

ARTICLE

The restorative nature of Aymara Indigenous justice in Bolivia

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Abstract

Much current Western scholarship suggests that the modern idea of restorative justice is not totally a recent invention; it shares a common basis with and is similar to Indigenous justice. This article draws on fieldwork concerning Indigenous justice in Bolivia and contends that it has little in common with restorative justice. In much of the Western world, modern justice systems are largely retributive, based on individual blame and punishment, and restorative mechanisms are used rarely as complementary. Our Bolivian fieldwork revealed Indigenous justice to be a full-fledged, intrinsically restorative system of justice. This article will briefly set out conceptualisations and practices of restorative justice in the Western world before going on to consider in some detail the Indigenous system in Bolivia. It will contend that it is the differences between Western restorative justice and Indigenous justice which are more important to a proper understanding of Indigenous justice. It will make the argument that linking the two may be damaging to the comprehension and survival of Indigenous justice and may also inhibit the real potential of Indigenous justice to enrich justice practices in Western countries.

Keywords: Indigenous justice, restorative justice, Bolivia, Latin America.

1 Introduction, context and methodology

The objective of this article is to explore Indigenous justice, to uncover and understand its real, underlying meaning and power. Importantly, the article does not aim to critically assess the justice of Western systems. It does not seek to question or undermine the use of restorative justice in a largely retributive system, nor does it discuss whether restorative justice should completely replace criminal justice and build a new justice paradigm (see Gavrielides, 2008). However, in order to provide context and lay the groundwork for the exploration of Indigenous

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Paolo Baffero, Ali Wardak and Kate Williams

justice, the article briefly introduces restorative justice as used in many Western systems of justice.

Although restorative justice is recognised to be a contested concept (Johnstone & Van Ness, 2007), Zehr's definition seems to be one of the most used in the existing body of literature on the subject:

[A] process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible (2002: 40).

Many argue that restorative justice developed because 'the system we call "criminal justice" does not work' (Zehr, 1985: 69). Restorative justice proponents draw on two main reasons to substantiate this claim. First, the modern criminal justice systems in the West do not involve victims in dealing with a criminal offence, ignoring their needs and, also, often compounding their injury, a form of secondary victimisation (Zehr, 2005). For this Zehr (1985: 69) claimed that: 'For victims ... the system is just not working'. Second, our criminal justice system fails to hold offenders fully accountable for their misbehaviour (Bertagna, Ceretti & Mazzuccato, 2015; Dünkel, Horsfield & Păroşanu, 2015; Zehr, 1985). These proponents emphasise the importance of offenders' active role and accountability in the resolution of criminal offences. According to Zehr (1985: 70), the criminal justice system understands accountability as serving due punishment for a wrongdoing, whereas it should entail 'understanding one's actions and taking responsibility for making things right'. Restorative justice proponents claim that full accountability would be more likely to result in individuals choosing not to reoffend. They further argue that enabling the offender to choose law abiding behaviours should lead communities to increase the degree to which wrongdoers reintegrate into society (Dünkel et al., 2015).

In recent years, campaigners for restorative justice have been able to persuade policymakers and criminal justice agencies in many countries in the Western world to implement restorative justice as a penal policy option. The implementation of restorative justice in other systems has been so widespread that the United Nations (2002) adopted a set of principles to guide states in the use of such practices and to set parameters to their use, to ensure it was used fairly and did not breach, for example, human rights principles. In the last 40 years or so, most restorative justice programmes have been incorporated within conventional criminal justice systems, often paired with diversionary programmes or as alternative sanctions within them (Wood & Suzuki, 2016). As argued by Johnstone (2011), for many of its proponents this has been reason for celebration (see Marshall, 1999, in Johnstone, 2011). They claim in fact that in some circumstances restorative justice meets criminal justice objectives more successfully than conventional ways of dealing with crime. As discussed in the following text, this article argues that this view, though accurate, may be problematic.

In England and Wales, which the authors understand as an archetypical, comparative example of a Western justice system, criminal justice objectives involve reducing risk in society and protecting the public among others (NOMS,

2016). The criminal justice system defines risk as the risk of future reoffending and the risk that reoffending will generate serious harm. Criminal justice attempts to alleviate that risk through a system of deterrence by moral or ethical norms backed by punishment to persuade people that offending is not worthwhile (preventing offences) and through the ‘surveillance, confinement, and control’ of those who offend to prevent their reoffending (Feeley & Simon, 1992: 452). Therefore, risk is defined around the individual dimension, as is public protection whereby the more each individual’s risk is reduced, the more the public is protected (NOMS, 2016). As Garland (2001) puts it, criminal justice interventions today focus on reducing reoffending by increasing crime control rather than by increasing social welfare and well-being. Our criminal justice system understands the rehabilitation of offenders, for instance, through risk-need-responsivity, as the need of individuals to overcome their criminogenic characteristics to fit within society (Andrews & Bonta, 2010), or building on their strengths to support them to live a noncriminal life (McNeill, 2006; Weaver, 2019). Criminal justice, however, often fails to question whether society is fit for individuals’ needs; it fails to take into account more structural and systemic issues in the understanding of crime. It often ignores ideas of social justice and cohesion.

