

Forgiveness and reconciliation in restorative justice conferences

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ABSTRACT. This paper presents some findings concerning peacemaking in restorative justice conferences. In guidelines and handbooks where the terms and conditions of restorative conferences are exemplified, forgiveness and reconciliation are not explicitly mentioned. However, many proponents of restorative justice assume that ‘coming together voluntarily’ will lead to rapprochement and reconciliation. Research findings in many ways contradict this supposed dynamic. Many victims want to teach the young offender a lesson. Others don’t want ‘closure’ or ‘restoration,’ and experience the pressure to come to terms as threatening. These observations make clear that notions as ‘forgiveness,’ ‘repentance,’ and ‘restoration’ are often too ‘big’ and ill-suited to function as core principles for restorative justice. It seems inappropriate to burden the process of coping with past injuries with these concepts. The process of moral learning within restorative justice conferences might better be conceived in terms of opening up and developing understanding.

KEYWORDS. Apology, forgiveness, reconciliation, reparation, restorative justice, retribution

1. INTRODUCTION

In recent decades, restorative justice has emerged internationally as a viable response to criminal wrong doing. During restorative justice conferences friends, relatives, and families of the offender and the victim come together voluntarily to confront the offender with the consequences of his act, and to discuss what should be done to put these consequences right. These encounters function as an alternative kind of conflict resolution in which offenders are held accountable to the people they have violated; they are given an opportunity to make things right with the victim

through some form of compensation. Victims have an opportunity to express the full impact of the crime upon their lives and to receive answers to any lingering questions about the incident. The added moral value of these conferences – compared with criminal proceedings – is that the offender is encouraged to take responsibility and apologize for misbehaviour and that the victim receives recognition.

Many proponents of restorative justice assume that the encounter will lead to a balanced process of reconciliation and forgiveness. Articulating a genuine apology would relieve the victim's distress and restore his / her worth, while expressing forgiveness would instil a sense of reacceptance in the offender. Many proponents do speak in terms of a 'regretting offender' and an 'understanding victim.' In the advocacy literature, victims are supposed to be forgiving and prepared to offer offenders a second chance, while offenders are willing to change their behaviour. The question is how realistic these ideals are. Is it reasonable to expect forgiveness and reconciliation between people who do not know each other and might have very diverging views on the criminal event? Another question is whether encouraging apology and forgiveness is ethically appropriate. Maybe offenders express an apology with strategic purposes in mind. Do victims have enough self-respect at their disposal to offer forgiveness?

This paper first – very briefly – sets out which ethical approaches and argumentations play a dominant role within theories of restorative justice. Although many theories do focus on reconciliation and forgiveness, in practice restorative justice schemes and guidelines do not mention these aims. Subsequently, some research findings are presented on how victims and offenders actually experience the conference process. Do mutual understanding and reconciliation play a dominant role during the process? Is the expression of forgiveness a relevant issue? The third part of the paper examines two problematic aspects of the apology: first, the aspect of 'compulsory compassion,' the implicit coercion to identify with the painful emotions of the offender, and second, the 'buy off,' the attempt to reduce punishment through offering a sincere apology.

Restorative justice conferences offer a unique ‘real world’ opportunity to examine hypotheses about peacemaking. Until now not many research findings on apologizing and granting forgiveness have been available. I will combine some heterogeneous research findings and theoretical interpretations to develop a more or less coherent picture of the reconciliatory aspects of restorative justice practices.

2. RESTORATIVE JUSTICE: THEORY AND PRACTICE

In his now classic study *Crime, Shame and Reintegration* (1989), John Braithwaite introduces the notion of ‘reintegrative shaming’ in restorative justice conferences. Braithwaite argues that public shaming directed at offenders is a powerful form of social control, if it is followed by efforts to reintegrate them. “Reintegrative shaming means the expressions of community disapproval ... are followed by gestures of reacceptance into the community of law-abiding citizens” (Braithwaite 1989, 55). Braithwaite claims that the proper use of shame might motivate offenders to seek reconnection with the community and that, following expressions of shame or repentance, the community might welcome back the previously unconcerned offender.

