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Solving Moral Conflicts. Case Restorative Justice in Domestic Violence Cases.

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Although restorative conflict resolution is gaining a steady foothold in many contexts, the context of domestic violence is strongly debated. The debate has been continuing and it still does. The argument in this paper sustains that the debate represents a typical conflict. When appreciating one, it is important to discern the core of it. The paper goes then on to arguing that the debate represents a typical moral conflict, rather than a judicial or a political one. The paper aims at establishing a framework for solving of moral conflicts, in the light of the debate between the advocates and the critics of restorative justice in domestic violence cases. As such the paper seeks to make a contribution to not only the debate relating to restorative justice in domestic violence cases but to restorative conflict resolution in general and to conflicts typical in societies today.

Keywords: domestic violence; moral conflicts; restorative justice; conflict resolution; ethics

Introduction

Alternative conflict resolution that differs from more conventional and adversarial methods for conflict resolution is gaining a steady and recognized foothold in various contexts, such as schools (Gellin, 2018; Payne & Welch, 2015), workplaces (Goodstein & Aquino, 2010), the courts (Adrian & Mykland, 2018) and even in connection to crimes and disputes in general (Zehr, 2002; Braithwaite, Jowitt & Newton, 2010). However, the context of domestic violence is vividly debated. While many countries are offering restorative methods for conflict resolution even after domestic violence (eg. Lünemann & Wolthuis, 2015; Liebmann, 2007; Pelikan & Trenczek, 2008), there is a robust feminist opposition to it (eg., Proietti-Scifoni & Daly, 2011; Curtis-Fawley & Daly, 2005).

Based on an assumption of male supremacy and of female subordination (Green, 2013) the feminist critique insists on restorative conflict resolution being hazardous for the female victim (eg., Stubbs, 2010; see also Hudson, 2002). These two completely opposite approaches, the determined critique on one hand and the acknowledging of the strengths of the practice on the other, have led to a vicious circle. Argument after an argument is being presented with none of them able to conclude the debate. This has led to a public indecisiveness regarding the role of restorative justice in relation to domestic violence (McGlynn, Westmarland & Godden, 2012). Policymakers are left uncertain of which of the arguments should be accepted as the rightful description of the suitability of restorative conflict resolution to domestic violence cases. As definitive bans are not placed, the practice continues – and so does the debate.

In this paper I will argue that the debate represents a typical conflict, and that the approach to it has been unproductive. Moreover, I will argue that the debate represents a typical moral conflict, rather than a judicial or a political one. That's why even the solutions to it will look different from other, more conventional approaches to conflict and conflict resolution. Rather than trying to decide which argument is the winning one, a whole new approach towards the debate and the resolution of the conflict it represents should be adopted. The aim of this paper is to establish a framework for solving of

moral conflicts, in the light of the debate between the advocates and the critics of restorative justice in domestic violence cases.

To situate the argument in this paper, I will start by giving an outline of restorative justice and its many methods and of domestic violence against women; as well as of some typical characteristics of the debate between the critics and the advocates. Because the debate is an elementary ingredient of the argument in this paper, I will refer to it as the Debate, with a capital letter D. It is in the intersections of these that the argument in this paper is developed. In doing so, I will refer to Stuart Hampshire, a philosopher who has written extensively on morality and political thought, eg. the monographs *Morality and Conflict* (1983); and *Justice is Conflict* (2000) and the edited collection *Public and Private Morality* (1978). Hampshire has developed in a poignant way the differences between a moral and judicial conflict. Hampshire will be complemented by others who, like him, denounce from a rationalist tradition in philosophy, such as D.Z. Phillips and Cora Diamond. Their thinking will play a more enhanced role in the last section of this paper, where I will discuss the framework of solving moral conflicts.

The choice of theoretical references will guide the method applied in this paper. I will be conducting a conceptual analysis. This is in line with the approach Phillips (1989) accords to philosophy in general as he criticizes the Enlightenment conviction that philosophy could give a rational foundation and justification of moral practices. Therefore, rather than giving a justification of one or more moral practices, I seek to give an account of how certain concepts comport. This more philosophically nuanced approach will be the special contribution of this paper and a differentiating factor, compared to a myriad of other contributions in the field of conflict resolution. Often these seek to define processes and techniques for solving a conflict, like Menkel-Meadow et al (2018); Davidson & Wood (2004); or Stewart (1998). The approach in this paper is different.

