

Seven Roads to Justice for Superheroes and Humans

By Mikhail Lyubansky

I like superheroes. I think I always have. Like many kids, I grew up reading the comics, and when I bumped into Alan Moore's *Watchmen* as a college freshman in 1989, I thought I had discovered the greatest novel ever written. I'm still not entirely sure that it isn't.

As a child, I was drawn in by the characters' superpowers and the imaginative story arcs, but superhero stories are not just juvenile entertainment. Like speculative fiction in general, superhero stories are ultimately a window into humanity. The fictional universes allow the writers to manipulate the circumstances to better examine the most complex aspects of the human experience, none more so than the issues of morality and justice.

Though they might be physically or intellectually superior to ordinary humans, superheroes generally operate within the same kind of justice systems as those of us living in what we call "the real world." Thus, looking at superhero justice allow us to better understand our own justice system and consider the various ways in which it does and doesn't meet both society's and our own needs. I will start with the question of punishment, a response to justice that is very much at the heart of contemporary critiques of real-world justice systems.

Vengeful Justice

As in our own justice system, superhero justice is mostly synonymous with punishment. Most superheroes do not literally follow the Biblical edict of "an eye for an eye"¹, but they do tend to share our own cultural belief that "the punishment must fit the crime".

Though different heroes do have somewhat different moral codes, almost all tend to endorse a punitive response, either explicitly or implicitly. At the most punitive end are anti-heroes like Rorschach (*Watchmen*) and the aptly-named Punisher, who first appeared in *The Amazing Spiderman #129*.

¹ It is worth noting that this line is often interpreted to impose a limitation on vengeance, not a minimum. That is, the Bible may well be instructing us to not be excessive in our vengeance, as in "only one eye for an eye, not more."

Like Lisbeth Salander, the diminutive heroine of *The Girl with the Dragon Tattoo*, the Punisher works outside the formal (and legal) justice system, unrestricted by its bureaucracy, unencumbered by its corruption, unfettered by the safeguards that were designed to protect the innocent but sometimes end up protecting the guilty too. With the Punisher, guilt is never questioned by either the protagonist or the audience. We know beyond a reasonable doubt that the offender is guilty, and the Punisher is not much concerned with the complexity of either the criminal mind or the criminal act. Motivations for the act don't matter either, because the prevailing assumption is that the offender in question is a "bad seed" that cannot be rehabilitated. Indeed, one does not rehabilitate monsters; one kills them. And there is no greater hero than that of the monster slayer who not only protects the rest of us from evil but takes vengeance against it. We celebrate the Punisher for his willingness to exact such vengeance, not in spite of his willingness to employ murder, kidnapping, extortion, and torture, but because of it. Rooting for the Punisher is relatively easy, especially if one accepts the notion of unredeemable evil. The appeal of Rorschach is more complicated. In *The Gospel According to Superheroes*, B.J. Oropeza describes what may be the character's defining scene in the novel:

In one flashback scene, he discovers the remains of a kidnapped child whose bones are being devoured by German shepherds. He kills the dogs with an ax, and after immobilizing the kidnapper with a handcuff, he lights the criminal's place on fire, giving the man a hacksaw with the option to either saw off his wrist with his free hand or be burned alive in the house.

"In short," Oropeza concludes, "Rorschach is not a well person."

He wasn't intended to be. *Watchmen* was intended as a commentary on a variety of approaches to justice, with the different costumed heroes each representing a specific philosophical perspective. Rorschach, the lone-wolf vigilante, is undeniably appealing on many levels, most notably his courage, resolve, and creative problem-solving, which are essential because, like Batman, he doesn't have real superpowers. However, he is also shown to have a limited ability to process complexity. In Rorschach's eyes (as in the Punisher's), an act is either right or wrong. There is no in-between. And if the act is wrong, then justice must be done in the form of immediate "eye for an eye" retribution. No other strategy is acceptable. No other response is possible.

The appeal of Rorschach might well lie in how he equates justice with vengeance. We might disagree with him about who is right and wrong, perhaps even about who is innocent and who is guilty. But most readers can be sure to agree on one thing: Those who are guilty (heroes included) of vile crimes need to pay, and we admire Rorschach for his uncompromising willingness to exact vengeance regardless of circumstances or even the law itself.

That last part is crucial. Our formal justice systems also exact vengeance -- capital punishment can certainly be viewed in this way -- but they do so in a more systematic way (i.e., due process) and with the full support of the government and its people.

Punitive Justice

Our own justice system is not nearly as rigid as Rorschach's. It can take into consideration "extenuating circumstances" and, rather than relying on the moral code of a single self-appointed vigilante, it consists of numerous highly trained professionals who are granted authority by the State to apprehend, judge, and, if necessary, punish the identified offender. At the same time, there is little doubt that the real-world criminal justice systems are primarily punitive² in nature, as typically are the school and work justice systems that are usually in place to deal with conflict and rule violations.

