

Justice versus Social Justice in South Africa: *Quo vadis?*

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Abstract

This article explores the concept of criminal justice as a formal process in which parties are judged and often adjudged from the paradigmatic perspective of legal guilt versus legal innocence. While this function of a criminal-justice system is important – and indeed necessary – in any ordered society, a society in transition such as South Africa must question the underlying basis of justice. This self-reflection must include an overview questioning whether the criminal-justice system and its rules are serving the community as originally intended or have become a self-serving function of state in which the final pursuit is outcome-driven as opposed to process-driven. The process of reflection must invariably find its genesis in the question: ‘What is justice?’ While this rhetorical phraseology has become trite through overuse, the author submits that the question remains of prime importance when considered contemporarily but viewed through the lens of historical discourse in African philosophy. In essence, the question remains unanswered. Momentum is added to this debate by the recent movement towards a more human rights and restorative approach to justice as well as the increased recognition of traditional legal approaches to criminal justice. This discussion is wide and in order to delimit its scope the author relies on a Socratically influenced method of knowledge-mining to determine the philosophical principles underpinning the justice versus social justice discourse. It is proposed that lessons learned from African philosophies about justice and social justice can be integrated into modern-day justice systems and contribute to an ordered yet socially oriented approach to justice itself.

Keywords: criminal justice; social justice; retributive justice



Introduction

Traditionally, an accusatorial approach to adjudication, tempered as it is by judicial interpretation, is favoured in South Africa. While this fragmented approach to adjudication, founded in formalism and procedural certainty, serves a purpose, its nature is flawed. The flaw lies unfortunately in the pursued outcome itself: conviction versus acquittal as opposed to a process-driven theory founded on societal need and an offender's conceptual life world. Fortunately, recent changes in the socio-political environment have brought about an augmented awareness of human rights and have raised an awareness of the meaning of and the processes by which justice or injustice, fairness or unfairness and related notions are settled in criminal matters. This debate is furthered by a growing trend towards the recognition of traditional cultural-based legal practices.

In addition, changes from a retributive to a more restorative approach have added another element to this discourse. This element focuses on the contention that justice served is *good justice* only when humanistic in nature. If justice is to ever acquire *fitness for purpose* in an African society? it must be driven by Afrocentricity. Indeed, this contention is not contemporary, but part of an age-old dialogue reflected in African judicial discourse.

During his defence on charges of impiety and corrupting the youth in 399 BC, Socrates stated that: '*The unexamined life is not worth living*' (Plato 2002: 41).¹ With this statement, Socrates argued that philosophical virtue, justice and truth could be achieved only if a 'life' is examined to its fullest. With this statement he shed light on what he thought are attributes a just man and society should have. Accordingly, virtue refers to the ability to achieve moral and social excellence by cultivating an inclusive personal and social moral order. Socrates therefore postulates that there is a strong correlation between justice and morality, since justice is connected to standards of morality; and also that it is in the best interests of people to adhere to these principles in order to achieve a just society. What Socrates postulated is that justice is not an end-based pursuit but rather a process that must culminate in an outcome which is just in a just society. The author submits that, stated differently, justice is *good justice* or *just justice* only when founded on a social agreement as to moral and ethical conduct and the mechanisms used to confront infringement of such a contract.

Unfortunately, Eurocentric pro-colonialist opinion incorrectly postulated that European colonialists brought justice, law and order to Africa (Dalglish 2005: 55). The author posits that this is simply a Eurocentric rewriting of history based on the self-serving views of pre-colonial society. It finds its roots in the notion that pre-colonial African societies were devoid of concepts of justice or systems by which to implement it.

¹ The second edition of *Five dialogues* was translated by GMA Grube and revised by John Cooper for *Plato, complete works*.

Traditional justice in South Africa, and in Africa in general, is encapsulated in the ubuntu philosophy and has always been humanistic and restorative in nature.² This supersedes the intervention of pro-colonial societies seeking to implant an adversarial approach to criminal justice in African society. The result is that the South African criminal-justice system is an incongruous melange of concepts and totalities that unfortunately no longer translate into justice served. This is clearly seen, for example, in the divergent opinions regarding the outcome of the Truth and Reconciliation Commission (TRC), which sought to amalgamate restorative concepts with some idea of *justice*.

