

Sulha: Exploring Contrasts Between Restorative Justice and Indigenous Conflict Resolution

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As is well-known, numerous studies have established connections, whether historical or conceptual, between contemporary forms of restorative justice and indigenous (as well as ancient and enduring) informal conflict resolution practices. These studies assert that restorative justice and indigenous systems share significant parallels, rooted in their emphasis on healing, community involvement, and the restoration of harm, rather than mere punishment of offenders. These parallels underscore the fundamental principles guiding both approaches. Specifically, both restorative justice and indigenous justice, in their various manifestations, prioritize dialogue and communication as indispensable tools for conflict management. However, this viewpoint has encountered criticism for its potential to misinterpret indigenous conflict resolution systems and misunderstand the complexities of post-colonial interactions. This essay does not claim universality but seeks to substantiate these criticisms through the analysis of a case study: sulha, a traditional method of conflict resolution in Middle Eastern cultures. More precisely, the aim of this essay is to highlight two critical differences between contemporary restorative justice and the sulha model: the nature of mediation (including the attitude of mediators and the social expectations burdening the mediation process; as well as the role of violent retaliation as a potential deterrent factor) and the concept of reconciliation. As this essay maintains, while restorative justice emphasizes individual accountability and interpersonal dialogue, the sulha model prioritizes group solidarity and ritualistic gestures. This disparity sheds light on the distinct social significance attached to mediation and reconciliation in their respective contexts. By exploring these differences, this essay illuminates two diverse approaches various cultures employ to address conflicts and foster relationship restoration.

Keywords: restorative justice; indigenous justice; conflict resolution; sulha; reconciliation.

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1. Introduction

Several studies have drawn links, be they historical or conceptual, between modern restorative justice methods and traditional indigenous² conflict resolution practices (among others: Weitekamp 1999; Braithwaite 2002; Van Ness & Strong 2010, 6-8). These studies argue that both restorative justice and indigenous systems prioritize healing, community engagement, and repairing harm, rather than solely focusing on punishing offenders. These similarities highlight the core principles guiding both approaches. In particular, both restorative justice and indigenous justice, across their diverse forms, emphasize dialogue and communication as fundamental tools for managing conflicts. Yet, this perspective has faced criticism for its risk of misinterpreting indigenous conflict resolution systems (e.g., Cain 1988, 356; Nader and Grande 2002, 577-580; Cunneen 2007, 113-116; Tauri 2009, 4-6), and overlooking the intricacies of post-colonial dynamics (Daly 2002)³. This essay does not assert universality but aims to substantiate these criticisms by analyzing a case study: *sulha*, a conflict resolution method in Middle Eastern cultures⁴.

Originating from ancient times (Jabbour 1993, 13), *sulha* is predominantly observed today as an embodiment of traditional (oral) law among Israeli-Palestinian communities residing in Galilee and Palestine. The Arabic term '*sulh*' (etymologically linked to '*sulha*') denotes the "procedure by which two conflicting parties come to an agreement" (Saxon 2018, 83). Thus, *sulh* specifically designates a ceremonial and institutionalized process aimed at managing and resolving conflicts. As explained in detail throughout this article, *sulha*—analytically described in §§ 2-3—can generally be identified as a "public formal ceremony" in which "mediation is employed widely" (Lang 2005, 97). However, as Pely argues, *sulha* "does not recognize the Western-based differentiation between mediation and arbitration" (2011, 428), allowing *sulha* practitioners to use both approaches. In any case, *sulha* can be defined as an organized set of "peacemaking negotiations" culminating (when successful) in a ceremony that restores peaceful social relations within the community (Lang 2002, p. 53).

² 'Indigenous' is used here with the awareness of the existing debate on the appropriateness of this word to designate a variety of peoples and cultures around the world, but with no intention to comment on or to take a stand in the said debate.

³ For a survey on the literature on this topic see Suzuki (2023).

⁴ The author has already conducted analyses on *sulha* in Mazzola (2023) and Mazzola (forthcoming). This essay translates, re-elaborates and partially updates excerpts from both contributions (especially §§ 1-3).

Building upon the comparative conclusions drawn from various works (particularly Rohne 2006; Pely 2011; Pely and Luzon 2017; Fallon 2020), this essay aims to highlight two crucial distinctions between contemporary restorative justice and *sulha*.

These distinctions concern both (i) the dynamics of *mediation*, including mediators' attitudes and social expectations influencing the mediation process, as well as the role of violent retaliation, and (ii) the concept of *reconciliation*.

More specifically, this article argues that while contemporary restorative justice and *sulha* share striking similarities, they fundamentally differ.

On one side, *sulha* identifies a conflict resolution process that is not averse to more or less strict forms of (mostly social) coercion, prioritizing group solidarity and ritualistic gestures as means to resolve conflicts and allow the parties to reconcile, which is its primary and preferred outcome.

On the other side, contemporary restorative justice emphasizes individual accountability and interpersonal dialogue, with (at least in principle) minimal or no space for coercion, aiming to promote healing and restore the broken relationship, not necessarily through reconciliation.

