USA, Australia and New Zealand, often mediated by religious groups (mainly Quaker and Mennonite), since the late 1970s, fostered interest around reparative practices (Liebmann, 2007: 41). Finally, the diffusion of theories like ‘reintegrative shaming’ (Braithwaite, 1989), penal minimalism and ‘civilizing’ criminal justice (Christie, 1977; Harding, 1982; Wright, 1982), contributed in the same period towards the development of restorative justice programmes in the UK, especially for less serious crimes committed by (everyday) youth offenders.

Reinventing the crime victim. The ‘marginalization’ of the crime victim within the criminal justice system is a topic widely discussed within the restorative justice literature (Johnstone, 2011: 51; Wright, 1996: 100). The development of this discourse is (once again) the contingent result of the action of several players: political parties; media; voluntary/third sector agencies; academic scholars.

It is well known how political parties (from both conservative and progressive backgrounds) initiated an instrumental re-definition of the crime victim in the early 1980s (Kearon and Godfrey, 2007), both in terms of political use of victimization surveys and of the political recoding of crime victims’ dissatisfaction towards criminal justice (Mayhew and Hough, 1988). The victim re-entered the political agenda as a symbolic actor able to appeal to the wide public, by catalysing sympathy and generating emotionally loaded responses to crime (Garland, 2001: 143), as a disempowered subject ‘asking for’ expressive punishments. At the same time, the priority assigned to specific crime victims, ontologically distinguished from the offender, increasingly featured mass media dramatized accounts on crime since the 1980s, reaching a critical peak in the 1990s (Jewkes, 2004).

Third sector organizations coalescing around an initial British grassroots ‘victims’ movement’ (Rock, 1990) partly challenged this emotionally loaded account. They started representing the crime victim as characterized by specific socio-demographic features (women and children), personal qualities (vulnerability, disempowerment, marginalization) and demands (involvement, compensation, restitution, punishment). Reparation, in this context, was a contentious topic due to its perceived ambivalent status. Although the early British victims’ movement contributed to the creation of relevant services, conferences and practical initiatives in the field,¹ the perceived links between reparation and offender-centred diversionary programmes were a deterrent to a complete acceptance of the reparative option (Reeves, 1989: 44). In the 1990s, the fragmentary victims’ movement (led by Victim Support) achieved further visibility through the consolidation of practical initiatives (e.g. Victim Support Schemes), in a situation of increasing media attention towards crime victims (Walklate, 2007: 132), and so did the relevant victim’s image. This growth intertwined with the development of a new victimology advocating for a shift from an ‘old’ to a ‘new’ way of understanding and supporting crime victims (focusing on their needs and not only rights) (Maguire, 1985; Mawby, 1988; Shapland et al., 1985), a view which also progressively informed the Home Office way of thinking about victims (Home Office, 2002, 2003a).

Two overarching themes unfold across these entangled yet conflicting representations of the victim’s problematic. First, a critique arose of the current criminal justice system, though without questioning its structural issues (Davis, 1992: 176). Second, a response emerged about criminal justice’s failures, championing a ‘victim-centred’ criminal justice (Garland, 2001: 11). These views translated into a wide range of policy documents (Home Office, 2001b, 2002, 2005), legal initiatives (Victim’s Charter—Home Office, 1996 [1990]; Code of Practice for Victims of Crime—Home Office, 2006; Crime and Disorder Act 1998), and actual interventions (e.g. Victim Support’s witness services or reparation programmes (Liebmann, 2007: 38)). A ‘victim-centred’ criminal justice does not invest in reparation but rather strengthens victim participation in criminal proceedings while encouraging local authorities to adopt a multi-agency line of action when working with victims of crime.

