

# WHY THEORY MATTERS<sup>1</sup>

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## 1. *A Moral Philosophical Approach to the Study of Restorative Practices*

Philosophical inquiries often use a question mark as a starting point. It is important to introduce this volume about some of the more philosophically relevant questions regarding restorative justice by emphasizing the main question: What is the appropriate philosophical approach to this subject? Before trying to (briefly) answer this question, the origin of this publication should be explained. In plain restorative fashion, the idea for this volume developed from listening to and addressing the need for contemporary debate on restorative justice. Many authors have emphasized how the field of restorative justice is one in which practices have evolved without corresponding theoretical growth and specification. In this regard, A. Chapman and T. Chapman expressed the following:

One problem is that restorative justice has yet to develop a fully formed theoretical framework. This makes it prey to a mixed, and often contradictory, set of premises borrowed from theology, anthropology, peace building, criminology and psychology. Restorative justice does not seem to have acquired a theoretical integrity of its own<sup>2</sup>.

<sup>1</sup> Simone Grigoletto is the author of the first section entitled *A Moral Approach to the Study of Restorative Practices*. Giovanni Grandi is the author of the second section entitled *The Importance of a Philosophical Effort in Restorative Justice*.

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<sup>2</sup> A. Chapman, T. Chapman, *Forgiveness in Restorative Justice: Experienced but not Heard?*, «Oxford Journal of Law and Religion», V (1), p. 137.

Thus, scholars concerned with restorative justice should fully develop and clarify its theoretical background. While we must not forget the important truth that theory without practice loses its value, we must also remember that practice without a proper theoretical background can be inefficient. We believe that philosophical inquiry can play an important role in preventing this from happening.

What, then, are the philosophical remarks we must bear in mind before proceeding with this theoretical operation? We can highlight at least two important points. First, we should consider which philosophical area is best suited to accomplish this task. Aristotle provided interesting insights when distinguishing between theoretical and practical knowledge in *Metaphysics*:

It is right also that philosophy should be called knowledge of the truth. For the end of theoretical knowledge is truth, while that of practical knowledge is action (for even if they consider how things are, practical men do not study the eternal, but what is relative and in the present)<sup>3</sup>.

The kind of knowledge that deals with restorative justice is *practical*, where action is the focal point and questions about how it would be good, just, or right to act are the main concern. Accordingly, given its ultimate practical end, the main philosophical domain of inquiry for restorative justice should be moral philosophy.

Second, a more detailed understanding of the philosophical approach is needed<sup>4</sup>. The word *philosophical*, generally understood, might be considered a synonym for *intellectualistic*, having the slightly negative connotation of something being too theoretical. According to these terms, restorative practices can hardly benefit from a philosophical approach. A major discussion point in the field of epistemology offers interesting insights for consideration

<sup>3</sup> Aristotle, *Metaphysics*, a 2, 993b 19-23 (trans. by W.D. Ross, in R. McKeon (ed.), *The Basic Works of Aristotle*, New York, Random House, 1941, p. 712).

<sup>4</sup> Other details will be provided in the following section.

here. Generally, defining the different kinds of knowledge that we have requires us to differentiate between a) knowing *how* to do something (e.g., riding a bike); b) knowing facts or persons (e.g., knowing *that* Mount Everest's peak is 8,848 meters above sea level); and c) *propositional knowledge*, knowing that some facts are true (e.g., knowing that it is true that the earth rotates on its axis). In particular, as pointed out in a seminal paper by Gilbert Ryle, *knowing how* and *knowing that* have a problematic relationship. Can we reduce *knowing how* to do something to the mere knowledge of a list of propositions? Ryle famously proposed that this would be an inappropriate *intellectualistic* claim. As for example:

We can imagine a clever player [of chess] generously imparting to his stupid opponent so many rules, tactical maxims, 'wrinkles', etc. that he could think of no more to tell him; his opponent might accept and memorize all of them, and be able and ready to recite them correctly on demand. Yet he might still play chess stupidly, that is, be unable intelligently to apply the maxims<sup>5</sup>.

Similarly, the study of restorative justice cannot incur the perils of intellectualistic reductionism. Restorative practices cannot be the outcome of mere theoretical knowledge of propositions, as «a fool might have all that knowledge without knowing how to perform»<sup>6</sup>. In this context, this knowledge appears particularly risky, as inadequate performance might lead to a case of re-victimization. It is important, then, that a philosophical study of restorative justice avoids an intellectualistic approach.

These two preliminary remarks outline a fruitful way to consider philosophical research about restorative processes. The words of Arthur Schopenhauer highlight the kind of theoretical process that restorative justice requires. In his early manuscripts he wrote:

<sup>5</sup> G. Ryle, *Knowing How and Knowing That*, in Id., *Collected Papers. Vol. 2. Collected Essays 1929-1968*, London, Hutchinson, 1971, pp. 212-225, p. 215.

<sup>6</sup> Ivi, pp. 217-218.

