Restorative Justice and Contemporary Political Theory

Critical Encounters

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1. **Encountering Restorative Justice**

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Abstract

Restorative justice is a growing phenomenon, as evidenced by the significant development of policy, spreading of practice, increase in public awareness and proliferation of academic research on this subject. However, there is limited theoretically informed engagement with its political nature and effects. This book is not an attempt at generating one comprehensive 'political theory of restorative justice'. Instead, it is an original endeavour to stimulate the political imagination of the restorative justice movement by foraying into different contemporary political theories and experimenting with how engaging with them could both enhance the current understanding of and inspire innovative political action through restorative justice.

> Nothing to do with a corpus: only some bodies.
> Roland Barthes (1980/1982: 8)

This book consists of six critical encounters between restorative justice and contemporary political theory. Its purpose is to contribute to creating a space for *political thinking* about, and then *political action* through, restorative justice. From this angle, the following pages provide a rich, original and innovative critical toolbox for those who find the lack of theoretical-political engagement with restorative justice problematic.

The word *encounter* derives from Latin – *in* (meaning 'in') and *contra* (meaning 'against') – denoting both a moving toward someone or something and an opposition, a moving away from them. This etymology seems to reflect the fact that encounters combine the striving toward others, our exposure to them, and the resistance that the world inevitably opposes to us. The term *critical*, meanwhile, derives from the Greek word *kritikē*, meaning 'the faculty of judging'. Critique is not a mere fault-finding exercise, a purely negative and destructive operation, but a positive and constructive endeavour to discern value, to express a stance toward the world we encounter.

A *critical encounter* is, therefore, a specific moment and space for moving toward someone or something, learning from the exposure to those encountered, experiencing the challenges of being open to others, and then engaging with a process of judgement. It involves discerning the value of who or what has been encountered and considering its consequences on us.

Facilitating a critical encounter between restorative justice and contemporary political theory is extremely timely.

In fact, restorative justice remains a largely undertheorised field, and this deficiency has detrimental consequences for its development. Namely, in a time when restorative justice is experiencing significant growth, the absence, or limited presence, of sustained political-philosophical, critical meditation around the direction of such an expansion may cause the form, substance and direction of this growth to be accepted passively, as natural and taken for granted. This could then lead to the stifling of those creative energies which have animated restorative justice as a collective enterprise and hinder their radical social impact. Specifically, neglecting the links between politics and justice may limit the capacity of the restorative justice movement to appreciate the connections between individual harms and socio-political contexts, between relational repair and social justice, thus hindering its potential to address oppressive social, cultural and political arrangements.

The relationships between politics and restorative justice are notably understudied, with very few significant exceptions (Pavlich, 2005; Gavrielides and Artinopoulou, 2013; Aertsen and Pali, 2017; Woolford and Nelund, 2019). George Pavlich's (2005) work is a precious critical analysis, largely inspired by Michel Foucault's writings, of governmental rationales that have legitimised restorative practices in the Western context. Gavrielides and Artinopoulou's (2013) collection is an ambitious endeavour to re-elaborate the philosophical foundations of restorative justice, from a variety of normative perspectives, ranging from Aristotelian thought to Ubuntu philosophy. Similarly, Aertsen and Pali (2017) offer a rich collection of critical examinations of restorative justice, aiming to deconstruct and reconstruct this idea of justice, often highlighting its political rationales and effects. More recently, Woolford and Nelund's (2019) monograph on the politics of restorative justice probes how intersecting socio-political contexts impact on restorative justice's political significance, role and effects.

In addition to these book-length analyses, over the last twenty years a few specific critical-political studies have contextualised the rise in popularity of restorative justice within a wider understanding of policy and the political process in the UK (Gray, 2005; Walklate, 2005; Maglione, 2019a; 2019b), Australia (Richards, 2011) and the US (Cohen, 2019). Others have reflected on the articulations between restorative justice politics and oppressive (gendered and racial) arrangements (e.g. Daly and Stubbs, 2013), including within postcolonial contexts (Moyle and Tauri, 2016). Some have argued for a political reorientation of restorative justice focussed on promoting equality and human relationality (González, 2014) whilst others have scrutinised the interaction between politics and language in restorative justice, focussing on the individuals who have shaped the framing, transmission and institutionalisation of restorative language (González and Buth, 2019).

These studies have made highly significant contributions to the critical understanding of the politics of restorative justice, often from a theoretically informed socio-legal standpoint. The following pages adopt a different (political-philosophical) perspective, drawing on an unexplored set of theories and theorists. This book is driven by the conviction that this type of scrutiny may elucidate the crucial, generative connections between how we conceive and organise the polity and how we think of and respond to wrongs and harms, and then in turn how specific ways of understanding and practising justice generate specific political effects. Accordingly, this book connects restorative justice to the processes which envision and

shape the polity, from a variety of theoretical approaches united by their critical and radical edge. This operation, however, does not amount to formulating a single, unified political theory of restorative justice. Instead, this book forays into different contemporary political-philosophical theories, experimenting with how they could both enhance the current understanding of and inspire political action through restorative justice. The final result is a polemical rhapsody, featuring a diverse range of thought-provoking perspectives, methods, and concepts aiming to stimulate the reader's imagination.

Along these lines, this book provides reflections on restorative justice in relation to six complex political concepts – *difference, sovereignty, community, identity, equality and subalternity* – by engaging with political thinkers who have developed a sustained examination of these categories. Each chapter, respectively, offers an analysis of how the thought of Gilles Deleuze, Giorgio Agamben, Jean-Luc Nancy, Judith Butler, Jacques Rancière and Gayatri Chakravorty Spivak could be used as a prism to unravel and reconstruct restorative justice, creatively. Before diving into such analyses, each chapter also provides a brief background of those authors' thoughts, their methods and main concepts. The reader is required to actively engage with those reflections and strategically select and employ the tools laid down in the following pages to reimagine politically restorative justice. In this way, it is possible to generate fresh insights into the vexed questions of the definition, history, cultural significance, relationships with social identities and institutionalisation of restorative justice, as well as its links with criminal justice.

This book also aims to engage politically with, not only read politically, restorative justice. This means that it seeks both to intensify our understanding of the emergence and possible trajectories of restorative justice, and to forge tools for political action through restorative justice. Each chapter, thus, is both an analytical exploration and an attempt to sketch out potential pathways for the restorative justice movement toward a radical and critical restorative praxis.

Regarding this work's disciplinary and conceptual boundaries, political theory, here, is broadly conceived as the theoretical reflection on the nature and organisation of political life and its limits. It is the space of an encounter between theory, understood as the process of critical understanding, and politics, seen as the process of imagining and conducting the polity. The authors discussed in the following pages, rather than conforming to rigid disciplinary positionings, have all worked across disciplinary boundaries. Much of the generativity of their thought depends on this defiance of preset intellectual identities. Yet the question of politics, and the theoretical engagement with it, remains central to their intellectual journeys. Their works offer radical analytical and normative frameworks to problematise restorative justice's conceptual and normative universe against the backdrop of the relationships between justice and politics. Framing the debate in this way aims to fill the gap concerning a thorough, philosophically informed analysis of restorative justice as a political phenomenon – that is, as integral to the organisation of the power relations which constitute the polity. This approach may possibly lead to (or at least facilitate) envisioning new and different futures for the restorative justice movement, thereby presenting significant praxeological implications.

Similarly, the expression 'restorative justice' is used in the following pages as a broad signpost for the social movement which has organically emerged around a range of informal justice

practices since the 1970s, in the Western world, advocating for dialogic and reparative responses to harms. Each chapter will engage with this idea of restorative justice and then unpack it, break it down, expand it and thoroughly reformulate it. This minimal working definition presents the advantage of being relatively comprehensive and open-ended, enabling a generative engagement with restorative justice's rather fluid (and often contested) operational, conceptual and normative universe.

The absence of a neat, totalising narrative across this book's chapters reflects both this substantive tendency to cross disciplinary boundaries and the choice to use a comprehensive working definition of restorative justice. Instead of presenting a single argument, the book unfolds through six distinct stories. The aim is not merely to replicate those authors' thought but to attempt 'to use it, to deform it, to make it groan and protest' (Foucault, 1975/1980: 54), without subsuming it to a greater whole. In this way, it is possible to express the diversity and plurality of the theories and theorists encountered, both substantively and stylistically. It then relies on the reader's willingness to both challenge their common sense, and to participate actively in reassessing some of their certainties, experiencing a puzzling discomfort when confronting thought-provoking analyses. This is at once a theoretical, ethical and pragmatic exigency. The refusal to formulate a ready-to-use, grand political theory of restorative justice, in fact, is driven by the desire to treat the reader as an active companion (and not a passive audience) in this journey, in a bid to facilitate the emergence of new ideas whilst empowering the reader to ask new questions.

Each theory and the respective authors have been selected for two interlinked orders of reasons. On a general note, these theories and theorists have yet to be monographically considered by the restorative justice literature whilst they are all renowned for the conceptual richness and transdisciplinarity of their investigations. From a substantive perspective, they offer a repertoire of critical instruments capable of both rethinking the historical development of restorative justice (with a specific focus on its political conditions) and proposing ideas for its future political roles. The selected theorists can all be described as 'continental' philosophers writing about fundamental political questions. Their approaches are historically informed and sensitive to the entanglement of power and knowledge and the material and cultural realms. Their descriptions are normative, their proposals are radical, and they tackle the roots of the problem whilst suggesting fundamental options for a future to come. These authors contest originary principles while reinventing them critically, confronting established authorities and envisioning new paths for change. From this angle, they help in problematising accepted narratives of the history of restorative justice whilst providing instruments to scrutinise the growth and formalisation of restorative justice by connecting it to broader political questions.

Notwithstanding these commonalities across the works and authors encountered, there are also conspicuous differences. Significant conceptual and methodological tensions exist between the Spinozian–Nietzschean orientation of Deleuze, Agamben's and Nancy's broadly Heideggerian approaches, and the Hegelian–Marxist theories advocated by Butler, Rancière and Spivak. The problem is not the existence of tensions, though, but the lack thereof, the absence of a diverse range of orientations. This book's open-ended texture attempts to honour theoretical plurality and methodological diversity, deemed as conditions for critical

understanding, by experimenting, playing with existing theories to raise new, daring questions about the basic tenets of restorative justice.

The book starts off encountering a thinker who dedicated his intellectual life to transcending conventional cultural boundaries, advancing a thought built around difference, defying any form of reductionism – Gilles Deleuze. Through Deleuze this chapter reflects on how we can draw a dynamic portrait of the multiple processes which constitute restorative justice without falling into anachronism and reductionism, whilst multiplying restorative justice's potential for forging new forms of solidarity.

Deleuze, in particular through the concept of *assemblage* (developed with his intellectual companion Félix Guattari), enables us to analyse restorative justice by combining different spheres: natural and cultural, semiotic and material, individual and social, psychic and political. Adopting this perspective, this chapter generates a multidimensional and intensive understanding of restorative justice. It then outlines the idea of a *nomadic restorative justice*, a political strategy of nurturing the creative, unbounded libidinal energies that inform restorative encounters by creating new spaces for enhancing people's capacities, although not without its share of challenges.

The following chapter reflects further on the relations between politics and restorative justice by connecting them to ontological issues. In doing so, it encounters a key figure in contemporary political theory, Giorgio Agamben. This chapter uses his work as a prism through which to address the relationships between sovereignty and restorative justice and the implications of an embodied form of justice whilst reflecting on the model of human life integral to restorative encounters. Agamben's philosophical archaeology traces the fundamental categories of restorative justice back to their origin, unearthing the ontological-political stakes of restorative justice. Here, *origin* does not denote the specific point in time when something begins but rather the fluid array of cultural forces that over time have shaped this form of justice. These forces demand critical scrutiny, which can then support the development of a radical *coming restorative justice*. This view suggests abandoning the juridical-sovereign models which are implied by the current process of institutionalising restorative justice and instead seeking politically engaged, means-oriented models of restorative praxis.

Similarly to Agamben's analysis, the chapter on Jean-Luc Nancy explores from a political-ontological angle the themes of relationality and *community* in restorative justice. Nancy offers material to rethink restorative justice as a hospitable space delivered from criminal justice, aiding us in reimagining community as a condition for exposing human beings' sociality without collapsing their singularities into identities.

Restorative justice, in fact, is often described as a form of relational justice, an endeavour to cure broken social bonds. The involvement of communities in restorative processes is integral to this representation. Yet relationality and community are not self-evident concepts, and the frequent claim that restorative justice's 'communitarian' nature is cast against criminal justice's 'individualism' requires political-philosophical analysis.

Nancy's work constitutes one of the most thorough contemporary critiques of both individualism and communitarianism. From his vantage point, both approaches revolve around a reified entity – either 'the individual' or 'the community' – endowed with an objective identity around which politics should be shaped. Both disregard the fact that the

human condition is always necessarily shared, that being is always being-in-common. Human beings are not defined by a common natural quality determining their identity but rather by their necessary exposure to each other. This chapter equips us with a sensibility to rethink the very core of restorative justice, whilst pointing to a *restorative justice singular plural* as an effort to counter the denial of difference exerted by capitalist forces on humans' quest for justice.

The issues of relationality and identity in restorative justice are also at the centre of the chapter on Judith Butler, a contemporary American philosopher who has produced innovative thinking on how the imbrication of political power and cultural frameworks contributes to creating spaces of social and individual oppression or emancipation.

Butler provides instruments to reflect on how restorative justice can be a space wherein participants can perform their 'selves' and enrich their personhood, whilst unearthing the implications of a form of justice which recognises interdependence, vulnerability and social precarity. By creatively appropriating Butler's theories, it is possible to rethink how restorative encounters may impact on *identity-making* processes and then to formulate a space for developing emancipatory strands of action and thought within it.

Encountering Butler's wide-ranging, transdisciplinary critique prompts a radical reflection on key claims surrounding restorative justice. Butler furnishes elements to elaborate certain aspects of restorative justice – the focus on interdependence, the critique of state justice, non-violence – whilst helping to imagine a *restorative justice otherwise*. This is a critical understanding of restorative justice as a political praxis informed by the awareness of the mutually constitutive links between social vulnerability and resistance, individuality and interdependence, subjectivation and subjection.

The following chapter, drawing on French philosopher Jacques Rancière, argues that the dynamics taking place during restorative justice encounters, including the identity-making dynamics described by Butler, should be considered distinctively political processes. People caught in those interactions, in fact, find themselves provided with or lacking the rights and duties to perform particular kinds of meaningful action, such as negotiating or rejecting assigned identities. This approach poses the problem of whether and how restorative encounters ensure *equality* between participants or instead enforce an unequal distribution of those rights and duties.

Rancière helps us rethink stakeholders' positions within restorative encounters by reflecting on how to enable people to articulate their own *logos* whilst raising the question of how restorative facilitators can promote social equality. Hence, this chapter provides fresh insights to widen and deepen the discussion on the politics of restorative justice, connecting broad issues of institutionalisation and de-institutionalisation with the specific functioning of restorative practices. It also outlines a *democratic restorative justice,* the process of infusing equality into restorative encounters whilst uncovering the limitations of existing forms of justice, questioning their foundations and effects, establishing new relations, allowing new voices to emerge and politicising what is at stake.

The final chapter expands on the theme of equality in restorative justice, encountering Gayatri Chakravorty Spivak, a literary critic whose work has been informed by feminist concerns, Marxist analysis and deconstruction. Spivak has dedicated her career to engaging with *subalternity*, the condition of being at once politically disempowered, economically deprived

and culturally silenced. Searching for, obtaining or being denied the experience of justice always takes place in specific contexts wherein human beings encounter each other. These contexts are often marked by struggles between those who are left at the margins, disenfranchised and suffering, and those who have the power to oppress both materially and culturally. Restorative justice is not immune to such dynamics. Through Spivak it is possible to reflect on how restorative justice can perpetuate political and cultural exploitation whilst imagining a decolonised, ethical restorative justice.

Encountering Spivak means not only enriching the critical vocabulary of restorative justice but also reflecting on the positionality of such vocabulary, adding a further crucial layer to our analysis. Ultimately, Spivak may serve as a catalyst for restorative justice to become an active force toward the re-establishment of a justice that is more than Western justice. From this perspective, this chapter points to a *subaltern restorative justice,* a reflection on how subalternity could inform justice practices understood as intersectional interventions aiming to redress unbalanced power dynamics. This would lead to dialogues which incorporate different concepts of the world and address power differentials related to gender, class and culture in a bid to address interlocking experiences of oppression.

The book also includes some concluding reflections on recurrent themes across the different chapters, looking particularly at the ontological and ethical-political dimensions of a justice that aims to restore just relations. The goal is not to draw a unified theory of restorative justice but to identify some crucial issues that need to be further addressed in order to develop a critical and political restorative praxis.

Overall, this intellectual endeavour is inextricably bound to a normative standpoint – that is, the analyses provided in this book demand specific types of political praxis. As Aristotle argued in the *Nicomachean Ethics* (350 BCE/1999), theory does not simply refer to abstract thought divorced from mundane concerns but to the contemplation of the most important things in the pursuit of a good life – that is, theory is always normative. From this angle, each chapter sketches out different paths for restorative justice to play a significant political role in addressing social, cultural and political oppression.

These analytical-normative reflections ultimately seek to keep restorative justice as dynamic and open as possible, with the awareness that closing off this field will ossify its radical potential and that the separation of intellectual critique and political action from imagining justice will lead to injustice.

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2. Encountering Desire

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Abstract
How can we draw a dynamic portrait of the multiple processes which constitute restorative justice? How can we rethink the history of restorative justice without falling into anachronism and reductionism? How can we multiply restorative justice's potential for forging new forms of solidarity?

This chapter encounters a thinker who dedicated his intellectual life to transcending conventional cultural boundaries – Gilles Deleuze. Deleuze, in particular through the concept of *assemblage* (developed with his intellectual companion Félix Guattari), helps us analyse restorative justice by combining different spheres: natural and cultural, semiotic and material, individual and social, psychic and political. Adopting this perspective, it is possible to generate a multidimensional and dynamic understanding of restorative justice. Deleuze, in fact, provides materials to rethink restorative justice in ways which widen our intellectual horizons and push us toward the very limits of our common comprehension of what restorative justice is, could be and should be.

This chapter also outlines the idea of a *nomadic restorative justice*, a dimly sketched political strategy for nurturing the creative, unbounded libidinal energies that inform restorative encounters by creating new spaces for enhancing people's capacities, although not without its share of challenges.

> Something in the world forces us to think, this something is not an object of recognition but of a fundamental encounter.
> Gilles Deleuze and Félix Guattari (1968/2014: 183)

Becoming, Desire and Justice

How can we rethink the history of restorative justice without falling into anachronisms? How can we draw a dynamic portrait of the politics of restorative justice avoiding simplifying reductionisms? How can we conceptualise critically the institutionalisation of restorative justice? How can we multiply restorative justice's potential for forging new forms of solidarity?

This chapter argues that addressing these questions requires a sustained engagement with different domains and their interconnections: natural and cultural spheres, semiotic and material elements, individual and social bodies, psychic and political processes. The main figure encountered in these pages is Gilles Deleuze, a thinker who dedicated his intellectual life to transcending well-established ontological, epistemological and conceptual boundaries.

A prominent figure in contemporary French philosophy, Deleuze advances a materialist, vitalist and empiricist theory which foregrounds *desire* and *becoming* as, respectively, the fundamental force and dynamic structure of reality. Much of his work is an endeavour to analyse how desire and becoming are socially captured and individually experienced. He challenges foundational Western philosophical notions, such as being, identity, representation and, more broadly, the negative – that is, thought articulated around basic dialectical dichotomies (being/non-being, matter/form, interiority/exteriority). Deleuze focuses on how things *become* rather than how they *are*, thinking of reality as a dynamic field wherein an array of forces combine, clash and coalesce, producing individual and social bodies. His philosophical work is shaped as a creative practice, an artistic intervention to generate new concepts and, in this way, new forms of thinking, seeing, speaking – in short, new possibilities for life. With Félix Guattari, in *Capitalism and Schizophrenia* (1972/2013; 1980/2013), his most ambitious work, Deleuze describes how desire is consolidated and dispersed, whilst arguing that the aim of thinking should be unearthing and questioning our desire to be subjugated, thereby propelling us toward revolutionary behaviour at both micro and macro levels.

The following pages 'play with' Deleuze to generate a multidimensional and dynamic understanding of restorative justice. They creatively appropriate one Deleuzian–Guattarian instrument in particular – the concept of 'assemblage' (*agencement* in French) (Deleuze and Guattari, 1980/2013: 2) – experimenting with how it may contribute to unpacking and reconstructing critically restorative justice.

Deleuze is like a *machine* capable of folding and unfolding restorative justice in unexpected and thought-provoking ways, widening our intellectual horizons and pushing us toward the very limits of our common understanding of what restorative justice is, could be and ought to be. Here, there is no prophetic solution but the struggle to forge new methodological, conceptual and normative tools that others will have to take up. This chapter endeavours to reproduce this puzzling experience, conjuring up the multiple vibrations that traverse the Deleuzian machine.

Encountering Gilles Deleuze

Deleuze's intellectual journey can be broken down into four main phases, characterised by the emergence of specific themes or approaches. Despite such variations, these stages are all underpinned by the conviction that philosophy is the expression of thought's active and positive function, explicated in the creation of concepts. Deleuze's overarching aim is confronting chaos whilst defying *microfascisms*, that is, human tendencies toward self-oppression. Rather than discrete phases, it might be more apt to consider Deleuze's career in terms of intellectual strata, each relying upon the previous and connected to the next, producing the layered character of his philosophical itinerary.

In his early works, Deleuze acts as an interpreter of other philosophers and writers: David Hume (1953/2001), Friedrich Nietzsche (1962/1983), Immanuel Kant (1963/2008), Marcel Proust (1964/2008) and Henri Bergson (1966/1991). Writing as a highly original historian of philosophy, Deleuze produces thought-provoking and counter-intuitive readings of these authors, who will deeply influence his entire intellectual journey. A few years later, Deleuze

finds his own philosophical voice through his groundbreaking works *Difference and Repetition* (1968/2014) and *The Logic of Sense* (1969/2015). Both books bring forward some of Deleuze's main pre-existing themes – sense, sensation, difference and repetition – by weaving them together whilst further expanding them in unique ways. By contrasting sensation with meaning and difference with identity, Deleuze lays the groundwork for his epistemology and ontology during this phase.

In the late 1960s, whilst writing two books on Baruch Spinoza (1968/1992; 1970/2001), Deleuze first encounters Guattari, and their collaboration marks the emergence of a new intellectual stratum, epitomised by the two volumes of *Capitalism and Schizophrenia*, a work on Franz Kafka (1975/1986) and the late *What Is Philosophy?* (1991/1994). *Capitalism and Schizophrenia* is, in many respects, Deleuze's most overtly political work, though it draws from various elements produced during his earlier philosophical explorations, highlighting the genuinely political nature of his entire journey. Volume 1, *Anti-Oedipus* (1972/2013), offers a scathing critique of the Freudian–Marxist narrative of innocent libidinal energies repressed by social institutions. Deleuze and Guattari maintain that social reproduction and economic production are intrinsically linked: the nuclear family privatises social reproduction as capital privatises economic production. From this angle, they challenge the capitalist nature of psychoanalysis and its Oedipal model of sexual relationships which reduces desire to fixed identities. On the contrary, Deleuze and Guattari advance a concept of diffuse and subjectless desire and unearth the microfascist tendencies which traverse the social and individual body. Volume 2, *A Thousand Plateaus* (1980/2013), is an effort to formulate an immanent and historical social ontology animated by a specific normative commitment. This effort results in the elaboration of what Deleuze and Guattari call *nomadic thought*, a perspective operationalised through an array of innovative concepts, among which the idea of *assemblage* with its emphasises multiplicity and difference, crossing ontological, epistemological and normative boundaries, is probably one of the most well-known.

The final stage of Deleuze's work, lasting until his death in 1995, includes works on art – e.g. cinema (1983/2013; 1985/2013) – and artists – particularly Francis Bacon (1981/2017) – as well as his book on his friend the late Michel Foucault (1986/2006). This phase primarily involves the application of concepts developed earlier to specific subjects, renewing his thought in the process, and addressing subjects as different (yet entangled) as power, artistic-visual practice and sensation.

Overall, this intricate intellectual itinerary bears the marks of at least four philosophers who significantly influenced Deleuze throughout his career: Spinoza, Hume, Nietzsche and Bergson. Deleuze interprets Spinoza as the philosopher of the body, immanence and ethics, Hume as the champion of empiricism and radical subjectivism, Nietzsche as the philosopher of power and genealogy and Bergson as the scholar of the relationships between life, virtuality and time. These thinkers collectively share an interest in the concept of becoming, viewing reality as a field of active forces whilst unearthing the connections between ethics and politics. To this list, we should add Kant, Freud and Marx, with whom, before and after the encounter with Guattari, Deleuze continued to engage in dialogue, challenging their foundational claims.

The ultimate result of Deleuze's multiple intellectual engagements is a composite philosophical approach. His ontology contests the privilege given to things and substances, and therefore to extension, foregrounding intensive forces – *desire* – as the basic components of reality. His epistemology disputes the very idea of reason as an a priori way of relating to (and knowing) the external world. Deleuze posits that there is nothing external to our thought; rather, everything is part of a world in which human thought and life are integral. Knowledge is the result of our interaction with the world we are inherently part of. He advocates for 'machinic' production, a subjectless and self-sustaining process of generating reality, encompassing more-than-human and other-than-human entities (Deleuze and Guattari, 1972/2013: 102; 1980/2013: 506). His goal is not to rediscover the eternal or the universal but to find the conditions under which something new is produced and then determine it, by creating new concepts (Buchanan, 2021: 52). Ontology and epistemology, however, in Deleuze's framework, are preceded by politics. Reality and our knowledge of it are an expression of forces which constitute us. From this normative angle, Deleuze interrogates our desire for subjugation, proposing to disentangle first from our own internal forms of self-oppression, hierarchy and fixity, which converge in our identity, and then from oppressive social institutions as a path to micro- and macro-revolutionary action.

Deleuze's Approach

Thinking about restorative justice through the concept of assemblage presents numerous advantages. Namely, it provides both analytical creativity and normative coherence, generating new ways of critiquing and then reimagining restorative justice. Additionally, it allows for a journey across the entire Deleuzian itinerary, connecting multiple aspects of his work and promoting wider engagement with this thought-provoking author.

The concept of assemblage is one of the results of Deleuze and Guattari's endeavour to describe the heterogeneous aspects of the reality human beings are enmeshed within (Deleuze and Guattari, 1980/2013: 2). Assemblage is thus a social-ontological instrument, not a static entity or a thing, but a dynamic process of looking at reality by connecting creatively different material elements (things, bodies, actions, passions) and signs (words, discourses), according to a specific diagram, driven by desire and leading to specific effects. Contrary to what the name might imply, in fact, assembling does not mean haphazardly lumping together disparate elements of reality. Instead, it requires examining reality by highlighting specific connections among different types of elements, making them resonate with each other.

By adopting this perspective it is possible to generate an understanding of reality as an open-ended network (and not a seamless and organic whole) of human, non-human and other-than-human elements, of different scales and orders, sustained by an underlying force – *desire* (Buchanan, 2021: 47; DeLanda, 2006: 4). This understanding is consistent, dynamic and oriented. Consistency arises from the fact that the assemblage reconstructs a certain phenomenon by focussing on how desire, the de-individualised flow of intensities which produce reality, informs such phenomenon. Desire is inherently productive; it is not an impulse toward something but a primal energy cast against the unformed matter which constitutes the background of life (Buchanan, 2021: 66).

Thinking in these terms involves making visible the active forces which constitute reality, as well as their clashes, combinations and intersections, which can lead to stability or conflict, at different speeds and with varying effects. Dynamism is related to the fact that these elements are not simply put together but change in quality and quantity, extension and intensity, whilst interacting with each other. The properties of the assemblage emerge from this interaction between components. This inherent dynamism is organised by a diagram, or 'abstract machine' (Deleuze and Guattari, 1980/2013: 81), a set of relations which develop across these elements and signs, endowing the process with a meaningful orientation. These relations exist independently of those components and follow a direction given by the forces underlying the entire assemblage. In terms of effects, the assemblage both makes and unmakes reality, as expressed vividly by Deleuze and Guattari, who describe it as 'stratifying' reality (Deleuze and Guattari, 1980/2013: 46). This means that the assemblage produces strata or layers of reality (material and discursive) in the face of unformed social matter – what Deleuze and Guattari emphatically call the 'body without organs' (1980/2013: 173) – whilst also harnessing the desire of unbecoming. The reality produced is not a unified whole, but a multiplicity characterised by relations enacted by the assemblage. There is no predetermined purpose or endpoint to this process; the effects are produced serendipitously through the dynamic and creative connections that constitute the assemblage.

In short, the assemblage aids in dynamically reconstructing a certain phenomenon – in our case, restorative justice – crossing both ontological and epistemological boundaries. It does so by charting how the heterogeneous components of restorative justice become and unbecome, fluidify and solidify, looking at them as part of a constellation of interconnected material and discursive elements, in movement, at different speeds, in different directions. As this chapter will reveal, the assemblage's functioning is inherently normative: by reconstructing restorative justice in this way, it also points to new and different possibilities for thinking of and doing justice.

Assembling Restorative Justice

The process of 'assembling' restorative justice begins with the arrangement of different material and semiotic elements. Material components constitute the content of the restorative justice assemblage, its machinic dimension, whilst semiotic elements pertain to its expressive side (Deleuze and Guattari, 1975/1986: 81). Material and discursive elements are dynamically connected and inscribed onto each other (Buchanan, 2021: 33; DeLanda, 2006: 12). Such components can be envisioned as lines: *molar* lines (rigid lines, such as those in the hierarchical and bureaucratic institutions regulating restorative justice), *molecular* lines (fluid and primal lines, such as the feelings and sensorial experiences that take place during restorative encounters) and *lines of flight* (like the development of a critical restorative justice), which work as the paths along which change is actualised and can transform assemblages creatively. The terms molar and molecular, here, have nothing to do with size; instead, they refer to qualitative states. Molarity involves the translation of desire into transcendental, fixed signifiers, whereas molecularity implies unstructured, high-speed flows. They are not in opposition but rather linked as each other's potential – a molar line can become molecular, and vice versa. Then, depending on how these lines combine, a supple or a rigid reality will be generated. The restorative justice assemblage includes those

two dimensions (material and semiotic) along these three different lines (molar, molecular, flight), which intersect, overlap and clash, generating different types of effects over time.

Semiotic Elements

Molecular semiotic elements provide the restorative justice assemblage with an open discursive texture. These components encompass a range of signifiers that can be articulated in different ways, remaining open to contestation and interpretation. Conversely, molar denotes codified signifiers which provide the assemblage with a semiotic rigidity. In the first group we should include the key concepts of *harm*, *stakeholders*, *encounter*, *facilitator*, *reparation* and *transformation*. In the latter group, we should include *policy* (legal, regulatory and administrative) on restorative justice enacted by institutional apparatuses. Clearly, there is a fundamental connection between these two groups: molar semiotic components are a development of the molecular semiotic elements, as much as the molecular is nothing but the molar's potential. These components, taken individually, pre-exist the restorative justice assemblage, but it is within the assemblage that by interacting according to distinctive relationships, they engender the reality we call 'restorative justice'.

Harm denotes the negative consequences of a behaviour deemed by a range of stakeholders as morally wrong. *Stakeholders* are the participants in restorative justice processes, 'victims' (or the 'person who has been harmed'), 'offenders' (or the 'person who has harmed') and 'communities', who have a direct stake in the harm and its consequences (Christie, 1977; Johnstone, 2011). Harms, in fact, 'belong' to relevant victims, offenders and communities, since they experience them directly, making the involvement of these direct actors necessary. The *encounter* is the time and space wherein the active participation of relevant stakeholders is enacted (Zehr, 2005). Here, responsibility is assumed, parties are heard, emotions are harnessed and accountability is activated (Dignan, 2002). The presence of a *facilitator* is a key condition for the encounter to be restorative, on the assumption that parties will not be able to find restoration by themselves (an idea somewhat conflicting with the concept of stakeholding mentioned earlier). *Restoration* indicates a critique of retribution (understood as the deliberate infliction of pain as a form of just desert), which emphasises instead the re-establishment of agency by correcting the material, psychological and symbolic dimensions of harm. It also seeks to heal the supposed social bond between stakeholders corroded by harm. *Transformation* refers to the stakeholders' journey of personal self-improvement, seen as a condition or consequence of repairing harm.

These key molecular semiotic components, which form a minimal 'restorative vocabulary', are informed by scientific, religious and moral-philosophical perspectives which endow the assemblage with its epistemic foundations (cf. Maglione, 2019: 654). Victimology provides restorative justice with the idea of a victim's marginalisation and the rise of victimhood as an academic subject (and political resource) (Garland, 2001: 11). Thus, it promotes the direct involvement of crime victims in criminal justice and the necessity of satisfying the victim's needs to 'be heard' and 'speak out'. The emergence of the 'third way criminologies' (Hughes, 2007: 23), which focus on crime as an effect of the progressive erosion of the moral fabric of local communities (Duff, 1992; 2000; Dzur, 2003) to be addressed with (moralising) community-based interventions, underpins much of the semiotic repertoire of restorative

justice, particularly the concepts of harm and stakeholding. Within this context, a central topic has been the emergence of 'everyday' youth offenders. Restorative justice has historically been conceptualised as a third way response to the youth 'problem', centring on responsibilisation by holding youth offenders accountable for the harm caused, as well as by requiring reparation for the consequences of crime.

This cultural background also includes sociological propositions around the 'eclipsing' of moral communities (cf. Etzioni, 1993; Giddens, 1998), as an effect of the combined action of conservative individualism and post-war social democracy, against which restorative justice aims to revitalise communities by involving them in response to harm. Penal minimalism is also relevant here, as the position advocating for the civilisation of punishment and the problematisation of legal language and its stigmatising effects (Christie, 1977). Religious and moral-philosophical perspectives contribute to the epistemic foundations of the assemblage as well. The 'therapeutic' and 'self-help' (Richards, 2005) movements have supported the development of restorative justice as a self-described healing and empowering form of justice which focuses on closure, forgiveness and reconciliation. Mennonites' and Quakers' ethical doctrines, with their focus on non-violent response to wrongdoing, spiritual rehabilitation and community-based and inclusive justice processes, also have been a source of semiotic material for restorative justice (Liebmann, 2007). Lastly, Westernised versions of Indigenous cultures and practices have played a similar role. This is the case for Navajo peacemaking, Māori conferencing and South African Ubuntu, which have provided a culturally specific platform used by Western scholars and policymakers as both a historical explanation of and a justification for the emergence of restorative justice (Zehr, 2005).

This complex, yet not exhaustive, molecular semiotic material is integrated into molar semiotic components such as regulatory decisions, laws and administrative measures. Taken together, molecular and molar semiotic components constitute the discursive dimension of the restorative justice assemblage.

Over the last thirty years a wide number of public policy measures have been enacted by local, national and international bodies regulating restorative justice. They weave together molecular semiotic aspects whilst infusing legal authority into (some of) them, on the basis of policymakers' preferences. This implies a molarisation of those molecular semiotic elements – that is, their qualitative transformation from organic and supple discourses to legally sanctioned 'order-words' (Deleuze and Guattari, 1980/2013: 88). At the international level, examples of this process are the passing of the United Nations 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' (1985); the Council of Europe Committee of Ministers Recommendations No. R(99)19 and CM/Rec(2018)8 concerning respectively mediation in penal matters and restorative justice; the United Nations 'Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters' (2002); and European Union Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (The Victims' Directive). Worldwide, an increasing number of national policies and laws on restorative justice are passed every year. There seem to be two general models of policy or legal regulation of restorative justice: centralised (that is, policy documents dedicated entirely to restorative justice) and diffuse (single norms introducing specific interventions with a limited reach). In the United States, thirty-two states now have either specific legislation on restorative justice within criminal justice or

specific single, normative dispositions on restorative justice within regulatory frameworks, disciplining other matters (González, 2020). In Europe, Belgium and Norway have developed a centralised approach whilst the United Kingdom has developed decentralised regulation. Aotearoa New Zealand is another example of centralised regulation. A further recurrent distinction is between restorative justice regulations for youth and adults. In the case of youth offenders, the youth's interest has to be balanced against the victim's interest, whilst for adults such balance is struck in a different way since there are no specific concerns regarding the offender's welfare. Non-statutory documents also represent an important macro-regulatory area. These span from regulatory bodies' initiatives to governmental recommendations. They continue to play a critical role in creating institutional space for restorative justice, increasing public recognition, legitimacy and provision.

Material Elements

Material molecular elements encompass the affective states experienced by individuals involved in restorative encounters. From a molar perspective, instead, material elements consist in the organisations (councils, NGOs etc.) which structure the social field and enable restorative justice encounters.

During restorative justice encounters multiple sensory modalities unfold. Sound frequencies, lighting levels, colour differentiation, and so on are all integral to encountering the other in a restorative justice setting (cf. McClanahan and South, 2020). This is the embodied dimension of such encounters, wherein flesh-and-bones individuals physically meet. Waiting for the other stakeholders, sitting on an office chair in a waiting room or in the facilitator's office. Entering an anonymous office, the pale-coloured walls, the absence or the presence of a table. The smell of a place unfamiliar and perhaps perceived as hostile or as a place of hope. And then seeing the other, victim or offender, person who has been harmed or person who has harmed, taking a seat in a pre-arranged space. Looking away, staring. A sense of fear or awe. The silence and the small talk before the encounter starts, the surprise, shame and fright given by the sudden appearance of the other. Listening, perhaps being interrupted, modulating the voice, trying to be concise, sometimes sticking with the restorative script. The silence which more or less frequently takes over the encounter. Smiling or crying. Touching a pen or a piece of paper, taking notes whilst the other is speaking. Fiddling, scratching one's head, caressing one's face. Shaking hands or physically withdrawing. Restorative encounters are constituted by embodied sensorial experiences (sight, sound, taste, smell and touch) like these, expressive of affective states, which interact often in subtle yet important ways.