Rather than questioning or undermining the system as a whole, some have introduced restorative justice to soften the edges. However, the incorporation of restorative justice into existing criminal justice systems has been criticised by many, who fear the risk of the co-option of restorative justice’s true goals for criminal justice outcomes (Boyes-Watson, 2018; Maglione, 2021; Wood & Suzuki, 2016). This may happen when victims are used to heighten offenders’ rehabilitation and desistance (see Zehr, 1995), or when restorative justice research avoids questioning the role of criminal justice ‘in (re)producing inequitable justice outcomes’ (see Moyle & Tauri, 2016: 92). In fact, most research conducted by proponents of restorative justice focuses today on the efficacy of restorative justice in responding to criminal justice issues. A little, very little, research (Daly & Stubbs, 2006; Gavrielides, 2014; Wood & Suzuki, 2016) considers the effects of using restorative justice in its purer forms, and studies whether restoring relationships and communities is harmful or cathartic. Does restorative justice restore and retain already existing harmful aspects of a community? Does the use of restorative justice to resolve the harm that arises out of crime mean that socially harmful relationships, power differentials and exclusionary situations become protected and replicated, thus leading to the continuation of harm which may underpin the crimes in the first place?

1.1 Restorative justice and Indigenous justice

A key theme that epitomises restorative justice thought is that the way in which Western society currently understands crime and responds to it should not be regarded as natural. Christie (2017) argues that both retributive justice and the punishment it uses are political/legal choices; they are not natural responses to conflict or to crime. Zehr (2005) furthermore adds that restorative justice is a means to help us question whether retribution, punishment, individual accountability, and accusatory justice are the correct choice and posits restorative

Paolo Baffero, Ali Wardak and Kate Williams

justice as a more natural response to offending. In fact, many proponents of restorative justice contend that our distant ancestors handled their own conflicts with the participation of their communities; crime was not resolved by a centralised authority. Specifically, many advocates of restorative justice argue that this is not a recent invention (Walgrave, 2008). They say that restoration and reparation have been key components of justice and conflict resolution ‘throughout most of human history’ (Braithwaite, 1999: 2; Umbreit, Vos, Coates & Lightfoot, 2005; Weitekamp, 1999; Zehr, 2002). Their claim is that restorative justice has been identified in the practices of many peoples in different parts of the world:

Germanic people ... ancient Arab, Greek, and Roman civilizations ... Indian Hindus as ancient as the Vedic civilization ... and ancient Buddhist, Taoist and Confucian traditions (Braithwaite, 1999: 1-2).

Many Native American tribes within the United States, the Aboriginal or First Nation people of Canada, the Maori in New Zealand, Native Hawaiians, African tribal councils, the Afghan practice of jirga, the Arab or Palestinian practice of Sulha, and many of the ancient Celtic practices found in the Brehon laws (Umbreit et al., 2005: 255).

Other scholars, however, reject this view. Klein argues that ‘the state of affairs during ... the “golden age of the victim” can only be described as brutal’ (1978, quoted in Weitekamp, 1999: 88). He states that the practices of justice mentioned earlier were not necessarily restorative in that they often were abused by people in power, involved coercive sanctions, were elitist and led to chaos in society because the practices were based on private retaliation. Many argue that ancient societies were rather lawless and thus the common and normal response to a perceived wrong was violent and indiscriminate private retaliation (Miller, 1999; Sylvester, 2003). Bottoms (2003: 90) reiterates that the practices of justice of many premodern societies were ‘hardly’ restorative as they were both coercive for the individual and failed to serve the community.

This article adds a new dimension to the debate. It will prove, in line with other contemporary research, that there exist ‘self-governing’ Indigenous communities in different parts of the world whose systems of justice are intrinsically restorative and in line with more local traditional practices (Beitzel & Castle, 2013; Elechi, 2008; Jones, 2014; Qafisheh & Wardak, 2019; Yazzie & Zion, 2013). The phrase ‘intrinsically restorative’ will be examined in the next sections where the practices of justice in Indigenous communities in Bolivia are discussed. It will be demonstrated that these have little to do with modern conceptualisation and practices of restorative justice. The finding is that although there is common ground between them, the core differences are more profound than the similarities, and hence they should be assessed separately.

1.2 Avvicinata: the Aymara Indigenous community accessed

To substantiate its claims, this article draws on research fieldwork conducted in Bolivia between September and December 2018. Progettomondo, an Italian NGO

established in Bolivia since around the 1960s, supported the principal researcher (PB) in loco. Part of the research was carried out in urban areas located within the La Paz department and part of it was carried out through a focused ethnography in *Avvicinata*, a local Aymara Indigenous community. The term *Aymara* refers to the second largest of the 36 cultural Indigenous groups recognised by the Constitution of Bolivia (2009), representing 46 per cent of the whole Bolivian Indigenous population (Instituto Nacional de Estadística, 2012). *Avvicinata* is located in the Eastern area of La Paz, about four hours away from the city. Its current population includes 110 families, who self-recognise as *indigena originario* (Indigenous peasant). Many of them (around 70 per cent of the total population) had never been to the city at the time of the research and did not speak languages other than *Aymara*. The population relies on lithium mines, and they mostly survive directly on what they grow (potatoes, wheat), fish (trout), breed (cows, alpacas) and swap with other local communities.

In the cities, the principal researcher conducted 24 in-depth, semi-structured interviews with stakeholders, such as deputy-ministers or chief justice executives, and professionals, including paid workers for NGOs and social workers. In the community, the focused ethnography allowed the researcher to embed his persona within the local people's reality as deeply as possible by endorsing behaviours and activities that were considered important (Knoblauch, 2005). Once the researcher gained the trust of the local people, the focused ethnography allowed him, first, to interview two Indigenous representatives dealing with justice in *Avvicinata*, and another six living in neighbouring communities. Indigenous representatives are common members of Indigenous communities who are elected by public vote on an annual rotational basis during communal assemblies, whose role is to provide order, protect stability and social cohesion, and more generally regulate life in the Indigenous society. Secondly, in *Avvicinata* the researcher anonymously recorded community members' experiences and 'stories' in a daily diary, which well-illustrated the differences between the local and the more Western world concept (all of these are anonymised and referenced throughout the article as 'ethnographic field notes').