Thus, Braithwaite departs from the tendency of ‘liberal culture’ to condemn shaming sanctions completely. For shaming to be reintegrative, however, a clear distinction needs to be made between an unacceptable act and the person who has committed that act. Shaming – expressing disapproval – should be directed at the act without degrading or stigmatizing the actor. Still, many authors have criticized the notion of shaming: it is considered an affront to the dignity of offenders and would incite the public to behave irrationally. Braithwaite admits that shaming might be degrading, so the concern for reintegration should have the upper hand: after the shaming ritual the processes of apology and forgiveness should unfold.

In insisting that the rituals of apology and forgiveness should play a central role in the aftermath of crime, proponents of restorative justice are making a second ethical challenge to (neo)liberal culture. Whereas in recent decades it has become more and more acceptable to openly express anger and frustration with criminals and to demand harsh punishment policies, restorative justice theorists point at the meaninglessness of hating criminals and the need to break through the cycles of violence. Although the legitimacy and usefulness of expressing anger is not denied, they stress that resentment may become counterproductive. In this way a classical – Christian – trend towards a more forgiving attitude to wrongdoers is revived (Johnstone 2002).¹

The culture of restorative justice is ‘non-punitive.’ Many restorative justice theorists argue that punishment carries the seeds of more social discord and non-well being, and thus of more crime and criminalization. In Lode Walgrave’s view, the a priori position that crime must be punished is both ethically questionable and instrumentally inefficient (Walgrave 2003). Punishment is counterproductive: it is a serious obstruction to possible restoration.

However, this short sketch of core concepts within restorative justice theory misrepresents other positions and views. A diversity of theorists are studying restorative justice, from radicals – sometimes embracing the old abolitionist project (restorative justice as an alternative to criminal justice) – to pragmatists who favour piecemeal reforms (incorporating mediation within the criminal justice system). These pragmatists (Daly 2003; Johnstone 2002) tend to view restoration as ‘alternative to punishment’ as misleading. They consider a punitive response to crime to be indispensable, but try to combine it with the social constructiveness of restorative responses (Van Stokkom 2008).

Actually, many contemporary ethical paradigms play a role in interpreting restorative justice practices. The ethics of care, discourse ethics, and virtue ethics are recurring and frequently disputed perspectives. Some authors stress that the expression of caring as a response to offending is

well-founded (Masters and Smith 1998). But the question is whether ‘care’ conceived as ‘loving justice’ or ‘promoting well being’ does fit the confrontational logic of restorative justice conferences. Besides, restorative justice – as a justice paradigm – cannot get rid of concepts as rights and making autonomous decisions. Others (Mackay 1992) are in favour of a neo-Aristotelian approach to restorative justice, connecting restorative practices with promoting the human potential to act virtuously, especially promoting self-worth in victims and responsibility among offenders. Restorative justice practices are viewed as modern examples of justice as friendship within the polis (see also Schweigert 1999).

Other theorists are searching for a more discourse-oriented ethical justification of restorative justice: developing the ideal of ‘restorative communication.’ Albert Dzur and Alan Wertheimer (2002) argue that in the conventional adversarial process victims have no opportunities to express and validate their anger, fear and pain. Moreover, the criminal procedure does not help to challenge any stereotypes offenders have built up about their victims and about society in response to their crimes. Although restorative justice stimulates ‘two way communication’ (Duff 2001), it may be objected that this communication cannot satisfy the ideal image of a dialogue between equals. As will be argued below, the conference process is often unbalanced, because offenders find themselves in a morally subordinate position. Dzur and Wertheimer ultimately believe that a consequentialist understanding of restorative justice is most consistent with the language of ‘benefits’ for victims, offenders, and the community (also Braithwaite and Pettit 1990).

Antony Duff (2001) – nowadays one of the most influential ethical theorists in criminal justice – would not agree because we have to address offenders as responsible moral agents, not as instruments for crime prevention. He is a protagonist of ‘secular penance’ and ‘restoration through retribution’: the offender is persuaded to repent the crime and make good. He develops a ‘third-way’-theory in which punishment looks backward, as deserved retribution for the past crime, and also looks forward to self-reform and reconciliation.

Idealism versus 'real world' practices

Like Duff, many scholars have criticized restorative justice for failing to give the retributive response to crime its proper place. Justice could be done without the infliction of punishment. Annalise Acorn suggests that the more people are emotionally drawn into a religious ethic of love, the more they will believe that victim and offender may develop into allies. And the more they are committed to an ethic of non-violence, the more they will protest against the thought of inflicting suffering on others. Thus, restorative justice is tied to the age old human hope for the convergence of love and justice. Justice is based on love and mercy rather than opposed to it (Acorn 2004, 19).

