

A Discourse on the Nature of Crime and Punishment in the Administration of Social Justice in an African Culture

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Abstract

Ideally, crime connotes violation of a given statute while punishment is the penalty meted out to a criminal to correct the culprit and deter potential offenders. However, the administration of punishment varies from culture to culture. The variation in culture and value in the context of commensurability of a given punishment to the degree of the offence committed has made the administration of crime and punishment cumbersome. While some cultures recognise the need for punishment to be complemented by forgiveness without undermining the delivery of social justice, others do not. This article evaluates the nature of crime and punishment in the administration of social justice from the perspective of an African culture. The paper adopts the critical and prescriptive methodology. It submits that it is important to take an insightful look at the traditional Yoruba conception of crime and punishment given its embedded spirit of forgiveness which appears to run contrary to the dominant contemporary western values. It concludes that such approach, if carefully considered, has the potential of fostering better social ethics in contemporary society.

Keywords: *Crime, Punishment, Social Justice, Yorùbá Culture*

Introduction

The concept of “crime” is from a Latin word “crimen” meaning “accusation” or “fault”. Crime has no univocal definition, like most concepts in the field of humanities and social sciences. Perhaps, this results from the fact that different societies have diverse conception of crime. Those in favour of this understanding on the notion of

crime such as Akin (2009) and Ndubuisi (2008) to mention just a few have argued that this is inevitable given the variation in cultures and values of diverse peoples of the world. Some scholars and researchers such as Sen (2009), Akin (2009) and Ndubuisi (2008) are of the opinion that a crime is what society says it is by expressly stating that an act is a violation of a criminal law. This implies that it is the law that makes an act criminal. It is noteworthy to say that even the primitive state evolved a method of administering criminal justice which centred on self-retaliation, a phenomenon that is derogatorily described as jungle justice. However, with the emergence of organized societies, the nature of crime and punishment have become more simple and straight forward.

In traditional Yorùbá society, crime could be regarded as *òràn* (translated as *crime*) which indicates a number of nefarious activities including theft, taboos and murder. Onayemi (2006: 86–87) argues that *ẹ̀şẹ̀* (translated as crime, sin or offence) could be cumbersome simply because of variations in people's cultures. For instance, *èèwò* (that is, sacrilege or taboo) when committed is a type of *ẹ̀şẹ̀*, the repercussions of which could be quite weighty. In a nutshell, crime could be seen as any act which contravenes specific laws of a given community, even if committed unknowingly or as a result of carelessness.

Available evidence in the literature has shown that efforts have been made not only to rationalize, but also to harmonize the system of crime and punishment. Hence, the system of crime and punishment seeks to check anti-social behaviour and thereby make the society habitable. In the consideration of what crime is and the requisite punishment that should follow, a lot of thinking has been done to ensure that man, who is usually the ultimate victim, is not endangered. Also, while attempts are made to safeguard the society, there is further caution to ensure that the freedom and liberty of man is not adversely affected. This non-adversary of freedom and liberty of human being among other elements explains why a number of factors are put into consideration in criminalizing an act.

The crux is that in coming up with the concept of punishment that goes with crime, utmost care is taken to ensure that the accused is not only punished if found guilty but also given a commensurate punishment in relation to his or her crime. In addition, there is the

need to ensure that the basic principles of human rights are taken into consideration in meting out punishment to culprits or criminals. This is where the concept of ethics comes into play. In its logic, ethics as a value of philosophy imposes moral responsibility on both the society and its members. It is this that reinforces the authority of the law and its duty to compel obedience to what it decrees. This responsibility presupposes human's rational nature, a quality that should urge humans to do what is right and refrain from evil.

Be that as it may, as rational social beings that must necessarily interact with other members of society, we must guide against any act that may bring about social disequilibrium. Scholars and philosophers such as Plato, Cicero, and John Rawls, to mention but a few, interrogated the concept of social justice with a view to achieving a just and enduring social order.