One of the strongest findings which emerged from the data is that the *Aymara* Indigenous communities approach conflict as a breakdown in social relationships and thus, a collective rather than an individual issue. The word 'crime' does not exist; they describe rule-breaking as a 'mistake', a temporary deviation from social norms due to transient disequilibrium. This is discussed in Sections 2 and 3 of the present article, which presents the key research findings into Indigenous justice in Bolivia. Sections 4 and 5 will then use those findings to discuss the key differences and similarities between Indigenous and modern Western restorative justice, the core argument of this article. This article will conclude with some final remarks on the possible lessons for restorative justice Western style.

2 The collective worldview of Aymara Indigenous communities

The Constitution of Bolivia (2009) defines the country as a 'Plurinational ... State' founded on 'juridical ... pluralism' (Constitution of Bolivia, 2009: Art. 1). The State of Bolivia is administratively subdivided into rural areas (Indigenous communities) and cities. The Constitution grants legal autonomy to Indigenous communities when it comes to responding to, for example, less serious criminal behaviour committed within their legal territories. This is not replicated in the cities, where the Spanish-imported, civil (Western) law based justice system takes effect. The Constitution of Bolivia (2009) also imposes limitations on the authority of Indigenous justice. The Law Limiting Indigenous Jurisdiction (Ley/Law 073, 2010) reiterates that Indigenous jurisdiction can only apply to Indigenous people who are involved in less serious conflicts within Indigenous territories. In particular, this Law (073, 2010, Art. 10.II) reiterates that the scope of Indigenous jurisdiction does not extend to international law (such as crimes against humanity, terrorism), crimes against the state (such as corruption), tariff law, crimes against children, and serious crimes, that is rape, murder and assassination. In addition, in applying Indigenous justice the Constitution requires Indigenous people to respect state imposed human rights, individual rights, especially those set out within treaties such as the Universal Declaration of Human Rights (United Nations, 1948).

Within the limitations set out earlier, Indigenous communities in Bolivia can deal with local conflicts through their own local mechanisms, which draw on a clearly identified system of values: the Indigenous collective worldview. This refers to the Indigenous holistic vision of the cosmos, which is founded on a collective conception of human life. One of the main difficulties encountered during the ethnography in the community involved comprehending the centrality of the collective dimension that underpins every aspect of Indigenous people's existence. In the Indigenous community, collectiveness, understood as the quality or state of being collective, is the common denominator of the values, duties, norms and decisions concerning everything in their lives including what we call 'crime', sanctions and community agreements that concern conflict resolution processes. What proved most difficult to understand was the depth to which the more communitarian view of the world and understanding of human nature underpinned the whole way of life and all decisions of Indigenous people in the community. This is especially revealed by their conceptualisation of values such as safety, equality, freedom and justice.

Freedom, for example, is understood locally as ontologically blended with a societal vision: its meaning cannot be grasped if external to a social context. Freedom is only truly meaningful when the needs of the community are taken into consideration. This view is in stark contrast to the assumptions and preconceptions of most people in the West, including the researchers. Western thinking is largely forged on the Western philosophical ideals that flowed out of the Era of Enlightenment, based on the works of theorists such as Hobbes (1651), Locke (1689), and Rousseau (1762), where freedom is generally linked to the idea that individuals should be free from constraints unless their actions harm (or might harm) others (Mill, 1859). Whilst there are caveats to this very general idea, the

core is that people should be individually free. However, the ethnographic field notes indicate that, from the perspective of the *Aymara* Indigenous culture, freedom lies in an individual's share within society. Their freedom is collective, associated with the community; a 'social construction'. There, freedom is a value that cannot be enjoyed 'outside a social context' (Braithwaite & Pettit, 1990: 56).

The ethnographic field notes also indicate that the Indigenous collective understanding of freedom extends to all values and rights enjoyed by *Aymara* Indigenous people. This means that in Bolivian *Aymara* Indigenous communities, it is group rights which are prioritised, and therefore group or community rights which are protected in the Indigenous justice system; they trump individual human rights. In this sense, the rights attributed to the members of the Indigenous community are forged in the irreducible collective value of the group, a value that is not reducible to the sum of each single member's rights (Jones, 2022). The core collective element of their ideology underpins every dimension of the Indigenous community life and of its people. It is their participation in communal life, their stake in society, their membership in the community, that makes the Indigenous people free and, also, that determines the meaning and organisation of every aspect of their community. This includes their understanding of conflict and justice. The Indigenous collective worldview does not see 'crime' or 'conflict' in the same way as seen by the Bolivian centralised justice system: it does not see 'perpetrators' as criminals who should be blamed and punished. As the next section will show, it rather sees individual actions that go against the community's collective values; it sees them as errors for which the whole community comes together and agrees on what needs to be done to correct them.

3 The Aymara Indigenous system of conflict resolution

Aymara Indigenous people have a very distinctive understanding of 'conflict'. To start with, in the Indigenous community, there is no distinction between criminal and civil law. Indigenous people do not differentiate between conflicts that might involve compensation to the victim (civil law) and those where punishment of the offender might be essential (criminal). Rather, their system of justice aims, in all cases and under all circumstances, to restore the harmony, balance and equilibrium of the Indigenous group, by repairing the harm suffered.