Some proponents of restorative justice explicitly embrace a vocabulary of the Christian Gospel and expect the victim to forgive. They believe that reconciliation is lived in the community of the covenant of love between God and humankind. The biblical concept of justice promotes genuine reconciliation and shalom between offender and victim. God's love is not given because we earn it, but because we need it (Allard and Northley 2003).

The restorative 'sales pitch' contains many over-optimistic ideas. The advocacy literature offers many moving accounts of reconciliation stories, demonstrating their remarkable success at healing. Victims would recover from the offence and the apology of the offender would contribute to 'repairing the harm.'

Although this kind of rhetoric is part of the restorative justice movement, the conferences are generally implemented soberly and pragmatically. Conference mediators are instructed to avoid the use of the words forgiveness and reconciliation. Such words prescribe behaviour and put the participants under pressure. Victims could interpret these words as devaluing their victimization, or as judging their legitimate anger and rage as inappropriate. They may also feel guilty if they fail to feel forgiving, and shut down to the point that they miss the opportunity to express fully how the crime has affected them (Umbreit 2001, 25/6).

Thus, forgiveness is not at all an appropriate goal of the program. Forgiveness is only a possible by-product. If forgiveness occurs, it must arise spontaneously without a directive from the mediator. The primary goal of the conference is to offer a conflict resolution process that is perceived as fair and safe by the participants.

Forgiveness in the context of restorative justice reveals a paradox: if the concept is used as an explicit intervention, many victims and victim supporters would feel unsafe or offended. On the other hand, the more forgiveness remains in the background, the more likely it is that many victims will travel the path of authentic forgiveness (Peterson-Armour and Umbreit 2005, 500).

Forgiveness cannot be completely eradicated from the restorative process. As long as offenders make excuses and offer amends, victims will be incited to grant forgiveness. In this respect, victims do take an ambivalent position. Many studies (Strang 2002; Daly 2003) suggest that victims are more concerned with achieving the symbolic reparation of a genuine apology than to receive material reparation for property loss. Normally victims agree with relative ease on the technicalities of material reparation. They prefer receiving a morally convincing response from the offender. A sincere apology offers a way to heal the emotional damage caused by the offence. On the other hand, when an apology is expressed, the victim might think that she is obliged to grant forgiveness. The offender's apology may also 'soften up' the victim, making it difficult for him / her to be forthright about the impact of the crime. This is particularly true if the offender is young. Besides, the offender may have self-serving motivations to apologize: he doesn't want a criminal record, or wants to keep out of prison. The apology may be expressed for sheer instrumental reasons.

In sum, the moral dynamic of restorative justice conferences may reveal contradictory attitudes: victims want to express resentment, but may also be 'softened up' by a genuine apology. Offenders are asked to give up their defensive stances and take responsibility, but their apologies may disguise a strategic ploy.

3. RECONCILIATION IN RESTORATIVE JUSTICE CONFERENCES: SOME FINDINGS

I want to present some research findings – based on post-conference surveys and participatory observation – which offer some insights in offender and victim peacemaking attitudes. These empirical data are mainly from Australia where youth conferencing is a high-volume activity, and as a consequence organizational routines often trump restorative justice ideals, goals like preparing the participants well for the coming confrontation. Before examining these data it must be stressed that conferences do attract all kinds of victims and offenders with very diverse degrees of readiness to make the process work. Offenders and victims are not equally disposed to be restorative toward each other, to listen to each other, or to be willing to repair harms. Many are committed only half-heartedly to the process, others prize the opportunity to tell about the impact of the crime. “Some come to conferences with negative orientations and closed minds that cannot be changed, others come with positive orientations and open minds. The conference process may engage restorative orientations already present in offenders and victims, or may create openings for those orientations to emerge. However for those victims with fixed negative attitudes (e.g., those who think the offender is a ‘bad person’) the process is unlikely to move them in a more positive direction” (Daly 2003).

