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RESTORATIVE JUSTICE AND THE STATE. UNTIMELY OBJECTIONS AGAINST THE INSTITUTIONALISATION OF RESTORATIVE JUSTICE

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Abstract
The incorporation of restorative justice (RJ) into penal policy is not a neutral process; it actually re-shapes both the rationales and the functioning of RJ, possibly erasing its potential to be something 'other' and 'better' than criminal justice. Through a comparative analysis of policy on RJ in England and Wales, Norway and France, this paper claims that RJ's promise to provide a cooperative-transformative approach to social conflicts and harms, predicated on de-professionalisation, direct stakeholders' centrality and critique of punishment, is neutralised by the process of translating RJ into penal policy. The second part of the paper sketches out RJ as a critique of violence, outside any legal framework. Along these lines, it is possible to generate original insights into the current situation and future developments of RJ and, more broadly, into the corrosive dynamics of legal violence.

Keywords
restorative justice; penal policy; institutionalisation; state; anarchism; abolitionism;

Introduction

In this paper, I reflect on the incorporation of restorative justice (RJ) into penal policy, as a stage in the wider phenomenon of institutionalising RJ. I contend that this process *necessarily* obliterates RJ's promise to provide a cooperative-transformative approach to social conflicts and harms predicated on de-professionalisation, direct stakeholders' centrality and critique of punishment. I make this case by analysing some examples of the inclusion of RJ into penal policy, drawn from England and Wales, Norway and France. My point is that penal policy, by imposing on RJ the recognition of the state – understood as a hierarchical social relation and not only as a complex institutional body – sterilises RJ's potential to be something substantively different and 'better' than criminal justice. When RJ endorses and enforces the state, in fact, it turns into a largely conservative and subtly punitive form of social control. In the final section of this work, drawing on Walter Benjamin, Jacques Rancière and Saul Newman, I sketch out some implications of my argument, generating insights into the possible development of a radical, non-institutionalised RJ.

Background

The expression 'restorative justice' here refers to three conceptually distinct but empirically overlapping objects: (1) a justice reform movement emerging in the 1970s in the Western

world and then spreading globally, advocating for a (2) largely non-punitive and participatory approach to harmful behaviours (3) mainly implemented by facilitated and voluntary encounters between direct stakeholders, geared toward addressing those harms and their consequences (cf. Marshall, 1999). This movement has taken different forms in different geographical/historical contexts, modifying its ethos in response to changing political and social circumstances, and advocating for different practices, determining the empirical complexity of the RJ field.

In spite of such a diversity, the RJ movement has often hailed the transformation of RJ into a penal policy option as a normatively desirable stage in the institutionalisation of this approach (e.g. Walgrave, 2000; Braithwaite, 2002; Van Ness and Strong, 2002; London, 2010). This is because policy supposedly ensures the wide and deep development of RJ, in terms of implementation, funding and capacity. At the same time, the development of policy on RJ, over the last thirty years in the Western world, has been relentless (Poama, 2015). This process has been studied widely.

Aertsen, Daems and Robert's edited collection (2006) on the institutionalisation of RJ has richly described dangers and opportunities related to the interaction between the multiple ideologies underlying RJ and its policy implementation, as well as the relationships between centralised institutionalisation and the current transformations of contemporary Western states. The overall picture emerging from this work emphasises the risks of sterilising the transformative potential of RJ due to the conflicting values underpinning criminal justice and RJ. In fact, as Pavlich (2005) has argued, RJ is often situated within criminal justice systems and increasingly tends to serve, and to be measured by, criminal justice objectives such as offender rehabilitation, compliance or reoffending rates, and less by the goals of repairing the harm or meeting victim needs. In a similar vein, Woolford and Ratner (2007) have expounded the limits of the formalisation of RJ describing how informal conflict resolution strategies (e.g. RJ) are articulated and then co-opted by state-based formal apparatuses. RJ, insofar as it is funded by the public bodies and endorses legal mindsets, strengthens juridical structures instead of problematising their premises, forms and effects. From an empirical perspective, Crawford and Newburn (2003) have investigated the incorporation of RJ within the English and Welsh youth justice, generating precious insights into the institutionalisation of RJ. Looking at the transformations involving the youth justice system in England and Wales during the early 2000s, they have questioned the purported shift from an 'exclusionary punitive justice' to an 'inclusionary restorative justice' (Crawford and Newburn, 2003: 2). The main issue, here, is that the application of RJ principles has been halted by the limited stakeholders' participation, mainly due to the legal tools used to implement RJ as well as by the managerial nature of the Anglo-Welsh youth justice system.

This perspective resonates with Johnstone's claim (2011) that institutionalising RJ equates with turning RJ practices into professionalised processes, characterised by uniformity, lack of creativity, centralisation, and as such unable to give conflicts back to communities. Similarly, Christie's late critical reflections on the cooptation of RJ (2013, 2015) have raised the specific issue of the language of RJ within policy (2013) which manifestly overlaps with 'conventional' criminal justice language (e.g. dichotomy victim/offender). The issue at stake is whether the institutional developments of RJ deliver or betray this 'new' paradigm's

ambitious promises, highlighting the implicit dangers in turning RJ into a mainstream penal policy option.

Differently from these sociologically-oriented explorations, von Hirsch et al. (2003) have advanced a number of legal-philosophical understandings of the translation of RJ into policy/legal frameworks critically discussing the underlying aims, values and limits of RJ in light of traditional conceptions, principles and values of criminal law and justice. They have stressed as overarching points, the controversial relationships between RJ, penal punishment/retribution and current penal policy, calling for a critical assessment of the incorporation of RJ into criminal justice from the perspective of both victims and offenders' rights.

Preliminary definitions and approach

The literature on the institutionalisation of RJ addresses the transformation of RJ into actual programs, often with a reformist aim (cf. Pali and Pelikan, 2015), focussing on the compatibility of RJ with general principles of law, from a socio-legal or legal-philosophical standpoint. This paper can be situated within the latter strand of the literature, with the proviso that it is informed by a radical anti-authoritarian (anarchist) approach (Newman, 2010, 2016). From this perspective, in the following pages, I reflect on how the incorporation of RJ into penal policy (namely into penal laws) neutralises RJ's most progressive aspects, that is, its *radical core*.