Indeed, the word 'crime' is not used in the Indigenous community. Any action that causes harm to somebody, that goes against the community's rules, is labelled as 'lack', 'fault' or, mainly, a 'mistake'. Indigenous people in *Avvicinata* struggled to understand the question: 'what is "crime" in your community?', but when they did, they used to reformulate the question into: 'what kind of "mistakes" might there be in my community?' This is because there is no local *Aymara* translation for 'crime'. 'Crime' is seen by Indigenous people as a Western imported concept that entails serious individual misbehaviour against an individual victim. For them, 'mistake' is something that adversely affects the whole group. Second, in the Indigenous community, rule-breaking has a strong collective understanding, where conflict is seen as caused by a breakdown in social relationships rather than 'wrong'

or 'bad' individual choices, and as a communal disequilibrium that must be rebalanced for the same action to be avoided in the future. Thus, 'mistakes' can only be truly resolved when the community recognises and deals with the existence of the pre-standing disequilibrium or lack of social cohesion which led to misbehaviour. Disequilibrium may emerge for different reasons, including issues relating to sustenance (e.g. death of domestic animals), social exclusion or relational issues between community members. During conflict resolution, the Indigenous group reiterates that 'mistakes' are not tolerated; the word 'mistake' means that the behaviour that goes against social norms is in fact a wrong way to make the community aware of the existence of disequilibrium. The message is that the disequilibrium should be discussed and rectified in the community before any 'mistake' occurs.

Thus, a 'mistake' is not the fault of an individual; rather, it refers to an action caused by disequilibrium in the Indigenous community, which jeopardises the community stability and which should have been addressed before any 'mistake' occurred. In this way, the ethnographic field notes show that from the perspective of the Indigenous culture, 'mistakes' are the responsibility of the whole community. Common 'mistakes' that participants refer to extend to land disputes, physical quarrels and theft. In most cases, when 'mistakes' occur, the whole community meets in a public assembly to extensively discuss the issue at hand with the parties directly involved or affected by the 'mistake' and the other community members. In *Avvicinata*, those meetings are held in public spaces, such as empty buildings used for ceremonies or other public events, and involve all members except young people (seventeen and under). Anyone in the Indigenous community can present a problem to their representatives who will decide together whether to make a *llamada de atención* (call for the attention of the community) to collectively address the issue in a communal assembly.

During the assembly, participants sit so they can look at each other, with direct victims and those whose actions might be termed a 'mistake' generally sitting opposite one another. Families of both parties usually sit in the front row. Although members of the community at large are present, they might not physically sit down during the assembly, but can stand at the back of the building or even outside, often listening through the open door. During the meetings, some members of the public go around with a basket full of cigarettes, leaves of the local flora to chew, and soft drinks to share with everyone. While the assembly is mediated by the Indigenous representatives, everybody has a chance to speak, to reveal thoughts and emotions, to take responsibility and to sign *compromisos* (literal translation: acts of compromise, i.e. reparative agreements). These agreements, which are typically proposed by members of the community and chosen on the basis of a majority rule, might involve the 'perpetrator' agreeing to something but might also require something of the 'victim' and/or of the whole community. Although assemblies are often uncoded, minutes (including any decision/agreement) are taken for each of them for future reference.

Hence, conflict resolution in the *Aymara* Indigenous community aims at dealing with issues quickly and collectively to avoid the chaos that delay or procrastination might mean, in order to avoid jeopardising the community stability.

The Indigenous justice system aims at including everybody in the dialogue that underpins conflict resolution, to give all the people the opportunity to express their emotions and feelings, so that the issue is resolved once and for all. It is also very important that community members quickly return to fulfil their normal functions in the community. This is because the equilibrium of the Indigenous group rests on each individual contribution to communal work and life; they are entirely interdependent.

Here we try to understand the root of the problem to find a solution ... When there is a mistake, we bring the community in an assembly. There, everybody is present. Normally, the rulebreaker attends: we cannot talk about a person who is not there, he must be there to explain himself, why he did that, what happened. As consequence, we can figure out and judge. It is the whole community that chooses the sanction, the community must be there to know what happened ... The rulebreaker signs an agreement and, generally, asks for forgiveness to the whole community, which will support him/her (Benvenuto, Indigenous representative in *Avvicinata*).

It follows that mechanisms for conflict resolution are designed to restore the social relationships that are disturbed by 'mistakes', to reinstate the community equilibrium and social cohesion. Restoring social relationships requires a collective understanding of the issue underlying the conflict; hence, social relationships need to be reshaped in order to both heal (public) harm and to avoid the same 'mistakes' in the future.

Furthermore, participants stress that the key objectives of Indigenous justice, that is restoration of social relationships and reparation of community equilibrium, can only be achieved (in most cases) with the full restoration of the wrongdoer and the wrongdoer's reinstatement within society. Reintegration may lead those involved in the 'mistake' to recognise and 'own' their 'mistakes' and thereby allow them to take part in community life while taking responsibility in an attempt to repair the harm suffered by the victim or the Indigenous group at large. However, reintegration often also involves the whole Indigenous community making a collective effort to readapt following a 'mistake', to facilitate the restoration of rulebreakers in the community. For example, participants often mentioned cases in which wrongdoers steal food or domestic animals from other community members. As highlighted earlier, Indigenous conflict resolution aims at understanding the reasons that caused community members to misbehave. Generally, rulebreakers steal because they lack resources for their own sustenance. In those cases, first, community agreements often require the restitution of whatever was stolen. Moreover, ethnographic field notes indicate that in those and similar situations, the Indigenous community has an overarching cultural expectation that all members should help rulebreakers in achieving equilibrium. For example, this could be done by assisting rulebreakers with their harvest, and/or giving them food and shelter. This is understood in Indigenous communities as necessary to repair the community equilibrium, to restore harmony between community members; it is a core value in *Aymara* Indigenous culture.