Expectedly, by establishing a framework for solving moral conflicts this paper will serve three kinds of purposes. Firstly, the paper will give insights into potential ways of going forth with the dealing with the Debate. Secondly it will give enhanced perspectives into the conflict solving potential of restorative justice in general. Interestingly, restorative justice itself can be said to be optimal in appreciating precisely moral conflicts, rather than judicial ones, between the two parties. Much literature already suggests that the judicial way of solving conflict leaves much to hope for and is not able to deal with all the issues the two parties might be pondering and experiencing after a conflict (Morris, 2002). The literature connects restorative justice with a value-talk, mentioning healing and forgiveness as central, if not sole, characteristics of the practice (Braithwaite, Jowitt & Newton, 2010; Zehr, 2002). Thirdly, the characteristics of moral conflicts can point to important ingredients in solving of any moral conflicts, thus substantially widening the scope of this article. In today's world profound differences are present in politics, education, religion and cultures in the broad sense. An inquiry into solving of moral conflicts will serve to cast light far beyond mere conflict resolution after crimes and disputes.

Restorative Conflict Resolution – in Cases of Domestic Violence

The underlying factor making restorative justice in domestic violence cases so problematic is the urgency of domestic violence itself. The awareness of the scope of domestic violence has been steadily raising in the past decades. It was with the advent of the women's liberation movement in the US and Europe that the state of knowledge

concerning the gendered nature of violence was greatly advanced (Demos & Segal, 2014; Pantazis, 2015; Walby, Towers, & Francis, 2014). Today violence against women is broadly understood as a fundamental violation of women's human rights (UN Women, 1992). World Health Organization (WHO, 2013; see also Pantazis, 2015) talks of violence against women as a significant public health problem. The phenomenon has been studied widely and different theoretical approaches to it have been presented. For instance, Johnson (1995) argues for two forms of couple violence, the one relatively nongendered and the other clearly patriarchal. Of these, patriarchal terrorism refers to men systematically terrorizing their wives. It stems from the interpersonal dynamic of violence against women uncovered in particular by researchers working in the feminist tradition, Johnson claims. It is this gendered type of violence against women that is highlighted in the feminist critique of restorative justice in domestic violence cases. And it is this type of violence that is referred to in this article, too.

Violence against women falling under the general term of gendered violence ties such violence to a number of other complexities in the society, all of which relate to women's subordinate position as opposed to men (see Green, 2013). This complexity comes to the fore in most areas of the society. For instance, legal systems are often taken to be negatively gendered and their abilities to account for violence against women in an impartial way has been widely contested (eg., Pennell, 2008; Gaarder & Presser, 2008). It's assumed that the patriarchal and male dominated society might not appreciate all aspects of violence against women as true violations. As many aspects of domestic violence are not even defined as crimes, the prosecution of domestic violence is not always easy (Walby, Towers & Francis, 2014); and courts and judges find it difficult to pass severe sentences on and punish perpetrators for activities which may still be viewed as culturally legitimate (Pantazis, 2015; see also Jülich & Thorburn, 2017; Kelly, 1988). For the victim this might be truly traumatizing. In addition, the repeated suppression has led many women to taking it for granted. That's why many women might be reluctant to give evidence in the courts for their abusive partners, making the prosecution even more complicated (Harwin & Barron, 2000).

Because of these and other failings, many feminists have been looking for alternative ways for conflict resolution in relation to violence against women (Gaarder & Presser, 2008). There is a general consensus saying that effective procedures will need to include measures beyond judicial actions only, and a firm multiparty cooperation (Harwin & Barron, 2000). While prevailing modes of discrimination against women challenge many of the current control mechanisms, there is also the urgency of needing to address the economic and sociocultural factors that foster a culture of violence against women (WHO, 2013). Long term and sustainable deterrence include challenging those social norms that support male authority and control over women and sanction violence against women (WHO, 2013).

In order to break the cycle of violence, restore the dignity of both the victim and the offender; and to show the offender quite how morally problematic the action was, there is a need to rethink conflict resolution. According to Barbara Hudson (2002) the case for restorative justice in domestic violence cases usually rests on two planks: that of the alleged failures of conventional justice system; and on a general appreciation of restorative justice's ability to deal with different kinds of conflicts. That's why it's important to appreciate the foundations of restorative justice in general. Restorative justice as a modern movement to revolutionize conflict resolution saw its birth in the 1970's, together with various other global movements that shook the prevailing thinking models – among others the feminist movement (Van Ness & Strong, 2002). Central to understanding restorative justice is that it presents an idea that fundamentally differs

from the prevailing models of adversarial, judicial conflict resolution (Levad, 2011). It involves a renewed approach to traditional notions such as deterrence, rehabilitation, incapacitation, and crime (Braithwaite, 2002).

