

# THE FRAGILITY OF FORGIVENESS. SUPEREROGATORY GOALS FOR A RESTORATIVE APPROACH TO CONFLICT MANAGEMENT

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**Abstract.** *What is the purpose of restorative justice? Analyzing different definitions, recommendations, and guidelines regarding restorative practices indicates that the answer to this question is not necessarily clear. In this paper, my starting point is the definition of conflict in relational terms. Specifically, the harm brought about by a conflictual event generates different kinds of relational fractures between the parties involved. I hold that if we consider the core premises of a restorative process, we have to acknowledge a specific focus on the relational equilibrium between the parties involved in the harm. In these terms, restoring ultimately means taking care of the relation that has been damaged in order to put things as right as possible. Accordingly, forgiveness is mostly considered a desirable side effect of these restorative practices. In contrast, striving for forgiveness to occur is not an obligatory task of those involved in the process (victims, wrongdoers, or practitioners). In moral philosophical terms, this is a clear case of supererogation, a theoretical concept that describes acts considered morally good but not morally obligatory. In this paper, I aim to provide some philosophical insights to support the claim that forgiveness (mostly offered by those who have been affected by the harm) is not a primary goal of restorative practices but a supererogatory one.*

**Keywords.** *Restorative Justice; Supererogation; Forgiveness; Conflict Management*

## 1. *What is the purpose of restorative justice?*

As philosophical practice requires, the starting point is a question. I propose starting from a rather basic and simple question: what is the goal or the purpose of restorative practices? It might be surprising, but there is no clear and widely shared answer to this question. Hopefully, if this essay is successful, we

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will grasp a sound response to the question and arrive at the point where brand new questions will arise. Although restorative justice has yet to draw major philosophical interest, these grounding theoretical questions disclose many issues of philosophical interest.

Guidelines and declarations might be helpful in our search for the ultimate meaning of these restorative practices. The first document that I want to focus on is the United Nations' *Basic principles on the use of restorative justice programmes in criminal matters*<sup>1</sup>, where restorative practices are said to promote a specific outcome – an agreement between the parties involved. The terms are defined as follows:

'Restorative justice programme' means any programme that uses restorative processes or aims to achieve restorative outcomes. 'Restorative outcome' means an agreement reached as the result of a restorative process. Examples of restorative outcomes include restitution, community service and any other programme or response designed to accomplish reparation of the victim and community, and reintegration of the victim and/or the offender<sup>2</sup>.

Another relevant document about restorative practices is the 2012 Directive of the European Parliament. Here, the goals of restorative justice are clarified on (at least) two occasions. First, it refers to reparation in relation to the victim's needs:

Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and

<sup>1</sup> *Basic principles on the use of restorative justice programmes in criminal matters*, ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add. 2 at 35, 2000.

<sup>2</sup> Ivi, section I, «*Definitions*».

needs of the victim, repairing the harm done to the victim and avoiding further harm<sup>3</sup>.

Second, it refers to the «resolution of matters»:

‘Restorative justice’ means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party<sup>4</sup>.

Unfortunately, the directive does not specifically state what ‘reparation’ means and what a ‘resolution’ is. Rather than a lack of theoretical depth (which is not expected from a document of this kind), the reason is that the actual content of ‘reparation’ might mean very different matters in different cases. The 2018 *Recommendation of the Committee of Ministers to member states concerning restorative justice in criminal matters* presents similar definitions. In the following statements, we find a more explicit reference to the basic principles of restorative justice:

13. The core principles of restorative justice are that the parties should be enabled to participate actively in the resolution of crime (the principle of stakeholder participation), and that these responses should be primarily oriented towards addressing and repairing the harm which crime causes to individuals, relationships and wider society (the principle of repairing harm). 14. Other key restorative justice principles include: voluntariness; deliberative, respectful dialogue; equal concern for the needs and interests of those involved; procedural fairness; collective, consensus-based agreement; a focus on reparation, reintegration and achieving mutual understanding; and avoiding domination. These principles may be used as a framework

<sup>3</sup> Directive 2012/29/EU of the European Parliament and the council, 46.

<sup>4</sup> Ivi, chap. 1, art. 2, 1.d.

with which to underpin broader reforms to criminal justice<sup>5</sup>.

In brief, these documents delineate that if we take ‘reparation’ as being defined by the needs of those harmed by the crime<sup>6</sup>, we cannot define it since we cannot tell *a priori* what these needs are. A more specific definition of the goals of these practices does not seem to be possible, which is one of the reasons why restorative justice is sometimes considered an umbrella term.