An example of an extreme real-life situation illustrates how the reintegration of wrongdoers into the Indigenous community (rather than their exclusion) may be key to the equilibrium of the Indigenous group. This is a case of homicide described by a participant of the study. This took place in an *Aymara* Indigenous community not far from *Avvicinata*, meaning, however, that the researcher could not follow up with the longer-term outcomes of the agreement. Although Bolivian constitutional law requires more serious cases, including homicide, to be reported to the civil (Western) law based justice system for resolution (Ley/Law 073, 2010), the Indigenous community chose to deal with it locally. This decision was based on the simple fact that if the rulebreaker was dealt with in the city he would be sent to prison and then two families would have been without breadwinners (the dead man's family and the family of the perpetrator), which would have added to the burden of the local community; it would have further eroded equilibrium. Therefore, the community, in agreement with the two families directly involved, decided to reintegrate the wrongdoer in society, but required him to work twice as hard. He had to provide for the two families (his own and that of the man he killed) until all the children were grown up.

Issues like this generate important controversy, as people might say that, as the person committed homicide, he should be punished, he should not be there, free, working. However, the community understood that it was more important to look after the harmony in the community, and the well-being of the families, than to impose sanctions as we understand them (Drago, high-level political decision-maker responsible for justice and corruption at the State of Bolivia).

Homicide is certainly an uncommon event; it is very rare in *Aymara* Indigenous communities. However, in the case described here the Indigenous community believed that the intervention of the civil (Western) law based system of justice would have increased the communal disequilibrium caused by the offence and made the situation worse. The sanction inflicted on the rulebreaker did not aim at individual punishment, but rather on finding the most effective way to restore the group's equilibrium in an attempt to alleviate as much as possible the harm caused to the direct and indirect victims. Restoration of equilibrium through reworking social relationships and making him responsible for the survival of two families seemed fair and is one of the major objectives of *Aymara* Indigenous justice, as the following sections further discuss.

4 Aymara Indigenous justice is more than just restorative justice

As indicated by socio-criminological research, many populations in different continents have similar systems of values that give priority to the peace, equilibrium and harmony of the local community and Indigenous group. This harmony forms the basis of their rules, and underpins criminal decision-making in their communities (see, for example, Baskin, 2002; Das & Maru, 2011; Elechi, 2008;

Hand, Hanks & House, 2012; Jones, 2014; Mirsky, 2004; Motala, 1989; Wardak & Braithwaite, 2013; Wardak, Saba & Kazem, 2007). Indigenous community justice practices in many countries worldwide often aim to re-establish the community peace, harmony and equilibrium threatened by conflict or 'mistakes', to heal the harm produced and to restore social relationships. Although the way in which that is achieved is particular to each group, it is generally attained through procedures that involve encounters between victims, wrongdoers and the wider society in the justice arena. These procedures emphasise, among other pivotal aspects, the relationships between victims, rulebreakers and the community (see, for example, Beitzel & Castle, 2013; Elechi, 2008; Huyse & Salter, 2008; Peat, 1997; Yazzie & Zion, 2013).

This article previously discussed that *Aymara* Indigenous people in Bolivia understand conflict differently from the way it is understood in Western society. To start with, they do not differentiate between conflict that might involve compensation to the victim and that which may involve or seem to involve punishment of the rulebreaker. Rather, *Aymara* Indigenous justice always aims to restore the harmony and the equilibrium of the Indigenous group. This is done by carefully allocating responsibility after consideration of many issues (including those coming out with the immediate 'mistake'), repairing the harm suffered by the victim, and reintegrating rulebreakers back into society (often repairing harm they have suffered). Sanctions (meted out to those that we in the West might refer to as 'perpetrators') following community agreements mostly include fines, public works for the community, personal works for the victim, a temporary or indefinite denial of access to potable water, irrigation, or electricity (as discussed in the following text, these have clear human rights implications), suspension of public duties and, in the most severe cases, expulsion from the community. Whilst these sanctions appear to be a punishment (that is how it would be viewed in Western circles), that is not what the Indigenous community believes. Our Bolivian fieldwork reveals that, in contrast with criminal justice in Western society, none of the sanctions aims to punish rulebreakers. Even if they appear to be punitive, the reason underlying their use is the desire to restore social relationships disturbed by conflict and, with them, the community equilibrium.

Banishment and physical interventions are two extreme examples of sanctions that to a Western eye appear as punishments, which possibly are experienced as punishments, but that are used to attain restorative objectives for the community. Banishment in the *Aymara* Indigenous community is a rare sanction imposed as a last resort on recidivist rulebreakers, and only used when the community considers that the individual poses a permanent threat to the communal equilibrium, and that it is not possible to reinstate them. It is rather like an admission that the community worldview has failed. It was not possible to establish the extent to which this sanction is used in *Aymara* Indigenous communities; however, Indigenous people who were part of the ethnography stressed that their community has never banished anyone (in living memory). Banishment in this community had therefore not been used in living memory, although local people are aware that it could be used, as a last resort. Banishment involves unidirectional decisions that,

basically, represent life sentences, and it is imposed upon someone only when it is thought to be the only possible solution to redress disequilibrium.