This article is not based on first-hand fieldwork but mainly draws from literature on *sulha* within the realms of cultural and social anthropology, and conflict theories. Key scholarly contributions to this discourse include Lang (2005), Pely (2009; 2011; 2016), and Saxon (2018). These works supported a view of indigenous Arab conflict management in Israel that challenges assumptions about the centrality of violence and blood feuds within these systems, which are overemphasized in classic studies (see, among others, Ginat 1987, 26; describing institutional violence and blood revenge as crucial and overriding factors of Bedouin communities' social behavior)⁵. This article also benefits from a discussion with Zoughbi E. Zoughbi from the Wi'am organization (held in 2021), an NGO in Bethlehem striving to innovate *sulha* dynamics and apply them to conflicts in nowadays Palestinian society.

The article is structured as follows: firstly, it provides a concise description of three fundamental mechanisms behind *sulha*: show of remorse, reverse *musayara* and magnanimity; as well as the role of honor in the *sulha* process.

Next, it briefly explores the structure of *sulha* and its phases: the institution of a mediation body; the request for a temporary truce; the payment of 'assurance money' (*'atwe*); mediation; lastly, reconciliation rituals (opening ceremony, ritual pacification, and symbolic closure of the conflict).

⁵ For a discussion on the risk of "perpetuat[ing] stereotypes of brutality in the social life of the region" and the opposite risk of overemphasizing a "harmonious" view of Israeli-Palestinian conflict management, see Lang (2005, 100).

Lastly, the article delves into the concepts and processes of ‘mediation’ and ‘reconciliation’ within *sulha*, emphasizing their distinct meanings in comparison to contemporary restorative justice.

2. Sulha Basics

Even within a diverse range of practices (Shahar 2021), three ‘basic mechanisms’ (Lang 2005, 104) at the heart of *sulha* can still be identified: shows of remorse, reverse *musayara*, and magnanimity⁶.

Before grasping how these mechanisms operate, it’s important to clarify that *sulha* mainly deals with conflicts stemming from insults to *honor*, rather than solely related to material and/or economic grievances. As Lang clarifies, *sulha* “is predicated on *sharaf* logic” (2005, 98), a setting in which “*sharaf* is a distinctive idiom of social relations in Arabic” (253) usually, although not always, translated as “honor”. Saxon defines *sharaf* as a part of “man’s self-identity. It is both status and one’s perception of self-worth tied to that social status [...] dependent on a web of social connection” (2018, 31).

Another crucial clarification concerns the nature of the parties involved: family groups – *hamula*; spanning three to seven generations paternally – hold paramount importance in the *sulha* process, with individuals considered secondary (but not irrelevant) to the collective group. This emphasis on group cohesion and solidarity aligns with Durkheim’s concept of ‘organic solidarity’, as highlighted by Bottoms (2003, 90). The significance of the *hamula* is evident in how responsibility and honor are distributed within the community. When an offense occurs, it is not just the individual offender who is held accountable, but the entire *hamula* to which he belongs. Similarly, when seeking peace or reconciliation, it is not only the individual who was harmed that seeks restitution, but the entire opposing *hamula* that seeks to have its honor restored.

Therefore, an offense triggers the activation of *sulha* especially when it results in a loss of honor or status for a *hamula* due to the offense. Conversely, the purpose of *sulha* is to return the honor taken from the offended *hamula*. The ‘immaterial’ nature of the offenses – pertaining *sharaf* – that leads to conflicts within the jurisdiction of *sulha* is a detail of great importance. In traditional law, from which *sulha* originates, the most common recourse for the offended party to reclaim lost honor is through *vengeance* (Lang 2005, 98; and literature here quoted). On the contrary, the concept of ‘*sulha*’ revolves around restoring honor *without* resorting to violence: it is precisely

⁶ The citations from Lang refer to the electronic version (epub) of Lang (2005).

about finding alternative paths to revenge. But how can a non-violent resolution provide alternatives matching the sense of honor restoration typically sought through vengeful acts?

Lang suggests that *sulha* embodies a “politics of persuasion”, aiming to convince the offended *hamula* not to retaliate against the offender. Instead, it encourages seeking compensation for the loss of honor through offering ritual forgiveness to the offender or their family group. This is typically achieved “through a skillful manipulation of the logic of *sharaf* that proceeds primarily in the realm of honor-laden gestures” (2005, 104). This process involves three ‘basic’ approaches: (i) showing of remorse, (ii) engaging in inverted *musayara*, and (iii) demonstrating magnanimity.

In the context of *sulha* literature, the term ‘expression of remorse’ refers to actions or gestures performed by the offender or their family that convey humility and a willingness to acknowledge wrongdoing, acting out “a stylized form of debasement” (Lang 2005, 105). These gestures, while not directly restoring the lost honor, play a fundamental role in de-escalating the conflict (“lowering the temperature”; *ibidem*) and creating a conducive environment for reconciliation by demonstrating a sincere desire to make amends. More on these gestures below (§ 3).

