



Justice

Introduction

- The relationship of justice to conflict
- Definitional issues—What is justice?
- Classical theories
- Justice, identity and cooperation
- Critiques of peacemaking and justice
- Restorative justice

Why Justice?

- Recall philosophical theme of self-interest vs. altruism
- In societies, people must be able to accept outcomes not personally most desirable
- Justice regulates cooperative behavior
 - Specifies reasonable solutions to conflict
 - Coordinates social interaction
 - Shapes behavior

Common Threads of Justice

- Justice is a social norm
- Justice is approbative
- Justice is obligatory
- Justice involves the idea of rights
- A right is a command or claim
- Every right contains:
 - An Object
 - A Subject
 - An Obligation

Classical Theories of Justice

- Positive Law
- Social Good
- Natural Rights

The Positive Law Theory of Justice

- Principles:
 - Justice depends on law
 - Justice cannot measure law
 - Justice is conformity to law
- Hobbesian view of humanity → coercive
- Concerned with order, not fairness

The Social Good Theory of Justice

- Principles:
 - Justice measures positive law
 - Justice is decided in terms of social utility
 - Rights and rules of justice are created by society
- Justice is a rule of conduct
 - Internal sanction = conscience and shame
 - External sanction = punishment

The Natural Right Theory of Justice

- Principles:
 - Justice rests on natural rights, not on law or social good
 - Equality is paramount
 - Natural rights are based on human knowledge of fundamental moral principles
- Many variations of the theory
- Expressed in Declaration of Independence and Bill of Rights

What is Justice?

Theory	Measure	Obligation
Positive Law	Conformity to law	Obedience
Social Good	Most good for most people	Promote good of society
Natural Rights	Preservation of individual rights	Recognize human rights

Justice and Balance of Power

Theory	Branch of Government
Positive Law	Executive
Social Good	Legislative
Natural Rights	Judicial

Classical Justice and Peacemaking

- Peacemaking is value-based = shalom
- Positive Law resolves conflict without regard to relationships
- Social Good resolves conflict on basis of what is best for most
- Natural Rights resolves conflict by upholding individual rights

Justice, Identity, and Cooperation

- Justice is based on the perception of fairness
- Distributive justice
 - Equity
 - Equality
 - Need
- Procedural justice

Distributive Justice

- Equity—Distribution according to contribution
- Equality—Distribution according to rank
- Need—Distribution based on need

Procedural Justice

- Thibault & Walker control theory
 - Process control
 - Opportunity to tell story and be heard
- Tyler & Lind relational model
 - Neutrality of procedure
 - Integrity of authority
 - Respect and politeness
 - (note how this is identity-relevant information...status, self-esteem, validation)

Can Peacemaking Provide Justice— Critiques

- Abel—informalism favors elite and promotes injustice
- Fiss—informalism favors private interests over public interests
- Delgado—informalism does not suppress bias, prejudice, racism

Restorative Justice

- Retributive justice:
 - Arose as a means of concentrating political and legal power in the government
 - Assumes that offenders are deterred by punishment
 - Gives no voice to victims
 - Sole purpose today is to punish for the sake of revenge

The Retributive Model

- The State is the Victim
- Focus on the Offender
- Victim-Offender relationship not important
- Adversary Process--no party control or participation
- Justice = punishment

Why Punish?

- Deterrence
- Community safety
- Maintain public order
- Victim “justice”
- Legitimate state power
- Teach offender a lesson
- Justify prison-industrial complex
- Give politicians a campaign platform
- Compel obedience to law
- Demonstrate superior power of state

The Restorative Model

- Crime violates people and relationships
- The Victim is the Victim
- Focus on Victim and Offender
- Justice = dialogue and mutual agreement
- Justice measured by responsibility, accountability, healing

Restorative Justice Theory

- Crime injures victims, communities, and offenders
- Justice must address needs of all three constituents
- Victims, community and offenders should be involved

Community and Government Roles

- Community responsible for establishing peace
- Government responsible for maintaining order

Restorative Justice

- Deterrence
 - Community safety
 - Maintain public order
 - Victim "justice"
 - Legitimate state power
 - Teach offender a lesson
- Yes
 - Yes
 - Yes
 - Yes
 - Yes
 - Yes

Restorative Justice

- Justify prison-industrial complex
 - Give politicians a campaign platform
 - Compel obedience to law
 - Demonstrate superior power of state
- No
 - No
 - No
 - No

Mediation Achieves

- Acknowledgment and empathy
- Conflict resolution and problem-solving
- Predicting changes and respectful support
- Emotional, cognitive, and spiritual restoration
- Reparation and apology
- Assurances, future safety and personal investment in the offender and family

The Benefits

- Respectful and understanding process
- Lessens financial and emotional burdens
- Saves tax dollars
- Assures future peace

Effectiveness per Cal. Judicial Council

- VORP exceeded benchmark standards
- Victims collected between 158% and 1000% more \$ than non-VORP victims
- Re-offending was 21% to 105% lower than normal cases
- Agreements reached in almost all cases
- Agreements kept in 70 to 93 percent of cases
- Victim satisfaction ran above 90%
- Offender satisfaction ran above 90%
- Considerably more VORP offenders performed community service

Issues in Justice and Peacemaking

- What values should peacemaking serve?
- Does peacemaking fulfill the classical theories of justice?
- How should the quality of justice be measured?
- When is peacemaking appropriate?
- When is peacemaking not appropriate?



The End