

Understanding the traditional Council of Elders and restorative justice in conflict transformation

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Introduction

This article explores traditional African models of justice in a changing culture that gives unequal treatment between the victim and offenders. The increase in injustice in many African countries has been associated with poor governance and structural systems in society today. However, even the most apparently “insane” person believes that violence has a rational meaning to the person who commits it, and to prevent this violence, we need to learn to understand what that meaning is. There is a difference between understanding what makes people violent, and excusing or forgiving the reasons. Therefore, punishing requires much less effort than understanding. The general agreement that traditional ways of restorative justice were capable of meeting the needs of the victim-offenders and the community motivates my desire to carry out this study. This is simply because violence is a complex mix of biological, psychological, and social forces. The social or environmental factor of violence appears to be more crucial than biological factors. Some societies and individuals are far less violent than others. In other words, all violence is an attempt to achieve what is perceived to be justice or to undo and prevent injustice.

Why restorative justice as a pastoral response to Refugees

The advent of Restorative Justice in Africa sustains a gradual development from the integration and sustenance of traditional institutions such as the Council of Elders. Studies have shown that systems of justice in many traditional African societies were carried out by the Council of Elders, not devoid of democratic values and practices. Current legal models of justice in a changing culture have been proven to give unequal treatment between the victim and offenders. It is a great sadness for perpetrator and victim to be treated within the justice system on the basis of ethnic identity or political affiliation. Therefore, the operations of the Council of Elders can only be understood against the administrative structure of the community.

For example, when there was a problem in most African communities, it was the role of the supreme jury with power to bring the victim-offenders together, who compelled witnesses to testify and accorded the offender’s punishment accordingly. The emotional gratification for punishment was the same for everyone using violence: a sense of pride and power in having dominion over others, including the power to inflict pain on them, punish

them and give them what they deserve.¹ However, there was no trial without judgement as in most cases the Council of Elders encouraged meetings in the victim offender process.

The Council believed that violence occurs when people see no means of undoing or preventing their own humiliation except by humiliating others. Hence, the offender was often given a chance to react to the allegations and accusations made against him or her and if the evidence were convincing enough, the sitting Council of Elders would decide on the nature of punishment. The whole process involved establishing a positive relationship between the victim and offender.² The council brought the victim and offender together anytime conflict or violence erupted in the community. The whole process was grounded on relationship building and respect for community members to put things right. The council used to prioritise forgiveness and reconciliation of the victim-offender and the community, based on the fact that crime and punishment were often thought of as opposites, rooted in the same perceptions of morality and justice based on people's values and traditions. The offenders in this case were not ignored and their needs were taken care off. As the present author pointed out in his article '*African Sub-Regional Bodies in Armed Conflict resolution: in the case of IGAD in the Sudan Conflict*, the old men had extraordinary alacrity and wisdom. They remembered every point made, did their deductions and passed an agreeable judgement on matters of clan quarrels, delicate cases of pregnancies and marital problems,³ on the basis of reasoning that violence is an attempt to achieve justice. To avoid an escalation of violence, the confidentiality of all the information was protected and in a situation where the offender's life was believed to be in danger, some form of security measures were provided to him or her by the Council of Elders until the case was over.

Thus, justice in the traditional community system was addressed with respect for each community member. These good values of the Council of Elders' pattern of leadership were preserved and integrated to foster the unity of the family. It thus follows that the more punishment a society uses, the higher the rate of violence becomes, making restorative justice the best model of an approach between the victim-offender. The Council of Elders can be a model of traditional restorative justice settings which I think are pertinent to the current political Kenyan system seeking healing and reconciliation. In other words, the Council of Elders established a system to promote human rights, throwing off imperialist domination and capitalistic exploitation to create a society where a *community* mode of existence prevails.

¹Gilligan, James. (2001). *Preventing Violence: Prospects for Tomorrow*, New York, Thames & Hudson.
Zehr, Howard. (1990). *Changing Lenses: A New Focus for Crime and Justice*, PA, Herald Press.