In this article it is proposed that the lessons learned about justice from African philosophies could contribute to guiding the integration of justice and social justice into the applications of justice in a modern-day society. Using the Socratic Method, this article explores pertinent questions about justice, with an emphasis on the philosophical principles that underpin the justice versus social justice discourse. Socrates' method of enquiry, also known as Socratic dialogue, is rooted in the exploration of concrete problems through the asking and answering of focused questions in order to facilitate the critical analysis of the explored phenomenon. It provides insight into different perceptions and preconceived opinions about the topic (Wortel & Verweij 2008: 59). In this respect, it also has a normative aspect, which reflects core values underlying the explored constructs. According to Wortel and Verweij (2008: 69), Socratic dialogue has ontological authenticity because it encourages the development of a holistic understanding of the explored assumptions, ideas and values. The focal questions that were explored in this article centre on: What is crime, justice and social justice?

What is Crime?

To begin with, it is important to define crime since, similarly to the concept justice, an understanding of its meaning depends on the perspective from which it is viewed. Ignoring the possible perspectives can result in '[a]n unknowable, a *Ding an sich*, a sound of one hand clapping' (Bateson 1979: 78; emphasis original).

In modern-day society, crime is generally viewed as a violation of a country's laws, which is punished in accordance with those laws. Therefore, the criminal-justice system controls those deeds that are perceived to be criminal in nature and those that are not. This definition is problematic because it does not explain why certain types of behaviour are singled out and described as criminal and punishable by law, whereas other forms of behaviour are not criminalised or punished. The power to determine what is right or wrong is therefore controlled solely by the state while the victims and larger society are ignored or viewed as secondary role-players at most. At most members of the

² Ubuntu is a familiar concept in most African cultures. In South Africa, it originates in the Nguni language family (Ndebele, Swati/Swazi, Xhosa and Zulu). Eastern African Bantu-speaking people refer to it as *omundu/muntu*; it is referred to by the Tswana-speaking people in Botswana as *botho* and by the Swahili language as *mtu* (Nafukho 2006: 409).

community are consulted during the drafting stage of legislation, but thereafter they become largely bystanders to the process. The question, at least to the author's mind, is if the description of what a crime is, is as simplistic as a mere state-defined classification of behaviours. If the answer is in the affirmative, then the social contract has clearly been violated, a contract that is meant to serve as the channel through which the governed communicate with the governors. In African societies this problem is further entrenched by the fact that African approaches to justice have, until the constitutional period, largely been met with a patronising Eurocentric approach to integration as opposed to revolution or, indeed, integration into a largely Anglocentric South African criminal-justice system (Dalglish 2005: 56).

In traditional African communities, crime is viewed differently from the general Western or Eurocentric perspective, one upheld by the current criminal-justice system. In African societies, a crime is viewed as a conflict between people and not a violation of state laws. Similarly, in African societies, a crime is viewed as a harm against a person and personhood, which influences the society of both the harmer and the harmed. The terms 'offenders' and 'victims' are modern Western legal terms that have equivalents in the terms 'wrongdoers' and 'the parties wronged' in traditional communities (Murithi 2006: 29; Kinyanjui 2009: 4; Geyeke 2011).

Van der Westhuizen (1990: 10) is of the opinion that the definition of crime is more diverse than the opinions explored above, because such definition depends on the perspective from which it is defined. Accordingly, crime can be defined from a judicial, societal and analytical perspective.

