

Gacaca: A Successful Experiment in Restorative Justice?

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Introduction

The scenes of extreme overcrowding in Rwanda's prisons, a domestic criminal justice system buckling under the weight of over 800,000 genocide-related prisoners awaiting trial (Wielenga and Harris 2011: 16; Khaleeli 2010) and a nation deficient of any remaining legal expertise constituted but a handful of factors which characterised early post-genocide Rwanda. This extreme situation required a radical solution, and so it is in this notion that a blend of the traditional restorative practices of *gacaca* was envisaged in light of contemporary needs.

The restorative conception and intentions of the modern practice of *gacaca* were specifically designed as an alternative to Western models of retributive justice, in order to offer a more efficient, effective and long-term solution to the problems of national suffering and divisions. This essay therefore contends that *gacaca* constitutes an *experiment* in restorative justice, yet without ever fully achieving its own aims. It is within this assertion that the success of *gacaca* will be explored, and so rather than assuming that *gacaca*'s failings are indicative of the inherent weaknesses of restorative justice itself, this essay seeks to outline its strengths, using these as a measure in which to judge *gacaca*'s success.

Firstly it is important to understand the nature of restorative justice, and so a full but nuanced conceptualisation of the term, influenced by Howard Zehr's definition, will be offered. Within this framework the three core tenets of restorative justice, to repair, restore and establish responsibility, will be invoked as the main foundations on which to assess *gacaca*. Through this analysis it will be proven that *gacaca* was restorative in conceptualisation and intent.

Primarily, therefore, *gacaca* can be viewed as a restorative justice experiment and in situating *gacaca* within the context of restorative justice the value of some of its elements can be understood. However, the extent to which *gacaca* can in practice be called a 'success' is dependent upon its realisation of these core tenets of restorative justice. As will be shown, however, *gacaca* did not fully implement these goals, but importantly also, external factors impeded its ability to deliver restorative justice wholly. Finally, the conclusions drawn from this analysis point towards some of the broader implications of *gacaca* as both an experiment and a failure of restorative justice, showing the relevance and potential that a restorative model of justice can hold, not just for Rwanda, but for contemporary global politics.

Gacaca as Restorative Justice

Designed as an alternative to the processes of retribution embedded in Western justice forms, restorative justice fundamentally provides a radically different framework in which to conceive of and respond to the problem of crime (Umbreit 1999: 213; Zehr 2001: 330). Its definitively victim-oriented structure reflects the shift in emphasis, from crime as a violation of laws answerable to the state, to an understanding of crime as harm done to individuals and communities (Umbreit 1999, Zehr and Mika 2003: 42; Cobban 2002). Thus, as articulated by Johnstone, restorative justice is done 'not when something negative is done to the offender, but when something positive is done to meet the needs of people harmed by crime' (Johnstone 2004: 9-10). It is within this definition of restorative justice that the case of *gacaca* can be contextualised. Despite its characteristically controversial nature due to its adoption for crimes of genocide, as well as its ambitious scope in terms of the vast numbers of perpetrators and victims, *gacaca*

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undoubtedly constituted an *experiment* in this method of justice. Whilst restorative justice is far from a homogenous concept, and encompasses a plethora of practices (Daly 2002: 57), a nuanced interpretation of Howard Zehr's definitional work identifies the three most compelling and fundamental components of restorative justice as repair, responsibility and restoration (Zehr 2009), all of which can be seen to some extent within *gacaca*.

As a primary function of restorative justice, the intent to repair damage done to victims and communities clearly constituted at least part of *gacaca's* design. Although this issue of reparation is indeed multifaceted, the very nature of *gacaca* as a local and community-based justice process (Cunneen 2003: 185) served to provide the Rwandan people with a sense of 'ownership' over their own and unique experience of conflict (Clark 2008b: 303; Johnstone and Ness 2007: 13). Therefore, in removing the direct interference and orchestration of the state, *gacaca* proved the capacity for communities to conduct a traditional and community-led process of administering justice, therefore adhering to a restorative model over that of Western methods (Cobban 2002). Moreover, this sense of victim empowerment relates to the exclusion of elites such as magistrates, elected officials and clergy from the role of the judges (Clark 2008b: 304; Drumbl 2000:1264), instead opting for the use of trusted members of the community (Sarkin 2001: 164, Uvin and Mironko 2003: 226), which in theory instigates the process of repair. In this sense, repair can be envisioned in a communitarian perspective (Cobban 2002), as communities participated in and conducted the *gacaca* court's proceedings, therefore engaging in a collective acknowledgement of the crimes committed and suffered. However, the functional qualities of repair also relates to notions of 'truth-telling' and the practical and therapeutic qualities which are associated with it (Brouneus 2008; Sarkin 2001).