The term ‘reverse *musayara*’ describes one of the key roles undertaken by mediators – referred to as *jaha* – which forms the core of *sulha*: specifically, the mediators’ endeavor to convince the offended party or their family to pursue a peaceful resolution to the conflict. In this capacity, the mediators, usually individuals of high status within the community:

...act toward the injured family from beginning to end with the elaborate respect and consideration normally reserved for persons of high status. This process may usefully be regarded as a performative reversal of the standard patron-client relationship prevalent in Arab society. In relationships of patronage (*wasta*), the client’s request for a favor is flattering for the patron, and each *wasta* favor can be seen as a transaction wherein *sharaf* flows from the client to the patron. The *jaha* [...] symbolically turn this relationship on its head (reverse *musayara*) by beseeching an ordinary family (currently reeling under the humiliation of a killing) to be so kind as to grant them a favor—to make peace rather than to avenge themselves [...]. Such treatment helps to assuage feelings of humiliation further and to effect a partial restoration of lost *sharaf* (Lang 2005, 105).

Both the expression of remorse and inverted *musayara* provide the offended *hamula* with the opportunity for *venting*, “an indispensable part of the process, crucial for the *jaha*’s ability to recruit the victim’s side into the process” (Pely 2011, 436)⁷. The offended *hamula* channels their members’ intense emotions towards the offender and the mediators by expressing them openly, often using

⁷ The most comprehensive account of *sulha* by Pely is Pely (2016). This study also quotes Pely (2009) and Pely (2011).

strong language or gestures. Ultimately, this can soothe the offended family's emotions and persuade them to pursue a peaceful resolution to the offense, devoid of violence.

Magnanimity, finally, indicates the act of the offended or their family who, though having the option of seeking revenge, choose to forgive the author of the offense: according to the logic of *sulha*, "[a] man shows magnanimity when, from a position of overwhelming strength, he forgives a person who has wronged him and on whom he could legitimately take revenge" (Lang 2005, 105). For this reason, the act of forgiveness also determines an 'increase' in the honor of the offended.

3. Sulha Structure

Expression of remorse, reverse *musayara*, and magnanimity are sequential stages wherein the offended party or their family progressively reclaim the honor lost due to the offense: initially, through an act undertaken by the offender (expression of remorse), followed by the conduct of the mediators (reverse *musayara*), and ultimately (when mediation is successful), by an act of forgiveness initiated by the offended themselves (magnanimity). These stages unfold within a clearly delineated framework articulated in five distinct phases, after an initial 'zero' phase marked by the offense:

- (i) the offending *hamula* requests the *jaha*'s availability to negotiate the dispute;
- (ii) the *jaha* asks the offended *hamula* for a truce;
- (iii) the *jaha* set the amount of the '*atwe*, 'assurance money';
- (iv) proper mediation;
- (v) reconciliation rituals.

In the first phase, the offending *hamula* demonstrates a willingness to reconcile with the offended. This expression of intent involves members of the offending *hamula* explicitly requesting influential individuals within the community to establish a mediation body, called *jaha*. According to Lang, through this request the offending *hamula* "she[d] [its] pride [...]", because its members perform a "symbolic gesture of supplication [towards the mediators] by which [...the *hamula*'s members] begin ritually to express remorse" (2005, 107). As Pely clarifies, "[i]n Sulha [*sic*], it is

always the perceived offending side that must appeal to the interveners to initiate the Sulha process" (2011, 431).

In the second phase, once formed, the *jaha* requests a truce – known as *hudne* – from the offended *hamula*. During this truce, if granted, no member of the offended *hamula* can retaliate against the offending *hamula*. In this stage, the *jaha* employs the so-called inverted *musayara* (see above, § 2) to persuade the offended family to accept the truce. Meanwhile, the offending *hamula* can be forced to escape from their house and conceal outside the village border (Saxon 2018, 42). As Lang writes, this 'escape' is a further "debasement step", and seems more symbolic than actual, serving as a way for the offending *hamula* to communicate to the offended *hamula* "we are not proud of what we did, and we do not want to hurt your feelings further" (2005, 301).

In the third phase, if the offended *hamula* agrees to the truce requested by the *jaha*, the mediators set the amount of the '*atwe*: a sum of money that the offending *hamula* must pay to the offended to ensure the latter refrains from seeking revenge. According to Saxon, the payment of the '*atwe* mostly serves as an additional "expression of remorse" (2018, xi) by the offending *hamula*, as well as a form of assurance.

In the fourth phase, the *jaha* initiates a 'shuttle' mediation between the two *hamulas*: "[m]ediators [...] talk with parties separately to learn about the conflict in detail" (Saxon 2018, 39) asking them "to present their positions and interests, and the conditions for a desired settlement" (Abu Nimer 1996, 46; quoted in Saxon 2018, 39). Pely identifies a difference between western, restorative mediation and *sulha*: while

[i]n Western mediation, some disputants conduct face-to-face meetings, and some opt for a private caucus with the mediator(s) [... i]n a Sulha, for a variety of reasons the process involves exclusively private caucus meetings between the [...] Jaha [*sic*] and each of the disputants' representatives (2011, 430).

This is a significant difference, since:

... this exclusive private caucus format allows the Jaha [*sic*] to reframe, even re-phrase, disputants' narratives when speaking to the other party, remove potentially inflammatory parts, and retain those parts that are conducive to fostering a climate of reconciliation. In contrast, the lack of joint meetings denies the disputants the possibility of witnessing firsthand the frustration, sense of victimization, and injustice that each party tends to perceive as its exclusive state of mind (*ibidem*).