The judicial definition defines 'crime' as a violation of a regulation or of the law, resulting in a sanction enforced by the state (Van der Westhuizen 1990: 10). Punishment is associated with retribution and suffering. From a judicial perspective, crime is unfortunately often driven by a sentence based on the retributive element that is connected to it. The author posits that, following this approach, an offender's infringement of the law or their causative influence on society is determined by the possible sentence that can be accorded to that infraction of the social contract. Stated differently, sentencing practice has become the yardstick by which offensiveness is defined and by which crime is categorised as more or less offensive. For example, traffic infringements attract little attention from society and are often considered to be minor crimes despite their potential consequences. They are less offensive to societal norms. Murder or rape, at the other end of the scale, is judged as being more offensive and as more of an infringement of the social contract. Unfortunately, that is where the exploration begins and ends. While the courts, through the so-called triad in *Zinn*³ and other judicial interpretations, supposedly give leeway to societal and offender considerations, the question needs to be asked about the extent to which the courts take the offenders' worldview and lived reality into account. Contributing or causational

³ *S v Zinn* 1969 (2) SA 537 (A).

factors that contributed, first, to the action of the offender and, secondly, to the reaction of members of society who are inevitably the customers of justice are not authentically considered. When the judicial definition of crime and its associated punishment are explained, it is clear that they are representative of a retributive philosophy; this is synonymous with the maxim ‘an eye for an eye’ (*lex talionis*). *Lex talionis* refers to the principle of direct and equal retaliation or punishment and it is encapsulated in the Code of Hammurabi (Harper 1904: 196).

By logical deduction, crime should then be defined by its ‘customers’ – the victims and society at large which are wronged and from which the wrongdoer originates. Society’s contribution to defining crime describes it as a wrong and a violation of the social relations and legal rights of people in society (Van der Westhuizen 1990: 10). In other words, from the perspective of society, a crime creates an imbalance in the social fabric, and this in turn creates an anomaly that must be dealt with in order to return to a homeostatic set point. Traditionally, society (as a collective of individuals) has relied on the state to codify these anomalies into laws, which serves the purpose of returning society to an orderly state.

Finally, the analytical definition focuses on individuals’ perceptions of crime, namely, how people understand crime and assimilate it into their life world (Van der Westhuizen 1990: 11). For example, in a particular society, patriarchal dominance may be viewed as the norm as opposed to a crime. In such a society, domestic violence may not necessarily be as legally or morally culpable as in other societies; and although, legally, domestic violence is viewed as a crime, in these types of society there is no congruence between the legal system and its codification, on the one hand, and their worldview, on the other. In contrast, it is possible for a specific society to view an otherwise legal act as illegal: such is the case with adultery or, by extension, bigamy. Such a reflexive viewpoint, however, is seldom considered during the conceptualisation of what a crime is.

When exploring crime from a definitional perspective, it is clear that there should be a correlation between the way in which the different perceptions highlighted by Van der Westhuizen – that is, judicial, societal and analytical – will influence the adjudication of justice. This enquiry links crime to the process by which it is adjudicated. In the *Republic*, Socrates argues that justice ought to be valued both for its own sake and for the sake of its consequences (Kamtekar 2010: 65). The justice process should therefore not only be a reaction to a wrongdoing but should have a specific purpose. In the current milieu in which African and Western philosophies and approaches are applied to the concept of justice, the author questions whether the system is achieving its original aim of restoring balance in society. In the context of the venerable debate about self-serving versus advantageous justice, as discussed in Plato’s *Republic*,⁴ the prominent focus

⁴ In the *Republic*, Polemachus posits that justice implies giving to each what is owed. A more in-depth examination of the statement by Socrates unearths its true meaning to be that the purpose

remains on the judicial system, with the pertinent question being ‘Justice for whom?’ The question therefore remains: Is the prevailing justice system truly to the advantage of society and all parties harmed? In addition, these questions should be asked: What causes disparities and inequalities in the criminal-justice system? and How do perceptions influence the actions of criminal-justice practitioners? In order to begin unravelling these questions, it is natural to turn to the question of the nature of justice itself.

What is Justice?