These punitive systems are so widespread that most of us have a hard time even imagining any alternative ways of "doing" justice. The superheroes don't help in this regard. Many of our most recognizable costumed crime-fighters, including DC's Superman, Batman, and the Flash, and Marvel's Fantastic Four and Avengers (who include dozens of rotating heroes, most notably Iron Man, Thor, and Captain America) are similarly punitive in their approach to justice. They communicate with government representatives, police, and other formal authority figures and almost always turn the criminals over to those same proper authorities. The superheroes are

² They are punitive in the sense that justice is understood to occur when reasonable and proportionate punishment is applied to the offender, such that "the punishment fits the crime." This is also sometimes referred to as retributive justice. Additionally, our criminal justice system is also punitive from the perspective of psychological behavioral theory, which posits that behaviors that are appropriately punished are less likely to occur in the future while those that are rewarded are more likely to be repeated.

typically allies to the police and other parts of the criminal justice system in the fight against crime and frequently work within the same system.

To be sure, there are times when superheroes question the justice systems they supposedly serve, and it is precisely such exceptions that provide meaningful commentary on our own justice systems. Marvel's Civil War storyline serves as a good example. This story arc takes place on the heels of the tragedy in Stamford, Connecticut, when a group of young superheroes were unable to prevent the supervillain Nitro from killing 612 civilians. In the aftermath, Tony Stark (Iron Man) wants every superhero to register with the government and novice heroes to be properly trained in order to avoid both a repeat of Stamford and the possibility of a harsh government response that might outlaw costumed crime-fighting entirely (this incidentally is the backdrop in *Watchmen*). Stark argues that heroes should be properly trained, not left to their own devices, and held accountable to the public and the legal system, in the same way police officers are accountable. Captain America, on the other hand, believes that such registration would place family members and friends of superheroes at almost certain risk; he heads the resistance. The other superheroes (and villains) line up on one side or the other in a memorable storyline that also doubled as an allegorical commentary on 9/11 and the Patriot Act. As plot lines go, the Civil War was compelling, both for the thrill of seeing Iron Man and Captain America on opposing sides, as well as (for more mature readers) the ethical undertones of the allegorical commentary.

Yet, even as they disagreed about politics (i.e., the Superhero Registration Act), Iron Man and Captain America never actually disagreed on what justice ought to look like. Both sought to apprehend criminals and turn them over to the authorities. Indeed, Captain America and his group of secret Avengers (which includes the Punisher, Storm, and Black Panther) continue to fight crime, capturing and tying up criminals for the benefit of authority, even as they themselves try to evade the government's (and Iron Man's) efforts to find and bring them to justice.

Rehabilitory Justice

It is worth noting here that most superhero stories end with the villain's capture. Though there are exceptions to the rule, for the most part what happens after the villain is apprehended is rarely depicted. Rather, the presence of police officers or other easily recognized authority figures is intended to imply that the formal justice system would take it from there. More specifically, the handing over of the villain to the formal authority implies that there will be a trial to determine guilt (we already know they're not innocent from the story arc), followed by incarceration or other type of restricted confinement necessitated by the villain's superpowers.

But is this type of formal punishment always in society's best interest? The comics occasionally suggest an alternative, as when Harvey Dent (Two Face) winds up in a hospital, under psychiatric care, rather than in a prison. Dent is a former district attorney of Gotham City, who often appears as Batman's nemesis. While the origin of his "Dr. Jeckyl and Mr. Hyde" persona has seen multiple incarnations, his evil-doing is most frequently shown to be a result of either psychosis (voices telling him to do evil things) or dissociative identity disorder (a fragmenting of a personality into distinct alters such that each has a mind of his/her own). As a result, Dent often winds up in some kind of psychiatric treatment facility rather than a prison.

As it happens, the psychiatric treatment Dent typically receives is not only substandard but unethical. In *The Dark Knight Returns*³, Dr. Bartholomew Wolper, who is the psychiatrist of both Dent and the Joker, believes that his patients are the victims of Batman's psychological issues:

You see, it all gets down to this Batman fellow. Batman's psychotic sublimative/psycho erotic behavior pattern is like a net. Weak-egoed neurotics, like Harvey, are drawn into corresponding intersticing patterns. You might say Batman commits the crimes...using his so-called villains as narcissistic proxies

³ Miller, F. (1997). *The Dark Knight Returns*. New York: DC Comics.

Not only does Wolper blame Batman for his patients' criminal behavior, he actively campaigns for his capture (and the Joker's release). Thus, psychiatry, and by extension the entire mental health system, is set up as a foil for our superhero and for justice, more broadly.

