

JUSTICE WITHOUT RETRIBUTION? THE CASE OF THE SYSTEM OF COMMUNAL SECURITY, JUSTICE AND REEDUCATION OF MONTAÑA AND COSTA CHICA IN GUERRERO, MEXICO

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Abstract: This paper discusses a non-state justice system (Sistema Comunitario de Seguridad, Justicia y Reeducción, hereafter: SCSJR) applied by some of the Afromexican and Indigenous communities of the Guerrero state in Mexico as an example of a maximalist restorative justice system. Restorative justice is presented here as an alternative to criminal justice. While it responds to similar moral concerns as retributive justifications do, it offers more adequate mechanisms of dealing with certain crimes and aims to reduce coerciveness of justice when dealing with lawbreaking. Restorative justice is also an approach that should be perceived as more legitimate when handling cases where the state lacks the moral standing to prosecute offenders. The SCSJR is used as an example to demonstrate the possibility of a justice system based on restorative principles to be effective in handling the entirety of lawbreaking in a community. In the case of the SCSJR this approach to justice has been proved to be effective even in the wake of high levels of criminal activity in the region. This paper discusses the SCSJR's institutions and attitude toward lawbreaking and argues that they demonstrate an example of a justice system based on restorative justice.

Keywords: restorative justice, indigenous rights, criminal justice, retributivism, victim participation, reconciliation

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Introduction

The notion that antisocial behaviors can be isolated, labeled as crimes, and met with proportionate punishment underpins criminal justice. Despite becoming the prevailing model for managing antisocial behavior, criminal justice has yet to show a significant impact on crime reduction and has incurred serious social costs. I believe, similarly to

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Gregg Caruso,¹ that humans do not have the benefit of equal chances and starting points. On the contrary, we are entangled within social structures, which shape our choices and behaviors, and sometimes belonging to a marginalized group can undermine the legitimacy of state punishment. Anthony Duff articulates this through the reciprocity principle: the state's authority to hold individuals accountable is contingent upon a mutual political accountability.² This legitimacy is eroded when applied to politically marginalized groups and, in consequence, the state lacks the moral standing to inflict punishments on such groups. This paper proposes restorative justice as a viable alternative to criminal justice, emphasizing the restoration of relationships and addressing the root causes of behavior. Despite incremental adoption of restorative ideas (such as mediation or the increased consideration of victims) within the criminal justice system, skepticism remains about its efficacy in deterring repeat offenders and ensuring public safety.³ As Braithwaite puts it: "We need to look for alternatives that leave moral anger behind and focus on the causes of antisocial behavior."⁴ One of the examples of restorative justice's capacity to focus on the causes in a way in which the criminal justice system cannot is the advantage of the creative and unique mediation process which may lead to better engagement of certain groups of offenders. I believe restorative justice to be justified beyond cases where the state's moral authority is questioned, and applicable across various offender profiles. The ensuing sections will delve into the reciprocity theory's relevance to the Indigenous and Afromexican communities of Guerrero, argue for restorative justice's broader applicability as an alternative to conventional criminal justice, and present the SCSJR as a functioning example of a maximalist restorative justice system. The success of the SCSJR in providing security disproves the common criticism of the ineffectiveness of restorative justice. While it is not perfectly restorative and involves elements of coercion and punishment, the SCSJR's efficacy in ensuring security challenges the prevailing skepticism toward restorative justice. This understanding of the role of restorative justice illustrates its potential for comprehensive application and challenges the peripheral integration of restorative practices within existing criminal justice frameworks.

The article is structured as follows: Initially, the discussion will center on restorative justice, elaborating its principles and rationale. Subsequently, I will explore the SCSJR's practices and ideological underpinnings, referring to contemporary restorative justice concepts. This comparison aims to: 1. develop an understanding of SCSJR's approach to sentencing and rehabilitation and 2. determine the extent to which SCSJR embodies restorative justice principles. In the end, I want to answer the research question: Can a primarily restorative justice system be implemented and effective in handling the entirety of what is considered antisocial behavior? If yes, I want to answer a follow-up question: What can we learn from it? In other words – what are the underlying factors that allow a primarily restorative system to succeed, and whether they may be universally applicable.

¹ Caruso (2021).

² Duff (2010).

³ Vogt (2012).

⁴ Braithwaite (2002).

