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Restorative Justice Practices and Their Role in Post-Conflict Criminal Justice Systems

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Abstract

The paper will discuss how Restorative Justice (RJ) practices are incorporated into post-conflict criminal justice systems as one of the critical alternatives to the traditional retributive models. The formal judicial infrastructures in the aftermath of mass violence or systemic conflict are usually catastrophically backlogged and confronted with a crisis of legitimacy. When retributive justice is concerned with the breaking of state laws and imposing punishment, restorative justice is concerned with the healing of social damage by the joint discussion between the victims, the criminals and the community. The research employs the multi-dimensional analysis, which examines the change in theoretical focus from the idea of prosecution to the concept of reconciliation led by stakeholders. The focal point of this argument is the Gacaca court system in Rwanda, as a major case study to apply community-based restorative processes in solving close to two million cases after the 1994 genocide. The empirical evidence provided in the paper indicates that recidivism could be reduced significantly with RJ interventions, with some meta-analyses of between 14-27% showing a reduction in recidivism, and at the same time, 80% of victims were satisfied. Nonetheless, the shift to restorative models is not without difficulties, with the risks of power imbalances, re-traumatisation, and the risk of political co-option being among them. This study presents the thesis that in order to attain sustainable peace in post-conflict societies, criminal justice systems should be transformed beyond mere incarceration to a transformative framework that offers solutions to the causes of the conflict and rebuilds the social fabric. Restorative justice can provide a utilitarian way out of the current issues by reconciling legal responsibility with emotional and material compensation, a means to create a new, more robust and united social fabric.

Keywords: Restorative Justice, Post-Conflict Reconciliation, Gacaca Courts, Recidivism, Victim Satisfaction, Transitional Justice.

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Introduction

The process of stabilising a peaceful society after a long period of conflict is seldom linear. When a mass violence, civil war or systemic human rights abuse has taken place, the social fabric is usually in shreds, with both embedded trauma and complete loss of trust. The justice gap is a deep-seated problem in post-conflict states (Peurača, 2015; Nikolić-Ristanović et al., 2017). It arises when formal legal systems, including courts, law enforcement agencies, and prisons, are destroyed (physically or functionally) or brought to a halt. More importantly, the citizenry tends to view them with great suspicion and they are often perceived as a remnant or tool of the former regime to impose inequality or political oppression. When a weak state tries to take thousands of cases through a broken and overloaded retributive system, the outcome is usually a self-perpetuating pre-trial detention and backlog in the courts and failure to deliver justice to the victims (Balint et al., 2017; Fijalkowski, 2015). This loophole between the necessity to hold the government accountable and the impossibility of the state to do so forms a dangerous vacuum that is threatening to lead to the recurrence of the cycle of violence.

The traditional criminal justice systems are essentially retributive, whereby the emphasis is put on the infringement of the state-written laws and the consequent punishment (Aloyo et al., 2023; Asadullah et al., 2021). This state-centered approach, however, does not usually work in post-conflict settings where the social and psychological needs of a broken population lie unmet. Incarceration-heavy approaches have the potential to escalate social tensions, consume scarce state resources, and not provide victims with a platform to tell the truth or receive restitution. The main issue is that solely punitive actions are not enough to achieve a real reconciliation process; the absence of the system that can restore interpersonal relations and reintegrate the criminals will leave the loop of retribution intact, and the long-term peace will be under threat.

Restorative Justice is a philosophical and procedural substitute to these common punitive actions. Instead of seeing crime as a crime against the state, RJ considers it a crime against people and relations.

- **The Paradigm Shift: Traditional justice asks:** What is the law that has been violated, who violated it, and what does he/she deserve? Restorative justice poses the following questions: Who is harmed, what are their needs, and whose responsibility is it to address the needs*?*
- **Philosophy of Repair:** It is a victim-focused practice that switches the state-imposed practice of inflicting pain (incarceration) to a community-driven practice of repairing harm in the form of restitution, apology, and reintegration.