These sensory modalities are assembled in distinctive ways – that is, their functioning is generated through their interaction with other components of the assemblage. These modalities' strength (that is, their frequency, or how often they occur), reciprocity (the symmetry or asymmetry of the interpersonal relations – e.g. who plays a more dominant or recessive role during encounters), density (the intensity of the connection across bodies partaking in a restorative encounter), stability (the presence or absence of disturbances from a condition of equilibrium) and solidarity (the interdependence of emotional and cognitive performance across participants) are all increased or decreased, affected and

affecting, depending on how the other molecular and molar semiotic and material elements are playing with each other (cf. Colman, 2008).

The design of the built environment 'materialises' the semiotic elements of the assemblage whilst providing a stage for those sensorial experiences. Courthouses' layouts express rigid positions within the justice process, as well as principles of hierarchy, accountability and responsibility. Correctional facilities' architectural diagrams express the pains of solitude and the deprivation of freedom. Restorative justice practitioners have characteristically advanced the need to redesign the spaces in which justice occurs as restorative spaces (Hobson, Payne, Bangura and Hester, 2022). These are spaces wherein listening and cooperation from all sides can be facilitated by the organisation of the proximate environment. From this perspective, the circle plays a critical role. This is a 'personal' space wherein no physical hierarchy can be established or recognised, insofar as everyone occupies the same position as everyone else. The circle is often presented as re-enacting Indigenous traditions of conflict resolution (Greenwood, 2005). A second structured form is the triangle (Brigg, 2003), wherein parties sit next to each other facing the facilitator. This is a 'sharper' organisation of the space, in which parties occupy positions which symbolise different roles with respect to the facilitator. Historically, this is an early form of contemporary restorative justice encounters, characterising victim–offender reconciliation programs developed in Canada and the United States in the late 1970s. Today, however, there seems to be a tendency to invest more in the circle than the triangle, especially in the case of youth justice. These two different models of designing the encounter embody different values. Circles, in fact, embrace a transformative discourse, whilst the triangle is more consonant with reparative intent. Both designs are said to create horizontal relationships, underplaying the role of the facilitator as an expert in the process, external to its content. A recent innovation in this context is the idea of the 'restorative city' (e.g. Straker, 2019). This represents an attempt to create a new, expansive restorative space, supposedly outside the triangle and circle as enclosed and artificial spaces. Restorative cities diffuse and systematise those semiotic components by injecting them into existing organisations, aiming to create a restorative space which surrounds human life and through which human life is cultivated.

A final molar material element consists of institutional bodies: conventional criminal justice organisations, communitarian institutions, and distinctive restorative justice organisations which operationally enable the 'delivery' of restorative justice. Police have been one of the first agencies to endorse restorative justice, by training officers in restorative approaches and actually launching and running restorative justice services (Davis, 1992). One of the reasons for this appeal has been that restorative justice, as a policing option, resonates with community policing and community resolution techniques as instruments for responsibilising e.g. youth offenders. Probation services have administered restorative justice programs since the 1970s, whilst prisons are a more recent space in which restorative justice has found some applications. In this context, restorative justice is either a penal option in addition to conventional punishment or independent from it, such as a condition for probation, an element of the sentence or an option given outside the sentencing framework (Daly, 2016). Restorative justice can also count on the support of a wide range of communitarian institutions, such as third sector agencies, non-governmental organisations, and voluntary groups involved in doing restorative justice within and outside criminal justice settings, such as victim support organisations and specific institutional bodies created to

lead the implementation of restorative justice (e.g. the 'restorative justice councils' which oversee the development of training and service delivery in e.g. the United Kingdom, United States and Norway).

Abstract Machine and Body without Organs

This multiplicity of semiotic and material elements is connected and orientated by an *abstract machine*, a diagram which cuts across the elementary components charted above, giving them consistency (Deleuze and Guattari, 1980/2013: 81; cf. DeLanda, 2006: 30). These connections are of different types; some consist of conflicts, others of combinations, overlaps or intersections. This emerging diagram is a field of relational forces – a 'rhizome' – neither a permanent structure, nor a pre-existing form, but rather a dynamic field with a basic orientation (Deleuze and Guattari, 1980/2013: 2). In the case of restorative justice, this diagram is the product of two different machinic processes: structural individuation and functional sequencing of semiotic and material elements.

The semiotic and material elements constituting restorative justice are *individuated* – that is, synthesised from that state of radical potentiality, a magma of virtual relations also known as desire – through a contingent process which responds to local and partial conditions. The abstract machine is the connection across those forces, the condition of their individuation as a singular meaningful object: in our case, restorative justice. This connection is not an outcome achieved once and for all but a continuous process which makes interacting molar and molecular elements. Restorative justice emerges as a configuration of individual bodies in search of responses to discrete actions qualified empirically as harms and normatively as wrongs. It involves the interaction between legal and non-legal, institutional and non-institutional actors, working in specific spatial environments. This configuration is only one possible form which could be given to restorative justice, yet it is historically the most stable.

The second dimension of the abstract machine is the functional sequencing of restorative justice. This means that once individuated, restorative justice is explained and justified sequentially. This happens by posing the abstract signifier 'conventional criminal justice in crisis' as the backdrop against which restorative justice is cast. Conventional criminal justice is a constellation of generalisations about the justice system, described as affected by a crisis of legitimation produced by criminal justice's incapacity to fulfil victims' needs and address reoffending. Restorative justice is therefore explained and justified as a functional response to such a crisis. The basic semiotic diagram of harm–stakeholding–encounter–reparation, expressed through specific material conditions, constitutes this response.

Both structural individuation and functional sequencing are libidinal processes. They express a productive tendency toward the codification of social reality. This machinic tendency, though functional, engenders tensions as well. There are tensions between semiotic components informed by standard criminal justice notions (such as victim and offender) and specific restorative concepts (the person who has harmed and the person who has been harmed). The former concepts express a distinctive criminal justice language, molarising identities and stigmatising, whilst the latter denote a proactive understanding of the stakeholders involved in restorative encounters. Similarly, there are tensions between victimological research findings, which put forth the idea of restoration as victim

satisfaction, and the penal minimalist idea of restoration as offender reintegration. There are complex relationships between material and semiotic elements as well. Material elements do not simply provide 'a platform' for the latter to be put in action. Instead, they produce or reproduce semiotic elements themselves impacting on the semiotic structure of the restorative justice assemblage. The spatial form of restorative encounters as a triangle or a circle affects the content of the encounter which will then take place, and the participation of certain stakeholders (professionals such as police officers or social workers, as often happens in the case of youth restorative justice conferences) materially alters the encounter as well, rendering it more or less inclusive or formal.

The restorative assemblage, orientated by the abstract machine, is cast against a non-organised background constituted by affective relations and populated by multiplicities, a 'body without organs' (Deleuze and Guattari, 1980/2013: 173). This background adds a further dimension to our analysis, a dimension which will then be crucial when trying to unearth the assemblage's normative level. The body without organs is the limit of the assemblage, 'what remains when everything is stripped away' (Deleuze and Guattari, 1980/2013: 174). It is the virtual of restorative justice, the pre-individuated *justice-desiring flows* which pre-exist the organised versions of restorative justice, a composition of affective multiplicities in their constant becoming which are then connected by the abstract machine. *Affect*, here, refers to the product of an encounter of bodies, their intensive molecular variation, lived and ethical, active or reactive, in time and space, in transformation. In our case, these affective relations are the entanglement between different justice-desiring flows, the libidinal energies expressed by the tension toward active and reactive affections traversing bodies whose powers are limited, coerced and decreased by destructive engagements with others' powers. More fundamentally, here, 'justice is desire' (Deleuze and Guattari, 1975/1986: 49), which means that what bodies strive to do when limited by other powers is to produce a new reality, generating new *multiplicities*. Multiplicities are the intensive mutations and gradations constituting bodies, unfolding over time and without spatial boundaries. The challenge, at this point, becomes deciphering what happens to this justice-as-desire, this emission of multiplicities, when the assemblage is set in motion, when this complex machine starts capturing and organising these magmatic flows.

Setting in Motion the Assemblage

Once the elements constituting the restorative assemblage are drawn, it becomes possible to look at this composite 'object' dynamically, that is, to explore the historical processes which animate the restorative assemblage, and then at how this actually functions, its effects.

From this angle, the restorative assemblage is the product of the 'coding', 'territorialisation', 'deterritorialisation' and 'reterritorialisation' of justice-desiring flows (Deleuze and Guattari, 1980/2013: 102). *Coding* involves ordering flows by creating bodies (i.e. the creation of discrete individuals in search of justice performed by the abstract machine); *territorialisation* is the ordering of bodies by turning them into consistent entities (their ordering as victims, offenders or communities); *deterritorialisation* is the flight from such ordering (the rejection of legal labels from radical restorative justice theories) and *reterritorialisation* is the return to fixed ordering (Buchanan, 2021: 42). Coding is an operation of fixing molecular relations

in static structures or identities (Smith, 2012: 169–70). What is coded is the exchange of energy constituting the justice-desiring flows, which pre-exist legal structures and identities. Territorialisation involves the production of connective forces which ensure stable reality, deterritorialisation involves the unmaking of that reality, allowing the chaos (the intensive differences which make up the world) in, and reterritorialisation entails the reproduction of connections and organisation.

The restorative justice assemblage appears, from a historical perspective, as a collection of heterogeneous bodies extracted from justice-desiring flows, which, once coded (that is, referred back to discrete human bodies rather than more-than-human or non-human entities), are territorialised (that is, traced onto sets of self-organising social processes). At the same time, these flows undergo concomitant processes of deterritorialisation and reterritorialisation. Here is where the dynamism characterising the assemblage becomes visible. Thinking in terms of molecular and molar lines only means focussing on the static aspects of the assemblage. Lines of flight, instead, activate the assemblage, rendering it unstable and unpredictable in its effects (cf. Buchanan, 2021: 89). The critique of the colonising effects of restorative justice or of its problematic impact on youths when administered as a moralising intervention e.g. (the critique of shaming) can be interpreted as lines of (partial) flight from well-established cultural and operational frameworks within restorative justice.

The assemblage, then, 'stratifies' (and 'destratifies') material and semiotic components, preventing the emergence of lines of flight (Deleuze and Guattari, 1980/2013: 46–63). *Stratification* is the capture and formation of free-floating intensive forces which constitute human and non-human bodies by layering them upon each other, giving them consistency (Buchanan, 2021: 36–38). Stratification equates with forming matter, imprisoning intensities, locking singularities and organising molecules. The product of this process is the actualisation and stabilisation of power relations, resulting ultimately in regular and reproductive social meanings, organisms, subjects. These strata constrain human bodies, and this process of capture is a form of 'machinic enslavement' (Deleuze and Guattari, 1980/2013: 498).

Organic reparation-orientated justice practices, blossoming at the very margins of criminal justice systems in the 1970s in the Global North, are one of the strata of the restorative justice assemblage. They stratify justice-desiring flows, turning them into machines (semiotic-material connections of bodies and discourses in the form of early victim–offender reconciliation programs or conferences) plugged into other machines (e.g. probation or court proceedings). What is usually defined as the institutionalisation of restorative justice is nothing but another layer of the process of assembling restorative justice, of turning justice-desiring flows into discrete social machines.

Institutionalisation as State Capture

The scholarly literature describes the institutionalisation of restorative justice as the gradual shift of this model, during the 1990s, from the margins of social control systems to the mainstream (cf. Maglione, Marder and Pali, 2024). One of the manifestations of this phenomenon is the increasing incorporation of restorative justice practices into state policy

frameworks, a trend supported by large sections of the restorative justice movement (e.g. Walgrave, 2000). The primary rationale behind this support is operational: policy is believed to ensure the wide and deep development of restorative justice, in terms of implementation, funding and capacity (Poama, 2015). When viewed through the lens of the assemblage, the institutionalisation of restorative justice can be conceptualised as a process of coding and territorialisation of justice-desiring flows, cast against the body without organs and driven by the state. The result of this process, which is constitutive of the restorative justice assemblage itself, is then stratified as legal practices, devoid of the multiplicity characterising justice-desiring flows.

Deleuze and Guattari draw their concept of *the state* from Pierre Clastres's idea (1980/2010) of the existence of a unifying regulative principle that precedes social and economic formations. This principle facilitates the emergence of, for example, the nuclear family or the Fordist factory by neutralising social antagonisms and producing a unified, collective subjectivity. Along these lines, Deleuze and Guattari view the state as a centripetal wave that captures flows and variations by introducing a transcendent foundational subject to enable the systematisation of life. The state rationalises spaces, establishes rights over a territory and structures the social world (Deleuze and Guattari, 1980/2013: 449), presenting its violence as always necessary, creating the right of appropriation by appropriation (Deleuze and Guattari, 1980/2013: 520). The state subjugates justice-desiring flows in two interrelated ways: by relating them to a central legal structure (i.e. legalisation) and by manipulating their underpinning desire (i.e. microfascism). In both cases, the aim is for the state to expand its sovereignty, to fulfil its libidinal tendency to accumulate and stabilise further power over the social world.

Justice-desiring flows are social relations which bind bodies together in their generation of mutually power-enhancing events, operating in a smooth, unorganised space (Holland, 2008: 80), exterior to representation, diffused and polymorphous. The state submits these flows to its totalising, unifying and signifying force by identifying and then representing them as fixed and universal entities, in the form of specific legal categories, such as individual responsibility, obligation to expiate or redress, repair, revenge and punishment. Identification is the condition of representation: something must be identified before it can be represented. However, social reality – in our case, justice-desiring flows – is a stream of pure differences, and identifying them entails their obliteration. Identities, in fact, are fixed predicates which extrapolate defined objects from reality, in this way denying multiplicity and engendering a form of social repression which will then constitute inherently deficient subjects (i.e. stakeholders with the crystallised identities of victims or offenders).

Legalisation is a complex process, whose final output is 'the law', a pure form, absolutely empty, objectless, whose only message is that we are guilty (Deleuze, 1970/2001: 4) and that the distribution and hierarchisation of bodies are necessary. This is fundamentally a dialectic process, animated by *ressentiment*, since the legal totalisation of justice-desiring flows entails a superior unity generated out of a negative conflict between lower elements: unorganised flows are dangerous and must be organised by means of legalisation. This process destroys connections, linearises and bi-univocalises; it imposes negative and extrinsic rules, as well as a transcendent ideal which derives everything from an original principle (truth) and relates everything to an ideal (justice), coalescing in a single state entity.

The other aspect of the state capture of justice-desiring flows involves the manipulation of the very libidinal energy constituting those flows. This manipulation results in *microfascism* – the love for being subjugated, an internal death drive which can be manipulated by external actors. Fascist desire is the desire for codes to replace free flows, creating rigid boundaries and immobilising flows. Obliterating desire involves causing death – that is, the decomposition of the body's relations, its immobility and degree zero of intensity. This is achieved by turning justice-desiring flows into codified lists of harms and responses to them, a classificatory attempt which disguises the very formative context within which certain harms occur. This obliteration is then complemented by the generation of new self-destructive libidinal energy.

IN fact, turning those flows into discrete restorative practices, a sequence of codified steps which lead from microdisorders to social order, may appeal to restorative justice practitioners or advocates since it promises to render predictable what is regulated, becoming the condition for translating chaotic organic processes into discrete sets of mechanical operations. This may be appealing since it reduces the emotional and cognitive labour required to handle organic flows, making things apparently smoother. And this is also the mark of legalisation's strength: it produces a form of grey joy and subtly colonises one's freedom, until freedom is paralysed. The very demand widely shared by the restorative justice movement to endlessly scale up restorative justice by regulating it, increasing funding and capacity, exemplifies this libidinal tension toward legal self-oppression. Legal abstraction and generalisations penetrate restorative justice, deadening its relational multiplicities. Referral routes kept by criminal justice agencies, the possibility of resuming the standard track if the restorative process is unsatisfactory and the quality certification of restorative providers are examples of this process. The obliteration of desire curtails the vital energy which constitutes justice-desiring flows (Deleuze, 1962/1983: 137).

A Nomadic Restorative Justice

Assembling restorative justice is both a heuristic and a normative operation. Unearthing the multiplicity of semiotic-material lines, reconstructing their underlying diagram and unformed background, charting how their becoming is immobilised by state capture – all of this means creating new spaces for thinking differently about and thus transforming restorative justice. Further developing these lines, it is possible to point to a *nomadic* development of restorative justice (cf. Woolford and Ratner, 2023). This entails reactivating the becoming of the justice-desiring flows which underpin restorative justice. This reactivation is a process of experimentation, an open-ended, reflexive dismantling of legal operations, creating new spaces for encountering bodies and enhancing their capacities, not without its share of challenges.

The key element of this normative approach is the notion of 'becoming-other' – the cultivation of the affective power of justice against any form of representation, universalisation and totalisation through identity (Deleuze, 1968/2014: 41). *Becoming-other* is not an end in itself but an active response to a problem unveiled by historical analysis: the current molarisation and stratification of restorative justice. Becoming-other means nurturing the non-linear, transversal, non-hierarchical relations of forces constituting justice. Justice,

here, is the moving, open-ended configuration of desiring bodies in search of mutual enhancement, the synthesis of those forces into events which are always specific instead of their representation into fixed and universal legal orderings.

The problem is determining which relations of forces are relevant and which ones are to be cultivated. This evaluative operation is as much ethical as political, and it has implications for the creation of an enhanced social (nomadic) subjectivity. Whilst legal morality consists of constraining rules against which one is judged in relation to the transcendent values of good and evil, producing 'lacking' subjects, ethics is a normative commitment to maximise connections that expand possibilities of life, whose 'good' cannot be determined universally or outside of a concrete situation. Law judges individuals based on how they are and should be, condemning them to infinite debt, subjecting the body to the soul, whilst ethics is the consideration of who we are becoming and may become: it is an immanent, evaluative and affirmative analysis of our capacity to live.

A nomadic restorative justice proposes 'ethical tests' and not legal judgements (Deleuze, 1970/2001: 41). These ethical tests involve analysing the affective compositions of relations between bodies taking place in encounters, wherein good interrelations are those relations which mutually enhance bodies' power. For these encounters to be affectively active means for them to be configured as *events.* An event is a vibratory block of space-time constituted by forces which communicates with other blocks. A *just* rhythm is created within such events when those forces are balanced against each other, enabling the possibility of both affecting and being affected by others' bodies. These encounter-events force us to think (Deleuze, 1968/2014: 183) about the forces that constitute bodies, forces we are never conscious of (Deleuze, 1968/1992: 226), whilst becoming-other, regenerating ourselves as something new, in the very process of encountering other bodies. This is neither the rational process of self-assertion nor that of recognition. At stake is not reconfirming our knowledge, beliefs and emotions but the emptying of oneself, opening up to the other, enabling a rupture of our own habits, whilst affirming a new way of seeing the world and our place within it (cf. O'Sullivan, 2006: 1).

Harm, Art and Dangers

From this perspective, harm is an investment of energy that leads to the ethical decomposition of the other's power. This should be addressed by local, expansive, flexible and contingent connections that mutually enhance power. This, in turn, would forge new, *minor* lines of flight instead of the microfascist legalisation of social relations. The 'minor' is a tendency toward the continuous variation of everybody (Deleuze and Guattari, 1980/2013: 124): experimentation, defiance of canonical models, investment in collective action, politicisation of personal matters, experimentation with language and opening possibilities for the people to come (Bogue, 2011: 135). Whilst the 'major' adheres to a fixed standard and external grounding – an identity – the minor is standardless, focussing not on who we are but on who we may become (Deleuze and Guattari, 1980/2013: 123). Majoritarianism is the standard which hierarchises statements by making them resonate with one central point, imposing binary structures and axioms and devitalising the organic through detached signification. It uses order-words which compel obedience. Becoming-other/minor works from inside and against majoritarian language, undoing it. It deterritorialises language: in our case,

the individualising legal language enfolding restorative justice, rendering everything political (Deleuze and Guattari, 1975/1986: 17). It produces intensive qualities, the proliferation of series and polyvalent connections.

A practice that embodies this minoritarian political element is *affective* art. Art is affective when, like in Kafka and Bacon, it creates the conditions for new connections and lines of flight from the law (including from the internal law – that is, identity) to arise. Art, here, neither expresses meaning nor represents things nor imitate nature; instead, it dismantles legal guilt, interiority and emptiness by suspending law and its representational, unifying and totalising machine (Deleuze, 1981/2017: 2), by hindering the subject that this violence enacts. Deleuze sees the subject as a relatively stable connection of lines, a pattern of syntheses which fold in on themselves, creating self-awareness. The legalisation of justice-desiring flows is nothing but the creation of an outside which enfolds bodies' affective multiplicity, resulting in legal organisms with fixed traits, hierarchically organised, a 'facialisation' of the body (Deleuze and Guattari, 1980/2013: 199). Dismantling this rigid legal subjectivity becomes art's main political aim, to be achieved not simply by fighting repressive institutions but by de-individualising bodies, disentangling them from their own desire for legal repression, blurring their rigid lines and forging the conditions for creating subject-groups, new collective solidarities. Affective art decouples justice (a mutually power-enhancing event) from law (a totalising structure), moves back and forth from the molar to the molecular and produces differences in order to enhance our collective 'potency' (Deleuze, 1970/2001: 3). The horizon of this intervention is 'irresponsibility', the radically innocent life of play (Deleuze, 1962/1983: 21), a life of pure immanence, a life of sensation, the range of possibilities of becoming, folding and unfolding potential. This life is always a potential life (Deleuze, 1993/1998: xiv).

However, becoming-other and minoritising our life artistically present dangers as well. Lines of flight can be negative; differences are inhabited by identities that produce, certify or perpetuate subjugated subjectivities. A nomadic approach must, then, not only reactivate lines of flight but also be aware of the processes of recodification and reterritorialisation implicit in any power dynamic – that is, not only in the institutionalisation of restorative justice but also in its de-institutionalisation. This ambivalence is constitutive of the very concept of desire. Desiring power means also desiring the repression of the multiplicity which justice-desiring flows can be.

So far we have focused on the destructive effects of the microfascist, state-led capture of flows; however, the opposite process, of molecular decoding and deterritorialising, can also be seized upon by violent machines, turning into a pathological condition. This is what happens with capitalism, which deterritorialises and decodes but then blocks the development of revolutionary energies. Capitalism produces its own unfreedom by freeing desiring-production from capture and repression by other codes and representations whilst it recaptures it (e.g. in state nationalism and the nuclear family). This is why advocating for becoming-other is, in itself, not a 'solution' but always a dangerous political strategy. When advocating for disentanglement from the legal machine, the goal is not to create an uncontaminated state of becoming but to cultivate the potential of such becoming, producing a permanent state of disentanglement from ourselves. This is always an incomplete and hazardous process, a continuous straining toward de-individualisation, descending to the edge of our abyss to nourish our becoming.

Beyond Deleuze

Assembling restorative justice means breaking down this 'object', shattering it into multiple lines of different matter, letting them morph into each other, recombining them together and producing unexpected combinations, overlaps, tensions and clashes. The assemblage is not only a heuristic device but also a normative orientation, a struggle for becoming, for nurturing our potential, with the awareness of the dangers integral to our becoming.

Deleuze helps us see justice-desiring flows as the unformed background of restorative justice. This is one possible way of assembling that unformed affective matter, one way of recombining it in semiotic and material elements, according to a certain diagram. This formed matter – restorative justice – is a historical phenomenon, always in motion. The institutionalisation of restorative justice, here, appears as one way of expressing the coding and territorialising of those flows into machines and then the stratifying of them into legal frameworks. The law, as a semiotic-material machine, fixes those flows through representation and identification. This process is libidinal – it entails desiring oppression, a condition which affects many of those propounding the legalisation of restorative justice today. Desiring oppression becomes normal when machines like the law appropriate organic flows by insinuating guilt and debt into them, exploiting their libidinal creative energies.

This awareness should not lead toward nostalgic longing for a pure version of restorative justice, a regression to an original state. Those justice-desiring flows are an always-present virtual stream within the legalised version of restorative justice. What is at stake here is cultivating their potential for becoming-other, turning encounters into artistic, mutually body-enhancing practices. There is no dialectic between the legal organism and art. Art is the suspension of the legal machine, with an awareness of the dangers of deterritorialisation and lines of flight. There is no reconciliation between these two terms.

Deleuze leaves us, then, with a Bacon-like portrait of the disquieting forces which constitute us, the primal matter which leads to emancipation as much as oppression. This painting is constitutively in the process of being drawn. Deleuze pushes us toward rediscovering the potency animating the yet-to-be-achieved production of reality without indicating a prophetic direction about how to use our potency. Could these lines be turned against themselves? Could freeing the justice-desiring flows integral to restorative justice destroy the assemblage itself? Is that freeing from the law a step toward a capitalistic justice? Deleuze reminds us that these are inevitable dangers and that dancing with them is a lifelong task when justice, and an ethically and politically just life, is at stake.

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3. Encountering Sovereignty

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Abstract

What is the relationship between sovereignty and restorative justice? What are the implications of an embodied form of justice? What model of human life is integral to restorative encounters?

This chapter reflects further on the relations between politics and restorative justice by connecting them to ontological issues – namely, to the question of *what it means to be human*. In doing so, it encounters a key character in contemporary political theory, Giorgio Agamben, using his work as a prism through which to interpret restorative justice.

Agamben's philosophical archaeology helps us understand the political-ontological stakes of restorative justice by tracing the fundamental categories of restorative justice – harm, stakeholder, restoration – back to their origin (or *archē*). Here, origin does not denote the specific point in time when something begins but rather the fluid array of cultural forces that over time have shaped this form of justice. These forces demand critical scrutiny, which can then support a political reimagination of restorative justice.

Agamben provides tools to address these questions whilst pointing to possible directions for a *restorative justice to come*. This perspective suggests abandoning the juridical-sovereign models which are implied by the current process of institutionalising restorative justice and instead seeking radical, politically engaged, means-oriented models of restorative praxis.

> Politics has suffered a lasting eclipse because it has been contaminated by law…The only truly political action, however, is that which severs the nexus between violence and law.
>
> Giorgio Agamben (2003/2017: 242)

Being, Politics and Justice

One of the most significant things we learnt from encountering Giles Deleuze's social-ontological work is that (restorative) justice is not merely a legal matter but a multidimensional and dynamic process involving disparate domains. This chapter reflects specifically on the relationship between sovereignty and restorative justice from a political-ontological perspective. In doing so, the following pages encounter a key figure in

contemporary political theory, Giorgio Agamben, using his work as a prism through which to interpret restorative justice.

Agamben's intellectual journey has revolved around the study of the political stakes of ontology and the ontological stakes of politics. He maintains that to understand our current political landscape we must historicise our political categories (e.g. sovereignty, democracy, human rights) to the point of tracing them back to their origin (or *archē*). Here, *origin* does not denote the specific point in time when something begins but rather the fluid array of cultural forces that over time have shaped our contemporary political concepts. Agamben's central argument is that such forces are all rooted in how the Western world has grappled with or disengaged from the fundamental ontological question of *what it means to be human*.

The following pages delve deeper into this set of issues in order to excavate the conditions that make restorative justice possible and then to sketch out a restorative justice to come. This exploration engages both with Agamben's early writings on language (1982/1991) and with his more recent, nine-volume *Homo Sacer* project on the foundations of Western politics (2017).

At the core of Agamben's journey lies a conviction of the inseparable relationship between language, being and politics. Language is both what characterises human beings and what marks that specific human activity known as politics. Exactly as human language presupposes and yet excludes the existence of an animal voice that preceded meaningful speech, so the political community presupposes animal life and yet keeps it at the margins of the polis. This inclusive-exclusive schema permeates Western culture and politics: from human rights to totalitarianism, from social democracy to the capitalist commodification of culture. Agamben's main claim, in fact, is that totalitarianism and capitalism are not historical aberrations but rather expressions of the ontological foundation of Western civilisation. The task of a progressive politics and culture is to unveil and address this problematic continuity, interrupting the political-ontological paradigm which keeps haunting the Western world (Agamben, 1990/1993; 1996/2000).

Encountering Agamben's philosophical thought compels us to question well-known claims around restorative justice: How can restorative justice truly differ from criminal justice? What are the implications of an embodied form of justice? What model of human life is integral to restorative encounters? Agamben also furnishes tools for radically reimagining restorative justice. He maintains that the means for deposing the contradictions of Western political and cultural traditions lie in a politics of *pure means*, completely divorced from sovereignty. This coming politics proposes the development of a new *form-of-life*, an endlessly potential ethical and political way of living. As the final sections of this chapter argue, this perspective suggests abandoning juridical-sovereign models of restorative justice, which are implied by the current process of institutionalising this approach, and instead seeking radical, politically engaged, means-oriented models of restorative justice.

Encountering Giorgio Agamben

Agamben occupies a unique and influential position within contemporary radical political philosophy, eliciting both admiration and criticism. His work represents a distinctive effort to

unravel the intricate relationship between violence and law, aiming to provide tools for responding to the commodification of life and the erosion of experience inherent in Western modernity (Murray, 2010). His approach is radical and strategic, focussing on the conditions of possibility of our present whilst opening up avenues for new forms of political thought and action. His critical analyses involve a painstaking dissection of the structure of Western modernity, highlighting the fundamental dichotomies which characterise our culture: man and animal, language and discourse, potential and act, political life and biological life. Agamben then describes the multifarious apparatuses devised by Western civilisation to make sense of those dichotomies. He focuses particularly on the unintended and destructive consequences of hiding the tensions that traverse those fundamental concepts or of prioritising one concept over the other, leading to cultural, ethical and political impasses. Denying the 'animal' origin of 'man', for example, leads to neglecting a crucial dimension of human life – its origin and natural environment. This critical operation is preliminary to the deactivation of such dichotomies and the envisioning of an alternative future. Agamben does not attempt to prophesise a definitive escape from the impasses of modernity; instead, he invites the reader to engage with his fragmentary sketches, allusive paths and incomplete maps of a world yet to come.

Agamben draws from a wide array of philosophical influences, including Martin Heidegger, Aristotle, Walter Benjamin, Hannah Arendt and Michel Foucault. From Heidegger, Agamben inherits a critical interest in the foundational question of what it means to be human. Like the German philosopher, Agamben contends that the defining feature of humanity is language. However, he diverges from Heidegger by asserting that Western philosophy's treatment of the relationship between 'being human' and language has always been highly problematic (cf. Mills, 2014). His diagnosis is that philosophical thought has presupposed and posited a foundation for being and language in *negativity* (Agamben, 1982/1991). Language does not belong to humans, yet they are thrown into it and constantly use it. This creates a form of negativity, a void, since humans are defined by something they do not own (Murray, 2010: 13). To some extent, language 'owns' humans, since without language humans would lose their defining feature. Agamben describes this negative ground of language as *voice*, which is included by exclusion into language in order for this to make sense. This negativity is repressed by Western civilisation and yet continues to exert influence on philosophy and politics.

In *Infancy and History* (1978/1993), Agamben suggests that a way of overcoming this negative foundation is the notion of *infancy*. Infancy represents the experience of language as such, not a prelinguistic state to which humans should return but an integral aspect of the experience of language. Infancy refers to the split between language and voice, the active origin of civilisation which keeps influencing humans' present condition, which should thus be recognised and reconstructed, historically and philologically. Along these lines, during this early stage of his intellectual journey, Agamben advocates for a rediscovery of *criticism*, as outlined in *Stanzas* (1977/1993) and *The Idea of Prose* (1985/1995). Criticism, for Agamben, signifies an effort to recompose the fractures which characterise a language founded in negativity. Agamben argues against presupposing an ineffable (negative) origin of both the human being and the community. We should instead recognise the 'ungroundedness of human praxis, neither presupposed incomprehensible foundation nor nihilist senselessness, but foundation of man in man, of language in its communicability' (Whyte, 2008: 77–78).

Western civilisation, in contrast, has tended to conceal its own ungroundedness by separating and excluding what defines humans and by grounding the very idea of polity on this ontological separation.

Language and Politics

Agamben's exploration of the connection between language and politics becomes apparent when considering his (Aristotelian) assertion that language not only constitutes the foundation of human existence but also serves as the basis for the political community: *logos* defines both humans as political animals and the very idea of the polis as their community. Therefore, both the negativity inherent in language and the ways in which Western civilisation has sought to fill this void project themselves into politics. This link between language and politics is evident in *The Coming Community* (1990/1993) and even more so in the multivolume *Homo Sacer* project (2017). Here, Agamben provides a historical analysis of specific empirical examples of the negative foundation of Western politics. His starting point is Foucault's (2008) thesis that a crucial political transformation occurred in the Western world from the seventeenth century onward – the shift from sovereign power to biopower, from the sovereign's right to take a subject's life (or let them live) to political institutions which treat human life, at the level of the population, as a political subject to be fostered. Agamben, however, contends that rather than being specific to the modern era, biopower and sovereignty are fundamentally intertwined: sovereign power inherently has a biopolitical dimension, aiming to manage the population as a living organism to be controlled and exploited.

Agamben invokes some of his key sources – Schmitt, Benjamin, Aristotle and Arendt – to conceptualise this intertwinement. Schmitt, a political theorist with connections to the Third Reich, notoriously affirmed that the defining characteristic of the sovereign is their power to decide when to suspend the law and establish a *state of exception*, positioning themselves as the subject who institutes the law whilst being outside its constraints (Schmitt, 2005). Benjamin, one of the most eclectic cultural critics of the twentieth century, responded to Schmitt by claiming that the 'real' exception is external to the law and cannot be subsumed within it (Benjamin, 2021). Agamben combines elements of both perspectives: he accepts Schmitt's position that in the state of exception the law is in force but loses its signification, whilst incorporating Benjamin's idea that in the real state of exception there is always a non-legal *potential* able to overcome sovereign power (Agamben, 2003/2017). What remains to be ascertained is the actual content of the exception, the object of the decision and the source of the overcoming of sovereign capture. Aristotle provides an answer here: it is *life* that is the object of the exceptional decision (Aristotle, 350 BCE/1981).

The result of this conceptual patchwork is a conception of political sovereignty as the self-grounding decision of violently separating political life (*bios*) from biological life (*zoē*), which ultimately reflects the exclusion by inclusion of animal sound to generate meaningful human language. Yet just as linguistic exclusion produces a negative residue (the voice) (Agamben, 1982/1991) and a split between humans and language, so the political exclusion of natural life generates a problematic secondary result, which Agamben, following Benjamin, terms *bare life* (Agamben, 1995/2017). Bare life is the by-product of including natural life in politics by exclusion, creating a life infinitely *abandoned* (cf. Nancy, 1993; see

next chapter) to sovereign violence – that is, without any political or legal protection. Drawing on Arendt – a political philosopher and Holocaust survivor – Agamben argues that this sovereign process of capturing life is epitomised by the concentration camp. The camp is the clearest form of inclusion of life by exclusion, the stripping of any relational and linguistic faculty from the human being, who is reduced to bare life.

To overcome these ontological-political predicament, Agamben posits the need for a non-sovereign ethics, one that does not rely on concepts like legal responsibility, culpability or punishment (Agamben, 1998/2017; 2017/2018), which conceal and enable the sovereign exception. In *Remnants of Auschwitz* (1998/2017), Agamben outlines an ethos of bearing witness to that which cannot be witnessed – a new ethical perspective that counters the ethical premises of exceptional politics.

In the last volumes of the *Homo Sacer* project, Agamben further develops his critical analysis with innovative conceptual tools. In *The Kingdom and the Glory* (2009/2017), sovereignty is complemented by economic government, the administration of humans and things, which includes both juridico-political and managerial elements. A comprehensive analysis of Western politics requires an appreciation of this managerial paradigm, bringing to the fore how the governmental management of people's life complements the sovereign exclusion. In *The Highest Poverty* (2011/2017) and *The Use of Bodies* (2014/2017), Agamben lays the groundwork for a new model of politics. He argues for deactivating the ontological apparatus that sustains the biopolitical violence informing sovereignty, proposing a politics articulated around the concepts of *use*, *gesture*, *profanation*, *destitution*, and *form-of-life*. Agamben advocates for a notion of life in the continuous process of freeing itself from sovereign apparatuses and their destructive effects. The aim is not the abolition but the deposition of these oppressive yet foundational structures of Western culture, politics and society. The fractures between biological and political life, with bare life as its by-product, between animal and man, potential and act, poetry and philosophy, are to be profaned (Agamben, 2005/2007). This involves being restored to a state where the possibilities of life can be freely used and enjoyed instead of exclusively appropriated and owned by a sovereign. This is a messianic life – a life of pure potentiality – to counter the destructive effects of the Western political and cultural machine, rediscovering the potential of our ungrounded being to generate a political community which includes without exclusion.

Agamben's Approach

In *The Signature of All Things* (2008/2009), Agamben, looking backward at his intellectual journey, outlines his method, defined as *philosophical archaeology*. This approach aims to expose what remains unarticulated in how a certain tradition generates and transmits knowledge on a particular subject, in this way controlling its intelligibility (Primera, 2019). Agamben's focus is on the capacity for development of the past – that is, on the fact that the past is replete with missed opportunities and unexplored paths that could have led to different outcomes. These unexplored paths can still be unearthed, in this way restoring their potential to change our present. By doing so, philosophical archaeology enables us to reimagine our current condition and open up new possibilities for the present, looking at the past.

Hence, philosophical archaeology involves reconstructing the past to uncover the dynamic conditions of possibility of the present, rather than its static origin. From this angle, Agamben explores the structure of those apparatuses of power which canonise the past by turning it into authoritative traditions, passing on to the present self-evident knowledge and natural ways of being and doing (Murray and Whyte, 2011). From religious institutions to political organisations, from administrative agencies to cultural authorities, philosophical archaeology directly engages with the historical unfolding of the traditions that such apparatuses generate and solidify. To achieve this, Agamben undertakes complex philological analyses, tracing the etymology of terms, uncovering the historical formation of meanings and highlighting opportunities which are not stabilised by traditions. These analyses emphasise the context-bounded nature of the ways in which institutions 'word' our understanding of ourselves and the world (Kotsko and Salzani, 2017).

The language-mediated connection between being and politics constitutes the political-ontological condition of Agamben's archaeological method. In fact, by excavating the paradigms of tradition, it is possible to reveal the bonds between ontology and politics, as well as their problematic by-product: a life without historical ground, separated from its linguistic nature and exposed to violence.