On a practical level, it is clear that *gacaca* offered the victims of the genocide one of the most important outcomes of this justice process, in the frequent revelations of the physical remains of the victims' relatives (Wielenga and Harris 2011: 23). The very process of *gacaca* and its emphasis on '[revealing] the truth' (HRW 2011: 16) has 'helped to bring the facts of the genocide out into the open' (Wielenga and Harris 2011: 23) in the most crucial way, offering victims a sense of closure. The reparative function of *gacaca's* 'truth-telling' should not be underestimated, and stands as a quality unique to restorative justice in terms of its attached importance to the truth. Yet, the act of 'truth-telling' which was advocated by *gacaca* and restorative justice models alike, at least in theory was envisaged to hold a 'cathartic' quality (Sarkin 2001: 147), therefore placing an emphasis on the repair of the victim and a desire to 'heal the wounds of genocide' (Brouneus 2008: 70). Yet, restorative justice promotes repair alongside notions of responsibility, which is embedded in the importance of victim engagement in the process and establishing the accountability and punishment of the perpetrator (Zehr 2009).

To draw on the definitional work of Howard Zehr, the emphasis on responsibility as a core component of restorative justice relates to the need to establish a sense of accountability by the perpetrator of the crime, whilst also addressing the needs of those harmed (Zehr 2009). However, it is within this conception of responsibility that the tension between *gacaca* and the principles of restorative justice lie, due to the debate surrounding the appropriate level of punishment within this model. Despite its restorative practices and character, *gacaca* remains a legal process (Wielenga and Harris 2011: 19) and so punishment does constitute a crucial element of the *gacaca* courts (Rettig 2008: 25). Whilst perpetrators are indeed sentenced to some form of punishment, it is important to note that this seldom takes the form of a jail sentence and instead prescribes tasks such as the rebuilding of victims' homes, working in their fields or other variations of community service (Wielenga and Harris 2011: 18). Thus, despite *gacaca's* clear punitive and legal elements, in many ways the nature of punishment remains within a restorative framework of repairing the harm done through practical measures. Moreover, it is noteworthy to observe the particular necessity of punishment in the case of Rwanda due to the concern over the nation's 'culture of impunity' (Wielenga and Harris 2011: 21) throughout the series of massacres which preceded the genocide of 1994.

With the nation's distinct lack of punishment and accountability within its historical trajectory of political violence, an element of retribution was deemed integral to the prevention of violence in the future (Roth and Des Forges 2002; Clark 2008b: 300 see also Clark 2008a). It is therefore possible to perceive *gacaca* as restorative in both its intention and conception, with its adherence to the principle of responsibility fundamentally seeking to repair the harm inflicted through a policy of acknowledgement and prevention.

With the principles of repair and responsibility entrenched in the creation of *gacaca*, it is worthy to explore the extent to

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which the courts promoted the restoration of trust and social harmony. Whilst Zehr is emphatic of the underlying value of restoring relationships, *gacaca*'s restorative quality lay in its ambition to restore social harmony (Zehr 2009). This is not to suggest that the repair of individual relationships between victim and perpetrator were not promoted, but rather *gacaca* was representative of the drive toward national 'reconciliation' (Brouneus 2008: 56) which encompassed wider understandings of restoration. In essence *gacaca* sought to promote reconciliation between Hutu and Tutsi, uniting them under the identity of 'Rwandans' (HRW 2011: 12). Moreover, in conjunction with its communitarian methodology, the restoration of social harmony and trust was of high priority in the aims and implementation of *gacaca*.

Through exploration of the core principles of repair, responsibility and restoration, integral to any experiment in restorative justice, it is apparent that *gacaca* valued and outlined all three of these fundamental values. However, the extent to which this experiment in restorative justice was successful is deserving of further observation and analysis.

Gacaca: A successful Experiment?

As highlighted above, the communitarian structure of *gacaca* adhered to core values of restorative justice, shifting the emphasis away from the level of the state to the role of the victims and community. However, this incurred significant costs for the justice process. The distinct lack of legal expertise within *gacaca*'s structure has been the source of much criticism regarding its success; justice of any kind is readily compromised if administered by those not sufficiently trained in the legal sphere, as the *gacaca* courts prove. For many critics of the proceedings, it is this detrimental factor, alongside the high levels of impartiality to the crimes amongst those selected to judge the trials (HRW 2010: 148), which prove contrary to international standards of a fair trial whilst also compromising its reparative function (Fierens 2005: 910). It is in the failure to achieve a balance between an accessible and local administration of justice and international legal standards which provoked organizations such as Amnesty International (AI) and Human Rights Watch (HRW) to persistently call for a reform of *gacaca* (AI 2000; HRW 2011; Schabas 2005: 881). Moreover, with many *gacaca* judges 'involved in the events of the genocide to some degree' (Corey and Joireman 2004: 85), the norm of impartiality within justice was compromised, and so the capacity for the courts to repair both the community and victims was greatly restricted. This is not to suggest that local, community-based justice is inherently flawed, but the communitarian practice of justice should not negate the importance of trust, fairness and impartiality within the deliverance of justice. Thus, rather than a failure of restorative justice itself, the failure to administer justice appropriately and professionally reflects the structural inadequacies of *gacaca*'s implementation.