The present paper gives an interdisciplinary view of the role of restorative practices as a stabilizing effect on volatile environments. The most important contributions are:

- Empirical Validation: Integrating the data of the world to prove how RJ interventions can reduce recidivism rates and make victims much more satisfied than they would be with traditional post-conflict tribunal models.
- Case Study Synthesis: A critical assessment of the Gacaca court system in Rwanda, with a roadmap to other countries with disastrous case backlogs.
- Strategic Framework: Proposing a hybrid model implying how restorative practices may be incorporated into the formal constitutional structures without undermining the basic due process.

The study is divided into the following logical sequence to help the reader move through theory and practice: Section II: Theoretical Foundations define the main principles of RJ and the sociology of harm in post-conflict areas. Section III: Strategic Mechanisms elaborates certain interventions, including victim-offender conferencing and peacemaking circles. Section IV: Case Study Analysis takes a closer look at the Rwanda experience by discussing how the Gacaca courts were implemented and the socio-political criticism faced. Section V: Empirical Evidence includes comparative data and visual artifacts to demonstrate the efficacy of RJ. Section VI: Problems and Conclusion cover the dangers of power disparities and the need of "Transformative Justice." Section VII: Conclusion reflects on findings and gives policy recommendations to international justice observers.

Theoretical Development

The Triad of Stakeholders: Interdependency of Recovery

The symbiotic relationship among three main actors: the victim, the offender, and the community is the theoretical heart of restorative justice (RJ) (Reddy, 2012). When using classical retributive theory, the victim is usually sidelined to play a secondary role of giving testimony to the state whereas the criminal is a passive recipient of the punishment. On the other hand, RJ focuses on the needs of the victim, the need to tell the truth, the need to be validated and the

need to be reparation as the motive behind the judicial process. The criminal is shifted from a passive role of time-serving and is put on a responsive role, being face to face with the human implications of their actions. In the meantime, the community is not a passive setting but is a crucial actor that offers the social scaffolding of reconciliation. This triad is needed in the post-conflict zones, because the community participation will make sure that the individual crime is resolved in a way that the community is restored on the larger scale and would not remain isolated, which causes radicalization or recidivism.

The Paradigm Shift: From State-Centric to Person-Centric Justice

Another important conceptual shift in the direction of this is the shift to a collaborative Person vs. Person model, as opposed to the adversarial State vs. Individual one. Retributive justice is based on the idea that crime is a breach of a statute written in a code of the state and therefore requires an equivalent amount of pain to uphold the rule of law Zinsstag, (2013). Nevertheless, when it comes to fragility, the state might not be in a position to inflict such pain with the moral or administrative power. Restorative paradigm changes the emphasis to the abuse of human relations. The process makes a dialogic approach possible by framing crime as an injury to people as opposed to a violation of an abstract code. The change is theoretically important as it reduces the tension between the citizen and the state and makes people answer to each other horizontally. This anthropocentric method appeals to the emotional and psychological wrongs that the legalistic courtrooms are supposed to disregard in the societies divided by civil strife.

International Legal Frameworks and the UN Basic Principles

These theoretical changes have become legitimized internationally by law in the form of international legal documents, with the most notable being the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (Li et al., 2018; Menkel-Meadow, 2015). This model offers the much-needed conceptual check-and-balances to guarantee the avoidance of restoration turning into the substitution of vigilante justice or human rights degradation. The principles of voluntariness, confidentiality and judicial control are the key principles that guarantee that RJ is a complex element of the modern rule of law. The UN model recognizes that restorative justice should be combined with formal justice systems in order to be effective in the criminal justice systems that follow the end of a conflict. This integrated model enables the hybrid form in which the state keeps the line of legality and the restorative process takes care of the level of social healing, the results are proportional and restorative.

