

ARTICLE

Forgiveness, compassion and loving kindness in restorative justice

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*Iustitia sine misericordia crudelitas est*¹

Saint Thomas Aquinas

1 Forgiveness as an emergent value ... to be encouraged

Although remorse, forgiveness and reconciliation are not explicit objectives or goals of restorative justice (Zehr, 2015), restorative justice nevertheless offers *room* and even a *suitable context* for their development (Blad, 2013; Zehr, 2015). In other words, certain contexts can serve as ‘appropriate biotopes’ for the (re)connection between people, and restorative justice provisions, such as victim-offender mediation and group conferences, appear to serve as such biotopes (Deklerck & Depuydt, 2004: 217). The Dutch sociologist Bas van Stokkom (2008: 415; also Van Stokkom, 2018: 35-37) contends that ‘notions as forgiveness, repentance and restoration are often too “big” and ill-suited to function as core principles of restorative justice’. He nonetheless acknowledges that forgiveness is ‘a possible by-product’ of it (Van Stokkom, 2008: 405, 2018: 35). Most restorative justice scholars do contend that there is *room* within restorative justice for remorse and forgiveness. Some – like myself – even go a bit further and recognise that restorative justice provides not only *room* but also a *suitable context* for their development.

For example, Australian criminologist John Braithwaite contends that forgiveness is ‘an emergent value’ of restorative justice, something that, as a consequence, can emerge from the restorative justice process (Braithwaite, 2016: 84-85). Remorse and forgiveness are, as Braithwaite rightly observes, ‘journeys of empathy’ which only have power ‘when they are gifts that come from the heart, that manifest no coercion’ (Braithwaite, 2016: 86). He nonetheless agrees with ‘the practice principle that we can *encourage* it [forgiveness] without of course demanding it or even urging it’ (Braithwaite, 2016: 86). Within this context he

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1 Justice without compassion is cruel.

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distinguishes between the wise encouragement of forgiveness, on the one hand, and the unwise expectation of forgiveness, on the other hand, and concludes:

We should not ... 'expect' forgiveness in the public sphere. Rather, forgiveness should be a light on the hill in a politics of hope ... Restorative justice advocacy for me is itself the path to that potential politics of hope ... A restorative justice that expands the sphere of forgiveness ... in the criminal justice system ... is therefore a light on the hill (Braithwaite, 2016: 87-89, 92).

In fact, we can find the same thoughts on forgiveness (and remorse) in Braithwaite's earlier work. In an article from 2002, Braithwaite formulates a set of standards for restorative justice (Braithwaite, 2002a: in particular, 568-572). In addition to *constraining* standards (standards that must be honoured and enforced as constraints, such as 'non-domination', 'equal concern for all stakeholders' and 'respectful listening') and *maximising* standards (standards that should be encouraged actively, such as 'restoration of human dignity', 'restoration of damaged human relationships' and 'restoration of peace'), he distinguishes *emergent* standards – which are no less important than maximising standards – meaning: 'values we should not urge participants to manifest ... If we try to make them happen, they will be less likely to happen in a meaningful way' (Braithwaite, 2002a: 570-571). Among other values, Braithwaite explicitly qualifies remorse, apology and forgiveness as emergent values and writes the following about forgiveness:

It is cruel and wrong to expect a victim of crime to forgive ... Apart from it being morally wrong to impose such an expectation, we would destroy the moral power of forgiveness ... to invite participants in a restorative justice process to consider proffering it during the process ... It cannot, must not, be expected (Braithwaite, 2002a: 571).

In his book *Restorative justice and responsive regulation* (2002b), Braithwaite writes – in line with the aforementioned article – the following about forgiveness:

... there are ... important values where we do not ask anyone to pursue them directly, yet we hope that restorative processes can be designed so that indirectly these values will be realized. Forgiveness is the prime example. Many of us believe that if we can create spaces that give victims an opportunity to discover how they might bring themselves to forgive, this is the most important thing we can do to promote the healing of both the victims themselves and of those who hurt them. Yet it is wrong to ask victims to forgive and very wrong to expect it of them. Forgiveness is a gift victims can give. We destroy its power as a gift by making it a duty (Braithwaite, 2002b: 15).