1. Restorative Justice

1.1 *Understanding restorative justice*

Restorative justice has been defined in various ways. In this article, I describe restorative justice principles to serve as a comparative baseline. When analyzing the SCSJR institutions, I will use those principles to evaluate whether the institutions are consistent with a restorative justice approach.

The restorative justice approach is often defined in contrast to a criminal justice approach.⁵ Criminal justice comprises a set of principles attributable to any state justice system worldwide. A system based on criminal justice primarily aims to establish if and which law has been broken, who should be responsible, and ultimately, what the proportional sanction for the crime is. The proportionality of punishment establishes the appropriate amount of pain the offender must endure corresponding to the committed crime.⁶ A restorative approach focuses on the victim's needs. The victim's role is central in the justice process, with a focus on regaining empowerment, understanding the motives behind the crime, expressing pain and anger, feeling safe, and receiving material compensation.⁷ The second participant in the restorative process is the offender. Restorative justice wants to influence the offender by focusing on their accountability. Offender accountability is understood here as 1) gaining an understanding and taking ownership of one's actions and the pain and harm provoked in the victim, and 2) actively involving the offender in actions and efforts to repair the harm caused, both concretely (e.g., in material terms) and symbolically (e.g., apologizing). In this process, significant importance is also placed on the community, as the crime is seen as a violation of the social fabric and a harm caused to the community, not only directly to the victim. Community members are expected to actively engage in the process, facilitating understanding and providing opportunities for the offender to make amends and reintegrate into society peacefully, as well as helping the victim recover from the harm.⁸ One of the underlying assumptions is that the offender, apart from being an individual with free will, is also a member of a community that may have failed them. Crime is often seen as a problem or injustice within the community.⁹ The responsibilities and roles of the involved parties in a restorative process are distinct due to the moral implications of their actions. The restoration process emphasizes the offender's understanding of the harm caused by their behavior, with a focus on the offender's accountability in meeting the victims' needs. The objective of the restoration process is to repair damaged human relationships and facilitate the reintegration of both parties into the community.¹⁰ To restore damaged relationships, it is necessary to give parties a space to express their emotions and needs.^{11,12} In principle, restorative justice processes should not use coercion; the offender must voluntarily take

⁵ Zehr (1990, 2014).

⁶ Zehr (2014): 25.

⁷ Ibidem: 26-30.

⁸ Ibidem: 28.

⁹ Zehr (2014): 24.

¹⁰ Nocella II (2011).

¹¹ Braithwaite (2002): IX-X.

¹² Ibidem: 3.

accountability for their actions.^{13,14,15} A primarily restorative system should refrain from imposing hard treatment beyond what courts would impose for similar wrongdoings.¹⁶

In this article, restorative justice is viewed as an approach that prioritizes addressing harm, allows the parties to express their needs and emotions, avoids inflicting pain, and seeks to mend damaged relationships. Community involvement is deemed crucial in the restorative process, providing support and guidance. A restorative justice system can be understood differently depending on how the system treats less-voluntary cases, in which the offenders are not immediately willing to take responsibility for their actions. A “diversionist” vision of a restorative justice system limits its application to cases where the restoration process is voluntary on both sides and refers other cases to the criminal justice system. In contrast, a “maximalist” (consequential) vision seeks the most restorative outcome in every case, regardless of whether both parties are willing to participate. A maximalist restorative justice system does not necessitate a complementary criminal justice system; where direct dialogue is not feasible or is refused, a restorative effect is pursued through a coercive process.¹⁷ As Walgrave puts it, “[the maximalist restorative justice system] curbs the current punitive premise toward a priority for reparative interventions.” According to Walgrave, maximalist systems may impose two kinds of limits to applying restorative practices: concerns about public safety and the mental capacities of the stakeholders. The SCSJR is an example of a maximalist restorative justice system as it does not rely on a complementary criminal justice system. In “grave cases,” such as sexual violence and murder, where victims may be psychologically unable to engage in valuable dialogue or forgive wrongdoers, the SCSJR uses coercion but still aims for restorative effects. Offenders are encouraged to address their wrongs through community work and by seeking advice from older community members on how to improve their relationships. This article adopts a maximalist perspective on restorative justice, which suggests that a restorative justice system should be primarily voluntary while allowing for restoration through justified, coercive measures in some cases.