None of these documents discusses forgiveness. However, due to the open-ended outcome of these practices, this does not mean that forgiveness is not generally considered one of the expected outcomes. In this essay, I am concerned about a related question. Can forgiveness<sup>7</sup> be contemplated as the final end of a restorative approach to conflict management<sup>8</sup>? I argue in favor of the claim that this is not the case. One of the reasons for such a claim is empirically grounded. As forgiveness usually requires an apology from those who caused the harm, it appears to be less achievable than might be thought. Some data show how much fragile these dynamics are. Kathleen Daly’s studies on the Australian juvenile justice system show how this is true at different levels<sup>9</sup>.

<sup>5</sup> *Recommendation CM/Rec (2018)8 of the Committee of Ministers to member states concerning restorative justice in criminal matters*, Appendix, Section III, no. 13-14.

<sup>6</sup> As the *2018 Recommendation* prefers to address to the «victims».

<sup>7</sup> I take ‘forgiveness’ in quite general terms at this stage. However, it is important to highlight how a restorative process deals with forgiveness at different levels. Mostly (but not limited to this) the forgiveness of the wrongdoers by the victims and by themselves.

<sup>8</sup> I intentionally use ‘conflict management’ in order to outline a broader domain than the one traditionally associated with criminal justice. This suggests what I consider a fruitful broadening of the reach of restorative practices outside criminal matters. Restorative Justice, in these terms, does not apply only to those conflicts that reach the court, but ranges to a variety of conflicts that characterize our daily lives.

<sup>9</sup> K. Daly, *Mind the Gap: Restorative Justice in Theory and Practice*, in A. von Hirsch, J.V. Roberts (eds.), *Restorative and Criminal Justice: competing or reconcilable paradigms?*, Haywards Heath, Hart Publishing, 2003, pp. 219-236; K. Daly, *A Tale of Two Studies: Restorative Justice from a Victim’s Perspective*, in E. Elliott, R. Gordon (eds.), *Restorative Justice: Emerging Issues in Practice and Evaluation*, Willan, Cullompton,

First, in one of her case studies, apologies were for the most part not spontaneous; 40% of the juveniles apologized spontaneously, 28% had to be prompted to do so, and 30% did not apologize at all. Second, the perception of apologies was inaccurate; only 25% of the victims perceived the apologies as sincere, while 61% of the offenders said that they were really sorry. This meant that 36% of the cases were affected by some sort of misperception of the apologies. Case studies, such as this one, reveal that true forgiveness is not easily achievable for what concerns both the offenders' side and the victims' perceptions.

Why is forgiveness so fragile and difficult to obtain in restorative processes? Some possible answers might lead us to different directions here. Either restorative justice simply does not work and is not as efficient as we consider it to be, or forgiveness is not the ultimate goal of such practices. My opinion on this matter is that the second answer is more accurate. In other words, if we acknowledge that restorative practices are not specifically designed to bring about forgiveness, we understand why it might not occur. My aim in this paper is to ground this belief. Fortunately, I find myself in good company in the restorative justice debate, as Howard Zehr also recognizes that «*restorative justice is not primarily about forgiveness or reconciliation*»<sup>10</sup>.

## 2. *Conceptual premises of restorative practices*

The grounding idea of restorative justice is that justice has to focus on the relationship between the parties involved in a conflict, while taking as its starting point the needs of those who have been harmed. This position entails (at least) a couple of theoretical premises that are functional for this way of conceiving justice. As

2004, pp. 153-174. I found out about these studies thanks to the interesting considerations (even from a philosophical point of view) made by B. van Stokkom, *Forgiveness and Reconciliation in Restorative Justice Conferences*, «Ethical Perspective», XV (3), 2008, pp. 399-418.

<sup>10</sup> H. Zehr, *The Little Book of Restorative Justice*, New York, Good Books, 2015, p. 15. I will comment this passage in the last section.

emphasized many times, restorative approaches to justice have ancient roots. The contemporary practices inspired by such approaches share the same conceptual premises that have originated this doctrine thousands of years ago. In particular, restorative justice is grounded on the combination of the following two ideas: 1) the interconnection among the subjects and 2) a *relational* definition of conflict.

