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JUSTICE IN HISTORY: AN EXAMINATION OF ‘AFRICAN RESTORATIVE TRADITIONS’ AND THE EMERGING ‘RESTORATIVE JUSTICE’ PARADIGM.

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Abstract
The internationalisation of restorative justice is a welcomed development. But restorative justice literature would be incomplete if the contribution of African restorative traditions to the emerging restorative justice paradigm is obscured or continued to be ignored. Some western criminologists and authors write about restorative justice history obscuring Afro-historical evidence. Others have even written that ‘when race are classified by colour, the only one of the primary races which has not made a creative contribution to any of the twenty-one civilisation is the black race’ (see Dalgleish, 2005:57). This paper argues that such assertion was perhaps wrongly and erroneously made due to the
obscurity of Afro-centric evidence in most comparative criminology literature. The author thus reviews the ‘African restorative traditions’ and how it might have contributed and/or could contribute to the emerging ‘restorative justice’ paradigm. This paper is to advance the cause of restorative justice as a global paradigm and to comparative criminology because knowledge in restorative justice and perhaps comparative criminology would be incomplete if ‘Afro-centric’ contributions continued to be ignored.

Introduction

Braithwaite (2002) have argued that we have yet to discover a culture which does not have some deep-seated restorative traditions. Nor is there a culture without retributive traditions. Perhaps it is in view of this understanding that more and more people in contemporary times are looking within their existing cultures and finding models and traditions that can be adopted or adapted to suit a culturally sensitive dispute resolution and reconciliation process. This international trend of looking ‘within’ or ‘inwards’ for dispute resolution, peace and reconciliation mechanisms, is a new and developing one which ought to be encouraged especially in Africa. This author thus advances the Afro-centric historical evidence aim at re-building the African restorative traditions in the light of emerging restorative justice paradigm.

However, in spite of the truth of deep–seated restorative traditions in most cultures of the world retributive traditions is mistakenly often seen to have survival value, perhaps, because restorative traditions or cultures which were regarded as ‘timid’ and weak in fighting back imported traditions and cultures were often wiped
out by the more determinedly retributive cultures (Braithwaite,
2002). But in the contemporary world, the author would argue that,
retributive emotions have less survival value because retributive
emotions are more likely to get us into trouble than out of it, as
individuals, groups and nations.

The message that this paper wish to communicate to all cultures
(especially the African cultures) is that in the world of the twenty-
first century, we are more likely to find our restorative traditions a
more valuable resource than our retributive traditions. Even sadly
though, the hegemonic cultural forces in the contemporary world
communicate just the opposite message. The knowledge we need
to learn is what has being the status quo in African traditions for
dispute resolution? This Afro-historical knowledge is imperative
because according to an Italian philosopher Marcus Tullius Cicero
(106 BC- 43 BC), ‘not to know what happened before one was
born is to remain a child forever’. So examining justice in history
as per the idea of restorative justice will offer a backdrop for our
understanding of the concept and its metamorphosis. An historical
review of restorative justice might also help us to understand what
factors influenced the move away from restorative justice in favour
of the criminal justice model and why we might in the recent times
want to move back towards this model of justice in our current
social context globally.

What is restorative justice?
Before discussing the main issue at stake it is imperative to have a brief idea of the concept of ‘restorative justice’. In modern times, Llewellyn and Howse (2002:4); Gehm (1998:3), have generally credited, a psychologist known as Albert Arthur Eglash to have coined the term ‘restorative justice’ in his 1977 article ‘Beyond Restitution: Creative Restitution’. Restorative justice is thus a new movement in the fields of Victimology and Criminology. Thus the interventions of restorative justice in the criminal justice context are relatively new models of dealing with crime and offending behaviour. However, from the early part of the 90s, very many national governments and non-governmental/community based organizations in Europe and America have been using these approaches with increasing frequency in an attempt to finding constructive solutions to interpersonal conflict, crime victimization, and offending behaviour. Through these initiatives, restorative justice interventions have now become significant and recognised tools of Alternative Dispute/Conflict Resolution both within and outside of criminal justice system in Europe, the Oceania and North America (Barton, 2003).