1.2. Restorative justice as an alternative to criminal justice

Having elaborated on the main ideas of restorative justice, I will now aim to provide justifications as to why and when it could be a viable alternative to criminal justice. To accomplish this, I want to explore Howard and Pasternak’s article¹⁸ and apply their idea of restorative justice as an alternative in cases where the state lacks the moral standing to apply punishment. Subsequently, I will address Allais’ concerns about restorative justice¹⁹ elucidating why I believe restorative justice shares its moral justification with censure retributivism. Additionally, I plan to strengthen the case for restorative justice by discussing its unique impact on offenders who commit crimes out of boredom.

¹³ Braithwaite (2002).

¹⁴ Pranis (2005): 7-8.

¹⁵ Ibidem: 13-14.

¹⁶ Braithwaite & Pettit (1991).

¹⁷ Walgrave (2022).

¹⁸ Howard and Pasternak (2023).

¹⁹ Allais (2011).

I concur with Pasternak and Howard that the state lacks the moral standing to try, convict, and punish for violations of natural moral duties (such as murder, rape, assault, and battery) the citizens who are victims of serious social injustice. Nevertheless, the imperative to hold perpetrators accountable remains, especially for the victims' sake. According to R.A. Duff's account,²⁰ an oppressed offender may deny the state's standing to hold them accountable. Duff justifies his view with the idea of reciprocity, meaning that an agent may hold another agent accountable only when each of them is accountable to the other for the wrongs each perpetrates on the other.²¹ Victims of serious social injustice are politically disempowered, lacking sufficient resources to hold the state accountable for its wrongs against them. Pasternak and Howard provide an intrinsic reason why reciprocity is necessary for legitimate authority: the enforcement of compliance with natural duties, similar to any other exercise of political authority, must allow everyone's effective contestation to be legitimate. Everyone has the right to participate in the judgment of the system that judges them. Due to its compromised standing in relation to oppressed individuals, the state faces a dilemma – it can wrong oppressed offenders by holding them to account, or it can wrong victims of crimes by not vindicating their suffering and not holding wrongdoers accountable. One solution proposed by Pasternak and Howard is the implementation of restorative justice for dealing with cases of oppressed offenders. When applying restorative justice, it is the victim, not the state, who holds the offender to account. While the compromised state cannot legitimately prosecute offenders, the victims can.

I believe that the Pasternak and Howard justification for restorative justice is perfectly adequate in the case of the SCSJR. The founders of SCSJR justified the need for its creation by the political disempowerment and oppression experienced by Indigenous and Afromexican communities and peoples in Guerrero. The 1990s were marked by great insecurity in Guerrero's Costa Chica and Montaña regions, primarily inhabited by economically disadvantaged Nahua (Nahuas), Na Savi (Mixtecos), Me'phaa (Tlapanechos), and Ñonmdaa (Amuzgos). Violent crimes, mainly robbery and sexual assault, were on the rise.²² The crime wave was never adequately dealt with by the Mexican federal or state authorities, who enabled the development of a culture of impunity by rarely prosecuting offenders and letting them walk freely.²³ It is impossible to perfectly delineate who should and should not be considered as individuals wronged by state accountability. I, similarly to Pasternak and Howard, believe that it is not a problem for restorative justice to be overly inclusive.

An objection to the moral standing of the SCSJR could be that the system's code includes "grave cases," not primarily dealt with through mediation, where penalties are imposed by the authorities. In those cases, the SCSJR does not benefit from the moral standing which is based in the fact of the victim holding offenders to account. However, the SCSJR does not represent the state. It allows every member of the community to vote every two years on every police officer and authority comprising the system, which

²⁰ Duff (2001).

²¹ Duff (2010).

²² Fini (2016): 97.

²³ Horta Cruz & Aburto Espinobarro (2016).

makes it a good example of the reciprocity principle in practice. Even in “grave cases” the SCSJR does not lack moral standing.