Eclipsing communities and ‘third way’ solutions. The discourse of the ‘eclipsing’ of moral communities (Etzioni, 1993; Giddens, 1998), as an effect of the combined action of conservative individualism and post-war social democracy (Driver and Martell, 1997: 27), penetrated UK politics of law and order in the 1990s, contributing to New Labour’s communitarian policies. ‘Community’ here is fundamentally a ‘loss’ (of order, morality, accountability, localism) generated by political liberalism through the promotion of individualistic tendencies as well as by welfare state policies by depriving local communities of power, while strengthening state organizations (Home Office, 2001a, 2010). The insistence on parental responsibility and anti-social behaviour (Muncie, 1999: 156), for instance, were linked to the narrative centring on the late-modern weakening of micro-community ties and their moral foundations, raised by moral communitarians. More generally, this understanding opened the way for the investment (symbolic and material) in the community/neighbourhood as a site of the fight against both crimes and actions that embody a lack of respect/responsibility (ACPO, 2011: 5). Two distinct criminological stances emerging between the

1980s and the 1990s further bolstered this investment. The first was the notorious ‘broken window’ speculation that had a documented impact on British policy (Home Office, 2003b; Labour Party, 1995), justifying muscular early-intervention programmes, symbolized by anti-social behaviour orders. An additional (more inclusive) support was offered by the ‘third way’ criminologies (Hughes, 2007: 23; O’Malley, 1996) which view crime as a ‘real’ effect of the progressive erosion of micro-moral ties localized in discrete communities (Braithwaite, 1989, 2002; Duff, 2000; Lea and Young, 1984). The focus in such work is on the promotion of partnerships between the public, private and voluntary sectors to identify and implement community-based crime prevention measures (Hoyle and Noguera, 2008; Hughes, 2007: 73). This narrative incites individuals and organizations to partake in crime prevention activities, as well as to reduce certain types of crime and the fear of crime (Morgan, 1991). These ideas of citizens as ‘partners against crime’ (Garland, 2001: 205) as well as of (cautious) decentralization of crime control during the 1990s became vital symbolic resources for the representation of the community as crime stakeholder in restorative justice (Maglione, 2017b).

Lack of efficiency and the managerial state. The rise of managerialism in the delivery of public services, including criminal justice, has deep historical roots in the neoliberal and neoconservative portrayals of post-war welfare regimes’ crisis. This was framed, in the 1980s, as an economic, financial and ideological crisis. Its purported effects were the hypertrophic bureaucracy and the de-responsibilization of individuals, resulting, inter alia, in idleness, crime and disorder (Newman and Clarke, 1997: 14). The ‘more and better management’ formula was then presented as one of the solutions to the problems of the welfare state in Britain (Newman and Clarke, 1997), inspiring the creation of new forms of political regulation. The idea of ‘reinventing government’ (Osborne and Gaebler, 1992 in Newman and Clarke, 1997: 37), by importing private companies’ categories of thought, was a strategic response to the problematic at stake, including the rise of criminal activities and anti-social behaviours. In this area, policy-makers described the criminal justice system’s lack of performance as one of the main causes of crime (Home Office, 2001b).

The crisis of traditional penal institutions was formulated in terms of absence of professionalism and cost-effectiveness, or more generally as a widespread lack of an economically oriented approach to criminal and penal matters (Cavadino and Dignan, 2013: 21). The political rejoinder was to empower the private sector to pursue innovation by prompting new ways of regulating offenders’ behaviours. This was the case of high-tech controls (Nellis, 2009: 101), and more broadly, of strategies towards the privatization and modernization of criminal justice (Auld, 2011; Glidewell, 1998). The growth of measures relying on an assumed ‘contractual capacity’ of both adult and youth offender/deviant (Crawford, 2009: 181), based on moral grounds but expressed in language drawn from the private enterprise vocabulary, was a further example of this cultural climate. In this context, restorative justice, especially as a policing option, was promoted as an efficient intervention and as such an appealing ‘street justice’ instrument (ACPO, 2011; Home Office, 2009; Restorative Justice Council, 2014: 10). Its resonance with the ideas of satisfying the consumers (of justice) and of community-based governance that complement the ‘more and better management’ philosophy (Osborne and Gaebler, 1992 in O’Malley, 2009: 10), was another condition for the rise of this justice model.

Relations and shifts. The problematics sketched out above, intersected and conflicted on multiple levels. Managerial issues such as slow prosecution and lack of coordination were considered key weaknesses of the youth justice system, to be tackled by speeding up the process, and by using (third way) multi-agency strategies (Audit Commission, 1996). Multi-agency responses were also integral to a victim-centred criminal justice, as seen above. Reparation programmes and payback to victims were often justified in terms of 'value for money' and 'payment by result' (Ministry of Justice, 2010: 41–42). However, contractual responses to everyday youth offenders could appear as a disappointing 'soft option' to victims' movements (Davis, 1992: 33) and managerial constraints may have de-responsibilizing effects that contribute towards the eclipse of moral communities. These intricate relations generated an assemblage of predicaments/responses that represents a condition of possibility for the development of restorative justice.