²Oricho O. Dennis (2007). *African Sub-Regional Bodies in Armed Conflict resolution: The case of IGAD in Sudan Conflict*, in *Peace Weavers: Methodologies of Peace Building in Africa*, by Opongo, Omondi

³Elias, S.J. (ed), Nairobi, Kenya, Paulines Publications Africa.

A good example is as reflected by a renowned African Scholar in his African Egalitarianism philosophy, *I exist for, with and in the WE and vice versa, I am because we are, and since we are, therefore, I am.*⁴ The concept brought to mind is that God loves diversity. God made a diverse world and we are to walk into difference rather than surround ourselves with people who are the same.

Likewise, the Council of Elders were regarded as men of wisdom with Plato's attributes of philosopher kings who could listen and handle diverse cases in the community. They did not have much formal education but were men of wisdom and humility who managed to bring the community together when there was conflict and disorder. Their mode of leadership was centred on the human core values of love, relationships, respect and recognition.

Their main task was to reconcile disputing families or relatives. This is based on the fact that disconnected relationships within the community bring shame on families which in turn reduce social cohesion among people. Cultures whose members commit the most violence are those whose value systems, socialisation practices and major institutions have the effect of making their members especially sensitive to feelings of shame and humiliation and do not facilitate their developing feelings of empathy, guilt or remorse which inhibit violent impulses. Therefore, the wisdom of the council elders was fully embedded in the concept of restorative justice as a uniting factor for the victim, offender and community. Restorative justice seeks to create dialogue and re-examine people's assumptions of justice.

As indicated by Johnstone, restorative justice represents a major paradigm shift and is a profound challenge to the conventional understanding of what is meant by crime and justice and how society relates to offenders.⁵ In the Council of Elders' system of leadership each member had a sense of belonging and the right to be heard. The term commonly used by the community was 'WE' not 'I' as in individualistic communities. The focus of the council fostered mutual engagement with neighbours and the entire community at a deeper level. For example, when couples quarrelled, the Council of Elders initiated dialogue between the parties to look into the main causes of disputes and ways of renewing relationships once more.

For example, events like communal meals and rituals were held on the basis of reconciliation, to prevent violence, do justice and build peace, fostering self esteem to protect against feelings of shame. The Council of Elders provided an environment for reconciliation where the victim-offender could meet face to face without tension or fear of expression. The creation of space for dialogue prevented the rise of unjust practices and promoted healing, respect and community harmony. Learning from this kind of

⁴Mbiti, John, (1978). *African Religions and Philosophy*. Nairobi: East- African Publishers. 1Zehr, Forgiveness - What is it, what is not, class notes: 12/04/2008, Fall Semester 2008.

⁵Johnstone, Gerry. (2002). *Restorative Justice: Ideas, Values, Debates*, USA, Willan Publishing.

restorative justice, Church leadership can give people the tools to acquire self-esteem through education, healthcare, empowerment and the opportunity to reduce violence within the community.

Zehr points out that restorative justice is more focused on needs, those of victims, communities and offenders.⁶ Decisions were community oriented with little damage and nobody was excluded. Most homicide cases could be attributed to income or wealth disparities. This is often referred to as “relative deprivation.” The Council of Elders in particular was unbiased and morally sensitive as violence was considered illegal by the community and offenders were punished.

An “Elder” had a social conscious and a thorough knowledge of prevailing social relationships to bring about social justice. The Council of Elders sought nonviolent means to diminish feelings of shame and ensure justice, peace and reconciliation. As the highest socio-political institution, membership of the Council of Elders depended on personal integrity and the ability to listen to the voice of the people, unconcerned with self-interest. Fr. Ikunza points out that the root cause of violent conflicts is the key to effective response.⁷ Thus, understanding violence ultimately requires learning how to translate violent actions into words. The formation of the Truth, Justice and Reconciliation Commission (TJRC) to look into post election violence in Kenya needs to adopt this kind of systematic approach to reconciliation. The promotion of justice as Zehr points out reveals that restorative justice provides concrete ways to think about justice within the theory and practice of conflict transformation and peace-building.⁸ Justice means that what affects one person also affects others because of the ‘social-connectedness’ of human persons.