Braithwaite's vision on the 'role' of forgiveness within restorative justice has not changed fundamentally over the past fifteen years. Nonetheless, in my opinion, a slight but interesting shift seems to have taken place in his thoughts, since

Braithwaite states, in 2016, that we can (wisely) *encourage* forgiveness without demanding or urging it, while in 2002 he argues that only maximising values – which forgiveness is not – should be encouraged (actively). Does this mean that in Braithwaite’s vision forgiveness has de facto moved a bit towards the category of *maximising* values? Or is there a difference between ‘encouraging’ and ‘actively encouraging’? And how can forgiveness be encouraged without enforcing, urging, demanding, imposing, expecting, asking (to pursue) or inviting victims to forgive?

Does ‘encouraging’ stand for *hoping* that restorative processes can be designed or perhaps for *trying* to design or maybe even for *designing* those processes in such a way that forgiveness indirectly will be realised – without (actively) encouraging *concrete* victims to forgive? This interpretation of ‘encouraging’ would make sense to me bearing in mind Braithwaite’s (implicit) plea for a restorative justice that ‘expands the sphere of forgiveness’ and that ‘creates spaces that give victims an opportunity to discover how they might bring themselves to forgive’. The bottom line seems to be that Braithwaite – like myself – recognises that restorative justice provides not only *room* but also *a suitable context* for the development of forgiveness (and remorse). In other words: the encouragement lies intrinsically within the restorative processes themselves.

2 Forgiveness as a maximising value to be expected?

British theologian Paul Fiddes goes a step further than Braithwaite. Referring to the theological dynamic of forgiveness (in which forgiveness is initiated by the victim rather than the offender), Fiddes contends that forgiveness is not so much an emergent value of restorative justice as a ‘maximising standard’. Maximising standards are ‘good consequences that do not constrain the process but which we will want to “maximize” as it is carried through’, says Fiddes in line with Braithwaite (Fiddes, 2016: 56). Within this context, he refers to ‘a continuum between maximizing and emergent values’, placing forgiveness ‘on the maximizing side of the boundary’ (Fiddes, 2016: 56). Although restorative justice practices are likely to be ‘appropriate biotopes’ for (re)connection, I will not go so far as to endorse Fiddes’ statement that forgiveness is a maximising value, meaning ‘a good within the process which should be *expected to happen* and be encouraged’ (Fiddes, 2016: 61, emphasis added).

Although in Christianity God/Christ is the victim who initiates forgiveness and this gift of forgiveness may encourage an offender to repent, I consider it neither prudent nor realistic to *expect* that ordinary flesh-and-blood victims will forgive their offenders unconditionally – as God/Christ does. (Unconditional) forgiveness sometimes does occur, but, as I see it, the problem lies in *expecting* ordinary people to be like God/Christ. Encouraging and facilitating them to be like God/Christ – by shaping a restorative justice that ‘expands the sphere of forgiveness’ and that ‘creates spaces that give victims an opportunity to discover how they might bring themselves to forgive’ (see the previous paragraph) – is the highest achievable goal in terms of what is morally justifiable and practically effective.

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As to Braithwaite, to me, remorse and forgiveness are 'lights on the hill in a politics of hope'. Equally so, in my view, is a restorative justice that *expands* the room for forgiveness within the criminal justice system but does not *expect* that extra room to be used. It is in this way that we can avoid the misconception that restorative justice *equals* forgiveness in the sense that the latter is an objective or a goal of restorative justice.

3 The importance of empathy for the development of forgiveness and compassion

Like Braithwaite, who speaks of remorse and forgiveness as 'journeys of empathy', I attach great importance to the concept of empathy, which is one's capability to put him- or herself cognitively and/or affectively in the position of the other and thus to become aware of the other's position.² Empathy or to empathise with the one whom you have hurt (empathy of the offender with the victim) or with the one who has hurt you (empathy of the victim with the offender) is not only an important step in the process of remorse respectively forgiveness (Worthington, 1998), but also a prerequisite for compassion, which implies 'to endure [something] with another person ..., to feel [his] ... pain as though it were our own, and to enter generously into [his] ... point of view' (Armstrong, 2011: 6) – resulting in the motivation to alleviate the other's suffering and to help him. French Buddhist monk Matthieu Ricard writes:

Loving kindness and compassion are ... two aspects of altruism. Their purpose determines the difference between the two: loving kindness wishes that all beings may know happiness, while compassion focuses on the removal of all their suffering (Ricard, 2015: 45).

