

INTERROGATING CAPITAL PUNISHMENT AND INDIGENOUS YORUBA AFRICAN CULTURE

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ABSTRACT: *This work interrogates capital punishment and indigenous Yoruba African culture. We examine punishment as a concept and the four theories of punishment which include; Utilitarian theory of punishment, Deterrent theory of punishment, Reform theory of punishment, Retributive theory of punishment. We also look into what punishment is and what punishment is not and then carry out a brief analysis of capital punishment. We then examine Yoruba African culture with respect to capital punishment; the work show clearly that Yoruba culture abhor capital punishment in their laws, the implement it and supported it with different proverbs and folklore stories. Today, there have being clamoring from every angle for the abolition of capital punishment in our society and Yoruba as a nation should not be left alone because; “Ikú tó ń pa ojúgbà ẹni, òwè ló ń pa fún ni” (‘the death that is consuming one’s peers is proverbially warning of one’s own impending similar death’).*

KEYWORDS: Africa, Capital, Culture, Folklore, Proverbs, Punishment, Yoruba

INTRODUCTION

Punishment may be defined as the infliction of pain, suffering, loss, or social disability, as a direct consequence of some action or omission on the part of the person punished. It may range from death, physical assault, detention, loss of civil and political right or banishment. Punishment involves the deliberate and intentional infliction of suffering on the offender. It is in virtue of this that the institution requires justification in a way that many other political institutions do not. There are some known theories of punishment that supply this justification, they include; Utilitarian theory of punishment, deterrent theory of punishment, reform theory of punishment, and retributive theory of punishment.

The utilitarian theory of punishment holds that; the justification for inflicting pains on a wrongdoers necessarily rest on the value of its consequences. In other word punishment is justifiable only by reference to the possible consequences of making it as one of the devices for sustaining the social order. It involves an intrinsic evil, for it is the deliberate infliction of pain, discomfort, frustration and other forms of unhappiness upon the person punished. But the offender pays the penalty, because he owes it. The utilitarian maintains that a punisher must produce some good future consequences or prevent some bad one. If he does or cannot do so, he is then only returning evil for evil, injury for injury, suffering for suffering, in punishing a person for past misdeeds.

The deterrent theory of punishment claims that the justification of punishment lies in the belief that pain inflicted on actual wrongdoers will deter potential wrongdoers. It is the belief of the proponents of the theory that the infliction of punishment on an offender will have a deterrent effect on others who might be tempted to break the law; this punishment aim at preventing crime and disabling the criminal from breaking the law again. When the offence is a serious

one, there is a great need of preventing similar offenses in the future. There is a greater need for deterrence, greater security against repetitions, hence longer isolation of the criminal from the society and a grater attempt at rehabilitation so that he will not repeat the offence when he return back to society. (Strong Edward 1968)

The reform theory of punishment claims that punishment can be justified on the ground that it is a process whereby the guilty person is reformed. In other words, when an offender is deprived of his liberty or undergoes cultural starvation; the offender is therefore given the opportunity to reeducate himself and develop a socially acceptable kind of conduct. Here there cannot be punishment for punishment sake, once the purpose has been established by the declaration of guilt. The aim here should be the reformation of the offender and his restoration in due course to a constructive share in the life of the community.

Punishment as retributive involves pain. It is an evil that the offender suffers against his will. The offender must have been found guilty and condemned and a penalty imposed on the earring. The retributive theory maintains that justice is not done if people do not receive what they deserve. By intentionally committing a crime, a person thereby brings upon oneself an owed penalty.

Furthermore to make the idea of punishment clear we should be able to know what punishment is and how it is different from other forms of punishment. Punishment entails the following; Punishment must be something that in the ordinary case is an evil or an unpleasant or deprivation for the person upon whom it is imposed. It must be something any rational being would prefer not to be happening to them. It must be something that it is believed will make them suffer, or make them in some sense worse off than they could have been if it had not been imposed.

More so, the deprivation must be imposed because it is as a result of an offence committed. The reason is that many things are done to a person that does constitute a deprivation but they are not in some important sense imposed because they are deprivation. For example: Quarantine i.e. separating from others a person with infections disease until it is known that there is no danger of spreading the disease again, this is not a punishment in the real sense, because deprivation of liberty is not imposed in order to produce a deprivation but to make their lives every bit pleasant and satisfying. However, the point of imposition of a deprivation when it is unmistakably a punishment is that, it is being imposed because it is a deprivation, since the persons upon whom it is imposed should thereby be made to suffer and in that respect be worse off than before, for an anticipated positive change on the person involved and also as a deterrent to others.