Even disregarding the specific context and social position of the communities constituting the SCSJR, significant principled reasons support restorative justice as a legitimate means to address lawbreaking. Lucy Allais²⁴ argues that for any justification of imposing hard treatment not to fall into the instrumentalist trap of allowing for disproportionate sanctions or the punishment of innocents, it needs to provide an intrinsic link between punishment and desert. Walgrave²⁵ offers an account of the restorative link of proportionality and restorative justice, describing restorative justice as “Inversed Constructive Retributivism.” According to Walgrave, restorative justice and retributive justice both measure suffering and damage in the same way, but while retributive justice aims to direct the proportional amount of suffering back on the offender, restorative justice holds that a proportional amount of suffering and damage should be reduced or compensated. I agree with Howard Zehr²⁶ that restorative justice is not opposed to retributive justice, as the two hold similar moral concerns. According to Zehr, both restorative and retributive theories of justice assume a proportional relationship between wrongdoing and a legitimate response to it. Both restorative and retributive theories of justice hold that any obligation may be placed on someone only after they are convicted of wrongdoing and only in direct, proportionate relationship with the wrongdoing. In the case of retributivism, the legitimate response would usually be punishment and the infliction of hard treatment on the offender. In the case of restorative justice, the legitimate response is aligned with the needs of the victim and established in the process of mediation between parties. A potential objection may be that the needs of the victim may greatly surpass the culpability of the offender and inflict a disproportionately difficult and painful obligation. My response to this objection is that most proponents of restorative justice agree that the offender should cooperate with the community in the process of acknowledging the victim’s harm. I consider this approach to be correct to ensure that offenders are not held accountable beyond their degree of culpability, and the result of a restorative process should establish the degree of accountability of the wrongdoer and decide on restoring the needs of the victim through other means.

In terms of its primary justification, restorative justice aligns with the moral concerns of censure retributivism. As Allais puts it, “[c]ensure retributivism holds that the justifying point of punishment is to express or communicate the censure or condemnation that fits the offense.”²⁷ According to this perspective, wrongdoings must be proportionately condemned to underscore the importance of communicating the nature of one’s transgressions. Metz argues that respect for the dignity of both offenders and victims necessitates conveying the degree and seriousness of the wrongful act committed.²⁸ On the side of the offender, communication of a wrongful act is essential because, through the process of retributive judgment, we gain a genuine understanding of the wrongdoer.

²⁴ Allais (2011).

²⁵ Walgrave (2022).

²⁶ Zehr (2014).

²⁷ Allais (2011).

²⁸ Metz (2006).

By engaging with their moral choices, we respect their autonomy and capacity for decision-making. From the perspective of the victims, the fact that they have suffered necessitates an entity standing up for them and seeking compensation on their behalf. Restorative justice emphasizes the intrinsic connection between the accountability and dignity of the offender – restoration is not solely about the victims but also about the offenders. According to the restorative justice perspective, wrongdoers commit wrongful acts due to social or personal injustice and the harm they have suffered themselves. Offenders also require accountability, intrinsically vital for them to actualize their potential as human beings capable of choosing good and respecting other members of their community. Regarding the need for victims' compensation, I have previously elaborated on the restorative idea of an uneven balance and the imperative to restitute whatever the victim has lost due to the wrongful act.

I believe that the intrinsic reasons supporting restorative justice as the primary source of obligations imposed on any individual guilty of wrongdoing are compelling. In the case of the SCSJR, the justification for the application of restorative justice practices is not only rooted in the intrinsic reasons of respecting the offenders' autonomy and standing up for the victims but also in the specific case of the lack of moral standing of the Mexican state concerning the Indigenous and Afromexican communities and peoples of Guerrero, who should not be punished by an entity they cannot hold accountable.

As described by Bonnie Talbert, restorative justice can be more successful than criminal justice in response to crimes committed in relation to boredom.²⁹ Talbert expands on the criminological theory advanced by Ferrell³⁰ which suggests that modern life is filled with a pervasive sense of boredom and posits that some crimes result from an inability to tolerate boredom: "Engaging in crimes like theft or vandalism can be a form of reclaiming agency and challenging this consumerist paradigm. For those who feel alienated or marginalized, crime can offer a narrative or identity that breaks away from the perceived dullness and invisibility of everyday existence." Talbert also refers to Lyng's³¹ idea of edgework³², the connection between the desire to feel extreme feelings and crime.^{33,34} Therefore, to effectively address crime, policies should foster inventiveness, spontaneity, and engagement. Talbert explains that restorative justice is much better suited to offer creative, engaging solutions to wrongdoers as it lacks predetermined outcomes, allowing for individualized accountability measures. Processes might be original, as the individual's specific experiences might be valuable and incorporated in the final ruling. Examples of creative ways to make things right may involve providing the victim self-defense classes paid for by the wrongdoer or the wrongdoer creating a work of art for the victim in place of financial compensation.

²⁹ Talbert (2024).

³⁰ Ferrell (2007).

³¹ Lyng (2004).

³² Edgework explains why people engage in voluntary risk-taking activities, that push them to their emotional, psychological, and physical limits. The goal of edgework activities is to feel a thrill, a sense of challenge, and a confrontation of fears. Criminal activities may be examples of edgework.