Even when psychiatrists are not portrayed to be immoral and corrupt, they are still emasculated and ridiculed for being unable to do their job. We see this, for example, in *Watchmen*, when Rorschach is interviewed by prison psychiatrist Dr. Malcolm Long. Unlike Wolper, Long is neither unethical nor corrupt. Rather, when he first meets Rorschach, he is content with his life, optimistic, and well-meaning. Long believes he can rehabilitate Rorschach and maybe learn about the vigilante mind in the process. Rorschach initially taunts him and effortlessly circumvents the psychiatric assessment (the Rorschach Test, what else?) but eventually shares his real dark history. Unfortunately, Rorschach's forthcoming results neither in his healing nor in Long gaining clinical insight into vigilantism. Rather, Long gradually becomes obsessed and personally impacted, such that his own contentment and happy marriage are both shattered. By the end of their time together, it is Long who is looking at the ink blots and seeing nothing but darkness:

I looked at the Rorschach blot. I tried to pretend it looked like a spreading tree, shadows pooled beneath it, but it didn't. It looked more like a dead cat I once found, the fat, glistening grubs writhing blindly, squirming over each other, frantically tunneling away from the light. But even that is avoiding the real horror. The horror is this: In the end, it is simply a picture of empty meaningless blackness. We are alone. There is nothing else. (VI.28.4)

During their time together, Rorschach clearly has little respect for Long, accusing him of being fat (and, by extension lazy), not understanding pain, and seeking professional prestige under the guise of "treatment". In a different comic, this critique might reasonably be interpreted as character-specific, but *Watchmen* is not just another comic. It is a sharp commentary on both society and the comic industry itself. In the words of writer Alan Moore, the intention was to create "a superhero Moby Dick, something that had that sort of weight, that sort of density."⁴

⁴ Eno, Vincent; El Csawza. "Vincent Eno and El Csawza meet comics megastar Alan Moore". *Strange Things Are Happening*. May/June 1988. Retrieved on October 29, 2011.

Thus, Rorschach's indictment of Long may reasonably be read as an indictment of psychiatry and mental health, more generally.

Altogether, superhero comics suggest that, at best, mental health professionals have no useful understanding of people or their motivations and, at worst, are morally corrupt and willing to use their authority to obfuscate justice. Rather than being a viable alternative to the criminal justice system, the mental health system is portrayed as incompetent, unethical, and in all ways undesirable as a response to criminal behavior, which, of course, invalidates the concept of rehabilitative justice and serves to support and maintain the reliance on punitive practices.

The indictment of the mental health system is unfair (especially in terms of ethics) but not entirely without merit. Psychologists have struggled to separate the concept of psychopathy from criminal behavior. Psychopathy is a condition presumed to be characterized by a variety of personality traits, most notably a lack of empathy or remorse, but also emotional manipulation, impulsivity, aggression, and a lack of response to punishment. However, these characteristics have proven to be extremely difficult to measure and, despite considerable efforts by many professionals, at this point "there is no consensus about the symptom criteria for psychopathy, and no psychiatric or psychological organization has sanctioned a diagnosis of 'psychopathy' itself."⁵ Not surprisingly, then, the current version of the Diagnostic and Statistical Manual of Mental Disorders avoids psychopathy and includes instead diagnostic criteria for Antisocial Personality Disorder (ASPD), which focuses on behavior patterns rather than personality characteristics. The ASPD diagnosis has little utility, however, as it may not adequately identify those who would benefit from mental health treatment from those convicted of crimes (a 2002 review of studies showed that 47% of male prisoners had ASPD⁶). Moreover, even if correctly identified, there is presently no empirically validated treatment for either ASPD or psychopathy. In short, there is, as yet, no suitable mental health alternative for criminals like the Joker, Green Goblin, and many others, who are clearly suffering from psychopathy, just as there are, as yet, no suitable mental health alternatives for real world serial-killers.

⁵ Skeem, J. L.; Polaschek, D. L. L., Patrick, C. J., Lilienfeld, S. O. (2011). "Psychopathic Personality: Bridging the Gap Between Scientific Evidence and Public Policy". *Psychological Science in the Public Interest* 12 (3): 95–162.

⁶ Fazel, Seena; Danesh, John (2002). "Serious mental disorder in 23 000 prisoners: A systematic review of 62 surveys". *The Lancet* 359 (9306): 545.

The vast majority of criminals, however, are not psychopaths and even the much broader ASPD diagnosis excludes the majority of those convicted of a crime. These kinds of criminals – the ones who have committed murder in a moment of passionate rage or those who turn to drug trafficking because it is the only survival path they see – are rarely depicted in the superhero universe because they aren't compelling foils for the superpowered heroes. However, they comprise the vast majority of the prison population. Many of these “regular” criminals suffer from a variety of mental health issues, including depression, post-traumatic stress disorder (PTSD), substance dependence, and occasionally, psychotic disorders, like schizophrenia. Unlike psychopathy, effective treatment options exist for all of the above, and it certainly seems worth asking if our society might be better off treating some criminals instead of punishing them, or at least doing both.

Metaphysical Justice

Of all the costumed heroes in *Watchmen*, only one, physicist Jon Osterman (Dr. Manhattan), has actual superpowers, thanks to an accident in which he was disintegrated into atoms in an Intrinsic Field Subtractor and somehow able to reconstruct a physical body. Osterman's powers include superhuman strength, telekinesis, teleportation, control over matter at a subatomic level, and, most importantly for this discussion, almost total clairvoyance – the ability to see the past, present, and future everywhere simultaneously. What does justice look like from this kind of God-like perspective? It's hard for humans to even imagine, but *Watchmen* gamely tries.