According to Zehr (2002) an outline of restorative justice suggests that it requires, at minimum, that we address victims' harms and needs, hold offenders accountable to put right those harms, and involve victims, offenders, and communities in this harm. Through restorative encounters the two parties can gain relevant insight into the conflict and into each other and hence enhance their conflict solving possibilities. From the very first moments onward the movement fitted several different approaches (Van Ness & Strong, 2002). This is the case still today. Under the umbrella term of restorative justice fits a myriad of different practices, all from conferencing, mediation, sentencing circles to community reparation boards and so on (Hudson, 2002; Zehr, 2002; Van Ness & Strong, 2002). According to James Ptacek (2017) of these the three first mentioned are most commonly used in connection to domestic violence (see also van Wormer 2009). While the differences between the practices are not enormous, they are enough to play a role for the way the conflict is being solved.

In connection to domestic violence cases the different practices pose slightly different challenges. The differences relate among others to the role the third party during the meeting occupies, and with the stage of the criminal process the intervention takes place. For instance, in the case of mediation, there is the expectation of the mediator being fully neutral towards the two parties (Braithwaite, Jowitt & Newton, 2010), which puzzles many feminists (Jülich & Thorburn, 2017; Björkgren, 2009). Similarly, depending on which stage of the criminal justice process the restorative intervention is used, including pre-sentence, post-conviction or as part of sentence, the questions related to domestic violence are somewhat different (see eg., McGlynn, Westmarland & Godden, 2012). In addition, a relevant aspect in dealing with restorative justice in domestic violence cases lends itself to the type of violence that is concerned, whether one-off sexual violence or on-going partner violence (see eg. Proietti-Scifoni & Daly, 2011). However, as it is not the details in different practices that would make a difference to the purpose of this article, I will remain on the generic level of restorative justice in domestic violence cases, rather than in any particular process or type of domestic violence against women.

At this point it should be concluded that violence against women is an urgent issue that calls for timely and serious responses on a wide front. That's why there should be no denying of the urgency and impact of it. At the same time restorative justice has for decades been developed as a response to the fallacies of judicial conflict resolution and as a rich method for conflict resolution regarding especially those aspects of a conflict that are not covered by legal processes. While there are critics who question the approach of restorative justice in general (see eg., Morris, 2002), the practice can in a bigger picture be seen as providing valuable responses to crime and violence. Yet, put together, these two, restorative justice and domestic violence against women, exhibit a complicated phenomenon. Despite somewhat of a general buy in, restorative justice's ability to have any say in cases involving domestic violence has become a burning dilemma. A presentation of the Debate in the following will bring us closer to identifying ways forward from the current status quo.

The Debate on Restorative Justice in Domestic Violence Cases

In *Restorative Justice: How it works* Marian Liebmann (2007) makes an enlightening reference to something of a core of the complexity regarding the Debate. She reports

how the responses to a government consultation paper on the potential of restorative justice in domestic violence cases in the United Kingdom were clearly divided in two opposite approaches depending on the original stance of the holder of the opinion. While restorative justice advocates thought the practice could be beneficial in some cases, domestic violence specialists were strongly against the use of it in all cases involving domestic violence, she explains. This division marks much of the Debate in general, too. The Debate presents itself as somewhat of an endless battlefield between those in favor of restorative justice, even in domestic violence cases (see Hudson, 2002), and those against, who usually adhere to feminist thinking (see eg., Proietti-Scifoni & Daly, 2011). The following outline of the Debate aligns with James Ptacek (2017) who discerns three consistent themes in the critique.

The first theme is the concern that the needs of the survivors, the victims, don't seem to be that central in the process. In general, restorative justice claims to be addressing the victim's needs, to the contrary of the conventional judicial process (Zehr, 2002; Van Ness & Strong, 2002). But the critics claim that this never really was the case as one of the initial aims was to influence teenaged youth vandalizing the community, not to target the needs of the victims (Ptacek, 2010a; Cragg, 1992). Allegedly, offenders have held a central role ever since and the feminist critique claims that the practice is directed towards benefiting the offender rather than the victim (Jülich & Thorburn, 2017). This presents itself in the way offenders are portrayed as victims having themselves been victimized or traumatized in significant ways (Zehr, 2002). The advocates, in their turn, see the process from a bigger and more generalized perspective. They claim that acknowledging and addressing the role and status of the offender can have a positive impact on hindering reoffending and offender accountability in general (Zehr, 2002). In this way restorative justice can benefit also the victim and the society at large.

The second big theme, that Ptacek identifies, is the concern that offenders will not be held accountable in the informal practices that a restorative process proposes. For feminists the weak offender accountability is a major concern. The danger is cheap justice. Simple acknowledging of wrongdoing in front of the victim does not necessarily equate to remorse and responsibility for abusive behavior, the critics claim (Hayden, 2014a; McMaster, 2013). They fear that restorative processes could be too easy on offenders—or too easy to manipulate—and thus both ineffective and unjust for the female victim (Ptacek, 2010b; Acorn, 2004). If the main motivation for offenders to participate in restorative conflict resolution lie in avoiding of the consequences of the crime, rather than in making long-lasting changes in one's behavior, the dangers with the practice are very clear for the feminist.