As mentioned previously, Socrates was of the opinion that justice emanates from standards of morality that people in society adhere to in order to achieve a just society. Justice is therefore the product of a series of events that are intended to order society in a fair and transparent manner, resulting in the adjudication of disputes. In the sphere of criminal justice, it has connotations of substantive and procedural fairness as well as notions which tether it to a higher philosophical sphere. The author, however, posits that, from a practical perspective, justice is little more than a collective term for a vague notion of what is right or wrong and the state’s answer to that query. In this fashion, justice serves a legitimising function as it allows the state to pursue the goals of its criminal-justice process. Justice served is therefore justice which follows a fair and transparent series of events when a criminal law is infringed. While this appears *prima facie* to be an acceptable outcome, the manner in which it is reached and the conflicting worldviews within the same system must be questioned according to the authenticity of the outcome. In the criminal-justice process, the search for justice resulted in a series of procedural codes and rules that guide the traditional trial from the pre-trial, through sentencing and into the post-trial phase. The entire process of justice arose from a rather informal public trial system, but it has gradually become a state-sponsored machine by which justice is supposedly dispensed using rules and limiting mechanisms to ensure that justice is done. This is clear in the modern division between the National Prosecuting Authority, the judiciary and the legislature, which largely determine the codes and processes required. According to Murithi (2006: 26), in order to preserve the integrity and fabric of society all societies since the beginning of time have developed systems and mechanisms for managing criminal disputes. The paradox, however, is that in handing over the power to adjudicate from society to the state, the result has morphed from restoration to retribution, with a strong focus on punishment and equitable sentencing. If, however, one examines an African adjudication process, the typical criminal trial in modern South Africa seems largely out of place.

of justice is to benefit one’s friends and harm one’s enemies. In this context, the concept ‘friends’ is linked to the ‘craft of keepers’ that referred to people with economic or political power (Ladikos 2006). In essence, Polemachus therefore affirms justice as being a self-serving endeavour for those in power, such as governments, while people in society are denied the advantages of good justice.

The African process of adjudication commences with a fact-finding process during which role-players (wrongdoer, harmed and interested parties) are heard by the Council of Elders and other community members in the *inkundla/lekgotla* forum. Once wrongdoing has been established, wrongdoers are encouraged to acknowledge responsibility for the harm they have caused (Schoeman 2013: 300). They are encouraged to show remorse or to repent for their wrongdoing. The harmed, in turn, are encouraged to show mercy. The Council of Elders decides on and suggests an appropriate form of reparation for the wrong done. The reparation is often more symbolic and is intended to be a tangible display of remorse rather than a repayment in kind for the harm done. The adjudication process is humanitarian and reconciliatory in nature, bringing as it does closure by encouraging the parties to commit themselves to reconciliation (Murithi 2006: 30; Ofako 2006: 41). Clearly, the process outlined above and the current criminal procedure have some commonalities, especially as far as the first step is concerned. Unfortunately, however, this is where the commonality ends. The current Eurocentric view of criminal process considers only steps two to four as a part of the sentencing process. The fifth step is largely ignored in Western process systems, other than in the form of vague and often apathetic references during sentencing to the triad in *Zinn* and its component parts. Stated differently, the outcome in African justice is often reparation, whereas in the Eurocentric process the outcome is offence-driven and punishment is determined by the degree of offensiveness. The author opines that the current criminal-justice process lacks the element of mercy which was intended in *Zinn* but which has unfortunately become little more than a passing reference in mitigation of sentence.

Similarly to the conceptualising of crime, finding a universally acceptable understanding of what justice is remains daunting because there is a magnitude of definitions with a multitude of meanings and interpretations. Following a Socratic method, therefore, the next avenue of enquiry after establishing the meaning of justice is an enquiry into the role of society in justice or, more aptly, social justice. As mentioned previously, Socrates' method of enquiry aims to explore problems through the asking and answering of focused questions in order to analyse critically the different perceptions of and preconceived opinions about the topic (Wortel & Verweij 2008: 59). The approach below is centred on an Afrocentric perspective that constitutes social justice or, more to the point, the role justice should play in society.

What is Social Justice?