Capital Punishment

Capital punishment is unmistakably a form of punishment, but it is distinctive because it is not just an ordinary punishment. It is the most severe or serious punishment one can think of. Here what is aimed at is the final extinction or the death of the person punished. The term "Capital" derives from the Latin *caput*, used by the Romans to refer variously to the head, the life or the civil rights of an individual (E. U. Ezedike2011). Capital punishment, thus, implies the idea of 'chief', 'principal', or 'extreme penalty' (J. J. Davis2004). Capital punishment is the lawful infliction of death as a punishment. It refers to the execution of a criminal under sentence imposed by competent public authority. In other words, it is the legal infliction of death penalty by the state on a convicted criminal, for an injurious crime, after due process of law.(A. F.

Udugwomen 2005). Capital punishment has also been described as the prescribed treatment meted to an offender who has been adjudged guilty of a capital offence. (E. O. Akingbehin. 2012). It is the supreme sacrifice paid by an offender who has been adjudged guilty of a capital offence by a court of competent jurisdiction (E. O. Akingbehin. 2012). Death penalty serves to remind us of the majesty of the moral order that is embodied in our law and of the terrible consequences of its breach.

Capital punishment is unmistakably a form of punishment, but it is distinctive because it is not just an ordinary punishment. It is the most severe or serious punishment one can think of. It is the supreme deprivation in the scale of punishment. However it is not all killings that are capital in nature and by so doing not all intentional killings are punishment. An intentional killing in self defense is not a case of punishment so to say, not intentional killings in the pursuit of war could be so defined. Capital punishment in essence is unmistakably a special kind of intentional killings; the one that is brought about in order that the resulting in to death on the part of the person punished.

CAPITAL PUNISHMENT AND YORUBA AFRICAN CULTURE

In Nigeria, Yoruba refers to a group of cultures linked by a common language. A group that inhabit the South- Western part of Nigeria, bounded by the Niger River and the eastern parts of Benin Republic, formerly Dahomey, and the western part of Togo. In Yoruba society Punishment is not different from the general mode of thought in other societies. There are many types of punishment just as we have it in other societies which are meted out to offenders. The nature of the offence is proportional to the type of punishment meted to the offender. “Obviously, no offender escapes punishment in Yoruba society while this is true, no one was made a scapegoat for the offence he has not committed; doing so amounts to incurring the wrath of the ancestors” (Olaoba, 2002:83).

The traditional Yoruba society classifies crime into two: the social and spiritual crimes. Social crimes include; adultery, fighting, lying, stealing, egocentrism, and many more. Spiritual crimes have to do with individual relationship with the unseen i.e. gods and goddesses. It is an invitation to the wrath of both the gods and goddesses. (Udugwoman, 1995: 64-65) and the consequences are often visited on the individual as well as the entire community. Spiritual crimes include; incest, murder, suicide, killing sacred animals, unmasking the masquerade, speaking evil of elders and so on. These are viewed with more seriousness than social crimes among the Yoruba because its commission is believed to have serious consequences on the entire community (Udugwoman, 1995:69).

There are many types of punishment in Yoruba society and each is proportional to any types of the crime an individual may have committed. Punishment in Yoruba legal culture can be categorized into capital, corporal, imprisonment and miscellaneous punishments. Capital punishment is the type of punishment which involves the execution of the convicted criminal under the sentence of a court constituted by legal officials. For the Yoruba, death is the common modes of punishment for the most serious crimes, such as murder, sacrilege and other magico-religious offences (Oppenheimer, 1913:121).

In pre-colonial Africa, the philosophy behind the death penalty for deliberate killing was restoration of a life for a life (literal retribution) or complete removal of the offender from the

ranks of the tribe (permanent incapacitation). Both aims were intended to serve deterrent purposes as well. Capital punishment as an intentional infliction of pains or deprivation is the worst in the scale of punishment most especially among the Yoruba's. There is no fitting funeral ceremony for such person. No one is allowed to cry or weep publicly for the deceased. There is no cooking or drinking. Finally, in traditional Yoruba settings cleansing ceremonies are performed by the deceased's family so that such an evil will not happen again. The elders would offer sacrifices for peace in the land and for the extinction of such murderous thought from the land. It is seen as the most evil thing that can happen to a person.

