

What Is Justice?

By: Lacino Hamilton

A recent rash of publicized fatal shootings of unarmed black pedestrians by law enforcement officers has drew uproarious pleas of justice for the family and friends of those who lost their lives. The family and friends of these men and women need to experience acknowledgment, voice, and participation in order to heal. Not solely in terms of forensic and adversarial legal processes, but in terms of restoration and peace. Unfortunately, there is no coherent understanding of justice in the modern world other than arrest, prosecution, incarceration, and in some instances, civil suits.

That is because contemporary expressions of the term justice makes extensive use of State sanctioned punishment. A process where "facts" are developed and rules applied by an authoritarian institution, such as a court, to drive a decision. According to this view, justice is ultimately reducible to commerce, paying a debt to society. This value system promotes an aggressive and confrontational culture of winners and losers, prosecution vs defense, The State vs so and so.

Now a person can very well owe a debt, but to whom--those affected by crime and other forms of harms, or to the State? Norwegian criminologist Nils Christie wrote an article for the British Journal of Criminology entitled "Conflicts as Property," (1977) explaining how if we look at the history of the human community's response to conflict over time, we see that the State, as an agent of concentrated power, increasingly encroached upon community processes. Encroached upon the community's genius to act to resolve a conflict or act when someone is in need, whether from a harm done or otherwise.

Christie's explanation continues into what kind of mechanism or process existed, or now exists for responding to harms or conflict in the community by detailing how the State gradually defined itself as the agent in charge of defining crime; gradually defined which conflicts or harms are worthy of societal response; gradually defined itself as the legitimate arbitrator; and gradually defined the array of State-acceptable responses. Since the administrative unit or entity is by nature a war machine, the State became arbitrator by exclusion, deprivation of time and space, punishment-violence, and execution. Backed by guns and muscle the State began calling the shots.

In increments, over the course of time, the State defined harms in terms of injury to itself, the symbolic citizen. While at the same time empowering a professional class of bureaucrats and functionaries, whose credentials have been certified by the State, to deal with

the management of community affairs. The community (the actual people harmed) either gave up or was forced to give up its share in taking care of itself. This includes the marginalization of parents, families, neighbors, and community members at large. The human community in so many areas and so many venues has become more and more of a passive observer in solving its own problems.

Of course there are numerous benefits from the actions and policies of the State and its professional class of problems solvers. For example, a vigilante style justice or the absence of a third party to arbitrate contested issues or the lack of facilities to treat the most violent among us would most likely lead to an individual style justice akin to the wild wild west. An agency physically capable and mentally equipped and trained to serve the most vulnerable among us has without a doubt had its favorable moments, but that does not mean the community is incapable of devising alternatives that allow the individual(s) who cause harm, and the party or parties harmed, from entering into dialogue and fostering both personal and collective development.

As presently understood and implemented "justice" is a growing number of practices and social institutions that are designed to create a body politic; a political economy consistent with manufacturing popular consent to social and political realities of power, predicated upon a limited subset of human emotions. Emotions that reflect the competitive compensatory ethic of the market and the corrective policies and practices of the State.

On a much larger scale the question of "what is justice" exposes our ignorance about the political economy of human participation in everyday life, about principles of need, participatory democracy, human dignity, and the need to repair human to human relationships. I wasn't surprised that majority of people who called for justice for the family and friends of the unarmed men and women whose lives were cut short by law enforcement officers was for the officers who fired the fatal shots to be arrested and imprisoned. Their vision of justice (and the retributive principles and emotions accompanying it) is a justice of revenge, a justice of retribution, and a justice of non-reintegrative ostracization. It certainly is not a vision of bringing together the victims family and friends, the victimizer, and the broader community to determine how to best repair the harm.

However, others have called for justice based upon a deeply spiritual process of transformation: of persons, situations, and above all, institutions. A form of justice which responds to human needs holistically in order to restore the moral bond of community. Justice based upon the principles of accountability, repentance (or radical change in direction), forgiveness, compassion, and reconciliation. The context for this form of justice is in the

realization that when a harm occurs human relationships become fractured, and sometimes broken. And as long as human relationships are damaged as such, we can never be whole or truly human. Meaning that justice is not the State acting as if it has been harmed, but people entering into dialogue to reconcile, repair, and restore both victim and victimizer. Best accomplished through restorative justice processes and practices.

Restorative Justice is a form of insurgency because it seeks to replace the State (and power based social arrangements generally) in how it responds to interpersonal and intergroup conflicts and how it defines what harms the human community should give restorative attention to in the first place. For example, restorative justice practitioners use the term harm as opposed to crime because what is or is not defined as a crime is the prerogative of the State, and owes its existence to the particular political realities of the time rather than to the exigencies of victim, victimizer, and community needs. In a multitude of ways restorative justice challenges both conceptually and in practice social arrangements and processes that thwart human development and prevent human needs from being met.

Restorative Justice reflects a vision of social life that sees the pain and suffering of "all" as worthy of the community's attention while the State i.e., power-based institutions discriminate between those worthy of attention and those not based upon race, class, gender, sexual orientation, and other socially constructed characteristics. That vision is brought to life by creating a safe environment for those harmed and those that committed the harm to acknowledge the harm, express how they have been affected by it, determining what is to be done to heal, and lay the necessary foundation to prevent further harm. Recognizing that wholeness of every member of a community is vital for the health of community. On one level it is an attempt to restore the social order while on another restoring those that create harm to his or her place in the circular flow of life. Justice can never be the State doing harm to someone because they have done harm. That is not justice, that is the dictum of a mad person, that two harms somehow make justice.

One might conclude from what I just wrote that I believe there is no time that a person should be detained or experience discomfort when they have harmed someone. I don't. Nor do I believe that that's the best way to seek justice. The confusion surrounding what is justice reflects the meaning of justice in our culture. As far as I can see, justice is being used in at least three different ways to resolve suffering and pain: to hold people accountable, revenge, and to find closure (healing). But since we have not taken the time to figure out the difference between the three, we end up collapsing them into one another in ways that are confusing and harmful. That confusion and further harm ensures that future harm will occur. It

also mask how the victim becomes the victimizer, creating an unsustainable cycle of pain and suffering. And even if we are not completely certain what justice is, we can be certain that that's not what justice is.

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