Thirdly there is the concern about the politics of gender. The critics are adamant in their argument over restorative justice's fundamental inability to deal with the dynamics of violence against women (Stubbs, 1997). For example, the couple's twisted power relations make the woman subordinate in the relationship (Harwin & Barron, 2000). Her choices are constrained by the effects of gendered violence, by material circumstances that tie her to the offender and by cultural narratives and practices that potentially offer compromising explanations to the violence. It is impossible for her to leave those constraints behind and emerge as a peer to the offender during the restorative encounter (Stubbs, 2010; Ptacek, 2010b). The victims' ability to make free and unbiased choices is strongly denied. One can never be sure of if the female victim participation is voluntary, and in fact one should presume that it isn't (Stubbs, 2010; Ptacek, 2010b). The advocates in their turn emphasize the safeguards in place. They underline that the meeting is always closely monitored by the third-party present

(Morris, 2002; Van Ness & Strong, 2002). In many cases there are two facilitators instead of just one, making them even more prepared to monitor the meeting and the participants (Zehr, 2002).

To these three central themes I would like to add two other points. One is that the Debate has been going on for years. There has been position papers and a myriad of scholarly articles presented (see eg., Stubbs, 2010). As the contributions of Stubbs (1997) and Hudson (1998) show, the lively Debate was well on its way already decades ago. Latest contributions have been published in academic journals only some months ago (for recent contributions, see eg Mills et al., 2019; Gang et al., 2019). The extensive timeline shows how complicated the Debate actually is. The different contributions for and against have not been able to conclude it. The Debate goes around in circles. This is even more flagrant in relation to the research data available. This is the second typical characteristics of the Debate I wish to add to.

It is not unusual to admit that there is not enough empirical research on the effects of restorative justice in domestic violence cases (Ptacek, 2017; Hudson, 2002). However, the research data available is not very clear either: the results usually point to widely different directions (Morris 2002). The research shows that victims prohibit positive, negative, ambivalent and uncertain views (Proietti-Scifoni & Daly, 2011). In fact, the experiences from both victims and the offenders show both successes and failures of the practice (Flinck & Iivari, 2004; Gavrielides & Artinopoulou, 2013). Typically, no victims nor perpetrators directly rule out the possibility of using restorative justice for intimate partner violence (Hayden, 2014a). The results are so pluralistic that both advocates and critics can use them for their purposes. It's therefore correct to claim that the prevailing view on restorative justice in domestic violence cases urges caution (Stubbs, 2010). But it is equally correct to argue that a majority of women expressed themselves as being empowered by the restorative conflict resolution (Pelikan, 2010). As if frustrated by this inability to give clear and scientific accounts of the suitability of domestic violence to restorative justice, the parties express concerns about the quality of the existing data. Advocates are convinced that official documents and recommendations issued to prohibit the use of restorative practices in cases of domestic violence are informed by incomplete data (Gavrielides & Artinopoulou, 2013; see also Hayden, 2014b). According to Ptacek (2017) this is precisely the case also amongst the critics.

The Debate has led to a general indecisiveness regarding the correct status of the practice. The critique holds a potential of hindering the practical and theoretical development of RJ in violence against women cases (Gavrielides & Artinopoulou, 2013). It is not clear what the appropriate approach to the practice should be, whether it should be banned or practiced. This comes to the fore e.g. in Canada, where, according to Julie Stubbs (2010) the status of restorative justice in domestic violence cases differs from one province to another, it being prohibited in others, practiced in others or practiced with restrictions in some. This comes equally to the fore in some important international legal documents raising serious concerns regarding the practice (Council of Europe, 2011). This indecisiveness is problematic. The urgent character of violence against women calls for solutions rather than endless debates and uncertainties. But now the critics and the advocates are situated in precisely that, an endless debate.

Like the two parties in the Debate even I could go on with presenting the Debate, ending with elaborate discussions on the different types of couple violence (see eg., Johnson, 1995); or on strengths and weaknesses of different types of restorative practices contributing to the resolution of domestic violence cases (eg., Ptacek, 2017). But this is part of the argument in this paper: how ever thorough an account of the cases

for and against the practice was, it would not suffice to conclude the Debate. For each argument in the Debate, there is a counterargument. While it will be important to have more research data available on the practice, to be able to adjust the processes, the results are unlikely to give the advantage for either one of the parties. That's why the Debate and the pitfalls of it serve as powerful examples. It is not likely to reach to a logical conclusion on the best argument based on a rational reasoning between the different positions. To better appreciate the Debate, and to be better equipped to take informed decisions around feasible ways of dealing with restorative justice in domestic violence cases, I will claim that the approach adopted towards the Debate has been fallible. Instead, the Debate could be appreciated as a moral conflict.