This approach is ultimately an attempt at unearthing the ways Western culture has dealt with the being–language–politics connection, bringing to the fore, in different contexts (e.g. from the emergence of sovereignty to the commodification of language), the covering over of those foundational, yet not natural, fractures. This method demonstrates that sovereignty is a groundless, self-affirming authority that demands subjection to its content-free rules, serving as a fragile glass floor for concealing the Western political void. Sovereignty entails the systematic production of what Agamben (1995/2017) calls *homines sacri*, bare life at the margin of the polity which contributes to maintaining the polity's boundaries. The deadly effect of this dynamic becomes visible within twentieth-century totalitarian states, which perform the mass-killing of human groups deemed noxious to the rest of the population. Similarly, Agamben's analysis of the commodification of language shows how language is transformed into a self-referential spectacle that results in the loss and destruction of meaningful presence in the world.

Yet philosophical archaeology is not merely a mere description of our present condition and its historical archē. Instead, this very historical-critical excavation opens the possibility of radical change fuelled by the potential which characterises human beings. Drawing from Aristotle, Agamben argues that our possibilities of becoming never entirely exhaust themselves into acts: there is always an ineliminable potential, a pre-individual resistance to actualisation which defines our being and which can be used to make *another* life possible (Agamben, 1995/2017: 42). This residue, displaced in history as missed opportunities, can be recovered and revitalised. Agamben's critique implies the recovery of this potential by creating new spaces for thought and action. This constructive dimension is developed though distinctively productive concepts (e.g. destitution, use and form-of-life) rooted in that idea of an active potential defining the human being – an energy which can never be fully realised but serves as an ontological reservoir of power to radically transform cultural and political life (cf. Deleuze's idea of desire in the previous chapter). Philosophical

archaeology thus becomes a method not only for understanding the past but also for engaging with the present and actively shaping the future.

A Political Ontology of Restorative Justice

Writing a political ontology of restorative justice involves questioning how this form of justice addresses (and could address) the fundamental relationship between being and politics. This operation entails exploring how different understandings of what it means to be human among other humans inform different understandings of justice.

Restorative Justice and Human Presence

What is the archē of restorative justice? Restorative justice can be conceptualised as the historical re-emergence of something that (liberal) criminal justice both denies and presupposes, something excluded by inclusion – *human presence*. Human presence is the lived experience that serves as a condition for legal judgements. Human presence is akin to an infinitely potential yet meaningless sound (cf. Agamben, 1982/1991) whose translation into legal discourse requires that presence be excluded. This transformation allows humans to acquire significance within the legal context, separating insignificant human behaviour from meaningful legal action and harm from wrongdoing, rendering humans suitable to be judged and punished.

This dynamic implies that criminal justice is essentially a penal machine: the mere entry into the criminal justice realm, such as by being accused of a crime, results in the capture (that is, the legalisation) of human presence as criminal justice's negative foundation. Criminal justice, from this angle, is primarily geared toward punishment by diminishing one's potential for being and becoming. This suggests that the ultimate goal of the criminal justice process is not the judgement but rather the punishment achieved by removing human presence upon entry into that realm. In this way, in fact, criminal justice fulfils a greater aim than merely enforcing criminal law and controlling crime – it ensures the perpetuation of the Western sovereign machine by restraining human potential and enforcing obedience to a self-referential authority.

This negative foundation is justified by criminal justice's 'katechonic' function (Agamben, 2000/2005: 109). The term *katechon* originates from theology, initially being used by Saint Paul to describe the mysterious entity that restrains the Antichrist from unleashing the Apocalypse. In political theory, this figure has been often interpreted as a theological transposition of the state, acting as the entity that prevents social anomie and violence. Criminal justice's separation and removal of human presence similarly fulfils a katechonic function – the prevention of the supposed anarchy that human presence might generate if not excluded. Nevertheless, human presence remains as a silent condition of criminal justice, included by exclusion. To claim that criminal justice serves to prevent or respond to anarchy is a way of concealing the inherent groundlessness of the idea of sovereign justice, which is designed to submit humans to content-free rules of self-referential power.

Just as Western metaphysics constructs a model of a self-sufficient human being (Heidegger, 2001), so criminal justice, by isolating culpable acts from human interactions, harm from wrongdoing, meaningful legal persona from mute meaningless human presence, contributes to the persistence of sovereignty in the political, social and cultural landscape. Similar to how ontological negativity was obliterated in the history of being, so human presence is denied in modern, katechonic criminal justice. However, this negativity resurfaces as a problem in the postmodern era. In fact, the katechonic function revealed its limitations historically when various embodied subjectivities broke free from their state of marginalisation, articulating demands for the acknowledgement of their human presence. Starting in the 1970s, crime victims' claim to a more central position on the criminal justice stage, their need for recognition of the personal experience of victimisation, lacerated the katechonic veil, letting criminal justice's negative foundation violently erupt and leading to a legitimacy crisis within the realm of criminal justice.

The rise of restorative justice can be interpreted as a response to this historical impasse – the re-emergence of the suppressed foundation of criminal justice, the attempt at disconcealing (victims') human presence through embodied encounters. Restorative justice, in fact, is built around the belief that flesh-and-bones human beings who have been harmed need a safe physical and emotional space wherein to 'heal' and find 'closure' (Johnstone, 2011). This notion of safety refers to a state of immunisation, which is at the same time both backward-looking (from the emotional, physical and financial consequences of victimisation) and forward-looking (from the risks and dangers of future victimisation). Likewise, those who have caused harm are provided with an opportunity to directly confront the human consequences of their actions.

Restorative justice revolves around meeting demands for participation, inclusion and the direct expression of one's experiences. Participants are enabled to communicate their emotions and seek answers to some decisive questions – such as why the crime happened to them, why they responded as they did, what to do in case of re-occurrence and how to make meaning out of this tragic happening (Zehr, 2005). 'Speaking out' and 'being heard' are the main forms this active participation takes in the restorative justice process (Van Ness and Strong, 2022).

The disconcealment of human presence in restorative justice is finally expressed through the obligation to 'take care' of the harmed person and their well-being by making amends, or providing material and emotional reparation or restitution. Making amends includes elements such as apology, changed behaviour and restitution from offenders to victims, as well as the offender's promise of behavioural change. Restorative justice often emphasises the need for a symbolic statement that acknowledges the legitimacy of victims' status and recognises the emotional harm they have experienced (Johnstone, 2011; Strang, 2003; Strang and Sherman, 2003). Restorative encounters, then, seek to provide a concrete and viable alternative to the possibility, already enshrined in law, of mere material or financial reparation by offering opportunities for emotional, psychological and symbolic restoration (Johnstone, 2011). The exploration of the offender's shame (Braithwaite, 1989) within restorative justice conferences is a further expression of the new demands of care toward the victim, as well as the manifestation of the offender's 'fundamental sentiment of being a subject' (Agamben, 1998/2017) vis-à-vis the victim.

Restorative Exception

The main difference between restorative and criminal justice is that the former responds to the exclusion of human presence enacted by the latter. However, a significant commonality between these two models of justice should now be considered: both include by exclusion something which precedes human presence – the 'mere fact of life' (Agamben, 1995/2017: 10). From a political-ontological perspective, restorative and criminal justice share this foundational continuity that demands critical scrutiny.

Both restorative and criminal justice, in fact, are built on the exclusion of what Aristotle referred to as zoē, biological or natural life as distinguished from political life (bios). Aristotle's account of the origins of the polis revolves around the relegation of natural life to the domestic sphere and, thus, its exclusion from the political realm. Natural life is stripped of any political significance and deprived of any protection; it is thus abandoned to the unconditional power of sovereignty.

From this angle, restorative justice appears to be characterised by an entanglement between bodily life and legal power. Participants in restorative encounters enter a distinctively 'grey' space, wherein life is suspended between law and non-law, external rules and interpersonal agreements, bureaucracy and bodily encounters, facilitators and criminal justice gatekeepers. Participants hold legal rights and responsibilities, much like in criminal justice. However, the encounter does not serve to ascertain, solidify or challenge those legal positions. Instead, it functions as a space wherein human restoration will take place, a space for healing, closure, and reparation. Yet both criminal and restorative justice perform the same crucial political operation: depoliticising human interactions (such as certain harms) and turning them into culpable acts. In doing so, the mere fact of life expressed by those human interactions, processes and ways of living is placed outside the political sphere. The actions of 'victims' and 'offenders' are individualised, abstracted from their social and political context and thus excluded from the protection of the political order. Victims and offenders become personally responsible either to the state (criminal justice) or to some other embodied subjects (restorative justice) for their (depoliticised) acts of transgression. This juridical process of depoliticisation, and the consequent individualising treatment of culpable actions, is what connects criminal justice to restorative justice, their common foundational matrix.

Throughout the restorative and criminal justice process, in fact, the lives of victims and offenders become politically irrelevant yet politically indispensable ('sacred', as Agamben [1995/2017: 10] would claim). They serve as the condition of the functioning of sovereign apparatuses which enable both forms of justice (e.g. policing and prosecution). This 'exceptional' capture generates lawfulness by producing deviance. Lawfulness is an empty ideal constructed through the isolation and exclusion of certain (deviant) actions from the political sphere, the establishment of an arbitrary differential residue which will be abandoned to the very sovereign justice that created it.

Although this dynamic occurs in both restorative and criminal justice processes, in the former the 'law' does not conceal the exceptional capture of life, as it does in the latter. In

restorative justice, in fact, the law (not only politics) is suspended while still in force, bringing the nexus between sovereignty (expressed by the decision to depoliticise the harm, its premises and consequences) and the body to light, in a singular way. This means that in restorative justice a double exclusion takes place: from both the political and legal domains. Participants in restorative encounters are simultaneously 'handed over' to politics and law while being 'banned' from them. Politics and the law linger on the threshold of those encounters, neither completely outside nor inside. This threshold represents a zone of indistinction in which human presence may be disconcealed but not freed from the sovereign logic. This constitutes the political-ontological limit of restorative justice: its potential for emancipation is curtailed by the sovereign power. The restorative disconcealment of being does not completely transcend the logic of the state.

The by-product of this dual ban is the creation of a distinctive *embodied life*. This concept neither equates to biological life nor to human presence. Instead, it is life exposed to the sovereign power that informs restorative encounters. This power depoliticises and delegalises human presence, whilst establishing a fluid threshold between life, law and politics in that context (Agamben, 1995/2017: 141). Embodied life is also the standard of inclusion in restorative justice – only those who adhere to this ideal are considered suitable for participation in restorative encounters; others are excluded from them.

Anthropological Machine

How is this embodied life shaped within restorative encounters? Specific subjectivating processes take place in those exceptional spaces. Humans involved in those encounters, in fact, are subtly encouraged to conform to a specific model of a subject (cf. Agamben, 2002/2004). This model combines qualities that overlap with the those characterising the liberal criminal justice subject – *culpability, free will* and *purposefulness* – with other features which are specific to the restorative justice realm – *embodiment, disempowerment* and *resilience* (cf. Maglione, 2017).

The restorative subject is inherently culpable. Here, culpability denotes that once human beings enter the realm of justice, their actions acquire new meanings sanctioned by the legal order. This entails that they are subjected to a particular form of violence – the violence that removes the mere fact of life. This violence sanctions human beings and makes them *entirely* culpable. Restorative justice requires a preliminary admission of responsibility– that is, the offender's acknowledgement of having committed culpable, willed and instrumental actions against a victim. Similarly, the victim must detach themselves from the social and political context within which harmful behaviours occurred. This results in a double separation – both the offender and the victim are removed from their social and political *life* whilst subjected to restorative justice.

This culpability is then interiorised. Agamben contends that Christian theology originally developed the idea of introjected culpability based on Aristotle's ethics. In the *Nicomachean Ethics* (350 BCE/1999), Aristotle, in fact, argued that actions can be attributed to agents because they choose their actions. The concept of choice makes it possible to claim that people are responsible for what they do (Agamben, 2017/2018: 37) and thus can be punished. This idea of choosing makes people own their actions, and this serves as a

prerequisite for individualising justice (as well as ethics and politics). Once choice is qualified as either 'good' or 'bad', it will produce the notion of culpable harm and, therefore, of punishable action. Actions and actors become indissolubly linked, making it possible to hold individuals accountable for their actions. The interiorisation of culpability as a shadow of freely willed actions is the precursor of the concept of individual responsibility that deeply informs both criminal justice and restorative justice.

The final common quality between restorative and criminal justice is the presumption that the ideal subject always acts instrumentally (Agamben, 2017/2018). The belief that the ultimate goal of every action is the good pursued by the actor leads to a separation and opposition between ends and means. Human actions are seen as mere means and never ends in themselves, mere actualisations of an external end-good. Whether this external good driving action is rationally chosen or biopsychologically or socially determined is irrelevant. What matters is that there is no alternative to instrumental action (except 'madness', which requires specific legal arrangements). As a consequence, an ontological gap between human beings and their good emerges. The good does not lie within humans but rather in the external world. The existence of such an external good retrospectively justifies the existence of punishable actions.

Among the features unique to restorative justice, *embodiment* demands specific attention (Maglione, 2017). In this context, embodiment refers to the material condition of causing harm or being harmed by a clearly identifiable individual, not a social structure or organisation. The emphasis on the need to speak up, listen and be listened to, as well as the need for physical safety and material repair, entails a connection between the body, as a natural entity, and thoughts, feelings and behaviours. The encounter between victim and offender, happening in a shared physical space where flesh-and-blood human beings encounter each other's suffering, exemplifies this embodied characteristic. Embodiment is also closely linked to the emotional nature of restorative subjects. Concepts such as healing, closure, forgiveness and reconciliation all align with an understanding that the restorative subject's needs revolve around emotions, moods and feelings. Being disempowered, mainly in terms of psychological or individual dis-empowerment (instead of social or political disempowerment), is also linked to this idea of embodiment. Although disempowered, this subject retains the capacity to act or react positively, demonstrating a unique quality of resilience. This quality is expressed through the choice to partake in the restorative processes, meet the other party, express needs and advance requests, mediate over them and decide the process' outcome (e.g. by refusing or accepting apologies or compensation). This embodied subject ultimately appears as a combination of a passive capacity ('can be judged') with an active capacity ('can repair the wrong/harm'), engaged in 'earning [their] redemption' (Bazemore, 1998) through symbolic and material actions, within a shared 'community'.

In summary, these subjectivating processes function as a mechanism which shapes life, complementing the inclusive-exclusive process of restorative exception (Agamben, 2009/2017). The end result, the restorative subject, is an internally split entity. On the one hand, this subject's culpable, freely willed and instrumental actions project the human good outside of itself. This means that the good is not a dimension inherent in human beings but rather an external reward to be achieved by actions for which one is responsible. This

operation dooms the restorative subject to the unfulfillable pursuit of preset external goods (e.g. reintegration in the community, forgiveness of the victim, acts of reparation) whilst making them suitable to be punished, diminishing people's ethical and political potential to reimagine and enact non-violent forms of community. On the other hand, its embodied, disempowered and fusional features produce an entity made of a bundle of sensations and feelings exposed to the sovereign restrictions of restorative encounters as spaces that capture the mere fact of life. This subject is the opposite of the 'Muselmann' described by Agamben (1998/2017: 807) as a paradigmatic dweller of the concentration camp – a complete witness who nevertheless cannot bear witness precisely because he has been stripped of every relational and linguistic capacity. In contrast, participants in restorative encounters are loaded with relational and embodied capacities. They appear as *hyper-witnesses* of the sovereign power to capture life through justice, who require external direction to achieve their good, and thus as governable entities with diminished potential.

Institutionalisation as Loss of Experience

The sovereign capture of life is further developed by the process of institutionalisation of restorative justice. To some extent, this process erases what initially appeared as the 'original' element of restorative justice – the disconcealment of human presence. In fact, the formalisation through policy and the canonisation through tradition of organic restorative practices is a flagrant example of the destruction of the experiential nature (that is, the anarchic and autonomous potential) of informal methods of responding to harm. Through this process, restorative justice becomes commodified, bureaucratised and technicised, and, ultimately, sovereignty can be perpetuated.

Policy – that is, the top-down, formal regulation of practice – construes restorative justice as a discrete object – a practice with codified steps, aims and goals – presented as a means for realising restorative principles. Despite its seemingly benign nature, this sovereign appropriation commodifies restorative justice, transforming various historical processes into ahistorical entities, human interactions into objects, depleting their potential (cf. Agamben, 1977/1993). Policy translations of restorative justice seem to hold an intrinsic value, representing the materialisation of Leviathan's will and the seal of its authority, cancelling the context-bound historical experiences that constitute restorative practices. This policy fetishism stands in stark contrast to the recognition of the disconcealment of human presence that the restorative justice movement originally advocated. Penal policy literally *defines* this experiential process of recognition (*definire* in Latin means confining, enclosing within bounds), ordering its fluid and opaque nature from outside, reducing its complexity to a transparent thing: a katechonic sequence of commanded steps leading from microdisorders to social order (cf. Pali and Maglione, 2023). This operation renders restorative justice regulable within the realm of law. Restorative justice, in fact, becomes integral to the juridical apparatus, a legal means to achieve victims' satisfaction and reducing reoffending. These are essentially criminal justice ends, with the proviso that the victim here is only the person categorised by criminal justice as the material or direct victim, not the broad society represented by the state/crown. In this manner, restorative justice loses much of its potential 'otherness', its pluralistic nature as a bottom-up approach that seeks to address human presence's ambivalence and, at times, destructiveness (Maglione, 2018).

Tradition – that is, the emergence of authoritative approaches to restorative justice – produces bureaucracy. This is a subtly invasive form of legal violence, epitomised by Arendt (2006: 252) as the 'word-and-thought-defying banality of evil'. Bureaucracy blurs the boundaries between law-making and law-preserving violence (cf. Benjamin, 2021), generating what it claims merely to enforce. This violence is akin to a self-augmenting organism which creates its own demand, making itself necessary even when it does not deliver on its promises of predictability and efficiency (cf. Arendt, 1970: 38). It generates more regulations, relentlessly, as a Moloch which grounds itself whilst expanding its deadening reach. Then, even when regulations remain largely unapplied, they nevertheless create the very condition for appealing to the 'rule book', when, for instance, conflicts arise on what to do and how. A layer of material sovereign violence is added when such rules are backed up by the possibility, framed as someone's right or duty, of resorting to violence to enforce them. This violence is expressed by sanctioning those who do not comply with the rules canonised by authoritative traditions – e.g. by excluding them from the restorative community or impeding their services.

Both policy and tradition systematically transform justice practices into technical apparatuses. These apparatuses expropriate the sociality of the world, reproducing it as an entity lacking presence (Agamben, 1977/1993). They relentlessly extract representations from the social domain and store them, revealing the world as a stock of phantasms (Heidegger, 2013). Over time, these apparatuses evolve into ends in themselves. This is because they are automatic (they seek the instrumentally rational best solution), self-augmenting (they increase without decisive human intervention), unitary (they produce a whole which is taken for granted), universal (they apply everywhere) and, finally, autonomous (the means becomes the end) (cf. Ellul, 1964: xi). Consequently, they gradually become sovereign machines that continuously increase their power.

In summary, institutionalisation limits the potential of human presence, ultimately leading to the expropriation of the very substance justice practices are made of – *language* as expression of human potential. Inevitably, the authoritative regulation of restorative encounters involves contrasting participants' experiences with phantasmatic participation. This entails bringing lived experiences into alignment with abstract, hollow and self-sustaining commands that dictate what can be done and known. Policy is rooted in a katechonic mistrust of experience, which must therefore be expropriated, translated into Leviathan's language and thereby transformed into nullified property that is no longer under the control of those actually living it. Restorative encounters are no longer experiences but commodified objects, deprived of their historical practical significance, formalised and canonised. Here, destruction means fracturing the anarchic structures of knowledge that nourish horizontal justice practices, transforming them into tradition. The establishment of restorative 'quality marks', compulsory national training standards and government-led restorative 'hubs', and the subsequent exclusion of practices that do not conform to such standards, are concrete examples of this destruction. Through the incremental commodification, bureaucratisation and technicisation of lived experiences, restorative justice slowly becomes *spectacle*, in Guy Debord's sense, an entity alien to itself (Debord, 1994).

A Coming Restorative Justice

Agamben's political ontology provides critical tools for addressing the contradictions within restorative justice whilst liberating its potential, gesturing toward a justice without violence, an inappropriable praxis able 'to make the world into the highest good' (Benjamin, 2003: 170; cf. Agamben, 2014/2017).

The first step is to overcome the presuppositional ban-structure of restorative justice, exposing its inherent contradictions. This involves undoing the sovereign bond between law and violence which characterises institutionalised restorative justice. The elimination of any reference to sovereignty becomes possible only if the mere fact of life is never separated and removed, never included by exclusion to found restorative encounters. This requires imagining forms of deposition (Benjamin, 2021) of legal violence that pave the way for a new form-of-life. This concept refers to the impossibility of isolating life to establish politics or justice. A form-of-life is a life that emerges once the Western political-ethical separation between natural life and political life is deactivated. This justice-to-come will offer an 'escape from utilitarian subject–object relations and juridical instrumentalism, and from substantivist conceptions' (Whyte, 2011: 156) of justice rooted in punishment and premised on stable identities. It will be a justice of means without ends, integral to a form-of-life populated by beings with no nature, no purpose, no biological destiny or vocation – a justice and life of potential beings.

This idea is developed by Agamben in *The Coming Community* (1990/1993) (a work influenced by Jean-Luc Nancy, see next chapter of this book)*,* wherein he formulates a concept of community that does not presuppose commonality or identity as a condition for belonging. What Agamben terms 'whatever singularities' (1990/1993:1) is a mode of being that appropriates itself, allowing for the formation of a community based on the co-belonging of singularities itself, immune to exclusion. *Whatever singularities* are the perpetual taking place of humanity. They constitute the stake in the struggle between the state and a humanity that seeks no recognition from the state or institutionalised tradition but manifests itself as the process of commoning, thereby inaugurating a new era of politics. It will not be possible to enact this life, politics and justice if we do not free ourselves from those legal traditions which immobilise our potential. A coming restorative justice should thus embrace a new and different idea of ethical responsibility (Agamben, 1998/2017). Contrary to juridical interpretations of responsibility, which frame it in terms of debt and culpability, responsibility must be thought as unassumable, as something which the subject is consigned to but which it can never fully appropriate as its own. Non-legal responsibility is a form of 'irresponsibility' that precedes the designations of good and evil, and it is rooted in an understanding of ethics as the 'doctrine of happy life' (Agamben, 1998/2017: 777). This idea of ethics is based on the recognition that human nature is a *potential* devoid of essence, vocation or destiny and that evil arises from the decision to repress potentiality.

Practising a Justice-to-Come

How can one liberate restorative justice from sovereign violence and realise a justice integral to a form-of-life that restores the potential of human beings? Agamben provides a range of interconnected instruments.

Profanation is the act of freeing things from the 'sacred' names that set them apart for the benefit of a few and returning them to their free or common use (Agamben, 2005/2007: 73). It involves redeeming life from the sovereign ban, transforming the state of exception into a situation wherein the anomic power is appropriated by everyone. In this way, the life produced and captured by the biopolitical function of sovereignty is redeemed as a 'happy life' – a life stripped of every essential identity, vocation or task. Profaning restorative justice means rejecting the admission of legal responsibility as a condition to enter restorative encounters, as well as the sacred categories of victim and offender. Open collective spaces should be created to address individual choices enmeshed within total social processes which contribute to destructive behaviours, imagining new forms of social-individual responsibility.

Agamben's notion of *use* denotes a new relationship with things that transcends both the utilitarian conception of use and the logic of exchange. This new relationship involves seeking spaces where people could enjoy things beyond the law rather than in open conflict with it (Agamben, 2014/2017). The notion of use in question rejects the idea of legitimate ownership. Use is contrasted here with property and (policy) appropriation, as it does not simply represent a different way of owning but a theory of relationship with the world that is independent from the paradigm of appropriation. In restorative encounters, use involves the creation of new forms of sociality. Legal categories could be appropriated and infused with new meanings toward non-violent forms of conflict resolution (a theme which will feature also in this book, in the chapters on Jacque Rancière, Judith Butler and Gayatri Chakravorty Spivak).

Gesture constitutes another instrument to counteract the disintegrative tendencies inherent in legalising justice. It involves bringing about a new world as a non-statist, non-teleological, non-identitarian community-to-come (Agamben, 1978/1993, 2017/2018). Gesture is a pure praxis that is free from any pre-existing end, a pure means and the exhibition of such mediality. Restorative justice should embrace the absolute gesturality of human beings by incorporating artistic forms of reparation that embody the pure mediality of gestures. Art can create spaces for engagement among individuals involved in harms, fostering communal praxis that suspends guilt and responsibility in favour of co-belonging to a form-of-life.

Destitution means deactivating rather than abolishing the law. It represents a mode of potentiality that is not exhausted in its transition to act. Whereas in liberal criminal justice the individual is compelled to be through internalised, content-free commands, destitution exposes the possibility of a 'properly human life' (Agamben, 2014/2017: 1278). Destitution proposes a human life 'in which the single ways, acts, and processes of living are never simply *facts* but always and above all *possibilities* of life, always and above all power' (Agamben, 1996/2000: 4.5). This form-of-life is entirely outside the grasp of the law and entails using the world without appropriating it. Destitution brings about a state of infancy (Agamben, 1978/1993), a pre-individuated space in which to experience the fullness of language connected to its voice and the world as a space of possibilities. This justice-to-come halts and deactivates the sovereign machine. By simply overthrowing it, in fact, the sovereign will reconstitute itself but in different forms or shapes. Destitution, instead, is about creating new, playful relationships and spaces for political engagements.

The image of restorative justice emerging from the combination of these instruments is crucially different from what restorative justice is becoming and, to some extent, has always been (Maglione, 2018). This restorative justice to come critiques both criminal justice and the legal mentality within restorative justice, exposing the contradictions within these sovereign structures. It reveals criminal justice's focus on acts more than interactions, personality more than systems, breach of social order more than broken human relationships. It contests the katechonic mentality, the idea of punishment as an antidote to the violated social order, as based on metaphysical illusions of sovereign control. It promotes the development of a political-ethical justice movement advocating for anarchist forms of sociality, for direct forms of discussing transgressions of people's freedoms as symptoms of 'communal inadequacies' (McKinney, 2012: 16). These non-sovereign restorative processes are not mere alternatives to (and apparently less punitive than) penal mechanisms but are ethical-political practices meant to neutralise sovereign relationships – that is, domination, hierarchy, violence. A self-critical stance toward the development of institutional models of restorative justice is also integral to this approach. Institutionalisation, on the one hand, appears to scale up restorative justice; on the other, it ends up transforming it into a mechanism which reproduces sovereign violence. Ultimately, this critique has the potential to suspend the sovereign machine that informs restorative justice by contesting its depoliticising function. In this way, restorative justice would open up spaces for reinventing social relationships beyond juridical institutions, practices and mentalities.

Beyond Agamben

Agamben's political ontology generates insights into the logic, aims and functions of restorative justice and its relations with criminal justice. Appreciating the metaphysical logic of justice and linking this to the very foundations of the Western conception of politics empowers us to consider some unexplored dimensions of restorative justice and to connect these to wider and deeper issues concerning Western history, politics and society.

The first finding relates to the archē of restorative justice, its origin and aim – disconcealing human presence, which is neutralised and hidden by criminal justice. This entails rethinking crime as harm, that is, as a material and/or psychological disruption of one's life to be addressed through embodied encounters between human beings directly involved in experiencing such harms.

Despite this significant difference, restorative justice presents a fundamental similarity with criminal justice – its presuppositional ban-structure. This means that both models share a deeper foundational dynamic: the removal of their common conditions of possibility – the mere fact of life – pushed outside the edifice of justice. However, such exclusion does not entail elimination but just an exceptional relation with what is excluded. The mere fact of life will play a vital threshold-position, enabling, as a negative foundation, the edifice of both criminal and restorative justice.

Political ontology also sheds light on the anthropological machine enacted by restorative encounters and how such events contribute to turning humans into certain types of subjects. The subject shaped within restorative justice presents some qualities which overlap with the features typical of the criminal justice subject – culpability, free will and

purposefulness – and others which are specific to restorative justice – embodiment, disempowerment and fusionality.

The contentious issue of the institutionalisation of restorative justice finds a critical reformulation within this theoretical framework. The policy incorporation of restorative justice, originally a fluid range of crafty practices which blossomed at the very margins of institutional apparatuses of social control, represents a paradigmatic form of sovereign appropriation of an informal model of justice. Bottom-up justice practices are separated and removed from their environment in order for the law-as-discourse to take place. The commodification, bureaucratisation and technicisation induced by policy appropriation cause a loss of experience, the neutralisation of the critical tension toward freeing life from oppressive apparatuses, which the historical emergence of restorative justice has embodied.

Political ontology is not only a set of radical diagnostic instruments. It also provides tools to reflect on what a coming restorative justice could be, opening the space of thought to the future. Revealing the inconsistencies of the presuppositional ban-structure of restorative justice, profaning the artificial separation and removal of life at its heart, imagining gestures to open to new use restorative encounters, amount to attempts to destitute the legal violence which informs restorative justice as a Western anthropological machine which accepts a legal, and thus violent, notion of ethical responsibility.

How to use these instruments is only sketched by Agamben; his elusive writing is consistent with the content of his work – an ever-coming thought which requires the reader's active engagement with those tools in order to make them work. This thought is not only a set of instruments, though; it is instead an intensive 'space' for generating a different way of thinking, whose unique feature is connecting language, being and politics in order to cultivate human potential – the very substance of justice.

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4. Encountering Community

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Abstract

How can we rethink restorative justice as a hospitable space delivered from criminal justice? How can we restore just relations shaken by a loss of coexistence without imposing fixed identities? How can we reimagine community in restorative justice as a condition for exposing human beings' sociality without collapsing their singularities into identities?

Restorative justice is often presented as a form of relational justice, an endeavour to heal broken social bonds. The participation of communities in restorative processes is integral to this representation. Yet *relationality* and *community* are far from self-explanatory concepts, and the recurrent claim that restorative justice's 'communitarian' nature is cast against criminal justice's 'individualism' requires philosophical scrutiny.

This chapter explores these themes adopting a theoretical stance drawn from French philosopher Jean-Luc Nancy. Nancy's work constitutes one of the most profound and wide-ranging contemporary critiques of both individualism and communitarianism. From his perspective, both approaches revolve around an impoverished entity – either 'the individual' or 'the community' – endowed with an objective identity around which politics should be shaped. Both neglect the fact that the human condition is always necessarily shared, that *being* is always *being-in-common*. Human beings are not defined by a common essential quality determining their identity but rather by their necessary exposure to each other.

Nancy's delicate exploration of our being-in-the-world as being-with equips us with a sensibility to rethink the very core of restorative justice, whilst pointing to a *restorative justice singular plural* as an effort to counter the denial of difference generated by capitalist forces and their effects on humans' quest for justice.

> 'Justice' designates what needs to be rendered. . . . What needs to be restored, repaired, given in return to each existing singular, what needs to be attributed to it again, is the giving which it is itself.
>
> Jean-Luc Nancy (1996/2000: 186)

Community, Exposure and Justice

In the previous chapter, Giorgio Agamben's political ontology brought to the fore some of the fundamental questions characterising restorative justice, such as the problematic links between justice, community and sovereignty, the issues of institutionalisation as a loss of experience, and the problems related to idea of an embodied and relational justice. This chapter further explores the themes of *relationality* and *community*, adopting a theoretical stance drawn from the work of French philosopher Jean-Luc Nancy.

Restorative justice is often presented as a form of relational justice, an endeavour to heal broken social bonds (Zehr, 2005). The participation of communities in restorative processes is integral to this representation. Yet relationality and community are far from self-explanatory concepts, and the recurrent claim that restorative justice's 'communitarian' nature is cast against criminal justice's 'individualism' requires philosophical scrutiny (cf. Braithwaite, 1989).

Nancy's work constitutes one of the most profound and wide-ranging contemporary critiques of both individualism and communitarianism. From his perspective, both approaches revolve around a reified and impoverished entity – either 'the individual' or 'the community' – endowed with an objective identity around which politics should be shaped. Both neglect the fact that the human condition is always necessarily shared, that *being* is always *being-in-common*. This means that human beings are not defined by a common essential quality determining their identity but rather by their necessary exposure to each other.

Nancy's philosophical scope is broad, being influenced by philosophers like Georg Wilhelm Friedrich Hegel, Martin Heidegger and Jacques Derrida. *The Inoperative Community* (1986/1991), a work on the question of community, and *Being Singular Plural* (1996/2000), a manifesto for a relational ontology, are probably his most famous works, even though his philosophical production was relentless until his death in 2021.

Throughout his intellectual journey, Nancy shows that community is not a project of fusion but a process of resistance against power, not a place, state or condition with preset boundaries and exclusionary effects but an endless process of *commoning* intrinsic to human existence. Justice, within this context, is the ever-coming, always-incomplete endeavour to enable the sense of the world – that is, human beings' constitutive relationality – a task which is at once ontological, political and ethical.

This chapter adopts this conceptuality as a lens to scrutinise restorative justice's basic theoretical tenets. From this angle, what is at stake in the restorative encounter is a confrontation with the world, the tying and untying of relational bonds. The acknowledgement of humans' own worldly and singular-plural origin shapes restoration as an active response to humans' mutual exposure and to the possible breaking or stifling of social bonds. Restoration, here, is a form of ontological repair, the endeavour to generate sense out of human beings' groundlessness, resisting any attempt at covering over or denying this existential void, engaging with the very process of becoming human 'out of it'.

How can we rethink restorative justice as a hospitable form of abandonment, as a space delivered from criminal justice? How can we restore just relations shaken by a loss of coexistence? How can we reimagine community in restorative justice as a condition for

exposing human beings' sociality without collapsing their singularities into identities? Nancy's delicate exploration of our being-in-the-world as being-with equips us with a sensibility to rethink the very core of restorative justice.

Encountering Jean-Luc Nancy

Nancy wrote dozens of volumes and essays on an extensive range of subjects from Christianity to globalisation, from cinematographic practice to the early German Romantics. His thought unfolds through broad chronological phases, wherein themes and approaches evolve incrementally, through a recursive engagement with a few main thinkers and theories.

Nancy's first intellectual phase, spanning the 1970s, is characterised by a sustained dialogue with classical and contemporary philosophical figures and expressed by creative commentaries on their thoughts. In this period, often with his long-time friend and colleague Philippe Lacoue-Labarthe, Nancy deals critically with Jacques Lacan's concept of subjectivity (Nancy and Lacoue-Labarthe, 1973/1992), Hegel's ideas of mediation and speculation (Nancy, 1973/2001), Kant's philosophical language (Nancy, 1976/2007) and the early German Romantics' theory of literature (Nancy and Lacoue-Labarthe, 1978/1988).

During the 1980s, Nancy produces some of his most original works. In 1980, Nancy and Lacoue-Labarthe organised a conference on Derrida and politics to stress Derrida's central role in contemporary philosophy, whilst providing a platform for a conversation between philosophy and politics. This incipient interest was then solidified by the creation in the same year of the Centre for Philosophical Research on the Political, which was dedicated to pursuing philosophical rather than empirical approaches to political questions (Nancy and Lacoue-Labarthe, 1983/1997).

In this period, Nancy writes his most famous book – *The Inoperative Community* (1986/1991). Here, he deconstructs Western political thought as characterised by a nostalgic longing for an original community. This is a morally higher entity produced by the merging of individual subjects, who will then draw their sense from such a fusional and intimate 'super-subject'. This work is marked by Nancy's interest in Heidegger's question of being-with as well as in literary critics Georges Bataille and Maurice Blanchot's idea of community as 'neither a work to be produced, nor a lost communion, but rather as a space itself' (Nancy, 1986/1991: 19).

The 1990s represent a critical stage of Nancy's work, characterised by the codification of his distinctive ontological approach. In this period, he develops a commitment to a relational ontology, as explicitly outlined in *Being Singular Plural* (Nancy, 1996/2000). Nancy formulates an idea of the social bond as independent of any substantial and exclusive identity. The book's fundamental argument is that existence *is* coexistence. Nancy thinks of *being* as always already *being-with*: what is common to each single human being is their being inevitably exposed to one another. The notion of *singular-plural beings* underscores the idea that whilst we are unique individuals (singular) we receive our meaning from our being together with other beings (plural). From this angle, he reframes fundamental Western political and cultural concepts, such as sovereignty, war, the body, technology and identity, deconstructing their underlying theoretical foundations.

During the 2000s, Nancy applies more consistently this conceptual apparatus to a variety of specific subjects while formulating some 'constructive' political proposals. *The Creation of the World or Globalization* (Nancy. 2002/2007a) reflects on globalisation and its impact on our being-in-the-world, undertaking a rethinking of the world-destroying and world-forming dimensions of globalisation. On the one hand, with globalisation, there is the uniformity produced by a global economic and technological logic leading to devastation. On the other hand, there is the possibility of an authentic world-forming activity – that is, the creation of *sense*. Nancy describes such activity in terms of an incomplete struggle for justice, understood as a task and responsibility for each human being. This perspective is then integrated with an understanding of democracy, summed up in *The Truth of Democracy* (Nancy, 2008/2010), not as a given form of government but as a process of political contestation, a force of resistance to capitalist power and the only way to restore a relational world.

Nancy's Approach

Nancy's main philosophical influences, stretching across his entire intellectual journey, are Hegel, Heidegger and Derrida. Nancy's encounter with Hegel dates back to his postgraduate work in the mid-1960s at the Sorbonne, under Paul Ricoeur's supervision. Nancy approaches this great German philosopher unconventionally, rejecting Hegel's foundational idea of the dialectical structure of reality whilst retrieving his phenomenological critique of individualism (Norris, 2015). The dialectical opposition of forces which informs reality is not exhausted in what Hegel calls sublation (in German *Aufhebung*), a synthesis which dissolves these conflictual forces, but, Nancy argues, remains open as a dynamic field, never exhausted and never completed. In *The Speculative Remark* (1973/2001) and then in the more recent *Hegel: The Restlessness of the Negative* (1997/2002), Nancy advances this creative appropriation of Hegel, proposing a notion of being and reality as constitutively relational and dynamic.