The first premise of restorative justice claims that all the subjects of a community are relationally interconnected, which I call the *relational bond*. This idea is a widespread conception of humanity. Aristotle himself alludes to the intrinsic relational dimension of human beings in his famous statement that we are «political animals», meaning that we are by nature socially apt<sup>11</sup>. This aspect reveals one of the most ancient roots of this doctrine and has a religious connotation as well. Surprisingly, this belief can be found in almost identical forms in different religious traditions<sup>12</sup>. For example, Judaism expresses this idea well with the concept of ‘shalom’, which is usually translated as ‘peace’. It actually connotes slightly more than this. It is peace that derives from a specific interconnection among the subjects of a community:

The webbing together of God, humans, and all creation in justice, fulfillment, and delight is what the Hebrew prophets call shalom. We call it peace but it means far more than mere peace of mind or a cease-fire between enemies. In the Bible, shalom means universal flourishing, wholeness and delight – a rich state of affairs in which natural needs are satisfied and natural gifts fruitfully employed, a state of affairs that inspires joyful wonder as its Creator and Savior opens doors and welcomes the creatures in whom he delights. Shalom, in other words, is the way things ought to be<sup>13</sup>.

<sup>11</sup> Aristotle, *Politics*, 1253 a.

<sup>12</sup> For a detailed analysis of this, please see M.L. Hadley (ed.), *The Spiritual Roots of Restorative Justice*, Albany, SUNY Press, 2001.

<sup>13</sup> C. Plantinga, *Not the Way It's Supposed to Be: A Breviary of Sin*, Grand Rapids, Eerdmans, 1995, p. 10.

Christianity has a similar conception of justice. Conflicts (and good deeds) can affect humanity as a whole through one individual. The following lines by Saint Paul are quite representative of this idea of justice:

18. Consequently, just as one trespass resulted in condemnation for all people, so also one righteous act resulted in justification and life for all people. 19. For just as through the disobedience of the one man the many were made sinners, so also through the obedience of the one man the many will be made righteous<sup>14</sup>.

Along the same lines, the sub-Saharan concept of *'ubuntu'* has also played a relevant role in the restorative justice debate. Generally speaking, this concept entails that a person can live a genuinely human life only by relating communally with others<sup>15</sup>. Commenting on the South African motto, «A person is a person through other persons», Thaddeus Metz points out that living communally is the ultimate moral end, according to this ethical perspective<sup>16</sup>. This means that to live a good life, a person has to take care of his/her relationships with those around him/her.

Other cultural traditions offer similar examples of concepts about the interconnection among the subjects. *'Whakapapa'* (Maori), *'Hozho'* (Navajo Native Americans), and *'Tendrel'* (Tibetan Buddhism) all refer to the same idea. It might be surprising, but these cultural and religious traditions (even if generally not in consonance as they appear here) are quite representative of humankind. In this paper, I assume that without the premise of a *relational bond* among human beings, we would be unable to fully understand restorative practices.

<sup>14</sup> *Romans*, 5: 18-19.

<sup>15</sup> T. Metz, *Ubuntu, Christianity and Two Kinds of Reconciliation*, in M. Girma (ed.), *The Healing of Memories: African Christian Responses to Politically Induced Trauma*, Lanham, Rowman & Littlefield, 2018, pp. 137-157, p. 139.

<sup>16</sup> Ivi, p. 141. It is interesting to note how this approach is quite different from more individualistically based approaches that have marked the moral philosophical debate of the Western culture (i.e. Utilitarianism and Kantian Ethics).

Furthermore, I hold that a second premise is equally necessary, which I call a *relational* definition of conflict. Conflicts can arise for different reasons and can be of different kinds. The most general distinction is that between *intrapersonal* conflicts (our inner conflicts, i.e., moral dilemmas) and *interpersonal* conflicts (our conflicts with others). Restorative practices are explicitly concerned with this latter kind<sup>17</sup>. What sort of interpersonal conflicts does restorative justice take into consideration? Even more specifically, how can we define a conflict from a restorative point of view? I think that the best way of doing so is again, to focus on the relations involved. Therefore, a conflict refers to a relationship that has been damaged by the contrasting position of two (or more) parties who hold opposing values in a given situation. Accordingly, a conflict damages the relational bond that stands as the first premise. A conflict brings about a disequilibrium among the parties involved (victim, offender, and communities) in the conflictual event that generates those needs that represent the starting point of restorative practices.