In his book, *The Republic*, Plato argues that justice can only be attained in the *polis* when each member of the community functions in line with his or her natural endowment without any form of hindrance. In the view of Cicero (2018), "nature sets certain norms which the positive law must live up to as best as it can". This implies that, for Cicero, positive law approximates perfect justice and right. In his famous book, *A Theory of Justice*, John Rawls sees justice as *fairness*. He submits that whatsoever reality seen from human rationality as *fair* in nature, be it political and economic, the concept of justice takes charge of such scenario. This shows that justice as a concept is seen from different angles. The reason being that there is hardly any definition that can exhaust the meaning of *justice*. Importantly, however, the central thrust of justice is to reward people accordingly, what they ought to get and the justification for getting whatever they got, as well as what they could not get within the context of a particular socio-political arrangement.

This essay is organized in five sections. Section one situates the connection between crime and punishment as inseparable phenomena that is streamlined along a given culture and values in the administration of social justice. Section two contextualises the idea of punishment and its challenges in relation to the progress of socio-economic and political realities of contemporary time. Section three offers the relevance of the administration of justice in traditional Yorùbá culture. Section four introduces the fundamental relationship

between criminal justice and forgiveness, drawing insight from communitarian spirit in an African thought system which encourages the act of forgiveness in all situations. Finally, section five is the conclusion which aligns with the consideration of our position on the place of forgiveness in crime and punishment in the administration of social justice, especially as they relate to the Nigerian society in postcolonial Africa.

On the Concept of Punishment

The concept of punishment is as old as mankind. It constitutes one of the essential tools used in regulating social behaviour, as well as maintaining law and order in the society. It is often preceded by an assumed violation of the rights, freedom and the interest of one party by another. The philosophical underpinning of punishment in traditional Yorùbá culture is embedded in its ontological principle of order. For many climes in Africa, this principle is usually determined by the affected community. In essence, in the traditional African communities, punishment is actually designed to avoid going against the laws, culture and traditions of a given community in a bid to protect the well-being of everyone and promote social harmony.

In modern times, Western paradigm of punishment is a major contention among moral and legal philosophers, particularly on its impact in terms of the commensurability of punishment. Many of the scholars' positions differ from one to the other on the issue of how punishment should be administered to erring persons. These brought to the fore some fundamental questions: should punishment of a crime be to punish because of a wrongdoing? Or should it be to deter others from repeating same in the future? Also, is it meant to correct and reform the individual involved or perhaps to compensate the victim(s)? These questions and related others have taken the front burner in Western scholarly theories like the utilitarian, retributive, restitutive and humanitarian approaches in the administration of punishment in the society. For instance, Retributivists and Utilitarians frown against some forms of punishment. According to Retributivists, the justification of punishment is first and foremost anchored on the principle of deterrence. In other words, retributivists prioritize preventive mechanism to dissuade potential persons from committing the said offence. Palmer (1995: 97–98) argued that

Utilitarians are valued-neutral in that they assume that the consequences of punishment imposition are the determinants of its goodness or otherwise. For this reason, the justification of punishment to the Utilitarian is a function of the utility it provides for the greater number of people. The implication is that if punishment could deter as many as possible from perpetrating crime or if it could reform a good number of culprits and make them turn new leaves, then punishment is justifiable.

In contemporary times, different organizations such as hospitals, schools, and the military, to mention just a few, have deemed it fit to set up internal mechanisms that ensure discipline to ensure decorum and professionalism among its employees. This way, punishment can be morally wrong or unjustifiable, particularly when anyone appears detached from the process of investigation of allegation made against him/her. Such is bound to lead to some sort of problem because when there is miscarriage of justice or when punishment imposed is not commensurate to the offence committed, justice is evidently not served and would not be seen to have been served in the perception of the concerned parties.

Oruka (1975: 87–89) argues that punishment is undesirable in human community and therefore should be abolished. To him, punishment is man's inhumanity to fellow man as well as evil personified. He posits that evil cannot be used to correct evil otherwise it would become a case of two wrongs that cannot make a right. Oruka appeals for a sympathetic disposition towards the offender rather than opting to inflict burden on him or her. He submits that the offender deserves pity rather than punishment. It appears that Oruka's position is an extension of Socrates' affirmation that "evils are done out of ignorance". Oruka reiterates that some force or forces that are beyond the control of the offender are likely to be responsible. The foregoing analysis can be likened to the popular saying that: "it is better for the law to set one thousand (1000) people free than to punish or convict one innocent unlawfully" (cf. Oyebode, 2012). This ethico-metaphysical position is contrary to the viewpoints of those who subscribe to the justification of punishment.