³³ Hayward and Young (2004).

³⁴ Steinmetz et al. (2017).

It is important to note that these outcomes are not allowed in every restorative justice system in every case. In the SCSJR, mediation is not allowed in so-called “grave cases.” Nevertheless, the process of finding a creative solution to an offense is only possible in a system where the solution is negotiated, and the wrongdoer has a say in what they would feel comfortable doing to repair their errors. This is not possible in a criminal justice system based on retribution, where penalties must reflect a proportionate degree of hard treatment. Restorative justice has a unique mechanism to positively influence offenders who struggle with the meaning of life and pervasive boredom.

2. The System of Communal Security, Justice and Reeduction of Montaña and Costa Chica as an example of maximalist restorative justice

2.1. The context of the System of Communal Security, Justice and Reeduction of Montaña and Costa Chica

The System of Communal Security, Justice and Reeduction of Montaña and Costa Chica in Guerrero (SCSJR), located in southwest Mexico, in the state of Guerrero, operated by a democratically elected institution known as La Coordinadora Regional de Autoridades Comunitarias-Policía Comunitaria (hereafter: CRAC-PC) is a justice system that I consider exceptionally interesting. CRAC-PC developed from a grassroots movement of Nahua (Nahuas), Na Savi (Mixtecos), Me’phaa (Tlapanecos), and Ñonmdaa (Amuzgos) communities fed up with violent crime, impunity and injustice in the Montaña and Costa Chica regions in Guerrero.³⁵ Initially oriented towards self-defense, these communities responded to Guerrero’s security crisis by adopting an active role not only in policing and providing security but also, when confronted with the reality of corruption and the helplessness of the state, in sentencing offenders. This was based not on the state’s concept of retributive justice but on “usos y costumbres” – their traditional institutions.³⁶ According to “usos y costumbres,” offenders must regain their place in the social fabric by engaging in activities essential for their community, thus being “reeducated.”^{37,38,39} The institution is founded on voluntary participation. To join the system, every community must organize a voting process at a General Assembly, where every adult member of the community has the right to vote. When a community officially becomes a part of the SCSJR, it benefits from the protection of the Communal Police and can select its police officers and representatives. All police officers and coordinators must be elected by the General Assemblies of the communities.⁴⁰ Officials are chosen for two-year terms and can be dismissed at any time if the relevant assembly perceives them as corrupt or incompetent. The SCSJR law is codified and defines all the offenses one can be sanctioned for, the relevant procedures, and the institutional framework.⁴¹

³⁵ Horta Cruz & Aburto Espinobarro (2016).

³⁶ Gaussens (2019).

³⁷ Guzmán Hernández (2014).

³⁸ Fini (2016): 99.

³⁹ Sierra (2013): 21.

⁴⁰ Gaussens (2019).

⁴¹ Reglamento interno del SCSJR, physical copy acquired on 11.03.2022.

The literature underscores the SCSJR's positive impact on reducing insecurity in the region. López López⁴² writes: "It has not only substantially reduced crime and insecurity in a territory that has historically been challenging in this regard, but it has also achieved this while maintaining the sociocultural fabric and building institutional framework." Sierra complements this view: "In a state like Guerrero, where structural violence and impunity prevail, the community police have become an important reference for building social order and horizons of peace."⁴³ An article by Daniele Fini points to a "90% reduction in crime rates" since 1995 into the 2000s and 2010s,⁴⁴ although it is important to note the absence of direct references to specific studies or methodologies supporting this claim. A study by Ley, Mattiace, and Trejo corroborates these assertions through a comparative analysis of crime statistics between two indigenous regions, one in Guerrero's highlands (controlled by CRAC-PC) and one in Chihuahua (Sierra Tarahumara) – both "ideal zones for drug cultivation and trafficking." Between 2007 and 2012, Sierra Tarahumara experienced an average municipal rate of 55.63 organized crime-related murders per 100,000 population, whereas CRAC-PC municipalities reported a rate of 11.81 per 100,000 – the lowest in Guerrero, Mexico's most violent state.⁴⁵ The authors attribute CRAC-PC's success to a long history of indigenous mobilization, resistance, and a system grounded in collective decision-making and participation.

2.2 *The processing of antisocial behavior*

2.2.1 *The investigation stage*

Within the SCSJR, a criminal investigation is started after coordinators receive complaints and demands from affected individuals, groups, and their relatives. The investigation, conducted at CRAC-PC's discretion, does not obligate coordinators to inform or involve the accused or other stakeholders.

