
Restorative and Retributive Justice

Definitions

Justice is the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments (Sandel, 2008). It can also be defined as the legal or philosophical theory by which fairness is administered. As with most philosophically driven disciplines, the concept of justice is relative as it differs in every culture. The three theories of justice include distributive justice, punitive justice and restorative justice. Distributive justice is defined as perceived fairness of how rewards and costs are shared by group members (Stevenson, 2014) For example, when workers do the same job, but are paid different salaries, group members may feel that distributive justice has not occurred; as this system of justice is concerned with the nature of a social justice and allocation of goods. A society in which inequalities in outcome do not arise would be considered a society guided by the principles of distributive justice. The concept includes the available quantities of goods, the process by which goods are to be distributed, and the resulting allocation of the goods to the members of the society. To determine whether distributive justice has taken place, individuals often turn to the distributive norms of their group. A norm is the standard of behavior that is required, desired, or designated as normal within a particular group. If rewards and costs are allocated according to the designated distributive norms of the group, distributive justice has occurred.

This system of justice has not really worked in states that have tried to use it, like Tanzania. This is because it encourages laziness, when the lazy people are assured they will benefit from what other people have worked for. For the hardworking people, they are demoralized since they feel like they are not only working for themselves, but also for the lazy people in the society. On the other hand, in the bible it works pretty well; Psalms 82:3 "give justice to the weak and the orphans". Also, in the new testament, deacons were appointed to share stuff brought to the church to the widows, orphans and other needy people amongst them in the church. Another instance is where people were instructed when harvesting, not to glean but leave some in the farms for the needy and aliens.

Restorative justice is an approach to justice in which the response to a crime is to organize mediation between the victim and the offender, and sometimes with representatives of a wider community as well (Zehr, 2002). The goal is to negotiate for a resolution to the satisfaction of all participants. This may include a restitution to be given from the offender to the victim, or to take steps to prevent the offender from causing future harm. It aims at getting perpetrator to take responsibility for their actions, to understand the harm they have caused, to give them an

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opportunity to redeem them and to discourage them from causing further harm. For victims, its goal is to give them an active role in the process. It also gives the victims closure. As they speak out of how they were hurt or affected, they get relieved instead of bottling it up and becoming bitter. Cases are really not taken to court, they can be sort locally by the district officers or the court can appoint people to deal with the issue like land disputes and other domestic matters. In other instances, people who hold offices like Secretary General to the United nations can come in as the mediator. The mediator has to be on neutral ground.

On the other hand, punitive justice is a theory of justice that holds that the best response to a crime is a punishment proportional to the offense, inflicted because the perpetrator deserves the punishment (Rawls, 2013). Prevention of future crimes, deterrence, or rehabilitation of the offender is not considered in determining such punishments. The theory holds that when an offender breaks the law, justice requires that he or she suffer in return. Retribution is different from revenge because retributive justice is only directed at wrongs, has inherent limits, is not personal, involves no pleasure at the suffering of others and employs procedural standards. In this kind of justice system, the offender is generally taken to court.

Comparisons between the two types

Restorative and punitive justice have similarities in that both justice systems have the same goal (of bringing justice) but they also have differences in that they are not administered the same way, and that both would not work in all situations. We find that restorative justice aims at restoring broken relationships and bringing the victim and the perpetrator together, while on the other hand, punitive justice aims at punishing the offender for whatever he/she did. When they are brought together, they might be able to live together like they did before the conflict. But when the perpetrator is punished for example sent to prison, when he comes back, he/she is never really accepted fully in the community and might be views as an outcast. Another disparity is that in restorative justice, both parties actively participate, as they are brought together and talk about what happened. An example is in the Rwandan genocide, where they had the Gacaca courts. The offenders confessed to the victims what they did and the victims expressed themselves on how they were affected; on the other hand, in punitive justice the state represents the community, the two parties never meet (Gunn, 2011). Lastly, restorative justice brings about the sense positive peace in that the root cause of the problem is addressed and there is also truth involved which brings healing whereas retributive justice results to negative peace. An example is the case of the post-election violence, suspects were taken to the ICC, things cooled down but every other time there is election, the temperatures rise again and, in some regions, conflict break out.

Biblical perspective

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The bible has a number of narratives of justice, on distributive, restorative and punitive justice. In all these narratives, we find that the ones that used restorative justice end up well, and hence the bible advocates for restorative justice. Incidences of retributive justice used in the bible are Leviticus 24: 17-19 "If anyone takes the life of a human being, he must be put to death. Anyone who takes the life of someone's animal must make restitution- life for life; fracture for fracture, eye for eye, tooth for tooth. As he has injured the other, so he is to be injured" That was what the Lord said to Moses as instructions to the Israelites. This was basically to warn them against harming their neighbor because whatever they did to them would also be done to them. This can also be used as a measure of punishment, in that one is punished for only that he/she has done and not punished more than the crime he/she has committed. In Deuteronomy 19: 18-20 "The judges must make a thorough investigation, and if the witness proves to be a liar, giving false testimony against his brother, then do to him as he intended to do to his brother. You must purge the evil among you. The rest of the people will hear of this and be afraid, and never again will such an evil thing be done among you." This was more or less of a warning to the Israelites because if they saw or heard what was done to the offenders of the law, they would not dare do the same because they knew they would be punished, and by that, there would be order. Finally, another incidence on retributive justice in the bible is the story of Noah. God told Noah to build an ark because there would be floods which would wash away everything. While he was doing this, he told the people that there would be floods but they did not believe him, rather mocked the old man. God sent floods to wash away everything because of how people had turned against Him and there was sin everywhere. In this narrative, people were punished by God for their wrong doings which was retributive justice.