The transformation of disparate reparative practices, at the margins of British criminal justice, into restorative justice (i.e. a field of ideas, values and principles underpinning laws, services, policy bodies, funds, scholarly works), became possible first due to an epistemological shift. When those practices could be configured as an instrument to responsabilize everyday youth offenders, a response to politicized victims' needs, a third way strategy of revitalizing dying communities as well as a less costly justice option, then, restorative justice became possible. Yet, the tensions between and within problematics have migrated into the restorative field whereby themes of empowering and shaming, rethinking of crime and acceptance of criminalization, satisfying victims and safeguarding offenders, uneasily cohabit. The further shift from potential to actual (and ambivalent) response to crime, is related to the inscription of restorative justice into the social body through governmental technologies.

Political technologies

Securitization. This technology consists of the range of strategies, techniques and procedures which convert the stability and reliability of the social world into issues of personal safety (physical type of security) (Bauman, 1999; Schuilenburg, 2012) as well as the distribution of responsibility for its production (Garland, 2001: 125). Such devices respond to the desires to control everyday offenders and empower communities and victims, while relying less on state interventions and more on the same users' participation. The moral communitarianism, the political re-invention of the victim as well as the new managerialism, justify the material production of this form of security—that is simultaneously forward-looking, plural and responsabilizing. The widespread trend (invoked by the Morgan report in 1991) of distributing responsibility in delivering this negative security is an instance of the technology at stake (Bayley and Shearing, 1996: 588; Crawford, 2003: 481). Within this context, community safety measures can be considered a more specific example, insofar as they aim to prevent assumed future (anti-social) behaviour by involving direct stakeholders (Crawford, 2003: 490).

While the state remains a relevant subject in the provision of security (especially for 'persistent' offenders), it is not the only player, and under certain circumstances, it may not even be the most important one. This means that community-based actors

complement state agencies in providing immunization from dangers threatening their life and property. Individuals and groups are invited to take responsibility for their own security; they are encouraged to distribute among themselves the concern to create 'liveable' spaces by reducing crime opportunities (Garland, 2001: 125). The creation of youth offender panels or measures such as youth offender contracts and parental orders, that is, the legal supports of restorative justice programmes in England and Wales, are further instances of this technology.

In such practices, individuals and communities are simultaneously providers and users of security services (Pavlich, 2005: 81). From this perspective, restorative justice represents a de-centralized strategy of providing negative security, by relying on (and indirectly promoting) the users' capability to take care of themselves. As already mentioned, the state, here, plays a less visible, but still relevant role. This is evident when restorative practices are state-sponsored, led by state representatives (police officers, probation officers, etc.) and re-enact the state-based criminal justice language and mindset (e.g. dichotomy victim/offender, offender's admission of guilt as a condition to restorative programmes) (Davis, 1992: 25).

Hybridization. Hybridism devices re-organize social reality by creating 'new' spaces (beyond the public/private divide) whereby crime control can be exerted (Rose, 2001a). This technology intertwines with the knowledge produced and promoted by the third way criminologies. It is consistent with the community-based 'more and better management' approach, with its drive towards the identification of new spaces/ways (e.g. 'the community') for doing social control. This can be seen in respect of policing policy ('community policing'), penal policy ('punishment in the community') and justice policy ('community mediation') (Crawford, 1999). It is also apparent in restorative justice practices where the role of efficient and pro-social communities is celebrated (Maglione, 2017b).

The community is posited as 'the ideal territory for the administration of individual and collective existence, the plane or surface upon which micro-moral relations among persons are conceptualized and administered' (Rose, 1996a: 331). The concept of 'community', here, represents a singular hybrid between the notion of 'civil society' offered by the 'left'—as the alternative to centralized statism and to the free market doctrine (Rose, 1999a: 168)—the moral communitarian insistence on traditional values and the idea championed by contemporary civic republicanism of community as a means by which to arrest liberal individualism (Rose, 1999a: 170).

