

Restorative and retributive punitive justice

[Law](#), [Justice](#)



On this paper I will mainly focus and Restorative and Punitive justice by comparing and contrasting them, which of them the bible advocates for, Nature of Kenya's justice system as well as giving examples from the scripture/bible and which of the two I think is suitable to ensuring a peaceful society/community in Kenya. For the purpose of making this paper as simplified as possible I will start by defining key words that will be repeatedly used and associated or terms that relate/co exist.

Definitions

Justice- justice is derived from the word being Just. Justice are actions in accordance with the requirements of some laws. Thus, involves actions such as being righteous, equitable and fair.

Conflict- To speak of justice implies that injustice exists, and injustice hints at conflict, so essentially justice is crucial to conflict, conflict resolution and reconciliation. A conflict is as a result of a disagreement between two or more parties who have incompatible goals.

Restorative justice- Just as the word suggests it involves restoring, this is where criminals or offenders who have been found to be guilty are taken through a process where they are rehabilitated i. e. in prisons or corrective centres and later reconciled back with the victims and community/ society at large. In my other class we defined it as VOMP which victim offender mediation programme or commonly referred to as VOMP by Umbreit et. al (1994).

Punitive justice- Punitive justice is similar to retributive justice which suggests that an offender/criminal is supposed to be punished equally to the offense/crime, inflicted or they may have caused because the offender deserves the punishment in order to Prevent future crimes i. e. in order to deter them from committing similar offenses when they reflect back on the reciprocity they received for their offenses. It can best be described as ' Just desert'.

Peace- It is mainly defined by its absence but in the simplest form it's an environment where no violence and tension exists, people are able to reach their potential with nothing curtailing their freedom.

Comparison and contrast of restorative and punitive justice

As I mentioned earlier that punitive justice is same as retributive justice I will henceforth use the terms interchangeably in order to have a complete though in my statements that one can easily understand.

Firstly, both restorative and punitive justice acknowledge that there are two or more parties involved, i. e. the Offender and the victims who could be individuals, a community or even a state. The only difference when it comes to victims between the two types of justice is that restorative justice focuses on violations and crimes against individuals/ groups and the community. As for Punitive/ retributive justice conceives crimes committed against the state.

Secondly, as stated by Braithwaite, John. (1999) they both focus on punishing the offender or making them come to terms and acknowledge what they have done is wrong only that they take different measures where

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by for punitive justice advocates that those who don't play by the rules or have committed crimes should suffer penalties for their mistakes with no consideration for the victims on whether they are satisfied with the measures taken. Additionally, once they are proved guilty it does not matter whether they take plea or not but must suffer equally to the harm/damage they have caused. While for restorative justice it is concerned with healing the victim's wounds whereby victims take an active role in directing the exchange as well as defining the responsibilities and obligations of offenders. As argued by Braithwaite, John. (1989) Offenders are encouraged to understand the harm that they may have caused the victims and take responsibility for it.

What does the bible advocate for?

From my perspective restorative type of justice is what carries more weight from the teachings of the scripture/bible. The bible advocates for punishing wrong doers where at the same time from the stories given wrong doers/offenders were punished for their wrong doings but what's important is for them to acknowledge the wrong, seek forgiveness and eventually be integrated back into the society as God is against disunity in. Punishment has been witnesses from the very first book of the bible. In Genesis Adam and Eve were punished for disobeying God when they ate the forbidden fruit. Genesis 3- (8: 23 The New King James Version))Then the man and his wife heard the sound of the Lord God as he was walking in the garden in the cool of the day, and they hid from the Lord God among the trees of the garden. But the Lord God called to the man, " Where are you?" He answered, " I heard you in the garden, and I was afraid because I was naked; so, I hid."

And he said, “ Who told you that you were naked? Have you eaten from the tree that I commanded you not to eat from?”

The man said, “ The woman you put here with me—she gave me some fruit from the tree, and I ate it.” Then the Lord God said to the woman, “ What is this you have done?” The woman said, “ The serpent deceived me, and I ate.” So the Lord God said to the serpent, “ Because you have done this, “ Cursed are you above all livestock and all wild animals! You will crawl on your belly and you will eat dust all the days of your life.

And I will put enmity between you and the woman, and between your offspring and hers; he will crush your head, and you will strike his heel.” To the woman he said “ I will make your pains in childbearing very severe; with painful labour you will give birth to children. Your desire will be for your husband, and he will rule over you.” To Adam he said, “ Because you listened to your wife and ate fruit from the tree about which I commanded you, ‘ You must not eat from it,’ “ Cursed is the ground because of you; through painful toil you will eat food from it all the days of your life. It will produce thorns and thistles for you, and you will eat the plants of the field. By the sweat of your brow you will eat your food until you return to the ground, for dust you are and to dust you will return.” Adam named his wife Eve, because she would become the mother of all the living. The Lord God made garments of skin for Adam and his wife and clothed them. And the Lord God said, “ The man has now become like one of us, knowing good and evil. He must not be allowed to reach out his hand and take also from the

tree of life and eat and live forever." So the Lord God banished him from the Garden of Eden to work the ground from which he had been taken.