On the restorative justice in the bible, God's justice is retributive inasmuch as it is never prejudiced, arbitrary, or impulsive, and is always morally attuned to human deeds and deserts. Yet it focuses not on imposition of retribution on wrongdoers, but the restoration of right relationship. (John 8: 1-11) there is the story of the woman who caught in adultery and was brought to Jesus by the Pharisees and wanted to stone her since it was commanded in the law of Moses that anyone caught in that act should be stoned. But Jesus said to them that whoever had not sinned to take up a stone and throw it to her. They all slowly started leaving one by one and Jesus was left with the woman; He told her to leave her sinful ways, in this, we see mercy, the woman was not punished, but rather restored back to God. Another narrative in the bible of restorative justice is the parable of the prodigal son. (Luke 15:11-32.) The younger son asked for his inheritance and got together all he had and went to a distant country and squandered all his wealth in wild living. After he had spent everything, there was severe famine in the whole country and he began to be in need. After he came to his senses, he asked himself how many of his father's hired servants had food to eat yet he was starving; he set out to go back home. He wanted to be his father's servant because he had sinned against him but when his father saw him coming; he was filled with compassion for him and ran towards him. He apologized to his father but his father said to his servants to go get him a robe and he put it on him and a fattened

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cow was slaughtered so that they could celebrate. In this, we see that instead of his father punishing him, he took him back to the family and restored the relationship that he had before with him. Finally on restorative justice, 2 Corinthians 5:18, "All this is from God, who reconciled us to himself through Christ and gave us the ministry of reconciliation." Despite man been sinful creature from Genesis, God was merciful to us and sent us Jesus in the new testament to reconcile us back to him. Unlike in the New Testament, where people had to offer sacrifices for forgiveness, we now have a personal relationship with God where when we sin we repent and ask for forgiveness and we are reconciled back to Him.

Kenya's Justice System

Kenya's justice system is more of punitive than restorative justice. This is because on any regular day, for example like when a thief is caught trying to steal, the first thing that crosses the minds of the people that have caught his is mob justice. More often than not, they don't even think of taking him to the police station. And if things do not go well, the mob would have dealt with the thief even before the police get to the scene. Another incidence is when cases go to court, the offender is found guilty and taken to prison, the community or the victim feel relieved because the perpetrator has been taken away from them. If the perpetrator was a killer, the community will now have some sense of security and can even go back to business as usual. An example is when Matheri, the thief and killer of Gachie, was hunted down and killed by the police, the locals in that area when interviews they said that they were happy he was killed because he had paralyzed a lot of activities in that community like businesses ben opened at night and people moving freely at night because they lived in fear. To them, him being eliminated rather than going through rehabilitation and coming back to the community as a "normal" person was better. This clearly shows that the Kenyan justice system is punitive and not restorative. Also because what the police did was killing him, even after he had surrendered.

Another thing to show that Kenya's justice system is punitive and not restorative is our prisons are not rehabilitation centers, as they do not aim at correcting the convicted person's behavior, but secluding him from the society. Also, when the convicts finish their sentence in jail, they are not really taken back in the society, as they are seen as outcasts and some cannot even fit in their community and end up relocating. This shows that the main aim is to punish the offender, rather than restoring him back to his people and community. In other incidences, these prisoners prefer staying in jail after serving long sentences because they do not even know the reception they will get when they are re-united with their people.

The incidence that affected almost every life of a Kenyan was the post-election violence saga. Lives were lost, property destroyed, economy was terrible, people lived in fear, some left maimed for life. The main suspects that were names were taken to ICC but none was convicted due to lack of evidence or there was evidence which was tampered. This clearly shows that we

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use the retributive justice system more. Because we were quick to take the suspects to court, rather than dealing with the root causes of what caused the post-election violence. And because of that, Kenya has really never healed. Every other time we go for elections there is tension among various ethnic communities and in some areas there is violence.

Justice system of preference

My justice system of preference would definitely be restorative justice. This is because humans are social beings and relate at different levels every day. When relationships are broken, they need to be restored so that humans can co-exist peacefully. Also, in as much as restorative justice can take a really long time, it is a long lasting solution to conflict since conflict is unlikely to recur again since the root causes will have been dealt with. There can be peace without justice, but that will be negative peace, and not positive peace. An example again is Kenya after the 2007 general elections. The temperatures cooled down after two leaders shook hands and the suspects were named. But because there was no justice, Kenya has had negative peace, unlike the case of Rwanda where justice actually took place after their genocide in 1994, and now they enjoy positive peace.

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