

The Role of Restorative Justice in Complementing the Justice System and Restoring Community Values in Nigeria

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ABSTRACT

Restorative Justice, an option for contemporary criminal justice system, which is characterized by punishment of offenders through imprisonment, could be resolved by adopting restorative justice system in dealing with cases that could be settled out of the criminal justice system, thereby reducing the problems of prison congestion, funding, abuse of court process, long duration of civil litigation, and non-compliance with court orders and judgments. Restorative justice stresses repairing the damage caused by crime. When victims, offenders and community members meet to decide how to do that, the results can be life-changing. This article focused on the role of restorative justice, first, as a conflict prevention mechanism and resolution, as well as an avenue for restoring community values and second, its role in complementing the current criminal justice system in Nigeria which is characterized by politics, corruption, and bureaucratic processes. The article argues that restorative justice can be used to complement the current justice system in Nigeria, thereby helping in reducing offenders' imprisonment and prison overcrowding.

Key Words: conflict, crimes, community values, stakeholders, and restorative justice.

INTRODUCTION

A flawless criminal justice system in any nation, including Nigeria is the vanguard for economic growth, social balance, and political stability (Ugwuonye, 2011). The reverse is a society that is in ruin, always avoided by both foreign and domestic investors (Ayorinde, 2014). A common fact is that every civilized state that professes human rights and democracy, particularly a democratic nation like Nigeria must not only live up to some measure of expectation, but should equally pride itself in meeting internationally required minimum yardstick in every area of governance. Therefore, the criminal justice system is one of the indices every responsible government must work hard at for it to be accorded a rightful place that developing nations earnestly seek to achieve (Ugwuonye, 2011). The vastness of criminal justice includes collective institutions such as law enforcement-the police, the judicial process, and corrections-the reformatory institutions, i.e., prison, which an accused offender passes through until the offender is either acquitted or convicted.

In Nigeria today, the three basic legislations dealing with substantive crimes are the Criminal Code (applicable to the Southern states), the Penal Code (applicable to the Northern states, and the Traditional Law that is based on the customs and traditions of the people (Omale, 2013). Despite the robust laws that are in place to handle the justice system, the expectations that our society has for the criminal justice system is to punish and rehabilitate individuals who commit crime (Ayorinde, 2014). Punishment and rehabilitation are also two of the four acknowledged objectives of the criminal justice system, with deterrence and incapacitation being the others. In Nigeria, punishment as opposed to restorative justice has always been the primary goal of dealing with individuals who commit acts of crime. Many theorists throughout history have argued which is more effective, punishment, rehabilitation, or restorative justice (Ayorinde, 2014). The effectiveness of punishment and rehabilitation has been analyzed to see the effects on victims and offenders and also the social and fiscal impact on our society (Ayorinde, 2014). The Classical School of Criminology has proposed that punishment is used to create deterrence while the Positive School of Criminology uses the practice of rehabilitation to reduce recidivism.

A major concern of the criminal justice system in Nigeria, as well as in other parts of the world, including the United States is overcrowding of prisons (Ayade, 2010). Rather than abate, overcrowding continues to be of major concerns to both the government and the criminal justice system. Inmates spend years awaiting to be tried (Omale, 2006). As of 31st March, 2014, the total inmate population in Nigeria was 56, 055 for an installed capacity of 49, 505 inmates in the 239 total prisons nation-wide. Of the total prison inmates population, 17, 404 representing 31% were convicted prisoners; a total of 38, 651 inmates representing 69% were un-convicted/awaiting trial. Additionally, the total number of male inmates was 54, 948 representing 98%, while the total number of female inmates was 1,107 representing 2% (Nigerian Prisons Service, 2014). The implication of the above staggering statistics is that about 38, 651 inmates are awaiting trial because they cannot afford the services of a lawyer; corruption in the system, and other bureaucratic processes. The ultimate goal of the criminal justice system is to do justice and be fair to either the offender and the victim as its name indicates.