These two premises allow us to conclude a first general definition of the aim of restorative justice. Before doing so, it is important to note that I have made no explicit reference to criminal justice so far. The kinds of conflicts I allude to are not necessarily those that end up in court. Conflict management, so intended, suggests possible expansions of the reach of restorative justice even outside the domain of criminal justice. With this further clarification, we can conclude that the primary aim of restorative justice is to reestablish a *relational equilibrium* among the parties involved in the harmful event. In other words, putting things as right as possible by focusing on the needs of those who have been harmed ultimately means finding ways to make possible some sort of relationship between the stakeholders. This relational balance is sought through an encounter. It does not simply mean the mutual presence at a face to face meeting. This means seeing and understanding the other as a person valuable in himself/herself (not merely as the means to something) with his/her needs, values,

<sup>17</sup> However, I do not exclude that some restorative principles might apply to *intrapersonal* conflicts as well. This seems to me a rather unexplored area of research and practice.



and story. To further understand this point, it can be helpful to focus on the concept of health. If someone is sick, what does health mean for him/her? Reflecting on the meaning of this concept, the French philosopher Georges Canguilhem states that working on a patient's health status does not necessarily mean bringing him/her back to his/her pre-pathological state. Unfortunately, this is not always possible in cases of more serious illnesses. Rather, health involves any attempt to reestablish the balance among the vital functions of the patient<sup>18</sup>. We can recognize the analogy with restorative processes here. If we understand conflict as a damaged relationship, managing a conflict does not necessarily mean going back to the pre-conflict circumstance. Sometimes, this is simply not possible or even undesirable (if we want to prevent the occurrence of more harm). Managing conflict means creatively finding a dimension where the affected relationship might work again or a new relationship could arise.

A syllogism, a form of reasoning where a conclusion is drawn from two premises, is one of the most powerful philosophical tools. Let me summarize the argument that I have provided as the basis of restorative justice:

*Premise 1.* All subjects are interconnected, disclosing a *relational bond*.

*Premise 2.* According to their *relational* definition, all instances of conflict bring about a disequilibrium in the net of relationships.

*Conclusion.* Justice (restoratively intended) aims at the reestablishment of the *relational equilibrium* among the parties involved in the given conflictual event.

The key term is '*relational equilibrium*'. Nonetheless, it is not easy to provide an *a priori* definition of this specific equilibrium. It might vary from case to case and depend on the kind of conflict. Other interesting insights that this syllogism provides is that it can be difficult (if not impossible) to achieve the restorative aim if a) we operate in a community that lacks a strong *relational bond* (contra

<sup>18</sup> G. Canguilhem, *The Normal and the Pathological*, trans. by C.R. Fawcett, R.S. Cohen, New York, Zone Books, 1991, pp. 181-201.

premise 1) and b) we do not understand conflict as a damaged relationship (contra premise 2)<sup>19</sup>.

Finally, in the light of the general argument and the other conceptual remarks emphasized in this section, it is useful to return to the specific question in the beginning of this paper: can forgiveness be the primary goal of a restorative practice? On the contrary, can we reach a relational equilibrium even without obtaining forgiveness?

### 3. *Philosophical insights on forgiveness*

Forgiveness has been a widely debated notion in the western philosophical tradition, which is especially true in ethical studies. For various reasons, forgiving is connected to our idea of the good and more specifically, is considered a morally good act. However, the issue has been approached differently in different eras. Here, I can only make brief remarks on the subject. The ancient Greek thought has covered forgiveness in the discussion about anger. In the *Nicomachean Ethics*, Aristotle underlines how anger might be the appropriate reactive attitude to certain events<sup>20</sup>. Rationally supervised, anger is the appropriate response of a man who has been harmed. In these specific passages from Aristotle's work, it is interesting to see how he takes this emotional response as functional for self-defense<sup>21</sup>. A man who does not respond to harm with some negative feedback would be unable to detect further harm inflicted on him. However, «the good-tempered man is not revengeful, but rather tends to make allowances»<sup>22</sup>. Notoriously, according to Aristotle, virtue is the mean between vicious extremes. Again, for him, it would be a vice not to respond to offenses by

<sup>19</sup> Both these theoretical observations have to be confronted with the know-how acquired through practical application of restorative processes. Academic research on restorative justice cannot cease to look for a constant relationship with the practices.

<sup>20</sup> Aristotle, *Nicomachean Ethics*, 1125b 35 (trans. by W.D. Ross, in R. McKeon (ed.), *The Basic Works of Aristotle*, New York, Random House, 1941, p. 996).

<sup>21</sup> Ivi, 1126a 8 (*ibidem*).

<sup>22</sup> Ivi, 1126a 2 (*ibidem*).

expressing the right amount of anger. Nonetheless, the good-tempered man is characterized by his tendency to let go and forgive. Both the excess of anger (irrationally on the loose) and the lack of reaction to the harm suffered are perceived as vicious attitudes. On the other end, virtue suggests a tendency to forgive.