By 'core' I do not intend some essential and immutable values driving RJ. Instead, I refer to one component of the fluid set of principles advocated by the RJ movement. By 'radical' I designate those values relating to RJ as a non-violent approach to social conflict and harms. Although such a 'core' is not unanimously shared by RJ advocates, scholars and practitioners, it does have a long history within this field and it is widely known, discussed and sometimes used to inform RJ campaigns and practices (Johnstone and Ward, 2010; Ryan and Ward, 2015). Nevertheless, these radical values constitute a rather unstable object, continuously revised and enriched by those involved in the practice and theory of RJ, making my analysis necessarily a partial sketch.

In order to address the institutionalisation of this radical core, I provide a critical scrutiny of a range of policy documents on RJ. Clearly, policy is just one dimension of the institutionalisation of RJ (Faget, 2006). This process, in fact, entails how policy texts are re-intepreted by professionals and an array of stakeholders, through a thick fabric of micro-social transactions. RJ practitioners are not mere passive 'policy enforcers', they creatively adjust regulations to their organisational culture or individual values. My contention, however, is that this should not suggest a meek acceptance of the regulation of RJ, burdening practitioners with the promethean task of enfranchising RJ from the shackles tentatively imposed by the state. For this reason, in this paper, I am concerned with policy texts in their own right, focussing on what gets silenced or emphasised and possibly why, within them. This can open up spaces for critical engagement with both recent institutional developments of RJ and with strands in the literature and advocacy which support the incorporation of RJ into penal policy (e.g. Walgrave, 2000, 2008; Braithwaite, 2002; Van Ness and Strong, 2002; London, 2010).

The analysis considers three case studies selected for two different reasons. Firstly, they represent different legal (and criminal justice) systems: common law (England and Wales), civil law (France) and mixed (Norway). Secondly, the incorporation of RJ in these three countries has followed different historical trajectories: well-established (Norway and England and Wales) and recent (France). Such legal/historical diversity enables a reflection on the overarching patterns of the policy regulation of RJ, presenting some generalisable implications with respect to this process.

There are two main limitations to my analysis. Firstly, this work is a theoretical elaboration on a large set of policy material and as such tends to be broad ranging. However, my primary goal is to reconstruct patterns across the representations of RJ in policy (Garland, 2001: viii) and, from this perspective, a degree of generalisation is inevitable. Additionally, this 'whole picture approach' enables a good degree of heuristic productivity (Garland, 2001; Pavlich, 2005). Secondly, the inferences from policy are always underdetermined and theory-laden, i.e. many readings of the same data are possible. My interpretations are led by the intention of pointing out some normative inconsistencies in the RJ literature and a direction for further critical research, offering an analytical perspective which seeks to raise questions whilst considering their implications rather than dispensing answers (cf. Maglione, 2019a; 2019b).

The radical core

De-professionalisation, direct stakeholders' centrality, critique of the crime/punishment dyad and a cooperative-transformative approach to social conflicts and harms constitute the radical core of RJ (Johnstone and Ward, 2010; Ryan and Ward, 2015).

De-professionalisation entails the systematic deskilling of professional positions in the area of responding to conflicts (including those expressed as 'crimes'). This process occurs when non-qualified or less-qualified individuals (e.g. volunteer laypeople) are used to perform work which historically was executed by qualified subjects such as lawyers and judges. This is a theme epitomised by Christie's penal minimalism, widely considered a reference point for the RJ movement worldwide (Johnstone, 2011; Van Ness and Strong, 2002). The now classic 'Conflict as Property' (Christie, 1977) has often been used by RJ practitioners, scholars and advocates as a conceptual reservoir upon which to draw the normative infrastructure of RJ. The conceptualisation of crimes as social conflicts stolen/reframed by professional (legal experts) and structural (social systems) thieves, feeds in the idea of limiting experts' monopoly in dealing with social conflicts.

This point directly links with the idea of involving direct stakeholders in dealing with their own conflicts. Christie (1977) argued that conflicts are precious resources which belong to the subjects personally involved, as well as their social networks, emphasising community-based conflict handling as an opportunity for norm-clarification.

In a similar vein, Zehr's work, considered a milestone for the development of RJ worldwide (Johnstone, 2011; Van Ness and Strong, 2002), has strongly emphasised the key role of direct stakeholders in RJ as one of the distinctive differences with respect to traditional criminal justice (Zehr, 2005). The focus on decentralisation, investment on community and

ostracism toward a state-based approach to crimes is highly characteristic of Zehr's proposal. Stakeholders should be active participants in the process of addressing the criminal behaviour, due to their 'direct' (i.e. personal) stake in the crime and its aftermath. Here, emphasis is placed on reducing the role of the state in dealing with harm and wrongdoing. Hence, community-based measures can positively address the human repercussions of conflicts, letting stakeholders regain control over their lives.

The critique of the crime/punishment dyad has traversed the RJ movement since its inception (Ruggiero, 2011). There is a stream in RJ theory which refers to a form of conceptual abolitionism (following Hulsman (1986)), seeking to liberate our ways of coping with those troublesome events sometimes called 'crimes' in order to make interventions more socially informed and thereby more organic (Sullivan and Tifft, 2001). By challenging the concept of 'crime', and by speaking of 'problematic events', 'conflicts' or 'harms' instead, it is possible to produce an alternative to the fundamentally violent social control model of crime-and-punishment. Restorative practices, in light of this, would address responsively social harms caused through unique interactions ('conflict') between two or more individuals (Woolford, 2009: 29).

The cooperative-transformative approach to conflicts and harms is also a key aspect of the radical core (cf. Bianchi, 1994). Because so many feel alienated from the criminal justice system, RJ would enable people to experience justice as supportive of their lives and their social interactions through non-punitive solutions, adapting structures and models from conflict mediation and negotiation. However, problematic situations, conflicts and harms are not just a result of interpersonal violence, but often of 'social structural violence, that is, violence done to people through [...] hierarchical social arrangements' (Sullivan and Tifft, 2001: 43). For this reason, RJ should not confine its attention to developing practices targeting conventionally defined – that is, defined by those who have significant cultural, social, political and economic capital – acts of injustice. Rather, it is necessary to address the social conditions which reproduce harm, inequality and violence. From this perspective, RJ should include aims such as recasting conflicts and harms as political matters, creating communities and denouncing precarity, along the lines of gender, ethnicity and socio-economic status (Hudson, 1998; Blagg, 2017; Maglione, 2018). This position complements the preliminary critique of criminal justice as based on violence and oppression, showing how criminal justice fails to account for how the larger social system contributes to what is defined as 'crime' (Pepinsky and Quinney, 1991).