A Moral Conflict

A conflict has been defined innumerable times in different theoretical accounts. Johan Galtung's (1965) fundamental description says that "[a]n action-system is said to be in conflict if the system has two or more incompatible goal-states" (p. 348). Vibeke Vindeloev (1997) gives a plainer description and concludes that a conflict typically has at least two opposing perspectives placed against each other. Based already on these two accounts, it can be established, that the Debate presents a conflict: there are two opposite perspectives, that of the advocates and that of the critics, placed against each other; and they have incompatible goals. But the vital question here is not if the Debate presents a conflict, but rather what kind of a conflict it presents.

Before proceeding, an elementary definition needs to be made. It concerns the concept *moral* and how to define it. Cora Diamond (1983) has made a poignant description of the reach of it. She refers to a mainstream use of the term and claims how striking it is that many moral philosophers wish to define the sphere of the moral by tying it to action. However, for Diamond the central in the notion is not action but good human life. She argues that any specification of the sphere of morality, of the phenomena of interest to moral philosophy, in terms of action and choice is both limited and limiting. Further on, Diamond claims, if we claim that the sphere of the moral is not limited to action but includes thought and imagination, a whole new perspective is opened into different phenomenon. Any discussion of a practical issue, of what to do, exhibits thought or thoughtlessness. That's why the content of the thought itself can become meaningful, Diamond sustains. This premise of not focusing on an action but rather on a thought, is furthered in the following.

To describe the essence of a judicial conflict, Stuart Hampshire (1983) refers to an exact reasoning that balances contrary legal principles. Such a reasoning comes to the fore in a pattern of general principles being used to guide decision in individual complex cases, and vice versa, in particular cases being used to modify general principles. For this type of reasoning, it is fundamental that the principles and the reasoning upon which a settlement has been made are clearly stated. Legal reasoning does recognize an unpredictable variety of circumstances and leaves a margin of indeterminacy for judicial discretion when laws and legal principles are interpreted and applied. But even in those cases the reasoning leading to the conclusion must be made available for reference and be usable as precedents in later decision, Hampshire explains.

Legal reasoning, the way Hampshire explains it, has a certain appeal to it in the contemporary world and thus a sense of familiarity to us. Hudson (2002) claims that there is a general logic of law prevalent in the society. This comes to the fore, according to her, in a mainstream logic on building on a standard case against which all other

cases are measured. Hudson's point can be highlighted in most of our actions. In the context of conflict resolution, we are inclined to resort to a judicial reasoning when appreciating a conflict. We tend to be looking for clear reasoning and an opportunity to base decision-making in neatly presented terms. This tendency can potentially become very problematic. That is the case in particular when it's not a judicial conflict that is at stake in the first place. As Hampshire (1983) explains, when moral conflicts are erroneously taken to be factual conflicts, their solution is substantially complicated. I'm arguing that this is precisely what has happened with the Debate. Rather than a judicial conflict, it in fact is a moral one.

For Hampshire (1983) a moral conflict stems typically from deep convictions and attitudes that do not make the object of persuasion nor of logical argumentation. He describes how a person might believe that he is moved to action on an occasion by an impulse to correct his neighbor's misdeeds, while the better explanation of the action would mention his mood of irritable jealousy. Because of the presence of this element of deep conviction, dealing with moral conflicts cannot be about negotiation techniques aimed at convincing the other party. Moral thoughts always include a non-rational element alongside with the rational. That's why moral conflicts will not be overcome with a mere logical argumentation or proving of facts. On the contrary, people might reach to completely different conclusions even drawing from the same set of facts as a basis of thinking, he claims.

Along these lines, it can now be even closer established how the Debate presents a moral conflict. The Debate concerns differing sets of value propositions and relates to some very fundamental moral attitudes about the constituency of the world around. Moreover, while the conflict does relate to an awareness of the global urgency of violence against women, it is not primarily about whether violence against women is reprehensible or not. In the context of the Debate, the question of the scope of violence against women is intertwined with convictions about the notions of crime and punishment. In these intersections negotiation techniques are not meaningful. Final word covering the whole potential of restorative justice in domestic violence cases can't be identified in clearly measurable parameters or rational reasoning only. It is not possible to indicate once and for all the right solution to the conflict, as there is no one set of truth claims available. That's why it is important to appreciate the what is at stake in the conflict, that is, to see the Debate as a moral conflict.