Social Justice in Traditional African Culture: the Yoruba Example

The justification of proportionate punishment to be meted out to an offender is what actually informs the sense of social justice. The concept of social justice simply means the fair and equitable distribution of power, resources, and obligations in society to all people regardless of race or ethnicity, age, gender, ability status, sexual orientation, and religious or spiritual background (Moses, 2011). Fundamental principles underlying this definition include values of inclusion, collaboration, cooperation, equal access and equal opportunities. Such values are also the foundation of a democratic and egalitarian society. It requires that a person should enjoy/suffer in proportion to his or her right-/wrong-doings. The prism of social justice already brings to mind some fundamental questions such as: what then is the appropriate paradigm to be used in the determination of punishment? Is it the silver rule of an eye for an eye? Can rape serve as punishment for a rapist? Is imprisonment enough punishment for rape or pederasty or is castration of the offender more than enough punishment? Are few months of incarceration adequate punishment for the embezzlers of public fund? Lastly, is life imprisonment justified for the theft of a priest's cell phone? These and many other questions that border on the commensurability of punishment to offence have effect on the establishment and sustenance of enduring social order.

Available evidence in the literature on the topic of justice has shown that social justice in traditional African systems is intricately connected with morality, religion, and culture. Okoro (2010: 141–143) raises some fundamental points that in traditional African communities, morality, religion and culture are indispensable in the administration of social justice. They all combine to define the law of the traditional African society.

In essence, the collective interests of the community in traditional African society is sacred. It is in this direction that all members of the community are duty bound to nurture, protect and preserve the community's interest, which may include the protection of some animals, designated places, as well as rights of individuals. Infringement on any of the catalogue of collective interests is frowned at. In this manner, the interests of the individuals and the

community are intertwined. Therefore, the individuals' existence is tied to the apron spring of the community, to the extent that, as individuals' think of the self, consciously or unconsciously he/she equally thinks of the community. The continuous existence of the community is predicated on the well-being of the individual members. Oduwole (2011: 1125) corroborates this when she submits that "I am because we are, because we are, therefore I am". This submission re-affirms the communitarian nature of traditional African cultures. Apparently, in the traditional African system, the concept of social justice is centered on the existence and co-existence of individuals, community and the primordial deities with all jointly having unhindered access to freedom, rights and so forth.

Again, the administration of social justice in traditional African society was through unbiased adjudicatory mechanism that protects and promotes human rights and needs of both individuals and the society on the one hand and those of the deities/gods on the other hand. This is unlike the Western world where laws are designed to enforce behaviour that promote and protect the interests, dignity and rights of individual members from being trampled upon by another in order to avert decay and the retrogression of the society into the fabled Hobbesian state of nature.

Onadeko (2008: 15–16) raises another fundamental point that is contrary to what obtains in the Western paradigm. In traditional Africa, there was no need to prescribe formal laws as deterrents against a social behaviour, because everybody implicitly accepted that any departure from the approved norm would be punished. It implies that approved behaviours or codes of conduct were unwritten, rather, the juristic thoughts are discerned through religion, traditions, custom, taboos and proverbs, all of which constitute the moral values of the people that were consciously passed from one generation to another. These were to ensure no transgression is predicated on the absence of a clearly stated rule by any offender. This nexus between law and morality in traditional Africa was to be corroborated by the legal optimists or naturalists, who argue in favour of a connection between law and morality.

In compliance with socio-ethics, sanctions are imposed on transgressors. In Western societies, such sanctions are designed to prevent the law from being a toothless bulldog. The sanction could be

capital or corporal punishment depending on the magnitude of the offence committed. This pattern of punishment mirrors the traditional Yorùbá cultural sayings: “*tí a bá ní kí á wo dúndùn ifọ̀n, a ó họ ara dé eegun*” (a reaction that is commensurate to the pain of the bite of the bedbug will produce a disastrous effect). In traditional African society, an offence is seen as an act that violates the rights of individuals, the interest of the community and the gods. The list includes, but not limited to, desecrating a sacred place, unmasking of masquerade, eating of totem animals, eating food sacrificed to deities, altering of land boundaries, murder, incest, lying, homicide, arson, and theft, among others.