The relevance of the justice system in improving the lives of the down-trodden and the vulnerable groups in ensuring that they receive justice within the system cannot be over-emphasized. Any state who fails to provide its citizens with the protection they need from crime and access to justice hinders sustainable development and economic growth (Ayorinde, 2014). Accordingly, this paper argues that the justice system in Nigeria is slow, favors some groups, expensive, and complex, which is unfavorable and detrimental to the poor, a situation that has swelled prison population in Nigeria. Therefore, the place of restorative justice as a complement and an alternative to restoring community values, as well as making courts more users friendly and utilizing the customary/traditional justice system in the resolution of conflicts/crimes is relevant for justice and fairness to all.

Importance of Restorative Justice Intervention in Criminal Justice

The importance of restorative justice intervention in justice administration cannot be an over-statement. Ordinarily traditional wisdom demand that professional in the field of criminal justice are best at determining and adjudicating on matters of justice administration. However, according to Bradshaw (1988) experts in the field of justice administration cannot claim to know

all the detailed knowledge required for addressing successfully the specific justice needs of the parties, i.e., victims and offenders in the criminal justice dispute. Therefore, it is only the stakeholders themselves, family members, and their communities that have the required detailed knowledge about the circumstances surrounding the matter can come up with solutions to the criminal incidents that may be acceptable to all the parties involved (Botchkovar & Tittle, 2005).

Although restorative justice cannot work in certain cases, especially where the offender denies having anything to do with the incident or crime or where the victim is unwilling to participate in the reconciliation process, restorative justice can play an essential role in reducing reoffending, as well as helping victims, and boosting public confidence in the justice system by engaging members of the local community, reinforcing parental responsibility, giving victims a voice as well as reducing the fear of crime and anti-social behavior, and holding young people to account so that they can take part in repairing the harm they have caused, as well as learn from the experience (Bazemore & Schiff, 2001; Abramson & More, 2002; Skotnicki, 2006).

Another reason in favor of restorative justice intervention is based on the fact that because judgments and adjudication by professionals in the criminal justice most of the times prove unhelpful, and fail to reflect the justice need of the stakeholders, the intervention of the family members of the parties involved who are knowledgeable about the incident will go a long way in creating an avenue for the resolution of the conflict amicably to the satisfaction of the parties involved. (Bradshaw, 1988) Situations where outcomes are decided and forced on them by professionals tend to result in less satisfaction of the stakeholders involved (Tangney, 1990; Tangney, 1995).

In all, restorative justice is not as lenient as people would make it seem. Most offenders find it difficult to face the impact of their crimes. Studies reveal that most victims who take part in the restorative justice process are satisfied and happy with the outcome because it helps in reducing offending, particularly when effectively combined with practice-based interventions (Bazemore & Schiff, 2001; Abramson & More, 2002; Skotnicki, 2006; Bradshaw, 1988). Therefore, restorative justice helps in reassuring the public that the fear of crime and other antisocial behavior can be reduced to the barest minimum.

Overview of the Nigerian Criminal Justice System

Located in West Africa, Nigeria is about one third larger than the state of Texas in the United States. Richly endowed with national resources, Nigeria is one of the largest oil suppliers. Nigeria was under British rule from 1851 to 1960 when she gained her independence. Nigeria is a member of the United Nation, as well as the Commonwealth of Nations. The country, like every other countries in Africa faced some challenges after gaining independence (Ayorinde, 2014). Today, religious instability and rivalry still continue to be a problem in the country. The Nigerian constitution is based on the sovereignty of the state. Similar to the United States constitution, Nigeria is a republic with a constitution that provides for Executive, Legislative, and Judiciary Branch. The branches protect each other's individual power through a system of checks and balances. The legislative branches consist of a Senate and House of Representatives, with members of the houses serving for four years term (Ugwuonye, 2011).