We first see Osterman's unusual orientation towards human life when Rorschach informs him of the Comedian's death and warns him that other costumed crime fighters may also be in danger.

A live body and a dead body contain the same number of particles. Structurally, there's no discernible difference. Life and death are unquantifiable abstracts. Why should I be concerned? (I.23.3)

As the story unfolds, we learn that, despite his omniscience (or perhaps because of it), Osterman espouses a philosophy of predestination. “Everything is preordained. Even my responses,” he tells his former girlfriend Laurie Juspeczyk, during their long talk on Mars, adding “We're all puppets, Laurie. I'm just a puppet who can see the strings.”

Although he clearly altered the course of the Vietnam War (shown in flashback), in “real-time” Osterman declines to interfere in either interpersonal conflicts (as when the comedian kills the enraged Vietnamese woman he had apparently impregnated) or international ones, intimating that he cannot interfere because his own actions (and presumably lack of actions) are already predetermined. As Osterman sees it, he cannot interfere with the unfolding of events because they've already happened.

There is no future. There is no past. Do you see? Time is simultaneous, an intricately structured jewel that humans insist on viewing one edge at a time, when the whole design is visible in every facet. (IX.6.5-6)

What, then, is justice when everything has happened, is happening, will happen at the same time? Are we to believe that from the perspective of an all-knowing and all-powerful being, there is no meaningful distinction between injustice and justice, no required action to transform the former into the latter?

Osterman's words to Adrian Veidt (also known as Ozymandias), near the end of the novel, suggest this may be the case.

I have walked across the surface of the sun. I have witnessed events so tiny and so fast, they could hardly be said to have occurred at all. But you, Adrian, you're just a man. The world's smartest man poses no more threat to me than does its smartest termite. (XII.18.3-4)

Osterman is explaining to Veidt why it was such folly for Veidt to attempt to kill him, but there is a deeper meaning in this passage. To Osterman, human beings and their conflicts are no different than termites, a species perhaps worthy of observation but one so far below our level of

consciousness that it would not occur to even the most moral among us to attempt to adjudicate or otherwise interfere in their conflicts as an ethical imperative.

Yet, Osterman ultimately backs away from his philosophy of non-interference. His conversation on Mars with Laurie reawakens his interest in humanity.

... the world is so full of people, so crowded with these miracles that they become commonplace and we forget... I forget. We gaze continually at the world and it grows dull in our perceptions. Yet seen from another's vantage point, as if new, it may still take our breath away. Come... dry your eyes, for you are life, rarer than a quark and unpredictable beyond the dreams of Heisenberg. Come, dry your eyes. And let's go home. (IX.27.3-28.2)

It seems like a happy moment: Osterman realizes the beauty and value of humanity and commits himself to saving it. But it's worth noting what it is that changes Osterman's mind. It is not Juspezyk's pleas that sway Osterman, but her realization and willingness to come to terms with the fact that her biological father was none other than the Comedian, Edward Blake, who once attempted to rape her mother but became her father as a result of a later, consensual relationship. It is not humanity's potential for goodness that sways Osterman but what he refers to as the thermo-dynamic miracle of each life-form emerging from the complexity and unpredictability of human emotions and behaviors.

Though not explicit, Osterman's observations about perspective and his new insight into the complexity of human behavior both have implications for real-world justice. What may seem like an obvious injustice from close range (e.g., a person smashing a car with a crowbar) may have very different meaning with the benefit of distance (the owner of the car had refused to transport the crowbar wielder's mother to the hospital and the mother did not survive the night). What would be just in such a case? To arrest the man with the crowbar? To charge the car owner with manslaughter? What if we zoomed further out still and learned that the man who owned the car refused the hospital trip because he worked for a drug gang that was planning to use the car for business that same night? What if the drug gang's activities actually funded the nearby hospital, as well as other local services because the official government did not have a presence in the community, as in many Brazilian favelas? What should justice look like, then? From a

metaphysical perspective, it depends entirely on the level of analysis. This seems like something worth keeping in mind, even if only as a reminder to remain humble and recognize the humanity of those who we see as having acted against society.

Structural Justice

Sometimes, evil is not so much an individual phenomenon as a cultural one. Many of our favorite superheroes, including Captain America and Wonder Woman, were originally created to do battle with the Nazis. Despite the presence of Red Skull, justice in those early stories was not so much about apprehending a particular nemesis as fighting the Nazi menace. Notably, the cover of the 1st issue of Captain America which went on sale in December, 1940, showed Cap punching Adolf Hitler in the jaw.