Restorative justice according to Marshall (1999:5) ‘is a problem-solving approach to crime which involves the parties themselves and the community generally, in an active relationship with statutory agencies’. The salient point to note in this definition is that victims, offender and community participation is actively supervised by statutory criminal justice/governmental agencies; whereas, the Mediation UK (2002:2) defines restorative justice as ‘a process whereby victims, offenders, and communities are collectively involved in resolving how to deal with the aftermath of an offence and its implications for the future’. The Mediation UK
definition however, did not recognise the active participation of statutory criminal justice or governmental bodies as evident in Marshall’s definition. The sharp contrast in the two definitions poses the question as to whether the restorative justice perspective and the criminal justice model are mutually exclusive, or work side by side (further discussion on this is beyond the scope of this paper).

However, Johnstone (2002:10) believes that a true restorative justice model should have the following four ideals and characteristics:

- That crime is, in essence, a violation of a person by another person, and this is much more significant than the breach of legal rules
- That in responding to crime our primary concern should be to make offenders aware of the harm they have caused, and to prevent them repeating that harm
- That the nature of reparation and measures to prevent re-offending should be decided collectively and consensually by offenders, victims and the community; and
- Efforts should be made to improve the relationship between the victim and the offender to reintegrate the offender into the community

So the conception of restorative justice in the opinion of Restorative Justice Consortium UK is that:

Restorative justice (should) seek to balance the concerns of the victim and the community with the need to reintegrate the offender into the society. It (should) seek to assist the recovery of the victim and enables all parties with a stake in the justice process to participate fruitfully in it (RJC, 2002:6).
All in all, restorative justice should be seen as a matter of ‘humanising’ criminal justice, in ways, which do not interfere with overall fairness and just procedure, by making room for involvement, seeing crime in its social context, and taking a forward-looking or problem-solving approach to all the issues that might be involved. Combined with legal justice, restorative justice might create a ‘holistic justice’. That is, justice not only from the point of view of a judge but also of the victim, the community and the offender.

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It has been admitted that while there have been many theories attempting to explain the origin of the ‘move away’ from restorative justice to retributive system, none has succeeded in offering a ‘plausible and satisfying theory of its origin’ (Bianchi, 1994:15). Bianchi however, noted that restorative justice which is, ‘the old systems of conflict resolution, repair, and dispute settlement survived, openly or covertly, in many centuries’ and indigenous cultures. Llewellyn and Howse (2002:6) also argued that there seemed to be agreement that the move from restorative justice to what ‘we know today as public, state centered, retributive justice began as early as the eleventh and twelfth centuries’. Zehr (1990) in his own argument suggests that ‘it took until the nineteenth century for retributive justice to gain prominence’. According to Zehr, whatever other factors that might have prompted this change, ‘it was clear, at least in part, that it was motivated by the desire for political power both in the secular and religious spheres’. Legal Historian Berman (1983) argues that this
change amounted to what he called a ‘legal revolution’. This revolution according to Zehr (1990:110) resulted in a ‘reconceptualization of the nature of disputes’. By this end, Zehr (1990:110) argues that the crown had proclaimed itself ‘keeper of peace’ and as such would be the victim whenever the peace was violated. The role of the courts he argued changed in suit; no longer was their task to referee between disputing parties requesting their involvement but ‘courts now took up the role of defending the crown and began to play an active role in prosecution, taking ownership over those cases in which the crown was deemed victim’. To these courts, Zehr argues ‘justice came to mean applying rules, establishing guilt, and fixing penalties’. According to Llewellyn and Howse (2002) this role of the crown resulted in devastating and lasting effects for the real victims harmed by wrongful acts. They were no longer parties in their own cause, because as Christie (1977) put it, their disputes have been effectively ‘stolen’ from them. This according to Christie remains the situation of the contemporary criminal justice system today as ‘victims have little or no power with respect to their case’ and cannot initiate or stop or settle a prosecution without permission of the state, and can often be locked out of the process altogether if they are not useful as a witness in the case.

As a support to the historical existence of restorative justice before now, Wright (2003) in his work ‘justice without lawyers’ reviewed the historical existence of restorative approach to conflict resolution existing among the Kpelle people of Liberia, Mexican Zapotec Courts, the Tiv people of Benue state Nigeria (also see Bohannan 1957), the Barotse and Korean traditions. Similarly,
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Elechi (2006) in his 'Doing Justice Without the State: The Afikpo (Ehugbo) Nigeria Model' reviewed extensively the restorative traditions of dispute resolution amongst the Igbos in South Eastern Nigeria. In another academic essay entitled ‘Pre-Colonial Criminal Justice in West Africa: Eurocentric Thought versus Africentric Evidence’ Dalgleish (2005:62) review how rulers in ancient Ghana do their justice. He maintained that as a tradition of keeping close to the people and upholding justice among the people, the chief and his commanders often assemble and ride their horses through the lanes of the community and around it and ‘anyone who has suffered injustice or misfortune confronts him, and stays there until the wrong is remedied’. Weitekamp (2003:111) also in his work ‘the history of restorative justice’ took a look at the anthropological origin of restorative justice practices and claimed that restorative justice had existed in what he called ‘the acephalous societies’ (non-state) and ‘early state societies’. Weitekamp further argued that some of the new programmes of restorative justice are in fact very old. He states that:

Ancient forms of restorative justice have been used in societies and by early forms of humankind. Indigenous people such as the Aboriginals, the Inuit, and the native Indians of North and South America have used family group conferences and circle hearings. It is kind of ironic that we have at the turn of this century to go back to methods and forms of conflict resolution, which were practiced some millennia ago by our ancestors (Weitekamp, 2003:111) and [perhaps disbanded by colonisers].

According to Braithwaite (2002:3) in his work ‘The fall and rise of restorative justice’ he argues that restorative justice has been
conceived as a major development in human thought which was grounded in traditions of justice from ancient Arab, Greek, and Roman civilizations which accepted a restorative approach even to homicide. He gave instances of the restorative approach of the public assemblies of the Germanic peoples who swept across Europe after the fall of Rome; Indian Hindus as ancient as the Vedic civilization of 6000-2000 B.C for whom ‘he who atones is forgiven’; and the ancient Buddhist, Taoist, and Confucian traditions that is blended with Western influences in today North Asia. In the same vein, Consedine (1999) argues that this ‘reputedly new justice’ [restorative justice] is ‘really not new’ because:

Biblical justice was restorative. So too was justice in most indigenous cultures. In pre-colonial New Zealand, Maori had a fully integrated system of restorative justice. It was the traditional philosophy of Pacific nations such as Tonga, Fiji and Samoa. In pre-Norman Ireland, restorative justice was interwoven with the fabric of daily life (Consedine, 1999:11).

Restorative justice conceptions therefore could be argued to have their roots in both western and non-western traditions. Thus, Llewellyn and Howse (2002) argue that a move towards a restorative model of justice is perhaps best understood as a return to the roots of justice, and not as a new-age justice for an ailing criminal justice system.

In modern times, however, Llewellyn and Howse (2002:4); Gehm (1998:3), have generally credited, a psychologist known as Albert Arthur Eglash to have coined the term ‘restorative justice’ in his
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1977 article ‘Beyond Restitution: Creative Restitution’. The conception of justice to which he referred was however, not new judging from the above review and as criminologist Braithwaite (2002:3) tells us, ‘restorative justice has been the dominant model of criminal justice throughout most of human history for all the world people’.

The historical conception of restorative justice is not only limited to those mentioned above, rather, we can also find some interesting history in the lasting traditions of many African and non-Western societies. But Stout (2002:55) have reported that there ‘has been concern that much of what is claimed to be ancient African, traditional justice is based upon anecdotal evidence and unsustainable claims’. In the same vein, Costa (1998:526), considers the very idea of African customary law to be an oxymoron: ‘trapped in the belief that African law is not law per se, but a form of custom, and primitive practice which predates law’. Similarly authors such as Daly (2000) and Blagg (1997) have argued that to ‘describes ancient justice as necessarily restorative is to romanticise the past and to provide an excuse for re-colonising indigenous groups’.

However, this paper aims at deconstructing those assertions and it is also arguing that, it might be hard for those of ‘us’ who are deep in the culture of materialistic individualism to understand or comprehend if anything good could come out of Africa. As far as restorative justice is concerned, it could be argued that it has been part and parcel of African traditions and there is a word that goes some way to explaining it. It is a word from the Nguni language family, which comprises Zulu, Xhosa and other Bantu tongues.
The word is “ubuntu”- the ‘organic wholeness of personhood’ or ‘the natural connectedness of the humanity of persons’, or as Van Ness and Strong (2002) put it ‘I am because you are’ or ‘my humanity is tied up with your humanity’ (see further discussion in subsequent pages of this paper).