Authoritative victims: helping young offenders

In her evaluation of the South Australian Juvenile Justice (SAJJ) project on restorative conferencing, Kathleen Daly (2003; 2004) examined the apologies offenders offered. Just over 40% of the juveniles apologized spontaneously to the victim at the conference, but for 28% the apology had to be drawn out, and in 30% there was no apology made at all. When asked why they decided to say sorry, 27% thought they would get off

easier (reduced punishment). The interviews that Daly conducted reveal that most victims thought that the young person's motives for apologizing were not sincere; most were unmoved by the offender's story at the conference. Only one quarter of the victims believed that the main reason that young persons apologized was because they really were sorry. By contrast, 61 per cent of the offenders said that they were really sorry. Daly points out that this mismatch of perception is always present when apologies are made and received.

Many offenders were not really prepared to apologize. Just under half of the young offenders hadn't thought at all about what they would say to the victim at the conference. They didn't take an active role in speaking to the victim. They were not there to repair the harm but rather to answer questions and hope that they didn't get too many hours of community service.

Analysing victim effects in the Rise project in Canberra, another Australian criminologist, Heather Strang (2002), found more positive results. For instance, over three quarters of the victims believed the apology was sincere. About 40% of the victims later said that they forgave their offenders. Strang adds: "A forgiving disposition may be indicated by the 36% per cent of all conference victims who said that wanting to help the offender was an important reason for their attending the conference at all" (Strang 2002, 111/112).

The Australian findings show that the parties do not meet on equal terms. Young offenders often remain silent, victims (and other adult participants) challenge them or want to teach them a (shaming) lesson. Some American studies in which these power imbalances were observed in detail, confirm that most offenders only play a marginal role during the process of victim-offender mediation (Arrigo and Schehr 1998; Presser and Hamilton 2006). The 'discourse of reconciliation' speaks for (and over) them. They do not pick up the language of peacemaking, are unable to articulate remorse feelings or even acknowledge its appropriateness; many speak as a 'divided subject' and cannot deal with the underlying

alienation. The young offenders (unconsciously) resist against this marginalization. Some ‘play the system’ and feign cooperation.

Victims and other adults, including the parents of the offender, take over authority. Some quotes may illustrate how the motives of ‘shaming’ and ‘helping’ coexist. An adult burglary victim establishes himself as both manly and good and was like a father to the offender: “A lot of people think I would bust your head wide open. No, that’s not the answer. The answer is what we are doing today.” Another victim: “I don’t want to see you in lock-up [jail]. I got you outa that. But with your permission, you screw over your Mom and Dad and I am gonna beat your ass. You understand me?” (Presser and Hamilton 2006, 329, 332).

Highly distressed victims: keeping distance

In the bulk of Australian conference cases, victims weren’t harmed much. Many wanted to help the young offenders, be it in a crude or annoyed way. However, this helping attitude changes when victims are deeply touched by the aftermath of victimization, for instance after a violent offence. These highly distressed victims are far less engaged in restorative behaviour during the encounter and remain frightened of the offender after the encounter (Daly 2004). Most of these distressed victims prefer to be treated fairly, than to find common ground with offenders. Non-distressed victims who are only ‘lightly touched’ by a crime tend to reason the other way around. For this group it is easier to be other-regarding and be empathetic towards offenders. They orient themselves more readily to peacemaking. A striking result from Daly’s data was that after the conference ended, the highly distressed victims were far more likely to remain angry and fearful of offenders. They were inclined to see the offender still as a ‘bad person.’ Listening to the offender caused renewed revenge feelings, rather than personal recognition or emotional recovery from the injury.

Thus, serious victimization keeps off seeking mutual understanding with offenders. This finding also prevails in a Dutch research on victim-

offender mediation (Leest 2007). Victims of violence generally are not able to articulate what happened exactly to them. For many the event is still beyond comprehension. These victims show their resistance by articulating haphazardly, or being silent. In a context of violence, words as ‘restoration’ and ‘understanding’ seem out of place.

Judith Leest characterizes the restorative justice conference as an unpredictable event in which victims are forced to reposition themselves when confronted with the bodily appearance of the offender. It is a transition ritual which brings forth clenching experiences and a strong ‘now’-perception that may incite strong emotional reactions. Many victims have a drive to be recognized, even to ‘submit’ the other, which allows a repositioning with regard to the crime. In this process, Leest says, reconciliation may loom up as a ‘dangerous utopia,’ because the prospect of reconciliation or bonding is often experienced as threatening.