According to Pely, finally, mediation is where the parties have the opportunity for venting (in their exclusively dialogue with *jaha*), without compromising the whole reconciliation process (see § 2).

A crucial part of the mediation phase is negotiating the *diyya*: a payment made by the offending to the offended *hamula*. Unlike the *'atwe*, which aims to ensure that the offended party refrains from revenge, the *diyya* is intended to provide *compensation* that is not solely economic for the offense committed and acts as “reparation” (Rohne 2006, 193) for the offended family⁸.

If the mediation concludes without reaching an agreement between the parties, the community grants an authorization for revenge to the offended *hamula*. As will be shown, this outcome is highly unlikely for several reasons (§ 4). Instead, if the negotiation is successfully concluded, the fifth (and final) phase of the *sulha* takes place, known as the *musalaha* (‘reconciliation’) or *sulha* ‘in the strict sense’: namely, a series of rituals formalizing reconciliation between the parties.

The *musalaha* ritual (ensemble) consists of three main sections: (i) opening ceremony; (ii) ritual pacification; (iii) symbolic closure of the conflict.

The opening ceremony represents a moment of “temporary humiliation” (Saxon 2018, 40) for the offending *hamula*. During the ceremony, “the victimized family [...] stand[s] on a raised platform [...] in view of the community. The *jaha* will tie a white flag (*rayah*) to a pole” (*ibidem*), symbolizing both “forgiveness by the victim’s family and surrender and submission of both families to the authority” of the *jaha* (Pely 2009, 85). After that, “[t]he offending family walks with the *jaha* to the ceremony site to meet the victimized family” (Saxon 2018, 40), which, crucially, occupies a higher position, both physically and (symbolically) in terms of *sharaf*.

The ritual pacification involves two acts: (i) the *musafaha*, a handshake between members of the offending and the offended *hamulas*; (ii) the payment of the *diyya* (negotiated during the mediation). Both the *musafaha* and the payment of the *diyya* are designed to emphasize the magnanimity of the offended *hamula*, which, although free to refuse the request of reconciliation and forgiveness of the offending *hamula*, chooses to renounce revenge (this choice sometimes is preceded by an emphatical rejection of the compensation offered by the *diyya*, or by the act of the offended *hamula* that first accepts and then immediately returns or destroys it) (Lang 2005, 109).

The symbolic closure of the conflict consists of two phases: (i) representatives from both *hamulas* (usually one or more of their most authoritative members) sign a peace agreement. This agreement also acts as a ‘non-aggression pact’ between the two *hamulas* and includes severe penalties for any violations, even extending to the members of the *jaha* who guarantee the agreement; (ii) in the second phase, known as *mumalaha*, members of the offended *hamula* invite members of the offending *hamula* to the victim’s family’s home and share coffee together. As Lang clarifies:

⁸ On the way in which, in similar contexts, a monetary payment may impact reparative dynamics, extending beyond economic considerations, see Mazzola (2020; 2023, 126-133; and the literature here quoted).

...[i]t is significant that the attackers go to the home of the victim for coffee because being hospitable is always *sharaf* heightening for the host. By placing the two sides in the positions of host and guest, the victims' *sharaf* is raised, and the aggressors' *sharaf* decreased one last time (2005, 114).

4. Sulha as Restorative Justice?

According to Fallon (2020, 439):

s]ulha presents an ideal model of restorative practice [...]. The process provides numerous opportunities to satisfy the greatest need of the victim and his or her family - empowerment through the restoration of honour [...]. The process also reintegrates victims and offenders through a delicate process of communal recognition.

Intuitively, *sulha* and contemporary, restorative justice seemingly share, indeed, a set of core values and underlying beliefs, including an emphasis on the importance of relationships, the promotion of healing, and reintegration (on restorative justice, see Pranis 2007, 63-65).

Contributions by two authors particularly highlight different aspects of *sulha* that are of notable interest for a comparative analysis with restorative justice.

On one side, Doron Pely (2011), expert in cross-cultural dispute resolution, identifies mediation as the core of the *sulha* process. On the other hand, Sharon Lang (2005), an anthropologist, emphasizes the *musalaha* (ritual reconciliation) as the most important component of *sulha*.

The following sections will explore both perspectives, highlighting similarities and differences with restorative justice practices.

4.1. Mediation

Mediation⁹ is a common practice not only in Galilee and Palestine unwritten legal tradition, but also in various informal and indigenous justice systems, often working alongside formal state

⁹ As is known, 'mediation' covers a vast range of legal practices, even within restorative justice. Despite their differences, these practices typically involve at least three parties (an offender, a victim and a third-party, the mediator) and aim to reorganize social relationships (e.g., Foddai 2017, 147-158; Reggio 2010, 32).

justice in post-colonial settings (see Tuso & Flaherty, eds, 2016). Often, formal and indigenous mediations denote fundamentally different practices.

Two important concepts for understanding *sulha* mediation are ‘impartiality’ and ‘neutrality’, as discussed by Zoughbi (2002, 54)¹⁰. ‘Impartiality’ means that mediators *do not favor either party involved in the dispute*, which is crucial for effective mediation because a mediator seen as biased would not be trusted by both sides. ‘Neutrality’ refers instead to mediators *not having any personal interest in the outcome of the dispute* (Field 2000, 1). Neutral mediators are expected to help facilitate the resolution process without steering it toward any particular solution.