The development of hybrid technologies of government is a purported alternative to both free market individualism and state-centred collectivism, not only within social and economic policy, but also in criminal and penal policy (Rose, 1999a). Once again such matters are evident in restorative justice: a third way of penal control, rooted in a perfected moral community, whose epistemic basis lies beyond the criminologies of 'the self' and of 'the other', and whose instruments are apparently alternative to both expressive punishments and welfarist interventions (Garland, 2001: 15). In this vein, restorative practices aim to develop participatory decision-making processes to deal with crimes, by 'empowering' victims and offenders, within and through their communities, to address the harm experienced.

De-politicization. Here the focus is on methods and processes to neutralize the moral, political and social character of public issues (Rose, 1998: 165), in two different (and to some extent opposite) ways. The first strategy consists of programmes, practices and policies that managerialize the production of order. The regulating principles of effectiveness, efficiency and economy supersede the political, ethical and social character of public decision making. The production of order relies on seemingly neutral expertise, which generates evidence-based support. Expertise distances decision-makers from the moral and political substance of their decisions (Burnham, 2001: 127) and reshapes popular perceptions of who is to blame for policy failures by reducing the operational liability of public institutions (Diamond, 2013: 7).

The growth of policies and practices of risk-assessment, accountability, transparency and external validation in the criminal justice sector exemplifies this technology. Such mentality is characteristic of New Labour's style of government: on one hand devolution to private actors, on the other strategic 'strengthening of the core executive [...] over policy-making and implementation process' (Diamond, 2013: 2). Particularly, New Labour's criminal and penal policy expresses such an approach insofar as multi-agency partnerships are paralleled by authoritarian instruments, like in the Crime and Disorder Act 1998, and managerial concerns are a non-negotiable guiding principle of reform. Furthermore, the development of problem solving, fast track and low-cost justice approaches, like restorative practices (ACPO, 2011: 5; Marshall, 1999: 5), resonates with managerial devices of control.

While the first strategy limits individual responsibility by de-activating the political/social content of public issues, the second set of devices of de-politicization installs a concept of the human subject as an autonomous, self-directing, decision-making agent (Rose, 1999b: 468). 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: 29). Operationally, this is achievable in different ways, for instance through the popularization of what Rose (1985) calls 'psy-complex'. This expression refers to an array of techniques used to incorporate psychological ideas about human resources and group dynamics into an increasing number of social domains, as well as to the nature and implications of the proliferation of psychotherapies (Rose, 1990). From a criminal and penal control viewpoint, this second set of devices foregrounds individual agency at the expense of socio-structural factors. Restorative justice embodies this position by implying that crime is fundamentally a matter of interpersonal conflict to be dealt with by the same conflicting parties; the role of social factors or macro-relations of power, is neglected if not denied.

Restorative justice reached the stage of a 'practicable' penal discourse (Gordon, 1991: 3) when its language, moral justifications and epistemic forms became integral to political strategies of securitization, hybridization and depoliticization. This was possible insofar as, during the second half on the 1990s, apparatuses of negative security for responsible users/providers, located within 'ideal' communities, incorporated restorative interventions in criminal justice. Additionally, the inscription of these practices into the social body required the de-politicization of their matter (from public offences to interpersonal conflicts) and goals (from punishment to personal healing/empowerment). This

is not a smooth process, since the technologies' aims are not easily compatible. There are tensions, for instance, between individual responsabilization and community involvement, as much as between managerial order and healing/empowerment or between distribution of responsibility and the Leviathan's informal support. These tensions affect the structure of restorative justice, stretched across multiple and ambivalent aspirations (e.g. satisfying victims' need of negative security and healing, enabling offenders' empowerment and reducing re-offending, investing in individual agency through communities). The analysis of the competing political rationalities that drive problematics and technologies, can further clarify conditions and consequences of restorative justice's ambivalent nature and fragmentary growth.

Political rationalities

Political rationalities are discursive patterns of ends, means, justifications and limitations formulated by multiple actors that drive the process of government (Rose and Miller, 1992: 175). Neoliberal and neoconservative rationalities, strategically opposed to the welfarist mentality, seem to inform the problematics and technologies charted above. This political conjuncture manifests itself in different ways, depending on several factors. In this article, the focus is placed on the 'inclusive' side of this political assemblage (O'Malley, 2009: 9), conceptualized, following Rose (1996b, 2001b), as 'ethopolitics', though a further refinement of this interpretive scheme is necessary (Garland, 1997; O'Malley, 1999).