Social justice has social and normative dimensions aimed at instilling 'quality of life resulting from relationships orientated towards justice' (Lorenz 2014: 14). It is a rights-based approach that promotes principles of justice in pluralistic societies. Social justice is relational in nature: it enhances social integration by recognising the accepted normative criteria of a particular society (Lorenz 2014: 14). It calls for the substantiation of the principles of justice in order for justice to be good. In an African context, the principles of justice therefore need to transcend the notion of 'common good' to a more

utilitarian approach, where ‘the greater good for a greater number of people’ is recognised (Okafo 2006: 45; Mabovula 2011: 38). It removes the privilege of the oppressor to meet and order justice and places the responsibility back in the hands of society, where there is an equal distribution to invoke, employ and rely on the criminal-justice process.

The concept of social justice is entrenched in the African humanistic philosophy of ubuntu, which is used to maintain law and order in traditional African societies. According to Mabovula (2011: 40), ubuntu encompasses issues of human dignity and respect in an understanding that an individual’s humanity is interconnected to the dignity and humanity of others. This is entrenched in the notion of the common good and is focused on meeting of communal needs that are basic to the enjoyment by and fulfilment of all the members of a community. Institutions in the community, such as legal, political and economic systems, are therefore set up to enhance social order and peace. Even though these systems might originate from a governing structure, it is important that their foundations be situated in the community in order to serve the community (Schoeman 2013: 293). This entrenches the notion that a community is both responsible for and accountable to its system of justice. Similar to Socrates’ view of social justice, ubuntu is more than a moral philosophy: it encompasses African life at an ontological level and underpins the concept of justice (Schoeman 2013: 292). Concepts of peace and justice are therefore integrated and emergent in African peoples’ life world.

Regarding human rights, African traditional justice requires an authentic respect to be observed for the human rights of cultures in and outside of Africa. It aims to promote reconciliation and to restore peace and harmony in a community (Schoeman 2013: 303). This emanates from the understanding that an individual’s humanity is interconnected to the dignity and humanity of others. In such societies, every member is expected to contribute to the wellbeing of society by virtue of their individual talents and attributes; in this way, they participate visibly in society and do not disappear in the whole (Mangena 2012: 11). Moral personhood is therefore important. In this respect, personhood is also a moral term and something that has to be attained. For example, the statement ‘he is a person’ is a normative judgment implying that ‘he has good character’ and therefore he is a generous, humble, respectful and peaceful person. Similarly, a person whose behaviour is unethical will be judged as being someone who is ‘not a human’, having no character (Gyekye 2011). In a number of sub-Saharan African languages there are no words for ‘ethics’ or ‘morality’, these concepts being replaced by the concept ‘character’. It is interesting to note that, similarly, the English word ‘ethics’ is derived from the Greek word *ethike*, which also means ‘character’ (Gyekye 2011). Character is believed to be acquired in direct proportion to one’s participation in communal life from birth onwards. In the prevailing criminal-justice system, however, character takes on a different meaning from an evidentiary perspective and often ties the offender to a misdeed or a lack of ethics as opposed to a nomenclature for personhood and the attainment of good character.

The primary objective of an Afrocentric judicial process is to deal with the harm done during a wrongful act by recognising the need to restore victims, the community and the offenders (Schoeman 2013: 296). A criminal act is seen to have harmed individual and communal relationships; therefore, the community is required to participate in the definition of harm and the search for resolutions (Okafo 2006: 44; Kinyanjui 2009: 14). This is an approach distinct from that described earlier, where an accusatorial process is followed and the state is the custodian of criminalisation. The purpose of an Afrocentric judicial process is therefore to restore relationships and to redress the imbalance caused by the offence and not only to determine guilt and mete out punishment. An example of the search for communal good is reflected in the treatment of offenders: they are not ostracised but encouraged to accept responsibility for their actions, and in this way reconciliation between victim, perpetrator and community is promoted. Even though retributive elements, such as imprisonment or restitution, may form part of the adjudication of justice, the fundamental purpose of the judicial process remains to heal (Tutu 2004). Consequently, Metz (2011: 534) suggests that ubuntu is not only applicable to a normative–theoretical understanding of justice in Africa but creates a foundation for human rights in Africa. It can therefore be concluded that the ubuntu philosophy evident in traditional African justice practices promotes social justice. A significant correlation exists between the African philosophy and practices associated with ubuntu and restorative justice (Schoeman 2013: 301–304): restorative justice adheres to the principles of social justice.