Overall, these multiple aims and values configure RJ as a non-violent justice, that is, a framework to imagine ways to reckon with the ambivalences of social relations without resorting to punishment (understood as a deliberate infliction of pain), that is, without reactivating the cycle of violence, whilst supporting people's capacity to own their social conflicts and harms.

Restorative justice and penal policy: three cases

England and Wales

In England and Wales early policy on 'reparation' activities involving 'offenders' and 'victims' date back to New Labour[1] governments in the 1990s, namely the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999, followed up more recently by The Criminal Justice Act 2003 and the Criminal Justice and Immigration Act 2008 (Liebman, 2007).

The New Labour flagship Crime and Disorder Act 1998 introduces at §67 the 'Reparation Order for youth offenders' (aged 10-17), paving the way for the institutionalisation of RJ in England and Wales. As the Guidance Document states, these orders aim to provide

> the courts with a new disposal to help prevent further offending by bringing home to young offenders the consequences of their behaviour and enabling them to make amends, as appropriate, to their victims or the wider community (1998: 2.1).

Reparation orders can be given before or after a court prescribes a non-custodial sentence and have to be commensurate to the sentence; they are carried out under supervision and do not require consent of the 'offender' but just of the 'victim'. In case of breach, the court may impose more restrictive consequences such as a curfew, an attendance order or the sentence which would have been given if the reparation order had not been made. In a similar vein, the Youth Justice and Criminal Evidence Act 1999 regulates the 'Referral Order' and 'Youth Offender Panels' (1999: §8). The conditions for receiving this order are to plead guilty and the absence of previous convictions. Additionally, it requires the offender's consent to a contract ('Youth Offender Contract') of rehabilitative and restorative elements to be drafted through a multi-agency panel and completed within the sentence. These measures resonate with the 'Youth Rehabilitation Order' created by Criminal Justice and Immigration Act 2008. This measure can include

> activity whose purpose is that of reparation, such as an activity involving contact between an offender and persons affected by the offences in respect of which the order was made (2008: §2.8.2).

Rehabilitation orders can be given to persons aged under 18 convicted of an offence, by the court by or before they are convicted and can include a reparation requirement which, if breached, involves the revocation of the order. As for adults, the Criminal Justice Act 2003 regulates a key statutory instrument for the development of RJ, that is, the 'Conditional Caution' (2003: §22). As the Crown Prosecution Conditional Cautioning Code (2010) explains, the key aspect of this instrument is the imposition of specified conditions as an appropriate and effective means of addressing an offender's behaviour and RJ, here, 'may be used to help determine the conditions to be attached to a Conditional Caution' (2010:

[1] New Labour' refers to a period in the history of the British Labour Party from the mid-1990s until 2010, under the leadership of Tony Blair (Prime Minister between 1997 and 2007) and Gordon Brown (Prime Minister between 2007 and 2010).

7.7) or can be 'a condition of the caution itself' (2010: 7.8). A conditional caution requires the admission of responsibility for the offence whilst the failure to comply may result in the person being prosecuted for the offence.

From the 2010s, the Conservative-Liberal Democrat[2] coalition's policy on RJ appeared to strengthen the focus on the responsibilisation of offenders and the satisfaction of (idealised) victims. A relevant example, here, is the Crime and Courts Act 2013 which regulates pre-sentencing RJ (2013: schedule 16.2). It states that the court can defer sentence in order to have regard to the offender's conduct after conviction, and within this context it can impose a 'Restorative Justice Requirement'.

This is an activity

> (a) where the participants consist of, or include, the offender and one or more of the victims, (b) which aims to maximise the offender's awareness of the impact of the offending concerned on the victims, and (c) which gives an opportunity to a victim or victims to talk about [...] the offending and its impact (2013: schedule 16.2).

In terms of conditions, the RJ requirement includes

> in addition to the offender's consent [...] the consent of every other person who would be a participant in the activity concerned (2013: schedule 16.2).

Finally, the Offender Rehabilitation Act 2014 establishes a form of post-sentencing RJ (2014: §15.3.8). It states that within the 'Rehabilitation Activity Requirement' it is to be considered 'restorative' any action if

> (a) the participants consist of, or include, the offender and one or more of the victims, (b) the aim of the activity is to maximise the offender's awareness of the impact of the offending concerned on the victims, and (c) the activity gives a victim or victims an opportunity to talk about, or by other means express experience of, the offending and its impact.

Norway

Norway has an established tradition of alternative measures to criminal prosecution, with a pioneering legislation on mediation introduced in 1991. The national mediation service ('Konfliktrådet') handles both civil and criminal cases, 'restoratively' (The Mediation Service Act 1991: §1), that is, aiming to enable the parties and others concerned by an offense or a conflict to jointly decide, helped by non-professional mediators, how its effects should be handled (Dale and Hydle, 2008). The legislation affords a statutory basis for mediation as

[2] Leading the government between 2010 and 2015.

well as powers to make referrals to mediation and to discontinue criminal proceedings. Such a 'mediation' is an independent criminal sanction, included in the Code of Criminal Proceedings. Legislation introduced in 2004 transferred responsibility for organising mediation from municipal authorities to 22 public mediation services, run directly by the Ministry of Justice[3].

The Mediation Service Act 1991 was significantly amended in 2014 through the introduction of the 'Youth Monitoring and Follow-up' measure (2014: § 1). This is a criminal sanction for young people (between 15 and 18 years) who have not committed serious or repeated crimes (in this latter case the new Mediation Service Act establishes a different measure, the 'Youth Punishment') aiming to prevent reoffending (Holmboe, 2017). It may be applied after a decision made by a prosecutor or a court and requires the young person's consent (along with their relevant guardian's). Its length will be no more than one year and will contain specific activity requirements to be fulfilled by the young person. The activity requirements which substantiate this measure are decided during a 'conference' (2014: § 1) and organised as a 'plan' which will be implemented through specific monitoring and follow-up multi-agency work. With the establishment of this new measure also a new professional figure – 'Youth coordinators' (2014: § 3) – is created. The coordinator sets up the conference and, at least once a month, meets with the young person and the monitoring team. Coordinators can also make direct decisions affecting the young person's freedom, such as prohibit the use of 'alcohol or other intoxicating or narcotic substances' (2014: § 28).