Restorative justice and the African restorative traditions

In the pre-colonial Africa, many African citizens were resolving their disputes using the traditional and informal justice forums. Despite the popularity of this system among the Africans, these forums were regarded as obstacles to development during the colonial era (this might be due to a clash of paradigms between existing methods of doing justice and that of colonial power). The emergence of the restorative justice paradigm in the West has made this author to review the African restorative traditions in this paper. Furthermore, the author wishes to support the argument of Keulder (1998:294) which stated that ‘those who have criticised the African traditional justice system as being too traditional to promote development are often too simplistic in their arguments’. Because the critics are bound up in the traditional-modern dichotomy in which ‘traditional’ to them is equated with ‘backward’ and ‘modern’ with ‘advanced’ initiatives. So to them, development could only occur within a ‘modern’ framework. The main problem with this equation according to Keulder is that, it is based on a very static and simplistic view of tradition because it ignores the fact that traditions are often ‘invented’ and hence, very ‘modern’ in content. It is thought by these critics of African traditions that as Africa modernised the African traditional justice
model would eventually die out. This of course the author would argue did not occur because traditional model of dispute settlement in Africa have remained as wide spread as ever, and even receiving international attention in the form of the ‘restorative justice’ paradigm?

Though orientalist criminologists would not accept this argument, but Cain (2000:1) with her experience teaching criminology in non-western cultures of Trinidad and Tobago supported the above argument when she says that the issues which were most salient in other cultures /context might not be covered at all in western criminology texts, and that the theoretical presumptions of western criminology were as likely to be misleading, or at best to miss the point, as to be helpful. She argues that an analysis of these difficulties revealed the twin failings in western criminology of ‘orientalism’, which romanticizes the other, and ‘Occidentalism’, which denies the possibility of difference, or seeks to explain it away. Thus, she argues that the deep presumptions of western theories (criminological theories for instance) may be harmful for non-western consumers of them.

So in spite of the ‘orientalist’ and ‘occidentalistic’ views of some western criminologists the African traditional dispute resolution approaches have remained relevant among most Africans for reasons such that: the vast majority of Africans continue to live in rural villages where access to the formal criminal justice system is extremely limited; or that the type of ‘justice’ offered by the criminal justice courts may be inappropriate for the resolution of disputes between people living...
in the rural villages or urban settlements where the breaking of individual social relationships (ubuntu) can cause conflict within the community and affect economic co-operation on which the community depends, and/or that the criminal justice system in most African countries operates with an extremely limited infrastructure (with its attendant delays in administration of justice) hence, does not have the resources to deal with minor disputes in settlements or villages. Other factors might include distrust of ‘settlers’ justice’ (especially, but not only, in South Africa) and a desire to avoid bringing trouble by involving remote (and sometimes corrupt) urban police in rural disputes.

Whatever the factors that might have contributed to the sustainability of the African traditional justice system, the main purpose of traditional dispute settlement in Africa according to Merry (1982:20) is to ‘restore social harmony’ and ‘reconcile the parties’. The penalties, therefore, usually focus on compensation or restitution in order to restore the status quo, rather than punishment. For most people in Africa, a Nigerian professor of law and criminology Adeyemi (1994) argues that justice is traditionally about restitution and must be seen by the people to have been done. Imprisonment has never traditionally existed as a penalty for any offence (Adeyemi, 1994) but corporal punishment, (as also was the case in some western cultures) however, has been administered by a number of traditional systems on juvenile offenders, and sometimes the traditional justice forums may order restitution of, for example, twice the number of the stolen goods to the owner, ‘especially when the offender has been caught in “flagrante delicto”’ and fines may be levied’ (Elias, 1969:20). So
in pre-colonial Africa, the traditional justice in a number of societies assumed an adjudicatory role for most serious/violent crimes such as murder, rape and witchcraft. On some occasions, in an event of serious/violent crimes the victim’s family would accept a penalty of compensation such as ‘nkuchi’, or ‘ikwala’ especially among the Igbos in Eastern Nigeria (see Omale 2005:16) and/or banishment of the murderer from the community, sometimes with his/her nuclear family.