Similarly to African justice practices, the primary aim of restorative justice is to restore. Crime is viewed as a ‘wound in human relationships’ which ‘creates an obligation to restore and repair’ (Zehr 1990: 181). This view of justice is diametrically opposed to the prevailing retributive paradigm. As a result, criminal-justice academics and practitioners often undervalue restorative-justice approaches because they are unsure of where they fit into a retributive and accusatorial system. The discourse questioning whether restorative justice is an autonomous or a parallel criminal-justice paradigm is ongoing and, although it is recognised, it is not within the scope of this article. For the purposes of this article, the author supports Zehr’s (2014: 7) suggestion that restorative justice ‘is not a map but the principles of restorative justice can be seen as a compass pointing a direction’. In this respect, restorative justice provides an alternative understanding of our reaction to crime and wrongdoing as compared to a retributive paradigm. The element of social justice includes the recognition of crime as a social harm that affects society at multiple levels. In a similar manner to traditional African justice practices, restorative justice also views crime as a violation of people and interpersonal relationships; therefore, the judicial process is aimed at restoring relationships and reconciling parties while addressing the harm to society caused by a crime. Gavrielides (2005: 98) postulates that restorative justice therefore replaces conventional criminal-justice processes with a new philosophy that moves away from a retributive focus towards the violation of the law to a social justice that focuses on the violation of people and relationships.

Another element of restorative justice that is related to the concept of social justice is the recognition of the reciprocal interaction of different role-players in the justice process (Schoeman 2014: 154). In this regard, McCold and Wachtel (2003: 2) identified stakeholders to include the victim, the offender and broader society. The aim of the restorative justice process is mainly to respond to stakeholders' need to achieve healing and restoration, leading to a just society. In order to achieve this, communities are encouraged to take ownership of the justice process; through this, they assume responsibility for the welfare of their members, including victims and offenders. According to McCold and Wachtel (2003: 3), the degree to which victim, offender and community are involved in meaningful emotional interaction, exchange and decision-making will influence the extent to which an intervention can be considered to be completely restorative.

Restorative-justice initiatives, according to Zehr and Mika (1998: 52, 53), involve both system-focused and individual interventions. Restorative-justice interventions recognise victims, offenders and affected communities as the key recipients of restorative interventions. A needs-directed and individualised approach is followed in responding to the needs and harms experienced by these parties. In addition, the community's obligation to victims, offenders and the general welfare of all community members is recognised. Accordingly, restorative justice includes systems-focused interventions aimed at preventing similar future harms by empowering potential victims and offenders through building and strengthening communities. The focus of the interventions is on righting the harms done by the wrongdoing and not on the transgression of laws. In this regard, the restorative-justice process emphasises the restoration of victims by empowering them and responding to their needs holistically. It also supports offenders while encouraging them to take ownership of and accept responsibility for their actions and the harm they have caused the victim and the community in general. Restorative justice recognises that these obligations may be difficult for offenders, but they are not intended as punishment – instead, they are aimed at achieving social justice.

The resemblance between traditional African justice, restorative-justice and social-justice practices clarifies that all these approaches promote a normative system that recognises the interconnectedness between individual and community, in this way trying to achieve a more community-centred approach to adjudication. Antithetical to a retributive ideology, where the judicial processes serve to advance the interests of individuals or factional groups, social-justice practices promote social cohesion and are not selective but inclusive in meeting the needs of all stakeholders. In essence, this is pure social justice in action as it deals with the equal distribution of the benefits to society. Maintaining positive relations in a community is therefore viewed as a collective responsibility. The harm caused by criminal behaviour can therefore not be considered fully resolved until peace, the relationships and the social harmony damaged by the wrongdoing are restored. In this regard, Gyekye (2011) and Okafo (2006: 38) are of the opinion that viewing crime as social harm plays an important role in generating

cohesion in society. Community participation serves to acknowledge the close-knit relationship between members of a society and promotes ownership of the judicial process. Such an approach to justice is an interactive and democratic process, one that acknowledges the human rights and dignity of all individuals in society.