The twofold reparative function of restorative justice is, however, crucial and so the extent to which *gacaca*'s emphasis on 'truth-telling' realised its desired outcome is subject to debate. To draw on Johnstone's conception of restorative justice once again, the fact that *gacaca* failed to offer something positive, in the form of compensation, to meet the needs of the victims (Johnstone 2004: 9-10) meant part of its reparative function was undermined. For example, whilst 'truth-telling' is believed to be cathartic for victims, evidence of 'traumatization' through their testimonies did in many cases incite 'fear, anxiety and sadness' (Rime et al 2011: 701; Brouneus 2008). Although this may be unavoidable for crimes of such extreme brutality, in order for victims' engagement in the process of 'truth-telling' between victim and perpetrator to hold a healing quality, adequate compensation is needed to empower victims (see, Baines 2007: 104; Waldorf 2006: 430) as well to avoid a 're-victimization' of those involved (Wielenga and Harris 2011: 20; AI 2000: 8). *Gacaca*'s reparative qualities were therefore hindered, as its lack of compensation for victims (AI 2000: 9) meant that for many the process failed to ameliorate the damage caused by the crime and instead caused further harm.

Whilst restorative justice promotes the 'responsibility' of victims to engage in the process, the lack of compensation for victims renders the participation in *gacaca* more burdensome than reparative. Moreover, this 'responsibility' is a reciprocal tool, used to engage perpetrators, as well as victims, in order for them to accept fully accountability for their actions and comprehend the damage inflicted by their crime. However, it is clear that within *gacaca* mistakes were incurred on both sides of this principle of responsibility.

Gacaca did prioritise the value of responsibility by perpetrators, yet despite the government's supposed commitment

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to '[revealing] the truth about what happened' and '[eradicating] the culture of impunity' (HRW 2011: 16) the failure to include crimes committed by the Rwandan Patriotic Front (RPF) in 1994 (HRW 2008: 36) proves contradictory to these priorities (Molenaar 2005: 44). As documented by one relative of a victim of RPF crimes;

"the biggest problem with gacaca is the crimes we can't discuss...even though the families need to talk... We're told to be quiet on these matters...It's not justice" (AI 2000:11).

Not only are the principles of responsibility and accountability evidently compromised by this miscarriage of justice, but this too incited upset amongst the victims of these hidden crimes. Moreover, this particular victim of RPF crimes demonstrates the potential for this lack of responsibility, accountability and truth to foster resentment. On a broader level, the exclusion of RPF crimes perpetrated both during and in the days following the genocide has been widely criticized for constructing a Tutsi-dominated 'victor's justice' (Bolocan 2004: 370; Sarkin 2001: 149; Uvin and Mironko 2003: 227) thus delivering inequitable justice (Corey and Joireman 2004: 73), and potentially further fuelling a culture of impunity. In actively excluding Tutsi RPF crime and exclusively addressing Hutu perpetration of violence, *gacaca* served to accentuate ethnic divisions within society (Corey and Joireman 2004: 73), therefore compromising its own restorative aims and values through the politicization of the process. Through the influence of such extraneous political and structural factors, the desire to restore social harmony and trust through *gacaca* was further impeded by its implementation.

With ethnic polarization frequently identified as a potential danger of *gacaca*, it is not simply RPF crimes that were overlooked, with rigid understandings of 'victims' and 'perpetrators' also repudiating claims of Hutu victimhood. Although the Rwandan state advocated 'ethnic unity' as a basis for future peace and security, the essentialist categorisation of Tutsis as survivors, and Hutus as *genocidaires* within the *gacaca* process hindered any long-term unity amongst Rwandans (HRW 2011: 12; Thompson 2011: 377). Thus, as Thompson has asserted, the RPF government has in fact 'politicized Tutsi victimhood' and 'collectivised Hutu guilt' (Thompson 2011: 378; see also, Wielenga and Harris 2011: 21) therefore negating hopes of restoring trust in Rwandan society. Despite the dominance of reconciliation, national unity and peace characterising the discourse surrounding *gacaca*, this particular experiment in restorative justice demonstrates the dangers of constructing a justice process entrenched in on-going political tensions. Furthermore, *gacaca* elucidates the ineffectual nature of restorative rhetoric if it cannot restore social harmony in practice and overcome ethnic divisions.