The 'Youth Monitoring and Follow-up' is explicitly described as based on the principles of RJ ('gjennoprettenderett') (2014: § 1), here mainly expressed by the 'voluntary' responsibilisation of the young offender. During a conference, in fact, the young person faces the consequences of their behaviours and hears about the damage caused. Also, for the 'victim' (whose participation is optional), such a meeting is said to have a good effect in terms of processing the incident and reducing anxiety (Jørgensen, 2015). As mentioned above, during the conference, the young person together with the coordinator and representatives from the police, prisons, schools, family services, child and adolescent networks, drafts a plan with specific requirements. These professionals constitute the monitoring team that follows up the young person throughout the implementation period and ensures both control and assistance. If the young person violates the requirements, a new plan is established, with stricter controls and closer monitoring. Multiple violations may finally result in the prosecutor resuming criminal prosecution (Jørgensen, 2015).

France

The development of RJ in France has been considered as slow, if compared to other neighbouring European countries (Bonafe-Schmitt, 2013; Cario, 2007). However, practices of informal criminal justice (i.e. penal mediation) have a long history here (see Code of Penal

[3] Children under the age of 15 (the age of criminal responsibility in Norway) cannot be referred for criminal mediation but may be referred to the civil mediation process.

Proceedings (CPP), 2014: §41-1). Regulations on material reparation of damages caused by the crime are also well established in the French criminal justice system (see Law 2000-516).

Traditionally, in France, penal mediation was set as a measure independent of the RJ theoretical framework. This measure was, and still is, decided by the prosecutor as a form of diversion from prosecution, as long as the facts are acknowledged by the offender (so called 'plaider coupable' principle), for a range of 'minor crimes' (CPP, 2014: §§ 41-1, 41-2 and 41-3). The mediator (police officer, a delegated professional or a mediator of the prosecutor) facilitates the reparation of the damage caused to the victim, with a view to stop offending and reoffending, also by drafting an enforceable agreement (based on parties' will) which however does not entail updating the criminal record.

A relevant change in this context was introduced in 2014 by the Law 2014-896 on the 'Individualisation of punishment and strengthening the effectiveness of penal sanctions' (enforcing the EU Directive 29/12 on Victims' Rights) which notably modified both the CPP and the Penal Code (PC) with respect to victims' rights. This law establishes the possibility for any person who is 'victim' or 'offender' to be proposed RJ ('justice restauratrice') at any stage of a criminal proceeding[4]. The general aim pursued is assigning a more central role to the victim within criminal justice (PC, 2014: §130-1). From this perspective, this law creates the right to obtain, at any stage of the criminal justice process, including the execution of the sentence, the 'reparation of the consequences of crime' which may involve 'compensation' and 'any other suitable measure including the possibility to offer a restorative justice measure' (CPP, 2014: §10-2.1), to both 'victims' and 'offenders'.

This law also introduces a new penal sanction – the penal restraint ('contrainte pénale') – which is conceived of as the suitable legal framework within which to propose a restorative measure. This is a type of community punishment consisting in a range of obligations and interdictions under supervision, for the offender aged above 18 and who has committed a crime whose statutory punishment is not more than five years of prison. This measure's justification is preventing reoffending by facilitating social reintegration (see Mouhanna, 2017). The length of the restraint is between six months and five years and includes a range of obligations such as to repair the consequences of the crime, the prohibition to encounter the victim and to undertake some training. In case of breach, the offender will be put in prison for the length of the remaining restraint. One of the activities which can be undertaken as a condition of the penal restraint is RJ. The §10-1.2 establishes as requirements for the proposal of a restorative intervention the 'recognition of the facts' and both parties' 'explicit consent' after being 'properly informed' about the restorative process. The definition of a restorative measure is 'any measure which enables a victim as well as an offender to participate actively in the resolution of the difficulties arising by the crime, and especially the reparation of any negative consequence arising from the crime' (CPP, 2014: §10-1). The restorative measure is arranged by a trained and independent party

[4] See Ministère de la Justice 'Rapport sur la mise en oeuvre de la loi du 15 août 2014 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales', 21 October 2016.

under judicial control or, when the measure takes place during the execution of a custodial sentence, of the prison administration.

Broken Promises

There are historical, legal and conceptual differences across the three examples of policy incorporation of RJ briefly analysed above. However, there are also significant commonalities which pertain to the basic aspects of the translation of RJ into a penal measure.

Criminal justice language

In England and Wales, France and Norway the language used to regulate RJ is fundamentally the 'conventional' criminal justice[5] language. The dichotomy victim/offender is a paradigmatic example. In penal policy one is either a 'victim' or an 'offender', there is no room for (social, personal, cultural) overlaps between those two positions. The idea of a person who is at the same time harmed but also harming, does not seem compatible with the idea of RJ underpinning the policy analysed above. Instead, institutionalised RJ revolves around idealised images of crime stakeholders mirroring criminal justice actors (Christie, 1986). The 'victim' appears as disempowered and vulnerable whilst the 'offender' is presented as the harm-maker/wrongdoer neatly separated from their victim. The 'crime' can be considered a further example. The idea of harms or conflicts rooted in e.g. social inequality is completely overwritten by the simplifying criminal justice label of 'crime'.

These linguistic choices are expressions of deep-seated values. RJ enshrined in legislation embraces a functionalist understanding of crime (Walgrave, 2017: 97). Crime is an individual pathology which needs to be neutralised. RJ aspires to 'cure' this pathology, 'maximising the offender's responsibility', whilst neglecting both the emancipatory potential of transgressions of established legal frameworks and the unbalanced power relations which contribute toward the definition of behaviours as crimes. Additionally, the use of the criminal justice language is a crucial condition for 'mainstreaming' (O'Mahony and Campbell, 2006), or 'flat-pack[ing]' (Blagg, 2017) RJ. The centralised regulation, in fact, requires a focussing on serving conventional justice goals, such as reducing reoffending or increasing efficiency, by lowering costs and speeding up the process. This standardised language also enables the development of an evidence-based, 'tick the box' approach to justice interventions. This may have culturally colonising effects, considering that, through policy transfer, RJ programmes are often sold as a 'standardised, homogenised commodity' to non-western communities (Blagg, 2017: 71).