The power of banishment is especially strong in societies characterised by ‘mechanical solidarities’ (Durkheim, 1893: 126), such as the Indigenous community, in which individuals and the social group are closely interconnected and interdependent. A wrongdoer who is banished has the person’s identity altered, is no longer a member of a community, and the person’s worldview will need to shift from a collective view to an individual one, based on personal survival. The research participants stressed that individuals who are banished by one Indigenous community are rarely accepted by any other community; they often migrate perpetually. During ethnographic observations of the area around the *Aymara* group, the researcher encountered a former member of a different local Indigenous community who roamed the liminal spaces between communities; he no longer ‘belonged’ anywhere. The community used him as an example not to be followed. It seemed that by labelling him as such, they were reminding themselves about their collective rules, values and the importance of their worldview, as his presence reminded them of what they would lose if they failed to live up to the communal ideals (Durkheim, 1893). Thus, banishment is not inflicted on wrongdoers to punish them, but used in order to strengthen social relationships, repair equilibrium in the Indigenous community, and maintaining it in the long term; it protects the community and its social cohesion.

Physical sanctions such as whipping and removal of water rights perform a similar function. Although prohibited by the Bolivian Constitution (as being a breach of human rights) and not used in *Avvicinata*, it was found that these might still be used in other *Aymara* Indigenous communities. Participants noted that these measures were most often likely to be used when Indigenous people had requested support from the civil (Western) law based justice system to help them to deal with intransigent problems, ones that could not be resolved through the use of ordinary Indigenous justice methods or when communal justice had failed. However, when the Indigenous people ask for such help, the centralised justice system does not always intervene. When the state fails to provide support to Indigenous communities, Indigenous people might use physical acts as a last resort to ensure the rulebreaker behaves in the future. Thus, physical interventions are used when Indigenous people believe it is necessary to preserve the stability of the community; they are not intended or designed as a punishment though they may well be experienced as such. The core aim of the physical sanction is the reintegration of wrongdoers into the community by using the shame that physical interventions produce (for perpetrators and their families) in order to force or persuade compliance with social standards.

To that end, the Bolivian Constituent Assembly’s Subcommission of Community Justice (2007) classifies whipping as a moral intervention; it does not classify it as a physical punishment. Similarly, in Colombia, for example, the Constitutional Court ruled in 1997 that physical interventions might be used as a sanction in Indigenous justice, as in the context they do not constitute punishment because they are intended to facilitate the recuperation, restoration and reintegration of wrongdoers (Botero, 2009). This falls within the logic of

‘reintegrative shaming’ (Braithwaite, 1989: 5), whereby wrongdoers feel shame for being physically embarrassed or degraded in front of the whole community, and, once reintegrated, the local understanding is that communal social bonds will be strengthened. The amount of whipping used is therefore what is necessary to give rise to the shame, to bring about restoration, not that which might be thought appropriate as punishment for the act. Hence, the objective is the restoration of the community’s stability by preserving the social structure of the community and, in the long term, preventing ‘reoffending’.

Physical interventions and banishment are, therefore, the most severe actions or decisions that might be inflicted upon wrongdoers in the Indigenous community, in common agreement with its members, and are used to restore community well-being. *Aymara* Indigenous justice arises out of this Indigenous collective worldview. In fact, Indigenous justice is an integral part of the Indigenous community structure, inherently intersected with the Indigenous system of values. Indigenous justice, also when it might appear to be punitive, always aims to restore the equilibrium within the community. The actions which we would label as ‘punishments’, it sees more as part of the shaming of the individual or condemnation of the ‘mistake’, something necessary to ‘mend’ the harm caused; not a condemnation or punishment of the person. In contrast, in Western systems if the usual restorative processes are not sufficient, the case will generally be elevated to a criminal court hearing and the perpetrator, if found guilty, will be punished. In such cases restoration can only then be an add-on, often something done to mediate the harm. This article thus claims that a core difference between Indigenous and modern Western restorative justice is that Indigenous systems of justice stand alone, the restorative approach is the only one, they are full-fledged restorative justice systems. This approach is underpinned by the Indigenous collective worldview, which makes the Indigenous people firstly concerned with issues relating to social disequilibrium and disparity, whereas restorative justice practices in Western society are an add-on to a largely retributive, individually blame-oriented system and are often used to supplement or soften the nature of that system. Each system is valid and important, but they are not the same, nor is it fruitful to claim similar routes for the two types of justice systems. The next section will further discuss this point while elucidating the second core difference between Indigenous and modern Western restorative justice.

5 Aymara Indigenous justice is intrinsically restorative

As previously discussed, the Indigenous collective worldview makes Indigenous people primarily concerned with the restoration of social relationships and of the community’s equilibrium. For this, the present article claims that the *Aymara* Indigenous practices of justice are intrinsically restorative. This is clear especially where the goal of conflict resolution is the preservation of the community’s equilibrium and peace disturbed by conflict, and thus the restoration of social cohesion and of the relationships among members of the Indigenous community. It is argued in this article that, drawing on the *Aymara* Indigenous tradition, justice

can be understood as being intrinsically restorative where it aims to restore and rework social relationships towards resolving any conflict(s) ('mistake'/misbehaviour) and their underlying causes, and promoting equilibrium between members of society.