Much more can be said about the history of philosophical investigation about forgiveness. For instance, we can refer to the Christian tradition and how it has introduced the idea of forgiveness as an act of love, the Kantian notion of forgiveness as an *imperfect* duty, and the role of *ressentiment* in Nietzsche's work<sup>23</sup>. However, I think that it would be functional for my argument in this paper to focus on more recent literature on the subject. The contemporary debate has addressed forgiveness as a case of a supererogatory act. The concept of supererogation is defined as covering a category of acts that are morally good but not morally obligatory. Typical examples are the morally excellent acts of saints and heroes. The rescue by the 9/11 firefighters and Maximilian Kolbe's sacrifice of his life to save another are clear examples of morally good acts that were not obligatory due to the harsh circumstances of the performance and the amount of sacrifice involved. Nonetheless, this category describes acts that are (fortunately) much more common in our everyday lives. Buying coffee for a friend, giving some flowers to one's wife, and helping a friend move out of his/her house, are all cases of supererogation. Similarly, David Heyd considers forgiveness a clear example of supererogatory forbearance<sup>24</sup>. Accordingly, to forgive means that those who have been harmed are willing «to renounce the moral

<sup>23</sup> Respectively: A. Bash, *Forgiveness and Christian Ethics*, Cambridge, Cambridge University Press, 2007; I. Kant, *Lectures on Ethics*, ed. by J.B. Schneewind, trans. by P. Heath, New York, Cambridge University Press, 1997; F. Nietzsche, *On the Genealogy of Morals*, trans. by W. Kaufmann, R.J. Hollingdale, New York, Vintage, 1967.

<sup>24</sup> D. Heyd, *Supererogation. Its Status in Ethical Theory*, New York, Cambridge University Press, 1982, p. 163. The whole section, entitled «Forgiveness, Mercy and Pardon» is particularly interesting for RJ studies as he tries to draw a distinction between forgiveness (by the victim of a wrongdoing), pardon (exercised impersonally by a third party).

right of resentment»<sup>25</sup>. In these terms, forgiveness is always supererogatory. More recently, Espen Gamlund has provided a more detailed analysis of why and when forgiveness ought to be considered supererogatory<sup>26</sup>. First, he outlines three conditions under which a forgiving action qualifies as supererogatory: a) it is not forbidden, that is, it is permissible; b) it is not obligatory; and c) it is morally good or praiseworthy<sup>27</sup>. While the first two conditions refer to optionality, the third one defines the moral character of this action. Forgiveness is not a mere optional action (such as walking or drinking water), but it is both optional and has an intrinsic moral value. Furthermore, Gamlund points out that not all cases of forgiveness are the similar. On one hand, in the *unconditional* case of forgiveness, the wrongdoers neither express repentance nor offer an apology. On the other hand, in the *conditional* case of forgiveness, appropriate amends are made. For Gamlund, both these instances of forgiveness are possibly problematic when confronted with the three aforementioned conditions. I focus on the problems that I consider particularly relevant for restorative practices.

First, unconditional forgiveness poses a serious risk; it might fail to properly acknowledge the wrongful act committed<sup>28</sup>. This introduces an important distinction between forgiveness (that presumes that we hold the wrongdoer responsible) and *condonation* (where we simply deny or overlook the harm done). Proper forgiveness requires that we admit and recognize that the harm caused by the offense is morally wrong. This sort of acknowledgment is one of the starting points of a restorative process; the stakeholders can address the needs of those who have been harmed only by recognizing responsibilities. Conditional forgiveness, where the wrongdoer is explicitly repentant, does not pose the same risk.

<sup>25</sup> *Ibidem*.

<sup>26</sup> E. Gamlund, *Supererogatory Forgiveness*, «Inquiry», LIII (6), 2010, pp. 540-564. For a further comment on Gamlund's position see also A. Archer, *Forgiveness and the Limits of Duty*, «Ethics & Politics», XIX (1), 2017, pp. 225-244.

<sup>27</sup> Gamlund, *Supererogatory Forgiveness*, p. 543.

<sup>28</sup> Ivi, p. 547.