Absent communities and ever-present criminal justice gatekeepers

[5] This is a shorthand expression which refers to the legal rationality developed in the Western world since the Enlightenment, centered on individual responsibility, justified in the name of public order, implemented by public bodies and including the possibility of the deliberate infliction of pain on the offender, justified by retributivist and/or reductivist aims.

Policy representations of RJ consistently define the community as a collection of professionals who play a supporting role with respect to the key stakeholders (i.e. 'victims', 'offenders' and criminal justice representatives). This is particularly the case of youth offender panels in England and Wales and of the new Norwegian youth conference. These meetings involve the youth offender's 'professional network' and possibly (but not necessarily) the victim and their network. In this way, the 'communitarian' elements are apparently saved, insofar as the relevant specialist micro-communities are engaged. However, to reduce the 'community' in RJ to the sheer presence of social workers and police officers is problematic, from the radical core's perspective. The aspect which qualifies this 'third' stakeholder should be its contribution towards avoiding the risk of privatising punishment and centering the process only on the stakeholders' agency. The measures analysed, instead, appear led by trained practitioners, and an array of other experts ('civil servants of moral orthopaedic' as Michel Foucault would call them (1977: 10)), leaving little room for any form of active social participation that RJ should safely provide.

From a procedural viewpoint, the policy regulations on RJ consistently require the offender's admission of responsibility/plea of guilty. This could be considered as a form of endorsement of the criminalisation processes led by criminal justice gatekeepers. The idea of RJ following the standard criminal justice's selective enforcement of offences and offenders, is a paradigmatic example of RJ being 'defined in' (Mathiesen, 2015) criminal justice. There is no chance (and no aspiration) to challenge police and prosecutors involved in screening discretionally harms and conflicts. In short, RJ works fundamentally as a penal mechanism. This means that it is about administering the consequences of an alleged/crime whose individual responsibility has been unambiguously pre-decided. Additionally, 'penal' refers to a distinctive understanding of social relations: dichotomic (victim vs. offender), focussed on personality more than systems, on acts more than interactions, on blame-allocation more than on conflict resolution (Hulsman, 1986).

Professionalisation, net widening and coercion

Some regulations analysed above (especially the Norwegian ones) also entail the professionalisation of practitioners, i.e. the creation of a new ad hoc professional category which specialises in dealing with people's crimes in a 'restorative' way. Restorative practitioners (e.g. the coordinator of the Norwegian youth conference) are new experts with power of control both over the participants during the restorative encounter and during the execution of the agreement/plan (e.g. youth follow-up plan) reached during the encounter. As Christie sharply noticed 'The coordinator becomes a judge, a social worker and a police person in one role. There is not much room left for lay people' (2015: 111).

A further element to consider is the net widening potential of professionalising RJ. As said above, RJ is thought of as a diversionary measure/standalone penal option run by external professionals and targeting minor crimes. This may 'functionalise' RJ services to deal with a range of cases which would/could not be dealt with by state agencies due to their 'minor' nature, at least from a legal perspective (Cohen, 1985).

The policy versions of RJ could easily be bent to coercion. The restorative caution lends itself to police pressure especially on first time youth offenders, insofar as it could be seen as a form of street-level responsibilisation (Crawford and Newburn, 2003). The Norwegian

measure yields a relatively invasive control over the young person, who may be required to take alcohol or drug tests as part of the agreed plan. The French penal restraint actualises the idea of RJ as a low-threshold and informal punishment backed up by the possibility of being referred back to the standard track of prosecution-adjudication-sentencing-punishment in case of non-compliance. In short, RJ 'despite being based on progressive principles, by locating itself (as an alternative) within the criminal justice system' (Moore and Roberts, 2016: 130) ends up re-producing a subtle form of coercion.

Making sense

Penal policy systematically constructs RJ as a *sui generis* penal mechanism which emphasises the responsibilisation of the 'offender' and idealises the 'victim', whilst eliminating any space for conflict resolution or transformation. RJ appears then as 'defined in' criminal justice (Mathiesen, 2015), administratively incorporated in the criminal justice system, a paradoxical 'better' punishment (Pavlich, 2005).

Clearly, these versions of RJ are inconsistent with the radical core described above. My contention, here, is that there is a constitutive – *ontological* – incompatibility between penal policy and the radical core of RJ. This implies that no 'better' penal policy will ever be able to embody those radical principles.

The main root of this constitutive gap is how penal policy 'parcels out' social reality. The 'symbolic constitution of the social' (Rancière, 2004) integral to penal policy, in fact, consists of essentialist binary oppositions (law-breaker/law-abiding, offender/victim, guilty/innocent) linked to individual categories (responsibility, subject, intent, motives) which downplay the role of social, cultural, economic and political interactions in shaping human relations (De Lagasnerie, 2018: 99). This individualising narrative is justified in the name of abstract social concepts such as public order and public interest (cf. Schürmann, 2019: 26), i.e. floating signifiers articulated according to the culture, interests and biases of those who are meant to enforce them. Penal policy 'sees' crimes as exceptional behaviours committed by morally imperfect individuals and responds to them by expelling the crime and correcting the felon (Coyle, 2018; cf. Girard, 2013: 17). This also entails, in a time of neoliberal penality, the use of this sovereign narrative as a tool to expand the penal apparatus to deal with (and shore up) social inequality (Harcourt, 2010).

Policy pre-sets such categories and forces people to take them up, creating 'one size fits all' identities, whilst making invisible and inaudible those whose positions are incompatible with this partitioning. In this way, this 'parcelling out' depoliticises people's needs and claims (Rancière, 2010). Penal policy would not be policy without such a partitioning of the world, that is, without including what can be controlled and excluding what cannot be captured by those neat labels. This is because it aims to render the social world 'legible' and this is possible only by simplifications which are always instrumental, standardised, static (Scott, 1998: 80) and as such fictitious and violent.

Taking a further step back, it is possible to read these epistemic-political operations as expressions of *the state*.

By 'state' I do not simply intend the public bodies (policymakers, police, prosecutors, etc.) on which institutionalised RJ depends, but a type of social relation (Landauer in Lunn, 1973: 226) whose reach informs and yet exceeds those public agencies. 'State' is any social bond which reaches a stage of non-transitivity, that is, highly unbalanced and hardly negotiable, drawing a line between 'who dominates' and 'who is dominated'.