More recently, superhero comics have taken on the cold war (*Watchmen*) and a variety of social issues, including racism, poverty, substance abuse, and the government's willingness to use violence to achieve its aims. In the December, 2001 issue of *The Amazing Spiderman*, Spiderman, Captain America, and Daredevil assist in the clean-up after the 9/11 attack and lament their inability to see it coming and do something to prevent it. This brief story arc, which positioned the firefighters and human clean-up crew as the "real heroes," went along with the prevailing spirit of patriotism that swept across the United States in the months following the attack. However it is not unusual for comics to take a critical perspective on U.S. policy and systemic structures. In *Marvel Boy #5*, for example, Noh-Varr (a.k.a. Marvel Boy, Captain Marvel, The Protector), a member of the alien Kree race who has decidedly mixed feelings towards Earth, explains his dissatisfaction:

There *is* no system here. There's nothing but fear and greed and stupidity. As far as I can see the planet is run by primitive primeurban *protection rackets* with something called "*Law*" as the only thing dividing *one* gang's methods from another. Your leaders are *murderers* who say violence is *wrong*, then drop bombs whenever they have a point to make. *Millions* of your people can't even get shelter or enough to *eat*. [emphases in original]

Noh-Varr is speaking about a fictional Earth (Earth-616), but this context is allegorical. His words are as much about the United States and its government as about the fictional universe in which he lives. In the fictional universe, Noh-Varr goes on to battle against Doctor Midas, a greedy, power-hungry scientist who eventually becomes the evil Cosmic Man, and a sentient corporation named Hexus, which had aims to consume all rivals and become the most powerful entity in the universe. On an allegorical level, the *Marvel Boy* plot line is a scathing critique of real-world U.S. policy and corporate greed.

Probably the most recognizable attempt to promote structural justice in the superhero universe has been the ongoing story of the X-Men, a group of humans who, as a result of some genetic mutation in the X-gene, developed some form of super-human ability and, as a result, became something different than human. The X-Men wear costumes and fight “bad guys” but at their soul, the franchise has always been less about superpowers and more about human tendencies to fear and hate those who are different and the various ways we deal with such tendencies. As long-time X-men writer Chris Claremont (1982) put it, “... what we have here, intended or not, is a book that is about racism, bigotry and prejudice.”

The remark about “intentionality” is noteworthy. It’s quite possible that prejudice was far from the minds of writer Stan Lee and illustrator Jack Kirby, when they first introduced the X-men in 1963. At the very least, given that the original ensemble of X-men was entirely racially and ethnically homogeneous (as per the comic industry’s standard of the time), the themes of prejudice were most likely not very well thought out at first. Nonetheless, the seeds of these themes were planted in the very first issue when Charles Xavier, a mutant telepath responsible for training and organizing the mutants into the X-Men, observed that human beings are not yet ready to accept superpowered individuals in their midst (*X-Men #1*). By 1975, the X-Men were ethnically and racially diverse, featuring Canadian (Wolverine), Russian (Colossus), German (Nightcrawler), and African (Storm) characters that reflected the comic’s ideology of tolerance and multiculturalism⁷ – an ideology that was a good decade ahead of its time.

⁷ A few years after this shift to multiculturalism, writer and artist John Byrne introduced the first gay superhero, Northstar, although Marvel did not allow him to actually come out formally until 1992 (*Alpha Flight #106*). Despite restrictions imposed by the Comics Code Authority, other gay, lesbian, and bisexual characters followed, including

Before long, the X-Men storylines clearly encouraged readers to see the mutants as an allegory for oppression in general and to generalize Professor Xavier's philosophy of tolerance and assimilation to other oppressed groups, including racial and ethnic minorities.

The question of race is especially pertinent to issues of justice, because though our own justice systems are supposed to be unbiased, the data show consistent racial bias in seemingly every aspect of our criminal justice system.

Consider some recent racial profiling data from my home state of Illinois, where the Illinois Department of Transportation (IDOT) has been compiling racial profiling data for almost 10 years. According to the 2009 data (the most recent available at the time of this writing), "minority drivers" were 12% more likely to be stopped (after controlling for demographic differences in population) and more than twice as likely to have their car searched (this requires consent but consent is given more than 90% of the time).

When confronted with such data, police officers (and chiefs) usually respond that they are merely doing their job -- that the racial discrepancy in stops and searches merely reflects group differences in criminal behavior. Yet, the city's own data suggest otherwise. Those consensual searches? They yielded contraband (either weapons or drugs) for 16% of the "minority drivers" compared to almost 24% of "Caucasian drivers (see bottom row in table⁸ below).

long-time friends and lovers, Mystique and Destiny (Uncanny X-men #265). A list of gay and lesbian comic book characters is available at <http://www.gayleague.com/gay/characters/>

⁸ Illinois Department of Transportation. (2009). Illinois Traffic Stop Report. Retrieved 3-24-2012 from <http://www.dot.il.gov/travelstats/ITSS%202009%20Statewide%20and%20Agency%20Reports.pdf>