From a governmentality perspective, neoliberalism is a self-limiting political mentality, based on the superimposition of the market rationality (Foucault, 2008). The market, as smooth space of contractual relations and 'site of veridiction' of policies and practices (Foucault, 2008: 32), is a distinctive product of neoliberalism. This mentality of government drives the marketization of public agencies, including the managerialization of criminal justice services. The development of a 'contractual' culture, the rise of victims-as-consumers, the abdication of thinking in terms of 'social causes' of crime, the focus on responsabilization instantiated by technologies of plural security and hybrid governance, are all expressions of the neoliberal way of thinking.

In England and Wales, during the 1980s, this rationality entered into a mobile alliance (O'Malley, 1999: 185) with the neoconservative mentality; that is, with a 'social authoritarian' mode of governing built around problematics such as the weakening of the nation, the breakdown of the nuclear family and the lack of moral community. Discipline, cultivation of the virtues of 'law and order' and respect for the traditions are the responses to these issues. The object of government is a range of natural communities, united by moral and traditional ties, coalescing around exclusive identities. The (partly) converging elements of this alliance are the ideas of a sovereign state as 'law and order' enforcer and the centrality of the market, while the tensions lie around concepts of social contract, self-interest and morality (O'Malley, 1999: 186–187). This inconsistent combination is glued together by a strategic foreclosure of the welfarist mode of social government, portrayed as spreading a culture of dependency, individual de-responsibilization and uncontrolled growth of bureaucracy. Around these issues, the conjuncture at stake emerged as a strategic response. This alliance includes by exclusion the welfarist

rationale, since it connects neoliberal and neoconservative mentalities as a danger to be continuously evoked and exorcized. The contradictory pathway to freedom/morality is the alternative to the 'road to serfdom'. The welfarist mentality is clearly not (only) an imaginary common enemy. It is present, as a political rationale, in multiple penal discourses, including some of those relevant for the historical emergence of restorative justice. Thus, we see how restorative justice was initially elaborated within probation settings as a rehabilitative technique (Davis, 1992: 22), as well as by third sector organizations (e.g. NACRO), even though their proposals were articulated in serendipitous ways by political parties (e.g. New Labour).

This combination of political rationalities configures a style of government that is not reducible to a particular political philosophy or economy, but, rather, as argued above, is characterized by its type of problematics and technologies, that is, 'ethopolitics' (Rose, 1996b, 1999a). Ethopolitics shifts government from questions of rational administration of population to those of individual everyday morality and ethics, from taking care of collectivity to the controlled empowerment of individual responsibilities of self-government, in order to make people governable 'at a distance' (Miller and Rose, 1990: 9). The securitization and the de-politicization of social matters, connected to the spreading of hybrid arenas of governance, result in a sustained investment on individual agency, at the expense of structural constraints, 'replaced' by morally cohesive communitarian ties (Pathak, 2014: 97). The neoliberal *choice* (highlighted in restorative practices) becomes a crucial site of political intervention: individuals must become free, must enjoy a specific form of freedom linked to a particular idea of responsibility, rooted in a moral (neoconservative) community (i.e. the setting of restorative interventions). The combination between freedom to choose and morally cohesive communities results in the production of a 'centripetal' freedom, since the community's moral fabric filters and enables individual choices. The proliferation of themes such as local autonomy, victims' participation, community empowerment, as well as reparation, seems informed by the ethopolitical tension towards the re-definition of people's relation with themselves, in terms of open-ended futures, transforming the individual ethos (constituted by shared sentiments, beliefs, values) in a crucial political matter. In restorative justice, the encounter between stakeholders, reparation of harm and personal transformation are all moral choices that aim to mend a wounded relation of trust and interdependency. These choices are enabled by discrete, imaginary communities (Rose, 2001a: 4), which make it possible to match the emphasis on individual responsibility with shared norms of civility.

Subjectivation

As Rose (1990: 213) writes: '[i]ncorporating, shaping, channelling, and enhancing subjectivity have been intrinsic to the operations of government'. A distinctive type of subjectivation is integral to the deployment of ethopolitical responses to problematics of government. On the one hand, 'intensely subjective' beings (i.e. individually responsible for their destiny) (Rose, 1990: 3), are shaped by processes of de-socialization of security and of hybridization of governance. On the other, these subjectivities are constrained by managerial limitations as well as by the tight moral ties of supposedly cohesive communities.