From an ontological viewpoint, this relation rests on the primacy of unification over multiplicity (Clastres, 2010: 274). Social practices (e.g. the definition of 'victim' or 'offender') are thought of as natural entities characterised by permanence, homogeneity and stability (Newman, 2010) carved out of the social world. This feature ties in with a certain epistemological viewpoint, whereby the state is marked by the idea that objective truth (e.g. the guilty plea or verdict's 'truth') exists and is achievable. Anthropologically, this relation is characterised by a fixed idea of subjectivity (e.g. law-breakers as a type of human being) backed up by the Hobbesian view according to which the human condition has a natural inclination towards egoism, prevarication and violence. The looming violence of the social is therefore countered by hierarchies and centralisation: legal violence to combat social violence.

Penal policy is an embodiment of this (a)social relation. In a similar vein, RJ when endorses processes of criminalisation, labelling, allocation of blame and dichotomisation of social relations, enacts the state.

Additionally, to think of penal policy as a mere means to achieve a greater end (i.e. the wide and deep development of RJ, in terms of implementation, funding and capacity) is a dangerous illusion. As Walter Benjamin argued (1996), this instrumentalist logic is flawed, since the means re-shapes the end in the process, state violence systematically 'gets out of hand', ending up as a tool which uses the user (Butler, 2020: 14). The bureaucratisation and standardisation of RJ practices are well-known empirical examples of this dynamic (e.g. Crawford and Newburn, 2003; Blagg, 2017).

There is an unbridgeable gap which separates the state from the radical core of RJ. The latter, in fact, embraces the indeterminacy of the social world, where conflicts do not need to be neutralised but nurtured and contextualised as a challenging opportunity to create new social and political obligations.

A way forward, sideways

How to practice a radical and sustainable RJ without accepting its incorporation into penal policy? How to disengage RJ from the state, in order to create a viable, non-violent and decentralised way of dealing with problematic situations, outside a juridical framework? How to address transgressions to people's freedoms by presenting opportunities to rethink social relations and political obligations, instead of re-establishing predefined hierarchies rooted in social inequality (Newman, 2010: 23)?

These questions would deserve a standalone meditation which cannot be conducted here, for limits of space. However, I do wish to offer a few considerations which dovetail with the

foregoing critique, suggesting that it is possible to imagine the enfranchisement of RJ from the state as an 'engaged withdrawing' (Virno, 1996).

Firstly, this involves a strategy for challenging 'from within' existing institutionalised RJ. RJ processes already 'defined in' criminal justice, should become spaces where facilitators support participants in reflecting upon the process of criminalisation instead of passively endorsing the fixed labels of e.g. 'victim' and 'offender'. Such arenas should furnish material to contest the very institutional framework and underpinning values – i.e. the state – they are inserted into. This involves discussing commonalities and differences, challenges and constraints, both at individual and societal level, that parties experience in their pursuit of justice when their needs are obliterated or threatened. RJ should not just be a place where 'offenders' give apologies and 'victims' receive space and time to vent their feelings (as policy seems to envision). Instead of this individualising strategy, RJ should allow possibilities for re-imagining forms of cohabitation, in non-violent and dialogical ways, whereby differentials of power – related e.g. to gender, race and socio-economic status – are openly addressed.

The condition for taking this step is the further development of a self-critical consciousness within the RJ movement, that is, a steadier awareness of the dependency, conformism, instrumental character of the institutionalisation of RJ. In fact, although RJ scholars, advocates and practitioners who share radical values do exist, larger sections of the RJ movement advocate strongly for more laws and regulations instead of reflecting (and acting) on the toll to be paid when accepting the state.

Then, the engaged withdrawal requires a bolder step. This implies investing entirely in *restorative practices*, that is, in RJ outside criminal justice. All the resources should be put in localised, informal and diffused networks of 'doing justice' according to values of de-professionalisation, direct stakeholders' centrality, cooperative-transformative approach to problematic situations and non-violence. No referrals from criminal justice gatekeepers, no schemes backed up by the threat of punishment, no professional facilitators, no government grants, no pre-set legal categories, no 'success' parameters based on criminal justice goals. Needless to say, *this* RJ should give up on grand plans of building mainstream systems (or 'restorative criminal justice systems'). Enfranchising RJ from the state would require small and reversible steps, planning on surprises and on human inventiveness (Scott, 1998: 345). Such a process is in itself an embodiment of the radical values advocated above and therefore an immediate challenge to the standardised, hierarchical and bureaucratic nature of institutionalised RJ and more broadly to the state.

Ostensibly, RJ 'in the community' could likewise end up endorsing and enforcing hierarchies and violence (cf. Cohen, 1985). Tendencies to self-institutionalise and to produce domination should be taken into account. More generally, it is naive to think that relations uncontaminated by any form of domination or completely peaceful practices will ever be crafted. The point, here, is not where justice practices are situated but how they 'think', which values they embody and what effects they engender. The goal is not imagining an unmediated relation with the social, but reflecting on which categories we use to make sense of human bonds whilst opening up new opportunities for doing justice bearing in

mind the differential of powers among people. 'Justice', in fact, is always and only a normative horizon, a permanent doing, a 'pure means', to be constantly lived through, renewed and nurtured.

To not conclude

Both the critique and the 'engaged withdrawal' sketched out in this paper should not be taken as a counsel of despair. Instead, my point was to raise some untimely objections, in a Nietzschean sense, that is, both contemporary and against their/our time. Too often, progressive social movements like RJ slowly dry up, strained by their own endorsement of state logic. We need new spaces for critical engagements with RJ, keeping alive its radical core. In short, '*there's no need to fear or hope, but only to look for new weapons*' (Deleuze, 1992: 4).

From this perspective, I have outlined the risks integral to institutionalising RJ. The analysis of three different examples of incorporating RJ into penal policy – England and Wales, Norway and France – shows how this process obliterates the promises of de-professionalisation, critique of punishment, direct stakeholders' centrality and cooperative-transformative approach to social conflicts and harms which constitute the radical core of RJ. In fact, within policy, RJ is expressed in the 'conventional' criminal justice language, excludes any progressive understanding of community, endorses the selective law enforcement performed by criminal justice gatekeepers, pushes toward the professionalisation of practitioners, whilst widening the net of crime control in a way which entails the threat of punishment.