In *sulha*, mediators exhibit impartiality by refraining from favoring either party involved in the conflict. However, they’re not completely neutral because they lean towards one specific outcome: reconciliation. This inclination originates from their status as community insiders (Saxon 2018, 116) prioritizing the community’s overall well-being and cohesion. Thus, mediators actively encourage parties to reconcile and address their differences for the greater good of the community.

According to Saxon, the preference for reconciliation arises from the mediators’ profound understanding of the community dynamics and the potential hazards posed by unresolved conflicts (2017, p. 116). Therefore, as Saxon elucidates, the mediators’ lack of ‘neutrality’ (as per the mentioned conceptual dichotomy) should primarily be attributed to the broader risks posed by interpersonal conflicts within the local community (*ibidem*).

This seems to be a prevalent trend in smaller-scale societies – whose conflict resolution process “inherently” pursue reconciliation (Fallon 2020, 431) – that cannot afford to be ‘paralyzed’ by conflicts between individuals. In a study comparing western and indigenous conflict resolution processes, Bottoms insists on the crucial importance of reconciliation as an “imperative need [...] in small society contexts where people have to continue to live in close proximity to one another in a functioning economic and social community” (2003, 91). Chris Hann also comments on this point by emphasizing how in small-scale communities, “[r]econciliation is especially important where the contesting parties have necessarily to continue sharing the same economic resources, to be part of a cooperative community in daily life” (2000, 125; quoted in Bottoms 2003). Because of the mediator’s crucial role in safeguarding the community from destruction or paralysis caused by interpersonal conflicts, Keshavjee and Whatling theorize the existence of a “cultural expectation” (2005) for *jaha* to steer parties toward reconciliation in such scenarios. Conversely, Saxon (2017, 117) suggests that if mediators cannot achieve peace or facilitate a satisfactory agreement (enabling the parties to choose reconciliation), it would be perceived, within the community, as a ‘failure’.

¹⁰ Pely only refers to mediators’ ‘neutrality’ (equivalent to impartiality) as a common feature between Western restorative justice and *sulha* (2011, 437). However, Pely appears eventually to implicitly agree with Zoughbi’s distinction.

The approach of *jaha* to conflict management in the *sulha* process apparently differs then from that of mediators in restorative justice processes. While mediators in restorative justice “support the parties throughout the conflict interaction by helping each party clarify their goals, options, and interaction with the other party [...and] assist [the parties] in a manner that is party-driven” (Saxon 2017, 118), *jaha* members take on a more directive role. They may actively influence, ‘persuade’, or even ‘coerce’ the parties to pursue reconciliation as the desired outcome of the process (Lang 2005)¹¹. Moreover, as is known, reconciliation is *not* a necessary aim of restorative justice processes (see, e.g., Minow 1998; Fallon 2020, 431; Mannozi and Mancini 2022, 127), so there are no expectations on mediators in restorative justice to reach an agreement between the parties at all costs. In this respect, *sulha* mediation identifies a building block of an outcome-focused conception of conflict resolution, where the desired outcome is the reconciliation of the parties involved (on the meaning of reconciliation in the *sulha* setting see, however, § 4.2)¹².

How do *sulha* mediators, however, manage to persuade or coerce the parties to reconcile?

According to Pely, the instruments of coercion/persuasion in the case of *sulha* are “mostly social” (2011, 431). The literature on *sulha* (and indigenous mediation in general) has identified at least four such instruments.

The first one pertains to pre-mediation dynamics (that is, social dynamics preceding the actual start of mediation) and entails the role of the community: as Pely explains, “the disputants in a *Sulha* are sometimes coerced rather vigorously by the community and by interveners to participate in the process, in many cases to put a stop to a potential cycle of vengeance and retaliation” (2011, 429). The community, therefore, exerts pressure on the parties, sometimes even “vigorously”, to compel them to participate in *sulha* mediation. On the contrary, as is known, in restorative justice, at least in principle, “coercion [is] to be avoided” (Johnstone and Van Ness 2007, 7)¹³. In the context

¹¹ A similar observation has been made on traditional Chinese mediation compared to ‘western’ restorative justice (Chan 2003, 4; quoted in Wang, Di and Wan 2007, 478).

¹² As is known, the ‘outcome-focused’ model is one of the competing approaches within restorative justice, particularly in relation to criminal justice (for an overview, see Zernova and Wright 2007). It is often contrasted with the ‘process-focused’ conception, which defines restorative justice as “a process whereby all the parties [...] come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (Marshall; quoted in McCold 1998, 20). In contrast, the outcome-focused perspective—more restrictive than the process-focused one—views restorative justice as “every action that is primarily oriented toward doing justice by repairing the harm that has been caused” by the offense (Bazemore and Walgrave 1999, 48). In the context of *sulha*, the significance attributed to the term “outcome” within the expression “outcome-focused” is even narrower, specifically denoting the reconciliation of the parties, rather than referring to broader notions such as “doing justice” or “repairing the harm”.