In the pre-colonial African societies, Robert (1979:51) thus noted that ‘enforcement of justice, law and order lies within the complex of relationships’. That is, although formal coercion is rarely resorted to, Igbokwe (1998:469) argues that ‘social pressure plays a powerful role in achieving compliance’. Igbokwe justify his argument when he says that ‘the high degree of public participation’ in reaching a solution to a dispute in the African traditional justice ‘means that disobeying a final ruling (agreement) is tantamount to disobeying the entire community and may attract social ostracism’. Robert (1979:27) argues that ‘this involves the withdrawal by other members of the community of both social contact and economic cooperation’. So in African societies, ostracism has more than a symbolic significance because it represents not only ‘social death’ but a threat to individual’s livelihood especially where food depends upon collaborative efforts and hunting and safety depends upon social efforts. This separation from one’s group in traditional African society (and in other societies such as Canadian Aboriginal and Feudal England) has been likened to what Justice Oputa (1975:8) called a ‘living death’.

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In the traditional African societies, the disputants’ desire to reach and abide by an agreement and the public’s interest in ensuring an outcome is also strengthened by ‘the fear that supernatural ancestral spirits may be disquieted by the breaking of rules and quarrelling, and ‘respond by causing illness or material misfortune on the wrongdoer’s kin or on the community as a whole’ (Robert, 1979:42). So it is generally believed among most Africans (especially the rural dwellers in Nigeria) until now that breach of a taboo or omission of some appropriate offering to the supernatural spirits by an offender may cause illness or disease to someone or the community as a whole, other than the offender or wrongdoer. Paul Bohannan and his wife’s three years ethnographic study living with the Tiv people of Benue state Nigeria confirms the above assertion and his findings were documented in Bohannan (1957) ‘Justice and Judgement among the Tiv’. Hence, in most African cultures (including some societies in modern Africa), the community or group is seen as a continuing self-perpetuating entity embracing both the living and the dead. The law of the community, therefore, is conceived and accepted as the possession and heritage of an endless chain of generations and an act of rebellion against the legal status quo is regarded as abominable not only in the eyes of the living but also of the supernatural ancestral spirits who it is believed perpetually hover around and to protect the community.

In as much as this supernatural belief may sound unscientific to the educated and the Western criminologists, it has helped in crime control, reconciliation and reintegration of offenders in most African societies especially Nigeria. In Nigeria for instance, for the
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Councils of Elders to be sure that genuine reconciliation have been achieved after dispute mediation, both parties may be expected to eat from the same bowl, (drink palm wine, burukutu or local gin) from the same cup and/or break and eat kola-nuts. This forms part of the reconciliatory approach intrinsic to most African traditional dispute mediation. The public/conference participants also partake in the eating and drinking as an expression of the communal element inherently present in any individual conflict and of their acceptance of the offender back into the community. Christie (1977) echoed this in his Arusha (Tanzania) experience.

To support the above assertion and to confirm the significance of the above traditions in dispute resolution in Africa, Beatie (1957:37 cf PRI, 2001:35) presented a case study from the Bunyoro Kingdom in Uganda thus:

Everyone present (at the mediation meeting) agreed that Yozefu (the offender) failed in this case…So I asked the village headman to take us to the sub-county chief’s headquarters, so that I could accuse him in the chief’s court (the formal native court). But many of the people present said to me ‘Yakobo, it would be better for you to allow him pay a ‘‘fine’’ of beer and meat, in accordance with our Nyoro custom of forbearance and good manner’. So I said, ‘All right; in that case I shall go home, and if he comes to my house and begs forgiveness I shall forgive him, but if he does not come I shall accuse him in the sub-county chief’s court’. He came in the evening…and we told him that he should bring four jars of beer and a goat…On the day arranged…He came, bringing two pots of beer. Then the neighbours who were present said, ‘Ho Yozefu, what are bringing beer here for? Are coming to marry here or what?’…he begged me to accept two jars of beer only, as he had not been able to get any more. I said that I would accept them, but I reminded him that it was only owing to my kindness that he was not in prison, and I warned him that if he committed a similar fault in
the future I would certainly take him before the chief’s court…So I and all the people there drank the beer, and we danced, and the matter was finished’ Beatie (1957:37 cf PRI, 2001:35).

Some critics of African traditional justice might argue that the offender in this case is made to suffer by being compelled to spend his money on meat and beer. The Ugandan Bunyoro has the answer to this ‘Why should he (the offender) be angry or hurt? He consumes his share of the things he buys, and he enjoys the feast just as much as others do’. The main objective then appears to be to reintegrate the offender into the community and, if possible, to achieve reconciliation and social harmony without causing bitter resentment; or as the Ugandan Bunyoro put it ‘to finish off people’s quarrels and to abolish bad feelings’ (see PRI, 2001:35).