Second, not all forgiving actions require similar efforts by the victim. This aspect is particularly clear to restorative justice practitioners. Gamlund identifies different levels of blameworthiness for the wrongdoing<sup>29</sup> that correspond to increasing difficulties to forgive. An offense can be performed out of *intention* (acting consciously with the purpose of bringing about the result), *recklessness* (acting consciously and disregarding unjustified risk), or *negligence* (acting carelessly by disregarding the risk involved when one should or could be aware of it). The harm caused by these attitudes elicits different degrees of resentment and thus different efforts by the victim to carry out the forgiving action. Simply, acknowledging that not all harms are equal in their effects (due to their degree of gravity and underlying motives), ultimately means that not all kinds of forgiveness are equal.

Third, while it is true that unconditional cases of forgiveness are typical examples of supererogation, the same cannot be said of conditional forgiveness. What if the wrongdoer has adequately apologized and repented<sup>30</sup>? Gamlund concedes that some specific cases of forgiveness are not classified as supererogatory; rather, all things considered, proper apology is a morally relevant aspect that cannot be ignored. In fact, proper apology generates *pro tanto* the duty to forgive that when the victim contemplates what to do, all things considered, counts in favor of forgiving. Nonetheless, this might not be enough to ground a proper moral obligation. If the harm caused is considerable (imagine a case of a terroristic event with many casualties), apologies do not outweigh the victims' right to keep an attitude of resentment. On the contrary, if the injury is minor and the apology and the repentance are adequate, their moral weight in favor of conditional forgiveness should not be overlooked. In other words, not all cases of forgiveness can be considered supererogatory without qualification. We need to pay proper attention to the causes of an offense and the degree of harm that it brings about, keeping in mind (as the restorative approach

<sup>29</sup> Ivi, p. 550.

<sup>30</sup> Ivi, p. 554. On this subject, see also Id., *The Duty to Forgive Repentant Wrongdoers*, «International Journal of Philosophical Studies», XVIII (5), 2010, pp. 651-671.

reminds us) the rights and the needs of those who have been harmed.

Thus, if forgiveness is mostly supererogatory, how are restorative processes affected? The practice in the field of restorative justice seems to have already adjusted to this theoretical remark. Analyzing the northern Irish case, Alice and Tim Chapman have sharply outlined the fragility of forgiveness under restorative justice. First, by putting the wrongdoer and the victim in relation to each other, a restorative process might lead to a point where the offender realizes the harm done and expresses real remorse and repentance. This, together with the safe and trustworthy environment that practitioners are able to create, might put those who have been harmed in a position where they feel compelled to react in a compassionate way. This in turn might lead to a point where they feel compelled to forgive. However, this may produce the so-called '*thin forgiveness*', something induced by the process and far from being actual forgiveness emerging from real engagement. This kind of forgiveness will unlikely endure after the encounter<sup>31</sup>. Similarly, the positive environment constituted by restorative conferences might lead those who have been harmed to expressions of sympathy or even acts of altruism. What Chapman and Chapman emphasize is that while these might appear as signs of actual forgiveness, they rather stand as cases of mercy and compassion<sup>32</sup>. Once again, these remarks highlight the fragility of forgiveness in a restorative process. While actual forgiveness indeed eventually occurs in this context, it cannot be easily granted. This should make us reevaluate the relation between restorative justice and forgiveness:

In restorative justice the definition of what would be a fair resolution is never absolute but rather a product of dialogue based upon an understanding of each party's story. Forgiveness is not a necessary element or outcome of this restorative process. So, does forgiveness play any part in

<sup>31</sup> A. Chapman, T. Chapman, *Forgiveness in Restorative Justice: Experienced but not Heard?*, «Oxford Journal of Law and Religion», V (1), pp. 138-139.

<sup>32</sup> Ivi, p. 144.

this process? In the restorative process forgiveness does not release people from distressing feelings such as anger, fear, shame, and anxiety. On the contrary the restorative process of doing justice enables people to be released from these feelings so as to be in a state in which they are ready, willing, and able to forgive truly. The release from distress is caused by the respect, empathy, and remorse demonstrated by the perpetrator towards the victim. Empathy from the victim towards the offender may cause compassion and mercy that, while it may result in the offender being released from obligations, should be distinguished from forgiveness<sup>33</sup>.

In addition to its supererogatory nature, forgiveness presents several difficulties<sup>34</sup>. This explains why we take it as something deeply special when actual forgiveness does occur.

In sum, what I have tried to show in this section is that an analysis of forgiveness, bearing in mind the practice of restorative justice, has brought out two similar remarks coming from two different directions: 1) From a theoretical (philosophical) perspective, by virtue of its supererogatory nature, forgiveness is not something that we can morally foresee, expect, or require. 2) Restorative practices show how forgiveness cannot be easily granted due to a possible misperception about the apology process and the fragility of the dynamic that leads to actual forgiveness. These remarks are particularly useful in focusing on the ends of restorative justice.