From this great example and the very first form of punishment it is clear that the bible/scripture is against punitive justice. God gave them a chance to confess and acknowledge the wrong Adam and Eve had done. Interesting is also the fact that there was some sort of negotiation between the two parties whereas as for punitive type of justice the crime as I stated earlier has to be transgressed against a state.

Additionally, I cannot deny to acknowledge that there are instances where punitive/retributive type of justice was employed and implied in some teachings as well. Examples include " (Galatians 6: 7 The New King James Version)). It is a Divine law that " whatsoever a man soweth that shall he also reap. Another example is Isaiah (59: 17-1 The New King James Version) breastplate, and a helmet of salvation on His head;

And He put on garments of vengeance for clothing and wrapped Himself with zeal as a mantle. 18 According to their deeds, so He will repay, Wrath to His adversaries, recompense to His enemies; To the coastlands He will make recompense.

Justice as Retribution/Punishment: When justice is related to retribution and punishment, it is the simple desire for offenders to get what they deserve. This is seen in the " eye for an eye" famous quote made in the Bible, which prescribe exactly which punishment is to be given for each sin. We see this in Exodus (21: 23-25 The New King James Version). Which states" But if there

is serious injury, you are to take life for life, 24 eye for eye, tooth for tooth, hand for hand, foot for foot, 25 burn for burn, wound for wound, bruise for bruise". This " law of retaliation establishes the principle that the offender is to suffer the same injury they may have caused the victim." The aim is to ensure that there is balance in justice; in other words, only an eye for an eye, not two eyes for an eye. This creates a separation between the balance of justice rather than revenge where equity is serve thus one. Many practitioners of restorative justice reject this aspect of biblical justice because they view punishment/retribution as something which is against the project of justice as they claim offenders should be rehabilitated back to the society. Braithwaite, John. (2002) argues that, even though restorative justice is in many ways grounded in the biblical concept of justice, this important aspect is sometimes ignored. There are consequences to our actions, and we must be ready to bear them. Our modern (or postmodern) sensibilities make it difficult for us to accept the idea of punishment and retribution, but it is an important concept in the Bible. It is also important to note that in most biblical passages where God's actions are on behalf of retributive justice, " God takes up the cause of the one who has suffered and rebalances the moral universe." There is evil in the world and it must be dealt with. Which is the justification for this type of justice.

Natures of Kenya's justice system

It's with no doubt that the modern and current Kenya restorative type of justice is practised and upheld. Umbreit et. al (2003) points out that Restorative justice is a concept based upon values that emphasize the importance of providing opportunities for more active involvement in the

process of Offering support and assistance to crime victims, holding offenders directly accountable to the people and communities they have violated, Restoring the emotional and material losses of the victims, Providing a range of opportunities for dialogue and problem solving among interested crime victims, giving offenders the opportunities for competency development and reintegration into productive community lives and Strengthening public safety through community building.

The criminal justice system in Kenya enforces punishment as the primary means of dealing with an offence. Punishment is more often than not effected through incarceration. This means that the offender is incarcerated, which isolates the offender from the outside world. The majority of the offenders who are incarcerated will eventually be released and will have to return to the community. Reintegration becomes significant to facilitate the re-entry of the offender into the community. From the court systems where an individual is innocent until proven guilty, in the court process they are allowed to reconcile or make peace with the victim but this does not waive their penalty. Eventually an offender is taken to correctional facilities where they serve their time and at the end of it they are rehabilitated back into the society with a chance for a fresh start. The challenge only being that the community most of the times is reluctant to accept them back but with time after proving that they are reformed they are reintegrated back though with a close watch.

Justice system of choice and can peace exist without justice?

In as much as both punitive and restorative types of justice have proved to be effective in some cases, I strongly advocate for restorative type of peace.

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In order to have a broader angle of view/ perspective it depends on which side one stands i. e. the victim or offender. In the same fashion way, I myself as an offender or with a close family member as the offender too, I would want a second chance in life and be integrated back into the community where I will feel accepted and acknowledged, In the same line of thought as a victim closure with the perpetrator/offender would be equally important and satisfying knowing that peace has been made and no need for vengeance.

It is important to mention that there are two types of peace, Positive and Negative peace. Positive peace being a scenario where no conflicting party considers using force in case the case of a disagreement. In other words, its permanent peace while as for Negative peace is temporary absence of armed conflict.

For this reason, a peaceful society cannot exist if there's no justice. People are not willing to compromise on justice especially when they are deprived what they feel they should have thus the reason as to why a peaceful society cannot exist if justice is denied as people will their aggression as retaliation. In this case not necessarily restorative justice but any other form of justice a community may have adopted since justice is relative. Weitekamp et. al (2003) clearly states that, what may be viewed as justice for one community may not be to the other. Thus, in agreement that the term restorative justice is relative.