This ceremony in Bunyoro (Uganda) therefore encourages social harmony and total forgiveness expressed in the communal eating and drinking, and moreover, not only does the offender have his share of food and drink he has provided, but he is himself the host. This according to the Ugandan tradition is a praiseworthy thing; because, from a dishonourable offender he is promoted to an honourable ‘host’. So the beer and meat the author of this paper would argue are not ‘fine’ in the criminal justice sense of it; for their significance is re-integrative, rehabilitative and reformatory rather than punishment. The ceremony therefore marks the sense of genuine acceptance of agreement as essential for ending of hostilities between disputants and the restoration of harmony within the community and among both parties. Braithwaite (1989) note that this form of ceremony is echoed in the modern rituals of
It is on the basis of the above argument that the author would argue that with regard to the ‘restorative justice’ paradigm, it will be important for the West to remember that Africans have as much to learn from the West as they do from Africans. Hence, a Canadian Project Coordinator Perrott (2004:1) in his ‘Finding Community Alternatives in the Gambia’ argues that Africans, with their societal focus on collectivist values and communitarianism, have a much longer tradition of settling problems at the village level than does the West. Even presently he further argues, many criminal matters never come to the attention of the police, but are settled by Councils of Elders (also see Omale, 2005:52) under the leadership of village chiefs or regional chiefs. Remedies sought during these mediation sessions are consistent with the principles of restorative justice insofar as the law-breaker must make amends for his or her actions.

The problem is that the process sometimes is often seen as arbitrary, paternalistic or unjust, with decisions often based along tribal, gender or other political lines. Especially disadvantaged in the process are women who often remain in a position of powerlessness in this still highly patriarchal society (Perrott, 2004:1). For instance, a female victim may find her perpetrator making amends to her father or husband without much consideration being given her.
Take domestic violence, for example. In the West, Perrott (2004:2) argues that many jurisdictions do not allow for police discretion when an assault is reported; mandatory arrest of the perpetrator is the policy. The restorative justice policies of most Western jurisdictions exclude the possibility of many serious offences being diverted from the formal court system, with domestic assault typically viewed in the serious category. In Africa, Perrott (2004:2) argues that domestic assault is ‘still considered a private matter’ and usually goes unreported. Should a woman report an assault to the police, she typically would be advised to return home and try to better get along with her husband. Ironically, then, were domestic assaults dealt with at the village level, this would represent an increased recognition of the seriousness of the act, and not, as many Westerners might perceive, a lessening of magnitude. It is important to note here that this practice does not underscore the rights of women as the feminist criminologists might think but it is premised on the African philosophy that “you can not take a friend to court and still remain friends”.

Van Ness and Strong (2002) and Sterne (1999) similarly found some of these interesting histories and traditions in the pre-colonial African societies where justice aimed less at punishing criminal offenders than at resolving the consequences to their victims. These authors corroborated the above arguments as they argue that sanctions in the pre-colonial African societies were compensatory rather than punitive, and were intended to restore victims to their previous position in the spirit of ubuntu. Although the term ubuntu is not in any of the Nigerian tongues, but in Nigerian cultures and traditions, it is easy enough to see similar philosophical principles.
For instance, Omale (2005:16) argues that there existed in pre-colonial Nigeria forms of sanctions used amongst the Igbo tribe of the South-East Nigeria. These include the ‘nkuchi’ and ‘ikwala’, which, literally means ‘replacement’ and ‘shaming’ respectively. The ikwala sanction Omale noted, is a form of spiritual sacrifice of ‘confession’ made to the ‘gods’ of the land by the offender or his immediate family to cleanse the land and the victim that has supposedly been defiled by the offending behaviour (e.g. in rape case). Where property crimes were committed, nkuchi was the most appropriate form of sanctions. However, both forms of sanctions could be suitable in some circumstances. Similarly, the author is arguing that ‘oral traditions’ and ‘personal ethnographic experience’ [living in a rural community] has shown that in some Nigerian communities if a man steal from someone’s farm, he might choose to dance round the farm several times singing ‘I am a thief, please forgive me’ or choose to go and do some hours of farm work with the victim to restore the relationships. Where the task of restoring the relationship (especially in severe/serious crime) is so much for the offender, the kinsmen do contribute morally or otherwise to relief his burden.