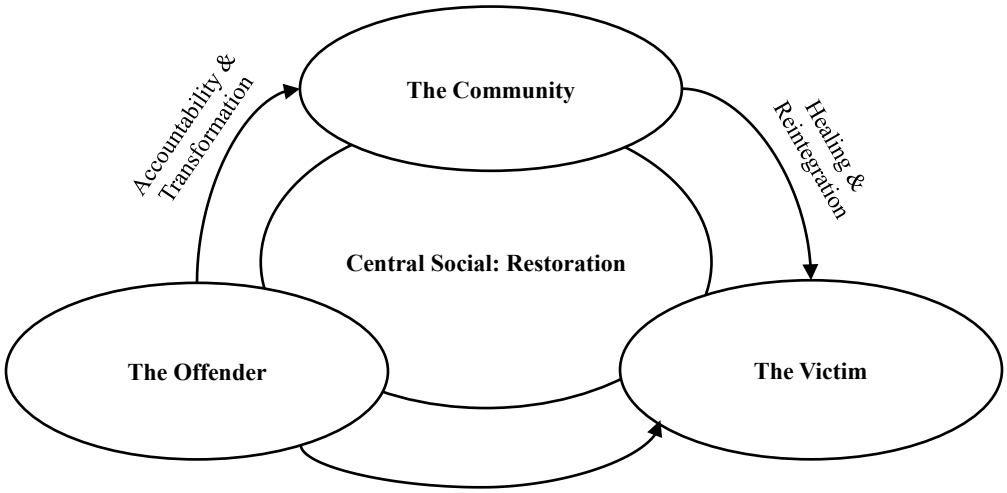


Fig. 1: The Restorative Justice Stakeholder Interdependency Model

The Restorative Justice Stakeholder Interdependency Model, as shown in fig. 1 is a conceptual system that helps to explain how justice can be a process of collaboration and not a binary opposition between the offender and the state. This model is captured in terms of a circular stakeholder dynamic with three major spheres; The Victim, The Offender and The Community intersecting at a common center. The Victim sphere is devoted to the needs of the Repair and Information, including that the victims are provided with the needed truth-telling, validation, and power. On the other hand, the Offender sphere emphasizes on Active Accountability and Reintegration whereby the person is not a passive recipient of punishment but a proactive participant in completing restitutionary tasks. The Community sphere serves

as the comprehensive frame around which this process may be enacted, with the priority being given to the Safety and Social Cohesion and helping to monitor and integrate all involved parties. The pivotal meeting point, denoted as Social Restoration, is the key to the social fabric reweaving. This intersection means that the real justice in the post-conflict context can be attained only in case the needs of all three stakeholders are met at the same time, shifting the system to the holistic person-centric result.

Table 1: Comparative Paradigms of Criminal Justice

Feature	Retributive Justice (Standard)	Restorative Justice (Post-Conflict)
View of Crime	Violation of the law and the state.	Violation of people and relationships.
Primary Goal	Administration of pain/punishment.	Repair of harm and social healing.
Role of the Offender	Passive; defended by counsel.	Active; takes responsibility for harm.
Role of Victim	Secondary, witness for the state.	Central; primary stakeholder in outcomes.
Outcome	Incarceration or fine.	Restitution, apology, or service.

Table 1 demonstrates a basic change in the philosophy of judicial work, comparing the conventional retributive model with the restorative model that is necessary in the post-conflict stability. Whereas in retributive justice crime is perceived as a violation of the law and the state, in restorative justice, crime is a violation of people and interpersonal relationships. The administration of punishment, therefore, becomes less of the main objective and more of a passive means to remedy damage and social restoration. In this context, the positions of the participants are swapped: the offender will become the active subject of the legal defense turned into an active subject of responsibility of their actions, whereas the victim will become the secondary witness and primary stakeholder in the decision. Finally, the end outcomes of these processes vary greatly, shifting away incarceration and fines in favor of restitution, apologies and community service.