A similar creative relationship ties Nancy's thought to Heidegger. Nancy re-elaborates well-known Heideggerian themes – the end of metaphysics, the question of being, death, spatiality and relationship with the world – focussing particularly on the concept of being-with, developed by Heidegger in *Being and Time* (1927/1962), as both prior to and constitutive of being. Nancy contests the idea of a solid metaphysical ground of being, arguing, with Heidegger, that this ground is *withdrawing*, leaving human beings in a world of emptied-out entities – such as sovereignty, God, nature – which need to be reckoned with and addressed. This task is, today, *the* human task par excellence. Against Heidegger, however, Nancy rejects the understanding of community as the historical completion of human sociality, a destiny to be realised (as in the Nazi *Volk*), proposing instead an interpretation of community as an essentially incomplete process of commoning, as sketched out in Bataille and Blanchot.

Derrida's deconstruction, finally, provides Nancy with a philosophical approach that questions the fundamental binary and hierarchical oppositions which characterise foundational Western cultural and political constructs. Deconstruction does not simply uncover and deactivate oppositions but also creates in this way a space for new concepts to arise, on the threshold between the old and new regimes, between violent hierarchies and their suspension. Adopting this perspective, Nancy deconstructs the ontology of topics such as existence,

embodiment, freedom, community and communism, reconstructing their conceptual contradictions and ontological limitations.

The result of these creative readings is a unique philosophical approach which, to some extent similarly to Agamben's method, unhinges the ontology of some foundational Western ideas whilst showing their intrinsic political implications. Nancy opposes to such concepts a distinctively materialist, bodily ontology which emphasises the fact that being is necessarily relational as bodies are necessarily exposed to each other and, therefore, that ontology is necessarily a political ontology of bodies. This framework provides conceptual tools to rethink history and politics independent of individualistic and fusional identities. Nancy does not produce, though, a coherent analytical method but rather a fragmentary approach that refuses totalisation and any form of subsumption of reality into a greater whole (James, 2006: 2) whilst pivoting around the concepts of deconstruction, being and body.

Deconstruction, Being and Body

Deconstruction, here, is not (only) the philosophical analysis of language originally formulated by Derrida, as it is often understood in the Anglophone academic world. According to Nancy, deconstruction involves uncovering and addressing the ontological weakness of Western cultural foundations, confronting what Heidegger refers to as 'finitude' (Nancy, 1996/2000: 15). Finitude is human beings' existential state: the absence of any solid ground, the lack of a destiny other than this very groundlessness. This is what is inevitably shared by human beings; their most fundamental character is their being thrown into such a condition, whose ultimate horizon is death. However, Nancy maintains, this should not lead to a nihilistic position of passive acceptance of meaninglessness. Instead, because existence is never a solitary situation but necessarily a shared state, here arises a crucial communal task: addressing this groundless existence, treating it as humans' *sense*. Human beings are 'abandoned' to this condition and to this task (Nancy, 1986/1991: 18). Yet, again, abandonment is not a condition of doom but the experience of abyssal freedom, the very state of being human when any solid ground is withdrawing. Addressing such an experience means confronting something which cannot be appropriated, due to the fact that this is always already integral to human existence. Nevertheless, withstanding our groundless condition, when understood as the deliberate act of traversing to the end of this existential state, does lead to the positive affirmation of (and not a passive surrendering to) human abandonment, actively creating a world out of it.

From a normative perspective, this approach ultimately leads to bridging the gap between what Nancy calls *the political* (the fundamental condition of being-in-common) and *politics* (the forces conflicting over the representation and governance of social existence) (Nancy and Lacoue-Labarthe, 1983/1997). In fact, Nancy's ontological deconstruction is intrinsically a political examination of the sociality of being as 'abandoned being'. Western ideas – of community as a common substance to be put to work, the subject as a self-positing atom, freedom as property, love as fusion and the body as bare flesh – once their ontological character (their shared finitude as the only ground in an otherwise groundless existence) has been deconstructed, appear as necessarily relational.

Relationality entails the idea that politics is not rooted in any kind of higher moral authority which reproduces the logic of sameness by forcing people to comply with that very model of being. Nancy supports instead the idea of ontological sociality, embracing the dissolution of any metaphysical, religious and moral super-subject, as well as the implicitly connected ethical-political task, the infinite 'tying, untying and retying of the social bond', which characterises human existence (Libbrett, 1997: xxi).

Within this context, the concept of the subject as a self-grounding entity, with an interiority made of specific mental states, is rethought by Nancy as the *body* – that is, as a stratification of worldly experiences which are necessarily social. Bodies, in fact, are inevitably exposed to each other, sharing a dynamic space – or *spacing* (Nancy, 1986/1991: 19) – through which their common existence unfolds. Such a coexistence is at once singular and plural (Nancy, 1986/1991: 19): a unique flow of incommensurable events, of infinite value, which, however, are shared across human beings. This relational, singular-plural matter is human beings' most distinctive character. It is not a fixed nature, though, but an overflowing relation, an excess which cannot be fully signified or entirely organised because it is never fully realised (similarly to Agamben's idea of potential and Deleuze's concept of desire; see previous chapters). Therefore, any attempt at objectifying or appropriating humans' singular-plural character, forcing it into a preset identity or essence, ultimately leads to destroying relationality, reducing human beings to empty and senseless forms (Nancy, 1996/2000). From this perspective, being itself appears as a singular-plural bonding, a relation which is never settled but always potential, never predetermined but always free, always articulated in unforeseeable ways.

Along these lines, Nancy deconstructs the concept of community. Nancy draws not only from Heidegger and Hegel but also from Bataille and Blanchot and their idea of *inoperativity* (in French *désœuvrement*) – that is, of a non-productive community (Nancy, 1986/1991). Community, here, is the being-with of singularities and not their synthesis on the basis of a shared identity. Their mutual exposure discloses their projection toward death, their finitude. Community is therefore essentially dislocated, an active loss, shared by human beings (James, 2006: 177). Within this framework, which in many respects influences Agamben's work as described in the previous chapter, community cannot be inscribed and exhausted into an objective institutional system (e.g. a totalitarian state). Community, instead, is a prepolitical relation which expresses both the most essentially political condition of politics and human beings' most human character (Smith, 2002: ix–x).

This conceptual framework has immediate political implications. In fact, in addition to a critique of identitarian communities and a contestation of the totalitarian state, it lends itself to produce a fundamental critique of capitalism (Nancy and Engelmann, 2015/2019). Capitalist techno-social devastation, from Nancy's perspective, is an expression of a non-social ontology. Capitalism, in fact, is built upon the idea of being as an essence instantiated in autonomous, self-grounding individuals, who are either consigned to infinite loneliness or objectified in organicist nations. Such entities are forced to compete as atomic individuals or fusional groups, negating their shared communal condition as beings exposed to death. Such ontological violence informs capitalism (and capitalist forms of justice), rendering it so destructive. Nancy denounces this denial of the human condition, suggesting a specific form of resistance. This involves a fundamental struggle – what Nancy calls 'justice' (1996/2000:

189) – to be carried out as an infinite task to affirm humanity. From this angle, Nancy aims to uncover those (capitalist) myths which turn into substantive and objectifying narrations of the human condition (Nancy, 1986/1991: 26). The taken-for-granted ideas of sovereign subject, individual freedom, exclusive belonging, possessive individualism, infinite exchange and measurability ultimately lead to a colonisation of the cultural and political world, the denial of relationality and multiplicity, which are reduced to preset essential identities.

Against this backdrop, the only political and ethical task is first recognising human finitude – that is, humans' intrinsic relationality and exposure to death – then engaging with the endless process of world-making, understood not as a theological generation from nothing but as the process of addressing human groundlessness. This task is the fundamental way 'to do justice to the multiplicity and to the coexistence of singularities, to multiply thus, and infinitely singularize the ends' (Nancy, 2002/2007a: 61). In sum, the only effective way to counter capitalism involves denouncing and suspending its (non-relational) ontology, and this is the task of (a relational) justice.

Demythologising Restorative Justice

An ontological deconstruction of restorative justice involves identifying the *myths* that form the basis of this idea of justice, then uncovering their underlying ontology, the figure of being they imply, and their connections with capitalism. The second part of this endeavour puts forth a *singular-plural* justice – that is, a reformulation of restorative justice based on Nancy's relational ontology, drawing out some ethical and political implications for a restorative justice to come.

Myths of Restoring Justice

In Nancy, *myth* refers to a narrative of origins and destinies, a specific mode of thinking characterised by a foundational fiction that engenders itself (1986/1991: 57). This self-generating narrative is an attempt to fill up the pure lack of ground which characterises human existence. Myth, in fact, produces 'the concepts or images that will form the basic vocabulary of the community by which that community will be able to name itself and the elements that comprise the world' (Morin, 2015: 165–66), injecting a substantive sense into human life, perpetuating a form of being-together which is essentialised. These mythic concepts and images are all rooted in the perception of the absence of foundation combined with the desire for an absolute ground. Myth arises as the result of this dynamic, though such foundational stories are always themselves necessarily without foundation (Nancy, 1986/1991: 57).

Restorative justice is itself a tangle of mythic narratives which found – that is, explain and justify – certain justice practices which blossomed at the margins of modern systems of formal social control. These narratives are built around specific subjects, their actions and relationships. The *victim* in restorative justice is an entity consistently in search of safety, of a physical and emotional space wherein to recover from the harm suffered, as a step toward healing and closure (Johnstone, 2011: 52). In this space, 'being heard' is a crucial need, to the point of appearing as the victim's fundamental condition. Victims need to communicate their emotions and find answers to some fundamental questions as a condition for their

sense of autonomy and safety to be restored (Van Ness and Strong, 2022). This individual, in search of safety and recognition, is the subject to whom restorative justice *responds*. However, more recently, other narratives around the victim in restorative justice have been generated and circulated. The natural environment (Ordóñez-Vargas, Peralta Gonzalez and Prieto-Rios, 2023; Pali, Forsyth and Tepper, 2022) and supra-individual groups (Gaddi and Rodríguez Puerta, 2022), for instance, are increasingly presented as possible harmed subjects. This emerging narrative has the potential to alter the idea of a necessarily embodied and discrete victim, opening up a space for thinking differently about stakeholders, harm and reparation.

The *offender*, routinely portrayed as lacking in emotional understanding of the crime's human costs, is another crucial subject in this narrative. The offender is a decision maker who is required to take active responsibility for the wrong or harm caused. Restorative justice seeks to hold them accountable through moral-psychological processes of remorse and shaming, giving them an opportunity to 'own' their behaviour by making amends to the victim. This narrative has been more recently paralleled by innovative representations of this stakeholder. Critical criminological analyses have raised the issue of the role of marginal offenders who are further marginalised by mainstream restorative justice practices, demanding a thorough recognition of how an array of diffused subjects – ethnic minorities, socio-economically disadvantaged individuals, people affected by learning disabilities – experience their role as those who are required to repair (Aertsen and Pali, 2017). Similarly, non-living offenders, such as deceased settler-colonial slave traders or non-human offenders (e.g. state agencies or corporations), increasingly feature in accounts of how restorative justice could radically change current understandings of offending and how to respond to it (Spalding, 2015; Shackford-Bradley, 2023).

Lastly, the *community* is characterised by a few recurrent attributes: it is innocent, local, an alternative to the state and society, weak but resilient and fusional. The premise of this view is that crimes and crime responses are conceived of in terms of micro-social conflict (Christie, 1977) taking place in (and against) the wider community, understood as a cohesive social environment. It follows that community involvement and participation is an essential component of restorative justice and, as such, is a purportedly key difference with respect to criminal justice (Johnstone, 2011: 126). Often the involvement of this actor is considered a legacy of an Indigenous form of justice, an expression of First Nations peoples' traditional ways of dealing with wrongdoing (e.g. in the Americas, Australia and Aotearoa New Zealand). Against this understanding of community as a smooth fabric of moral values and beliefs, embodied in family members or local professionals, new ideas of community have been produced by practitioners and scholars (Blagg and Anthony, 2019). The idea of community as a process of sharing power, not as a subject with a fixed identity, has been put forth as one of the main challenges for the future of restorative justice (Chapman, 2019; Maglione, 2017).

There are two other key components of the foundational narratives constituting restorative justice. The first is the notion of *harm*. In the literature this has traditionally been conceptualised as either material or symbolic (e.g. Barnett, 1977; Eglash, 1977; Retzinger and Scheff, 1996). Material harms include physical damages to a direct or indirect victim or

community. Symbolic harms refer to the breach of the interpersonal relationship between victim and offender, by creating a sense of fear and lack of safety.

The second element is the very idea of *restoration* itself. This often involves a holistic process wherein symbolic and material, moral and psychological, individual and social, elements coalesce around the restorative outcome. Restoration satisfies the stakeholders' needs ingrained in their human 'nature' (safety, justice, participation, empowerment) whilst healing social bonds in the community (Zehr, 2005). Again, harm and restoration appear as conceptualised differently over time. Whilst the representations outlined above are deep-rooted and widespread, other understandings of what has to be restored and how have emerged. Ideas of structural, socio-economic harms linked to microrelational harms have been proposed (Willis, 2020). Along the same lines, the idea of linking restoration to broader social processes of structural transformation has been formulated (Maglione, 2020).

These actors and their relationships are then cast against a polemical backdrop – *criminal justice*. Criminal justice, here, designates a model of responses to wrongdoing rooted in a self-sufficient and individualistic idea of subjecthood (Leung, 2015: 130). Criminal justice is represented as a legal rationality implemented by public prosecution, trial process and individualised criminal punishment and justified by retributivist or rehabilitative philosophies. This model is described as marginalising victims, inflicting pain on the offender and ignoring communities (Zehr, 2005). It is highly professionalised and, as such, removed from people's needs and interests, cold and distant. Restorative justice's foundational narratives contend that criminal justice has never been able to address victims' needs, opening the way for new forms of justice to emerge.

Overall, the mythical structure of restorative justice appears as an array of responses to materially or psychologically harmful behaviour involving a limited set of subjects, arising as a functional response to the failures of criminal justice. There are variations regarding who those actors are, their needs and interests and what restorative justice can offer them. This field appears as rather stable at its centre, though with increasing peripheral complications, and its margins as slowly but increasingly blurred due to the emergence of new understandings of restorative justice's origins and purposes. A recurrent aspect, though, is the conceptualisation of stakeholders as self-enclosed entities, whose relationships are shaped as contingent psycho-social interactions. Victims, offenders and communities appear as subjects 'perfectly detached, distinct, and closed: being[s] without relation' (Nancy, 1986/1991: 4).

From Myths to Mythologies

Myths serve a crucial role in providing individuals, groups and organisations with a story of their origins. The problem, here, is when myths turn into *mythologies*. In our case, this means that the narratives constituting restorative justice end up institutionalising themselves. This entails selecting certain myths and then establishing them as authoritative sources of exclusive identities and substantive meanings. This inclination toward self-institutionalisation and self-legislation characterises the present of restorative justice.

Myths become mythologies when multiple understandings of a historical phenomenon (e.g. the rise of restorative justice), which have emerged organically, are absorbed into a single fictional narrative that is then propagated through institutional means (Biro, 2019: 68–69). Mythological narratives crystallise the logos of restorative justice, stifling the modes of thinking that characterised restorative justice as a practice-based justice. This *logos* is ontologically divided since its singular articulations never voice the same origin (Fynsk, 1991: xxii–xxiii). Institutionalisation involves instead negating this fundamental historical plurality and denying the singularity of those voices.

The institutional narrative of restorative justice is built around essential subjects with predetermined identities (the disempowered and resilient victim, the morally immature offender and the community-as-Gemeinschaft) and preset relationships (the harm as material or psychological loss, restoration as healing and closure). In this context, restorative justice works as a penal mechanism which relies on the prior existence of a norm – restoration as the fulfilment of certain subjects' needs – and its enforcement (Daly, 2016).

This mythology excludes competing perspectives, ultimately perpetuating *sameness* – that is, the closing out of the diversity characterising marginal justice practices – through a distinctive form of epistemic violence. The generalisation and abstraction which define the institutional representations of restorative justice, described, for example, as a 'sanction' (as established in the French Law 2014-896), a 'rehabilitation requirement' (in the UK Offender Rehabilitation Act 2014) or a 'process' (in European Union Directive 2012/29/EU), express the solidification of restorative justice as a discrete tool or service integrated into existing systems of formal social control and enforcing preset ideas of 'just' actors and their relationships.

The risk here, therefore, is that restorative justice becomes a self-perpetuating mechanism for realising a specific model of being human and of just social bonds. The adoption of distinctive ideas of victims, offenders and communities tends to re-engender a world populated by such subjects, and, in turn, *this* world becomes the destiny of restorative justice. The primal relationship with myth cannot be avoided; what is needed is awareness of the ways in which myths found fictionally and ideologically institutional restorative justice as the only restorative justice possible (Biro, 2019: 65–66).

Institutional restorative justice is founded in the same ontology which underpins both atomistic individualism and communitarian philosophy. In fact, restorative subjects appear as self-sufficient and substantive entities, with firm identities around which justice is shaped. The 'error' of institutional restorative justice is that of oscillating between the individualistic legacy handed over by liberal criminal justice – the victim/offender dichotomy, individual responsibility, reliance on law enforcement, gender and race blindness – and the communitarian philosophy developed by Western informal and traditional justice movements, with its emphasis on a fusional community as an alternative to the state, even as this community works as another fixed cultural and social background.

Either way, restorative justice espouses a distinctive form of ethical sovereignty which emphasises the reproduction of the same – that is, a preset idea of subjectivity which exempts itself from finitude, becoming the telos of justice, 'bringing the plurality of

existence under the logic of unity ... the phantasm of sovereignty, which is the non-shareable par excellence' (Gratton, 2015: 222). This is the logic of institutionalisation, the idea of stabilising marginal, fragmented mythical narratives, leading to the objectification and appropriation of singularity (Nancy, 2020/2021: 15).

Why this institutional-legal closure? One possible answer is to relate this dynamic to capitalism, understood as a process of establishing singularities as infinitely substitutable entities, producing a distinctive techno-social devastation by isolating individuals and denying their finitude. Capitalism denies the possibility of exposing our lack of foundation, trying instead to appropriate it, turning it into a need to be filled or a fear to be removed (Fynsk, 1991: xvi).

As Nancy argues, 'Capital is something like the reverse side of co-appearance and that which reveals co-appearance. ... One could say that capital is the alienation of being singular plural as such' (Nancy, 1996/2000: 73). The world produced and reproduced by capitalism is stripped bare of any signification, whilst human and non-human bodies are incorporated into a system where they are arranged and put to work according to capital's logic of infinite commensurability and exchange (Nancy, 2002/2007a: 33). For Nancy, capital is not an abstract ideology or a concrete economic program but an ontological process which installs an idea of the world and of being that perpetuates the endless substitution of singularities and the distribution of ethical, political and material misery. This force destroys relationality, closing the space of mutual exposure to singularities (Hiddleston, 2015: 237), and so it opens the way to a solidified, essentialised model of restorative justice. Restorative justice, in fact, when institutionalised, reinforces the logic of capital by reproducing specific ideas of subjects and their relations, with stable features and functions, needs and interests, as if they were measurable and exchangeable commodities.

Institutionalisation as the Retreat of the Political

This institutional dynamic is integral to the broader process of the *retreat of the political* (Nancy and Lacoue-Labarthe, 1983/1997). As seen above, Nancy distinguishes between politics and the political: the first is the clash, representation and government of social forces; the second is the relational and communal foundation of politics, its sense. Mythologies reduce justice to a substance which can be taken up by political subjects and used as a tool of political programming. Justice is subsumed under a general principle which imposes a fixed form and an external end, becoming a mere political instrument of law enforcement.

This process is an expression of the retreat of the political, that is, of withdrawal from the ever-coming space where multiple singular beings unfold. As Nancy argues, 'The retreat presents itself in two ways at once: on the one hand, the theologico-political withdraws into the realm of law; on the other, it withdraws into a self-representation that no longer refers to an origin, but only to the void of its own specularity' (Nancy, 1996/2000: 47). This dynamic entails the institutionalisation of difference, the negation of the ontological condition of human beings. In this context, institutional politics endeavours to institute a community founded on an idea of justice as instrumental to a specific – individualist or communitarian – political ideal. Justice becomes the most prominent political apparatus (for

politics is equated with law) whose aim is applying a normative code to found a polity with rigid boundaries.

The political exploitation of crime victims to generate consensus in a time when politics undergoes a crisis of legitimation, and the consequent transformation of restorative justice into victim-centred or victim-led justice (Kearon and Godfrey, 2007), is an example of the instrumental politicisation of this model of justice. The insertion of a non-political subject – the victim – at its core, individualises restorative justice, whilst the reference to community provides a shared socio-cultural backdrop. From this angle, the institutionalisation of restorative justice consists of subsuming justice under an ordering principle – satisfying the victim in the community – turning restorative justice into a means to a political end. Institutionalisation, therefore, is informed by and perpetuates a distinctive archē, the sovereign victim, which endows restorative justice with a stable purpose, a sense. This means turning justice into a device to erase those variations which characterise the recent dissenting myths of restorative justice – the ideas of non-corporeal victims, vulnerable offenders, community as a power-sharing process, structural restoration – ensuring sameness.

Nancy suggests that behind this process lies the supposed impossibility of facing and addressing the mutual exposure and shared finitude that mark the human condition. The terror of addressing the existential abandonment and lack of ground that characterise human beings' ontological condition is addressed by capitalist apparatuses through fixed meanings and identities. The retreat of the political is this denial of humans' abandoned condition and of what makes this condition bearable: that we are always already in-common. This process totalises our being, turning it into identity.

Institutionalised restorative justice responds to the unbearable lack of foundation by constructing a static space which treats human beings as a united common substance, according to a specific political principle. This process superimposes the immanence of social reality, rejecting the plurality of ends and lives that is the condition for the generation of sense (Prozorov, 2018).

Yet the retreat of the political is not simply a critical event leading to social and political paralysis. In fact, it also demands the generation of different opportunities for collective existence, the development of new forms of political spacing to enable resistance to fusion and totalisation. As Nancy states, the retreat of the political involves 'first, withdrawing the political . . . but also . . . re-tracing of the political, re-marking it, by raising the question in a new way which, for us, is to raise it as the question of its essence' (Nancy and Lacoue-Labarthe, 1983/1997: 112). Institutionalisation, thus, is not merely the demise of a justice aligned with our ontological condition but an opportunity to retrace a singular-plural justice.

Restorative Justice Singular Plural

According to Nancy, our task is to interrupt this mythologising process, thereby reaffirming the experience of finite being-in-common (James, 2006: 199–200). This involves interrupting the institutional denial of difference generated by capitalist forces, reversing 'the

insignificant equivalence . . . into an egalitarian, singular, and common significance. The "production of value" becomes the "creation of meaning"' (Nancy, 2002/2007a: 49). Interruption does not involve rejection or the erasure of myths but rather recognition of the existing plurality of foundational narratives and their possible degeneration into mythological material. This is only the first step toward countering the injustice which arises from the self-institutionalisation of restorative justice. The task, here, is opening up new possibilities for alternative and non-institutionalised forms of restorative justice, creating avenues for ontological, ethical and political praxis.

World, Multiplicity and Justice

Justice is a thing of this world, if by *world* we mean the endless process of making sense of human existence, in which beings are constantly involved. This process is necessarily relational, for sense-making requires beings to be in contact with one another. This contact, the sharing of this relational space, is the condition of possibility for the world to be, for sense to take place. Creating the world, enabling sense-making, is a response, and an obligation for human beings, to the condition of being thrown into this relational existence. Abandonment thus consists in the obligation to make a world (Raffoul, 2012: 78), the duty to enable its sense.

Institutionalisation, instead, solidifies myths and erases multiplicity, which reduces the participation of each multiple, singular being in the process of sense-making. It imposes transcendental models of hierarchy and sameness, limiting its possibilities of restoring relational bonds (Hiddleston, 2012: 151). Institutionalisation *is* injustice, represented as the sovereign suppression of coexistence, the fictional erasure of abandonment and, as a consequence, the reduction of beings to passive entities.

Hence, justice, within this context, is the effort to enable the sharing of the world, exploring the freedom which is implicit in our condition of ontological abandonment and activating our ethical obligation to live in and address such a relational world. This endeavour alone generates community, in contrast to the 'unworld' of institutionalisation (Hand, 2012: 136). Justice is this crucial world-forming activity which resists the totalising impulse of techno-social institutionalisation by refusing any transcendental abstraction of our being-in-the-world, offering instead a measure for what is necessarily unmeasurable – that is, our ontological condition. Justice does not provide specific moral rules. Instead, it is the condition of being obligated to interrupt the transformation of humans into essential identities and relations into codified practices, multiplying human beings' ends and relations (Marchart, 2012: 180; Heikkila, 2012: 54). Additionally, this being-obligated can never be itself institutionalised; justice cannot become a function of an institutional agency. In fact, justice, for Nancy, is not the mere task of producing a relational world, a fabrication that supposes a given object, a project and a producer (Hand, 2012: 134). To the contrary, justice is always *to come*, an endless resistance to any ontological reduction of the coexistence of singularities.

This is what Nancy designates as *inoperativity*, the condition of something never closed or completed, something which 'does not belong to the order of the achieved, or the unachieved; it lacks nothing while being nothing accomplished' (Nancy, 2014/2016: 8; cf.

Agamben, 2014/2017: 1278). The community that justice creates is inoperative since it involves the binding and unbinding of social bonds, the undoing of subjectivities, always in progress and never turned into a completed work or a finished product. Justice's constitutive incompleteness is the root of resistance to institutionalisation and to any form of grounding justice in some total, unified identity. Inoperative justice counters the totalitarian political program of putting justice to work as an instrument to reproduce stable identities, marginalising any residual entity which does not comply with the chosen model, creating instead a non-unitary space of encounter. As Nancy poetically puts it, 'This is also why justice is always – and maybe principally – the need for justice, that is, the objection to and protest against injustice, the call that cries for justice, the breath that exhausts itself in calling for it' (Nancy, 1996/2000: 189).

Ontological Restoration

Restoration, in this context, acquires a new and distinctive meaning. As Nancy states, it refers to 'what needs to be rendered . . . [w]hat needs to be restored, repaired, given in return to each existing singular . . . in its coexistence with all other creations' (Nancy, 1996/2000: 186–87). Nancy describes the core of justice as the process of ontological restoration, the restoring of something which is given with the world, its sense, integral to our existence, and which has to be rendered (McMahon, 2011: 624). Justice does not come from the outside to fix the world; it is not external to existence but is the very expression of humans' singular-plural condition. Justice generates a restorative relation whereby humans actively take responsibility for the world and its sense. This restorative logic shapes justice as a world-forming task, as seen above, which unfolds our being-in-common.

Restoring the world thus involves restoring the subsistence of multiple singular beings. This entails responding to the elimination of relationality caused by institutionalised justice by enabling bodies to be exposed to each other and, in this way, restoring their condition of shared finitude. This justice, clearly, is not an abstract normative principle enacted by some 'objective' judgement delivered by a supposedly neutral, third-party and independent sovereign agency. Justice, for Nancy, is not just a question of giving something its due but of rendering and restoring what is always already there (James, 2012: 39). This restoration is an ontological responsibility which is at once political and ethical. The existential call for making sense of the world is what justice ought to secure. This responsibility is not a legal duty but a task integral to human existence. Restoring this world requires recognising its incommensurability against any attempt to impose the logic of identity (James, 2006: 236–37).

The material form of this justice is inevitably that of *bodily encounters*. An encounter is not a space but a spacing, the unfolding of a relationship wherein listening (and not simply hearing), as conscious exposure toward the other, becomes possible (Nancy, 2002/2007b: 9). Justice develops a restorative relation whereby bodily encounters reactivate multiple singular relations across human beings objectified by external events. Harm, here, designates the un-sharing, the isolation of singularities as atomic individuals or as communitarian beings. Harm is the elimination of difference, the closure of the space wherein beings expose and share their finitude. Yet it is through these interrupting events that a possibility to address the world is offered: harms are openings to otherness. In this

context, humans' world-forming task turns into an infinite endeavour, without a final product, an inoperative activity to address otherness and its excess. In such encounters, a non-identitarian bonding can be explored as a practice of resistance to the negation of relations with other humans and their environment.

Here, the restorative encounter follows the scheme of *love.* Love is not an experience of fusion with another into a greater community but an open-ended relation with another singularity which leads to the shattering of one's self-images, narratives and relations. Love affirms oneself as a *loss* inevitably exposed to others, beyond any attempt to fill, erase or remove that experience (Nancy, 1986/1991). The encounter is, in fact, a space of *touching*, wherein the other takes place in its naked abandonment, as Nancy states: 'Touching is the taking-place of a relation: the proximity according to which forces encounter one another, one coming to another, feeling their powers, their resistances. Touch is the very act of the encounter of forces' (Nancy and Goh, 2021: 37). In this spacing, material or psychological harm is deconstructed as an existential loss, whilst human beings are allowed to rethink their experience of victimisation or offending as a process of touching the other as a broken, mutually exposed and codependent singularity. This is not a journey back to oneself but an opening to the broken constitution of the being-in-common (Nancy, 1986/1991: 99).

Touch and love are resistance to violence and power, objectification and appropriation, insofar as they are the release of this space for relating. This space does not produce community; it *is* community, the restored finitude, the incomplete process of interruption, the suspension of singularities, unworking social, economic, technical and institutional arrangements (Nancy, 1986/1991: 31). The subject encountered, and touched, is a subject exposed, a subject sharing its finitude, traversed by the other. Rediscovering this subject's infinite potential is justice's sole aim.

Democracy and Justice

This ontological justice is always already a democratic justice. This involves affirming the immeasurable and unexchangeable to be shared among people against the capitalist demands of absolute exchange and the necessary equivalence of beings. Democratic justice embodies the idea of difference, of singularities transcending themselves, of fragmentary social and political arrangements which resist the institutional-legal capture of human beings and their relations (Marchart, 2012: 176–78).

The democratic affirmation of what cannot be measured and exchanged can displace and suspend the domination expressed by the capitalist negation of difference. This means restoring community as a potentiality, recognising ontological relationality and repairing the world as an event, the surging up and sharing of sense. This democratic event has no end, no final completion, but it does need to be affirmed; it is an ongoing struggle for justice (Nancy, 2016/2020: 15).

Here, democracy is not a specific political system but an event without a preset form, a process of *anarchic* resistance, an excess which cannot be captured by a fixed, superimposed rule (see in this book the chapter on Jacques Rancière and his concept of democracy). Democracy is the disruption of existing social and political arrangements, not a political

system. Justice is democratic when it serves as the incomplete, ever-renewing endeavour to restore difference. This justice is a mode of action that does not abstract and generalise, subjecting beings to a higher figure of being, but rather 'gives to each evaluating gesture – a decision of existence, of work, of bearing – the possibility of not being measured in advance by a given system but of being, on the contrary, each time the affirmation of a unique, incomparable, unsubstitutable "value" or "sense"' (Nancy, 2008/2010: 24).

Democratic justice's underlying ontology is therefore distinctively anarchic: 'Democracy equals anarchy . . . the power to foil the *archē* and then to take responsibility, all together and individually, for the infinite opening that is thereby brought to light' (Nancy, 2008/2010: 31). To be anarchic means to be deficient by definition, defying any archē, any essential end or beginning (Marchart, 2012: 174). Anarchic democracy, here, means defying sovereignty, suspending the institutionalisation of justice, the sovereign-capitalist grounding and crystallisation of justice into the law of sameness and its pre-existing norms.

Democracy entails the disconcealment of mutually irreducible means, ends and forms-of-life, the protection of their spacing, their emergence and transformation. A democratic justice is always a justice against totalising constructions, against the process of organising forces to impose upon multiple singular beings a global principle which would supposedly determine the course of their life, their ends and sense. Democratic justice deconstructs totalitarian forms of justice that impose commensurability and equivalence on singularities and defy difference (Nancy and Engelmann, 2015/2019: 89).

The goal is not picking an end or value to make it the overarching sense of a certain political organisation but the deconstruction of any total figure of being, any ultimate value, reopening the spacing of plurality by subtraction and detotalisation (Prozorov, 2018). Democratic justice therefore enables the ontological community to speak its own difference, instead of generating any form of consensus, to take responsibility for the absence of an ultimate principle of political organisation, instead of covering over this void with individualistic or communitarian political arrangements.

Beyond Nancy

Encountering community, engaging with Nancy's thought, means undertaking a journey inside human existence, realising that its foundation is nothing but an infinitely withdrawing ground, the absence of a human nature or destiny understood as a form of ontological abandonment. This awareness may understandably suggest either melancholy, which translates into nihilism and passive deliverance to a senseless world, or an existential anxiety, which results in desperate attempts to conceal that void which is humans' common identity, by either a celebration of atomistic individualism or the rediscovery of primordial communities.

Nancy's deconstructive effort proposes a third way, an ethical-political post-foundationalism cast against any form of nihilist anti-foundationalism and fusional communitarianism (Marchart, 2012: 172). Nancy acknowledges that there is no ultimate stable ground, no transcendent principle of legitimation, and that foundations cannot be instituted if not temporarily. But the acceptance of the absence of ground also inevitably uncovers a crucial

dimension of human existence. This is the mere fact that we *share* this groundlessness, and this sharing-out is nothing but the result of the inevitable mutual, naked, mute, abandoned exposure of each and every being to the other.

Nancy does not deduce from this ontological consideration any ethical or political principle. Instead, his main point is that our ontological groundlessness, insofar it is shared, is always already ethical and political, an ethos and a praxis. This does not entail the existence of a normative ideal inherent in the 'nature of things', to be restored by some political program. The only human task, instead, is to make sense of this world we are thrown into, enabling our shared finitude, our community.

Justice, in this scheme, plays a crucial role. Justice is the endeavour to enable such a community to resist being put to work and instituted (Watkin, 2012: 20–21). It is not an 'ultimate justice' founded on human nature but the never-completed, always-coming endeavour to resist the political closure and ethical violence of totalising our being, radically displacing any form of institutionalisation.

This conceptual apparatus provides profound insights into the development, present conditions and possible futures of restorative justice. From this angle, restorative justice appears as a tangle of myths – foundational narratives constituted around specific subjects and their relationships cast against a background represented by liberal criminal justice. These myths turn into (institutional) mythologies when contingent historical conditions – aggregated around the development of capitalist state – lead to the enforcement of certain myths to the detriment of others. Institutional restorative justice is constructed ontologically on the same self-engendering and self-perpetuating subject which underpins both atomistic individualism and communitarian philosophy. This development reduces the ethical-political potential of human relationality, turned into organised sameness against difference, prioritising unification against fragmentation and stability against temporal unfolding. Restorative justice becomes an *instrumentum regnii* meant to implement an essential, self-engendering polity.

A restorative justice singular plural, instead, is the endeavour to restore the world shattered by the closure of difference, interrupting the mythologies which reduce justice to one voice and then opening up new possibilities for forming the world, reactivating our responsibility, our infinite task and endless duty to restore multiplicity. This is a justice of the encounter, an encounter of encounters wherein a dynamic space – a spacing – for sharing is reconstituted. This ontological spacing is always already a democratic task, an ethical-political process of contesting the imposition of an archē upon justice, an anarchic spacing which rejects the subjection of justice to law and encounter to judgement.

In this way, restorative justice is not any more a way of covering over the shattering and groundlessness uncovered by a crime but the endeavour to create a more hospitable form of abandonment, as a spacing delivered from criminal justice. In this spacing, the loss of coexistence is addressed instead of denied, explored instead of filled.

Nancy's delicate exploration of our being-in-the-world as being-with, which demonstrates that the ontological question is always already an ethical-political issue, demands that we

rethink the very core of justice as ontological restoration. His post-foundational thought does not leave us with ready-to-use solutions but with openings, broken assumptions and shattered certainties. It is by addressing this debris that a new possibility of justice may arise.

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5. Encountering Identity

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Abstract

Who is restorative justice for? How can restorative justice be a space wherein participants can perform their 'selves' and enrich their personhood? What are the political implications of a form of justice which recognises interdependence and vulnerability? How can restorative justice address issues of social precarity?

This chapter delves into the intricate relations among identity, violence and restorative justice, drawing on the work of Judith Butler, a contemporary American philosopher who has developed innovative thinking on how the imbrication of political power and cultural frameworks creates spaces of social and individual oppression or emancipation.

By creatively appropriating Butler's theories it is possible to rethink restorative justice and then to formulate a space for developing new strands of action and thought within it. In so doing, this chapter draws on Butler's entire intellectual journey, from her early Hegelian studies to her most recent reflections on non-violence, focussing particularly on the relationships between *identity* and restorative justice.

Encountering Butler's wide-ranging, transdisciplinary critique prompts a radical reflection on key claims surrounding restorative justice such as the focus on interdependence, the critique of state justice, and non-violence. The final result is a *restorative justice otherwise*, a critical model of restorative justice as a political praxis informed by the awareness of the mutually constitutive links between vulnerability and resistance, individuality and interdependence, subjectivation and subjection.

> Let's face it. We're undone by each other. And if we're not, we're missing something.
> Judith Butler (2004b: 19)

Identity, Violence and Justice

'Doing justice' entails preliminary decisions regarding who can seek justice, who is worthy of achieving it, and who cannot. These decisions are often deeply woven into the very fabric of a society and therefore assumed to be natural and unchangeable.

This chapter delves into the intricate relations between identity, violence and restorative justice, drawing on the work of Judith Butler, a contemporary American philosopher who has developed innovative thinking on the conditions and effects of those crucial decisions about what counts as a 'person' and its implications for a just society (Lloyd, 2007). Butler started her career engaging with Hegelian concepts, such as recognition, desire and dialectic. Working through feminist scholars and drawing on psychoanalysis and Michel Foucault's theory of power, Butler has produced an eclectic body of work on an extensive range of issues, from gender to non-violence (Brady and Schirato, 2011). Adopting a relational political ontology similar to Jean-Luc Nancy's (that is, arguing that the human condition is necessarily social) and a constructivist epistemology (by claiming that culture shapes reality by injecting meaning into it), Butler has problematised the boundaries which traditionally separate sex from gender, paving the way for the emergence of queer studies (Butler, 1990; 1993; 2004b). Her ethical and political philosophy, then, has offered a subversive view of human agency as intimately tied to vulnerability, serving as the foundation for egalitarian and non-violent political obligations (Butler, 1997b).