CRAC-PC is authorized to use coercion, occasionally detaining individuals accused of misdemeanors to prevent escape or mitigate potential dangers they pose until trial. However, detention is not a necessity; the decision to detain is based on evaluating the suspect's risk of flight or threat level.^{46,47}

2.2.2 *The judgment stage*

The judgment phase can entail one or several sessions, typically involving an SCSJR coordinator or commissary, the suspect, the complainant, and their supporters. In most cases, the objective is to foster conciliation and identify means to amend the harm. However, for "grave cases" (e.g., homicide, kidnapping, drug-related crimes), conciliation and repair are not pursued. In "grave cases," if evidence indicates the accused committed the offense, the Regional Assembly of Communal Authorities determines the outcome, with penalties ranging from detention up to 24 hours to reeducation for three months to

⁴² López López (2015): 138.

⁴³ Sierra (2017): 367-368.

⁴⁴ Fini (2016): 101.

⁴⁵ Ley et al. (2022).

⁴⁶ Reglamento interno del SCSJR, physical copy acquired on 11.03.2022.

⁴⁷ López López (2015): 143-144.

ten years. What distinguishes the SCSJR's approach is its reframing of legal infractions and offenders, avoiding labels such as "crime" or "criminal," suggesting an aim to prevent stigmatization.^{48,49} This terminology aligns with restorative justice by viewing the offender as inherently good but misguided, due to circumstances or lack of education, suggesting a need for enlightenment⁵⁰ or healing.⁵¹

Howard Zehr contrasts retributive and restorative paradigms through the questions they pose in response to harm. The criminal justice system asks about the laws broken, the perpetrator, and the deserved punishment. In contrast, restorative justice focuses on who was harmed, their needs, and who holds the responsibility to address these needs.⁵² This emphasis on repairing harm, with conciliation as a primary aim, encourages stakeholders to share their feelings and experiences, embodying restorative justice's core principle.⁵³ The SCSJR upholds restorative justice principles by primarily treating crime as relating to the relationship between the harmed party and the wrongdoer. Nevertheless, it is not always the case and it allows for the prosecution of acts with no directly harmed parties, like the possession of drugs.⁵⁴ As the possession of drugs directly affects only the possessor, it seems hard to justify the sanctioning of drug possession through a restorative justice lens. The rationale for punishing drug possession suggests a more instrumental perspective of crime (as per the "proxy crimes" theory^{55,56}) for it allows the authorities to sanction drug dealing, an offense that is very difficult to prove, yet closely associated with drug possession.

Sanctioning the possession of drugs under the SCSJR framework appears incompatible with a restorative justice perspective. Assuming the drugs are for personal use, it can be argued that while drug possession, especially of substances that can cause physical harm to the user, is self-damaging, it does not directly harm others. From a restorative viewpoint, the focus should be on aiding the user's health and recovery from potential adverse effects of drug use. Thus, to align more closely with restorative justice, the SCSJR ought to amend its legislation to offer support rather than label drug possession as an error.

Conciliation and the repairing of relationships are not the main focus in every case. For "grave cases," conciliation and harm repair are excluded, and direct interactions between involved parties may be avoided. Ultimately, a judgment is issued, and sanctions are applied, designed to serve educational purposes, and promote positive outcomes.⁵⁷

The SCSJR's treatment of offenses bears notable similarities to restorative justice principles, emphasizing conciliation, the importance of addressing harm and relationships, and the educative intent of sanctions.

⁴⁸ Reglamento interno del SCSJR, physical copy acquired on 11.03.2022.

⁴⁹ Horta Cruz & Aburto Espinobarro (2016): 244.

⁵⁰ Guzmán Hernández (2014): 177.

⁵¹ Horta Cruz & Aburto Espinobarro (2016): 244.

⁵² Zehr (2014): 25.

⁵³ Braithwaite (2002): IX-X.

⁵⁴ Reglamento interno del SCSJR, physical copy acquired on 11.03.2022.

⁵⁵ Bystranowski (2017).

⁵⁶ Bentham (1864).

⁵⁷ Guzmán Hernández (2014): 175-176.