The radical values of RJ are incompatible with penal policy and therefore with any type of criminal justice system. This means, on one hand, that there is no 'better' penal policy which will ever embody any radical value and, on the other, that a 'penalised' RJ will always be an expression, however subtle, of hegemonic criminal justice. The root of this incompatibility is ontological: it pertains to the nature of penal policy, and namely to the way it parcels out the social world through fixed oppositions and abstract narratives that are informed by an aversion to social indeterminacy and conflict. This normative perspective – 'the state' – aims to make the social world legible in order to control it from the outside. It follows that the radical values of RJ are sterilised by the fact of having the recognition of the state imposed upon, in the form of penal policy. In the final pages I have sketched out the idea of an 'engaged withdrawal' from the state as a possible way to cultivate those radical values. Social conflict and indeterminacy are not a threat to be exorcised by the use of pre-set identities. The lack of 'one size fits all' approaches and solutions does not equate with moral confusion, but with an opportunity to embrace an endless ethical and political challenge: exploring non-violent ways of addressing the (sometimes tragic) ambivalence of human relationships.

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References

Aertsen, I., Daems, T. and Robert, L. (eds) (2006) *Institutionalizing restorative justice.* Cullompton: Willan.

Benjamin, W. (1996) 'Critique of Violence'. *In*: Bullocks, M. and Jennings, M. (eds.) *Walter Benjamin. Selected Writings, Volume 1, 1913-1926,* Cambridge: Harvard University Press, pp. 236–253.

Bianchi, T.H. (1994) *Justice as Sanctuary. Toward a new System of Crime Control.* Bloomington: Indiana University Press.

Blagg, H. (2017) 'Doing restorative justice 'otherwise''. *In* Aertsen, I. and Pali, B. (eds.) *Critical Restorative Justice*, Oxford: Hart. pp. 61–78.

Bonafé-Schmitt, J.-P. (2013) 'Restorative justice and penal mediation: The French exception'. *In* Cornwell, D., Blad, J. and Wright, M. (eds.) *Civilising criminal justice: An international restorative justice agenda for penal reform*, Winchester: Waterside Press, pp. 429–450.

Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

Butler, J. (2020) *The Force of Nonviolence: An Ethico-Political Bind*. London-New York: Verso.

Cario, R (2007) *La justice restaurative: vers un nouveau modèle de justice pénale?* [Online] [Accessed on 2nd September 2019] http://www.justicereparatrice.org/news/AJP_JR_sept_2007.pdf.

Christie, N. (1977) 'Conflicts as property'. *British Journal of Criminology,* 17(1) pp. 1–15.

Christie, N. (1986) 'The ideal victim'. *In* Fattah, E. (ed.) *From Crime Policy to Victim Policy. Reorienting the Justice System*, London: Palgrave, pp. 17–30.

Christie, N. (2013) 'Words on words'. *Restorative Justice: An International Journal,* 1(1) pp. 15–20.

Christie, N. (2015) 'Widening the net'. *Restorative Justice: An International Journal,* 3(1) pp. 109–113.

Clastres, P. (2010) *Archaeology of Violence.* Los Angeles: Semiotext(e).

Cohen, S. (1985) *Visions of Social Control: Crime, Punishment and Classification.* Glasgow: Polity Press.

Coyle, M. (2018) Who Is Mired in Utopia? The Logics of Criminal Justice and Penal Abolition. *Social Justice*, 45(4) pp. 79–115.

Crawford, A. and Newburn, T. (2003) *Youth offending and restorative justice: implementing reform in youth justice.* Cullompton: Willan.

Crown Prosecution Service (2010) Conditional Cautioning Code – Adults. [nline] [Accessed on 12th March 2020] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/atta

chment_data/file/228971/9789999098144.pdf .
Dale, G. and Hydle, I. (2008) 'Challenging the evaluation of Norwegian restorative justice experiences'. *British Journal of Community Justice,* 6(2) pp. 69–76.
De Lagasnerie, G. (2018) *Judge and Punish. The Penal State on Trial.* Stanford: Stanford University Press.
Deleuze, G. (1992) 'Postscript on the Societies of Control'. *October*, 59 pp. 33–7.
Faget, J. (2006) 'The French Phantoms of Restorative Justice: The Institutionalization of Penal Mediation'. *In* Aertsen, I. Daems, T. and Robert, L. (eds.) *Institutionalizing Restorative Justice,* Collumpton*:* Willan, pp. 151–166.
Foucault, M. (1977) *Discipline and Punish. The Birth of the Prison.* New York: Random House.
Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society.* Oxford: Oxford University Press.
Girard, R. (2013) *Violence and the Sacred.* London: Bloomsbury.
Harcourt, B. (2010) 'Neoliberal Penality: A Brief Genealogy'. *Theoretical Criminology,* 14(1) pp. 1–19.
Holmboe, M. (2017) 'Norwegian Youth Punishment – Opportunity or Trap?' *Bergen Journal of Criminal Law & Criminal Justice,* 5(1) pp. 37–58.
Hudson, B. (1998) 'Restorative Justice: The Challenge of Sexual and Racial Violence'. *Journal of Law and Society*, 25(2) pp. 237–256.
Hulsman, L. (1986) 'Critical Criminology and the Concept of Crime'. *Contemporary Crises,* 10(3-4) pp. 63–80.
Johnstone, G. (2011) *Restorative justice: Ideas, values, debates* (2nd ed.). London and New York: Routledge.
Johnstone, G. and Ward T. (2010) *Law and Crime.* London: Sage.
Jørgensen, G. (2015) Klar oppfordring til politi og påtale om ungdomsstraffen. Gjøre riktige ting til riktig tid. [Online] [Accessed on 12th December 2019] https://www.konfliktraadet.no/gjoere-riktige-ting-til-riktig-tid.5625444-314028.html.
Liebmann, M. (2007) *Restorative Justice: How It Works.* London: Jessica Kingsley Publishers.
London, R. (2010) 'The restoration of trust: Bringing restorative justice from the margins to the mainstream'. *Criminal Justice Studies*, 16(3) pp. 175–195.
Lunn, E. (1973) *Prophet of Community.* Berkley: University of California Press.
Maglione, G. (2018) 'Pushing the theoretical boundaries of restorative justice: Non-sovereign justice in radical political and social theories'. *In* Gavrielides, T. (ed.) *Routledge International Handbook of Restorative Justice*, London: Routledge, pp. 21–31.
Maglione, G. (2019a) 'The political rationality of restorative justice'. *Theoretical Criminology,* 23(4) pp. 545–562.
Maglione, G. (2019b) 'The Restorative Justice Apparatus: A Critical Analysis of the Historical Emergence of Restorative Justice'. *Social & Legal Studies,* 28(5) pp. 650–674.
Marshall, T. (1999) *Restorative Justice: An Overview.* [Online] [Accessed on 12th December 2019] http://www.homeoffice.gov.uk/rds/pdfs/occ-resjus.pdf.
Mathiesen, T. (2015) *The Politics of Abolition Revisited.* London and New York: Routledge.