The following sections creatively appropriate Butler's theories to rethink restorative justice and then to formulate a space for developing new strands of action and thought within it. In so doing, this chapter draws on Butler's entire intellectual journey, from her early Hegelian studies to the most recent reflections on non-violence, focussing on aspects relevant to the political scrutiny of restorative justice.

Central to Butler's work is her endeavour to challenge the reifying effects of discourses in the production of subjectivities (Butler, 1987; 1997b). Notably, she posits that not only identities but also bodies, not only gender but also sex, are an effect of cultural constructs. Individuals 'perform' their gender and sex by repeating existing rules of behaviour influenced by heteronormative discourse. Such constant iteration creates the 'naturalness' of sex, gender, or any other essential identity. This dynamic is not only a personal matter but also an ethical and political issue since it entails marginalising certain identities, bodies or lives as non-natural whilst imposing others as normal (Butler, 1990; 2004b). The strategic response to this predicament is to re-signify those taken-for-granted identity-making discourses, rewriting their meaning to produce new inclusionary and emancipatory arrangements that recognise human beings' shared vulnerability (Butler, 1997a).

Encountering this wide-ranging, transdisciplinary perspective prompts a critique of key claims surrounding restorative justice: Who is restorative justice for? How can restorative justice be a space wherein to perform different identities or even defy the very category of 'identity'? What are the implications of a form of justice which recognises vulnerability? Butler furnishes elements to elaborate further certain aspects of restorative justice – the focus on interdependence, the critique of state justice, non-violence – whilst raising a number of objections that can stimulate a political reimagining of restorative justice.

Encountering Judith Butler

Butler's work could be described as a series of intellectual efforts to develop original readings of a wide range of texts across disciplinary boundaries, from political theory to psychoanalysis, from Anglo-American literature to legal theory.

Her philosophical training encompasses German idealism, French phenomenology and Frankfurt School critical theory. A pivotal theme running through her work is the idea of humans' constitutive relation to alterity – we become who we are by encountering and engaging with the other. In her debut monograph, Butler (1987) elaborates on the idea of a subject that is necessarily social, drawing on Hegel's idea that self-consciousness depends on the mutual desire to be recognised by the other, and that this in turn binds individuals in complex ways. Butler, similarly to Nancy, reads Hegel not as the philosopher who aims to resolve difference into identity but as the proponent of a subject who 'neither has nor suffers its desire, but is the very action of desire as it perpetually displaces the subject' (Butler, 1987: xxi).

In the early 1990s, Butler publishes probably her most well-known intervention – *Gender Trouble: Feminism and the Subversion of Identity* (1990). This work aims to liberate feminism from the still-reifying idea that gender is a social construct and sex a predetermined natural or biological entity (Butler, 1990: 11). In this period, Butler develops the key idea of *performativity*. We do not have a sex or gender; instead, we perform them – that is, we comply (more or less creatively) with existing social rules about sex and gender over time. Butler emphasises the role of repetition as the core of performativity, rejecting simplistic ideas of doing gender/sex as mere theatrical practice or as voluntaristic choice. The formation of a gendered/sexed identity results from embodying those rules of being and becoming – they become part of our body, as Butler argues in a distinctively Foucauldian (and Nietzschean) manner (Butler, 1993: 6). It is for exactly for this reason that it is possible to construct different genders, sexes and bodies via the creation of different rules and different behaviours. These themes are lately redeveloped in *Undoing Gender* (2004b), which again contests the idea of 'choosing gender', reflecting on the contextual challenges posed by the encounter with the other and existing social arrangements when performing oneself. Butler's point, here, is to underscore the crucial importance of recognition and interdependence for the formation of one's – fundamentally social – self.

In the late 1990s, Butler utilises the theory of performativity to describe a specific type of symbolic violence – hate speech. *Excitable Speech* (Butler, 1997a) insists on the issues of symbolic violence, of how 'words wound' (ibid: xvi), influencing reality, creating, erasing or modifying the conditions for certain acts or subjects to be and become. Unlike those analyses that see hate speech as mere conduct and the only way to stop it is via censorship, Butler maintains that this repressive approach reinforces those legal-political structures that enable hate speech. Censorship, in her view, is predicated on an individualistic notion of symbolic violence which limits hate speech to an individual and responsible act. Hate speech is instead imbricated in large (state) power structures, and legal censorship can do nothing to alter them; in fact, censorship feeds their violent/punitive logic. Butler's alternative approach involves *subversively re-signifying* hate speech – reclaiming these violent words to strip them of their hateful charge. Just as the word *queer*, once a derogatory term, is now used to assert the freedom to be oneself, other forms of hate speech can serve as instruments for emancipation when wielded by those harmed by them, without resorting to repressive state interventions (Butler, 1997a: 159).

During this phase, Butler also refines her theory of subjectivity by combining Foucault and psychoanalysis (1997b). Butler reflects on how psychic life is generated by the entanglement between individual and social processes, active subjectivation and passive subjection, how social power is introjected and forms one's psyche. Her main argument here is to highlight the paradoxical structure of becoming a subject – what subjects us, power, is also what constitutes our individuality; we never choose such dependency, and yet 'that paradoxically initiates and sustains our agency' (Butler, 1997b: 2). Butler draws on psychoanalysis to describe this socio-individual dynamic. The Freudian concept of *melancholy* – that is, the formation of the ego through the incorporation of the lost object – helps explain how social prohibitions become part of our psyches. Butler argues that the same-sexed parent is desired by the child and that such desire is repressed by (heteronormative) society. Repressed homosexual desire is then incorporated as a lost object into one's ego, becoming a constitutive part of our (melancholic) identity.

The early 2000s mark a more explicit political and ethical turn in Butler's work, although building on her previous work on performativity, normative violence and subjectivity. Critiquing the United States response to terrorism as a missed opportunity for fostering collective mourning, Butler introduces the key concepts of precarity/precariousness, vulnerability and grievability (2004a; 2009). At the heart of her argument, once again, lies a Hegelian premise: human beings are necessarily interdependent; we develop self-consciousness first by being recognised by the other. Yet this 'fundamental dependency' (Butler, 2004a: xii) is fraught with complexities, implying exposure and vulnerability. We are exposed to each other for recognition but also susceptible to the potential violence of the other. This fundamental vulnerability (or *precariousness*, as Butler terms it) is an integral part of human existence, shaping individuals as both dependent on and dispossessed by the other (Butler, 2004a: xviii). In *Frames of War* (2009: 2), Butler, drawing on Emmanuel Levinas and Foucault, reflects on how social, economic and political contingencies lead to a differential distribution of vulnerability (what she calls *precarity*) and an uneven allocation of the possibility of death and grievability. Some lives count as life and can be grieved; others are categorised as non-lives and are ungrievable (like the 'terrorist's' or the 'immigrant's' lives), and this, in turn, justifies lethal politics of revenge and retaliation. Cultural frames have the potential to dehumanise individuals and groups, negating humans' shared relationality and fundamentally vulnerable condition (Butler, Gambetti and Sabsay, 2016).

This ethical-political shift is accompanied by a further development in Butler's idea of subjectivation. *Giving an Account of Oneself* (Butler, 2005) elaborates on the theory of power/subject to define a distinctive ethical approach which, in turn, could guide actual interventions in social and political matters. If the subject is constitutively paradoxical, and constantly in the making, socially dependent and vulnerable to the other (that is, beyond one's own control), the very premise of individualistic ethics – the notion of the responsible 'I' – collapses. This 'I' is a pure narrative fiction meant to cohere and make sense of human deeds. Instead, the ethical address should account for our limited self-knowledge, incomplete self-constitution and fundamental interdependence (a theme that we will find in this book also in the chapter on Gayatri Chakravorty Spivak). As a consequence of this socialisation of the 'I', social and political critique are placed at the core of ethical practice, rejecting the notion of individualising responsibility and advocating for social accountability when harms occur (see also Butler and Athanasiou, 2013).

Butler's more recent work (2015; 2020) applies her conceptual and methodological apparatus to some contemporary political and social controversies, like the power of public gatherings as those related to social movements like the Black Lives Matter and Occupy movements, or the struggle against racialising and gendering state violence. *Notes Toward a Performative Theory of Assembly* (Butler, 2015) reflects on the performative power of spontaneous, bottom-up assemblies as crucial sites for radical democracy. Public gatherings are instances where bodies materialise as both precarious and resistant, vulnerable entities and yet conditions for democratic action. Likewise, *The Force of Nonviolence* (Butler, 2020) reimagines non-violence as a militant and relational practice rather than a passive one. It reflects on the crucial role of the apparatuses which define what counts as violence and non-violence whilst linking non-violence to the struggle for radical and democratic equality.

Butler's Approach

The core of Butler's theoretical work, as previously mentioned, is her exploration of how culture contributes to the forming of the human world (Lloyd, 2007; Brady and Schirato, 2011). Cultural formations – that is, context-bound chains of symbols, such as words or images – create the conditions for certain existing configurations of things to receive meaning and, in this way, to play a significant social role in people's lives. Conversely, cultural formations can strip those arrangements of meaning, consigning them to meaninglessness and therefore to the impossibility of a socially relevant existence. Queer, for example, became a socially relevant identity only when people experiencing the oppression of the heteronormative discourse were able to understand their existential condition not as a natural state of things but as a man-made form of subjugation. This awareness emerged through the development of a new – queer – discourse which could make sense of and legitimise their non-heteronormative interests and needs. Butler's primary concern is to unearth this discursive-material dynamic, adopting a socially and historically deconstructive approach. Her focus is consistently on the normative power – or violence – of cultural frameworks: how symbols establish what is right or wrong, good or bad, but also liveable or unliveable and even existing and non-existing lives. Butler is interested in the materiality inherent in discourses as much as the discursivity of the material realm, in the fluid transactions between 'nature' and 'culture' taking place within specific contexts traversed by multiple social forces. Her innovative claim, in fact, is that not only can identities be generated or effaced by cultural frameworks but that material bodies are socially formed as well. Bodies are always already signified, always imbued with symbols which, congealing over time, become natural and taken for granted.

Butler addresses this constellation of issues by piecing together epistemological, ontological, anthropological and ethical-political elements. The normativity of epistemic practices – that is, the idea that cultural frameworks are entangled with power relationships and shape both subjectivities and social reality – is Butler's fundamental argument, derived from Foucault (1975/1977). Butler's approach elaborates on this claim by incorporating key ideas from Georg Wilhelm Friedrich Hegel (1807/1977), Louis Althusser (1970/1971), John L. Austin (1962) and Jacques Derrida (1967/1974).

The starting point here is Foucault's well-known idea that no one is born a subject, but we become one through epistemic-political operations. 'Becoming subject' is a process whereby social forces produce the field within which cultural formations create the conditions for developing self-consciousness (Foucault, 1975/1977). This dynamic is both active (people engage with these discourses, selecting or contesting them) and passive (ultimately, people subject themselves to existing discourses), both social (it is inevitably a shared process) and individual (it requires individuals' context-bounded choices) ultimately resulting in the constitution of a subject incomplete and ambiguous. The first phase of this process is when individuals are 'interpellated' (Althusser, 1970/1971: 110) – that is, addressed by existing discourses, called upon not merely as acceptable or unacceptable subjects but as existing entities. Naming and creating a subject are concurrent operations. Yet, through a synthesis of Austin (1962) and Derrida (1967/1974), Butler contends that becoming a subject requires the active participation of those who are interpellated. Subjectivation entails a performative process – that is, the daily and active work of acting upon those frames, repeating those deeds which cast the doer as the deeds' retrospective shadow, within existing social contexts. Being subjected to discourses and then performing them over time produces a normalising and naturalising effect: subjects are regulated by this process, and they look at and evaluate themselves and others through its effect, which is considered natural and unchangeable. Human beings are not simply 'women' or 'men', 'national citizens' or 'immigrants'. They become these categories by simultaneously being subjected to cultural frameworks that convey those conditions and performing them in compliance with existing social rules.

Recognition and Subjectivation

What needs to be explained, at this point, is how individuals become attached to discourses, how they end up embodying those meanings which then solidify as their identities. Butler's main suggestion is to draw on Hegel's theory of the dialectical development of self-consciousness. Hegel (1807/1977) posits that one attains self-consciousness through *recognition* – that is, by seeing oneself through the eyes of another. The very development of an 'I' can happen only through this mutual recognition – that is, through a social relation (Butler, 2005: 8). This perspective underscores the fact that human beings are fundamentally dependent on each other. However, this is anything but a linear and harmonious process, since social recognition entails being subjected to the other. We need the other to establish ourselves: 'the "I" is invariably implicated in the "we"' (Butler and Athanasiou, 2013: 107). Similarly, human beings' social existence depends on existing discourses, even though such discourses inevitably constrain their possibilities of being and becoming – it is better to be consigned to oppression than not to exist.

This position has significant implications for our understanding of both agency and resistance (Butler, 1997b: 6). Butler claims that our agency, exactly like the process of becoming a subject through recognition, is socially conditioned and ambivalent yet never obliterated by subordination. The other never completely determines our existence, as much as culture never completely shapes our identity. From this angle, Butler contests both the idea of a self-sufficient and autonomous (liberal, masculine and rationalist) subject and the nihilistic conceit that humans are doomed to passivity in the face of the world. If we need each other in order to become ourselves, and if we are never entirely determined by

this process, then human beings are endowed with autonomy, though this must be conceived of as a conditioned social practice.

Butler famously applies this conceptual framework to the discourse of compulsory heteronormative gender identity. This object emerges when she incorporates into her Hegelian framework a reference to the feminist critique that women only become women because of the circumstances of their society (Butler, 1990). Butler argues that sex is always gendered and that cultural formations shape sexed bodies by signification – that is, by making them meaningful. Moreover, there is a hierarchy of cultural formations, with the heteronormative discourse being the most powerful when it comes to gendering (in a binary way) individuals. Butler insists on the exclusionary effects of heteronormative discourses, focussing on how they produce seemingly natural sexes and accepted genders whilst foreclosing others. She emphasises how such mechanisms work at individual level, claiming that both gender and sex are performed. This means that the language we use actually has the potential to bring into existence what it names when enacted by adhering to socially available (heteronormative) rules (Butler, 1990: 185).

More recently, Butler has shifted the focus onto other ethical and political matters, from hate speech to the War on Terror, from Black Lives Matter to the COVID-19 pandemic. Although the core of her philosophical approach has largely remained unaltered, one major integration is worth noticing: an increasing reference to vulnerability and interdependence (2004a; 2009). The main theoretical reference here is Emmanuel Levinas (1961/1969), combined with Hegel's idea of recognition. The resulting ethical approach revolves around the idea of a response to the demand made by the very encounter with the other which honours interdependence. This encounter does not reduce otherness to sameness but keeps otherness as an incessant demand to be reckoned with, the source of an endless responsibility toward the other.

Overall, Butler's eclectic approach seems animated by recurrent perspectives and concerns: a non-dualist, relational ontology whereby matter and discourse are mutually constituted, a fundamental concern with the intertwinement of epistemic and political operations in the creation of subjectivities and a crucial commitment to explore resistance to oppressive epistemic-political regimes through recourse to the ideas of interdependence and vulnerability.

Troubling Restorative Justice

Troubling restorative justice refers to the critical examination of taken-for-granted notions in restorative justice, aiming to unearth and destabilise those understandings which captivate our imagination. This process has the potential to generate new areas for critical political engagement with doing justice by scrutinising how interdependence, precarity, subjectivity and vulnerability are conceptualised in restorative justice. It also involves considering the implications of these engagements and pointing toward new avenues for restorative justice theory and practice.

From Interconnectedness to Interdependence

Restorative justice has frequently been characterised as resting on the vague concept of *interconnectedness* (cf. Johnstone and Van Ness, 2007: 17). This designates the assumed pre-existing social connection between those who have been harmed and those who have harmed, set against the backdrop of an imagined community (e.g. Zehr, 2005). Here, interconnectedness entails the presence of relations between crime stakeholders to be restored and, as a consequence, the need for victims, offenders and communities to actively participate in dealing with the harmful consequences of the crime. The restorative encounter is typically seen as a time and space where the different issues at stake can be addressed, restoring emotional, social, symbolic and material relations, with a specific emphasis on the victim's needs. This view challenges the retributive concept of 'hard treatment', as the deliberate infliction of pain disrupts existing social bonds that tie stakeholders together. This viewpoint is rooted in a communitarian perspective on human nature (Christie 1977; Braitwaite, 1989), emphasising the significance of the interpersonal bonds upon which communities are built, which can be hindered by destructive behaviours. Restorative interventions aim, therefore, to restore such interconnectedness, addressing positively the consequences of actions which undermine those relations.

Interconnectedness is also what renders restorative justice a paradigm of personal transformation which can lead people to act upon themselves and others in a restorative way, relying on dialogue and peacebuilding (Sullivan and Tifft, 2001). Transformation involves victims' healing, offenders' reintegration and community building; it entails the stakeholders' inclusion in a community-based, prosocial moral order (Van Ness and Strong, 2022) to be reactivated through the restorative encounter. This discourse is intertwined, as far as its principles and goals are concerned, with a range of philosophical speculations and ethical doctrines (both secular and religious) around the spiritual dimensions of crime and justice (Consedine, 1995; Richards, 2005; Liebmann, 2007).

In summary, restorative interconnectedness appears as a link between autonomous individuals, eventually broken by harm, to be then fixed. Crime equates to a social and moral pathology, an accident affecting the prosocial link which binds people together.

On closer examination, this understanding appears as predicated on functionalistic and political liberal assumptions. Interconnectedness is shaped akin to a tacit social pact (similar to the one that forms the basis of criminal justice) which presumes autonomous subjects, instead of as a constitutive element of the human condition which can be disavowed but never completely erased. Restorative justice, through the idea of interconnectedness, acknowledges social *interdependence* yet not its constitutive role for the creation of oneself. There is no appreciation of the entanglement of individual and social which characterises interdependence, which is reduced to a purely external relation between autonomous and premade subjects. Interconnectedness is limited to the idea that the victim and offender shared some moral values, knew each other, perhaps had common worldviews and were part of the same community.
Even more, restorative justice appreciates only the prosocial side of such a condition, ignoring its destructive dimension. This destructiveness derives entirely from the fact that we are inevitably exposed to the other. Interdependence, in fact, embodies an ambivalence related to its violent potential, which needs to be reckoned with and addressed. There is a need, in restorative justice, to acknowledge the necessity to provide, on the one hand,

spaces for mutual recognition as development and, on the other, the resources to address the possible destructive effects integral to the very fact of being dependent on the other's recognition for one's development as a human being. From this perspective, harm is not a breach of interconnectedness but a moment of misrecognition of social interdependence. Being harmed is not simply an accident to be overcome or naturalised as a social and moral pathology but a tragic opportunity to reckon with the destructiveness which characterises any relation to the other, its impact on the constitution on one's subjectivity and the hallmark of the constitutive ambivalence of the social formation of personhood.

Justice Precarity

From a socio-cultural perspective, restorative justice consists of a variety of discourses that inject meaning into objects, actions or bodies. Examples of these cultural frameworks include concepts like victim-centredness, the notion of morally immature offenders, the importance of prosocial and innocent communities and the concept of relational harm. Butler reminds us that there is a specific type of violence integral to discourses like these: their power to establish not just what is acceptable or unacceptable but also what actually exists or does not, which experiences are meaningful and thus socially relevant, and which are irrelevant and therefore unworthy of consideration.

The emphasis on victim-centredness in restorative justice makes restorative encounters primarily adhere to individuals victimised by a specific and clearly identifiable offender, rather than by social structures or organisations. The emphasis on the victim's need to listen and be listened to, as well as the focus on healing, closure, forgiveness and reconciliation, shape a model of victim that revolves around emotions, moods and feelings. Restorative justice adopts a concept of the offender not as bad, depraved or wicked but as morally immature, needing to encounter the victim's pain in order to realise the impact of their actions. This offender is assumed to be a clearly identifiable and definite individual able to directly harm the victim and community, a flesh-and-blood offender and not a corporation, state or any other disembodied entity. Lastly, restorative justice conceives of the community as an innocent entity that envelops the immediate stakeholders of a crime and uses language which underscores physical proximity and even intimacy, positioning it as a (partial) alternative to the state (cf. Maglione, 2017).

These discourses shape restorative justice as a penal mechanism that underscores the responsibilisation of the offender whilst idealising the victim. This approach embraces essentialist binary oppositions (e.g. law-breaker/law-abiding, offender/victim, guilty/innocent) associated with individual categories (e.g. responsibility, subject, intent), which tend to diminish the significance of social, cultural, economic and political interactions in shaping human relationships. Crimes are seen as exceptional behaviours committed by morally imperfect individuals.
These cultural frameworks are essentially normative – they preset stakeholders' categories, defining acceptable ways of doing and being in restorative encounters. They produce simplifications which are always instrumental, standardised and, as such, fictitious and possibly violent. These epistemic-political operations, in fact, embody and contribute to perpetuating social relations which are unbalanced and hardly negotiable, defining victims

and offenders as natural entities characterised by permanence, homogeneity and stability and carved out of the social world.

Applying these frameworks to people and social relations can lead to the generation of *justice precarity*. As seen above, Butler distinguishes between precariousness and precarity. Precariousness designates a generalised human condition related to the mere fact that human beings are interdependent, exposed to each other and therefore vulnerable. Precarity, instead, is unequally distributed vulnerability, affecting only marginalised people exposed to insecurity, injury and violence. In the context of restorative justice, those excluded from the idealisations generated by the prevailing epistemic frameworks are likely to be prevented from partaking in restorative encounters or to experience them as non-ideal victims or offenders (Maglione, 2017). Powerful victims, victim-offenders, weak offenders, and non-prosocial communities are not entirely suited to restorative justice. The functioning of restorative encounters, guided by existing epistemic-political frameworks, could render non-ideal stakeholders unable to benefit from such encounters. This would entail depriving certain groups of the possibility to seek justice outside the criminal justice world, or would at least limit their opportunity to engage meaningfully with restorative encounters.

Interpellating Subjects

Restorative justice discourses create specific conditions for people to 'become subject'. This process does not consist in passive subordination to existing discourses or in acts of voluntaristic self-constitution. Instead, it is the incomplete product of the interaction of both cultural and material arrangements, the psyche and the body, within the context of restorative spaces. Becoming a subject hinges on socially specific and historical frames of intelligibility, like the discourses outlined above, which make possible or impossible the emergence of certain ideas of who one is. This claim, however, does not entail that subjects are passively shaped by almighty cultural formations. Becoming a subject is a performative activity – that is, a process of engaging with those frameworks, repeating authoritative behavioural rules, within a pre-existing social context and along with other subjects.

Restorative justice favours the constitution of subjects who are intensely responsible for their destinies, foregrounding certain ideas of subjectivity whilst foreclosing other possibilities of being. Discourses of victim-centredness, the offender's moral transformation, community prosociality and relational harms *interpellate* participants in restorative encounters, exerting pressure on their ideas of themselves. Such discourses stress, at the same time, the moralising role of the community and the agentic responsibility of individual actors, the need for protection and transformation, the necessity of distance but also operational proximity to criminal justice. Victims and offenders are deemed to have the necessary psychological, moral and practical resources to engage in restoration, which is the outcome of their decisions. They are the only ones who can repair the harm. Individual agency is the only necessary and sufficient 'site' for the regulation of criminal harms. In restorative justice, individual actors are shaped as responsible subjects, yet restoration can happen only against the backdrop of a community. At the same time, and somehow paradoxically, the restorative subject appears as both agentic and disempowered, in search of participation, acknowledgement and empathy (cf. Maglione, 2019).

The restorative subject ultimately emerges from a process that is inherently ambiguous and unfinished. One fundamental ambiguity arises from the fact that subjects become attached to those discursive frameworks even though they may limit their capacities. This is because their existence as suitable participants in restorative encounters hinges on embracing those pre-existing ideas of subjectivity. Butler (1997b: 7) refers to 'passionate attachment' as the attachment through dependency that leaves the subject open to subordination and exploitation. The subject only emerges through a process of affective bonding to the very discourses that subordinate them, and they are only able to affirm an identity in the socio-symbolic order of the restorative encounter which foregrounds certain ideas of subjectivity against others.

Yet restorative subjects are not mere abstract entities; they are embodied beings. The body, here, is not simply a mass of cells determined by genetic makeup. The body is the effect of discourses on people who become meaningful entities capable of action upon themselves and the world. The material body, therefore, is the process of materialisation of cultural frameworks into self-consciousness, the injection of meaning into pre-existing, silent cells.

Against this background, participants' gender equates with the gendering dynamics involving their bodies during restorative encounters. Gender is not a static attribute but a dynamic process, a result of ongoing gender performances. So, the focus on gender in restorative encounters should shift onto gendering dynamics, on the performative activities participants and facilitators engage with, rather than solely relying on their declared genders. The point is that this embodied and gendered subject only remains a subject so long as they are able to reiterate themselves as an identifiable, intelligible and hence governable subject, which is dependent on the subject's ability to perform themselves according to the authoritative discourses they are surrounded by. What would happen if a victim performed her gender without complying with the script of an individually vulnerable and 'feminine' victim? What if the offender acted as vulnerable and passive, against the 'masculine' assumptions related to offending? In such a scenario, they would position themselves beyond the boundaries of accepted modes of being, potentially encountering practitioners' reluctance to allow such unscripted reactions.

However, it is important to note that the ambivalent nature of subjectivation also provides the conditions for resistance to take root. It is in the gaps characterising subjectivation's paradoxes that spaces of contestation (and active subjectivation) will likely arise as opportunities for individuals and groups to seize (see the final sections of this chapter).

Institutionalisation and Vulnerability

Vulnerability ultimately consists in being 'undone' by the presence of the other (Butler, 2004b: 19). Whilst the constitution of one's subjectivity is a daily 'doing' within a certain social, cultural, political and economic context, vulnerability can be understood as the process of being undone when facing the other.

Yet vulnerability is frequently disavowed, countered by the phantasy – the imaginary creation – of self-sufficient subjects and individual autonomy. Criminal justice, often portrayed as the 'constitutive outside' (Butler, 1993: x) of restorative justice, is such a

phantasy – not simply and only a collection of agencies but an imagined constellation of symbols which revolve around a rational, self-grounding and thus individually responsible subjectivity: the defendant/offender. Within the criminal justice phantasy, the subject is an individualistic entity – a category predicated on the Hobbesian rejection of vulnerability. Vulnerability is criminal justice's *lost object*, melancholically incorporated as the core of the Hobbesian phantasy. Every crime is a 'narcissistic wound' (Butler, 2004a: 7) in Leviathan's flesh, to be denied by a violent response.

In this context, the institutionalisation of restorative justice consists in the restorative justice movement giving up to the criminal justice phantasy of standardising restorative practice, ultimately resulting in capturing and constraining vulnerability. Within institutionalised restorative justice, vulnerability appears to be perceived primarily as a psychological disposition, rather than as 'a relation to a field of objects, forces and passions that impinge on or affect us in some way' (Butler, Gambetti and Sabsay, 2016: 25). The emphasis on victims' vulnerability – that is, on their essential condition of being psychologically/physically harmed – within restorative encounters does not reflect the vulnerability that is shared by both victims and offenders, particularly within deprived and marginalised communities. In this way, restorative justice foregrounds a fixed conception of vulnerability distributed unevenly and relies on criminal justice gatekeepers' separation of (vulnerable and feminine) victims and (powerful and masculine) offenders.

Furthermore, there appears to be a limited recognition of vulnerability's 'creative' side, the fact that one can be vulnerable and yet resist power. The emergence of a trauma-informed approach within restorative justice, particularly when it extends beyond addressing the victim's psychological trauma to consider the possibility of shared trauma among all participants, is an incipient acknowledgement of the intricate nature of vulnerability in this context (cf. Randall and Haskell, 2013). Yet recognising trauma could readily turn into a tool for paternalistic control and disempowerment of participants in restorative encounters. If participants are passive, weak or unable to cope, someone else will have to decide for them or at least direct their decisions. This poses the question of how to recognise vulnerability without erasing the persistence and resistance that are integral to it, or at least how to create space for the expression of one's capacity to resist.

Vulnerability is not synonymous with passivity; instead, it signifies exposure to the other, a social condition which encompasses the possibility of resistance and even violence against the other, influenced by specific cultural and social factors. This resistance is not a matter of heroic individualism but results from the fact that we are never fully subjected to the other, and yet we are dependent on the other's recognition. Vulnerability and resistance, therefore, are not opposites, and hence vulnerability does not require state protective capture and the strengthening of its paternalistic power, as often proposed by both conservative and neoliberal political discourse. Yet there is a need to address the fact that this primary social bond is not immune to violence: 'violent potential emerges as a feature of all relations of interdependency' (Butler, 2020: 105). The issue becomes reckoning with such ambivalence without denying it through institutional controls. This requires collective efforts to limit the destructive potential of vulnerability while nurturing its capacity for resistance. Even more so, there is a need to oppose the uneven distribution of vulnerability – precarity. Existing social arrangements unjustly burden only certain populations with

economic and social vulnerability, exposing already-marginalised groups to a concentration of violence and a lack of protection. Institutionalised restorative justice obliterates this condition, treating participants in a way which is largely precarity-blind, denying, like liberal criminal justice, the existence of obstacles to social equality (Willis, 2020).

The challenge for a critical restorative justice lies in addressing this ambivalent entanglement without oversimplifying vulnerability as an essentially psychological fact, as the emphasis on trauma in restorative justice sometimes seems to entail. Restorative justice would need to embed an idea of agency that is social, conditioned and ambivalent, yet never completely erased by subordination.

Performing Restorative Justice 'Otherwise'

What is needed is a critical theory of restorative justice which integrates the psychic-individual and socio-political dimensions of power, recognising the mutually constitutive links between vulnerability and resistance, subjectivation and subjection.

Restorative Justice, Precariousness and Precarity

Restorative justice should acknowledge the presence of unevenly distributed vulnerability, recognising it as a political and social phenomenon rather than merely a psychological disposition (Butler, 2009: 25). This entails the recognition of structurally deprived groups and individuals as actors whose agency is denied by specific political, cultural and economic processes. As Butler suggests, there is a need to address this condition of precarity as a form of contextual vulnerability imposed on certain individuals and groups whilst also acknowledging the fundamental vulnerability which pertains to every human being (i.e. precariousness) (Butler, 2009). The attempt to foreclose vulnerability – as liberal criminal justice does – produces violence, since subjects 'immunize [themselves] against the thought of [their] own precariousness' by asserting 'their own righteous destructiveness' (Butler, 2009: 48). Conversely, accepting vulnerability can help prevent violent responses to crime, understood as a narcissistic wound in the body politic, from taking place. In this way, vulnerability can become the basis of non-violent interventions.

From this perspective, restorative justice would combine moral theory with social and political critique, promoting the mobilisation of precariousness against precarity and emphasising the recognition of human vulnerability in the face of socio-economic marginalisation. Thus far, restorative justice theory and practice have done little to engage with social precarity, often relying on criminal justice gatekeepers and, in this way, reproducing their biases and the forms of justice precarity described above. Nevertheless, there are examples of scholarship on the role of social factors in affecting the functioning of social encounters and practices which aim to bridge the socio-structural, not only the socio-relational, dimensions of harms and conflicts (e.g. Willis, 2020; Gavrielides, 2022). Denouncing the structural factors which possibly impact on restorative justice requires the integration of a further critical element – that is, the normative critique of social precarity is strengthened by the affirmation and recognition of human precariousness. Embracing precariousness means opposing politics that aim at achieving stability for select groups whilst structurally disavowing the needs of others. It then entails favouring the recognition of what is common across individuals and groups as a

foundation for a liberating moment, which can help reimagine what we mean by justice and how we try to achieve it (Butler, 2004a).

This critical-social perspective necessitates the development of a new cultural framework (Butler, 2009) that problematises the binary divisions between victims, offenders and communities whilst contesting criminalisation. It should shift the focus away from individualistic responsibility and, instead, highlight people's experiences of precarity, as influenced by factors such as wealth, gender and race. Within restorative encounters, individuals would be encouraged to rethink the relationships challenged by their behaviours, beyond juridical frameworks, and recognise them as related also to wider social, economic and political vulnerabilities. In this way, the criminalisation process (and not just crime), its precedents and effects, would become the object of discussion. The recognition of human vulnerability would be the fundamental common ground, the starting point for a reflection on the possibility of violence (which is integral to being exposed to each other) and on how to recognise and address the grief caused by it. This could be the first step to appreciating how violence has contributed to creating subjectivities, altering one's psychic reality, modifying daily behaviours, sedimenting in one's very body, affecting the other bodies to which one is exposed and producing broader social ripple effects.

Through the rejection of securitarian notions of total immunity from others as the sole means of preventing and addressing conflicts and harms, restorative justice can pursue a more extensive objective – nurturing a culture centred on mutual recognition whilst addressing violence without resorting to further violence. This implies criticising institutionalised restorative justice insofar as it individualises conflicts by downplaying their intertwined political, social and cultural drives. It then requires denouncing how restorative encounters constitute parties as individual victims and offenders involved in microsocial harms, who are in need only of personal reconciliation and psychological healing, detached from broader social harms.

Restorative Justice and Injurious Discourses

As argued above, cultural frameworks can wound and produce a distinctive type of (symbolic) violence. Yet discourses are also *excitable* – that is, their effects are beyond the control of the speaker, shaped by context and power structures (Butler, 1997a).

Institutionalised restorative discourses, often embedded in policy, have the potential to generate subjugating effects on people caught in their symbolic nets during restorative encounters. They can also be reappropriated, though, and reinterpreted according to progressive ideals and turned into potentially emancipatory discourses. Can 'better' policy serve as a means to redress those oppressive effects and unlock the emancipatory potential of restorative discourses? Policy is a product of state power, and to use it as the regulative framework of violence is problematic. When the policy at stake is the (liberal) criminal law, then, a certain (individualistic) notion of personhood and responsibility is foregrounded, and as a consequence, conflicts and harms are individualised and interdependence is denied. Instead, we should explore alternative methods for cultivating peaceful social structures, placing our focus on the process of 'subversive re-signification' (Butler, 1997a: 159). Language, in fact, even when replete with constraining policy labels, can be used to talk back; legal

speech can reinforce power structures, but it can also be reinterpreted in ways that separate language from its injurious potential (as Jacques Rancière also argues; see the next chapter). Language's oppositional power resides in its insubordinate and dynamic nature, the fact that it belongs to everyone and no one at once, in its being appropriable by those who are subjected to it to generate new and unpredictable counter-effects. Re-signification means altering the meanings of those social terms and categories which bring the subject into social existence. This is possible since social terms are fundamentally unstable and, without being adopted and ritually repeated over time, will never be able to construct fully what they name.

Here, restorative justice should strive for a subversive re-signification of the authoritative discourses that tend to confine participants within rigid categories during encounters. The victim-centeredness of restorative justice can be reappropriated by people harmed, who may reclaim the power to define themselves not only as relationally harmed but possibly as socially, politically and culturally injured. This is particularly the case for harms such as environmental, hate and gendered harms. More so, it can be adopted by offenders to highlight their being situated in a wider social, political, economic and cultural context and not simply (and always) necessarily autonomous individuals who choose to harm through rational deliberation. Rejecting or negotiating the label of victim or offender can be emancipatory, and it can offer new ways of re-storying the harm which brought participants to restorative encounters. Other times, instead, people may need those labels to fully conceptualise their experience as a way forward to restoration.

Similarly, harm can be redefined, allowing participants to link their specific relational harms to the broader socio-structural conflicts that frequently precede or contextualise such harms. The problem is not language as such but how it is performed, what constrictions it materialises through repetition and its possibly injurious consequences for people. In restorative encounters, problems arise when people experience a limitation of their possibilities to restore justice due to the discursive limitations imposed on them, and when such limitations work as violent and unequally distributed injuries. Any reappropriation, though, requires restorative practitioners' active involvement in creating spaces for rethinking non-negotiable oppositions, challenging the mentality that restorative justice inherits from state apparatuses, particularly liberal criminal justice.

This critical restorative justice should ultimately disengage from the state, understood as both a formal, centralised, legal-political entity and a hierarchical, non-negotiable and inherently violent social construct that negates vulnerability (Maglione, 2020). The aim is to create a decentralised way of dealing with conflicts and harms, outside a legal framework, presenting opportunities to rethink social relations and political obligations, instead of re-establishing identity hierarchies rooted in justice precarity. This approach involves challenging institutionalised restorative justice by turning restorative encounters into spaces where facilitators support participants in reflecting upon and re-signifying fixed identities (e.g. victim and offender) according to values of inclusion, equality and non-violence. Encounters would provide cultural capital to contest the very institutional framework and underpinning values – the state – they are inserted into when relying on criminal justice's processes and mentalities. This involves discussing the commonalities and differences, opportunities and constraints, both at the individual and societal levels, that people experience in their pursuit of justice when their needs are unmet.

Certainly re-signification, in itself, does not always lead to a subversive transformation of the existing arrangements. Re-signification must be situated within the framework of radical democratic and non-violent praxis. The negotiation of restorative discourses or specific labels can produce further harm if it is not grafted onto a normative framework which privileges the inclusion of all voices, as well as equality and non-violence.

Restorative Justice, Non-violence and Identity

A non-violent restorative justice aims to generate discourses to intensify resistance by promoting practices which recognise and cultivate independence and equality. The encounter itself is an 'embodied form of calling into question the inchoate and powerful dimensions' (Butler, 2015: 9) of state-mediated conflict resolution, the site wherein that critical disarmament of violence may commence. In this context, restorative encounters may work like micropolitical assemblies, public arenas for debate wherein people performatively challenge precarity, re-signify relationships and establish novel micropolitical strategies to address harms. Restorative encounters may become spaces where the performative enactment of new subjectivities, built around the recognition of vulnerability, is possible, and a new 'we' is generated (Butler, 2015: 169). Justice, here, is not merely a judgement about how to treat people or constitute a society but concerted 'decisions about what a person is, and what social norms must be honoured and expressed for "personhood" to be allocated' (Butler, 2004b: 58).