<sup>33</sup> Ivi, p. 152.

<sup>34</sup> Together with the problems regarding different perceptions by the victims about the effectiveness of apologies that I have introduced above, forgiveness presents other problems that I will not discuss here. It is important to at least keep in mind that forgiveness is a much more complicated and less unitary subject than we might think (and this is especially true within restorative processes). A more refined approach to the subject would distinguish between 'forgiving the offender' and 'forgiving the offence'. See J. Shapland, *Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful?*, «Oxford Journal of Law and Religion», V (1), 2016, pp. 94-112, p. 111.

#### 4. *The purpose of restorative justice and its supererogatory goals*

In this paper, I have tried to emphasize some philosophical remarks about forgiveness with regard to the initial question on the purpose of restorative justice. Let me outline a possible answer to the question on the aims of this approach to justice. Notably, forgiveness has appeared as a complex dynamic. It is difficult to obtain due to a possible misunderstanding in the perception on apologies, it cannot be easily favored by restorative justice practitioners, and mostly, it stands as a victim's right whose optionality identifies it as a typical case of a supererogatory act. Taking these elements into consideration leads us back to the question introduced in the beginning: can forgiveness be the primary concern of restorative justice? As has transpired from my analysis in the previous section, my stance take is that forgiveness, being supererogatory and difficult to obtain, cannot play such a central role in restorative practices. We have also noted how this claim is shared by Zehr, among others<sup>35</sup>. My main claim in this paper is that rather than excluding forgiveness from the picture, we need to consider it a supererogatory outcome of restorative justice. If restorative practices happen to bring about actual forgiveness, it would be an excellent outcome. However, this sort of positive outcome cannot be expected or required in any way. Rather than a primary goal, forgiveness stands as a supererogatory one. This appears to be true for all those involved in the process (victims, wrongdoers, communities, and practitioners). In plain restorative justice's fashion, the supererogatory nature of forgiveness leads to the claim that those who have been harmed, by being the first actors of justice, are the only ones who should decide whether or not to offer forgiveness.

Excluding forgiveness from the primary goals of restorative justice does not explicitly help in finding an answer to my starting question. What about considering a less demanding goal than forgiveness? Can reconciliation be a good candidate? The first answer leads us back to Zehr's claim that we cannot include reconciliation in the primary aims of restorative justice<sup>36</sup>. I think that a reason in

<sup>35</sup> Zehr, *The Little Book of Restorative Justice*, p. 15.

<sup>36</sup> *Ibidem*.



favor of such a claim is to avoid putting more pressure on those who have been harmed by expecting something from them. This request would eventually compromise the safe and protected environment that is necessary to trigger a proper restorative process. Nevertheless, once it is properly defined, I still take reconciliation as a better candidate for being the primary concern of restorative justice. Let me briefly focus on this concept to rehabilitate its role. First, it is important to emphasize that forgiveness and reconciliation are two different matters, as well as to maintain why this is the case. Generally speaking, forgiveness involves giving up some negative emotional state that caused a reactive attitude toward a given conflictual event. In these terms, forgiveness deals directly with the emotions involved in the post-conflict situation and entails a personal inner process. Differently, my position considers reconciliation to be concerned with relations. This is true on different levels. Thaddeus Metz outlines two different kinds of reconciliation in connection to restorative practices<sup>37</sup>. One is reconciling *with* the other party; this aspect focuses on *interpersonal* relations. The other is reconciling *to* the trauma that the victim has experienced<sup>38</sup>. In these terms, the reconciliation is *intrapersonal* and involves the way that those who have been harmed approach the offense and try to move on with their lives. I think that both these reconciliations, defined in relational terms, are fundamental to a proper restorative process. By drawing from some ethical insights derived from the concept of ‘*ubuntu*’ (as discussed in Section 2), Metz refers to the relational bond that I have taken as a fundamental starting premise of restorative justice. Accordingly, he defines reconciliation in a very interesting way:

An *ubuntu*-based form of reconciliation between enemies is not so thick as to require good feelings between them, nor so thin as to demand only peaceful co-existence. It is instead ‘in between’, for expecting parties to clear the air

<sup>37</sup> Metz, *Ubuntu, Christianity and Two Kinds of Reconciliation*.