ILLINOIS TRAFFIC STOP STUDY, 2009				
Agency:		ILLINOIS STATEWIDE		
Stops				
	Caucasian Drivers		Minority Drivers	
Total Stops	1672913		796491	
Percentage Stops	68		32	
Duration (Mean\Median)	12\10		14\10	
Estimated Minority Driving Population Ratio			28.48 1.12	
Reason for Stop				
	Caucasian Drivers		Minority Drivers	
Total	1672877		796202	
Moving Violations	1228815	73%	529101	66%
Equipment Violations	308762	18%	177588	22%
Licensing / Registration Violations	135257	8%	89215	11%
Outcome for Stop				
	Caucasian Drivers		Minority Drivers	
Total	1672913		796491	
Citation	930829	56%	499378	63%
Written Warning	507380	30%	164058	21%
Verbal Warning/ Stop Card	234704	14%	133055	17%
Consent Searches				
	Caucasian Drivers		Minority Drivers	
Total	1672913		796491	
Requested	13625	1%	12618	2%
Granted	11558	85%	11368	90%
Performed	11112	96%	10974	97%
Found	2677	24%	1721	16%

These numbers are not an aberration. They are exactly at the state's 6-year average (15% vs. 24%). If there were true probable cause, the percentages would be roughly the same. Unfortunately, this is not just a policing issue. Similar bias is evident in the U.S. incarceration rates, where the racial disparities are so high that, in the words of attorney and writer Michelle Alexander, "the racial dimension of incarceration is its most striking feature."⁹

Superheroes don't generally examine their own racial profiling tendencies, and I have seen no published studies examining race-group differences in the incarceration rates of those convicted of a crime in the superhero universe, but the X-Men franchise does have something worthwhile to say about real-world racism. While X-Men does not address racism directly, the franchise does more than merely model an ideology of tolerance and diversity. It examines the causes of prejudice and intolerance and pits competing perspectives against each other as different

⁹ Alexander, M. (2010). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press: New York.

characters try to come to terms with the ethical and psychological implications brought on by the dawn of a new evolutionary phase in which mutants and humans struggle to co-exist.

The racial metaphors in the superhero comics have often been flawed and problematic, as for example, when the often villainous Magneto tells Xavier “The [human-mutant] war is coming, and I intend to fight it by any means necessary.”¹⁰ However, unlike news coverage of crime (as well as most other fictional stories about justice), the X-Men franchise placed prejudice front and center, exactly where it needs to be given the racial discrepancies that pervade our police blotters and prisons. To be sure, the X-Men were exceptional in this respect, but at least they serve as an exemplar for both those of us interested in justice and comic fans more broadly.

Restorative Justice¹¹

If superhero comics can sometimes present a vision of justice for the real world to follow, the industry has also been surprisingly conservative in its support and glorification of retributive models of justice. This is nowhere more evident than in the absence of not only restorative superheroes but restorative practices more generally.

Restorative practices have been around for thousands of years and are part of the traditions of many indigenous people all over the world. Unlike punitive and retributive notions of justice, restorative approaches focus on identifying and “restoring” the harm that was done rather than on punishing the person who is determined to have caused the harm. In restorative practices, the goals are truth-telling (and listening), responsibility taking, and voluntary agreements about how to go forward.

Occasional social issue story aside, the emphasis on punitive justice in the superhero universe is not coincidental. The 1954 Comics Code which, at the time, had to be followed in order to have the right to sell comics, had all of the following statutes:

¹⁰ X-Men [Motion picture]. (2000). Toddman, B. (Producer) & Singer, B. (Director). United States: Twentieth Century Fox.

¹¹ An earlier version of this section appeared in Tikkun Magazine’s Jan. 2012 online edition: <http://www.tikkun.org/nextgen/how-super-is-superhero-justice>

- Crimes shall never be presented in such a way as to create sympathy for the criminal, to promote distrust of the forces of law and justice, or to inspire others with a desire to imitate criminals.
- If crime is depicted it shall be as a sordid and unpleasant activity.
- Criminals shall not be presented so as to be rendered glamorous or to occupy a position which creates a desire for emulation.
- In every instance good shall triumph over evil and the criminal punished for his misdeeds.

In other words, restorative practices were literally outlawed in the superhero universe.

The Comics Code underwent significant revisions in the 1980s and 1990s and was abandoned altogether in the 2000s, but for some reason, restorative superheroes – that is, superheroes who espoused a clear restorative world-view, never came. In some ways, this is not surprising. Restorative practices often require community members to hold each other accountable and work together to repair the harm rather than relying on some authority to do it . As such, restorative superheroes are, in a way, an oxymoron because they, by definition, are superior to others and, therefore, usually take on the duties of taking care of other people’s conflicts. In the words of Peter Parker’s Uncle Ben, “With great power there must also come -- great responsibility.”¹²

For Spider-Man and other superheroes, Uncle Ben’s words (originally attributed to Voltaire), provide a necessary moral grounding, but what do they imply for those of us who lack great powers? In my reading, they suggest that those of us with little structural (or personal) power have little or no responsibility to respond to injustice and conflict. Our justice systems support this view, as well.

Our formal justice systems (including those in the schools and workplaces) typically professionalize the handling of conflict. They identify individuals who are authorized to decide

¹² In later stories and adaptations, including the 2002 movie, this phrase was modified to "With great power comes great responsibility."

who is right and wrong and what needs to happen next. There are benefits of such an approach, but there are costs too, and one of these is that those directly involved in the conflict and those who are most affected by it do not typically take the responsibility for working things out. Restorative practices tend to put the responsibility back in the hands of those who are actually part of the conflict, not in some supposedly objective, well-trained (or super) outsider.¹³

That said, there is still room, I think, for a restorative superhero.

