

Punishment and Forgiveness in the Administration of Justice in Traditional African Thought: The Yoruba Example

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Abstract

The institution of punishment is familiar to human society as a mechanism for the promotion and sustenance of social peace. However, the necessity for the imposition of pain on an offender for crime committed has been a controversial moral issue in contemporary times. The argument of most of the antagonists of punishment focused mainly on the unlikely commensurability of punishment with the quantum of offence committed. Few, if any of these arguments recognize the need for punishment to be complemented by forgiveness without undermining justice delivery in society. This paper therefore examines the Yoruba socio-ethics' perspective on punishment and forgiveness as exemplified in folklores, folktales and Ifa literary corpus in the bid to ensuring an enduring social order. The paper employs the critical and prescriptive methods of philosophy. It argues that the rationale for punishment provides justification for its application without undermining humanistic ethics of the people. The prescriptive method is employed to argue that when the spirit of forgiveness as against vengeance complements punishment as obtainable in Yoruba socio ethics, it would be relevant when applied to social and political problems confronting contemporary society.

Keywords: Punishment, Forgiveness, Justice, Socio- order and Ifa literary corpus

Introduction

Issue and discussion of justice is universal. Justice is discussed, defined and demanded for in different cultures in varied ways. The quest for justice has been at the centre of interpersonal, intergroup and international discourses for ages.

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One striking issue about the notion of justice is that it is assumed to be a common concept known and sort by everyone in human society, either in the past, now or in the future.

This is aptly captured by Amartya Sen, when he writes that justice is an immensely important idea that has moved people in the past and will continue to move them in the future. (Amartya Sen 2009 :401) This importance propels the quest for global justice or cosmopolitan justice (an idea of justice that would transcend all cultures of the world) especially, when globalization makes the action of people to have trans-border effects on others now and in the future.

As social being, humans necessarily interact and, harmonious interaction requires fair treatment by other members of society. To, therefore, guide against social disequilibrium, philosophers, theologians, lawyers, conflict analysts, as well as peace scholars have continued to interrogate the concept with a view of achieving a just and enduring social-order in society. Plato in *The Republic*, for instance, argued that justice can only be attained in the polis when each member of the community functions in line with his or her natural endowment unhindered. David Hume sees self-centredness and scarcity of resources as the basis of injustice in society. According to him, if humans were constructed in such a manner that they can always have equal concern for everyone and that the desires of men could be met like the biblical manna, there will not be need for distributive justice. (Samuel Freeman 2009:42). Corroborating this position, Norman Barry (1981:118) argues that an inseparably link exist between scarce resources and the question of justice. According to him, in situations of abundance, the question of who should get what and why would not arise. Mary Wollstonecraft sees gender inequality that promotes masculinity as injustice. John Rawls in his famous book, *A Theory of Justice* sees justice as fairness.

The central thrust of justice, therefore, is how people are treated, 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. (D D. Raphael 1970 :161) This implies that justice is holding individual, group of individuals or institutions accountable/ responsible for their behavior either rewarding them for good done or punishing them for wrongs committed. Appropriately put, the question of justice centers on ideal social order which can facilitate human flourishing.

It is concern with our attitudinal disposition, especially towards others in ensuring social peace. (Kai Nielsen 1996:81)

When there is a disequilibrium between individual or group's due or demand and, what it actually got there is tendency for resentment, conflict and its degeneration into violence.

In other words, the presence of justice facilitates peaceful and harmonious relation in society because it addresses the rights, needs, deserts and equality of all persons while injustice breeds chaos and disharmony. It is this understanding that informs, Louis Pojman (1997: 550-8) position that, justice is the commitment to give every man his due. By this, Pojman means unhindered promotion and protection of others' freedom, rights, as well as interests. How precisely the traditional Africans, specifically the Yoruba of south western Nigeria were able to ensure social justice and social order is relevant to contemporary society.