Relationship between Justice and Social Justice

The most prominent means of observing a country's perception of what justice is can be seen both in that country's laws and policies and in the manner in which their justice system functions. In this regard, it is also important to ask where the judicial powerbase lies in a country. Is it legalistic and seated in bureaucratic institutions, or humanitarian and seated in society?

The justice system used in modern-day South Africa is predominantly based on Western retributive principles. As indicated in this article, this is contrary to traditional African traditions, customs and laws, which are more akin to social justice. An Afrocentric approach to justice is used mostly in child justice and domestic disputes and rarely preemptively for crime prevention or as a mechanism for alternative community-based adjudication. A government's support for social-justice initiatives is typically also limited to its application in the criminal-justice system, whereas community-based interventions are driven by non-governmental and church-based organisations in civil society. These initiatives are funding-driven and rarely sustainable (Vanspauwen & Röntsch 2006: 8, 23; NICRO Annual Report 2013: 7). This top-down approach to adjudication is not ideal as it marginalises the judicial process from a legalistic power base instead of being focused on community-based needs.

As mentioned earlier, the notion of social justice is also entrenched in ubuntu and the restorative-justice philosophy, which are both relevant in South Africa. Even though the power of ubuntu as an ontological philosophy has steadily diminished in Africa, it is still recognised in legislative frameworks such as the African Charter and the Constitution of the Republic of South Africa. With the interest in finding an alternative to the current retributive-justice system in Africa gaining ground, self- or agent-directed justice is becoming more prominent. This paradigm shift has its roots in the search for reconciliation and reconstruction after the apartheid legacy. In this respect, South Africa is an example of an African country that is poised to develop modern restorative-justice processes within and alongside the existing criminal-justice system. It can therefore be argued that the challenge in South Africa is not to introduce concepts of social justice but rather to reintroduce traditional ubuntu justice through the integration of a restorative philosophy.

Exploring the relationship between justice and social justice, Johnstone and Van Ness (2011: 96) ask the question whether restorative justice should be viewed as an alternative to the criminal-justice system. They are of the opinion that these methods of adjudication have the same goal but that they follow different routes to that end. Both

accept the authority of criminal law and subscribe to prevailing ideologies and assumptions that underlie the criminal-justice system. Accordingly, an integrated approach will serve to strengthen the functioning of the criminal-justice system. Moore (2011: 259) concurs with Johnstone and Van Ness, indicating that lessons learned during the truth and reconciliation process showed that retributive justice and restorative justice should not be either/or propositions but should instead be used in parallel in order to deal with harms done. In this regard, Cook (2006: 22) argues that social justice has an important role to play in upholding human rights in the criminal-justice process, since inequality before the law undermines social justice. She is of the opinion that the road to reconciling retributive and restorative concepts should commence with a discourse about positive rights.

Conclusion

This article explored the lessons for African philosophies about how justice and social justice are integrated into modern-day justice systems. Philosophical similarities in perceptions about justice between African philosophies are relevant since they highlight the search for a universal understanding of and approach to adjudication. The recent movement towards a more human-rights and restorative-centred attitude to justice as well as the recognition of traditional legal practices adds momentum to this discourse.

It is clear from the discussion above that an argument can be made for the integration of a more restorative form of social justice into the existing justice system. Although this is not a new debate, the question how this can be achieved remains a challenge. That said, the fact that such dialogues are already taking place is an indication of progress, since knowledge best emerges in a relationship of dialogue in which the truth is revealed by means of critical questioning (Wortel & Verweij 2008: 70). Continuing advocacy of an integrated approach to adjudication may just be the best way to proceed.

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