<sup>38</sup> Ivi, pp. 144-147.

about what happened, to accept responsibility for wrongdoing, and then to interact in ways that are communal, hoping that good feelings might develop down the road<sup>39</sup>.

Reconciliation, so defined, is clearly far from being confused with actual forgiveness. Rather than a change in the victim's emotional state, the focus is on the improvement in the web of relationships (whether intrapersonal or interpersonal) that an offense adversely affects. I take this to be the paramount core of restorative justice. Thus, as in the introduction, I have sought brand-new questions, it is worth asking whether reconciliation can be considered the primary goal of a restorative process. In Section 2, I have outlined a general argument for restorative justice that concludes by referring to *relational equilibrium*. One possible way to define it is exactly the kind of focus that reconciliation brings to the table – the possibility to create the conditions that make a relation function.

When thinking about the goals of restorative justice, reconciliation stands as a more achievable and less demanding outcome than actual forgiveness. Moreover, these two concepts are not necessarily related:

Sometimes forgiveness might lead to reconciliation, and sometimes reconciliation might bring about forgiveness, but these causal relationships do not always obtain. One can find reconciliation without forgiveness, and also forgiveness without reconciliation (say, if the guilty party has died)<sup>40</sup>.

In other words, if restorative justice is concerned with reconciliation, intended to specifically focus on relational bonds, then forgiveness is neither necessary nor sufficient for a restorative process to be carried out. It is not necessary because in the case of a minor conflict, for example, the victim can still somehow relate to the offender even if the former has not forgiven the latter. It is not

<sup>39</sup> Ivi, p. 145.

<sup>40</sup> Ivi, p. 151.

sufficient because even when forgiveness is granted, reconciliation might not be possible (e.g., the offender is dead or unreachable) or might be undesirable (e.g., in the case of sexual assault). While helping refine possible outcomes of restorative practices, these remarks do not exclude that both reconciliation and forgiveness might take place in the same restorative encounter.

As I have already hinted, restorative justice should view forgiveness as a supererogatory goal and rather focus on the possibility to attain *relational equilibrium* as a primary aim of this approach to justice. However, from a theoretical perspective, I think that more work needs to be done. We need to define the *relational equilibrium* that restorative practices are aiming for. As one of the attendees of the 2018 Conference of the European Forum for Restorative Justice in Tirana, I remember Jonathan Doak claiming that «in restorative justice, practices have outpaced theories»<sup>41</sup>. I take the case of *relational equilibrium* to be an instance of outpaced theory. Practices do aim for such an outcome, but it is difficult to find a definition of what this is about.

In this paper, I have attempted to focus on the goals of restorative justice by examining this issue from a (moral) philosophical perspective. The following questions have been raised: What is the primary goal of restorative practices? Is forgiveness necessary? Is it obligatory? From a theoretical perspective, some of the answers to these questions are grounded on the concept of supererogation. The philosophical debate about the concept gained relevance in the 1960s, and since then, it has shown how difficult it is to justify this concept. What I have tried to show elsewhere is that the reason for this difficulty emerges when we fail to acknowledge the intrinsic complexity of the moral domain<sup>42</sup>. Regarding our values and idea of the good, a plurality of voices comes into play. While many times appearing as bewildering, this shows the many possible paths to bring about the good. Restorative justice is characterized by the same potential of a plurality of possible good outcomes. On one

<sup>41</sup> Such a remark is shared in Chapman, Chapman, *Forgiveness in Restorative Justice*, p. 138.

<sup>42</sup> S. Grigoletto, *Only Through Moral Complexity. The Case of Supererogation*, Padova, Padova University Press (forthcoming).

hand, offenses, crimes, and the morally blameworthy should be our primary objects of limitation; on the other hand, the good and the praiseworthy have (fortunately) no limitations whatsoever. The concept of supererogation reminds us of this. I take these remarks from the words of David Heyd:

By its nature, a moral system does not leave patently bad action as morally permissible. In that respect, good and bad, the virtuous and the vicious, are not symmetrical from the deontic point of view: the good is open-ended in a way that the bad is not. The extremely good cannot be required, but the extremely bad (vicious) is the prime target of prohibition<sup>43</sup>.

Within the domain of restorative practices, forgiveness reminds us of how open-ended the good is. While we could not expect it to be the required outcome of restorative justice, we should not limit these processes' possibilities to bring about the good in unexpected and surprising ways.

<sup>43</sup> D. Heyd, *Supererogation*, in E.N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2019 Edition) (<https://plato.stanford.edu/entries/supererogation/>).