Along these ethical-political lines, it is possible to *disidentify* restorative justice – that is, to provide a new *gendering* (and not just *gendered*) critique of restorative encounters. In fact, traditional gender-based analyses of restorative justice seem based on a largely essentialist conception of gender as fixed identity and a binary dichotomy of sex/gender. The focus thus far has predominantly fallen on the potential gendered benefits or risks of restorative justice to improve practice on the micro level (Österman and Masson, 2018). Policy, instead, often oscillates between complete erasure of the issue of gender in restorative justice and paternalistic protection of females as passive victims against males as active offenders (Hudson, 2002; Ptacek, 2009; Goodmark, 2018).

All this amounts to a form of gender essentialism: the assumption that the experiences of all women and men could be distilled into that of a woman model (premised on injury, passivity, blamelessness) or a man model (premised on domination, control, lack of emotion), whilst completely neglecting non-binary subjects and their experiences in restorative encounters. Gender relations, when addressed in restorative justice, appear mainly as structured by relations of 'coerced subordination', as if this condition constituted the social meaning of being a 'woman' (Butler, 1994: 7). As a consequence, state regulation of gender dynamics in restorative justice processes is geared toward alleviating that coerced subordination, incorporating a standard phallocentric narrative that conceptualises women as weak and disempowered and therefore unable to take care of themselves (Hudson, 2002).

Non-violent restorative justice should actively confront this normalisation of fixed identities, highlighting the process through which individuals are shaped by their interactions with others. The categories of woman and man, as well as non-binary gender categories, are

contingent, never completely stable and unified. It is *difference* rather than identity which should be embraced, and gendering as a specific subjectivation process should be reckoned with in all its ambiguity, expressed by both its performative character and the passionate attachment to subjection. Restorative justice, rather than criminal justice arrangements, has the potential to create space for processes and remedies that undermine essentialist conceptions of what people are and how they should respond to harm. Instead of reinforcing the ontological divisions between identities, restorative justice should create an environment for those who seek to engage with the other, to define the terms of a future relationship. The condition for taking this step is the further development of a self-critical consciousness within the restorative justice movement – that is, a steadier awareness of the dependency, conformism and instrumental character of the institutionalisation of restorative justice. This would lead to putting resources in diffused networks of performing 'just relations' which emphasise solidarity. This very process embodies non-violence and thus presents an immediate challenge to institutionalised restorative justice, as well as, more broadly, to the state.

Beyond Butler

Butler's thought-provoking work, with its emphasis on the ontological effects of cultural frameworks, the production of subjectivity as inevitably bound to subjection, and interdependence and vulnerability as a shared human condition, is a powerful theoretical lens through which to critique restorative justice. Her work on performative politics as subversive re-signification, the recognition of precarity and the struggle for empowering ambivalent subjectivities to resist symbolic violence helps us to sketch out a different, critical-political restorative justice.

By adopting a relational political ontology and constructivist epistemology, one can perceive restorative justice as marked by complex interplays between subjectivity and identity, as well as subjection and agency. This approach has been applied to scrutinise the widely accepted notion that restorative justice derives its rationale and legitimacy from human interconnectedness – a contingent social bond between autonomous individuals, disrupted by harm, to be subsequently restored. Highlighting its functionalistic and liberal background, this chapter has contested the idea of interconnectedness as a social pact (like the one which underpins criminal justice), arguing instead for social interdependence as an ontological condition which precedes individuality, to the point that self-consciousness is itself a social practice.

The restorative subject emerges as being called forth by a dynamic array of contradictory discourses, setting the stage for an incomplete, fluid and ambivalent process of subjectivation within restorative encounters. However, this process can give rise to a unique form of (symbolic) violence when it forcefully ascribes to individuals fixed and hierarchical identities. Yet discourses are also excitable – that is, their effects are beyond the control of the speaker, shaped by context and power structures. A non-violent restorative justice embraces the ethical-political operation of disidentifying individuals and groups whilst generating competing frameworks to intensify resistance by situating and naming practices which cultivate independence and equality.

This is possible, though, only if the oppressive effects of the discourses which inform restorative justice are unearthed. The victim-centredness of restorative justice; its emphasis on healing, closure, forgiveness and reconciliation; the offender as a morally defective individual but one willing to earn their social redemption through reparation; the idea of community as a moral stabiliser and the background of restorative interventions; and the conceit of harm as only relational accident, all appear as discourses producing specific subject positions to which a passionate attachment can develop, sometimes with problematic effects. Certain 'types' of people who have been harmed or people who have harmed can appear as non-ideal participants and are therefore excluded by restorative justice, producing a situation of justice precarity – that is, of uneven distribution of access to and participation in restorative encounters.

Restorative justice theory and practice have thus far made limited efforts to acknowledge and confront social precarity. There is significant work to be undertaken in addressing this condition, emphasising that while precariousness, defined as human exposure to the other, is unavoidable, precarity itself is a product of regressive political strategies.

Butler's work helps denaturalise the reifying effects of discourses imbricated with power over the production of subjectivities. The most innovative insight here is that not only identities but also bodies are an effect of cultural formations. Actors in restorative encounters meet cultural formations, whose natural appearance is the mere effect of a series of acts whose constant repetition creates the 'naturalness' of their position: as such, essentialised. The strategic response to this apparent neutralisation is to promote subversive re-significations of those naturalising discourses, reappropriating exclusionary categories to rewrite their meaning and produce inclusionary and emancipatory arrangements.

Restorative justice can serve as a space where individuals can enact different identities informed by equality and non-violence. This perspective extends an invitation to explore forms of justice which recognise vulnerability, address uneven distributions of cultural and material capital, all the while acknowledging that human existence is ontologically marked by social interdependence.

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6. Encountering Equality

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Abstract

How can we rethink the preset rights and duties associated with participants' positions within restorative encounters so as to enable people to articulate their own *logos*? How can we generate restorative spaces wherein people can openly discuss criminalisation? How can restorative facilitators promote social equality?

This chapter, drawing on French philosopher Jacques Rancière, argues that the dynamics taking place during restorative encounters should be considered distinctively political processes. People caught in those interactions, in fact, find themselves provided with or lacking the rights and duties to perform particular kinds of meaningful action, such as negotiating or rejecting assigned identities. This approach poses the problem of whether and how restorative encounters ensure *equality* between participants or instead enforce an unequal distribution of those rights and duties.

This chapter provides fresh insights to widen and deepen the discussion of the politics of restorative justice, connecting broad issues of institutionalisation and de-institutionalisation and the specific functioning of restorative practices with the idea of social equality. It also outlines a *democratic restorative justice*, the process of infusing equality into restorative justice, allowing new voices to emerge and politicising what is at stake whilst uncovering the limitations of existing forms of justice, questioning their foundations and effects.

> To pose equality as a goal is to hand it over to the pedagogues of progress, who widen endlessly the distance they promise they will abolish. Equality is a presupposition, an initial axiom – or it is nothing.
> Jacques Rancière (1983/2002: 223)

Equality, Democracy and Justice

Restorative encounters are spaces wherein people articulate their experiences by narrating their deeds, feelings and needs, asking questions and giving answers. We learnt from Judith Butler that in these restorative spaces participants are also faced with assumptions about who

they are (e.g. 'victims' or 'offenders'), which they may adjust to or resist. This chapter, drawing on French philosopher Jacques Rancière, argues that such discursive dynamics should be considered as distinctively political processes. People caught in those interactions, in fact, find themselves provided with or lacking rights and duties to perform particular kinds of meaningful actions, such as negotiating or rejecting assigned identities. This approach poses the problem of whether and how restorative encounters ensure equality between participants or instead enforce an unequal distribution of those rights and duties.

Rancière's figure emerges from the Marxist French philosophical milieu, during the post-1968 struggles for social equality. His fundamental contention is that *equality* must be assumed as a point of departure and not a destination, a presumed condition and not a promised land. Politics, in his view, is the *verification* of this axiom – that is, the cultural and material struggles of marginalised groups to assert their equality by exercising the very capacities they are said to lack and by claiming the rights they are not entitled to.

From this (agonistic) perspective, this chapter provides fresh insights to widen and deepen the discussion on the politics of restorative justice, connecting broad issues of institutionalisation and deinstitutionalisation with the specific functioning of restorative practices. It reflects on the risks of both imitating criminal justice and appealing nostalgically to a cohesive ethical community and on how these diverging political aspirations impact on the dynamics taking place when 'victims' and 'offenders' meet. Rancière's radical approach suggests viewing restorative encounters as instruments for a political transformation which goes beyond individual harm repair, questioning broader social and political distributions of resources, roles and powers. This transformation is fuelled by *dissensus* (Rancière, 2000/2004), a preliminary confrontation over which/whose speech counts in a community. This idea could assist in re-examining who is included in and excluded from restorative encounters and the meaning of harm as a political wrong to be reckoned with. This politicisation requires interrupting the *police order* (Rancière, 1995/1999) which sometimes informs restorative encounters – that is, the rigid allotment of rights and duties which produces fixed roles, positions and identities whilst limiting people's intellectual and moral capacities.

How can we rethink preset rights and duties associated with participants' positions within restorative justice encounters, enabling people to articulate their own *logos*? How can we generate restorative spaces wherein people can openly discuss criminalisation (and not only crime) and conflict (and not only harm)? How can restorative facilitators promote social equality? Rancière offers some answers worthy of meditation whilst also raising related challenges in relation to such key questions.

Encountering Jacques Rancière

Rancière's intellectual profile defies rigid disciplinary classifications. His career starts with a breakthrough when he co-authors *Reading Capital* (Althusser et al., 1965/1970) with the Marxist philosopher Louis Althusser and others. In the following years, he comes to develop an original and radical body of work largely motivated by a critique of Althusser's perspectives and more broadly of the standard concept of political philosophy (Rancière, 1995/1999: viii).

From 1975 to 1981, Rancière writes in the journal *Les Révoltes logiques*, interrogating the historiographic and political norms around the representation of workers' social history. Rancière endeavours to reveal the complexity, contradictions and diversity of workers' thought 'from below', countering the tendency in academic historiography to discard working class writers and writings as insignificant, exploring the archives wherein workers' words were buried. In this period, Rancière grows increasingly critical of Althusser's idea that masses are victims of ideological obfuscation and that only an intellectual and political avant-garde can enfranchise them. This idea is seen by Rancière as yet another way of subjugating the masses to intellectual hierarchy and, therefore, as a betrayal of social equality (Deranty, 2010: 5). In *Proletarian Nights* (1981/2012), *The Philosopher and His Poor* (1983/2002), *Staging the People: The Proletarian and His Double* (2011) and *The Intellectual and His People* (2012), Rancière articulates this critique of the Althusserian orthodoxy, describing the history of those who contested their identities as 'workers', challenging the predefined space given (or denied) to them to speak (Tanke, 2011: 25).

The Ignorant Schoolmaster: Five Lessons in Intellectual Emancipation (1987/1991) represents a development of Rancière's archival work. The story of a teacher, Joseph Jacotot, who taught French to Flemish students without knowing Flemish himself is used to dismantle the idea that (intellectual) equality is a destination. Teachers need not know anything; rather, their role is to motivate students to realise their intellectual capacities. By denying his own knowledge, in fact, Jacotot creates space for students to express their intelligence. This view challenges the taken-for-granted idea of teachers injecting knowledge into students and, metaphorically, of oppression predicated on the reliance on experts. We find similar remarks in a later work, *The Emancipated Spectator* (2008/2009), wherein Rancière disputes the depiction of cinema or theatre audiences as passive, arguing that the spectator has to be thought of as an active agent and the work of art as a performance which removes barriers for that agency to express itself and develop.

During the 1990s and early 2000s many of Rancière's essays are translated into English, and his work becomes more widely known in the Anglophone world. Namely, his writings on political aesthetics – that is, on the redefinition of the sensible space as a common aim of both politics and aesthetics – reach a growing audience. *Dis-agreement: Politics and Philosophy* (1995/1999) is a slender manifesto of Rancière's ideas in this period. Starting from a critique of Plato's *Republic*, Rancière argues that politics has no foundation, being only the agonistic process instantiated at the very moment 'the people' (*demos*) disrupts the order of things, bodies and language created by existing authorities. Politics is the unfolding of this disruption, the contestation of the logic which naturalises arbitrary social arrangements.

Dissensus: On Politics and Aesthetics (Rancière, 1988/2010) and *The Politics of Aesthetics: The Distribution of the Sensible* (Rancière, 2000/2004), collect a number of works revolving around the conceptualisation of the politics of aesthetics and the aesthetics of politics. Rancière argues that politics is ultimately an aesthetic phenomenon, if by 'aesthetics' we mean the original Greek word *aisthesis* – that is, sensory perception of the world and our place in it. Politics, in fact, is the endeavour to set boundaries between visible and invisible bodies, audible and inaudible words, thinkable and unthinkable experiences, possible and impossible lives. Similarly, artistic production is an effort to reorganise our perception of the surrounding world and our position in it, generating new images, thoughts and words or re-signifying old

ones. As Rancière writes in *On the Shores of Politics* (1990/2007), democratic politics and art ultimately defy 'consensus', what is accepted as natural, whilst letting subjugated voices speak by themselves, creating a space for their expression.

From the 2000s onward, Rancière has developed this approach further, analysing artistic practices, particularly in cinema and literature, to reveal their intrinsic political dimension. Again, this is not related to any explicit political function assigned by the writer or the director to their works. Instead, the political essence of art depends on its very capacity to influence our perception of ourselves. *Mute Speech: Literature, Critical Theory, and Politics* (Rancière, 1998/2011), *Mallarmé: The Politics of the Siren* (Rancière, 1996/2011) and *Aisthesis: Scenes from the Aesthetic Regime of Art* (Rancière, 2013) exemplify this recent development, centring on a critique of the representational hierarchies of established modernist understandings of figurative arts and literature. Rancière's aim is to reveal the democratic nature of artistic performances, their capacity to be appropriated, activated and used for unlimited possibilities by audiences in order to change their perception of reality, producing new behaviours and conjuring up new subjects.

Rancière's Approach

Rancière's unique intellectual journey coheres around a few interlinked themes underpinned by a distinctively anti-materialist stance (Rancière, 2011). Anti-materialism, here, entails the upturning of Marx's idea that the economic and social structure determines people's culture and habits. Material reality does have a bearing upon individuals, yet people's culture (or *logos*), how they make sense of (and so modify) themselves and the world through language, is not a simple projection of their position in the empirical world – e.g. whether they are poor or wealthy. Language, in fact, is *fatherless* and (similarly to Butler's theory of re-signification; see previous chapter) can be appropriated by anyone; anybody can use it. This means that words can deviate from their author's intention, be injected with new meanings and produce unintended material effects (Lane, 2013: 39). This understanding is derived from Aristotle's affirmation (widely referenced by Giorgio Agamben as well; see Agamben's chapter in this book) that language is the defining feature of human beings (Rancière, 1995/1999: 1). However, whilst Aristotle argued that the foundation of politics is the natural fact that all men are endowed with meaningful speech (whilst all animals produce only meaningless sound), Rancière contends that all political activity is a conflict meant to distinguish between who can speak and who cannot. The fact that words can be appropriated by everyone and can alter reality implies the possibility that certain individuals or groups may use them to silence others. Politics, within this context, is the endeavour to uncover and disrupt the marginalisation of voices and bodies, employing discursive means to denounce and counter oppressive arrangements (Rancière, 2000/2004: 35).

Against this backdrop, Rancière contests traditional (Platonic, Aristotelian, Marxist and postmodern) political philosophies for speaking on behalf of the masses, which ultimately results in suppressing their voices (Gayatri Chakravorty Spivak argues something similar; see next chapter). He insists that intellectuals' focus should be placed on unearthing how spaces and resources for people to speak and be heard are generated or erased. Rancière terms this allocation of positions the 'distribution of the sensible' (in French *partage du sensible*) (Rancière, 1995/1999: 26). When a distribution of the sensible is informed by equality, then it

can be described as *democratic*. Equality, however, is the premise of political action, not its goal: Rancière invites us to assume we are all equal in our capacities and that the unequal manifestations of them depend on obstacles put in place by oppressive social and economic contingencies (Rancière, 1983/2002: 223). Undocumented migrants today, for instance, like workers in the nineteenth century, can and should effectively participate in political life, yet the lack of legal arrangements activating their capacities renders them politically irrelevant. This means that a distribution of the sensible is democratic only when it is informed by a willingness to realise our presumed equality, to make it real. This effort entails a contestation of (or 'disagreement' with) social arrangements which silence certain groups, imposing inequality (Rancière, 1995/1999: x). Rancière defines as a 'police order' this non-egalitarian partitioning the social world, the imposition of rigid identities, which democratic politics aims to disrupt (Rancière, 1995/1999: 28). *Dissensus* (or active conflict) is the logic of politics, while *consensus* (or passive conformity) is the logic of the police, and their clash is the agonistic game which gives rise to the demos – the only truly political subject (Rancière, 1988/2010).

Regimes, Distributions and Equality

This theoretical background informs Rancière's methodological approach. This is characterised by three interconnected aspects: firstly, a meticulous attention to the historical unfolding of the subject analysed; secondly, a distinctive analysis of the positions occupied by the subject at stake in given distributions of the sensible; lastly, a normative evaluation of such positions, opening up spaces for new political engagements.

Rancière reconstructs the history of his subjects of interest in different ways at different stages of his career. Early archival works centring on rediscovering workers' voices from below have been more recently complemented by abstract frameworks – *regimes* – when analysing the historical development of art (Rancière, 2000/2004).

Rancière employs the concept of a 'regime of the arts' as a tool to systematise historically different ways of understanding how certain practices ordering the sensible – that is, instituting relations between the world, language, artefacts and community – could be defined as art. Such regimes are not fixed structures but heuristic instruments which isolate, abstract and generalise certain features from long-term historical contexts (Tanke, 2011: 77). Rancière identifies three different historical regimes: 'ethical', 'mimetic' and 'aesthetic' (Rancière, 2000/2004: 10). The *ethical regime* refers to the Platonic understanding of arts as practices which establish an ethical-political relation with the normative core of the polity. Art is therefore subordinated to the ethical values and political principles of a community, and only those images and words which express those values and principles will be judged as art. Within the Aristotelian *mimetic regime*, practices to be qualified as art do not need to express any ethical-political value but only mirror the social nature of a community, its rules, roles and hierarchies. Such social reality is an inert matter that art can vivify by representing it. Lastly, the *aesthetic regime* captures a split in the correspondence between ethical-political or social nature and art. What counts as art here is an operation of dissensus against representation (Guerlac, 2017: 165). Practices to be defined as art must saturate things with meaning, beyond their standard connotations. In this way, they can then be taken up and used in possibly unlimited ways by individuals, allowing infinite configurations of the sensible.

Within each given regime a different distribution of the sensible will take place. 'Distribution of the sensible' (Rancière, 1995/1999: 26), as previously mentioned, refers to the process of making visible and audible certain bodies and voices. It works by classifying and separating certain roles, powers and positions from others and then distributing them across people, based on whether they are valuable or not according to those operating the partitioning. As a consequence, some actions, thoughts and bodies become sensible – that is, visible and audible – others insensible, meaning excluded from the possibility of being perceived. Excluding the capacity of certain groups (e.g. slaves, the mentally insane or women) to articulate political claims (e.g. voting) or censoring certain words or thoughts are examples of this partitioning. Along these lines, this process sets the very preliminary boundaries of a community, defining the threshold between what and who counts and can be included and what and who is irrelevant and should be kept invisible and inaudible. This process is at once discursive, since it assigns a certain meaning to people and things, phenomenological, by generating a certain political reality, aesthetico-political, since it orientates the perceptual basis of a shared world, and ultimately material, since it directly impacts on people's lives (Panagia, 2010: 100).

The evaluation of whether a certain distribution, within a certain regime, enables or obliterates equality completes the two previous methodological steps (Rancière, 1995/1999: 28). In fact, distribution of the sensible is a neutral concept, neither good nor bad. It is possible to qualify normatively a distribution based on whether it is informed by *equality* or *inequality*. This means that in Rancière, both politics and police order have a fundamental relation with the distribution of the sensible – police is simply one example of such partitioning, informed by inequality, whilst politics is the disruption of a police partitioning through a reorientation of the sensible based on the idea of giving voice to those muted by police. Thus, the division between sensible and insensible becomes the crucial site of political struggle, the virtual space wherein the boundaries of a political community are drawn, modified and erased (Panagia, 2010: 97). Police create communities with rigid identities passed on as natural, whilst politics disidentifies such communities, modifying the criteria of political participation.

Equality, within this context, is inevitably a crucial (both normative and methodological) concept. Rancière, however, does not provide a direct definition of it. Looking at how he uses this term, we can infer that equality designates a virtual field wherein capacities and possibilities are generated and coexist (Davis, 2013: 9). On this plane, human beings are assumed to be provided with the same capacities but hindered by non-egalitarian, oppressive social structures. Equality is thus a virtual condition to be enacted in order to verify itself, realising a remodulation of the sensible which is the condition for the constitution of the demos. This antagonistic force can never be instituted as a fixed entity; it is always moving, unsettled and unsettling. Rancière's work aims to unearth how this force works and gets captured, serving as a methodological-normative tool for the affirmation of (egalitarian) politics.

A Political Aesthetics of Restorative Justice

Writing a political aesthetics of restorative justice means looking at the development of restorative justice as a combination of historical regimes, then analysing the distribution of

the sensible inherent in each regime and lastly evaluating such distributions (Rancière, 2000/2004: 3). Historical regimes are not diachronic phases but coexisting dimensions of a certain phenomenon which expand or contract over time, representing, in our case, the richness of restorative justice as a historical entity. Exploring how, within each regime, certain voices are foregrounded or silenced entails uncovering how socio-discursive spaces are created and shaped, limiting or expanding people's possibilities of articulating their logos and becoming a demos. Evaluating such milieus involves expressing a normative stance toward those partitionings, based on their affirmation or denial of equality, as a preliminary step toward democratising restorative justice.

Communitarian Restorative Justice

Values such as informality, victims' empowerment and offender rehabilitation in the community led to the early inception of modern restorative justice, which was shaped originally as a range of non-adversarial, community-based practices in North America, Australia, Aotearoa New Zealand and parts of Europe. This *communitarian* restorative justice grew out of criminal justice practitioners' endeavours to disentangle themselves from liberal criminal justice and its failures, during the 1970s.

Victim-offender reconciliation programs (VORPs), victim-offender mediation (VOM) and family group conferences (FGCs) are examples of these early practices which only in the early 1980s were bundled together under the overarching label of 'restorative justice'. They reflected the emergence of several informal and alternative justice approaches in the late 1960s and 1970s as a part of a growing movement to de-institutionalise and deformalise responses to social conflicts and harms (Christie, 1977). The first recognised case of a VORP was documented in a small Canadian town, Elmira, in 1974 (Zehr, 2004). VORPs bring together victims and offenders to address the facts and feelings regarding an offence from the point of view of each of the principal participants. VORPs are based on the idea that following a criminal offence, the victim and the offender have a common interest in responding to the offence in a way that leads to reconciliation and closure. The emphasis is placed on assisting victims to overcome the consequences of the crime, helping offenders to change their lives and, more generally, humanising the criminal justice system. VOM, a typical European form of restorative justice, similarly involves a face-to-face encounter between victim and offender. With the help of a neutral third party – a trained mediator – parties are provided with an opportunity to talk about what has happened and express their feelings. Victims can tell offenders how crime has affected them and ask questions. Then the parties may decide together what needs to be done about what happened and reach a mutually satisfying agreement. This agreement may include the offender's making financial restitution, working for the victim or community, undertaking to behave in a particular way or attending some form of rehabilitation program.

FGCs originated in Aotearoa New Zealand as a form of Western appropriation of local (Māori) community-based justice practices. They consist of a mediated meeting between family members and other officials (e.g. social workers and police) in regard to a crime committed by a young person. The process includes a meeting where professionals inform the family of the concerns they have, followed by private family time, where the family can develop a plan that addresses the concerns related to the offending. The plan is then presented to the professionals, who should support it if the concerns have been addressed. FGCs are described

by their proponents as aiming to realise 'the transfer of power from the state, principally the courts' power, to the community; the [generation of] a negotiated, community response; the involvement of victims as key participants, making possible a healing process for both offender and victim' (McElrea, 1998: 527).

The 'ethical' dimension of this regime is exemplified by the fact that such practices were often described as driven by a return to community values, from civic responsibility to an emphasis on local traditions, leading to the enhancement of individuals' social connections (Bazemore and Griffiths, 1997). Here, the community appears as a cohesive subject, 'obsessed with its own unification' (what Rancière calls *ochlos*) (Rancière, 2000/2004: 92) – a non-conflictual homogeneous entity. This transcendental 'one' provides a normative reservoir from which individuals will draw meaning, to make sense of themselves and the surrounding world. The other ethical component of this regime is the idea of personal transformation or reconciliation. This element resonates with a range of religious belief systems, particularly Mennonite and Quaker doctrines (Liebmann, 2007). The belief that humans are naturally good beings, capable of recognising right and wrong, and the emphasis on non-violent responses to wrongdoing and spiritual reform expressed by the affirmation of healing, reconciliation and closure as aims of restorative encounters (Immarigeon, 1994; Marshall, 1999) still constitute a crucial cultural dimension of restorative justice, often starkly opposed to the dehumanising effects of criminal justice.

Communitarian Distribution of the Sensible

The spaces of early restorative justice have certain characteristics and follow a certain organisation, which to some extent still inform current ways of doing restorative justice. From a socio-relational viewpoint, the communitarian regime reflects the need for change in the 1970s in the way of doing justice, emphasising the significance of community reintegration against the backdrop of the crisis of criminal justice structures. These spaces are presented as embodying culturally significant practices related to traditional conflict resolution methods and community building (Hobson, Payne, Bangura and Hester, 2022). Materially, the communitarian regime largely revolves around a circular structure characteristic of both VORPs and FGCs, constituted by the trained practitioner, the victim, the offender and their supporters. Such spatial organisation is meant to generate a physical and conceptual closeness between participants. However, it also gives rise to subtly hierarchical and rigid relational processes and structures (particularly in the VOM case).

This regime, in fact, establishes relatively neat subject positions, each incorporating taken-for-granted conceptual repertoires. As a result, participants in restorative encounters are driven to adopt the perspective associated with their position, using certain images, metaphors and concepts which are relevant within the particular discursive space in which they are located (cf. Harré and Moghaddam, 2003). Victims, offenders and sometimes families or supporters represent self-evident subject positions laden with images and storylines that constitute a preset discursive space. Within this space, the scope for individual manoeuvring is significantly limited. The victim position assumes a higher moral ground, shaping the encounter as a space to enable them to speak and to be heard. The offender, by contrast, is required to listen and answer questions, to be held accountable and responsibilised. The expression of remorse becomes a key performance required of this actor. Remorse, in this

context, involves the offender's self-assessment of their own failure in understanding the immorality and material consequences of their actions (Maglione, 2023). This failure has ultimately resulted in a breach of the moral bonds which tie the offender to the victim within a supposedly shared community. Within this context, another negative moral emotion – shame – is often expected from the offender. Such rigidification of positions and associated expectations can be conceptualised as a *police order.* As seen above, for Rancière, the term police does not refer to specific law enforcement institutions but to the opposite of politics, to which it is tied by an unmediated relation. Police order refers to any hierarchical organisations enfolded by the veil of consensus, the imposition of a certain arrangement of bodies and words, naturalised as essential and necessary.

From an ethical perspective, this regime foregrounds certain voices whilst silencing others, presenting this distribution as obvious or natural. Victims and offenders are typically the only stakeholders legitimised to actively participate in early restorative processes. Additionally, such subject positions reflect criminal justice gatekeepers' – mainly law enforcement's – criminalisation choices (cf. Maglione, 2020). The selective framing of certain issues as worthy or unworthy of attention and the foregrounding of certain voices are complemented by the exclusion of individuals who do not fit the choices of police officers and prosecutors who make referrals to restorative justice services. This happens in the case of victims who are also offenders, systemic victims (e.g. ecosystems or populations) or non-ideal victims, who hardly can adopt the identities preformed by criminal justice gatekeepers. By excluding these voices and bodies, the police order manifests itself as an instantiation of social inequality. This order greatly limits the possibility of disagreement with existing procedures, roles and powers. This vertical organisation hinders the emergence of any genuinely political subjectivity, depoliticises human relations, enforces cohesion and stabilises identities (Tanke, 2011: 45; Clarke, 2013: 16).

Institutional Restorative Justice

The *institutional* regime refers to another dimension of the history of restorative justice – its institutionalisation. Here, the development of restorative justice imitates the nature of criminal justice – its rules, roles and hierarchies. This dimension is exemplified by the legalisation of early restorative practices, which involves altering, but not necessarily erasing, their communitarian roots.
FGCs were legislated in the late 1980s, becoming the foundation of the Youth Justice system in Aotearoa New Zealand in 1989. Through a top-down approach, FGCs were integrated in state-delivered youth justice practices, often in serious cases of youth offending. The Children, Young Persons, and Their Families Act 1989 institutionalised this measure (which was not explicitly defined as restorative justice at the time). The aim was to address high custody rates for young people, as well as the lack of inclusion of young people's families in decisions regarding youth justice.

In England and Wales, early policy on 'reparation' activities involving offenders and victims dates back to the Labour governments of the 1990s, specifically the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999, followed by the Criminal Justice Act 2003 and the Criminal Justice and Immigration Act 2008. In particular, the Crime and Disorder Act 1998, which introduced the reparation order for youth offenders, and the Youth

Justice and Criminal Evidence Act 1999, which established referrals orders and youth offenders panels, have paved the way for the institutionalisation of restorative justice in England and Wales as a legislated, state-organised and quasi-professionally run system.

In Europe, Belgium has always been at the forefront of the legalisation of restorative justice. Here, a legal provision on penal mediation (Code of Criminal Procedure, art. 216ter) was introduced in 1994. In 2006, the Belgian Youth Protection Act recognised and encouraged mediation and sentencing circles in juvenile cases. In 2005, a federal law provided that every person who has 'a direct interest' can request mediation at any stage of the criminal procedure (Code of Criminal Procedure, art. 553[2]). Similarly, Norway has an established tradition of alternative measures to criminal prosecution, with pioneering legislation on mediation introduced in 1991. The national mediation service (Konfliktrådet) handles both civil and criminal cases 'restoratively' (The Mediation Service Act: §1) – that is, aiming to enable the parties and others concerned by an offence or a conflict to jointly decide, helped by non-professional mediators, how its effects should be handled. The Mediation Service Act was significantly amended in 2014 through the introduction of the 'youth monitoring and follow-up measure' (§1), a restorative sanction for young people who have not committed serious or repeated crimes which aims to prevent reoffending. This measure, among other things, introduced the figure of a professional facilitator with powers to restrict the young person's freedom (Holmboe, 2017).

France and Italy represent more recent European cases of VOM absorbed by or integrated into novel legislation on restorative justice. In France, early practices of penal mediation were supplemented in 2014 by the right to obtain, at any stage of the criminal justice process, 'reparation of the consequences of crime', which may involve 'a restorative justice measure' (Law 2014-896). This law also introduced a new penal sanction – the 'penal restraint' – conceived of as the suitable legal framework within which to propose a restorative measure. In Italy, Law 2021-134 introduced a systematic reform of restorative justice for adults, in the past minimally regulated by provisions scattered across multiple statutes. This new law provided a new definition of restorative justice as any programme which enables victim, offender and community to freely participate in the resolution of the issues arising from the crime, with the help of an impartial third party. It also enacted a wide range of legal safeguards regarding, for example, access, confidentiality and rights to information and established that the outcome of restorative encounters, which may have an impact on the judicial process, will be evaluated by a judicial authority.

Finally, it is worth noting that many national efforts to institutionalise restorative justice have been prompted by international policy. Examples of these early prompts are the United Nations Economic and Social Council 'Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters' (2002), the Council of Europe Committee of Ministers Recommendations R(99)19 and CM/Rec(2018)8 and European Union Directive 2012/29/EU on victims' rights (The Victims' Directive).

This brief overview illustrates the tendency to turn early restorative practices, which emerged at the margins of Western criminal justice systems, into codified processes expressed in the language of criminal justice. This progressive and gradual imitation is a long-term historical dynamic, although recently the pace and spread of this process have significantly increased (see González [2020] for a critical overview of this process in the United States).

Institutional Distribution of the Sensible

Institutionalising restorative justice involves creating a policed space that confines voices and bodies into legal-bureaucratic positions. This space is populated by victims, offenders, (sometimes) communities and a fourth entity – the state. The state occupies a crucial position, being often represented by authorities who make referrals to restorative services, supervise their provision and certify their outcomes. This organisational structure is designed to exclude or significantly limit the possibility of conflict. For example, if the offender does not acknowledge responsibility, they will not be allowed to partake in encounters, and if the restorative facilitator rejects the control of the state, no referrals will be made. A logic of consensus underlies the assumed legitimacy of legal procedures, roles and powers. The arbitrariness of this distribution of the sensible – dichotomic, abstract, functionalist – is concealed by the state, presented as a necessary instrument for scaling up restorative justice. Additionally, this institutionalised arrangement is hypertrophic and self-replicating. Its aim is to saturate the sensible with policy, leaving increasingly less space for other, spontaneous organisation of bodies and words, creating a solid and smooth, apolitical space. Hence, the creation of political subjects is prevented, replaced by non-political legal entities.

This discursive closure relies on the use of liberal criminal justice language to regulate restorative justice (Clarke, 2013: 24). The dichotomy victim/offender and the concept of community exemplify this perspective. Restorative justice policy neatly establishes individuals as either victims (or 'persons who have been harmed') or offenders (or 'persons who have harmed'), with little room for (social, personal, cultural) overlaps between these positions. When community (infrequently) features in policy, it is often described as a collection of professionals who play a supporting role to the primary stakeholders (i.e. victims, offenders and criminal justice representatives). This is the case for youth offender panels in England and Wales or the new Norwegian youth justice restorative measure. These initiatives involve the youth offender's 'professional network' and possibly (but not necessarily) the victim and their network. These discursive choices reflect the same functionalist understanding of crime which underpins criminal justice (Walgrave, 2017: 97). Crime is an individual moral deficiency which needs to be neutralised, and restorative justice is presented as a way to address this pathology, giving victims' voice and responsibilising the offender whilst neglecting the unbalanced power relations which contribute to the definition of behaviours as crimes. This functionalist language can also lead to the development of a bureaucratic 'tick the box' approach to justice interventions with culturally colonising effects when restorative justice programs are imposed as standardised commodities on non-Western communities (Blagg, 1998; 2017; see also next chapter).

Overall, institutional restorative justice appears as a discrete, standardised process informed by criminal justice concepts. Penal policy reduces restorative justice to a transparent object: a sequence of codified steps which supposedly lead from crime to social order. Restorative justice becomes a state-run technical device, a means to achieve victims' satisfaction and reduce reoffending. In this way, it loses much of its radical potential to address human interactions. This is a consequence of the policing of bottom-up informal justice practices, of the immobilisation of their ethical roots. This situation is exacerbated by the fact that policy generates its own demand, making itself necessary even when it does not deliver on its

promises of efficient regulation. Policy generates more policy, relentlessly, legitimising the police order of the sensible which is integral to the institutionalisation of restorative justice.

Democratising Restorative Justice

Democratising restorative justice requires infusing equality into both communitarian and institutionalised forms of justice, although without imposing another regime which would yet again restrain people's capacities. Democratic restorative justice is, in fact, a process and not an end product, an active challenge which does not demand the abolition and then replacement of existing distributions of the sensible. Instead, it promotes an ongoing process of uncovering the limitations of existing forms of justice, questioning their foundations and effects, establishing new relations, allowing new voices to emerge and politicising what is at stake (Sachs, 2017: 71).

Miscounts

As mentioned earlier, politics is the human activity that aims to realise equality. Restorative justice becomes a political force when it enables the contestation of the consensual logic which neutralises conflict and conceals inequality (Rancière, 1988/2010). This can be achieved by enabling individuals to question the positions assigned to them within restorative encounters (Deranty, 2010: 10). Politicising restorative justice entails creating spaces for reflecting critically on pre-established subject positions, such as victim and offender, or non-legal labels (such as person who has been harmed and person who has harmed) which are still influenced by a dichotomous logic. In fact, whilst imposing such positions creates a rigid discursive space, characterised by rights and duties, questioning this arrangement aims to allow unheard voices to affirm their needs and interests. This process may well include the appropriation of such labels, yet only as one option available to participants, not as their predetermined personas. This implies providing parties with opportunities to contextualise their actions, to narrate not only their personal stories but also their social histories, considering not only the crime and the harm but also criminalisation and its conditions (cf. Rancière, 2001). Broader social, cultural and economic factors surrounding participants should be included as possible material for reflection. Along these lines, taken-for-granted ideas of individual responsibility and individual victimisation become questionable. Again, this does not mean denying them but creating spaces for a dialogue around these concepts that are considered abiding in existing regimes of justice.

A related form of politicisation consists in providing participants with resources within restorative encounters to reframe interpersonal harms as 'miscounts' (Rancière, 1995/1999: x). *Miscounting* designates the process of reflecting on which voices count, who is allowed to speak and about what issues, with the aim of questioning the very preconditions of restorative encounters. Discussing who should participate in such arenas, with which role and powers, under which circumstances, amounts to instituting relations, convening new populations and creating new subjects through discursive acts. For example, this process can involve extending the reach of restorative encounters to include as direct stakeholders the agencies which both criminalise individuals (often on gendered, classist or racial grounds) and are supposed to protect them (e.g. police). Exploring such agencies' power to 'name' victims and offenders, inviting them to reflect on the human consequences of their work

and the complex conditions and legacies of wrongdoing, has the potential to lead to the expansion of the concept of harm within restorative encounters.