Ministère de la Justice (2016) '*Rapport sur la mise en oeuvre de la loi du 15 août 2014 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales*', 21 October 2016. [Accessed on 15th May 2020] http://www.presse.justice.gouv.fr/art_pix/Rapport%20Loi%20du%2015%20aout2014+annexes.pdf

Moore, J.M. and Roberts, R. (2016) 'What lies beyond criminal justice? Developing transformative solutions'. *Justice, Power and Resistance,* Foundation Volume pp. 115–136.

Mouhanna, C. (2017) V*ers une nouvelle justice ?* [Online] [Accessed on 12th January 2020] http://www.gip-recherche-justice.fr/publication/vers-une-nouvelle-justice-analyse-de-la-mise-en-oeuvre-des-dispositions-de-la-loi-du-15-aout-2014-relative-a-la-contrainte-penale-et-a-la-liberation-sous-contrainte/.

Newman, S. (2010) *The politics of postanarchism*. Edinburgh: Edinburgh University Press.

Newman, S. (2016) *Postanarchism.* Cambridge: Polity Press.

O'Mahony, D. and Campbell, C. (2006) 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing: The Experience of Northern Ireland'. *In* Junger-Tas, J. and Decker, S. (eds.) *International Handbook of Juvenile Justice,* New York: Springer, pp. 93–116.

Pali, B. and Pelikan, C. (2015) 'Con-texting restorative justice and abolitionism: exploring the potential and limits of restorative justice as an alternative discourse to criminal justice'. *Restorative Justice*, 2(2) pp. 142–164.

Pavlich, G. (2005) *Governing paradoxes of restorative justice.* London: GlassHouse Press.

Pepinsky, H. and Quinney, R. (eds.) (1991) *Criminology as peacemaking.* Bloomington: Indiana University Press.

Poama, A. (2015) 'Restorative Justice: The Institutional Turn'. *Raisons politiques,* 59(3) pp. 7–16.

Rancière, J. (2004) *The politics of aesthetics.* London: Continuum.

Rancière, J. (2010) *Dissensus: On Politics and Aesthetics.* London: Continuum.

Ruggiero, V. (2011) 'An Abolitionist View of Restorative Justice'. *International Journal of Law, Crime and Justice*, 39(2) pp. 100–110.

Ryan, M. and Ward, T. (2015) 'Prison Abolition in the UK: They Dare Not Speak Its Name?' *Social Justice*, 41(3) pp. 107–119.

Schürmann, R. (2019) *Tomorrow the manifold. Essays on Foucault, Anarchy and the Singularization to Come*. Zurich: Diaphanes.

Scott, J. (1998) *Seeing Like a State.* New Haven: Yale University Press.

Sullivan, D. and Tifft, L. (2001) *Restorative Justice: Healing the Foundations of Our Everyday Lives*. Monsey: Willow Tree Press.

Van Ness, D. and Strong, K. (2002) *Restoring Justice: An Introduction to Restorative Justice*. Cincinnati: Anderson.

Virno, P. (1996) *Virtuosity and Revolution: The Political Theory of Exodus.* [Online] [Accessed on 28th December 2019] https://www.generation-online.org/c/fcmultitude2.html.

Von Hirsch, A., Roberts, J., Bottoms, A., Roach, K., and Schiff, M. (eds) (2003) *Restorative justice and criminal justice: Competing or reconcilable paradigms?* Oxford: Hart.

Walgrave, L. (2000) 'How Pure Can a Maximalist Approach to Restorative Justice Remain? Or Can a Purist Model of Restorative Justice Become Maximalist?'. *Contemporary*

Justice Review, 1(4) pp. 415–432.
Walgrave, L. (2008) *Restorative Justice, Self-Interest and Responsible Citizenship*. Cullompton: Willan.
Walgrave, L. (2017) 'Restorative justice is not a panacea against all social evils'. *In* Aertsen, I. and Pali, B. (eds.) *Critical Restorative Justice*, Oxford: Hart, pp. 95–110.
Woolford, A. (2009) *The Politics of Restorative Justice: A Critical Introduction.* Black Point: Fernwood Publishing.
Woolford A. and Ratner R (2007) *Informal Reckonings: Conflict Resolution in Mediation, Restorative Justice and Reparations.* Abingdon: Routledge-Cavendish.
Zehr, H. (2005) *Changing lenses: a new focus for crime and justice.* Scottdale: Herald Press.

Legislation

England and Wales

Crime and Disorder Act 1998
Youth Justice and Criminal Evidence Act 1999
Criminal Justice Act 2003
Crime and Courts Act 2013
Offender Rehabilitation Act 2014

France

Loi n° 2000-516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victimes ('Law reinforcing the protection of the presumption of innocence and the victims' rights')
Loi n° 2014-896 du 15 août 2014 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales ('Law on the individualisation of punishment and strengthening the effectiveness of penal sanctions')
Code de procédure pénale (consolidated to 20/03/2020) ('Code of Penal Proceedings')
Code pénal (consolidated to 20/03/2020) ('Penal Code')

Norway

Lov om rettergangsmåten i straffesaker (Straffeprosessloven) 1981-05-22-25 (The Criminal Procedure Act With subsequent amendments, the latest made by Act of 21 June 2013 No. 84) ('Code of Criminal Proceedings').
Lov om konfliktrådsbehandling (Konfliktrådsloven) 1991-03-15-3 (now 2014-06-20-49) ('The Mediation Service Act').

EU

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