The legal system of Nigeria is patterned after the British English Common Law. It is divided into sub-system, with the federal law superseding every other laws of the land. There are also local legal systems. The legal system in Nigeria is divided into criminal and civil. Crimes are classified into: felonies, misdemeanors, and simple offense. On other hand, civil law is not punishable by the state. In Nigeria, the constitution is the legal foundation for the criminal justice system, especially the portions relating to the powers of the court and the jurisdictional mandates of the courts (Ugwuonye, 2011). Furthermore, there is another section that deals with the fundamental human rights of the individuals, particularly the rights to fair hearing, to liberty, and other rights that will make an accused not to be detained indefinitely without appearance in court within a stipulated time.

The criminal justice system in Nigeria, as in any nations of the world begins with a process and with three components comprising the police, the courts, and corrections (prisons), with each component impacting the overall process of the system. The first contact an accused or a defendant has with the criminal justice system is the police or law enforcement that dig deeper and investigate any suspected wrongdoing and make an arrest in line with their functions of keeping the peace and enforcing criminal laws based on their mandated mission and jurisdiction. The police are the first step in the judicial process, as well as the first responders to any crime scene. After the investigation and the arrest, the defendant or suspect is then processed and given a date for court appearance. The next step in the justice process after the suspect/defendant has been given a court date, is for the court to conduct a fair and impartial trial. If the suspect is found not guilty, they are acquitted. However, if the suspect is found guilty they are convicted and sent to prison/correctional facility where they are held until their jail term is completed.

It is important to know that the criminal justice system can be scary, overwhelming, and confusing for someone not knowledgeable about how the system works. Therefore, it is important for the victim to know what to expect and have the necessary support throughout the process. The goal of the court is to protect and prevent an innocent person from going to jail, while at the same time ensuring that justice is served to the victims of crime. The criminal justice system may not be perfect at times because a guilty person who should have been convicted of a crime is set free for a variety of reasons best known to justice administrators.

Restorative Justice and the Role of the Community

Nigeria's criminal justice system draws inspiration from the retributive school of thought that emphasizes punishments for any crime or harm done to another or to the society. This is not surprising as the philosophy of punishing criminals' dates back to 3,500 years. For example, the Code of Hammurabi provided that 'if a man destroys the eye of another man, they shall destroy his eye. If he breaks a man's bone, they shall break his bone. If a man knocks out a tooth of a man of his own rank, they shall knock out his tooth. (Hammurabi Code). Now that we have found ourselves in this retributive process of our criminal justice system that has shut its doors to other processes that could be effective in combating crime, helping victims, rehabilitating criminals, and keeping our society safe and sound, the challenge now is whether or not our justice delivery system should continue going this route in the face of an almost deteriorating justice system (Lynd, 1958). It is against this background that society looked into the possibility

of complementing the current justice system with restorative justice in restoring community based cultural values in Nigeria.

Restorative justice is relevant in our society today because it is emerging as a formidable alternative to imprisonment, prosecution, as well as a means of holding offenders accountable in a way that responds not only to the needs of offenders but also the victims, as well as the community (Bradshaw & Roseborough, 2005). In criminal matters, restorative justice is seen as a convergent point for offenders, victims, and those affected by crime, often with the help of an intermediary in the resolution of the criminal matters. It stresses and draws on the traditional and religious belief, coupled with that of the state that disputes or crimes can be repaired without recourse to the conventional criminal justice system (Bradshaw & Roseborough, 2005). Restorative justice does not replace the criminal justice system; rather it complements the existing well-functioning justice system (Retzinger & Scheff, 1996). It is a process that states and comprises of the idea that because of the hurt crime cause to the victim, justice should heal relationship. Under restorative justice, those involved, i.e., the victim, offender, the community, and other stakeholders have the opportunity to discuss the hurts of a crime and how solutions can be proffered without recourse to the conventional criminal justice system.