The judicial and moral aspects of a conflict are not, however, necessarily mutually exclusive. Appreciating the moral conflict does not aim at saying that judicial reasoning would be pointless. A conflict can exhibit characteristics of both. The Debate certainly touches matters concerning legislation, criminal justice and social policies. In *Moral Conflict and Political Legitimacy* Thomas Nagel (1987) positions that in politics we are all competing to get the coercive power of the state behind the institutions we favor, institutions which we have to live, and then it's not only our personal interests that bring us into conflict, but our different moral conceptions. Political disagreements reflect not only conflicts of interest but conflicts over values that public institutions should serve, Nagel claims. Similarly, the Debate touches the reach of national laws and the interpretation of international conventions. This can give the impression that the Debate is mainly a legal or a political question. The policymakers and legislators certainly can make it to such and the status of restorative justice in domestic violence cases can be resolved by public decisions regarding its position within the legal framework, either by endorsing or prohibiting it. However, it's unlikely that even such decision-making could conclude the Debate.

I wish to claim that the Debate cannot be concluded by judicial or political measures only. The critics will hold on to their positions and so will the advocates. This is because ultimately there are no judicial questions at stake in the Debate. Because of the continued variety of potential stances towards restorative justice in domestic violence cases, the special character of the conflict between the advocates and the critiques should be acknowledged and appreciated it rightly as a moral conflict. This is important, because a moral conflict will not go away simply by pushing it aside and doing nothing about it. Existing moral conflicts can potentially also escalate and consume energy in a negative way. It's important to try to deal with them. It's important to be conscious of the type of the conflict at stake because the solving of them differs from each other. Portraying the Debate as a moral conflict opens up to a whole set of new ways to solving it.

Solving Moral Conflicts

As conflicts differ from each other, so does the solving of them. That's why many of the typical strategies for solving judicial and political conflicts, like the overriding of the faulty argument with a correct argument (Phillips, 1997; Sullivan, 2007) or by simply adding up everyone's votes in free and fair elections and deciding along with the majority (Goodin, 2003), or any following of a set of defined and consecutive steps of a process to reach to the solution (eg., Davidson & Wood, 2004) are not sufficient in the context of moral conflicts. Moreover, in many of those more conventional ways of solving conflicts the instrument of force as a coercion is handed over to the policymakers who, in their capacity as the decision-making body have the power to settle a conflict to the best of their ability (see eg., Büttner, Kronenberger & Stahl, 1998). But such coercion is not best placed in solving all types of conflicts.

However, these and other similar ways of solving conflicts are so rooted in the minds of people today, that it is difficult to envisage any other way. That's why both advocates and critics tend to believe that the right set of facts on how restorative justice works or doesn't work in the context of domestic violence could lead to the correct decision-making around the status of the practice. But moral conflicts don't comport in this way. Stuart Hampshire (1983) points out that we cannot, in moral matters, pretend to reason like engineers, technicians and lawyers, who might have a tested body of knowledge to set out in their practical syllogisms. There is no exact science that can be applied to the study of human feelings like remorse and sense of loss, Hampshire (1983) claims. In fact, Phillips (1989) sustains that attempts to effect a marriage between morality and rationality have proven to be unsuccessful. That's why a new approach to solving moral conflicts needs to be identified. This new way can shed light into conflict resolution far beyond the sphere of restorative justice in domestic violence cases, too.

Today's world presents us with numerous conflicts that are based on convictions far more complicated than the assumption of one single correct argument would suggest. Issues like immigration, reproduction, crime and punishment tend to make the object of fierce debates where it is not possible to discern the right argument as an absolute claim in moral terms. Will Kymlicka (2007) describes how we live in a world where entire populations and blocs of nations look for moral guidance to their distinct and widely differing cultural traditions. This means that conflicts can arise between adherents to different traditions not because people suspend their ethical sensitivities, but precisely because of their ethical sensitivities. He explains that while the different traditions contain elements that allow and encourage cooperation across cultural, national and religious lines, they also might mandate conflicting norms and

incompatible social arrangements. These incompatibilities will render all cooperation difficult. In fact, conflicts rooted in rival perceptions of good and evil may be particularly destructive and intractable, Kymlicka points out. Opposing moral concerns cannot be ironed out simply by referring to the existence of certain legislation or to a democratic decision. Moral conflicts are rooted in elementary convictions and attitudes and people tend to hold these as absolute and exceptionless. They are difficult to solve, but they are not impossible to solve.

The framework for solving moral conflicts suggested in this paper refers to a wider framework that entails a fundamental change in perception. This point is explained by D. Z Phillips (1997) who sustains that an important point of departure in solving of moral conflicts is the discerning of a conflict as a moral conflict in the first place. This will be vital for the odds of getting the conflict solved at all. Secondly it must be acknowledged that facts are not irrelevant in moral conflicts. But when dealing with moral conflicts it should be made clear on how the facts available are being and can be used. Phillips (1997) concludes that in moral concerns an appeal to certain criteria is not meant to settle anything, but rather to elucidate what is already settled. Moral reactions and moral conclusions do follow from facts. But these reactions and conclusions occur within certain moral perspectives that are distinctive for the holder of those reactions and conclusions. When moral perspectives are different, as they are from person to person, different reactions will occur, and different conclusions will be drawn. Understanding this does justice to the variety of moral possibilities, Phillips argues. This approach captures somewhat of the core of solving of moral conflicts.