Empathy, let alone mutual empathy, rarely arises in criminal law. Perhaps the victim who makes use of his right to make an impact statement can trigger some empathy on the part of the offender, but generally criminal proceedings or punishments facilitate (mutual) empathy only to a very limited extent. Be that as it may, within the restorative justice process, empathy for the victim may be instilled in the offender. If the offender, when confronted with and moved by the personal story of the victim, begins to experience guilt and shame, no longer wishes to be associated with his crime and is willing to actively take responsibility to undo the damage that he inflicted on the victim, he will, because of his remorse (which requires empathy), set off on the path of positive change towards a better future for himself and the other. In fact, out of remorse, the offender wants to alleviate the victim's suffering; just like compassion, remorse then focuses on the removal of the victim's suffering.

2 For more information about empathy, see: De Waal (2009); Nussbaum (2014); Krznaric (2015); Ricard (2015).

When the offender shows his 'better self' to the victim, the latter can respond with trust and hope, as he becomes aware that the offender, like himself, is neither exclusively capable of evil nor invariable in behaviour. It is also possible that the victim's negative emotions (e.g. anger, fear, sorrow) are eased, that his anger directed towards retribution, in the sense of revenge, converts into 'transition anger'³ (meaning constructive anger directed towards the future, towards positive change and bringing about well-being for all) and even that his negative emotions make place for positive ones, such as loving kindness and compassion (which also require empathy) – from which forgiveness may blossom. This process, which is also referred to as 'emotion work', can take place within the context of restorative justice (Leest, 2002). Within this context (mutual) empathy serves in a way as 'the pivot point' (Claessen, 2017: 83-84).

4 Forgiveness or compassion?

Van Stokkom makes an explicit distinction between forgiveness ('swiping the slate clean') and compassion (Van Stokkom, 2018: 38). Although forgiveness belongs to 'the ethos of restorative justice', he voices the opinion that it plays only a 'secondary role' herein – as 'a possible by-product' at most (Van Stokkom, 2018: 34-35). Sincere apologies from the offender and his wish to change his behaviour for the better seem to lead to compassion rather than forgiveness on the part of the victim, says Van Stokkom (2018: 37). He defines compassion as 'the willingness of the victim to judge the offender in a more gentle way' out of 'care for (the future of) the offender' – and also in order to prevent reoffending and new victimisation (Van Stokkom, 2018: 34 and 38-39). In fact, compassion is the 'desire-to-take-care-of-the-other'-aspect of empathy (Gobodo-Madikizela, 2018: 15; Van Stokkom, 2018: 39). Van Stokkom links compassion also to 'granting the offender a second chance', on the basis of which he deserves a more lenient or constructive sanction (Van Stokkom, 2018: 45). He distinguishes within the context of the concept of compassion three 'goodwill factors': 1. clemency or mercy; 2. tolerance and 3. respect (Van Stokkom, 2018: 39-42).

The first factor is about the prevention of 'undeserved suffering' by taking into account the harmed person of the offender and the difficult circumstances in which he finds himself. Seen in this way, clemency or mercy can be labelled as 'deserved compassion', which actually belongs to the realm of justice. After all, within the context of the sanctioning process, the judge has to take into account not only the seriousness or severity of the offence, but also the person of the offender and the circumstances of the case. The second factor concerns the tolerant or lenient attitude of the victim towards the (often young) offender, because he sees the offender's wrongdoing as 'an incidental misstep' and believes that the offender has already learned his lesson from it. The third factor is based on respect for the offender's remorse and his wish to change his future behaviour. Van Stokkom concludes his exposé as follows:

3 For more information about 'transition anger', see Nussbaum (2016).

Compassion and care play a certain role in all three factors ... Nevertheless, it is the third factor that will weigh heavily on the willingness of the victim to judge the offender in a gentler way. In that case, the offender has not only apologised, but he has also committed himself to restoration. The victim believes the offender's sincere motives and has the feeling that trust has been restored or can be restored. The offender's commitment can induce the victim to take a mild position: the full penalty must be avoided in order to make the restoration process a success. Care for the offender's rehabilitation and behavioural change plays an important role within this context (Van Stokkom, 2018: 42).