The conferences Leest studied generally do not bring about efforts to seek common ground or a shared horizon. In the context of crime and violence, communication primarily has the meaning of perplexity, aversion, and incomprehension, being confronted with aspects of human existence that the participants believed to be impossible. Nevertheless, Leest adds, victims need the offender to confront themselves. When facing the other, personal views begin to slide, not into the direction of sympathy, but as an opening up of the ‘fractured self,’ which may lead to a readjusted victim-status or regained self-respect.

Some interpretations

These research findings indicate that victims are not really willing to grant forgiveness and offenders not really willing to repent. Many victims are not ready to see the truth from the others’ standpoint. Even when offenders apologize and promise to repair the damage, highly distressed victims withhold sympathy. Re-envisioning the wrongdoer is beyond their reach, often because their anger and resentment have not been moderated.

Most youngsters do not show much sympathetic understanding of how their deeds affected the victim. They apologize but do not seem to engage in the victim's point of view. Daly (2003) concludes that young people appear to be more interested in repairing their own reputations than in repairing the harm to victims. Many youngsters may not yet have the capacity to think empathically. Presser and Hamilton (2006) suggest that most young persons lack the moral wisdom to participate in a reconciliation discourse. At the same time, their moral competence seems to be overshadowed by distrust and defiance. The language of peacemaking contradicts their sub-cultural reputations.

Restorative justice conferences do not seem to offer an interpersonal scene of apology and forgiveness, in which moral relations between the parties are balanced. There seems to be no moral reciprocity between injurer and injured. In fact, the victim and other adult participants hold the offender in their power: the offender is blamed and is 'overrun' with moral superiority. However, this lecturing is often counterbalanced by the urge to care for the young offender. Many victims show compassion: a willingness to promote the welfare of the offender, give them a last chance and prevent the option of being sent to prison. Many tend to see the wrongdoing of the young offender as attributable to lack of maturity rather than to actual malevolence. They pity his privations, bad influences, and emotional wounds that led him to the crime.

Thus, spontaneous compassion for the young offender may become the dominant energetic force during the encounter. Because many victims want to help the offender, it would be tempting to suggest that these victims are prone to forgive. But that would be a too hasty conclusion. To be sure, when forgiveness shows up in this context, it is often an expression that the youngster deserves a new start and should be released from the threat of punishment. But in fact the victim only wants to be generous. The 'I forgive you' does mean a kind of fellow-feeling, not a reconsideration of the injury that the offender caused. When 'real' forgiveness would be at stake, the victim would require good reasons to give up her

judgment that the wrongdoer warrants continued resentment. Being young and being pitiful are not good reasons. Nor is the desire to comfort the offender. A good reason would be that the offender commits himself to becoming the sort of person who does not inflict injury. Or providing an account that he is not just a wrongdoer and that the wrongdoing did not express his ‘total person.’ But in the large majority of cases, offenders do not seem to put in much effort to reframe themselves, nor are they seeking to persuade the victim of their credibility. Yet within restorative justice conferences the aim of reframing each other’s identity would be far too ambitious. A two-hour conference is not able to instigate this re-envisioning process, although it may offer a beginning.

4. THE APOLOGY: TWO PROBLEMATIC ASPECTS

Although forgiveness and reconciliation seem to be quite uncommon in restorative justice conferences, there is clear evidence that crime victims want apologies. Of course, highly distressed victims generally tend to stick to resentment and do not seem to expect the offender to make excuses. But the majority of crime victims appreciate that the offender apologizes, repudiates his deeds, expresses regret, and promises to change for the better. There is also clear evidence from clinical research that apologies influence whether forgiveness occurs. An apology stimulates emotional dissonance and humility, which allow victims to recognize their own transgressions and respond based on commonalities rather than differences (Peterson-Armour and Umbreit 2005, 497). Even weak or indirect apologies influence the willingness to forgive, but victims report reduced revenge, less anger and more forgiveness only after a ‘strong’ apology (Exline and Worthington 2003; Exline and Baumeister 2000).

But as stated above, apologizing in restorative justice conferences seems to incite compassion rather than forgiveness. Nevertheless, the victim may come into a position that she feels obliged to grant forgiveness.