Restorative justice embodies such a Janus-faced subjectivation process insofar as participants in restorative programmes are hailed by ambivalent discourses on why and how responding to crime. These practices stress at the same time, both the critical role of communal networks as crime stakeholders and the agentic responsibility of individual actors. 'Victims' and 'offenders' are deemed to have the necessary psychological, moral and practical resources to engage in 'restoration', which is the outcome of their deliberate decisions. They are the only ones who can repair, compensate or apologize for what happened. The individual agency is the only necessary and sufficient 'site' for the regulation of crimes' consequences. In restorative justice practices, individual actors appear as 'responsible subject[s] of moral community guided—or misguided—by ethical self-steering mechanisms' (Rose, 2000: 321). Yet, this response to crime is not a (purely neoliberal) form of privatization of conflict. The 'restoration' can happen only against the backdrop of a community-as-moral-stabilizer and under the auspices of a managerial state, which regulates the effects of restorative encounters on conventional criminal justice.

Such an ambivalent subjectivation process is related to the constitutive tensions and contradictions which characterize ethopolitics. Neoliberal, neoconservative and welfare rationalities overlap yet are opposed in many respects and on multiple levels. If, in fact, mobile alliances make possible the actual government, they also carry discordant representations, claims and responses. This paradox generates tensions and contradictions at the level of both political programmes and technologies, which translate into penal options, 'volatile and contradictory' in turn (O'Malley, 1999). However, the incoherent nature of ethopolitics is also the very condition for the development of resistance to it. It is in the 'cracks', 'gaps' and 'holes' engendered by those tensions that spaces of contestations (and active subjectivation) will likely arise as possibilities to be seized upon by individuals and groups (Rose and Miller, 1992: 190).

Conclusions

This article places the development of restorative justice into a specific socio-political milieu, in order to bring to the fore some historical contingencies to which it is tied. The transformation of sparse reparative practices, with limited social, political and cultural traction, in a practicable penal policy option, depended on the development of competing political problematics and technologies informed by a strategic convergence of rationalities, that is, ethopolitics. This is not an orderly combination of political mentalities, being actually replete with constitutive tensions, expressed by contradictions at the level of political programmes and technologies, which produce, *inter alia*, conflicting penal policies. The fragmentary growth of restorative justice is inextricably related to the normative inconsistencies across its very political conditions.

It is not only the emergence of restorative justice, but also its inner structure which suffers the same fragmentation characterizing the political milieu within which it arises. Restorative justice imports into the penal policy arena an ambivalent vocabulary that insists on individual responsibility in and through cohesive communities, empowering through shaming, rethinking crime but not of criminalization, critique of punishment but not of the penalty, priority of victims' needs but also of offenders' rights.

A question which could be raised now, is whether the political conditions for the emergence of restorative justice are also its *destiny*: is it possible to envisage a set of reparative practices which run counter to ethopolitical imperatives, whereby the 'subject gives itself the right to question truth concerning its power effects and to question power about its discourse of truth' (Foucault, 1996: 386)?

The constitutive incoherence of political mentalities (and of related penal policies) is the theoretical condition for contestation to arise. Furthermore, spaces of resistance likely occur when technologies are crystallized in practices and institutions (i.e. at the level of the 'real governmental practice' (Foucault, 2008: 2)), due to, for example, professional rivalries, lack of technical conditions, communication short-circuits and so on. A theoretical and empirical investigation of these spaces is a desirable challenge ahead for a critical scholarship, as well as for a restorative justice movement which aims to be not only successful (by gaining more funds, services and regulations) but also self-critical (by becoming more aware of its political roots, limitations and risks).

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1. An example of these initiatives was the launch in 1984 of the Forum for initiatives in reparation and mediation (Davies, 1992) led by the National Association of Victim Support Schemes (NAVSS).

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Author biography

Giuseppe Maglione is a Lecturer in Criminology at the School of Applied Sciences, Edinburgh Napier University. His research expertise sits at the intersection of jurisprudence, legal history and social theory. His recent works on the historical development of restorative justice in the UK have appeared in *Criminology & Criminal Justice*, *Critical Criminology* and the *International Journal of Law, Crime and Justice*.