¹³ On the role of coercion in restorative justice see, however, the last paragraph of this section.

of *sulha*, pressure arises from the looming threat to the broader community of igniting endless feuds and conflicts. As said (see above, § 2), once the mediation starts, “the [*jaha*’s] approach is totally different. The *Jaha* [*sic*] uses a low-key, supplicating tone to ‘invite’ the victim’s family to participate” (Pely 2011, 432), making use of so-called reverse *musayara*.

The second instrument has to do with the social status of *jaha*: mediators utilize their prestige and status to persuade parties to follow their guidance. As respected figures within the community, these mediators wield indeed considerable influence, and parties risk facing social consequences, such as isolation and blame, if they disregard the mediators’ advice. Lang writes that

[u]ltimately, it is embarrassing for the victim’s family not to acquiesce to the requests of these prestigious men, and elders, including those of a victim’s family, feel that they ought to yield to the *jaha*’s requests out of respect for them (2005, 109).

The third instrument is honor: Pely shows how “[t]he *Jaha* points out that in the absence of an agreement and reconciliation, disputants, *Jaha* members, local dignitaries, and even the community at large will suffer a grave loss of face, and an offense to their honor” (2011, 430-431). A similar approach works in the context of *sulha* since, although “the ramifications of loss of face may seem trivial to a Western observer, [...] in a clan-based culture, where honor, shame, and respect are central elements [...], the prospect of shame or loss of honor constitutes considerable leverage” (431)¹⁴.

The fourth and final instrument is the menace of revenge looming over the *sulha* process (as said above, if the mediation ends without reaching an agreement, the community grant an authorization for vengeance to the offended *hamula*). As Bottoms explains, in similar settings vengeance acts as a deterrent to those who might resist reconciliation. Although revenge is seen as an extreme measure, its possibility manifestly influences how parties approach reconciliation (2003, 90; from Ryan 1995). Bottoms highlights that this threat of revenge significantly shapes the mediation process, creating a “coercive” and “deterrent” atmosphere (*ibidem*). Parties in *sulha* are (commonly) aware that a failed mediation could escalate into a feud, threatening their lives and the broader community (Lang 2005, 113). Thus, what may seem like a purely restorative process, where parties work together to rebuild their relationship, is overshadowed by the fear of retaliation and violence, giving it an air of coercion and deterrence: in Bottoms’ words, informal conflict resolution procedures as *sulha* “are heavily buttressed by other processes” as “the very real

¹⁴ On the difference between the use of shame in *sulha* and reintegrative shaming in restorative justice see Pely and Luzon 2017.

threat” of vengeance and can be then “perceived as coercive, and indeed seem[s] to produce a deterrent effect” (2003, 90; see also Cunneen 2007, 117). It would be interesting to explore whether similar dynamics are present in contemporary restorative justice. For instance, does the threat of legal sanctions or social reprisal for the offender motivate participation in the restorative process and encourage his disposition towards reconciliation? Investigating how these factors may influence the willingness of parties to engage in restorative justice processes and mediation could provide valuable insights into the effectiveness and fairness of a range of restorative practices¹⁵. According to John Braithwaite (2002, 195) and Lode Walgrave (2003), it is sometimes unavoidable for restorative justice to rely on coercion (or, at least, on pressuring the parties into meeting and discussing the conflict’s implications). In such cases, also contemporary, restorative practices seemingly deal with “imposed reconciliations” (*ibidem*)¹⁶.

4.2. Reconciliation¹⁷

Based on the previous reflections on *sulha* in general and *sulha* mediation specifically, it is clear that reconciliation between two *hamula* extends beyond resolving individual grievances. It involves restoring harmony and honor to the collective entities. Reconciliation signifies the renewal of trust, and social cohesion between the two *hamula*, ensuring the continued stability and well-being of the entire community. Therefore, reconciliation represents the restoration of broader social bonds and the reaffirmation of communal solidarity.

But what does it truly mean for two groups to ‘reconcile’?

As is known, the debate over whether groups can possess collective feelings and desires, such as the desire to reconcile, has been a longstanding issue in social science. Despite extensive discussions, definitive answers remain elusive. A perspective suggests that within a group, specific individuals hold the authority to make decisions on behalf of the entire collective. This notion is

¹⁵ Some preliminary and useful reflections on this issue can be found in Abel and Marsh (1984, 124: on criminal law as the extrema ratio of restorative justice); Gavin and Sabbagh (2019: highlighting the possible distortions of this mechanism, in Ireland); Mazzola (2022, 88: for a short review of the literature).

¹⁶ For a comment and contextualization of this discussion, with specific reference to mass victimizations, see Weitekamp, Parmentier, Vanspauwen, and Valiñas (2006, 228-239).

¹⁷ This section re-elaborates segments of an intervention (on Northern Albanian informal justice system, which shares similarities with *sulha*; see Mazzola 2023) held at the *International Workshop on Community-Based Dispute Resolution Mechanisms around the Mediterranean* (Beliş, Romania; May 8-10, 2023), then submitted as a draft for a future publication.

reflected in Bottoms' ideas, regarding informal or indigenous conflict management process. Bottoms asserts that "elders" hold this decision-making power. These elders, typically the oldest individuals within the community, "dominate the proceedings, acting essentially on behalf of the victim(s), as well as on behalf of the community at large" (2003, 91)¹⁸. In the context of *sulha*, a similar hierarchical structure is observed, where decisions ultimately fall under the purview of the leader(s) of the *hamula*, often the eldest male member of the family. While different members of the *hamula*, including women, have varying roles in the reconciliation process, and even if these decisions are typically deliberated within the group, the final authority rests with the designated leader. It's noteworthy that while other members of the *hamula*, including the material offender or offended individuals, may voice dissent, the collective group is expected to abide by the decisions by its chief. This hierarchical arrangement ensures formal cohesion and order within the community, even amidst disagreements or conflicts among its members.