In the remainder of the article I will discuss two problematic aspects of expressing an apology, first the effect of ‘compulsory compassion,’ and second, the ‘buy off.’²

Compulsory compassion

Some researchers claim that expressing forgiveness belongs to the ‘core sequence’ of the emotional dynamics that unfolds during the conference (Retzinger and Scheff 1996). Before that stage is attained the emotional dynamics is dominated by feelings that belong to truth-telling and reporting what was the impact of the crime. During these stages the victim (and usually also the parents of the offender) are highly indignant about the offence and blame the offender for his faults. This condemnatory atmosphere seems to dissipate as the offender apologizes. As soon as vulnerable emotions come in, like regret, sorrow, and grief, the core sequence may take off. According to Suzanne Retzinger and Thomas Scheff (1996), even if the emotional exchange during this sequence is only very brief, it is the key to restoring the victim’s peace of mind and to instilling a sense of reacceptance in the offender. Without this sequence, agitation and tension remain, and the participants continue to feel dissatisfied. Usually, such an exchange only occurs after the formal part of the conference, when the pressure is off and offender and victim can meet in a more private atmosphere.

It seems that Retzinger and Scheff (also: Moore 1993) interpret the core sequence idealistically (Van Stokkom 2002). They describe this key phase as a process of identification, but fail to point to the potential dangerous aspects of ‘sympathetic resonance’ and ‘emotional contagion.’ The painful words of the apology may move, impress, or embarrass the participants, so much that they do not choose deliberately whether or not to accept the account of the offender. The victims may be carried away, giving in to the urge to comfort the offender, show mercy, condone his criminal behaviour, or grant forgiveness.

But, as said above, ‘pure’ forgiveness cannot be combined with being affected in compulsory ways and the corresponding loss of control. Forgiveness assumes that the victim does not forget herself when sympathizing; the difference between self and other remains present. Of course, identification enables a ‘change of heart,’ but to forgive one needs to reframe the self: projecting a story about the self one wants to be, in relation to the vicissitudes of the past. Forgiveness also embodies an element of commitment, the commitment to forswear revenge and to let go of resentment, and to give good reasons for these intentions. That requires changes in the tale of resentment and its incorporation into a larger account. Resentment is a species of moral anger that is deliberative rather than impulsive, and embodies a judgment about the unfairness of wrong doing and the potential aggravating and mitigating factors (Griswold 2007).

The apology as a ‘buy off’

Symbolic reparation, it seems, will only satisfy when offenders apologize sincerely and are genuinely moved by their victim’s plight. Thus the benefits of the restorative justice conference are conditional on the offender’s emotional engagement with the process. But what happens when offenders do not feel much regret, for instance because they have another view on the offence or because they think they are unfairly treated? Apologizing may become a strategic ploy, one in which the offender does not have a true emotional involvement, so as to ensure favourable restitution arrangements or to avoid further problems with police or justice. As stated above, victims regularly interpret the apology as insincere. Daly found that most victims were unmoved by the offender’s story at the conference. A quarter of the young offenders thought they would get off easier if they would say sorry.

Some theorists try to avoid these difficulties by developing ‘proofs’ of sincerity. They stress that the mediator and participants have to form

a good picture of physical signs of vulnerability as emitted by the offender. In offering a genuine apology, David Moore says (1993, drawing upon Tavuchis 1991) that the offender must drop all defences, including the defence of being ‘childlike’ or other signs of lacking moral responsibility. It is believed that the expression of a ‘defenceless stance’ prevents playing with emotions.

This claim to detect signs of sincerity raises the spectre of ‘forced confession.’ It would be both impracticable and insulting if we would search for conclusive evidence of the person’s sincerity before we accepted the apology. Offenders shouldn’t be required to express attitudes they do not believe in. If they would have an obligation to be sincere, the old Christian test of ‘perfect contrition’ could easily be resurrected, and ‘restorative clergymen’ would have the task to track signs of disingenuous behaviour and unsatisfactory self-chastising.