Clearly, however, 'equilibrium' and 'social cohesion' are culturally informed concepts, which, in many Indigenous areas worldwide, such as in Bolivia, are grounded in more communitarian values and in the notion of group rights. The researcher found that despite constitutional obligations (see Section 2), Indigenous practices of conflict resolution in Bolivia sometimes breach individual human rights. There may be circumstances where the good of the collective requires the sacrifice of the good of the individual, and this sometimes might 'result in gross violations of the most basic liberties of individuals' (Kymlicka, 1995: 75). For example, it was found that serious crimes such as rape or violence against children are often resolved in the *Aymara* community by material compensation, not to the child raped but to her family, or by making the victim marry 'her' perpetrator. The way in which rape is resolved is a case where group rights represent a threat to the most vital individual interests of human beings, that is safety, equality, freedom and bodily integrity, among many others (see Gordon, 2015). There might be other cases in the Indigenous community in which wrongdoers do not want to sacrifice their individual liberty to attend to community's decisions, or in which victims are not happy with the decision of reintegrating wrongdoers, or are forced to accept rulebreakers' apologies to facilitate reintegration for the sake of the community's stability. There might also be other circumstances and characteristics of the *Aymara* justice process that to a Western eye may appear as power imbalances, although similar occurrences rarely resulted from the research. As one of the participants of the study stressed:

Indigenous justice always guarantees the harmonic coexistence between citizens who live in the community, but within the logic of their norms, proceedings, culture, principles and values, those they have always used over centuries (Silvio, high-level political decision-maker responsible for Indigenous justice at the State of Bolivia).

It follows that the aim of rebalancing equilibrium in the community prevails and sometimes might conflict with more individual basic interests. For this reason, as mentioned previously in this article, many Western scholars argue that, broadly, Indigenous justice is not restorative because it can be coercive for the individual as it might violate individual interests (Bottoms, 2003; Miller, 1999; Klein, 1978, in Weitekamp, 1999; Sylvester, 2003). However, it is the goal of this paper to contend that the more communitarian understanding of society experienced by Indigenous people and their cultural conception of rights as being group rights rather than individual should prove the restorative nature of Indigenous justice, disproving Western scholars' claims. It is recognised here that what should happen in cases of rape and other similar circumstances is that the present Indigenous ways of resolving them need to be reconsidered. More specifically, the Indigenous community should find more inclusive ways to resolve the issue, ensuring that the

child victims are not disadvantaged, silenced and/or damaged. It is out of the scope of this article to discuss this more fully and to consider the ethics of the justice of *Aymara* Indigenous communities. This article rather contends that, when Western scholars claim that Indigenous justice is not restorative (Bottoms, 2003; Miller, 1999; Klein, 1978, in Weitekamp, 1999; Sylvester, 2003), they are failing to recognise that the Indigenous collective worldview is intrinsically restorative. More precisely, those scholars are using Western views of ethics and of individual rights to judge the Indigenous collective worldview, and they are ignoring the intrinsic meaning of 'restorative' as applied to justice in Indigenous societies. In *Aymara* Indigenous communities in Bolivia, restoration centres on the promotion of equilibrium between members of the society where it operates, which is forged in the Indigenous collective worldview. This Indigenous stance of restoration is different from (but neither better nor worse than) contemporary practices of justice in Western society, including restorative justice, as it is more fully considered in the following text.

As opposed to the Indigenous collective worldview, Western liberal philosophy is based on the Hobbesian view according to which the human condition is naturally egoist and 'brutish' or at least self-centred (Hobbes, 1651: 78). This view builds on the idea that there needs to be an authority in society, the state, that guarantees the equal protection of the basic interests of every individual. Equality, however, and with it the equal protection of individual human well-being/rights, is certainly not a characteristic of Western liberal democracies, where, for instance, power dynamics underpin discrimination between individuals living in the same sociopolitical context (Christie, 2017; Foucault, 1975). Such inequality takes on several forms, ranging from cultural issues relating to patriarchy, sexism, and misogyny (GREVIO, 2020), to deep-seated structural and systemic problems of relative deprivation, racism, discrimination, xenophobia and intolerance (ECRI, 2019). Deep analysis of these falls outside the scope of this article. However, a quick look at, for example, the disproportionate rates of ethnic minorities and the poor that navigate Western criminal justice systems, or the biased institutional approach to issues of gender violence in Western countries (GREVIO, 2020), gives a clear picture of how problems of inequality also structure the criminal justice system response to crime in Western society.

This article questions the claim that restorative justice, especially when used as an instrument of criminal justice, is truly and intrinsically restorative. Building on the *Aymara* Indigenous justice tradition, this article identifies those practices that aim to restore and rework social relationships by resolving both conflicts and their underlying causes as being intrinsically restorative, as they promote equilibrium between members of society. In the *Aymara* Indigenous community, the cultural notions of equilibrium and social harmony build on the Indigenous collective worldview and the local concept of group rights. The goal of local practices of justice is thus to restore equilibrium and the rights of the group. In Western society, cultural notions of equilibrium and social harmony build on the Western liberal philosophy and on the human rights agenda. It follows that the practice of justice to be intrinsically restorative would aim at restoring equilibrium, meaning rebalancing equality and the equal respect of individual human rights. Hence,

Western practices of justice that claim to be 'restorative', would focus on resolving deep-seated structural issues, as those identified earlier (e.g. discrimination, poverty, failure to protect certain groups), which determine inequality and thus the unequal respect of human rights between individuals. However, as mentioned earlier (see Section 1), restorative justice today represents a penal policy option in a largely retributive system of justice. Most Western (Northern criminological) research conducted by proponents of restorative justice focuses on whether this meets criminal justice objectives and also on individual restoration between victims and perpetrators, rather than on restoring relationships and equilibrium in the community.