In pre-colonial Nigeria, issues regarding crimes and deviances were resolved among the parties involved amicably by the elders and within the community. Nations with the highest imprisonment rates such as the United States, Russia, South Africa, China, and others have utilized the advantages restorative justice offers to stem the tide of retributive justice and imprisonment (Abrams, Umbreit, & Gordon, 2006). Therefore, it is high time the Nigeria justice system embraced the opportunities and merits restorative justice brings instead of resorting to the punitive approach even at the least offenses. It is important to note that restorative justice movement is gaining waves and making grounds in all strata of societies such as in schools, community services, post-conflict societies, as well as housing and care settings around the world because of its effectiveness in conflict resolution within the framework of the justice system, especially at the pre-sentence stage. (Bradshaw, 1988). One of the advantages of restorative justice is its use at the pre-sentence stage. It is useful in its ability to inform and convince the sentencing judge or magistrates of the need to take a second look at the offender/accused by learning about their state of mind, character, as well as their level of contrition, ultimately leading to a better assessment and a responsive use of criminal justice interventions (Bradshaw, 1988). Additionally, restorative justice, at this point gives rooms for those involved in the conflict the chance to resolve the incident within and among them with little or no intervention from the conventional criminal justice system.

THEORETICAL FRAMEWORK

Re-integrative shaming Theory

One of the theoretical frameworks often used in explaining the need for restorative justice in society is the Re-integrating Shaming Theory authored and popularized by John Braithwaite who is also a credible researcher in the field of restorative justice. According to Braithwaite, when members of the community are the primary controllers through active participation in shaming offenders, and, having shamed them, through concerted participation in ways of

reintegrating the offender back into the community of law abiding citizens, crime is best controlled. Braithwaite then goes further to state that low crime societies are societies where communities prefer to handle their own crime problems rather than hand them over to professionals in the criminal justice system (Braithwaite, 1989). Braithwaite maintained that families are the most effective agents of social control in most societies. In relation to Nigerian society where extended and nuclear family is practiced, no family member wants to bring shame to their families or communities because of the cultural values placed on individual conduct. Moreover, while maintaining bonds of respect, family life teaches us that shaming, as well as punishment is possible, hence a properly understood re-integrative shaming by both participants and observers is vital to the success of restorative justice (Braithwaite & Braithwaite, 2001). This is true especially when influential and important people from the community and in the offenders' family life are present as active participants in the meeting.

As opined by Braithwaite (1989) in his theory, the essence of involving important people or members of the offender's family and friends, as well as their community in the conferences is to show their disapproval of the offender's behavior while at the same time showing respect and acceptance towards the offender as a person, which will most likely make the offender to make a contrast between what they did and who they are with a view of incorporating and aligning themselves once again with their family and community, which is the first process towards restoration and healing (p. 65-68).

One misconception and confusion about the re-integrative shaming theory need to be clarified as this confusion seems to have emanated from the word "shaming" which many have interpreted to mean the humiliation of the offender intentionally in the public and conferences, as well as in a meeting. To clear this confusion, Braithwaite (1989) makes a clear division between *disintegrative* or *stigmatizing shaming* on the one hand, and *re-integrative shaming* on the other. According to Braithwaite (1989), disintegrative shaming happens when *the person* is stigmatized, demeaned, and humiliated for what they did. Re-integrative shaming happens when the person's *behavior* is condemned but their self-esteem and confidence are upheld through positive comments about them and gestures of forgiveness and re-acceptance. Besides, Braithwaite is firmly opposed to stigmatic shaming and sees it as likely to be counter-productive in the restoration process. Moreover, re-integrative shaming is seen as likely to be effective in controlling crime in that the offence rather than the offender is condemned and the offender is reintegrated with rather than rejected by society, adding that the shame which matters most is not the shame of judges or police officers but the shame of the people we most care about (Braithwaite, 1989).

Similarly, the role of culture in expediting restoration and re-integration has been studied (Braithwaite, 1989). Culturally, Braithwaite (1989) cites and uses the example of the Japanese culture that has a high degree of affinity with the Japanese society as the principal influences responsible for keeping crime rate low in Japan, especially after the Second World War (p.62-63). According to Braithwaite (2001) the justice system in Japan operates like a healthy family where responsibility and morality is stressed in a way that no family member wants to bring shame to their family. (p.63 - 65). In essence, Braithwaite's re-integrating shaming theory points out the flaws in the conventional criminal justice system in that it disempowers stakeholders –

offenders, victims, family members, and the society in the conflict and creates a feeling of isolation, confrontation, and unnecessary alienation between stakeholders in a conflict, thereby creating a feeling of helplessness, animosity, hatred, and fear between the victim and the offender, which gives no room for re-integration, restoration, and resolution of the conflict between and among the stakeholders.