Strategic Mechanisms

The process of translating theory to practical implementation needs certain strategic mechanisms that can enable dialogue, accountability, and healing. These processes work on a different level, ranging between personal interpersonal sessions to political structures of a country.

Victim-Offender Conferencing: The Structure of Facilitated Dialogue

Victim-Offender Conferencing (VOC) is a face-to-face interaction between the individuals who have been directly affected by a crime. As compared to an ordinary courtroom, the discussion is facilitated by a neutral who has been trained on restorative mediation and not an adversarial judge. It usually takes a stringent three-step process which includes the due preparation of the two parties, the actual meeting, and a follow up to keep on the obligations. The hallmark of VOC is the narrative exchange whereby parties undergo the exchange instead of clinging to legal facts and move on to express the emotional and social consequences of the event. The result of this discussion is a Reparation Plan, a contract in which the offender accepts to undertake certain practices- financial restitution to community work- to meet the needs presented to him or her by the victim. This mechanism is especially powerful in post-conflict contexts when it substitutes abstract enmity with humanized contact that interrupts the cycles of othering that contribute to social division.

Truth and Reconciliation Commissions (TRCs): A Hybrid Restorative-Political Tool

On the macro-level, TRCs are interim institutions that are formed to probe and report on systemic human rights violations during times of conflict. These commissions are based on a restorative principle according to which the discovery of the official truth is a primary form of justice to the victims who have long been deprived of recognition. Tracing a shared past, TRCs seek to create a sense of national catharsis, a narrative basis on which a new, post-conflict identity can be built. TRCs tend to be a cross-breed between amnesty and accountability. Under most systems, conditional amnesty is given to the criminals provided they confess all their crimes publicly. This process forms a political compromise, which enables a society to progress without the burdensome resources needed to carry out mass criminal prosecutions, which may tend to cripple weak judicial systems.

Peacemaking Circles: Indigenous and Traditional Roots

Peacemaking circles tap into the ancient indigenous cultures as shown in table 2 to solve modern conflict by considering crime a violation of the overall community balance and not merely an individual crime. In stark contrast to bilateral mediation, circles involve family members, elders, and representatives of the community, and it is stressed that the whole community is impacted by the harm. One of the fundamental procedural tools is the use of a talking

piece, that is, everybody is given an equal chance to speak and be heard without being interrupted, irrespective of social status. The models differ all over the world but have one thing in common, communal harmony:

- South Africa, Ubuntu: This philosophy is based on the principle of I am because we are and it is focused on reestablishing the offender within the community in order to preserve the balance of the whole community.
- Jirga (Afghanistan/Pakistan): These are tribal meetings which use the consensus-based decision-making approach to resolve a dispute, typically the main source of justice when there is no state courts or where state courts are mistrusted.

Table 2: Scale and Scope of Restorative Mechanisms

Mechanism	Primary Scale	Key Objective	Core Procedural Tool
Victim-Offender Conferencing	Individual / Micro	Interpersonal Healing	Facilitated Mediation
Peacemaking Circles	Group / Meso	Community Cohesion	The Talking Piece
Truth & Reconciliation Commissions	National / Macro	Political Stability	Public Testimony

Case Study: The Gacaca Courts of Rwanda

The Problem: A Judicial System in Collapse

After the 1994 Genocide of the Tutsi, Rwanda experienced a disastrous judicial crisis, with some 120,000 people in custody awaiting trial in a system that had been destroyed by the genocide and the majority of judicial staff had been killed or driven into exile. The number of suspects alone was such that the normal Western-style adversarial courts would have required an estimated 100-200 years to hear the cases, which would have amounted to denying justice to both the victims and the suspects. Such a justice gap required a radical break with traditional retributive models in order to avoid constant instability and additional social disintegration.