In traditional Yorùbá culture, there is room for repentance, rehabilitation, and acceptance into the communal fold once the required justice has been served (Adesina & Akaayar, 2018: 54). Punishment ranging from fines, banishment, and flogging are institutionalized. Punishment is the intentional infliction of harm or imposition of burden on an individual or group of individuals by another individual or body of individuals that has constituted authority. Balogun (2009:52) buttresses this when he opines that when a culprit is punished, such is done with the view to finetune the character of the offender in line with the communalistic ethos of the Yorùbá culture Thus, punishment within such social set-up is a machinery for: maintaining or reducing crime to the barest minimum in the society; protecting lives and properties; ensuring social order; and enhancing the sanctity of human dignity.

Imposition of punishment on the offender starts from the family level, through the ward or quarter and to the community level, depending on the nature of the offence committed and the traditional institution that has the jurisdiction to adjudicate on such matter. For instance, offence that has to do with death can only be handled at the community level, and not at the family level. The gradation of the institutions charged with social justice dispensation is similar to that of the Western society but the objectives of such institutions differ. One of the objectives that defined social justice administration in traditional African society is the need to reconcile the conflicting parties, heal the wound occasioned by the disagreement, and not necessarily to decide who is right or wrong, neither is it meant to apportion blame. It is against this background that one tends to

appreciate the time, the involvement of relevant stakeholders in a dispute, the unhindered freedom of expression, and the thoroughness that pervade the social justice dispensation space of traditional Africans.

Specifically, among the Yorùbá, like other African societies, proverbs, folklore, and taboos encapsulate moral precepts, societal norm and etiquette that are expected to regulate social interaction for peaceful co-existence. In addition to the foregoing is the *Ifá*¹ literary corpus. *Ifá* divination and the lessons therein provide a guide for human conduct in Yorùbá society. The corpus contains the fundamental religious and moral ideas of the Yorùbá, their literary and philosophical systems. According to Abimbola (1976: 31–32), *Ifá* is believed to store a compendium of information on Yorùbá world-view. In the dispensation of justice, therefore, *Ifá* divination could be used to discern the fact of a matter that is not patently obvious to the humans. Moses (2011: 413–415) reiterates that *Olódùmarè*, the *Supreme Being*, the trusted ideal judge of the people, could make pronouncements that would lead to the resolution of conflicts.

Indeed, there are cases that do not require divine intervention, their resolution is believed to be done or carried out by the people themselves. In this regard, the head of the family has the duty to settle disputes at the nuclear family setting. He is expected to hear out every side to a case before making any pronouncement. Even at that, the pronouncement should tend towards reconciliation rather than the determination of who was right or wrong. At the level

¹Abimbola (1976: 31–32) affirms on Yorùbá belief that *Ifá* (otherwise known as Orunmila) was one of the four hundred divinities who came from *orun* (heaven) to *aye* (earth). He argues that Olodumare (the Supreme Being) had charged each one of the divinities with particular function to be performed on earth. Recent studies in this area has shown that this version of *Ifá* is anthropological (cf. Shotunde, 2018: 68–71) as the conception of *Ifá* is twofold: anthropological and philosophical. The anthropological is needed to advance the arguments for the seat of the structure of the nature of human mind in *Ifá* while the philosophical is to show that the structure of mind itself is inspired by the nature of spirit (known as mind) in the immediate environment. Hence, *Ifá* divination simply means the common practice in the traditional Yorùbá system that relies on the complex system of signs compiled in a literary corpus that are interpreted by diviners to guide important personal or collective decisions. The literary corpus is a treasury of knowledge on Yorùbá history, philosophy, medicine, and mythology. For more information, cf. <https://ich.unesco.org/en/RL/ifa-divination-system-00146>.

of the compound or extended family, the *Olóri Ebí* (head of the family) has the responsibility of presiding. He is assisted by other elders in the extended family. However, this does not preclude the intervention of other elders in the community. That is why the Yoruba often says “*àgbà kì í wà lójà kí orí ọmọ tuntun wọ*” (where there are good elders, orderliness prevails).

On more serious cases such as murder, unmasking the masquerade, desecration of a sacred place, etc., it is the *Ìjókòó Àgbà* (Council of Elders) of the community that adjudicates. To ensure that there is no miscarriage of justice, issues are thoroughly investigated and disputants are thoroughly cross-examined. In situations where there is need for oath taking to unravel the mystery surrounding some particular conflicts, oath is administered. It is only the timely confession of the guilty that can ameliorate the deserved punishment.