LITERATURE REVIEW

Literature abounds in favor of restorative justice as an effective tool for reducing recidivism. Influential scholars in this field such as Abrams, Umbreit, and Gordon (2006) have argued that restorative justice offers a fundamentally different background for responding and understanding crime, victimization and justice. They opined that in restorative justice, emphasis is placed on the importance of elevating the role of crime victims and community members. Abrams, Umbreit, and Gordon (2006) further stated that restorative justice provides a range of opportunities for dialogue so that negotiation and problem solving can take place, thereby leading to a greater sense of community safety. Additionally, they stated that restorative justice is an avenues for holding offenders directly accountable to the people they violated by restoring emotional and material losses to the victims.

Several arguments have been made in favor of restorative justice. For example, Skotnicki (2006) posits that restorative justice is a “theory that seeks to restore the harm caused by crime” (p.188). Skotnicki (2006) further explained that the “process of restoration results in forgiveness or at least in a sense of closure for the participants, each having expressed themselves and having determined a mutually satisfactory solution to the infraction” (p. 189). The argument by Skotnicki is important because in order to forgive, one has to give up pain, resentment, anger, and fear to experience goodness, peace, joy, and love, as well as do away with what you do not want so as to make room for what you want (Crisostomo, 2008). Moreover, the saying “to err is human, and to forgive divine” readily comes to mind here in relation to restorative justice. Mistakes are part of life, therefore restorative justice creates room for people to recognize their mistakes and to constantly improve upon those mistakes, as well as develop acts of reparation (Crisostomo, 2008).

There is evidence that restorative justice produces major changes in people (Pearson, & Jurich, 2005). According to one interview from Pottstown, PA, respondents and volunteers agree that the youth court program encourages positive peer pressure. For example, youths learned from their mistakes and also learned about the laws that affect juveniles daily from the program (p.20). The American Youth Program is a testament to the fact that positive things, as well as positive changes are happening in the lives of the youths who participated in the program. In a related study, Varnham (2005) found that restorative justice is a viable alternative to incarceration and punishment. She argues that the issue of conflict and safety in schools should be dealt with and resolved by the “school community” as a whole based on restoration of relationships, rather than punishment (p.87) as explained in her article.

Bradshaw and Roseborough (2005) both agree that the best option and approach to reducing youth crime is restorative justice. They agreed with the three theories which the United

States government used in responding to juvenile offenses and how restorative justice theory in particular reduces recidivism. The two traditional theories that have been used in the U.S. are “retributive” and “rehabilitation”. Bradshaw and Roseborough (2005) concluded that these traditional methods do not focus on the major stakeholders, i.e., the “victim, offender and the community”. On the other hand, they maintained that restorative justice offers a process by which those most directly affected by crime have an opportunity to be involved directly in responding to the offense, holding the offender accountable, offering emotional and material assistance to the victim, and working toward the development of a safe and caring community for victim and offender (p. 15).

On a final note, Bradshaw and Roseborough (2005) use “mediation” and “conferencing” as specific programs instrumental in restorative justice dialogue. To buttress their point, their study sampled 1,298 juvenile offenders (619 participated in a mediation program and 679 did not). Those who participated in a mediation program recidivated significantly lower than those who did not participate in the program (p. 16). With this result in mind, a restorative justice approach does work and should therefore be used as a strategy to prevent and reduce youth crimes (Crisostomo, 2008).

Overall, restorative justice develops life skills that enable youth to treat others with more respect and communicate more effectively (Crisostomo, 2008). Petty crime and anti-social behavior can lead to the disintegration of the community and makes it inhabitable for people. For some people, the hurt, harm, they feel is often contained within as they hold it as a feeling of anger, frustration, rage, and a feeling of hopelessness. The idea of restorative justice is to bring about healings and restoration of individuals and communities through a reasonable plan of accountability and an earnest desire to repair the harm, with the community as the ultimate overseer of this process.