We can see features of restorative principles in several existing superheroes. Aquaman's most recognizable power, for example, is essentially enhanced communication skills – in his case with the marine community, which he summons when he needs help, and it is notable that Wonder Woman's greatest weapon against crime is truth, in the form of her magic lasso. Yet, both Aquaman and Wonder Woman also work within the conventional punitive systems, apprehending the criminals and turning them over to the authorities as members of the Justice League. Wonder Woman, in particular, essentially functions as a super-powered detective, one that combines the threat of physical harm with an interrogation technique (her lasso) that is efficient at getting the truth. But these truths are not offered voluntarily and the marine life that comes to Aquaman's aid does so in order to overpower his adversaries. Neither is intended to have a restorative effect and neither produces one.

A truly restorative superhero does not yet exist, but that doesn't mean one could not be created. I can imagine such a hero. Let's call her Empathy. She would be human, with no extra-ordinary physical powers but an unusually well-developed ability to feel compassion, not only for those who are harmed but for those who perpetrate harm as well, including those who perpetrate evil. Along similar lines, Empathy is characterized by an inner peace and a capacity to recognize the needs of others and embrace everyone (even those who violently lash out against others) with empathy.

¹³ Restorative practices actually come in many varied forms and differ considerably in the role that is given to the facilitator or circle-keeper and in the extent to which they involve the conflict community. Even so, restorative practices are much more likely to involve those impacted by the conflict than our formal justice systems.

How would our hero walk in the world? How would she try to be restorative? It seems that this very question would be a necessary and on-going part of Empathy's internal struggle. I can imagine Empathy trying a conventional approach—finding conflict and trying to work through it as some kind of Super-mediator before realizing that this was still another way of taking the responsibility for working through conflict out of the hands of those directly involved. An existential crisis might follow, leading Empathy to resign her hero status and responsibilities in order to lead Restorative Circles¹⁴ and other restorative practices as a peer, rather than as an authority.

Of course, given her abilities, Empathy cannot, for long, continue her work on a small stage. After turning down multiple requests to facilitate conflict on a world scale, Empathy finally receives a request she is unable to refuse. With the fate of the world hanging in the balance, she re-emerges into public life and creates the conditions for the world's governments to rehumanize each other and work together to restore peace. Though uncomfortable with what she regards as “undue credit” – it was the conflict parties themselves who resolved their differences, she insists -- Empathy is left with a new purpose and decides to take on a new name: Mahametta¹⁵.

Eventually, Mahametta (who also becomes known as “the Facilitator”) will find herself confronted by those who, like the Punisher and Rorschach, are driven by the need for vengeance. Might the Facilitator find a way to turn the Punisher away from his punitive methods? That story would be worth telling, because it would show that no one is beyond redemption. The Punisher might come to reevaluate his own childhood and the murder of his wife and kids that initially turned him into a punisher. Perhaps empathy and kindness from some unexpected source might lead him into self-empathy for the child who received the ultimate punishment, which might lead to empathy for violent criminals who, in some cases, may also be acting from a desire to punish those they perceived to have harmed them in some way.¹⁶

¹⁴ Restorative Circles refer to a specific restorative practice developed in the favelas of Brazil by Dominic Barter and his associates. More information about this practice can be found at <http://www.restorativecircles.org>

¹⁵ Combination of the Indian words Maha (great) and Metta (loving-kindness, universal love).

¹⁶ I do not mean to suggest that all (or even most) violent crime is an attempt to punish others for the harm they caused. My purpose here is just to acknowledge that some violent crime does fall into this category. In this context, it is also worth stating that even when “offenders” pick random victims, they (the offenders) may still feel victimized by society and/or their life history (e.g., chronic physical abuse) and, in various intentional as well as unconscious ways, may be acting out of this felt sense of victimization.

To be sure, the kind of transformation described above is hardly typical. More than likely, despite the Facilitator's best efforts, her words and actions will have little impact on the Punisher. Indeed, because restorative practices place a high premium on voluntariness, no outcome is ever assured. Sometimes, things just don't work out the way we hope, even in the comic books.

When we finally see a character like the Facilitator among the other superheroes, it will be a sure sign that restorative practices have fully infiltrated our society. In the meantime, restorative practices demand that we be our own superheroes, not in the sense of seeking vengeance but in the sense of being willing to walk toward conflict and engage with it ourselves, rather than relying on someone with actual super powers or an authority that is given super powers, like a judge. In this sense, there are already many superheroes among us. And room for many more.

Zen Justice¹⁷

There is an old Zen story of an elderly farmer who had worked his crops for many years. One day his horse ran away. Upon hearing the news, his neighbors came to visit. "Such bad luck," they said sympathetically. "May be," the farmer replied. The next morning the horse returned, bringing with it three other wild horses. "How wonderful," the neighbors exclaimed. "May be," replied the old man. The following day, his son tried to ride one of the untamed horses, was thrown, and broke his leg. The neighbors again came to offer their sympathy on his misfortune. "May be," answered the farmer. The day after, military officials came to the village to draft young men into the army. Seeing that the son's leg was broken, they passed him by. The neighbors congratulated the farmer on how well things had turned out. "May be," said the farmer.