Thus, restorative conferences must not be loaded with the task to assess whether genuine acts of apology did occur. Still, apologies have an important role to play and many victims adhere to their moral message. Christopher Bennett has formulated an elegant (and provoking) way out. He proposes to arrange a formal, public ritual after the conference, in which the offender reads aloud a written apology. This text contains concise specifications that may better meet the expectations of the victim, other participants and the community. Reading such an apology would not require the expression of specific emotions. In the terms of Bennett: sincerity doesn’t constitute a necessary aspect of apologizing, although the statement will probably hold elements of regret and remorse (also Joyce 1999). In other words, public phrases read by the offender as ‘I regret’ and ‘I apologize’ are not necessarily reports of sentiments, but speech acts aiming at moral persuasion. Of course, these words might have effects on the sentiments of the audience. But the function of the ceremonial expression of apology is to communicate a moral viewpoint impersonally (also Griswold 2007, 141/142).

5. CONCLUSION

The empirical basis of the research findings presented in this paper is rather small, so solid and clear-cut conclusions are not warranted. But the findings suggest among other things that young offenders do not show much sympathetic understanding of how their wrong doing affected the victim. They apologize often in a half-heartedly or defiant way. Many are not willing to take up the language of peacemaking and think they are subjected to a meaningless ceremony. A considerable group of victims – having faced not much harm – wants to help young offenders out and give them a second chance. Other victims are too distressed to sympathize or find common ground. For these reasons, the restorative justice conference cannot be conceived as a ritual of reconciliation properly speaking. The conference is rather a ritual of truth telling, although chiefly unilateral with the victim (and other adults) in a dominant position.

This discussion makes clear that notions like ‘forgiveness,’ ‘reconciliation,’ and ‘restoration’ are often too ‘big’ and ill suited to function as moral guides for restorative justice conferences. It seems inappropriate to burden the process of coping with past injuries with these concepts. The process of moral learning within restorative justice conferences might better be conceived in terms of opening up the self and developing (the beginnings of) understanding. The process of symbolic reparation could be confined to expressing a sense of respect and regaining (some) confidence in one’s fellows.

Forgiveness may work well as a way of healing rifts and settling disputes amongst people who are closely bound together, and who are eager to maintain and repair these bonds. But many offenders have too little in common with their victims to be willing to repent and be able to share their view of the offence. Although many victims moderate their resentment and show (compulsory) compassion after the offender has voiced his excuses, conscious acts of forgiveness occur only occasionally. Forgiveness only has a marginal meaning in practices of restorative justice.

But this is not true for apologizing, which is inseparable from the restorative protocol. To satisfy the legitimate wish of the victim to receive moral recognition, a conclusive apology is welcome. ‘Conclusive’ not in terms of sincerity, nor as invitation to identify with painful words, but in terms of giving a deliberate moral account for wrong doing.

The findings presented in this contribution do not seem to be encouraging in terms of reconciliation. That does not mean that restorative justice practices fall short of moral expectations in all respects. On the contrary, viewed from the angle of procedural justice most restorative justice conferences are quite successful (being treated fairly and with respect; being consulted and listened to) (Strang 2002; Strang et al. 2006). Besides, notwithstanding the disappointments mentioned earlier, restorative practices are promising as processes of personal communication. Compared with criminal trials, these settings have the benefit that the participants can talk unconstrained about their own experiences. Of course, this comparison is partly inadequate because criminal proceedings do not aim to discover what happened as lay persons might understand it, but to test the defendant’s guilt in relation to a specific charge. But the concrete needs of the participants – getting recognition, showing responsible sides of the self – also count. If victims and offenders want to address the other party directly and find ways to overcome being tied down to the criminal event, restorative conferences hold forth good prospects. However, expecting that the parties may develop into allies is entirely beside the point.

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NOTES

1. This shift from resentment to forgiveness is also dominant in recent ethical theory revolving around transitional justice and post-conflict peace-building strategies. The South African Truth and Reconciliation Commission has been an important model and source of inspiration for many other countries in dealing with their past grievances and internal conflicts. Theological thinking emphasizes how testifying in these public events may lead to forgiveness and healing. More pragmatic authors as Charles Villa-Vicencio (2007) argue that restorative justice is necessarily a modest exercise when it comes to restoring victims and rehabilitating offenders. Also the topic of reparations to victim groups and communities has lately been revived in ethics. Walker (2006) argues that reparation claims in the framework of restorative justice are focussed on human relationships, not material losses.

2. Although offering some convincing critiques (and an appropriate term as 'compulsory compassion'), Acorn (2004) more than once makes a caricature of restorative justice theory. Without referring to sources she often attributes all kinds of blatantly naïve suppositions to this theory.