The Restorative Solution: Re-inventing Tradition

The Rwandan government followed suit and in 2001, introduced the Gacaca court system; a hybrid system which re-modeled traditional community meetings (Gacaca, meaning justice on the grass) into a formalized legal system. These courts aimed to accomplish three main restorative objectives; to determine the truth of the events, to expedite trials to lessen over-crowding in prisons and to bring about national reconciliation. In contrast to formal courts, Gacaca used almost 12,000 community-elected judges (Inyangamugayo) not legal experts, but respected people in the community.

Analysis of Outcomes: Due Process vs. Social Restoration

One of the most notable historical implementations as given in table 3 is of restorative justice (RJ) into a transitional system was the Gacaca courts which eventually dealt with about 1.9 million cases by the time they ceased operations in 2012. The system provided a level-based classification of crimes in which the lesser crimes could be given a lesser sentence or community service in lieu of full confessions and requests of forgiveness to the families of the victims.

But this quick recovery of community functionality came at a great cost:

- **Legal Critiques:** It was questioned by international observers that the accused lacked legal representation and that these cases might be sentenced inconsistently by various local jurisdictions.
- **Psychological Impact:** Although 95% of the surveyed Rwandans were of the opinion that the court was able to create the truth, the publicity which was the nature of the testimonies tended to re-traumatize the survivors.
- **Political Dimensions:** Critics have remarked that Gacaca dealt mainly with crimes related to genocide, frequently omitting those perpetrated by the Rwandan Patriotic Front (RPF), which some critics felt restricted the extent of complete "reconciliation".

Table 3: Comparison of Judicial Outcomes (Rwanda)

Metric	Traditional International Tribunals (ICTR)	Gacaca Community Courts
Cases Completed	93	~1.9 million
Primary Actors	International Judges/Lawyers	Elected Community Members
Duration	1994 – 2015	2001 – 2012
Focus	High-level masterminds	Direct perpetrators and looters
Reconciliation	Distant/Legalistic	Local/Interpersonal