Yoruba also practice intentional killings which may not fall into what can be regarded as capital punishment or death penalty because the people involved are more or less innocent. These include; killing of defective newborns – children born with blindness, deafness, and extremely low intelligence, killing at birth of twins or a child born with teeth. The Yoruba think that life is meaningless to such children, and that they should be allowed to forego such lives. Others like; ritual murder that is, the offering of human life for sacrifice to appease the gods, to avert some imagined god-ordained pending calamity or to obtain some favour from the gods. Death that may ensue from 'trials by ordeal', this is when the power of the deity is invoke to separate the guilt from the innocent base on their intervention. The summary execution of a 'witch' or 'wizard' by the social group was carried out so as to prevent him or her from ever getting a chance to disturb the delicate fabric of the community's social life. These practices, found also in all ancient human communities, are hardly surprising. Man is susceptible to a certain psychological habituation due to marginal insecurity and spiritual dread of the unknown (Elias TO, (1956). There is also another ritual death and it involved important state officials and titleholders (some of whom were part of royalty). These individuals had to die either on the accession of a new king or on his demise. The biological mother of the king-elect, for instance, was officially asked to 'go to sleep' (death) immediately her son become the king (Johnson, 1998). This was necessary so that "there will be no occasion to violate any filial duty imperative on a son who is at the same time the king ...[and whose] majesty must be supreme" (Johnson, 1998). Upon her death, an official mother will be appointed for the king. Again, the Crown Prince and a host of other title-holders had to die on the death of the king in order to accompany him to the hereafter. These individuals were called *abobaku* (one who dies with the king) (Johnson, 1998). These types of death may not be regarded as capital punishment because they are innocent and any punishment for that matter imposed on innocent person cannot be regarded as punishment but brutality.

However, just as law is referred to as "ofin" (Lloyd, 1962: 3-10) in Yoruba etymological model, "Ijiya" (Anon, 1991:46) is Yoruba translation of punishment. The intentional infliction of pains or deprivation on an offender; according to the Yoruba, is premised on the saying that "*Ilu ti o si ofin, ese o si nibe*" – meaning "any society without laws, ceases to have the notion of sin," a sine-qua non to punishment. Law in traditional Yoruba society are norms agree upon by the people and this has being transfer from generation to generation, so a typical Yoruba man or woman knows that any attempt by anybody to contravene the laid down laws and ethics would be sanction. Punishment, which involves intentional infliction of pain or deprivation on an offender base on the wrongfulness of his action, is a machinery of facilitating collective conscience of the Yoruba through frowning at impropriety of manners, which are capable of being inimical to the developments of legal norms and disrupting the social equilibrium. If "Ijiya" (punishment) understood in this sense, then it is meted out only to offenders or criminals who have breached the law and certainly not to the innocent (Achilike, 1999:168).

The saying by the Yoruba “*elese kan ko ni lo lai jiya*”, meaning “no offender shall go unpunished”. And another “*igba ti a ba fi win oka la fi n san*” meaning “the same bowl use to borrow mail, the same bowl we use to repaid” and also “you cannot plant yam and harvest cassava, it is whatever you have planted that you would harvest” meaning “*eniyan ko ni gbe isu ko kore ege, ohun ti a bag bin la ma kore*”. Is an indication of the seriousness of the Yoruba on justice and any affront to it is seriously frowned at and penalized. Thus, a wrongdoing or misdemeanor would amount to the “the violation of a rule, a command or an expectation” (Lindersmith, 1968:217). Whenever this is done, the societal moral and laws have been breached with some consequential effects (punishments). Therefore whoever violates or contravenes any of the laid down principles, rules and regulations is handled and treated appropriately by the law of the land (Alli, 2001:113).

Furthermore, it is very rare in Yoruba society for a person to be wrongly punished because of the nature of investigation and cross-examination embedded in the legal culture (Olaoba, 2002:81). Indeed, there is a Yoruba legal maxim which states thus “*Ika to ba se l’oba nge*” which translates, to mean only the offenders are punished by the ruling elite. In traditional Yoruba society, crime and formal punishment are intrinsically connected and totally inseparable. In such a society, there is a central agency which adjudicates cases and imposes sanctions. As a special arm of the Yoruba legal culture, the institution of punishment is a projection of societal concerns, for a violation of the collective conscience, which is a crime. This central agency comprises of several legal officials with prescribed authority and prerogatives of power to impose sanctions on offending members of the Yoruba society. These legal officials, who are members of the “Ogboni” secret societies jealously guard over the legal norms of Yoruba society to the effect that there was minimal breach of promulgated laws. In fact, no member of the traditional Yoruba society could claim ignorance of the existing sanctions instructed by this legal authority. The reason for no ignorance of the law as excuse for breaching it is not farfetched. The populace is aware of these catalogues of punishment through training of the children at moon-lit, public assembly and announcement made on them by the town crier (Olaoba, 2002:82). According to S. Ojo,