2.2.3 *The reeducation stage*

Reeducated individuals undergo a rigorous regime of community service within the SCSJR framework. They are rotated between communities every 15 days, working six days a week on projects that benefit the community, such as building roads, preparing meals for the community police, and chopping wood. In return, the community provides them with food and accommodation. After every 15 days, the reeducated person may receive a certificate of good behavior from the community, which could contribute to a reduction in their sentence. However, the SCSJR does not apply a fixed formula regarding these certificates; individuals can be considered “reeducated” and released early based on qualitative assessments. Additionally, the SCSJR mandates regular meetings between the reeducated individuals and community elders. These meetings serve to discuss the harm caused by the individuals’ actions and encourage their positive reintegration into the community.⁵⁸ CRAC-PC members view these interactions as crucial for facilitating psychological change, focusing on the impact of the individual’s actions on children, families, and the broader community.^{59,60} These discussions also explore the concept of community and how the community may have failed to support the individual, drawing comparisons to treating someone who is sick.^{61,62} The Internal Code (Reglamento Interno) specifies that CRAC-PC authorities and community members should conduct these meetings daily, emphasizing advice, critiques, and ideological discussions. Such dialogues are intended to have a transformative effect, enabling the individual’s reintegration into the community.

The reeducation process indicates that avoiding stigmatization is not its primary aim. Although the SCSJR refrains from labeling lawbreakers as criminals, the process still publicly identifies them as individuals who have caused harm and are in need of guidance. The objective is for the reeducated to acknowledge their responsibility for their actions, comprehend the resulting pain inflicted on the community and its members, and adopt a pro-community mindset moving forward.

Historically, *fajina* (work) has been a pivotal institution in the Costa Chica and La Montaña regions of Guerrero, embodying the communal responsibility to contribute to public works. This tradition underlines the importance of collective effort for the community’s well-being. “*Fajina*” means the responsibility of every community member to sacrifice their time for community service. Members of the community should take some time off from their regular occupations and participate in building a road or a bridge, renovating a local school, or dealing with the effects of a natural disaster.⁶³ The practice of *cambio de brazo* (exchange of arms) similarly reflects the exchange of labor among communities for larger projects.⁶⁴ This context is needed to understand the importance of reeducation, which is not merely punitive but aims at reintegration into the community

⁵⁸ Reglamento interno del SCSJR, physical copy acquired on 11.03.2022.

⁵⁹ López López (2015): 223-225.

⁶⁰ Sierra (2017): 368.

⁶¹ Domínguez Corona (2017): 23-25.

⁶² Horta Cruz & Aburto Espinobarro (2016): 236-237.

⁶³ It is important to note that in the region, communities have been living off communal land, cultivating and collecting produce without the modern idea of property.

⁶⁴ Horta Cruz & Aburto Espinobarro (2016): 237.

by emphasizing the value of working for the common good. It is a communal endeavor, with communities collectively taking responsibility for the reeducation process, demonstrating that the repercussions of an offense extend beyond the individual perpetrator.^{65,66}

Reeducation within the SCSJR reflects traditions passed down through generations in the Costa Chica and Montaña regions of Guerrero. According to Horta and Espinobarro, CRAC-PC members and chroniclers, historical practices involved bringing offenders before the community assembly for discussion, criticism, advice, and understanding of the act's impact. Offenders were required to publicly apologize and, in severe cases, perform community service as amends.⁶⁷

Upon completion of work and dialogues, the reeducated are typically detained to prevent escape, reflecting the SCSJR's custodial responsibility. Although López López notes that the detention system often permits freedom of movement, with reeducated individuals participating in communal tasks and even mingling with the Communal Police,⁶⁸ it still means that the SCSJR is based on hierarchical structure relating the authorities to the judged, while restorative justice should aim for a process among equals.⁶⁹ Nevertheless, the unpaid status and removable nature of CRAC-PC officers might contribute to a more equitable power dynamic.

2.2.4 *Procedural rights*

Concerning procedural rights, distinct criteria should be applied when discussing state law and a system based on customary laws and cultural matters. Nonetheless, a minimum baseline should be established. As previously elucidated, the concept of restorative justice advocated in this paper underscores the proportional relationship between the imposed obligation and the committed violation. Establishing an accurate degree of accountability is impossible without a fair process. A fair legal system should also afford defendants adequate measures to protect themselves from accusations.