5 What's in a name?

My question to Van Stokkom is: why can this third factor not be called forgiveness? Van Stokkom makes an explicit separation between forgiveness and compassion, so in Van Stokkom's perception this factor simply cannot be called forgiveness. However, from my perspective this third factor can certainly be called forgiveness, since I believe such a separation cannot be made. Surely, we are then referring to a conditional form of forgiveness, and according to some, Christian scholars in particular, conditional forgiveness is no real or complete forgiveness, since the latter is unconditional by nature (Claessen, 2017: 25-27). Nevertheless, I would argue that under the influence of the remorse of the offender and his cooperative attitude towards restoration and constructive future behaviour, the negative judgement and the negative feelings of the victim (e.g. anger, fear and sorrow) (partly) make way for a positive judgment and positive feelings (e.g. loving kindness and compassion), from which – not respect but – forgiveness follows in the sense of (partially) refraining from retaliation. My own definition of forgiveness is: 'the (partial) refraining by the victim ... from retaliation (the external process) through (partially) overcoming negative feelings towards the offender (the internal process)' (Claessen, 2017: 27; Corstens, 2019).⁴

Like American philosopher Martha Nussbaum, I believe that respect itself – although definable as a *feeling* of appreciation or admiration for someone because of, for example, his achievements – is insufficient, namely too cold and rational, to (re)connect people; to bring respect truly to life we need stronger emotions such as loving kindness and compassion that explicitly focus on the other's well-being (Nussbaum, 2014: 25 and 107). The question is whether respect, which may appear quite 'detached', can be an aspect of compassion, which is an affectively loaded concept linked to 'an open heart'. If the victim's respect implies such an appreciation or admiration for the offender's remorse and wish to change future behaviour that this respect leads to the victim's rejection of the full penalty, then what is the difference between respect and conditional forgiveness? Do they differ so much from each other that they have to be separated in such a way that

4 See also: 'If forgiveness needs to be put in positive terms, it may be argued that it is related to love and compassion and to the (intuitive) insight that, in essence, people are all connected' (Claessen, 2017: 27).

respect belongs to the realm of compassion and forgiveness does not? In that case, my vision is that forgiveness and respect have to do with 'sensed insight', in which both intellect and emotion come together. I find Van Stokkom's definition of all 'goodwill factors' (clemency or mercy, tolerance and respect) too cold and rational. I miss the affective load that is intrinsically enclosed in compassion and that incites and motivates people to act – the intellect alone is too weak for that.

Can forgiveness be separated from loving kindness and compassion? I don't think so. In my opinion forgiveness stems from them. Common expressions such as 'loving forgiveness' and 'forgiving love' make this clear (Claessen, 2017: 15). And while Ricard links loving kindness and compassion to altruism, American psychologist Everett Worthington speaks of forgiveness as an 'altruistic gift' (Worthington, 1998: 107-137). Therefore, via loving kindness and compassion there seems to exist a connection between forgiveness and altruism. Braithwaite also implicitly establishes a link between compassion and forgiveness in his work when he writes: '... compulsory compassion is not the problem, while it is unusual for restorative justice programs to ask, let alone compel, victims to forgive' (Braithwaite, 2006: 440). Furthermore, he not only argues that restorative justice provides a suitable context for the development of forgiveness but also that restorative justice is about 'creating spaces where it is more possible for compassion to flourish than in traditional criminal justice institutions' – without compelling victims (or offenders) to show compassion (Braithwaite, 2006: 437). Incidentally, I find it remarkable that Braithwaite qualifies (the restoration of) compassion (or caring) as a *maximising* standard and not – as is the case with forgiveness – as an *emergent* standard (Braithwaite, 2002a: 569). Why is compassion a *maximising* standard and forgiveness not, or, to put it the other way around: why is compassion not an *emergent* value like forgiveness?