Within this context, 'democracy is neither a form of government nor a form of social life' (Rancière, 1988/2010: 50) but what is at stake in restorative encounters: the altering of the socially and legally accepted order built around the 'natural' separation between victim and offender and the individualisation of responsibility as much as the distinction between person who has been harmed and person who has harmed and the privatisation of conflicts. This does not imply abolishing *tout court* those labels but turning them into objects for open yet safe discussion and disagreement. Democratic restorative justice opposes dissensus to taken-for-granted partitioning (Rancière, 1988/2010), demanding a critical reflection on the effects of abstracting harms from their social context and on the political implications of individualising responsibility and victimisation. Yet a paradox should be noted here. As an interpreter of Rancière has sharply noticed, 'democracy ungrounds itself when spreading democratisation, since micropolitical practice which enables the egalitarian distribution of the sensible also engenders anti-political resistance, that is, policing order' (Apter, 2017: 12). This implies that in democratising restorative justice there is a risk of recreating a new fixed, unequal order, which simply replaces the imposition of certain voices with others. Democratic restorative justice is therefore always already *impure* – never fully democratic, never a stabilised distribution of rights and duties, always set to question its own foundations (Chambers, 2013). This is because democracy is not a regime but a disrupting force supporting marginalised voices, preventing human encounters from immobilising people's potential to reimagine themselves and their relations.

Expanding Boundaries

Political action produces emancipation first of all discursively, and this is intrinsic to the fact that human beings are 'literary animals' (Rancière, 2000/2004: 35). Politics, in fact, relies upon the capacity of language to create, modify or erase reality, assigning new meanings, authorising new ways of relating to the surrounding world, and forging new subjects. This is fundamentally the aesthetic driver of politics and, in our context, of restorative justice.

As said above, politics and the arts are always contingent and precarious attempts to reorder the sensory community, subverting and reconfiguring hegemonic social arrangements. Democratic art is art that, once freed from the task of representing social nature or political communities, is able to create 'possibilities of life by refusing to be part of the settled sensible, shattering meanings and shared appearances' (Tanke, 2011: 85). Art pushes the boundaries of what can be thought and said, dismantling self-evident facts, defying any hegemonic social order and ultimately inventing new forms of life (Chanter, 2017: 158).

For democratic restorative justice to embody this aesthetic core and its emancipatory potential means accepting the idea that 'everything speaks' (Tanke, 2011: 86–90). Not only individuals and groups but also non-human and more-than-human entities, such as ecosystems or social movements, should be able to participate in encounters, whose boundaries should be extended. Very recent, albeit still marginal, examples of this expansive process are environmental restorative justice and restorative cities.

Environmental restorative justice, understood as an ecocentric approach to harm to human and non-human entities, can create space for alternative narratives which have the potential to redefine and challenge notions of harm and justice (Pali, Forsyth and Tepper, 2022). Here, stakeholders can define themselves as victims of environmental harm even if they are not legally defined as such by the criminal justice system. It is possible to narrate a type of harm that is not legally acknowledged, imagining ways of making the ecosystem speak of the harms it suffers, whilst politicising their causes and effects.

The idea of restorative cities involves producing cultural change by expanding some of the values characterising restorative justice to inform wider social processes within spaces as wide as entire political communities (Mannozzi, 2019). From this angle, it consists of a movement, rather than a process, advocating for a range of strategies – from dialogic decision-making processes, to architecture, to social networks to deal with vulnerability – which contain a political potential, promoting a 'logical revolt' insofar they extend the bounds of restorative justice beyond the limiting spaces of encounters (cf. Rosenblatt and Adamson, 2023).

What unites these different processes is their common foundation: the non-anthropocentric acknowledgement and inclusion of new restorative actors. These are not embodied subjects, but complex entities constituted by physical matters as much as moods, memories and sensory impressions, sensating interfaces of social space and individual needs (Rancière, 2000/2004: 35). Expanding the boundaries of restorative encounters amounts to creating new spaces wherein to articulate new configurations of the real.

Restoring Subjects

The concepts of *subject* and *subjectification* are central to Rancière's idea of democratic politics (Rancière, 1992; 1995/1999). Rancière challenges the commonsense relation between politics and subjectivity, arguing that politics is itself a subjectivation process, a dynamic through which political subjects are formed, and thus that no political subjects exist before politics. This process begins when a non-political subject – that is, an individual or group who in the current hegemonic arrangement is considered unable to speak and to be heard – realises and then publicly denounces their subjugation, or, in Rancière's words, declares a 'wrong' (1995/1999: 39).
Democratic restorative justice should create the conditions to enable non-political individuals – that is, victims and offenders, persons who have been harmed and persons who have harmed – to become political subjects, to articulate their disagreement with current justice arrangements as a wrong, a political injustice. Declaring a wrong involves politicising their condition, connecting their harms to wider and deeper social, economic and cultural conflicts. It involves challenging the idea of individual responsibility by connecting people's choices to contextual processes, letting emerge the fluid transactions between agency and structure that restorative encounters, largely informed by a dichotomous mentality, neglect. It also calls for contesting the absorption of one's individuality into the nostalgic horizon of communitarian justice, making conflicting voices and their claims audible.

Subjectivation consists in detaching oneself from one's natural and predefined social roles, producing new spaces and possibilities for becoming, new realms of experience, generating a new 'we' (May, 2010: 78). Against this backdrop, victim and offender, as well as person who

has been harmed or person who has harmed, can transition from predetermined identities to active subject positions. This requires enabling people in restorative encounters to critically reflect on those labels, to decide together whether they are appropriate or not to name their conditions and fulfil their needs. This implies that the process of becoming a subject is not the same as taking up an identity but entails questioning an identity imposed by others upon us. Subjectivation requires disidentification, the 'creation of a space between identities in police orders' (Chambers, 2013: 104) and never passive submission to a pre-existing ethos.

Predetermined identities, in fact, tend to 'objectify social attributes whilst elevating them to constituents of an ideal identity which determines in advance what people are and what they can do' (Lane, 2013: 29). In contrast, democratic restorative justice assumes that individuals or groups have the capacity to articulate their voice, generating something different than a pre-established ethos. The challenge lies in removing barriers to these capacities, transforming restorative justice into a social movement that assists people in recognising and then distancing themselves from externally imposed social positions (Mecchia, 2010: 45). The ultimate aim of this ongoing process is the generation of the demos, an 'excessive' – i.e. undetermined due to its permanent self-renewal – subject, rather than a community obsessed with its own unification (Rancière, 2000/2004: 92).

The foundation of this polemical and open-ended notion of political subjectivation is, once again, Rancière's idea of language's inherent openness to deviation from its intended meaning (Lane, 2013: 42). Subjectivation is always and only a linguistic process, relying on poetic devices which dislodge fixed arrangements by naming them as wrongs, injecting equality into them (Chambers, 2013: 20).

Politicising Facilitators

There is at least one other way to democratise restorative justice, by focussing on the role of the facilitator and drawing on Rancière's pedagogy. The pedagogy described in *The Ignorant Schoolmaster* revolves around the concept of equality of intelligence. We are all provided with intelligence, and the variations in its manifestations simply depend on external factors. Rancière's pedagogy thus requires teachers to remove those obstacles, beginning with their own idea that students need someone to explain subjects to them. Explaining is an act grounded in inequality, on the presumed intellectual inferiority of learners, which reproduces inequality by 'stultifying' people and perpetuating a distribution of the sensible characterised by the subordination of one intelligence to another (Rancière, 1987/1991: 13).

A democratic restorative facilitator should avoid rigidly 'scripting' encounters, imposing fixed positions on parties and erasing, in a directive way, anything deemed irrelevant or inconsistent with the script. Such rigid structuring of the process is not a simple means toward an end but the condition for transforming an emancipatory process into a stultifying one. In fact, this hierarchical pedagogy ultimately rationalises and legitimises its own practices and institutions whilst it defers the emancipation it promises (Davis, 2013: 4). In this way, it accepts inequality, which is simply transferred from criminal justice to restorative justice.

A radical political-pedagogical approach, inspired by Rancière, assumes that everyone has the capability to effectively participate in these democratic encounters, everyone can engage with

this task, based on the presumption of equality of intelligence. In other words, people involved in harms or conflicts are deemed to have the competence and skills to deal with their own problematic situations. Yet some contingent obstacles can arise, from a lack of linguistic resources to participants' special needs. These circumstances are unrelated to intelligence, being instead factors that a political-pedagogical praxis must remove, upholding the axiom of intellectual equality (Rancière, 1987/1991: 27). This approach ultimately leads to uncovering and supporting everyone's existing intellectual power, creating the conditions for realising human potential.

From this perspective, restorative facilitators should become social activists playing a role in removing obstacles both within and outside encounters that hinder the expression of participants' intellectual power and the affirmation of their equality (Citton, 2010). Emancipation, in this context, designates the process of enabling participants to engage with the meaning-making process that underlies encounters, providing space for them to translate into their own language what they have seen, heard or felt. When restorative encounters exceed the determinations of any preset narrative, they can produce a dissensual reconfiguration of the sensible, letting participants confront and rewrite the meanings of reality. In this way, restorative justice becomes a form of dissensus by empowering marginal voices to manifest themselves, disrupting the sense of self-evidence with which we approach the sensible and generating a space antagonistic to the hegemonic order.

Beyond Rancière

This chapter has engaged with Rancière's political theory to unpack and then rethink restorative justice as a democratic force. Rancière's method helps reconstruct restorative justice history as characterised by different regimes which, although emerging at different times, end up coexisting in the present. The communitarian regime refers to ethical elements characterising the early, practice-based development of restorative justice: informality and an organic and participatory nature, aiming to reform criminal justice from outside. The institutional regime captures other aspects of restorative justice – namely, its imitation of criminal justice. The institutionalisation of restorative justice involves the transformation of those early practices into structured and codified processes relying on criminal justice authorities and often subordinated to their logic.

Both regimes ultimately create a police order – rigidified structures which confine participants' identities by 'scripting' their stories, limiting their possibility of expressing their voices beyond pre-existing labels. The communitarian regime anchors restorative justice to nostalgic communitarian values of return to an informal, humanised justice, whilst the institutional regime binds restorative justice to the criminal justice concepts of crime and individual responsibility. Rancière's political theory prompts a radical democratic reimagination of restorative justice. This approach does not aim to replace the existing regimes and then to solidify as a new authoritative model but to unsettle ethical and mimetic identities, creating spaces for subjugated practices, processes, bodies and voices to be seen and heard. Democratic restorative justice *is* this anarchic disruptive force aiming to reconfigure relations that communitarian and institutional representations tend to conceal.

This reconfiguration requires uncovering and challenging the criminal justice identities of victim and offender, expanding the boundaries of restorative encounters, like in restorative cities and environmental restorative justice. It also involves rethinking harms as (also) political disagreements and wrongs, producing spaces for expressing one's capacities by removing obstacles to the affirmation of equality, enacting subjectivating processes and pushing facilitators to become social activists willing to help parties to realise their equality. Overall, this restorative justice is democratic because it is founded on dissensus; it is an attempt at politicising what criminal justice and institutionalised versions of restorative justice depoliticise, contesting any order of the sensible based on inequality. In this context, restorative encounters become agonistic spaces which support people to rethink their social positions, providing cultural resources to connect private troubles to public issues.

Democratic restorative justice does not aim to find a stable space in the social world, becoming a hegemonic form of justice. It needs instead the existence of other regimes in order to produce that impure social space wherein new voices and bodies can count. This view highlights the fundamental connection between politics and justice – a depoliticised justice is a justice which implicitly succumbs to subjugating police orders. Democratic restorative justice is instead an open challenge to the seductive illusions of an objective, third-party and independent justice, as well as their implicit endorsement of hegemonic orders of the sensible. It underscores the importance of maintaining a disruptive and politically engaged approach to justice, one that continually challenges and questions existing power structures.

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7. Encountering Subalternity

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Abstract

Can restorative justice perpetuate political and cultural exploitation? How can restorative justice practitioners unlearn their privileges when engaging with marginalised subjects? How can a decolonised restorative justice be developed?

Searching for, obtaining or being denied the experience of justice always takes place in specific contexts wherein human beings encounter each other. These contexts are often marked by struggles between those who are left at the margins, disenfranchised and suffering, and those who have the power to oppress both materially and culturally. Restorative justice is not immune to such dynamics.

This chapter encounters Gayatri Chakravorty Spivak, a literary critic whose work has been informed in equal measure by feminist concerns, Marxist analysis and deconstruction. Spivak has dedicated her career to engaging with *subalternity*, the condition of being at once politically disempowered, economically deprived and culturally silenced.

Encountering Spivak means not only enriching the political vocabulary of restorative justice but also reflecting on the positionality of such vocabulary, adding a further crucial layer to our analysis. Ultimately, Spivak may serve as a catalyst for restorative justice to become an active force toward the re-establishment of a justice that is more than Western justice.

From this perspective, this chapter points to a *subaltern restorative justice*, a reflection on how subalternity could inform justice practices understood as intersectional interventions aiming to redress unbalanced power dynamics. This would lead to dialogues which incorporate different concepts of the world whilst addressing power differentials related to gender, class and cultural context, in a bid to confront interlocking experiences of oppression.

They [the subalterns] are the figures of justice as the experience of the impossible.

Gayatri Chakravorty Spivak (1985/2020: 7)

Colonialism, Subalternity and Justice

Judith Butler and Jacques Rancière remind us that justice does not happen in a vacuum. Searching for, obtaining or being denied the experience of justice always takes place in specific contexts wherein human beings encounter each other. These contexts are often marked by struggles between those who are left at the margins, disenfranchised and suffering, and those who have the power to oppress both materially and culturally.

This chapter encounters Gayatri Chakravorty Spivak, a literary critic whose work has been informed by feminist concerns, Marxist analysis and deconstruction. Spivak has dedicated her career to engaging with *subalternity* (1985/2020), the condition of being at once politically disempowered, economically deprived and culturally silenced. This condition particularly affects those who live in the postcolonial world. Postcoloniality, in fact, does not merely refer to the end of colonialism but to its lingering, intergenerational and multidimensional effects. Spivak's work on the representation of subaltern voices, and on the risks of benevolent speaking on behalf of the other, is a powerful tool to criticise both identity politics and multicultural pluralism. The challenge, taken by Spivak as her lifelong mission, is to create spaces for the subalterns to reaffirm their life.

Spivak develops this critical stance through an itinerary in which biographical and intellectual spheres intertwine. Born in India, Spivak discovered Jacques Derrida's deconstruction when she was a postgraduate student in the United States, leading to her breakthrough translation of *De la grammatologie* (1976), which introduced Derrida to an American audience. Here, Derrida's deconstruction serves as a source of insights rather than a methodology, revealing how language generates domination through *masterwords* – e.g. 'workers', 'women', 'the other' – that collapse difference into identity. For Spivak, deconstruction is an ethical endeavour, as it challenges the authority of these masterwords. This intellectual ethic becomes more explicitly political when combined with Marxism and radical feminism.

Marxism is a significant component of Spivak's intellectual platform, although her approach is marked by a distinctive revisionist stance. While she shares Marx's fundamental insights into alienation and the exploitation of labour, Spivak adds a further dimension to this perspective. She explicitly highlights, and addresses, Marx's Eurocentric bias and complete lack of reckoning with non-Western socio-economic contexts, criticising his humanistic idea that human beings are the same everywhere (Spivak, 1990; 1999).

Feminism then allows Spivak to criticise both Derrida, for his lack of genuine engagement with the gendered subject, and Marx, for his total absence of interest in the relationships between gender and social class (1985/2020). At the same time, deconstruction and Marxism add fundamental epistemic-normative dimensions to her feminism. Spivak's feminism, in fact, goes beyond the idea that 'sex is natural, gender social'. Using a deconstructive approach,

Spivak challenges this binary opposition, producing an intersectional reading of gender which connects labour exploitation to female bodies.

Encountering Spivak means not only enriching the political vocabulary of restorative justice but also reflecting on the positionality of such vocabulary, adding a further crucial layer to our analysis. How can restorative justice practitioners unlearn their cultural and material privileges when engaging with marginalised subjects? Can their well-intended words and actions perpetuate political and cultural exploitation? How can restorative justice reckon with its own widely acclaimed past as an ancient form of justice without collapsing cultural differences into Western identities? How can a decolonised, ethical restorative justice be developed? Ultimately, Spivak may serve as a catalyst for restorative justice to become an active force toward the re-establishment of a justice that is more than Western justice.

Encountering Spivak

Spivak's work follows a trajectory which is marked by recurrent themes – the entanglement of cultural and material struggles, the importance of a gendered focus, the acknowledgement of one's inevitable situatedness. Nevertheless, it is possible to observe significant shifts in emphasis over time, such that some of those overarching motives appear as more prominent at different stages of her career.

In the 1970s, after some early works on William Butler Yeats (1974), Spivak publishes her breakthrough translation of Derrida's *De la grammatologie*, including her introduction (1976), giving her an immediate reputation as a key interpreter of deconstruction. Her introduction is still considered a key entrance into this field, whilst at the time, it initiated the debate on Derrida in Anglo-American academia. Spivak understands deconstruction as a critique of Western thought, an endeavour to problematise the Western intellectual tradition by engaging with it as if reading a complex text.

'French Feminism in an International Frame' (1981) and 'Displacement and the Discourse of Woman' (1983) mark Spivak's first attempts at approaching deconstruction with a feminist lens. These works make visible the connections between deconstruction and the exploitation of women within the economy of property and international capital. They also provide insightful commentaries on French feminist thinkers, like Julia Kristeva, Luce Irigaray, and Hélène Cixous.

The 1980s see Spivak further developing her deconstructive-feminist critique, and also the beginning of her gendered critique of the effects of colonialism. In *Can the Subaltern Speak?* (1985/2020), Spivak critiques colonialism's epistemic violence and its implications for the gendered subject. In this essay, she famously objects to the benevolent yet epistemically violent attempt, made by European intellectuals (such as Michel Foucault and Gilles Deleuze), to create an essentialised subject – the masses – assuming that this subject is able to represent itself (1985/2020: 8). In this way, an anonymous *other* is generated and, despite the anti-essentialist premises of Foucault's and Deleuze's works, essentialised.

This Eurocentric approach is particularly problematic when considering marginalised women from the Global South. These women are unable to represent their own interests mainly

because colonialism had changed the status of the precolonial subject, causing their 'pure' and 'innocent' voices to be irreparably lost. The *subaltern* (a word coined by Marxist philosopher Antonio Gramsci) is the position occupied by those who are at once politically disempowered, economically deprived, socially marginalised and epistemically silenced (1985/2020: 28). Women occupy a distinctive subaltern position as gendered postcolonial subjects, and Spivak's aim is to access their subjectivity by deconstructing their identity, understood as the product of the colonialist Eurocentric representation of non-Western women. This approach inaugurates postcolonial studies and specifically postcolonial feminism as a response to Western feminist movements, which focussed almost exclusively on the experiences of Western women. Instead of offering a defined theory or a discrete methodology, this perspective deconstructs the impacts of colonialism and globalisation on female bodies in the Global South, unearthing the intertwining of epistemic-cultural violence and capitalism.

These crucial themes are further developed in *In Other Worlds: Essays in Cultural Politics* (1987/2006), which includes essays refining Spivak's deconstructive reading of Marx and feminism, tied to a critique of them as lacking context-specific sensitivity to the condition of the proletariat in the Global South.

During the 1990s, Spivak first gathers her major contributions to the postcolonial field in *The Post-Colonial Critic* (1990), then attempts to critically distance herself from some of the developments of postcolonial studies (1999). *The Post-Colonial Critic* (1990) consists of a selection of interviews and discussions with Spivak that took place in the late 1980s. Here, Spivak reflects on questions of representation and self-representation, the politicisation of deconstruction, the situation of postcolonial critics, intellectual responsibility and political strategies. *A Critique of Postcolonial Reason* (1999) examines how European culture has turned non-Western subjects into 'native informants' (ibid: ix), that is, commodified objects of knowledge without ethical substance. Here, Spivak charges postcolonial scholars with adopting this simplifying viewpoint when, in good faith, they try to represent non-Western cultures. Spivak reflects on what a responsible postcolonial critic would look like, working on a wide range of authors and subjects, from Kant to Marx, from the concept of the sublime to child labour in Bangladesh.

In this same period, Spivak starts engaging directly with pedagogical questions, drawing on her experience as a teacher in Bangladesh. In the collection *Outside in the Teaching Machine* (Spivak, 1993/2009), she presents critical analyses of works of literature as a starting point for questioning power structures and reflecting on the political function of pedagogy.

The 2000s see Spivak returning to the relationship among language, women and culture and further developing themes of pedagogy and of the responsibility and complicity integral to every act of communication. This is the case for the essays collected in *An Aesthetic Education in the Era of Globalization* (Spivak, 2013), which propose to read the present by drawing on the idea of an aesthetic education for implementing global justice and democracy.

Overall, Spivak's itinerary is marked by the dynamic interrelations among deconstruction, feminism and Marxism. A constant theme is to use the resulting approach to read critically postcoloniality as a condition to improve the subaltern's life. Spivak's relentless confrontation

with the entanglement of economic conditions, cultural representation, or lack thereof, and political organisation outlines a cultural politics that leads us to rethink (restorative) justice by drawing on unexpected sources, ideas and theories.

Spivak's Approach

Spivak's background is characterised by a fundamental tendency to cross disciplinary boundaries, sometimes producing puzzling effects in readers who might instead expect epistemological, methodological and conceptual consistency. Spivak deliberately pursues such effects, not only engaging with disparate cultural spheres but also inventively addressing Derrida, Marx and feminist scholars.

Spivak (1976) starts off from Derrida's metaphysical understanding of deconstruction. This highlights how the Western philosophical tradition and culture are built on a series of binary oppositions – e.g. male/female and writing/speech – that entail a hierarchy of one of the binary terms over the other (Spivak, 1987/2006: 103). Deconstruction aims first to displace and then to reverse such binary pairs by reinscribing the previously inferior term (e.g. *female* or *speech*) as the origin of the opposition and the hierarchy itself (Spivak, 1996: 30). This approach is meant to show that the meaning of any word is nothing but a play of difference with other words, and therefore a stable meaning is never achieved. For instance, our comprehension of *speech* arises from its distinction from *writing*, our understanding of *good* is shaped by its opposition to *bad*, and so forth. Consequently, meaning is in a perpetual state of postponement. This situation of differing and deferral of meaning is what Derrida calls *différance* (Spivak, 1976: xliii). From this angle, linguistic meaning is created rather than given, fluid instead of fixed, and hierarchies are always culturally determined.

Spivak uses deconstruction inventively, as an intellectual ethic that proposes to resist the institutionalisation of culture through authoritative and apparently neutral truths (Spivak, 1996: 27). She looks at the world as a text to be read, paying attention to its multiple and endless possibilities, destabilising the Western tradition of establishing a (Western) centre to organise understanding of ourselves and the world we inhabit. In this way, Spivak examines and contests conventional theoretical concepts that have historically rationalised the exploitation and colonisation of non-Western societies, such as sovereignty, citizenship and individual rights (Morton, 2008: 54). Deconstruction allows Spivak to unpack not only these concepts but also the supposedly emancipatory terminologies employed by political movements. She highlights how terms like workers, women and colonised tend to encapsulate and oversimplify the experiences of minorities. Spivak contends that such words represent a misuse (or *catachresis*) of multifaceted struggles, reduced to cohesive and universal entities, with supposed material referents, which often conceal their (Western) origin and (Westernising) effects (1990: 104).

Clearly, this creative use of deconstruction carries an ethical dimension, challenging all supposedly universal frameworks that cause epistemic harm to non-Western subjects as a precondition of material oppression. Spivak, following Derrida (and Emmanuel Levinas), seeks ways of encountering *the other* as an ethical singularity, as *others* not reduced to a chain of universal labels. This encounter is never risk-free: there is always the risk of

inadvertently silencing others' voices, and the awareness of such a limit is the key condition for an ethical encounter.

Spivak grafts Marxism and feminism onto this idea of ethical deconstruction. She reassesses Marxism by keeping the fundamental aspects of capitalist alienation and exploitation of labour while criticising Marx's neglect of non-Western economic and social realities. There is a strong Eurocentric bias in Marx's thoughts, expressed by his attempt to fit non-European contexts (e.g. the Asiatic mode of production) into a Eurocentric narrative. Spivak challenges Marx's idea that the working-class struggle for economic equality represents the political interest of all humanity, regardless of place or time, overlooking other marginalised constituencies, such as women and the colonised, and their unique contexts. Hence, Spivak argues that contemporary economic exploitation requires a context-sensitive and gendered analysis of the relations of production.

Radical anti-essentialist feminism enriches the Marxist analysis of production and its effects. The idea that 'one is not born but becomes a woman' is certainly a good starting point, but, Spivak argues, there is a need to contextualise this claim historically and geographically. Working on Kristeva, Irigaray and Cixous, Spivak reclaims the experience of the female body, insisting that Western feminism must recognise the material, embodied experiences of 'Third World' women. She criticises European feminism for, much like Marxism, adopting a Eurocentric perspective that uses the Western woman as its paradigm, underscoring how modern transnational capitalism exploits women's productive bodies (Spivak, 1987/2006). This critique prompts a re-examination of Marxism that moves away from the conventional, androcentric and European definition of the working class and acknowledges the exploitation of disenfranchised working women in the Third World.

The relationship among Marxism, feminism and deconstruction is circular. Spivak, in fact, not only uses Marxism and feminism to politicise deconstruction but also utilises Derrida's intellectual ethics to uncover the inherent presumptions and omissions in both Marxism and feminism and their claims to represent and speak on behalf of all oppressed individuals.

In the first case, she deconstructs the binary opposition between capitalism and socialism, claiming that socialism cannot exist independently of the capital relation. She thus challenges simplistic notions of political and economic autonomy, highlighting the complex interplay of global economic forces and structural inequalities. Similarly, Spivak argues that the conventional definition of woman is often rooted in the word man. From a deconstructive point of view, it is necessary to move beyond this limiting and binary framework by proposing a more epistemically aware understanding of gender (Spivak, 1990: 70). It is likewise necessary to challenge the universal feminist subject by calling for a more inclusive (intersectional) understanding that transcends Western-centric perspectives.

From Postcoloniality to Subalternity

The overall result of these transdisciplinary combinations is a critical approach concerned with creating a space wherein epistemic-political challenges related to Western truths, and their material effects, are unearthed and addressed in order to encounter the ethical singularity of the other (Spivak, 1995). Operating from the margins of central discourses,

Spivak interrogates the mechanisms that generate and sustain these truths, foregrounding *subalternity* as the position wherein multiple forms of oppression intersect, removing people 'from the lines of social mobility' (2004: 531).

Deconstruction helps Spivak displace and reverse the effects of masterwords such as woman, worker and colonised. Deconstruction highlights the normative and epistemic challenge posed by colonial oppression. Imposing a representation of the oppressed which fixes their position is one of the main epistemic strategies of colonisation. Spivak, drawing on Marx, argues that Western representations of the colonial and postcolonial world conflate two distinct meanings of representation: 'speaking for', in the sense of political representation, and the aesthetic sense of 'speaking about' (Spivak, 1985/2020: 19). Speaking on behalf of 'the masses', as benevolent Western intellectuals often do, further silences the colonial others, whilst aesthetic representation, if ethically aware of its inevitable othering effects, can generate some spaces for reactivating the political agency of the represented.

The concept of subalternity, here, provides Spivak with the sufficient flexibility to describe moments of subordination which cut across epistemic, political, economic and gender spheres to indicate the multidimensional effects of colonisation. Subalternity signifies not only economic exploitation but also the process of censoring voices (for instance, by marginalising local literature or negating access to historical records) whilst creating narratives that legitimise the capitalist-colonialist uneven distribution of resources. This dynamic particularly affects gendered subjects, who are more than others unable to represent themselves. Representation is the point of suture between the political, economic and epistemic spheres, to be contextualised geographically and with regard to gender (1985/2020).

This approach ends up being critical of postcolonial studies itself and the classical Marxist methodology that underpins it. Whilst Spivak greatly contributed to the birth of postcolonial studies, as seen above, at one point she distanced herself from it. The classical Marxist postcolonial approach is too rigid to accommodate the diverse and complex social history of Third World realities, and it is too restrictive since it is geared only to class politics. Instead, there is a need to incorporate liberation struggles, such as peasants' and women's movements (Spivak, 1987/2006). Additionally, postcolonial studies portray the colonised as sovereign subjects, able to articulate their oppressed voice, neglecting the intertwinement of the colonised's voice and coloniser's violence. The subalterns' voices are inevitably contaminated, as impure as their consciousness is fragmented and contextual (Spivak, 1985/2020).

Expanding and complicating her own initial perspective, Spivak aims to show that when the subalterns attempt to speak, their voice is not recognised in the dominant political systems of representation. The challenge, therefore, is to acknowledge the power relationships imbricated with any form of cultural exchange, generating spaces for inclusive and expansive cross-cultural communication and an ethics that is aware of the limits of encountering and knowing others (cf. 1996: 142).

Deconstructing Restorative Justice

A deconstructive critique combines an engagement with restorative justice masterwords and a Marxist-feminist analysis of their premises and effects, particularly within the postcolonial

world. This approach reveals that restorative justice is largely a postcolonial endeavour, with significant epistemic and material limitations that demand consideration.

Masterwords and Institutionalisation

Restorative justice relies on a set of masterwords that form the conceptual foundations of this idea of justice. These words are rooted in a *logocentric* bias – that is, in the idea that there exists an authoritative and transcendent foundation to ensure the fixed meaning of language (Derrida, 1967/1976: 43). These words function as oversimplifications of unique, fluid and contextual social relations, which are ossified as binary oppositions. Deconstruction challenges the dualistic thinking and assumed hierarchies that form the authoritative foundation of restorative justice, opening up possibilities for reinterpretation grounded in the openness of language.

Crime and *harm* are two fundamental concepts in restorative justice, bound by a binary hierarchical opposition. Crime, within restorative justice theory, is interpreted as the legal manifestation of an interpersonal conflict, while harm refers to the material and psychological consequences of a crime (cf. Zehr, 2005). The classification of behaviour as criminal wrongdoing remains in the hands of criminal justice agencies. Harm, instead, is defined by the victim and acknowledged by the offender upon admitting their responsibility. The concept of crime, as such, serves as a framework supporting the definition of harm. Crime, in fact, establishes the conceptual boundaries of harm, from the outside. It operates as a backdrop against which harm is described, thereby prioritising criminal justice agencies' definitional power (since they decide what a crime is). In this way, restorative justice is positioned as a response to the needs arising from supposedly dysfunctional social relationships, with harm being parasitic on a legal definition of crime.

Similarly, *victim* and *offender* as well as *state* and *community* are masterwords, denoting the primary subjects that populate restorative justice. They refer to largely inherent entities with predefined characteristics rather than subject positions constructed within discourses through practices like classification, norm-setting, and foregrounding/backgrounding. The victim is the embodied recipient of material or psychological reparation, while the offender is the wrongdoer who harms a specific victim, often due to a lack of emotional understanding and moral maturity (Maglione, 2017b). The community is a law-abiding collective subject functioning as the fusional context within which crimes take place. Community serves as the local alternative to the state, the 'cold monster' that steals crimes from the rightful owners.

Lastly, *restoration* and *punishment*. The concept of restoration encompasses and goes beyond the idea of reparation; it is not solely the material fixing of the consequences of a crime but a process that serves innovative functions and fulfils different needs triggered by harm. Restoration is characterised by recurring traits: it is holistic, needs-based and emotionally intelligent (cf. Van Ness and Strong, 2022). This view suggests the intimate interconnectedness of various aims within restorative justice, the combination of symbolic and material, moral and psychological elements around the ideal outcome of restorative justice. This outcome is envisioned as transcending cultural, social and personal differences since it can satisfy needs rooted in human nature – such as safety, justice, participation and empowerment. This

position underscores the universal needs of the individuals or communities harmed by a crime.

Overall, such masterwords reduce multifaceted relationships and conflicts to binary, cohesive and universal entities that often conceal their (Western) origin and (Westernising) effects. Spivak proposes to displace and reverse these binary oppositions and their implied hierarchies, questioning the privileged status of one term in a pair over the other – victim over offender, restoration over punishment, community over state. Meaning, in fact, is continuously deferred and differentiated within a chain of signifiers, with each signifier referring to others in an endless process of deferral. Displacing these words means focussing on the inherent impossibility of establishing meaning definitively, and therefore on the arbitrariness of immutable hierarchies. Consequently, this approach demands ethical and political thought to address the contextuality of those hierarchies.

Victim/offender, restoration/punishment and community/state are oppositional pairs in which the first term is assumed to be hierarchically superior to the second, with an ontological differentiation of meaning between them. These oppositions, and implied hierarchies, are instead socially constructed through language. Such constructions have powerful material effects, impacting on people's lives and destinies. This perspective highlights the inherent instability of restorative justice, ultimately pointing to the fundamental undecidability – that is, openness and instability – of language, the absence of an absolute fixed meaning. Those masterwords instead seem to propose a 'closure' of the restorative language, which is problematic insofar as they do not reflect universal needs but context-specific interests.

This closure is further strengthened by the process of institutionalising/legalising restorative justice. From a deconstructive standpoint, institutionalisation can be interpreted as the ossification of speech into writing, the transformation of masterwords into law. Historically, Western culture has favoured written language over speech, a preference seemingly mirrored in the legalisation of restorative justice over its informal and organic nature. 'Writing restorative justice' involves the creation of laws, delineating a separation between the 'natural' origin of justice and its institutionalisation in writing. However, this interpretation does not seek to prioritise 'nature' over 'culture', or speech over writing, since these would be yet another set of binary hierarchical oppositions. Instead of considering nature (restorative justice) and institution (law) as existing independently, deconstruction proposes an understanding in which nature itself is constructed in relation to the institution. Law is not a direct representation of restorative justice; rather, our comprehension of both restorative justice and law is shaped by their dynamic interplay. This challenges the rigid separation between them, rejecting the notion that restorative justice is an objectively pre-existing organic phenomenon that was at one point rediscovered by scholars and practitioners. Similarly, viewing law as a direct embodiment of the natural origin of restorative justice overlooks and conceals other potential interpretations of justice that are not explicitly represented in the law.

This approach challenges the idea that institutionalising restorative justice entails an ontological mutation of justice, rejecting the transcendental origin of law and the idea that one can go beyond the institution to discover something external – an autonomous origin, an 'outside of the text'. The dominant concept of restorative justice as a discrete victim-oriented

process legitimises itself as a legislation of the natural order, suppressing competing interpretations that nevertheless persist as traces within this dominant meaning. The still-existing debates around the definition of restorative justice among scholars reflect the existence of such traces (see Rosenblatt and Mazzucato, 2023).

Marxist-Feminist Analysis

From a classical Marxist perspective, restorative justice appears to be based on implicit class factors and characterised by the privatisation and commodification of social harms. Restorative justice foregrounds privatised notions of harm and restoration as opposed to crime and punishment. Harm is a relational phenomenon, opposed to the state-centric concept of crime, to be addressed through a holistic process which embodies both procedural and substantive justice elements. Privatisation refers not only to the exclusion of the state from the handling of social harms but also to the fact that harms are a private matter detached from larger social and economic factors. Restorative justice, in fact, biographises social harms and neglects their social history, focussing only on victims' and offenders' personal stories. The only transindividual element here is represented by the community, understood as an affective and functionalist entity characterised by social equilibrium (cf. Koen, 2005). The harm alters this equilibrium, appearing as a social disturbance and a pathology to be cured within this community (cf. Maglione, 2017a).

This view overlooks the fact that social conflicts are the contexts of relational harms. Restorative justice tends to disregard structural class conflict and its role as motor for social change because it is underpinned by a distinctively functionalist epistemology and individualising morality (Koen, 2005). The community portrayed in restorative justice appears as a unified, natural entity representing only one class, which neglects the reality of diverse social constituencies within it. Restorative justice seems to neglect that crime, criminalisation and harm are related to social conflict. Additionally, when positing the restoration of community harmony as its aim, restorative justice pressures stakeholders to accept the structure of capitalist exploitation (cf. Maglione, 2017a). In this way, the restorative process becomes a mechanism of class domination, disguised behind the façade of promoting social peace. The idea of restoration through empowerment and healing fails to recognise that these notions can vary significantly across different social classes (cf. Willis, 2020). Whether stakeholders have access to material resources or not is crucial to addressing the harm they have been involved in. Their capacity to actively participate in the process is contingent on their social conditions. Similarly, without contextualisation, the reintegration process risks merely imposing conformity to the capitalist social structure, concealed by the veneer of a harmonious, affective-functional community (Koen, 2005). This mechanism turns social harms and their underpinning conflicts into a privatised commodity exchanged among the stakeholders. These are deemed to be formally equal, though formal equality can mask substantive inequality.

Overall, from a classical Marxist perspective, restorative justice works as a negation of the social antagonisms and economic conflicts that underpin social harms, desocialising and depoliticising them. In the consensus-based restorative justice process, the personal story of harm takes over the social history of conflict, inadvertently reproducing unequal social relations that perpetuate capitalist structures.

Radical anti-essentialist feminism, as employed by Spivak, enhances this socio-economic analysis, unearthing its affective-gendered dimension. The production of gender, in fact, is a process inextricably linked to relations of economic production. When restorative justice practices structurally neglect social conflict, they implicitly endorse and legitimise the gender roles implied by those conflicts – namely, the subordination of women to men and the complete silencing of non-binary genders. This process is fraught with uneven distributions of socio-economic and cultural resources, which make it particularly oppressive. The emphasis on restoring a harmonious community sidesteps issues of social accountability, institutional power and the creation of relationships that could rectify structurally uneven gendered relations. To truly promote equality within restorative processes, it is crucial to prioritise substantive equality over procedural equality, acknowledging and challenging deeply entrenched societal structures during participation in restorative encounters (Jülich and Thorburn, 2017).

The feminisation of restorative justice – that is, the idea of restorative justice as a form of 'emotionally intelligent' justice – is stereotypical and essentialised too (cf. Sherman, 2003). The stereotype that women are more emotional than men perpetuates harmful gender norms, restricting women's agency and contributing to inequality. Moreover, harmful gender stereotypes, when combined with other biases, can have a disproportionately adverse impact on specific groups of women. The idealisation of victims as powerless is also problematic since it essentialises a subject position, which then becomes problematic for individuals who do not fit that ideal to take up.

This situation raises concerns about the potential of restorative justice to perpetuate and worsen unequal power dynamics additionally marked by gender-based inequalities. Consequently, there is a need to consider whether the feminisation of restorative justice might intensify the marginalisation of women in society (Hodgson, 2022).

Spivak's crucial contention is that whilst a Marxist-feminist analysis empowers us to bring to light the gendered social conflicts underpinning social harms, deconstruction helps make this analysis epistemologically and normatively more searing.