In the SCSJR, every charge is determined by the relevant body and a public hearing takes place. The party is entitled to present witnesses and evidence, be informed of charges against them, not be detained without justified cause, and never be tried twice for the same facts. A noteworthy distinction between the SCSJR and a state system lies in the prohibition of lawyers in all legal procedures. Each party has the right to be assisted by their loved ones and relatives to present arguments and evidence in their favor. The SCSJR strives to foster sustainable community life and the common good. In this context, a party's family member is more likely to achieve conciliation with their neighbor, with whom they might have to continue living and cooperating for the next 20 years, compared to a lawyer who has no personal stake. Another argument involves the unequal economic nature of legal services – a community member who can afford a lawyer might gain an unfair advantage over the other party in the trial. A notable objection to this system is the possibility that someone might be unable to find anyone to

⁶⁵ Sierra (2014).

⁶⁶ Domínguez Corona (2017): 24.

⁶⁷ Horta Cruz & Aburto Espinobarro (2016).

⁶⁸ López López (2015): 223-227.

⁶⁹ Pranis (2005): 8.

represent them in a trial. The SCSJR seems to underestimate this problem, as the nature of community life in small communities, where everybody must rely on others, makes it virtually impossible to be unknown to everyone. However, the possibility of a situation where someone is estranged from their community remains. In such cases, the right to defense could be significantly weakened, and the SCSJR lacks adequate mechanisms to address these scenarios.

In any ruling, especially one that might be perceived as unfair, the critical factor is the ability to control the legality of decisions and measures applied by authorities. The SCSJR employs a two-instance system. In reconciliation cases disputed at the community level, when a satisfying conclusion cannot be reached, the case is adjudicated by regional authorities – the Regional Coordinating Body of Communal Assemblies (CRAC). CRAC is the first instance in “grave cases,” and the Regional Assembly of Communal Assemblies is the ultimate decision-maker. However, the code does not explicitly outline the conditions under which a ruling can be appealed and what the appeal procedure entails. The absence of clear guidelines for challenging decisions weakens the system’s ability to ensure the legality of its outcomes.

In the SCSJR, accountability is emphasized in the democratic system of elections and the ability to vote out authorities and police officers. However, this solution might not be sufficient in individual cases. Even if someone has been mistreated by an officer, there is still the possibility that most of the community is satisfied with the officer’s role. Documented cases of human rights abuses and brutal treatment of individuals processed by the House of Justice in Ayutla de los Libres (local headquarters of CRAC-PC) have been reported. Regulations should be implemented to enable better control over the actions and measures of CRAC-PC functionaries, both at the state and, more importantly, at the internal level. A legal mechanism designed to report officer mistreatment could be a step in the right direction.

3. Conclusions

The SCSJR stands as a compelling exemplar of a maximalist restorative justice system, characterized by its emphasis on victim participation and its efforts to reconcile and address victims’ needs and expectations. This system is deemed “maximalist” due to its approach to handling “grave cases” through reparative measures integrated within coercive criminal justice interventions. Individuals who commit serious offenses engage in community service, receiving guidance and resources in return, with their actions framed as opportunities for communal reintegration through traditional means of fostering unity and belonging, such as the “fajina”.

However, the system is not without its shortcomings. The SCSJR faces challenges in adequately supporting individuals accused of offenses who are distanced from their community, and lacking familial or close relational support for defense. Moreover, the application of coercive measures in “grave cases” raises concerns about the system’s alignment with restorative principles, suggesting a potential for achieving its aims through enhanced restorative dialogue and reduced reliance on hierarchy, direct force, and detention.

The SCSJR has made significant strides in combating crime and impunity, aiming to balance community well-being, address victims' needs, and facilitate the reintegration of offenders. This supports the affirmative response to the research question of whether a primarily restorative justice system can effectively address antisocial behavior in its entirety. To reference the follow-up question: What are the underlying factors that allow a primarily restorative system to succeed, are they universally applicable?

Firstly, the SCSJR highlights the crucial role of community participation in sanction imposition, reeducation processes, and the democratic election and removal of authorities. This model of community control over CRAC-PC minimizes corruption and abuse, demonstrating the advantages of democratic oversight in restorative justice systems.

The second implication underscores the importance of communal work for reintegration, reflecting the SCSJR's foundation on reestablishing community-oriented traditions for addressing wrongdoing. On the other hand this approach suggests that strategies effective in cohesive communities may not directly translate to individualistic societies.

The third implication is that, while the SCSJR's restorative process is broadly applicable, it faces limitations in addressing extreme crimes like murder or severe sexual violence, particularly in regions plagued by organized crime. A certain level of authority and coercion may be necessary for public safety, though the current reeducation process could potentially be refined to be less punitive without undermining the system's effectiveness.

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