Thus, this article reiterates that modern Western restorative justice, besides not being a full-fledged justice system, does not incorporate the core communitarian element of Indigenous justice, which results in the two justice concepts and practices being profoundly different from one another. It is important to note that this is not to claim that all forms of restorative justice have been co-opted in Western society. Also, it is not the goal here to stress the inability of restorative justice to resolve such sociocultural issues, nor to claim that when used as part of the Western criminal justice system, restorative justice is without worth. This article merely questions the extent to which modern Western restorative justice is restorative in any broad or Indigenous sense; it claims that the two justice practices are so different as to be almost unrecognisable and a comparison is thereby futile and of little worth. It is key for the survival of Indigenous justice to identify such differences and to respect that each has its place and value. Tauri (2014) argues that Western claims about the incorporation of Indigenous justice into state justice are postcolonial attempts which result in the neocolonisation of Indigenous justice. Those claims, in fact, sustain that restorative justice incorporates Indigenous elements and thus that criminal justice systems, by furthering restorative justice, promote cultural inclusion. However, given the two core differences between the Indigenous and restorative justice that this article has discussed, it rather seems that these claims silence and question the value of true Indigenous traditions and worldviews, which are excluded from Western justice systems. It is vital to highlight the differences and to value each, in order to avoid the obliteration of Indigenous worldviews and justice practices.

6 Lessons for Western restorative justice

It is also argued here that Western practices of justice can learn much from Indigenous justice. In particular, key Indigenous justice elements (e.g. community participation and responsibility) have the potential to enrich and broaden contemporary Western perspectives on crime and its resolution.

For instance, the *Aymara* Indigenous concept of 'mistake' could be very useful to lead practices of justice in Western society and related criminological research to focus on the social disequilibrium that may underpin criminal behaviour and on what is needed to deal with it. This would prevent the process being driven by 'risk', 'guilt' and individual 'responsibilisation', and move it on to a question of what the

issues are for all parties, including the community. Instead of being a one-way apology (by the ‘perpetrator’) and acceptance of apology (by the ‘victim’), there might need to be multiple apologies, including on behalf of the community (society), and actions taken to resolve complex disharmonies. This would help to provide a new ‘frame of interpretation’ (see Hulsman, 1986: 73), one which would move from the individualisation of the ‘crime’ problem to its social/collective contextualisation. Simson (2012, in Gavrielides, 2014) provides an effective example of this. He conducted research in the United States on the use of restorative justice in the disciplinary practices of 30 schools and compared it to 113 schools that used nonrestorative justice. His results demonstrate that punitive practices in American schools (e.g. suspension) are consistent with racial disproportionality, and that restorative justice not only helps in reducing the use of punitive practices, but also that dialogue and interaction between school members help to get rid of labels and fight structural power relationships. In this way, conflict would not be seen as something inherently wrong, but, as in the *Aymara* Indigenous community, an occasion to cope and deal with the issues that it presents.

In fact, using restorative justice as an add-on to traditional criminal justice systems might silence the otherwise critical analysis that restorative justice/approaches would bring to traditional Western criminal justice systems. Using it as part of the traditional system dampens the ability of restorative justice to use a criminal occurrence to increase social justice in a community. Clearly, it is recognised here that shifting the use of restorative justice in this way is probably unrealistic, and such a discussion falls out of the scope of this article. However, altering its use in more closed communities where groups may have a real affinity to each other such as sports clubs or schools might be more feasible. In this way, restorative justice would institutionalise a new concept of justice learned from the *Aymara* Indigenous tradition, one which is about restoring social equilibrium and reworking social relationships towards social harmony.

7 Conclusion

As was seen earlier, many Western restorative justice advocates argue that Indigenous justice and restorative justice are linked, that restoration and reparation have been among the pillars of justice and conflict resolution in most of human history (see Braithwaite, 1999; Umbreit et al., 2005; Walgrave, 2008; Weitekamp, 1999; Zehr, 2002). However, it is clear that despite the fact that many Western justice systems have adopted restorative justice, this is very different from Indigenous justice. In fact, although one can find more superficial similarities between Indigenous practices of conflict resolution and Western restorative justice, including the centrality of the meeting between those with a stake in the offence, the underlying ideologies for Indigenous and restorative justice are profoundly different. Specifically, restorative justice is a procedure used in a largely individually-based justice system. Within that system, restorative justice usually considers crime to be the responsibility of the wrongdoer and it often ignores more structural issues in the understanding of crime. On the other hand, Indigenous

Paolo Baffero, Ali Wardak and Kate Williams

justice is a fully restorative system of justice, in which understanding of the root causes of ‘mistakes’ is the core of the justice system alongside the restoration of communal equilibrium.

Furthermore, when Western scholars argue that, broadly, Indigenous justice is not restorative because it might violate individual interests (Bottoms, 2003; Miller, 1999; Klein, 1978, in Weitekamp, 1999; Sylvester, 2003), they fail to recognise those differences. Those scholars are in fact using Western views of ethics and of individual rights to judge Indigenous justice, ignoring both the intrinsic meaning of ‘restorative’ as applied to justice in Indigenous societies as well as the collective worldview on which Indigenous justice is based. It is important to recognise and respect Indigenous justice in its entirety and from its own perspective, to accept that other ways of viewing the world are both possible and whilst they might not suit our own lives, they are important to sustain; they are important, if not vital, to other cultures. Western justice is not necessarily superior to Indigenous justice; it is merely different. Although the recognition and preservation of these local, Indigenous justice systems should not be uncritical (see Wardak, 2016), any critique should take account of and respect cultural differences and any different worldview which is an integral part of that culture. A concept of justice which is about restoring social equilibrium and reworking social relationships towards social harmony is important to preserve to avoid cultural assimilation and annihilation of those systems and to progress towards inclusive justice.

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Paolo Baffero, Ali Wardak and Kate Williams

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