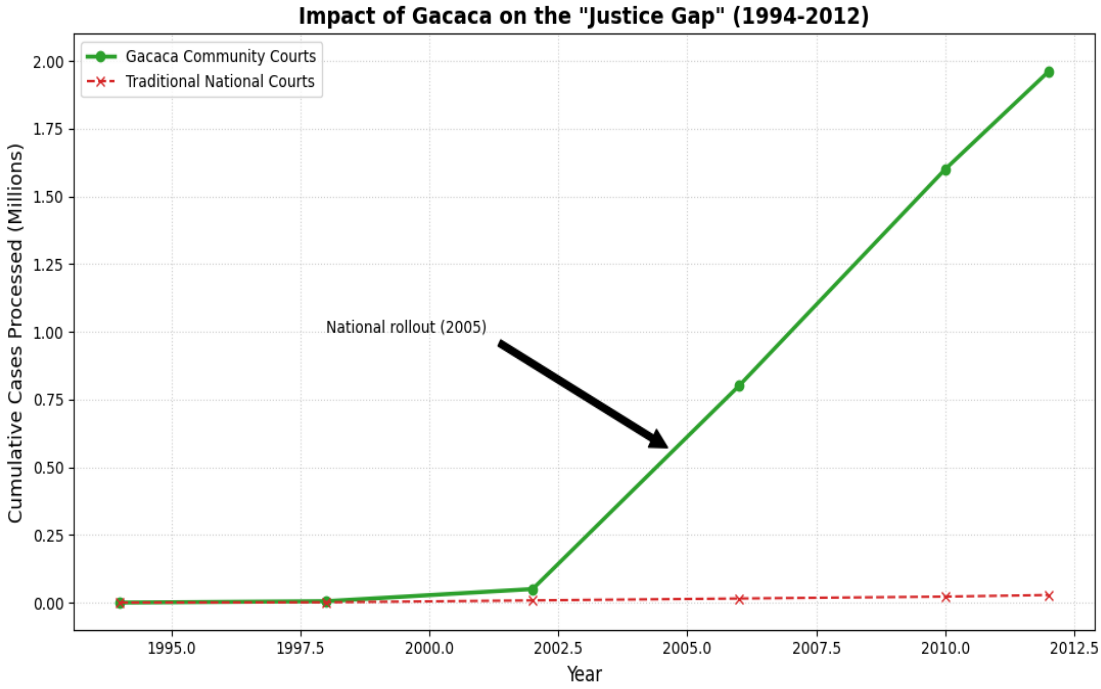


Fig. 2: Impact of Gacaca on the Justice Gap

Fig. 2 illustrates how Gacaca has demonstrated its ability to achieve scalability of justice in terms of speed and volume previously unattainable by a retributive system. Rwanda was able to clear its huge backlog of judicial cases by not focusing on perfecting the procedure but repairing the social fabric and enabling the country to leave the state of complete paralysis and enter the state of functional development.

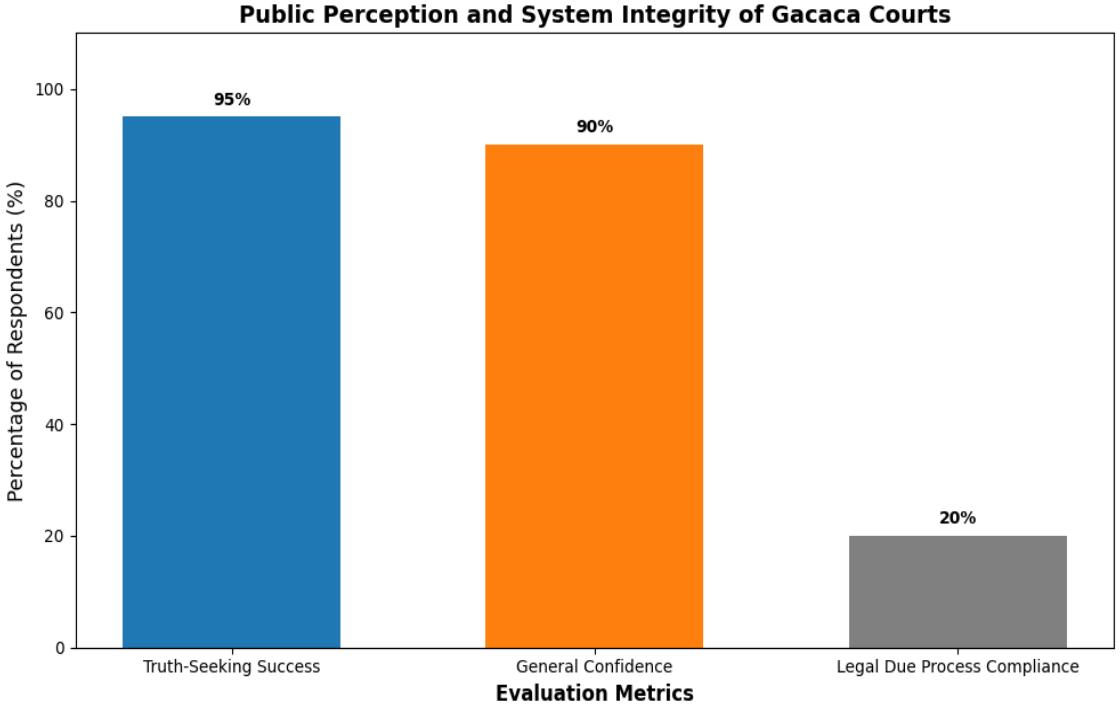


Fig. 3: Public Perception of Gacaca Outcomes

The success of the Gacaca courts as the data presented in fig. 3 indicated, was based on its ability to offer local validation. Although the system was legally flawed, it helped bring about a national discourse that was paramount to survival after the conflict.