It's here that the approach I'm suggesting differs from many other presentations of conflict resolution. These tend to exhibit, as argued by Wagner-Pacifici & Hall (2012) a normative quality, an endeavor to get the conflict resolved. That's why much of the literature contains a tendency towards practical and programmatic handbooks and exposition at producing specific outcomes. In relation to the Debate this approach means that one should not start by trying to determine which argument is the correct one. Instead one should acknowledge and accept the existence of the various arguments as expressions of the deep convictions of the holder of the argument. This way one can find ways of moving from the current status quo of shouting out arguments and counterarguments towards a debate where each argument will contribute to forming new perspectives for the crucial aftermath of domestic violence.

Variety of Moral Possibilities as the Solution

The existing variety of moral possibilities has been conceptualized by many with slightly different connotations. Wittgenstein (1997) famously mentioned the forms of life that give any understanding that one might have of an issue, of herself or of the world meaning. Stuart Hampshire (1983) then again talks of ways of life when explicating an inherent plurality in life. For him, a way of life includes habits and rituals of behavior and manners which are not so much direct expressions of explicit moral beliefs as expressions of unstated moral attitudes. They can often only be identified with difficulty as they may be expressions of not fully conscious preferences, feelings and ambitions. For D. Z. Phillips (1997) the variety of moral possibilities exhibits in that we must recognize that there is no all-embracing moral theory. Even the ones we have are merely blown-up generalizations of certain aspects of our own moral experience. Once we give up the search for such a general theory, we can try to give the variety of moral possibilities the attention they deserve, he claims. These accounts contribute also to

establishing a framework for appreciating the Debate. This plurality can now be described as a variety of moral possibilities.

To explain the impact of the varieties of moral possibilities Hampshire (1983; see also Sullivan, 2007) sustains that they typically allow for a man to think of only selected aspects related mainly to his own situation. This means that he can be totally uninterested in features that are attached to other people's lives. Therefore, human beings find themselves trying to reconcile, and to assign priorities to widely diverging and changing concerns and interests.

It is apparent that precisely this is the case in the context of the Debate. The advocates and the critics adhere to widely different perspectives and thus exhibit a variety of moral possibilities. Moreover, both parties seem to think of only selected aspects related mainly to their won positions. Both interpret the practice of restorative justice in domestic violence cases with certain preset expectations and convictions that bear no resemblance to each other. Along these individual convictions and positions they remain uninterested in features that are attached to other positions. It is difficult if not impossible to understand the other perspectives. In fact, the other perspective is completely irrelevant, at least as a source of possible inputs into the development of restorative justice in domestic violence cases. In addition, both the advocates and the critics stick adamantly to their own viewpoints, ready at retaliating with yet another argument if the opposite party comes with any new arguments. As pointed by Hampshire, the two parties in the Debate find themselves trying to reconcile and to assign priorities to widely diverging concerns and interests.

Now, the acknowledging of the varieties of moral possibilities entails a completely different approach to conflict resolution and to solving of moral conflicts in particular. Hampshire (1983) underlines that in this approach the accepting of the plurality is an essential starting point. When solving a moral conflict, the first step is then not taken towards solving the issues at stake in the traditional sense. The first step is neither taken towards a rapprochement of the existing argumentation. The first step is simply the accepting of the plurality and acknowledging that the two opposing perspectives will never reach a complete unanimity, Hampshire explains.

This approach makes a substantial difference in the context of the Debate. Like the debating of which notions and concepts are the best to describe an inherent plurality in human life, it is, within the context of the Debate equally pointless to debate which argument shall have priority. To move forward in the Debate, it is therefore important to adopt a new kind of an approach to the conflict and its solving. A fundamental requirement for solving any moral conflict is the original assuming of a variety of moral possibilities. At the same time, this variety of moral possibilities points to a variety of solutions to the conflict. The variety of moral possibilities is the solution. This is an important learning. In fact, it is the learning and the conclusion of the argument.

It must be noted that this approach to solving a moral conflict does not point to any concrete solution of the conflict, in the traditional sense. It leaves the conflict and the Debate at the stage at which we can appreciate philosophically what the disagreement involves. Undoubtedly, accepting of the variety of moral possibilities as the solution to the conflict rather than as the conflict itself is very confusing. In fact, Phillips (1997) admits readily that this conclusion might be disappointing to those who were not looking for an appreciation of moral disagreement but for a resolution of it. In an environment marked by an adversarial, judicial conflict resolution and a search for the winning argument, this position seems unsatisfactory. However, looking at some of the core elements of restorative justice, it becomes evident, that some of this is already included in the theory.