Impact of Restorative Justice

Restorative justice is intended to reduce crime and works well in “granting justice, closure, restoration of dignity, transcendence of shame, and healing for victims” (Braithwaite, 2002, p.69). Despite the fact that studies addressing restorative impact on reducing crime have not consistently demonstrated a significant reduction in crime rate among restorative program participants (Niemeyer & Shichor, 1996; Umbreit & Coates, 1992), the lower rates reported in these studies were insignificant statistically.

Recent researches point to the fact that restorative justice is effective in addressing recidivism rate of offenders (Lipsey, Wilson, & Cothorn, 2000). One study that readily comes to mind is the meta-analysis of 35 restorative justice programs and 27 victim-offender mediation programs, as well as 8 conferencing programs, which proved that these programs were effective in reducing recidivism than the traditional correctional supervision programs (Latimer, Dowden, & Muise, 2005).

Moreover, restorative justice programs play a significant role in education. As stated by Schwartz and Stollow (2006) “all we want from education, be it discovery, small learning teams, real-world skills, and character development, are what restorative justice programs provide (p.9).

Moreover, students are able to work as a team while operating in small groups. Other impact of restorative justice is that it brings real-world learning experience because it engages the broader community where students can forge positive relationships with adults and be productive members of the community. Besides, restorative justice recognizes the fact that people's actions, thoughts and attitudes affect others and that it is important to take responsibility and act for the greater good of others and the community.

Finally, restorative justice encourages everyone to play an active role in the integration and restorative process for all in the wrong doing and antisocial behavior within the community. For example victims are able to receive the services and help they need as a result of the harm caused. The offender is equally helped to complete the process and the obligation required in making amends to the victim and the community. Additionally, relationships are restored, improved, and developed between the offender and the victim on one hand, and the community on the other.

Restorative Justice: Implications for the Nigeria Justice System

In Nigeria, the current criminal justice system is too focused on the victim and therefore, gives the victim a passive role in the whole process of justice administration. Furthermore, the criminal justice system in Nigeria creates an antagonistic relationship between the offender and the victim on one hand, and the community on the other because of its retributive and punitive nature while ignoring the fact that criminal behavior represents interpersonal conflict that can only be resolved by the community through restorative justice. The way and manner of adjudication by the justice system between the offender and the victim creates an avenue for conflict and hatred among the stakeholders (Zehr (1990).

Moreover, gravely punishing offenders cannot stop reoffending. Besides, punishment should be the least option available to the criminal justice administrators as there are other opportunities to compensate and empower victims in their search for justice and gaining a better understanding of what happened so as to move on with their lives, while at the same time impressing it upon the offenders the real human impact of their behaviors, and promote restitution to victims (Bazemore & Umbreit, 1995; Zehr, 1990). According to Zehr (1990) instead of ignoring victims and placing both victims and offenders in an inactive roles, what restorative does is to place both the victim and the offender in active and relational problem-solving roles.

Conclusions & Recommendations

Restorative justice is useful in that it provides a helpful structure for understanding the consequences of crimes in a more balanced view. It emphasizes the relevance of holding offenders personally accountable for their actions and behaviors, while at the same time creating an avenue all stakeholders to receive interventions that also address the needs of the victim, offenders, and the community in the restorative justice process (Pealer, 2004; Umbreit & Coates, 1993; Bazemore, 1994; & Zehr, 1990; McCold, & Wachtel, 1998).). In relation to the conventional criminal justices, restorative justice approaches have yielded some positive results for young person, victims, and families. It is therefore recommended that for the system to work in Nigeria, it must seriously focus on repeated and persistent offenders. It must be embraced by

the community, local, state, and the federal government as a way of reducing high incarceration rate, especially for those awaiting trials. Government must provide the necessary social services that will make life meaningful for the masses. Finally, there is need to provide more resources and better interagency cooperation to address the causes of re-offending.

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