A theoretical philosopher is one who from the representations of all classes can furnish a copy in concepts and hence for his faculty of reason, just as the painter copies on canvas what he has seen, the sculptor in marble, and the poet in pictures for the imagination (which, however, he gives only in the seed of the concepts from which they have first sprung). A so-called practical philosopher, on the other hand, is one who does the opposite and controls his actions according to concepts; thus just as the former transfers life into the concept, does the latter carry concepts over into life<sup>7</sup>.

Research into the theory of restorative justice should aim exactly at this goal, bringing concepts into life. As emphasized above, the best way to achieve this is to take a moral philosophical approach in a non-intellectualistic way.

## 2. *The Importance of a Philosophical Effort in Restorative Justice*

Theory and practices need each other, but in what sense do we still need a philosophical effort in the field of restorative justice? Perhaps not in order to provide a philosophy as a general theory on the values and the intended goals of this paradigm of justice. We can say that the international debate has already provided enough clarification at that level. Not only the works of the most important voices – Howard Zehr, John Braitwaite, Mark Umbreit, Ivo Aertsen, and many others – but also a significant series of institutional documents have drawn the main conceptual perimeter of restorative justice. For example, the Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States (of the Council of Europe) concerning restorative justice in criminal matters is accurate in defining and specifying concepts, terms,

<sup>7</sup> A. Schopenhauer, *Manuscript Remains in Four Volumes: Volume I. Early Manuscripts (1804-1818)*, ed. by A. Hübscher, Oxford, Berg, 1988, p. 122.

and coherent dynamics and processes. Therefore, what can we ask of a philosophical reflection? Of course, we must acknowledge that a debate between theory and practices, in and of itself, never ends, since life and experience continuously provide new problems. However, there is today a more specific reason that probably suggests continuing to develop discussions with particular attention to theoretic details, and that is, perhaps paradoxically, consolidation of the international institutional acknowledgement of restorative justice.

The popularity of restorative justice proposals is growing: using a non-philosophical expression, we could say that ‘restorative is cool’. New and more expansive possibilities for introducing restorative approaches in criminal justice draw attention to many realities, such as that long-term experience suggests that these solutions to wrongdoings can replace the nude punishment of the guilty. Restorative justice today is becoming a sort of trendy label under which to collect very different approaches that have in common something negative, that is, the idea that punishment of the guilty is not the solution for wrongdoing. In that sense the family of restorative justice practices tends to grow, and the meaning of ‘restoration’ tends to become wider, less precise, and at its limit, rhetoric. Many good practices – in probation programs, for example – claim a restorative nature in their proposal, even if their grounding philosophy has less to do with the main ideas of restorative justice. That is, there is no doubt, for example, that in many cases, socially useful works ‘restore’ something in the life of an offender and even in a community, but if this process does not involve the people offended, it seems improper to consider these otherwise praiseworthy initiatives as part of the restorative justice paradigm. Briefly, the facts at work in the field of criminal justice plus the rise of restorative outputs do not produce as a mechanical result a restorative justice practice. Which (possible) proposals and processes are really inside the philosophy of restorative justice and which simply sound similar to the concept? A philosophical debate needs to be developed in order to discuss perspectives and possibilities. Someone could obviously ask why this point should be so important. Is it perhaps a matter of copyright? Of course not, but

neither is it a sterile academic question. The point is substantial, because the concrete power of a paradigm consists in its peculiarities, not in its breadth.

Let us consider again the topic of an encounter between parts involved in wrongdoings. Mediators and facilitators work very hard to prepare themselves for this kind of service and know how difficult the paths are that lead to an encounter between parts. What could happen if this point, such as, for example, the involvement of the community, becomes optional as a way to understand the core of restorative justice, rather than characterizing it? The risk is in skipping the encounter every time it appears more difficult to realize, and this is a loss for practices, not for theories, of course. In that sense a philosophical debate could help practices face the growing popularity of the restorative paradigm and the risk of simplifying it, and lose some of its main (and difficult) intuitions. A trailing-off of interest in theoretic debate could mean a danger for practices deeply inspired by the perspective of restoring relationships.

Most likely, this is exactly the time to develop a deeper comprehension of specific points of the restorative justice paradigm, looking, on one hand, at the main theory, and on the other hand at the roots of its various intuitions, particularly from an anthropological, moral, and social perspective. If we accept the idea that restorative justice represents a «new paradigm for criminal justice» (and perhaps not only for criminal justice), as Barnett has suggested<sup>8</sup>, we have to recognize that, at a certain point, a new general vision has to face the deeper challenge of consistency, which implies what we call a «philosophical effort» in exploring specific aspects and implications. The papers collected in the present issue of *Verifiche* aim to be a contribution in this sense.

<sup>8</sup> R.E. Barnett, *Restitution: A New Paradigm for Criminal Justice*, «Ethics», LXXXVII (4), 1977, p. 301: «As any new paradigm becomes accepted, it experiences what Kuhn calls a period of 'normal research', a period characterized by continuous expansion and perfection of the new paradigm as well as testing of its limits». Howard Zehr has been influenced by this work when he refers to the change of the restorative paradigm. See H. Zehr, *Retributive Justice, Restorative Justice*, «New Perspective on Crime and Justice», IV, 1985.