The words of the brother of a murder victim, reported in the documentary *Sulha* (2016), by Israeli director Eytan Harris¹⁹, exemplify a disconnect between the will of the *hamula* and the will of one of its members (in the context of a *sulha*). After his *hamula* decided to accept the reconciliation proposal of the offending family, the victim's brother participates in the *musafaha* (the ritual handshake), but confesses to the camera - with an unequivocal expression of anger on his face - the following state of mind:

I refuse to conciliate with them. My revenge is his [the killer's] suffering. May the suffering of four walls kill him every day [the killer was previously sentenced to jail time by a State court] and the torment of his family which was torn from its roots, from its foundations. There is no vengeance in killing. Torment to him and his family! I am reassured knowing that he suffers every day.²⁰

In this sense, Jabbour had already pointed out the problematic nature of traditional *sulha*, when related to the purpose of effectively resolving the conflict, due to the fact that family and social ties

¹⁸ The elders with decisional power in *sulha* are usually males, primarily due to the predominantly 'patriarchal context' (Pely 2016, 130) of dispute resolution in Arab communities in Israel. For a discussion on the *informal* yet crucial role of women (as opposed to the *formal* role of men) in *sulha*, see Pely (2016, 131-138). Attempts to bring gender equality to *sulha* have been made by the W'am organization operating in Bethlehem (see § 1).

¹⁹ I was able to access the documentary through the assistance of Doron Pely. The documentary is particularly interesting because it offers the opportunity to explore the issue of the coexistence between *sulha* and State justice, although to discuss this topic here would exceed the purpose of this article.

²⁰ The translation from Arabic is sourced from the documentary's official subtitles.

impose on individuals in that context a strong commitment and duty towards their *hamula* as a collective and towards the preservation of the family's honor and reputation. This is true both for the offending and the offended *hamula*. As Lang writes, referring to the *musalaha* opening ceremony:

...[t]he final *sulha* ritual is a scene of temporary humiliation, or *sharaf* lowering for the offenders. *Whatever the genuineness of the humility*, the offenders must publicly go through the prescribed steps conveying shame and remorse. *If they perform their moves adequately*, the victims will feel assuaged and the egalitarian balance of *sharaf* will be restored (Lang 2005, 301; own emphasis added).

Similarly, Saxon writes (in a comment to Lang's study):

...[t]he use of genuine apologies and forgiveness in the *sulha* process is not necessary, but the formal ritual act of giving them is [...] necessary for the agreement [...]. [...] *parties do not need to be sincere in their messages and gestures* of ritual apology and forgiveness in *sulha*, because the extent of social relations will bind parties to their agreement (Saxon 2018, 123; italics added).

Both Lang and Saxon's accounts suggest that the emphasis in *sulha* is not on the (individual) participants' emotions, but on their gestures and adherence to ritual norms. Using Rappaport's terminology regarding rituals, for *sulha* to succeed (that is, to conclude in such a way that parties are 'reconciled') what is important is not (individual) belief – "an inward state, knowable subjectively if all" such that "it would be entirely unwarranted [...] for participants or witnesses to assume that participation would necessarily indicate such a state" – but (collective) "acceptance", "not a private state, but a public act, visible both to witnesses and the performers themselves" (2002, 119-120).

While the victim's brother (in the aforementioned example) may hold personal feelings or beliefs regarding reconciliation, the collective decisions of his *hamula*, as represented by its leaders, take precedence and dictate his actions. The *hamula* insistence on his participation in the ritual handshake reflects their recognition of the significance of upholding traditions and pursuing reconciliation. This occurs within the confines of customary practices, prioritizing the preservation of the honor and integrity of the involved *hamula*. In this instance, the man's personal convictions diverge from the anticipated actions within *sulha*. He does not view it as appropriate or preferable to reconcile with the offending *hamula*, nor to perform the handshake, as he apparently does not want to restore social relationships and communications with the killer's family. Nevertheless, his *hamula* have agreed to engage in the *sulha* conflict management procedure. As a result, he finds himself obligated to behave 'as if' (Rappaport 2002, 125-126) he believed it was appropriate to

accept the offending *hamula* ritual apology, highlighting a disconnect between his personal beliefs and the external actions he must undertake. Consequently, reconciliation rituals assume a 'choreographic' (rather than 'substantial') significance in the *sulha* process, signifying that their purpose is to showcase to the community the intentions of the *hamula* rather than addressing individual emotions.

Rappaport's conceptual analysis elucidates how disparities between ritual actions and internal convictions *do not nullify the ritual's significance or its result*. Indeed, within the framework of the *sulha* conflict resolution process, reconciliation does not inherently signify a genuine resolution of the anger and animosity between the parties. Rather, it symbolizes a public display of harmony that the parties must outwardly maintain for the sake of community stability (see also Mazzola 2020, 103). Therefore, within the customary framework, reconciliation is characterized by its communal and pragmatic nature, with adherence to ritualized processes serving broader societal interests rather than solely focusing on individual emotions or beliefs.