Educating the critics

In spite of these historical antecedents of restorative justice traditions of Africa, many historical accounts of justice and the administration of justice have served to obscure this history. Feeling concerned about this sense of obscurity, Bianchi (1994) argues that the reason for this obscurity might be due to the fact that ‘scholars, particularly those from the West’, were so attached to the punitive model of justice, which forms the backbone of our
current justice system, that they were unable ‘to contemplate the success and existence of other models in other times and places’. Perhaps this reason could be why Authors such as Skelton, (2002); Roche, (2002); Blagg (1997); Daly (2000); and Costa (1998), have expressed that many African traditional forms of justice disposal are not necessarily restorative. The author of this paper is however arguing that the above African customary dispute resolution principles and African restorative traditions reviewed above are, in concord with the restorative justice framework which need to be rebuilt.

Similarly, Justice Balonwu (1975:48) advance this argument that ‘what the earlier colonial masters’ and possibly these authors (Daly, Blagg, Skelton, Costa and Roche) did not understand about the African pre-colonial judicial system is the difference in the handling of civil offenders and non-apologetic criminal offenders. For instance, Justice Balonwu (1975:48) notes that in the pre-colonial Eastern Nigeria, “Osus” and for instance, non-repentant criminals or their ancestors (whom originally were freeborn), could subsequently be bought by a family or individual at a command of a diviner, and/or offered as slaves to some deity. This customary tradition however, Justice Balonwu (1975:48) argues was abolished in 1956, as being ‘repugnant to natural justice, equity and good conscience’. Justice Balonwu (1975:48) and Oputa (1975) therefore note that while Alternative Dispute Resolution/Restorative Justice principles applied to all civil matters in those days, non-repentant criminal offenders, or offenders whose family members are non-cooperative, attracts banishment, ex-communication, etc. The later (draconian)
measures as applicable to criminal matters, were to some extent what discouraged the earlier colonial masters to abolish the African pre-colonial judicial system (Justice Balonwu 1975:48) and perhaps that is what the critics also rely on to make their assertions. Reverend Father (Professor) Stan Ani in a Television Programme entitled ‘Values’ similarly argues that, what the earlier colonial masters forgot to understand about Africa is that ‘Africans has ground norms of justice. They know that at the level of ‘‘justice’’, you do not forgive somebody who have not repented but at the level of ‘‘systemic thinking’’, you can forgive somebody who have not repented’ (Stan Ani T.V interview 2005).

Supporting the above assertion that pre-colonial African justice system was indeed not barbaric Justice Balonwu (1975:31) cited the testimony of Sir James Marshall, a director of the 19th century Royal Niger Company, who later became the first Chief Justice of the West Coast of Africa (now Nigeria, Ghana, Liberia, Sierra Leone, etc) under the company’s administration. The London Times of July 17, 1886 reported Sir James Marshall’s statement about the West African pre-colonial justice system thus:

His [Sir James Marshall] testimony as to the efficiency with which the natives administer their own laws is very striking. He has sat beside native judges, and witnessed with admiration their administration of justice. These people have their own laws and customs, which are better adapted to their condition than the complicated system of English jurisprudence. The adoption of them would, it is maintained, be more conducive to the best interests of all than the present system (London Times of July 17, 1886 cf Justice Balonwu 1975:31).

So African justice encapsulated in the concept of ‘ubuntu’, which is the ‘organic wholeness of personhood’ or ‘the natural
connectedness of the humanity of persons’, recognises the interdependence of personhood which has to do with wellbeing, happiness and membership of a community. Villa-Vicencio (1996:527) in his work ‘Identity, Culture, and Belonging’, Braithwaite (2002:5), and Llewellyn and Howse (2002:7) all corroborated this assertion as they attempted to explain the traditional African understanding of the concept of ubuntu as enshrined in the popular Xhosa proverb and popularised in the musical track of late Brenda Fassie’s: *umuntu ngumuntu ngabantu* (a person is a person through persons), and Sutuhuzaki Arosi’s musical label ‘UBUNTU’.

Van Ness and Strong (2002) attempt defining ubuntu as: ‘I am because you are’ or ‘my humanity is tied up with your humanity’. Llewellyn and Howse (2002:7) agreed that the effect such a conception of humans (i.e. ubuntu) would have on one’s understanding of justice is clear because, ‘if one’s humanity is tied up with the humanity of all others what makes others worse off also brings harm to oneself.’ In other words, restoration requires attention to each part that suffers, ‘for restoration is impossible if a part of a whole is harmed’. Hence, the ‘‘broom adage’’ in Nigeria (which represent strength in unity) believes that ‘‘there is strength in our togetherness’’ or that ‘‘our strength is in our togetherness’’. Similarly, the ‘‘soiled finger’’ idiomatic expression is popular amongst the Nigerians because as the saying goes ‘what happens to the eye happens to the nose’ too. Which is why, there is a general notion among Nigerians that ‘one can not keep quiet when a kinsman is “dancing” wrongly’. All of these cultural philosophies
are a demonstration of communitarian principle and a sense of oneness, or the connectedness of the human persons.