The story is usually used to caution readers from rushing to judgment. One of its points is that it is not always immediately evident whether a particular event will have positive or negative

¹⁷ An earlier version of this section was published on the author's Psychology Today blog, *Between the Lines*: <http://www.psychologytoday.com/blog/between-the-lines/201001/the-zen-watchmen>

consequences, even if it seems obvious (as it does in the examples above) that the consequences are clearly either good or bad. Indeed, because the story ends with yet another “may be”, even a longer perspective is inadequate to judge any particular event, because something could happen the very next day that would turn everything on its head. Rather than judge, the story would have us accept things as they come, without judgment, and act accordingly.

It seems like good advice. And I have to admit that it’s liberating to step into that non-judgmental space. The wars in Iraq and Afghanistan? Maybe they will be a catalyst for a new era of world peace. The Occupy movement? Maybe it will lead to both economic and social reforms that raise the standard of living around the globe. Or, on the other hand, maybe it will wind up splintering the American people and ushering in decades of backlash against progressive politics and cultural tolerance.

The point is we just don’t know. And we can’t know. All we can do is just...be...and focus on accepting our circumstances, rather than trying to control them or even judge them.

This way of thinking, of “being”, is appealing. We are, after all, mere human beings, unlike Dr. Manhattan, ignorant to most of the consequences of our actions. Who are we to judge others?

But then, doesn’t judgment – the process of forming opinions, including critical opinions -- have its benefits? Doesn’t it motivate us to take action? If abolitionists did not condemn slavery, might it not have been institutionalized in the North, as well as the South? If Civil Rights activists did not rise up against Jim Crow, might we not still be living under the “separate but equal” doctrine? Isn’t acceptance without judgment merely a way of maintaining the status quo, which may be far from just? Maybe it’s better to have principles and live by them. Maybe accepting that which violates those principles is the last thing we ought to aspire to. This is one of several philosophical questions *Watchmen* takes up.

Rorschach has principles. They’re good ones: Justice, fairness, honesty, possibly even decency. And he walks the walk. By the time the story reaches its climax, viewers have little doubt that Rorschach is driven to do what he believes to be just and that he will stick by those principles to the end. Indeed, as we’ve already established, he is willing to kill for them.

Because *Watchmen* is not a typical superhero story, Rorschach's foil is not a typical villain. Adrian Veidt/Ozymandias wants to live in a peaceful, decent world, not one ravaged by crime and substance abuse and under constant threat of nuclear annihilation. He doesn't wish to rule such a world, just to live in it, not just for his own benefit, but for the benefit of humanity. And he too is willing to kill to get what he wants.

Part of *Watchmen*'s magic is that it makes you think you know whose vision you support and whose perspective you want to triumph, and then, like the Zen story at the beginning of this section, presents additional information that puts everything in a different perspective. At the end of the novel, you may still know whose vision you support and it may still be Rorschach's, but you're probably a little less sure. At the end of the film, Rorschach may still be right. But there is reason to doubt it, and there is no way to know for sure.

This lack of certainty creates a tension between acceptance and judgment, and years after reading the novel, it is this tension that I find myself contemplating again and again.

The best I seem able to do is to conclude that either extreme is flawed. It feels inhumane to accept without judgment that which is unjust. That's not the type of person I want to be. But neither do I want to delude myself into thinking that I have some special superpower (like Osterman's) to know how something will turn out...or even how something has turned out.

At the end of the film, despite the new information, Rorschach remains convinced that he knows what is best for the world. And though he may well be right, it is scary to me that he does not seem to even consider the possibility that he might not be. He can't. That type of cognitive process is decidedly gray, and as comics historian Bradford W. Wright described, Rorschach's world view is "a set of black-and-white values that take many shapes but never mix into shades of gray, similar to the ink blot tests of his namesake"¹⁸. I admire Rorschach's life journey. It took a lot of courage and integrity to survive his childhood and channel his experiences into

¹⁸ Wright, B (2001). *Comic Book Nation: The Transformation of Youth Culture in America*. Johns Hopkins, pp 272-273.

something positive. I'm glad he survived and found a way to contribute to society. But I can't accept his worldview. Our reality is too complex to be easily dichotomized into good and evil, or even just and unjust. I think these are choices we do have to make, but I don't feel like I can truly trust someone who makes them without at least entertaining the possibility of being wrong.

Watchmen inspires social activism. It is filled with characters who want to change the world for the better. But, more than anything else, it inspires humility. If neither the smartest man in the world nor one with God-like powers to perceive time non-linearly are in a position to confidently judge the film's deciding event, how can us ordinary humans portend to know anything with absolute certainty? Can a superhero story change the way you look at the world? It says something about both the story and our reality that the answer is: May be.