Implications

"An African solution to African problems" (Paul Kagame)[1]

With the conception and implementation of *gacaca* born out of a traditional Rwandan practice of restorative justice and a display of violence unprecedented in scale and nature, Kagame's assertion that *gacaca* is unique to Africa is conceivable. However, despite the failings of Rwanda's experiment in restorative justice, *gacaca* reflects its potential, for Rwanda as a nation, Africa as a continent, and the international community at large. Fundamentally, the plethora of lessons which can be learned from this experiment are not exclusive to Africa. Despite the local and customary nature of *gacaca*, rather than constituting a specifically African solution, as an experiment in restorative justice, it proved to adhere to the core definitional notions of repair, responsibility and restoration. Furthermore, whilst the uniqueness of the genocide of 1994 should in no way be generalised amongst other cases of 'ethnic conflict', Rwanda's experience of ethnic and political violence resonates with global trends towards the intra-state, localized, identity-based, and pervasive warfare of the post-cold war era of globalization (Kaldor 2006). Thus, whilst it is clear that the lessons to be learnt from *gacaca* are of particular significance for the African continent 'because too many African societies share the problems of civil war and its aftermath' (Molenaar 2005: 157), these are problems which plague too many of the world's nations. It is for this reason that *gacaca* does not strictly constitute an African solution to an African problem, but rather, this experiment should be looked upon as a particularly 'human' response and solution to a persistent global problem.

The contentious nature of *gacaca* within the academic and political sphere has problematized its legacy as either a success or failure. However, its failings were not indicative of an inherent flaw in restorative justice, but rather

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reflective of extraneous structural and political factors which impeded its capacity to deliver a justice that was wholly restorative. In this sense the failings of *gacaca* offer a lens through which a successful experiment in restorative justice can be viewed. Whereas criticisms of retributive models such as the International Criminal Tribunal for Rwanda (ICTR) reflect the flaws in its very conception and inability to foster long-term reconciliation (Clark 2008a: 331), the failings of *gacaca* demonstrate the need to strengthen the core tenets of restorative justice. Whilst it has attracted a wealth of criticism from international human rights organizations for its deficiency in international standards, evidence of corruption and ethnic bias, such organizations have merely offered reform strategies which improve upon existing practices and structures of restorative justice (HRW 2011; AI 2000). Therefore, whilst even through its criticism, *gacaca* is indicative of what is still perceived to be the most appropriate and effective course of action for post-conflict societies (Clark 2008a: 331). In this sense, it is without doubt 'imperfect' but nevertheless remains 'the better model' (Weisbord 2003). The failings of this experiment are indeed constructive for an on-looking international community, sympathetic to the desire within some post-conflict societies to find alternative mechanisms in which to administer justice and reconciliation.

Whilst *gacaca* failed in some of its outcomes, the reason why it remains significant in both Rwanda and to the international community is that it did possess a 'transformative quality' (Johnstone and Ness 2007: 1; Braithwaite 2002: 564) in the sense that it projected an alternative understanding of crime and how to respond to it. If post-conflict Rwanda was able to invoke the vision and aims of restorative justice in order to deal with crimes of such severity as genocide, even despite its internal failings, it provides scope for alternative methods of justice to be envisaged across a broad spectrum of crimes on a global level.

Conclusion

Gacaca, evidently, cannot be called a successful experiment in restorative justice. The *gacaca* system did not contain a strong enough reparative element, whilst the reparative qualities that it did possess were restricted by factors of capacity such as a lack of legal expertise within the system, and sufficient support and compensation for victims. *Gacaca* clearly prioritised the role of responsibility and accountability in order to stop the culture of impunity in Rwanda, yet because *gacaca* operated within a society still ravaged by ethnic divisions, the system served to further polarise these divides by collectivising guilt. Whereas restorative justice aims to individualise responsibility, the external political and societal factors surrounding *gacaca* served to contradict this aim, potentially fostering further resentment and entrenching cyclical violence. These factors fundamentally undermined the potential of *gacaca* to harmonise Rwandan society, evinced by the 'negative peace' of contemporary Rwanda.

However, there was no precedent for how to invoke a system of restorative justice which could effectively deal with the effects of genocide. *Gacaca* was never likely to gauge accurately the necessary responses to such an extreme event. Even though experiments such as *gacaca* were drawn from traditional practises of restorative justice within Rwandan communities, in a global political realm *gacaca* was still very much a new phenomenon, and therefore it is still taking root as an effective method of delivering justice. Experiments such as *gacaca* are needed by the international political community, and its failings are constructive to a realisation of what can constitute a successful model of restorative justice. Whilst *gacaca* cannot be considered a successful experiment, it has successfully outlined a path for the realisation of an improved practice of restorative justice.

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[1] Paul Kagame quoted in Human Rights Watch (2011) 'Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts', New York: Human Rights Watch.