In this context, it is interesting to mention British philosopher Geoffrey Scarre, who – inspired by the work of the Austrian-British philosopher Ludwig Wittgenstein – argues:

Forgiveness seems too broad, too varied and too vaguely bounded a phenomenon for its essence to be captured in some statement of necessary and sufficient conditions. It would be hard to find any positive claim made by a philosopher about the nature of forgiveness that is not falsified by particular cases (Scarre, 2004: 25).

For that reason, forgiveness belongs to those concepts that refer to 'a range of things which, like the members of a family, share no single common feature but are related by various patterns of resemblance'; at bottom, according to Scarre, forgiveness is a 'family resemblance term' (Scarre, 2004: 25). Does the same argumentation not apply to loving kindness and compassion – and maybe also to clemency or mercy, tolerance and respect?

The concept of forgiveness is almost exclusively connected to the Judaeo-Christian-Islamic culture and its accompanying ethics, in which – next to justice (*tzedakah*) – also love (*agape* or *caritas*) plays an important role. In the moral world of the ancient Greeks and Romans, the emphasis was much more on clem-

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ency or mercy – to temper justice (*dikaionè* or *justitia*) (Scarre, 2004). In Hindu and Jain ethics non-violence (*ahimsa*) is at the centre, in Buddhist ethics the focus is on loving kindness (*maitri*) and compassion (*karuna*), and in Confucian ethics on loving-kindness (*ren*). Even though on the surface (because of the influence of place and time) there will certainly be differences between all these concepts, I am nevertheless convinced that, in essence, all these concepts are members of one family (simply because all human beings are members of one family) (Libbrecht, 2004; Smith, 2000). In short, they can be distinguished but not separated.

Analysing and defining the aforementioned concepts can certainly be of some (scientific) value, but there is a danger in ‘over-analysing’ – and thus separating – them: when human experiences do not fit the author’s definition of a certain concept, for example forgiveness, his or her conclusion will be that these experiences cannot be qualified as forgiveness. However, bearing Scarre’s words in mind, the problem is that no exhaustive definition can be given to concepts such as forgiveness. Maybe the author disqualifies certain experiences as forgiveness, while others do qualify them as such. Using a Procrustean bed violates reality, which cannot be caught in watertight boxes. To quote Shakespeare: ‘What’s in a name? That which we call a rose – By any other name would smell as sweet’ (*Romeo and Juliet* – Act II, Scene II).

6 From separateness towards connectedness

In my opinion restorative justice is embedded in a view of mankind and the world, which is premised on the idea that, in essence, all people are connected and consequently depend on one another – a view of man and the world that also has moral and legal implications. In the words of the American restorative justice scholar Howard Zehr: ‘all things are connected to each other in a web of relationships’ (Zehr, 2015: 29; see also Hadley, 2001). Ricard speaks of a view of man and the world ‘based on the awareness of the interdependence of all people and on the humanity that they all have in common’ (Ricard, 2015: 139). My favourite philosopher, the German Arthur Schopenhauer, contends that man can view the world in two ways and therefore can be in the world in two ways: departing from the illusion of separateness, which comes with egoism (*Egoismus*) and wickedness (*Bosheit*), or through gaining (e.g. by contemplation or meditation) the insight of connectedness, which comes with compassion (*Mitleid*) (Schopenhauer, 2010). Schopenhauer bases the insight of connectedness, which he considers the better, most authentic perspective, *inter alia* on the Upanishads, ancient holy Hindu scriptures. There it is expressed by the words *Tat tvam asi*, meaning ‘That is You’: we are profoundly one and indivisible, the one can only exist by the grace of the other.

In restorative justice a context is created that encourages and facilitates *some* of the transition from the illusion of separateness towards the insight of connectedness; as said, (mutual) empathy serves as ‘the pivot point’. Although such transition is achieved or deployed in victim-offender mediation or group conferencing on far less than all occasions, restorative justice practices do offer a more fertile

breeding ground for this to happen than the theatre of war in which criminal proceedings are often conducted these days and which in many cases only acts to intensify the illusion of separateness. Besides, all this does not mean that in restorative justice enemies must become friends, but rather that they no longer wish each other evil. The bottom line should be some degree of neutralisation of the conflict. The current Dalai Lama formulates it as follows: 'Our prime purpose in this life is to help others. And if you can't help them, at least don't hurt them.'⁵ However, in some cases there will be a 'surplus' in the sense that the victim shows (some) loving kindness, compassion or forgiveness towards the offender – most of the time after the offender has reacted repentantly towards the victim and has made sufficient effort to repair the damage that he has caused, in rare cases even unconditionally.