In *Changing Lenses: A New Focus for Crime and Justice*, Howard Zehr (1995) talked about restorative justice as a new lens of doing justice. The idea of a new lens is applicable in here, too. This new lens of solving moral conflicts entails a recognizing the varieties of moral possibilities and acknowledging their accuracy in giving an account of a valid perspective. The acknowledgement of the inherent variety of moral possibilities is both the requirement and the result of solving of moral conflicts. The openness for the variety of moral possibilities can lead to new knowledge and to new ways of approaching the conflicts at hand. This solution should be left to be discovered in each individual situation that presents the conflict in the first place. It's therefore important to clarify the nature of all the possibilities. It is equally important to clarify the various relations in which they stand to one another.

What this can entail in the context of the Debate is that being faced with the different perspectives, the two parties are given the opportunity to recognize the existence of precisely those opposing views. The perspectives put forward in the Debate should be understood as representing varieties of moral possibilities which cannot be valued against each other. For the Debate this means that both parties will need to reject own argument as the one and only. Instead they need acknowledge the value of the other arguments precisely as exhibitions of moral possibilities.

Critics for example have been unable to see the potential in the innovative new model for conflict resolution that does not build on retributive justice (Liebmann, 2007; Ptacek, 2010b). Advocates for their part have been quick in dismissing the feminist critique without acknowledging it as a valid description of some of the constraints facing female victims of domestic violence (Mills, Barocas, & Ariel, 2013). In the light of the variety of moral possibilities this is no longer possible. To remain aware of the continuous need to develop restorative practices and of the challenges violence against women presents to it the advocates need to appreciate the potential of the feminist critique. The critics then again need to appreciate the potential in different methods of conflict resolution; and that the variety of moral possibilities stretches also to the needs of victims of domestic violence. Such an approach to restorative justice in domestic violence cases fights violence against women whilst appreciating the variety of moral possibilities.

I have above suggested that the conclusions in this paper are relevant beyond the scope of restorative justice in domestic violence cases. It can now be established that both in relation to restorative conflict resolution and the encounter between the two parties, or for societal conflicts in general, the appreciation of the varieties of moral possibilities posits a fruitful outset. When solving a moral conflict, one can and should be inspired by the moral possibilities presented by the situation at hand.

The position can be explained further by Phillips (1989) who argues that there is no general justification of moral considerations by means of which they can be commended to everyone. There simply is no general definition of a good action. Nonetheless, there is something in common: the general in ethics is the conceptual elucidation and clarification. A philosopher may bring out the character of a specific moral perspective. Whether he adheres to that perspective or not, he may want to elucidate its character, perhaps because he sees it ignored or distorted by those who write about ethics. On the other hand, a philosopher may simply discuss a specific virtue, say, truthfulness or courage. If his writing possesses sufficient character, he may even deepen our conception of what a particular virtue can be, Phillips argues. Whether a philosopher or not, this same possibility can apply to any party in a conflict who wishes to acknowledge the variety of moral possibilities in the situation at hand.

Conclusion

Violence against women is a major threat to any societal development. Threats no less important are the many conflicts in societies worldwide that have their roots in complex moral disagreements. Both call for sustainable solutions that are meaningful for the two parties as well as just in general. Restorative justice proposes such a method for conflict resolution, even in the cases of domestic violence. The potential of restorative justice in domestic violence cases has, however, been rejected by a strong feminist critique. The critics and the advocates are engaged in an arduous debate, that I have characterized as a conflict.

In this paper I have argued that an inability to conclude the Debate has to do with the fact that the nature of the conflict has not been sufficiently appreciated. I have argued that the Debate represents a typical moral conflict, rather than a judicial, or political one. This opens up to fruitful ways for its solution. An essential starting point for solving a moral conflict is to point to the variety of moral possibilities inherent in different forms of life. Acknowledging a worth in the other party's account is a sign of an ability to respond in a responsible way to the challenges of different forms of life. This acknowledging will give both parties a chance to discover new moral possibilities and thus find fruitful solutions to the conflict.

The varieties of moral possibilities can serve in identifying ways forward in other moral conflicts, beyond the Debate, too. What this means to restorative conflict resolution in general is that through restorative conflict resolution glimpses of varieties of moral possibilities can be made available for the two parties. Therefore, combining elements of restorative justice (in domestic violence cases) with its feminist critique possesses a great deal of promising prospects for a meaningful resolution of conflicts. Taking these two different approaches together might entail innovative ways in creating justice for victims, offenders and communities, together with new ways of fighting domestic violence. Through restorative justice one can understand that difference in fact is the new normal.

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