Before the public bell is rung, the head-chief and chiefs of the town must have a previous meeting and pass a resolution on a matter, rule or bye-law, as the case may be, and then order the lead-chief to send his bell ringer out. Anyone who disobeys such bell ringing will, according to the gravity of the offence to be punished. The upshot of the above is that ignorance of the law is never an excuse for breaching it in traditional Yoruba society. It rests on individual volition and freedom to either act in such a way to be legally reprehensible or in a way that will maintain the societal equilibrium of the society.(S. Ojo 1953:32)

This fact brings to fore, the “peace keeping” and “peace making” functions of the Yoruba legal culture. Although the Yoruba in pre-colonial times believed in the sovereignty of their traditional rulers in their respective domains, they also believed that each ‘oba’ (traditional ruler) would ensure that the incidence of any punishment was directly on the offender that is,

as a Yoruba proverb puts it, “*ika tí ó sè ní oba n gé*”, meaning “The finger that offends is that which the king cuts” (Adewoye 1987:77)). The Oba himself is not sacred; there could be a direct demand in the form of political rejection issued to the king. A ruling *Alaafin* could be rejected by his chiefs (the *Oyomesi*) for tyranny, wickedness or as a result of political intrigues or power struggles. This rejection would be communicated to him by the *Bashorun* (Prime Minister) who would present the king with an empty calabash, or one containing parrots eggs, with the pronouncement ‘the gods reject you, the earth rejects you, the people reject you’ (Johnson, 1998). The pronouncement is an intentional infliction of pain or deprivation on the reigning king who would have no option than to die

The widespread acceptance of capital punishment for offences as theft, murder, treachery, and rebellion is very well reported in Yorùbá folklore, particularly ‘Àlò’ (Yorùbá folk tales). Many of the Yorùbá folk tales (i.e. Àlò) are meant to convey moral precepts, to teach societal norms and etiquettes, to comment on life and living, and to portray the structure of society. Of particular relevance for the present discussion is the ‘Àlò Ìjàpá’. These are animal stories, in which ‘ìjàpá’ (the tortoise, believed in folklore to be the most cunning of all animals) is always the focal, often tragic, character. Most of the stories depict possible and actual situations that mirror the society’s experiences of reality and offer occasions for critical reflection on such experiences. Babalola (1973) and Lawuyi (1988) report many of these folktales, which are usually orally given among the Yorùbá. In most of these tales, the ending is the execution, or other severe punishment, of the convicted tragic character, as ordered by the ‘oba’ (i.e. the traditional ruler or king). In the folktales, death by beheading is the usual form of capital punishment.

CONCLUSION

In this work we discovered that the Yoruba as a nation have a system of law that commensurate with punishment for each crime committed by the individual in the society. Yoruba culture as discussed here clearly shows that capital punishment is not alien to the society. Today people all over the world are now condemning and clamoring for the abolition of death penalty because of certain inadequacies inherent in the action which include; death penalty contributes to disrespect for human dignity and life. It contributes to the atmosphere of violence. It is not a deterrent to crime. Empirical studies have shown that it has a very minimal deterrent to other criminals; rather it has tended over the years to harden criminals. More so, mistakes can be and have been made through which innocent persons die, this mistake is not remediable. It precludes the possibility of reform or rehabilitation; the dead person can never be reformed or rehabilitated, it can only be done while he was alive. The death penalty and its delays cause anguish to the family of the victims and to the family of the criminal and also the publicity attendant upon executions lead to animosity and escalate the level of violence.

Yoruba as a nation should not be left alone in the clamoring for abolition of capital punishment. According to Bewaji (1992), “for the Yorùbá, life is valuable in itself”. For the Yorùbá, therefore, human life ought not to be deliberately taken, as is done in death penalty, for any reason whatsoever. In Yorùbá indigenous culture, “injustice to one is injustice to all members of the society” (Bewaji, 1992: 64), as is aptly expressed in the following Yorùbá proverbial saying “*Àrùn tó n se Abóyadé, gbogbo ọlọya ló n se*” (‘whatever is plaguing a member of the community of Oya’s devotees, i.e. devotees of the Yorùbá River Deity is plaguing every member of that community of devotees’); “*Ikú tó n pa ojúbà ẹni, ọwe ló n pa fún ni*” (‘the

death that is consuming one's peers is proverbially warning of one's own impending similar death'); "*Ohun tó bójú, ló bámu*" ('whatever affects the eyes affects the nose'); and "*Eni tí kò ò kú, kò mọ́ ikú tú má a pòun*" ('the living are ignorant of the manner of their death'). That is the reason why we should all strive as much as possible to support the clamoring for the abolition of capital punishment so that the community would not follow the way of the murderer through the use of the punishment of death on its members for offences against the community. And government on its own part should make available everything possible that will make life worth living for the citizens so that the tendency to commit murderous crime we reduce in our society, because we cannot say capital punishment is not justifiable and allow murderer to go scot free.

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