Hence, Braithwaite (1989) supporting the above assertions argues that reintegrative shaming is most likely to be found in societies such as Africa’s that are characterised by communitarianism and a high level of interdependency (ubuntu) among its members. He noted that:

For a society to be communitarian, its heavily enmeshed fabric of interdependencies therefore must have a special kind of symbolic significance to the populace. Interdependencies must be attachments which invoke personal obligation to others within a community of concern (Braithwaite 1989:85).

Conclusion

Llewellyn and Howse (2002:3), Sterne (1999), and Van Ness and Strong (2002) noted that colonialism have replaced much of the African traditional form of societies, and restorative traditions described above with a Western individualistic, and retributively oriented system. However, instances such as the ‘South African Truth and Reconciliation Commission’, the ‘Nigerian Human Rights Violation and Investigation Commission (Oputa Panel)’ and ‘the umuvumu tree project’ in Rwanda, which, is to prepare prisoners accused of genocide and the community members for the country’s gacaca hearings (judgment on the grass/fields) and eventual reintegration of the prisoners into society, have demonstrated that there has of late been a move by Africans to return to the restorative approaches embodied in their traditional practice.
Similarly, Karstedt (2002) progressively argued to support the above argument that the paradigm of restorative justice might have evolved from the indigenous cultures of the developing nations. In what seems to be a conclusive assertion to this argument, Karstedt (2002) argues that the ‘internationalisation of restorative justice’ is a significant development, because it has demonstrated that restorative justice paradigm is one of the few ideas that can be seen to have travelled ‘from developing countries’ to ‘industrialised nations’, rather than the other way around (see Stout, 2005:73). So could ‘African restorative traditions’ have contributed to the emerging ‘restorative justice’ paradigm?

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Footnote
This paper is a modified version of an ongoing doctoral thesis. The methodology used for this data is both primary and secondary. The author’s ethnographic experience, field survey and literature review from academic books, journals and internet sources form the bulk of this data.
Restorative justice, as practiced in many African communities, is a conflict resolution paradigm that brings together the victims, offenders, and community members to address and resolve a crime or a dispute. It aims at restoration, reparation, reintegration, and community participation in tackling crime, disputes, and related problems that affect them (Doolin, 2007). The countries were purposefully sampled or selected based on their history of colonization, post-independence experience, and attempts at reviving traditional justice mechanisms for dispute resolution because of the limitations of the adversarial justice system they inherited from former colonial masters.

Overview of the Conversations about Restorative Justice in the Literature.

Restorative justice has burst on the international scene as an umbrella concept and social movement. We review the major streams of activism and social thought that have made restorative justice a popular idea, consider the implications of its popularity as a social movement, and identify ways to move the idea forward. This essay offers a highly selective, critical examination of the past, present, and future of restorative justice. The history of restorative justice cannot, of course, be encapsulated in discrete temporal categories. The ultimate aim of restorative justice is one of healing. If survivors of crimes receive appropriate emotional and material reparation, the harm can be redressed; by seeking to repair the damage caused, the offender can be reconciled with the victim and reintegrated back into his or her social and familial networks; and through such reconciliation and reintegration, community harmony has a chance to be restored.

History and Development of the Restorative Justice Movement.

Restorative justice is a young field that emerged during the 1970s as alternative approaches to the court process, such as alternative dispute resolution, were becoming a national trend. Restorative justice has burst on the international scene as an umbrella concept and social movement. To construct such a paradigm, we propose in Part III that scholars and activists must (1) get beyond oppositional retributive-restorative caricatures of justice models, (2) address the relationship of retributivism and consequentialism to restorative justice, and (3) use more precise terms and promise less. Part I: The Past. A. Social Movements Although many contemporary histories of restorative justice in North America begin in 1974 with a victim-offender reconciliation program in Kitchener, Ontario, our history does not. Rather, we view the civil rights and women's movements of The U.S. civil rights. the 1960s as crucial starting points.