An important contrast arises then between the *sulha* and contemporary western restorative justice processes and mediation. On the one side, restorative justice mainly revolves around the interaction *between individuals*, with both individual offenders and victims playing pivotal roles (Bottoms 2003, 197). Though individuals might receive backing from their families or support groups, as in family group conferences, and even if larger communities are usually impacted by the restorative process, the emphasis remains, in principle, on the direct engagement and responsibility of the individual offenders and victims (implicitly acknowledged in Braithwaite 2000, 199-121, as discussed in Mazzola 2023, 223; see also McCold 2000, 360)²¹. On the other side, *sulha* functions, as seen, within the context of *group dynamics*, where the entire *hamula* is deeply engaged in the reconciliation process. So, emphasis on group solidarity and collective responsibility distinguishes conflict resolution in *sulha* from the individual-focused approaches observed in restorative justice.

This also suggests that reconciliation in the *sulha* process is *inherently ritualistic*. Given that the beliefs and emotions of the parties are only of secondary importance to the process, it is essential for each *hamula* (as clarified by Lang and Saxon; see above) to publicly showcase commitment through apologetic gestures and demonstrate forgiveness, respectively. Differently, while restorative justice might occasionally include ritualistic elements, its main focus mostly lies on

²¹ This, however, does not mean that discussions about the genuineness of the participants' beliefs and internal states in restorative justice processes have no relevance for contemporary analyses (see von Hirsch 1993, 74; quoted in Bennett 2007, 260). For a focus on this issue (arguing that in the context of some restorative processes it is sufficient for the participants in a restorative process to act *as though they mean* to behave in a certain way, without necessarily meaning so), see, for example, Duff 2001.

interpersonal dialogue and resolution, which can be accomplished even without the ritualistic components integral to *sulha*. In other words: rituals play an *essential* role in performing *sulha*, whereas they are merely *incidental* (non-mandatory) in restorative justice²².

5. Summing up: Analogies and Contrasts Between Sulha and Restorative Justice

This article had the purpose to describe Middle eastern *sulha* process of conflict resolution and highlighted the main analogies and differences with contemporary western restorative justice and mediation. Such analogies and differences can be summarized as follows.

On one hand, both the *sulha* and western restorative justice models of conflict resolution prioritize dialogue and interactions between the parties involved, as well as focusing on healing, community engagement, and repairing harm rather than solely on punishing offenders. Also, they both rely on mediation as a key tool to achieve those objectives. Ultimately, both restorative justice and *sulha* stand in contrast (from a conceptual standpoint) to criminal state justice, which prioritizes measures aimed at punishing offenders rather than repairing social relations.

On the other hand, *sulha* and restorative justice differ for at least two important reasons:

The first reason revolves around the role and attitude of mediators in the mediation process. In *sulha*, *jaha* members are tasked with encouraging parties to choose reconciliation over perpetuating the conflict. They employ various strategies to persuade or even coerce the parties, utilizing four key instruments: (i) highlighting the danger their conflict poses to the community; (ii) emphasizing the *jaha's* social status and prestige, and the negative consequences in terms of social recognition for those who refuse to reconcile; (iii) referencing community honorability, which may be disrupted by the conflict; (iv) warning of potential revenge if reconciliation is not pursued²³. Additionally, there is an expectation stemming from the community for mediators to achieve reconciliation and mitigate the damages caused by the conflict for the collective. Therefore, mediators, although striving to maintain 'impartiality', are inherently 'non-neutral' – the two notions, as seen, don't denote the same phenomenon – throughout the conflict resolution process. In contrast, mediators in contemporary restorative justice are expected to maintain both impartiality *and* neutrality. Their function and role solely revolve around supporting the parties throughout the conflict interaction by assisting each party in clarifying their goals, exploring their

²² For a view of restorative justice *as* a ritual (or a ritual ensemble) see Bennett 2006 and Pointer 2021.

²³ The dominance of elders and *hamula* leaders in the mediation process, which limits an individuals' agency in *sulha*, is a critical point of comparison with contemporary restorative justice. Analyses of power imbalances and moral agency in *sulha* (and similar forms of 'indigenous' justice and conflict management) will hopefully be the subject of future research.

options, and facilitating constructive interaction. They ought not 'push' the parties towards one, specific outcome of the mediation.

The second reason pertains to the concept of reconciliation. While restorative justice centers on the interaction between individuals and delves into their emotions, beliefs, and internal states in general, *sulha* addresses group dynamics. Here, the emphasis is not on individual beliefs, but rather on the public gestures *hamula* members perform to demonstrate the collective will of the group. Therefore, reconciliation in restorative justice (when achieved) often involves the culmination of an interpersonal dialogue aimed at altering the involved individuals' perspectives on the conflict and the offense. In *sulha*, however, reconciliation primarily entails the successful execution of specific rituals (that precede, characterize, and follow mediation). The opportunity to perform such rituals is discussed and eventually established by the *jaha* members together with the leaders of the groups involved, even if they were not directly implicated in the initial offense.

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