Postcolonial Restorative Justice

Deconstruction, Marxism and European feminism are informed by a Eurocentric perspective. They either neglect non-European realities of cultural silencing, labour exploitation and gender oppression or attend selectively to such contexts, ultimately imposing a European perspective, with colonising effects. Spivak contextualises deconstruction, the Marxist analysis of labour exploitation and the feminist concern for the exploitation of female bodies, placing them into the framework of colonisation and its consequences. The result is a gender-sensitive cultural politics of capitalist colonialism which uses deconstruction to read critically those intersecting forms of exploitation, creating spaces for new epistemic-normative arrangements. The final aim is not the retrieval of the colonised's pure and innocent voice but an expansive, intersectional critique which captures a new subjectivity – *subalternity*. Subalternity is the product of this analysis, the intersection of multiple positions of

cultural/material oppression, subsumed under a common yet flexible subject position which demands critical reckoning and ethical-political action.

From this angle, whilst criminal justice seems to reflect a typical colonial mindset, restorative justice appears to embody a postcolonial perspective. Postcolonial restorative justice conflates the two meanings of representation indicated by Marx. Representing community in restorative justice, for instance, seems to entail both a portrayal of community as a material entity and an attempt at making the community speak. However, this is a problematic operation since community is not a thing or place but an imagined and context-specific category without a literal referent (Kaasila-Pakanen, 2021). Analogously, victim and offender are represented as ontologically different entities, supposedly expressing completely different needs, erasing the multiple forms that harm and being harmed can take, including the nuanced overlap between them.

Restorative justice appears to be built on the cultural, social and economic foundations of the West, which inform the English-speaking academic world in particular. Additionally, the representation of colonised perspectives often comes from Western subjects – academics or policy entrepreneurs – who speak on behalf of non-Western constituencies. This is the paradigm of the postcolonial formation of the theoretical, empirical and normative foundations of restorative justice (Tauri, 2013). Restorative justice works as a novel criminological approach aiming to indigenise criminal justice. However, this operation is only superficially context-sensitive since it is aligned with the worldviews and interests of Eurocentric academic institutions, policymakers and, ultimately, the neo-colonial state. The idea of Indigenous-informed restorative practices, the connection with state policymaking, the hegemony of Western voices in shaping the restorative justice agenda and the professionalisation of practices are all claims with colonising effects. Similarly, restorative justice masterwords, which embrace a universalistic notion of human nature, can turn restorative practices into interventions exerting epistemic-normative control over non-Western individuals who are not aligned with these supposedly universal ideas (Tauri, 2013).

This critique highlights how certain restorative justice models, such as family group conferences (FGCs) in Australia and Aotearoa New Zealand, may not be as culturally sensitive as they are portrayed. FGCs are usually described as an example of context-specific restorative justice or, even more often, as the offspring of traditional justice practices. However, researchers have argued that, rather than a model of culturally appropriate justice practice, FGCs are perceived by some Māori participants as imposing Eurocentric, formulaic and standardised processes, rejecting the notion that they are truly culture-sensitive (Moyle and Tauri, 2016).

By foregrounding notions of guilt and responsibility, restorative justice disavows the role of systemic, colonial factors leading to criminalisation. This is encapsulated by the offender's acknowledgement of responsibility as a condition to enter restorative justice programs. Yet guilt and responsibility are distinctively Western concepts with specific historical roots which do not reflect any preliminary cultural engagement with non-Western understandings of conflict and harm (Winterdyk, 2021). Similarly, the stereotypical idea that Indigenous worldviews primarily rely on healing and interconnectedness, as opposed to state-centric

ideas of fairness, rights and equality, is a hyper-simplifying binary opposition which 'orientalises' Indigenous struggle within postcolonial states, undermining its effectiveness (Smith, 2022).

The categorisation of restorative justice as an Indigenous form of justice, or a justice rooted in local justice traditions, can be read as a postcolonial state's attempt to justify Western crime-control models. This endeavour is expressed by the claim that those practices are intended to assist Indigenous offenders, ultimately resulting in legitimising state interventions (Smith, 2022). The Indigenous participant in restorative justice, in this way, is turned into a commodified 'native informant' (Spivak, 1999: ix), a passive subject who is written out of any significant ethical existence by those postcolonial justice narratives.

In short, postcolonial restorative justice seems to obliterate what Spivak calls the process of 'worlding' integral to any form of justice (1985: 247). This concept designates the intricate process of understanding the diverse, interconnected worlds inhabited by individuals and communities. From this angle, social categories such as Indigenous roots, guilt and responsibility are part of historically, culturally and geographically specific worlds. Using such concepts to market novel justice practices with a significant Western imprint (cf. Spivak, 2004) would cause epistemic distortions with detrimental ethical and political effects on those who are supposed to benefit from such practices – Indigenous people. The risk here is to make a political use of history to sell a state-friendly notion of restorative justice to policymakers around the world, irrespective of its effects on already marginalised constituencies (cf. Spivak, 2013: 57).

The political representations of the world embodied in these exercises of apparently benevolent postcolonial justice should be critically appraised. The worlding implicit in postcolonial restorative justice lacks awareness of how colonial histories have influenced the construction and perception of justice and of the power dynamics embedded in representations. The main concern here is how certain groups are represented in the process of postcolonial worlding, how their perspectives are disavowed and their voices are spoken by others. This is a typical example of hegemonic political representation which 'flat-packs' the diverse ways in which people experience their worlds, standardising the complexities of various cultural contexts under overarching labels to make those practices more appealing (Blagg, 2017: 71).

Overall, postcolonial restorative justice seems unaware of the intersectional dimensions of people's experiences. It does not consider the possibility that individuals may inhabit multiple, intersecting social positions, such as gender, race, class, place and more, which shape their experience of the world.

Subaltern Restorative Justice

Ultimately, restorative justice poses ethical and political questions related to its epistemic structure and material effects. Subalternity, used as a normative framework, can help address those questions turning restorative justice into an intersectional praxis aiming to redress unbalanced power dynamics. This reflection requires the awareness that any justice practice is epistemically and materially determined and that innocent and pure voices cannot be

retrieved. Yet it is possible to engage in dialogues which try to incorporate different concepts of the world – and their power differentials – and which critically address different experiences of oppression (Spivak, 1990: 19).

Decolonise Restorative Justice

Subalternity, as argued above, designates interlocking moments of cultural, economic and gendered subordination. This condition is exacerbated when (benevolent) postcolonial scholars, activists or practitioners attempt to make subalterns 'speak'. The entanglement of subordinated voices and subordinating violence renders subaltern voices inevitably contaminated, and this impurity needs to be reckoned with. The challenge is, therefore, to acknowledge the power relationships imbricated with any form of encounter as a precondition to generating spaces for inclusive and expansive cross-cultural communication and then material emancipation.

Postcolonial restorative justice disempowers non-Western forms of justice by categorising them as mythical 'roots' lost in mythological time, thus diminishing their actual significance (cf. Levers, 2023). A subaltern-sensitive restorative justice needs first to acknowledge and understand its potential to compel people to adopt a Western-centric, epistemic-normative logic of justice – binary, abstracting, generalising, functionalist, conservative. The process of de-Westernisation requires postcolonial restorative justice to 'unlearn its privileges' (Danius, Jonsson and Spivak, 1993: 24). The masterwords characterising restorative justice, to which participants must adapt in order to be suitable to restorative justice, should be critically addressed and not passively accepted by or actively forced upon participants. Imposing this logic and its masterwords is another way of legitimising the hegemonic power of the West, where the West is the standard which often marks *the other* as backward and irrational, making Western justice fulfil a civilising mission. The issue is to think of a non-logocentric justice which deliberately challenges the epistemic violence and power imbalances enshrined in Western forms of justice.

A subaltern-sensitive restorative justice aims at establishing counter-hegemonic spaces that facilitate new interpretations of the world, paving the way for social and material transformations (Darder, 2018). These spaces are characterised by both diversity and resistance to a universally fixed language. This language, anchored in Western epistemologies of patriarchal dominance, class divisions and racialising reproduction, marginalises voices suspected of purportedly outmoded and uncivilised claims. There is a need to advance an approach that negotiates abstract and general notions of responsibility, guilt, victim, offender, state and community by incorporating other, creative, risk-taking, material, concrete and specific epistemological sensibilities (Darder, 2018).

The design of these spaces cannot be predetermined; they should entail collaboration with subaltern constituencies, the establishment of power-sharing partnerships between service agencies and subaltern individuals and groups, in contrast to the prevailing top-down, managerialist approach that prioritises administrative and measurable outcomes, such as victim satisfaction and reoffending (Moyle and Tauri, 2016). Restorative justice actors should be actively involved in the entire process – from identifying needs to designing and directly delivering the programs, including program evaluation. Decentralisation in the design and

facilitation of these encounters requires a comprehensive understanding of the social context surrounding subaltern issues. The challenge lies in transitioning from a focus on efficiently delivering services and on Eurocentric notions of evidence-based policy to an emphasis on initiatives allowing for diversity, which avoid defining subalterns according to Western standards and treating their cultural beliefs and practices as mere add-ons (Moyle and Tauri, 2016).

As said above, this is not merely an epistemological effort but an epistemic-normative endeavour to reinvent a decolonising stance aimed at social transformation. Decolonisation, here, seeks to demystify the artificial limits imposed by racialised formations and economic hierarchies, recognising all cultures and linguistic systems as significant. This approach requires practitioners who are willing to think of themselves as active participants (not passive or neutral facilitators) and acknowledge their knowledge as inherently partial, unfinished and deeply influenced by specific gendered, historical, economic and cultural configurations (Darder, 2018).

More broadly, restorative justice must fulfil its potential as a politically transformative force; it must become an integral part of the struggle for effective decolonisation, challenging the norms of Western knowledge and questioning the assumptions underlying concepts of justice (Cunneen, 2002). From this angle, subaltern restorative justice embodies a non-harm principle, by minimising its possible detrimental effects on contexts, and an anti-oppressive aim, by challenging the power relations embedded in criminal justice systems. It finally aims at creating a platform for individuals to articulate their unique experiences of hierarchy and disenfranchisement (Asadullah, 2021).

Restorative Justice and Political Pedagogy

Spivak provides pedagogical-political tactics which can be taken up to generate a subaltern-sensitive restorative justice. 'Strategic essentialism' designates the use of stereotypes by a group as a means of subverting the forces that oppress them (Danius, Jonsson and Spivak, 1993: 34). These stereotypes are adopted yet not completely adhered to by these individuals, who keep themselves at a critical distance from these labels. For example, the label *Indian*, as a designation of national identity, certainly oversimplified the diversity of people living in India, yet it helped create a sense of unity strategic to the struggle against British colonial rule. Strategic essentialism remains, therefore, an anti-essentialist tactic, justified by the political opportunity of reappropriating negative categories for emancipatory aims, though it requires that groups deliberately downplay their internal differences to create a sense of unity as a condition for political struggle.

Strategic essentialism (similarly to Butler's 'resignification' and Rancière's 'fatherless language'; see the previous chapters) can be adopted to counter marginalising discourses by using them against their intended outcomes. In the case of restorative justice, its postcolonial effects due to the use of Western-centric masterwords can be countered by appropriating critically some of those abstract labels. Concepts like victim, community and restoration, as well as offender, state and punishment, as seen above, can confine groups within overly simplistic, restrictive epistemic spaces, limiting their self-understanding and self-representation. However, individuals and groups so defined can reappropriate those

labels as a temporary tactic to enter restorative encounters and then to articulate their need to have their contexts and social histories recognised, pushing encounters away from imposing one-size-fits-all identities on them (Eide, 2016).

A related tactic devised by Spivak is the concept of 'affirmative sabotage' (2013: 4). This consists of an overt challenge to epistemic-political principles in order to subvert them without merely discarding them. Rather than seeking uncontaminated native knowledge or destroying everything as colonial, affirmative sabotage promotes a critical analysis of the complicity of certain restorative justice categories in limiting the transformative potential of restorative encounters. Restorative justice becomes problematic when it fails to comprehend its inevitable political and ethical situatedness. The core of this tactic involves the '*uncoercive* rearrangement of desires' (Spivak, 2004: 526), the process of reshaping subjectivity in both colonial and postcolonial restorative justice. This entails not only entering but also fully engaging with the discourse or system that is being criticised, undermining it from within. It is a form of subversion that acknowledges the need for insider engagement to bring about effective change.

Practitioners may play a crucial role here, though they need to embrace their function politically and pedagogically (Spivak, 2013). We need practitioners fully engaged with a form of cultural literacy which entails unlearning their own privileges and then acting upon this new self-awareness. The aim would be to become a critical reader of culturally diverse contexts, develop a sensible readerly imagination and move beyond the identitarian confines dictated by masterwords. There is a need for imaginative training to assist practitioners to detect their own internalised cultural stereotypes, which work as taken-for-granted truths. Practitioners, for instance, are often deeply entrenched in technical and operational discourses, losing sight of how such discourses disguise the specific cultural roots of their training or practice.

The goal should be to unveil the constructed nature of the restorative masterwords and their hierarchical binary relations, identifying the concealed mechanisms behind the representation of peoples' needs. We need to imagine training as a means to develop the imagination, demonstrating that master narratives related to nationality, gender and class often produce stereotypes that obscure the subjectivity of others. Training, here, is about demythologising universal figures, critically questioning assumptions about the conditions of knowledge, disrupting assumed certainties and encouraging a critical engagement with concepts such as restoration or harm (cf. Castro Varela, 2020; Purcell, 2020).

Practitioners should be trained to acknowledge their situatedness by examining their role within restorative justice and the position of restorative justice within Western culture. Instead of passively letting participants 'speak', they should immerse themselves in the culture of participants in restorative encounters. In this way they can relate to participants, imaginatively entering their world, reading it as a text, whilst recognising their own liminality with respect to participants' lives.

Privilege – in the form of reliance on essentialist taxonomies and reductionism – can create a form of isolation that disconnects those who possess it from certain forms of alternative knowledge. It is essential to acknowledge these limitations and address them, not merely as

an inclusive gesture but to expand one's understanding. This involves critically scrutinising and challenging personal beliefs, biases and assumptions to grasp their origins and normalisation.

Adopting this approach amounts to experiencing an epistemic transformation that may help practitioners experience themselves relationally, rethinking participants not as mere objects of knowledge or as perfectly autonomous epistemic actors, but as subjects who navigate and construct their identities – not only in response to their personal stories and social histories but also in response to how practitioners relate to them.

Encountering Ethical Singularities

These tactics may constitute a viable political strategy only when they are intertwined with a deconstructive ethical politics. Restorative justice's postcolonial ethics is rooted in preconceived notions of what the other is and should be that inevitably infringe upon the distinctiveness of specific others. Representing the other erases differences, assumes stable identification and simplifies unique human experiences and narratives. Subaltern restorative encounters should instead be shaped by a call to address the ethical singularity of others and its political implications.

Spivak's engagement with ethics is closely linked to political responsibility. She encourages scholars and practitioners to be aware of their positions of privilege and to use their knowledge and agency to challenge oppressive structures. This can be seen as an ethical imperative to actively engage in transformative and socially just practices.

This awareness would lead to presenting new possibilities and ways of being, creating opportunities for encountering others dialogically. This process is not informed by any expert knowledge but by *justice* understood as the ethical interruption of the self by the demands of others (Spivak, 1990: 110).

Practitioners, scholars, advocates and policymakers have a crucial institutional responsibility and complicity when they claim to be neutral and let the people speak for themselves. They are complicit in the suppression of the voice of the oppressed, especially of those culturally and materially affected by colonial capitalism.

The restorative justice movement finds itself entangled in the webs of Western universal categories and practices. In encounters with difference, we are compelled to consider our complicity and responsibility, both within knowledge/power relations and in the unequal material conditions that those categories and practices may perpetuate (Kaasila-Pakanen, 2021).

The challenge is then to imagine ethical encounters able to mitigate the inevitable othering effects which are generated when facing differences. The acknowledgement of the limits of Western knowledge, of participants' situatedness, and the unlearning of privilege are first steps to creating such encounters. These steps, whilst acknowledging epistemic, normative and material complicity with the capitalist system, would provide a space for a different ethical engagement with others. The *other* is no longer a transcendental, Westernised subject but a situated category to be broken down as *others*, understood as 'unknowable' subjects

(Spivak, 1993/2009: 185). This encounter calls for developing an intersubjective relation with someone we will never be able to know entirely, therefore configuring an impossibility which is generative of a new openness toward those we encounter. To some extent, this encounter marks the end of autonomous, identitarian, rational subjects and the birth of unknowable *inter-subjects*, who, as such, call for engagement, for the negotiation of new foundations, within specific contexts (Griffiths, 2017).

What animates these encounters is a notion of 'ethical singularity' (Spivak, 1995: xxv), understood as the process, unstable and never ending, of engaging with what cannot be disclosed, reached or represented when encountering others (Davis, 2002). This posture would help limit the risk of appropriating and then exploiting differences. Accepting this concealment, this shared incapacity to fully know, is what enables justice as a never entirely accessible condition, never completely expressed in any law, an experience of the impossible which drives the ethical encounter with one who is other than 'I'.

These are bodily encounters, where the body is the phenomenological stratification of one's experiences, unfolding in and enmeshed with the world (Kaasila-Pakanen, 2021). Here, responsibility means enabling an ethical response which is aware of the impossibility of total knowledge of those encountered. Ethical singularity, rooted in bodies, is founded upon and generates an ethics of the self-aware and self-limiting exchange, which can be transformative rather than merely restorative.

Beyond Spivak

Discussions around restorative justice must address the positionality of those involved in advocating for, studying or practising it as much as of those who engage with those practices, bringing their broken relations into restorative encounters in the hope of achieving restoration.
The gender- and class-sensitive deconstruction proposed in the previous pages is strategic in showing both the colonial nature of liberal criminal justice and the (benevolent yet problematic) postcolonial premises and effects of restorative justice. Restorative justice, in fact, often represents the other as a material constituency, which ends up silencing differences.

Engaging with subalternity helps imagine forms of justice which encounter differences without appropriating and exploiting the other. Subalternity captures intersectional forms of epistemic-normative and material oppression produced by colonial and postcolonial actions. A justice that aims to acknowledge instead of disavowing the contexts within which embodied others encounter each other must reckon with the materiality of the struggles of those who are left at the margins, disenfranchised and suffering. It must also tie these challenges to cultural production so that links between justice and cultural politics are unearthed.

Unlearning epistemic-material privileges, creating spaces for subaltern experiences to be addressed and criticising restorative justice's widely acclaimed Indigenous past, generates opportunities for the development of active forces toward the establishment of a justice which is more than Western justice.

Specific epistemic-political strategies can contribute to subverting those privileges and creating those spaces, or at least reducing the impact of erasing or objectifying cultural and material differences. Strategic essentialism, the use of stereotypes by a group as a means of subverting the forces that oppress them, helps reappropriate marginalising categories for emancipatory aims. Then, the affirmative sabotage of epistemic-political principles can subvert them without merely discarding them. Affirmative sabotage promotes a critical analysis of the complicity of certain restorative justice categories in limiting the transformative potential of restorative encounters.

Spivak also aids us to understand what a self-critical ethical-political restorative justice may look like. This endeavour requires imagining forms of training for practitioners that empower them to recognise their situatedness and acknowledge the impossibility of developing a full knowledge of the other, as well as their responsibility and complicity with the postcolonial state when refusing to address their own ethical and political position. Thinking of justice outside political struggles, material exploitation and cultural silencing means serving these forms of oppression, enabling their operation in disguise, within restorative encounters.

A way forward is to break the other down as *others* and difference as *differences*. This is a precondition for encountering human beings as ethical singularities – that is, as illegible subjects who are situated at the intersection of cultural, material and gendered power relationships. Ultimately, encountering subalternity pushes those interested in critically appraising and politically rethinking restorative justice to develop an acute sensitivity to the inevitable epistemic-political contamination of justice. There is no struggle for justice devoid of cultural, material and gendered premises, implications and effects.

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8. Conclusions, New Beginnings and Futures

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Abstract

Encountering difference, sovereignty, community, identity, equality and subalternity leads to rethinking innovatively and originally the foundations of restorative justice. From an analytical viewpoint, rethinking the history of restorative justice using the concept of assemblage; reframing the relationship between restorative justice and criminal justice through a political-ontological approach; unearthing the problematic conceptualisation of community as a fusional entity in restorative justice; addressing the identity-making dynamics in restorative encounters; analysing the relationships between restorative processes and social equality and unearthing the postcolonial legacies of restorative justice all open up new ways of appreciating what restorative justice is, could be and should be.

These analyses demand specific types of political praxis. From this perspective, the book illustrates the possibility of a nomadic restorative justice, a restorative justice to come, a restorative justice singular plural, a restorative justice otherwise, a democratic restorative justice and a subaltern restorative justice. Each of these ideas outlines how restorative justice could play a significant political role in addressing social, cultural and political oppression.
These analytical-normative reflections ultimately seek to fuel a critical and radical restorative imagination, with the awareness that the separation of intellectual critique and political action from the quest for justice will lead to injustice.

> He must, so to speak, throw away the ladder after he has climbed up it.
> Ludwig Wittgenstein (1922: 189)

Encountering difference, sovereignty, community, identity, equality and subalternity has prompted a creative reconsideration of the foundations of restorative justice. It has enabled a profound meditation, from different angles, on the political conditions, meanings, significance and effects of restorative justice. Ultimately, this intellectual endeavour has challenged familiar notions in restorative justice theory and practice, through the lenses of the theories encountered. Mainstream conceptual, historical and practical issues have morphed into something unexpectedly strange and have demanded formulating original ways of thinking and innovative paths for political action.

From an analytical standpoint, rethinking the history of restorative justice using the concept of assemblage; reframing the relationship between restorative justice and criminal justice through a political-ontological approach; unearthing the problematic conceptualisation of community as a fusional entity in restorative justice; rethinking the role of identity in restorative encounters; analysing restorative dynamics as aesthetico-political processes; and unearthing the postcolonial dimension of restorative justice, have contributed to generating new understandings of what restorative justice is and could be. This book's analytical dimension is then inextricably bound to a normative perspective; thus, these explorations have also involved outlining how restorative justice ought to be. Hence, the possibility of a *nomadic* restorative justice, a restorative justice *to come*, a restorative justice *singular plural*, a restorative justice *otherwise*, a *democratic* restorative justice and a *subaltern* restorative justice has emerged. Each of these concepts encapsulates reflections on restorative justice's possible political role in addressing relational, social, cultural and political oppression.

Gilles Deleuze's contribution consisted in disassembling and then reassembling restorative justice, revealing it as a dynamic combination of multiple lines of different matter – semiotic and material, molar and molecular. Restorative justice is animated by a tangle of justice-desiring flows, while the institutionalisation of restorative justice is a manifestation of the coding and territorialisation of these flows into state apparatuses and their stratification into legal systems. Yet the assemblage served not only as an interpretive tool but also as a normative framework. It suggested avoiding any nostalgic yearning for returning restorative justice to an organic form of justice. The justice-desiring flows, in fact, persist as an ever-present virtual stream within the institutionalised version of restorative justice, and the issue becomes how to nurture them, harnessing their life-generating potential. Ultimately, this encounter with Deleuze taught us that the focus of the restorative justice movement should be on fostering its capacity for radical transformation, becoming aware of its self-oppressive tendencies, whilst generating new forms of solidarity across social, cultural and political spheres.

Through Giorgio Agamben's political ontology, it became possible to conceptualise the origin of restorative justice as the rediscovery of human presence, which is neutralised and concealed by criminal justice. However, this approach also helped us identify a fundamental similarity between restorative justice and (liberal) criminal justice. Both possess a ban-structure – that is, they both include by exclusion their very archē, the mere fact of life, which is relegated to outside the realm of justice. The mere fact of life is not simply erased, but it is positioned as a negative foundation, inside and yet outside (like a threshold) of both criminal and restorative justice. This chapter, then, proposed a similarly nuanced

appreciation of the relationship between criminal justice and restorative justice, with respect to the subjectivation processes which take place during restorative encounters.

The institutionalisation of restorative justice was critically reconsidered as a paradigmatic form of the sovereign appropriation of an informal justice model. The resulting commodification, bureaucratisation and technicisation of restorative justice leads to a loss of experience and the neutralisation of its potential to liberate life from oppressive systems. Political ontology also provided a framework for reflecting on the future of restorative justice. By unveiling the inconsistencies of the presuppositional ban-structure of restorative justice and profaning the artificial removal of life at its core, it is possible to activate restorative encounters' political potential to support anti-authoritarian forms of life, whilst dismantling the legal violence inherent in institutionalised forms of justice.

Placed within Jean-Luc Nancy's conceptual framework, restorative justice emerged as a web of myths set against the backdrop of liberal criminal justice. This chapter showed how these myths evolve into institutional mythologies when particular historical conditions facilitate the diffusion and solidification of certain narratives at the expense of others. Along these lines, it became possible to understand institutional restorative justice as built upon the same self-generating and self-perpetuating subject that underlies both atomistic individualism and communitarian philosophy. This institutional development diminishes the ethical-political potential of human relationality, transforming it into organised uniformity.

This chapter proposed the development of a singular-plural restorative justice to interrupt mythologies that reduce justice to a unified normative theory, opening up new possibilities for shaping the world and reactivating our responsibility to restore multiplicity. This justice unfolds as an anarchic spacing, a dynamic encounter which involves an ethical-political challenge to the institutionalisation of justice. Nancy urged us to envision restorative justice transcending its role as a means to overcome the relational disruptions represented by a crime. Restorative justice should become an endeavour to create a more welcoming spacing, wherein the harm, as loss of coexistence, is encountered and addressed as an expression of human groundlessness. Ultimately, within this context, justice is nothing but an ongoing effort to resist the political and ethical totalisation of human existence inherent in the (capitalist) institutionalisation of human praxis.

Judith Butler's chapter provided a powerful transdisciplinary lens for critiquing restorative justice's basic tenets. Butler reminded us that the symbolic dynamics which take place when trying to restore just relationships shape people's identities, a process that can be inherently violent and thus warrants critical attention. This chapter also raised the issue that human interconnectedness, often used as an anthropological justification of restorative justice, is rooted in the idea of a social pact between atomic individuals akin to that which underpins criminal justice. If our aim is to develop a critical restorative justice capable of embracing social complexities without imposing fixed identities, then we must rethink the foundation of restorative justice as social interdependence (instead of interconnectedness). Social interdependence, as an ontological condition, precedes individuality and is therefore prior to those same individuals who purportedly entered into a social pact.

This chapter then argued for a non-violent restorative justice that embraces the ethical-political operation of disidentifying individuals and groups while generating competing frameworks to intensify resistance by fostering equality. The way to achieve this transformation is twofold. On the one hand, the roots of those symbolic forms of violence

characteristic of institutionalised restorative justice (such as distinctive idealisations of victims and offenders, or the psychological notion of vulnerability that individualises harm and responsibility) must be detected and denounced; on the other hand, social precarity must be acknowledged and addressed, whilst recognising social precariousness. This dual movement, symbolic and embodied, cultural and material, can be adopted creatively to unearth the fundamental challenges and opportunities for connecting restorative justice with radically progressive politics.

Jacques Rancière's political theory aided us in reconstructing the historical-theoretical trajectory of restorative justice, delineating the ethical components characterising the early development of restorative justice as well as the more recent institutional growth propelled by the restorative justice movement's attempt to emulate criminal justice. This trajectory culminates in a rigidification of restorative justice characterised by the imposition of structures that constrain participants' narratives, thereby curtailing their ability to express themselves, their needs and interests, beyond pre-established labels.

This approach led to advocating for a radical democratic reinterpretation of restorative justice, disrupting both the fixed structuring of restorative encounters and the process of communitarian de-institutionalisation. Rancière's agonistic, self-critical approach challenged not only the criminal justice identities of victims and offenders but also the nostalgic longings for an organic restorative justice. It suggested broadening the scope of restorative encounters and redefining harms as political disputes and injustices. It encouraged the creation of spaces for expressing one's capacities by eliminating obstacles to equality, asking facilitators to evolve into social activists committed to helping parties realise their equality. This chapter ultimately showed the intrinsic link between politics and justice, asserting that depoliticised justice inevitably succumbs to subjugating police orders. In contrast, democratic restorative justice constitutes an ongoing challenge to the tempting illusions of context-blind justice, emphasising the importance of sustaining a self-critical, disruptive and politically engaged approach to justice.

The chapter on Gayatri Chakravorty Spivak proposed a gender- and class-sensitive deconstruction of restorative justice, highlighting the colonial nature of liberal criminal justice and the postcolonial premises and effects of restorative justice. Both treat the other as a homogeneous constituency, resulting in the suppression of differences into identities. To address this predicament, this chapter argued for engaging with subalternity to envision forms of justice that encounter differences without appropriating or exploiting the other. Subalternity exposes intersectional forms of epistemic-normative and material oppression stemming from colonial and postcolonial arrangements. A justice that seeks to acknowledge, rather than disavow, the contexts in which embodied others interact must grapple with the material struggles of the marginalised, connecting these challenges to cultural production so as to unveil the ties between justice and cultural politics.

This approach challenged restorative justice's celebrated Indigenous past, charged with a tendency to oversimplify cultural differences, turning them into Western identities. It also underscored specific epistemic-political strategies that can undermine Western cultural-material privileges in shaping restorative justice. Similarly, this chapter argued for enriching the training for restorative justice practitioners, envisioning educational programs for facilitators that would empower them to recognise their situatedness, acknowledge the impossibility of fully understanding the other and recognise their complicity with the

postcolonial state when failing to address their own position. Ultimately, a subaltern-sensitive restorative justice 'breaks down' the other as *others* and recognises difference as *differences*, laying the groundwork for encountering human beings as ethical singularities.

While these approaches and the understandings they have generated appear as fundamentally distinct from each other, they also exhibit significant commonalities that warrant attention. The recognition of common ground not only facilitates dialogue but also provides a solid starting point for the development of more comprehensive and inclusive approaches to (restorative) justice. Recognising and exploring the common themes among different theoretical analyses provides a rich and fertile ground for future research and practice, ultimately contributing to the ongoing evolution and refinement of restorative justice principles and methodologies, serving as the foundation for a restorative justice to be.

The authors encountered in this book share a conviction that the epistemic and normative, cultural and material, ethical and political dimensions that animate justice are intimately entangled. They blur the boundaries between these spheres, whilst simultaneously nurturing the tensions that traverse them. The different analyses of the foundations, development and institutionalisation of restorative justice, by crossing different spheres, engage with fundamental domains of justice at multiple levels, and they reconstruct restorative justice as a layered and dynamic 'tension field'. Knowledge and power, the descriptive and normative dimensions, are intertwined, and their separation is at best a heuristic operation. The cultural and material dimensions are entangled as well, implying that there is no material reality which is not always already cultural, no body, action or object that is not already signified.

This analytical perspective is not normatively neutral. Instead, it is informed by the desire to challenge reifying authorities, interrupting the flow of command that tradition and the state places over us by generating fixed identities and rigid boundaries that constrain human potential. This desire, once again, is animated by a fluid entanglement between the ethical and political spheres. The reckoning of how individuals should behave is linked to how societies should act. Politics does not merely scale up the findings from ethics, and ethics does not merely individualise politics. There is neither a conflation nor a mere developmental link between these levels of human action. Instead, our authors have shown the generative, mutual dependency between these two domains. In this context, justice is both ethical and political, and rethinking justice means rethinking it as an ethical-political endeavour to address human relations. This means that the micro and macro dimensions of human action – relational stories and social histories, personal harms and collective injuries – are inextricably linked and, therefore, must be treated together.

Politics is not merely a series of processes concerning the power to govern, to administer the economy and design bureaucratic apparatuses for the management of social issues. It is about rising and addressing the very question of being and becoming human among other humans; it is about imagining, shaping and then conducting the polity. Similarly, ethics is not merely the decision of how to live an individual life but of how to imagine and conduct one's life among other lives. The relationship between politics and ethics is therefore internal and agonistic: ethical principles presuppose and challenge politics, and political processes entail and affect ethical principles.

The ontological dimension of restorative justice, the connection between the quest for a justice that encounters other human beings and the question of being and becoming human among other humans, is therefore a crucial, common theme. From radically different perspectives, the six encounters have addressed this reciprocally constitutive link between the normative and the ontological domains, unearthing both ontology's political implications and politics' ontological significance, once again highlighting the entanglement between apparently separate domains. In fact, it is exactly this artificial separation which limits the quest for justice to a purely regulatory means for the distribution of resources, neglecting the fundamental and decisive role that the question of being and becoming human may play in envisioning forms of coexistence and addressing the sometimes-tragic manifestations of living together. Ontology, here, is not the search for some essential or natural substance, ahistorical and decontextualised. Instead, it is the active, relentless questioning of the conditions of being and becoming (or unbecoming) human within historical (social, cultural and economic) arrangements.

Our authors see humans as ethical-political creatures in a constant state of becoming, necessarily exposed to each other. The human condition, in fact, emerges as marked by fundamental sharedness, difference and groundlessness. Yet this condition manifests itself in various ways, depending on contingent social, cultural, economic and political factors. Thus, this entanglement between the ontological and normative spheres warrants crucial attention to the specific historical contexts wherein human coexistence takes place. This awareness demands envisioning justice as a dynamic flux, an ethical and political form of life, which unfolds over time in specific contexts. These contexts are often marked by struggles between those who have power and those who do not, demanding that justice be context specific.

This awareness then requires a self-critical and reflexive approach that acknowledges the contextuality of the analyses generated, their roots in distinctive sets of contingencies, and the fact that this situation affects what those analyses will generate. By embracing a historical perspective, it is possible to access this unfolding, which is always contextual, diverse and unique, and to reconstruct the dynamism which pertains to the human condition and, therefore, to the quest for justice. This reflexive historical posture, once again, is normatively charged. Embracing history, in fact, means refusing to accept the rigidification of the present, the perception that the present is our epochal horizon and, as such, can hardly be modified. History teaches us that change is possible. What there is and what we have are not our destiny, even when they seem immutable.

A further common theme is that there is a need to develop the embodied and creative nature of justice. A body, here, is not a biological object but the stratification of one's experiences plugged into the wider social, political, economic, cultural and physical environment. This body is not a static entity but a process, a becoming; body is the embodiment of being. Justice restores the body as a whole of affective experiential levels when interruptions of the process of embodiment take place. These diminutions of bodily agency are invariably intertwined with discourses and cultural constructs, always contextual and contingent upon social arrangements. Justice, reactivating the flow of embodiment, of becoming human through the body, enables intersubjectivity, for the concrete experience of others is rooted in the very fact of the body. This does not mean that restorative justice is a justice only for bodily individuals; instead, it considers human embodiment as integral to the non-human and other-than-human

worlds. Altering non-human and other-than-human realms always affects human embodiments, and vice versa, since this process is inextricably enmeshed with the world, as much as the world is integral to human embodiment.

Justice's creative element refers to the body's actual capacity to create, artistically. Art is not simply a tool for justice. Art *is* justice when it generates tangible spaces which alter the common understanding and sensory perception of the world. Art is this embodied, affective, expressive disruption of technocratic and capitalist devastation, modelled not on the act of production but rather on humans' creative potential to generate new, non-violent, mutually enhancing social relationships.

From this angle, the pressing issue of the institutionalisation of restorative justice appears as historically related to techno-capitalist devastation. Institutionalisation is a process of collapsing difference into identity by technicising justice, neutralising those entanglements and the dynamic tensions that animate them. Technicisation, by undoing social interdependence, denying human experience and imposing preset and unchangeable models of the world, turns justice into a means integral to capitalism. This becoming-technical of justice, in fact, involves a distinctive way of understanding the world as a passive resource to be instrumentally and limitlessly exploited (cf. Heidegger, 1954/1977). This process supports capitalism, understood as a religion without redemption (cf. Benjamin, 1921/2021), a form of life wherein production is an absolute priority, the self-engendering and self-perpetuating exploitation of humans and nature. Capitalism reifies difference by annulling it into fixed identities, covers over the human lack of foundations with taken-as-inevitable artefacts and impedes any genuine, non-utilitarian contact between human beings.
However, this damning diagnosis should not suggest a mere, naive call for de-institutionalisation, for the retrieval of a supposedly pure and organic restorative justice. De-institutionalisation poses ethical and political questions since the return to some imagined uncontaminated form of communitarian justice often results in a return to nostalgic identities, fixed hierarchies and conservatism. This would likely be another manifestation of capitalist injustice.

To counter this predicament, justice has emerged across these chapters as an ever-coming, self-critical, context-specific interruption of techno-capitalist devastation. This is a fragmented justice whose archē is the acknowledgement of human groundlessness, the necessarily mutual exposure of human beings and the fundamental difference which marks human existence. Justice needs to reckon with this ontological condition and address contextual injustices underpinned by the denial of groundlessness, the suspension of human interdependence, the disavowal of difference. This justice is not a free-floating entity but an earthly, embodied process, historical and social, integral to people's ethical constitution and coextensive with the political organisation of the polity. This results in a search for ways to forge new models of ethical self-constitution and innovative forms of solidarity, as well as radical and politically engaged tactics to counter injustices.

Along these lines, restorative justice emerges as an ontologically grounded political praxis implemented through critical encounters. Its overarching aim is to address human coexistence and its sometimes-tragic manifestations whilst countering its social preconditions, relational effects and rigidification in fixed identities. Critique means taking a stand about why certain

interactions are deemed to be harms, their roots and effects, why certain individuals, organisations and human and non-human entities are deemed to be stakeholders and others not. Encountering entails addressing humans' mutual exposure, and its challenges, engaging in ways that honour the multidimensional entanglements which *are* human relations, recognising that some suffer more than others, that justice cannot be context blind, and that imagining and practising justice is an ethical-political journey. But a justice of critical encounters is also a self-critical justice, a restless endeavour to uncover its own limitations, an attempt at addressing its own archē, questioning its foundations, establishing new relations, allowing new voices to emerge and resisting the temptation to affirm itself as the only justice and, in this way, neutralise its own potential to nurture life.

Ultimately, these critical encounters do not constitute a totalising theory but are innovative instruments to be creatively appropriated to fuel the relentless quest for a justice that restores human potential. These encounters, ultimately, are like 'ladders' to be thrown away after the reader has climbed to the next level (Wittgenstein, 1922: 189).

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