The Relationship between Social Justice and Forgiveness

The administration of social justice and forgiveness among the Yorùbá people are fundamentally connected and directed towards social order, and not legal justice. The enhancement of cordial relationship is more paramount in the justice system of the Yorùbá culture. The interest of the community is uppermost in the judicial administration. Hence, forgiveness plays a vital role to ensure social harmony. Forgiveness is the conscious and voluntary reversal of negative feelings, either that of vengeance or resentment towards a person or group who has hitherto harmed you. To ensure peaceful co-existence, the Yorùbá culture frowns at an attitude of obduracy as everyone, including the gods, goes for appeasement. In the case of the gods, forgiveness is usually solicited through *Ebọ* (sacrifice) to appease the gods whenever they are wronged. Individuals and the community also explore the opportunity offered by the spirit of forgiveness as expressed in the saying that, “*Ọmọ àlè ló ń rí inú tí kò ní bí, ọmọ àlè là ń bè tí kí í gbà*” (it is not out of place to be aggrieved however, it is only a bastard that does not respond positively to appeasement”).

Therefore, the issue of forgiveness in the process of making peace towards social justice is paramount in Yorùbá world-view. Importantly, the opportunity provided by forgiveness does not encourage the violation of the laws of the land. Folklores common

among the Yorùbá teaches the need to forgive even when one imposes punishment. For instance, an elderly person told a story about one man “Aláfowórá” (pilferer) who was caught in a particular community and the punishment tied to the offence was for him to walk naked within and outside the community. This psychological punishment was meant to expose him to ridicule among women. In the morning, those who heard about the story and saw the man naked condemned him for stealing and made all sorts of smear remarks.

In the above story, it is appropriate to establish that the Yorùbá culture does not wholly depend on punishment to maintain or sustain social justice. While it is generally believed that an offender should not go scot-free, particularly when the offence was deliberately committed, provisions for forgiveness is readily available. Oluwole (2014: 47–48) argues that people will always forgive a wrong doer who apologizes since this is a confession of ignorance, and the communitarian spirit in African culture encourages forgiveness in all situations. This reality of forgiveness also accounts for why social justice in traditional Africa was directed towards reconciliation. Thus, the demonstration of forgiveness is not restricted to the terrestrial world, but the celestial world also complement punishment with forgiveness in order to engender peaceful social co-existence.

Conclusion

In this paper, I have demonstrated the significance of crime and punishment in the administration of social justice through the lens of Yorùbá culture, with a special focus on the centrality of forgiveness within the system. It is imperative to underscore the fact that the Yorùbá social justice system involves holding individual, group of individuals or institutions accountable for their behaviour. Such deterrence includes the imposition of psychological punishment for wrongs committed. The study shows that contemporary society has not fared better in maintaining enduring social order given its passionate drive for punishment in the administration of criminal justice. It is in this regard that I showed the relevance of forgiveness in the administration of justice in a way that is capable of facilitating social peace and development in the process of criminal justice in the society. Therefore, efforts need to be directed towards injecting some of the traditional African approaches to solving issues of crime in contemporary society justice systems. The reason being that contemporary society is saddled

with heinous acts such as terrorism, violent conflicts, unreserved agitation for justice by parties in disputes, as well as excessive claims to right without corresponding attention to duties owed others in the society.

Given the reality of the twenty-first century complexity with its attendant nefarious activities around the globe which continue to push humanity to the dangerous brink of total anarchy, strict adherence to the principles of justice, particularly through the imposition of punishment without consideration for forgiveness, cannot guarantee social peace. Terrorism and different phases of insurgencies being witnessed in many parts of Africa today result from the belief that rights of individuals or group of individuals' have been infringed upon. Therefore, the killing of the innocent is seen as a veritable means of imposing punishment on the embattled states. In the same manner, the states need not insist on the principle of an-eye-for-an-eye, which is capable of leading to a total break-down of societal peace, if such insurgents lay down their arms. It is therefore not out of place to conclude that social justice which is capable of facilitating peaceful co-existence in contemporary society is that which complements punishment with forgiveness, as demonstrated in traditional Yorùbá culture.

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