Comparative Data & Empirical Performance

Recidivism Metrics: Restorative Cohorts Versus Traditional Incarceration

Systematic literature always shows that restorative justice (RJ) groups do not re-offend as often as conventional incarceration. Whereas retributive models tend to isolate and professionalize criminal networks, RJ centers on accountability. The process prompts the offenders to engage in self-reflection, which is otherwise lacking in passive sentencing because they are forced to accept direct responsibility of the damage caused. Studies indicate that RJ is able to decrease recidivism by about 14% to 27 % in different jurisdictions compared to those where violent crime occurs. The personalized contact with the victim forms a great psychological deterrent that cannot be duplicated by incarceration.

Victim Satisfaction: The Psychology of Healing

One of the strongest performance indicators in RJ is the psychological healing dimension in RJ. Traditional courts have the victims playing secondary roles as witnesses to the state, which may cause erasure. The restorative processes focus on telling the truth and enable the victims to get a first-hand response by the offender, this gives them some form of cognitive closure that cannot be provided by the legal verdicts. The recognition of the community and the offender of the particular harm done is an effective affirmation to the experience of the victim. Empirical evidence indicates that up to 80-90% of victims are usually satisfied in the restorative processes, which is a lot higher than the 30-50% that is normally observed in the adversarial systems.

Economic Impact: Cost-Effectiveness

RJ has a high ROI by transferring funds spent on costly prison infrastructure to community-based mediation. RJ saves the administrative overhead of legal counsel, judges and long-term facility maintenance, which are enormous by taking cases out of the formal court system. RJ can also handle millions of cases at a fraction of the cost and the time it takes international tribunals to do so, as seen by the Gacaca courts in Rwanda. Such community-based justice investment enhances local resiliency and social cohesion, which is a preventive factor in further conflict and the economic cost of war and policing (Friedman, 2015; Sutrisno et al., 2024).

Critical Challenges & Integration

The "Net-Widening" Risk

The main issue in RJ implementation is net-widening, the danger that since RJ is perceived as a less aggressive or more accessible alternative, it is used on people who would have received a mere warning or been let go by the system. This perhaps enhances intervention of the state in the lives of citizens instead of being a real alternative to imprisonment. There is criticism that, unless there is a strict gatekeeping, restorative programs can unintentionally increase the scope of the criminal justice system to the minor social conflicts (Lang, 2022; Kiza & Rohne, 2016).

Power Imbalances

RJ is based on the premise of a dialogue of equals, which is frequently not the case in practice. The re-victimization of the less powerful party can occur when there are huge power imbalances between parties (as in the example of systemic corporate crime or gender-based violence), if case facilitators are not trained specialists. Moreover, in post-conflict contexts, there is the social pressure to forgive that causes reconciliation to be superficial, that is, the needs of the victim are subdued to the need to have political stability.

Conclusion

The success of the permanent stabilization of post-conflict situations demands much more than the conclusion of material enmity or the conclusion of peace agreements. The realization of a justice system that heals as opposed to punishes is what makes true peace, so that social fractures do not necessarily translate to violence. Only by treating the human relationships between the victims, the offenders and the community around them as an interrelated network can social restoration occur. Due to the natural interdependence of these three groups, no legal system that disregards the emotional and social bonding of the parties can be viable in terms of long-term order. A switch to a person-centered model would be a stepping stone toward peace in the legal system, and would break the cycle of additional resentment that is often fueled by the traditional adversarial court system. The hope of the restorative practices is the intentional

shift to a Transformative Justice (TJ) paradigm. Whereas restorative justice is meant to repair the particular harm that a single incident caused, transformative justice broadens the area of focus to deal with the structural root causes that enabled the conflict to fuel up in the first place. This involves responding to systemic inequality, poverty at high levels and the burden of historical trauma that frequently precedes the immediate violence. Through interpersonal restorative interventions and wide-ranging socio-economic reforms, societies can rise out of the narrow objective of bouncing back to pre-conflict state by the confined goal of restoring a society. They, instead, rebound, becoming even more robust, just, and stable social order, which is structurally cemented against the recurrence of systemic conflict.

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