Traditions and values were restorative in handling victim offender issues. Indeed, for a concrete practice of justice, leaders should be involved and not detached from the community they are called to serve. A philosopher king’s position is that of involvement in the day-to-day running of the community.⁹ Leaders must engage in dialogue, allowing people to express their opinions and discussing until they agree. It is the Council of Elders’ prerogative, like that of the philosopher kings, to influence the way the judicial system is run by personal contact and allow dialectic from both the victim and offender on a win-win solution. Jesus modelled an aikido approach to social change and did not live within the purity paradigm that kept away tax collectors and prostitutes. Counselling others to “turn the other cheek, walk a second mile, give them your cloak” are all aikido moves. He engaged from the beginning

⁶Zehr, Howard. (2002). *The Little Book of Restorative Justice*, PA, Good Books.

⁷Hakimani, (2009). *Jesuit Journal of Social Justice in Eastern Africa: Seeking Truth, Justice and Reconciliation*, Jesuit Hakimani Centre, Nairobi Kenya

⁸Zehr, Howard. (2002). *The Little Book of Restorative Justice*, PA, Good Books.

⁹Gothrie, W.K.C. (1975), *A History of Greek Philosophy Vo.5. “Plato the Man and His Dialogues; Early Period*. Cambridge: Cambridge University Press.

with their paradigm, terms and worldview, and transformed the terminology toward a new interpretation. We can reframe the national conversation on security by talking about God's security strategy, security from the ground up.

Restorative justice prefers collaborative and inclusive processes, as far as possible, and outcomes that are mutually agreed upon rather than imposed.¹⁰ Offenders must acknowledge and take responsibility for their actions to receive proper punishment, healing and forgiveness.

The results of the justice system must repair broken relationships and address the causes of the crime while meeting the needs of victims-offenders and communities. The Council of elders was a plausible alternative in building trust and eventually improving damaged relationships. Nonetheless some issues brought to the Council were beyond their jurisdiction, due to the trauma or psychological healing of victims-offenders in cases of rape, murder and burglary. Besides, issues like reconciliation are long term processes requiring thorough self reflection and humility and I fear most Council of Elders lacked expertise on these matters. In some respects this pointed to a disintegrating system, which in order to be remedied, required some sort of advocacy for trust building and the re-integration of society.

Another weakness appeared when the Council of Elders was mirrored within the context of Western democracy which does not exclude women. In the Council of Elders, a lot of focus was on men as key decision makers. This created partiality in terms of decision making and issues deeply affecting women and young people. I therefore raise the question 'What knowledge of customs should be taken into consideration before appointing the Truth, Justice and Reconciliation Commission in Kenya to set them apart as guardians of the community? Are these traditional values being practiced in our current court systems? These questions call for further research.

Conclusion

I think that regarding the nature of leadership it is a society's right to take the means necessary to achieve the purpose for which it exists. This is justified by the lawfulness of society's goals and means to achieve justice. The Council of Elders kept community social structures strong with respect, trust and honesty and they showed wisdom, intelligence, seriousness and leadership. Forgiveness is a journey rather than an event, a part of healing and an act of empowerment or courage.¹¹ This calls for a long term process of healing to help the victim offender. However the lack of centres and institutions in African communities for psychological healing, traumas and educational training has curtailed this process.

¹⁰Gothrie, W.K.C. (1975), *A History of Greek Philosophy Vo.5. "Plato the Man and His Dialogues; Early Period.* Cambridge: Cambridge University Press

¹¹Hakimani, (2009). *Jesuit Journal of Social Justice in Eastern Africa: Seeking Truth, Justice and Reconciliation*, Jesuit Hakimani Centre, Nairobi Kenya.

The pertinent question is: *Can Council of Elders values and natural wisdom in leadership be utilised in the modern restorative justice process without ethnic bias?* I think more research should be done in this area. Within the unjust systems of today's world, the fate of restorative justice is in our hands as practitioners in justice and peace building. We have learnt from history that we can forget it and let it die, or we can nurture it, share it with others and keep it alive. Thus common justice needs to include acknowledgment of responsibility, maximum information, the search for truth, empowerment and repair of harm. Putting things right requires addressing harms and causes.

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