The American spiritual teacher Ram Dass contends the following in relation to forgiveness:

[Forgiveness] is a step on a ladder that goes from dualism into non-dualism. Because as you forgive or allow or acknowledge or say 'Of course you're human' or 'We all do that' or something, you open your heart again which embraces the person or the situation back into you, which allows the play. See, every time you close off something with judgment, it's as if you take a bit of energy and you lock it away and make it unavailable to you. Until pretty soon you are exhausted ... We've been telling you how to say no without closing your heart, but the no I'm talking about is the heart-closing no. It's the judging, grudge, non-forgiving no. And it costs more than it's worth. Even though you are right, righteousness ultimately starves you to death. Righteousness is not liberation. It is known as the golden chain. You're wonderful and you're absolutely right, but you're dead. I mean you're dead to the living spirit. And finally, you want to be free more than you want to be right.⁶

By employing restorative justice, a context is created within which not only is justice done (in the sense of 'righteousness'), but it is also made possible to break down the wall that exists between and around people as a result of a crime and the subsequent judgment, so that people regain their liberty (in the sense of 'liberation'). To me, this means that victims are able to leave behind their victimhood and offenders their offendership. Since, in my opinion, restorative justice is intimately embedded in a view of man and the world that is characterised by connectedness, restorative justice offers *room* and even a *suitable context* for the development of empathy, remorse, forgiveness, loving kindness and compassion. In my view there is a continuum with regard to our responses to wrongdoing, whose one end is made up of hate and unbridled revenge (rooted in the illusion of separateness) and the other of unconditional loving kindness and compassion (rooted in the insight of connectedness). Between these two poles lie, among

5 Famous quote by the current Dalai Lama.

6 Retrieved on 18 February 2020 from <https://www.ramdass.org/forgiveness-and-the-awakened-soul-2/>.

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others, retribution, transition anger, restoration, clemency or mercy, tolerance and conditional forgiveness, as intermediate steps towards the *ideal* of unconditional loving kindness and compassion (read: non-duality).

It implicitly follows from the foregoing that, for me, justice, on the one hand, and loving kindness and compassion, on the other hand, are not separate domains (Claessen, 2017). I fully agree with the argument of the Dutch legal scholars Willem Pompe and Herman Bianchi that justice and love are fully in sync and that, although love transcends law, without love law would fall apart (Bianchi, 1964; Pompe, 1999; see also De Wit, 2018; Van Stokkom, 2018). Persian philosopher and mystic Zarathustra spoke thus: 'Love cannot be governed by the law. Quite the reverse: the law must be governed by love' (Hanken, 2002: 77-78). Perhaps restorative justice can offer an 'intriguing fusion' of love, justice and law.

7 Questions for John Braithwaite to reflect upon

Based on the previous exposé, I have several questions for John Braithwaite divided into three categories: 1. Forgiveness; 2. Compassion; 3. View of mankind and the world. The questions in the first two categories have already been asked in the foregoing (see paragraph 1 respectively paragraph 5), while the questions in the third category are new but directly related to the content of paragraph 6:

- 1 Has forgiveness de facto moved a bit towards the category of *maximising* values in your vision? How, in your opinion, can forgiveness be encouraged without enforcing, urging, demanding, imposing, expecting, asking (to pursue) or inviting victims to forgive?
- 2 Is there a link between compassion and forgiveness in your vision? Why is compassion a *maximising* standard and forgiveness not, or, to put it the other way around, why is compassion not an *emergent* value like forgiveness?
- 3 In which view of mankind and the world is restorative justice embedded in your vision? How, in your opinion, are compassion and forgiveness linked to this view?

I cordially invite Professor Braithwaite to reflect on these questions. It goes without saying that he is free to discuss other aspects of my exposé as well, for example (the lack of) a link between forgiveness and respect.

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