Justice in Traditional African Society

Although the discourse concerns justice in traditional Africa, suffice it to say that Africa is an heterogeneous society. This heterogeneity notwithstanding, there are some specifics (elements) that permeate the multiplicity of cultures among the people. Justice is one of those specifics. Justice in traditional Africa is intricately connected with morality, religion and culture, all of which combined to defined the law of the traditional African society. In other words, judicial administration in traditional Africa has religion, morals and ways of life all mystically intertwined. Proper appreciation of this would require recourse to the traditional world-view of the traditional Africans.

Traditional Africa has a teleological conception about the evolution of the world, this is at variance with the mechanistic conception prevalent in some cultures. The world was designed by a Supreme being contrary to the opinion of some scholars that, it evolves by chance. Traditional Africans subscribed heavily and reverence greatly this evolution story of the universe, as well as the designer. The universe is consequently perceived by the Africans as one universe with two levels viz; the visible and the invisible levels. The invisible level is the supersensible world; the domain of the Supreme being, the ancestors, divinities and other spirits (Magesa, L 1997 :1-59) but whose interests and sphere of influence extend to the visible world.

The visible level is the physical world of appearances, it is co-habited by humans (Kings, Priests and People) and other animate and inanimate objects. The two worlds are closely knitted together.

Thus, offence committed in the terrestrial world has negative effects also on the ethereal world, and is consequently frowned at by the ancestors, the gods and the Supreme-being whose interest is to ensure social peace in the world. The punishment for offence that impinges on the interest of the inhabitants of the invisible world was often decreed through divination.

In the course of interpersonal relation in the visible world, conflict of interests could occur between the inhabitants of this world, as well as between individuals and the community.

In traditional African society, the interest of the community is sacred; all members of the community had a duty to nurture, protect and preserve the community's interests, which may include the protection of some animals, some designated places, as well as the rights of the individuals. Encroachment on any of the catalogue of interests is frowned at as a case of abuse or injustice. In other words, the individuals and the community are intertwined. The individuals' existence is tied to the apron string of the community, so much so that, as individuals think of the self, s/he consciously or unconsciously thinks of the community. By much the same token, the continuous existence of the community was also predicated on the well-being of the individual members. In the words of John Mbiti (1969: 120), "I am because we are, because we are therefore, I am" expresses the communitarian nature of the traditional Africans. Justice, therefore, to the traditional Africans centred on the existence and the co-existence of individuals, community and the primordial deities, each and jointly having unhindered access to freedom, rights and deserts.

The administration of justice in traditional African society was through unbiased adjudicatory mechanism that protects and promotes human rights and needs of both individuals and society on the one hand, and those of the gods on the other hand. Unlike in western society where laws are designed to enforce behaviours that promote and protect the interests, dignity and rights of members from encroachment by other individual members within or without, so as to remove perversion, decay and the retrogression of the society into the fabled Hobbesian state of nature. In the case of traditional Africa, "there was no need to prescribe formal laws as deterrents against a social behavior, because everybody accepted implicitly that any departure from the approved behaviour was punishable." Tunde Onadoko (2008:16).

The approved behaviors or the 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, and are consciously passed from one generation to another 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 argued in favour of a connection between law and morality.

To ensure strict compliance with the socio ethics, therefore, sanctions are imposed on transgressors. An African proverb says, when a lion cannot act mightily, it could as well be referred to as a cat. These sanctions prevent the law from being a *toothless bulldog*. The sanctions could be capital or corporal punishment depending on the magnitude of the offence committed. An offence in traditional African society however, is an act that violates the rights of individuals, interest of the community, or offends the gods. The list includes: desecrating a sacred place, unmasking of masquerade, eating of totem animals, eating food sacrificed to the divinities, altering of land boundaries, murder, incest, lying, homicide, arson, theft, and killing etc. Punishment ranges from fines, banishment, and flogging. Punishment, therefore, 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.

The imposition of punishment on an 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 not at the family level. The gradation of the institutions charged with justice dispensation is similar to that of the west but the objective of such institutions differs. Specifically, one of the objectives that defined 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 and to apportion blame. It is against this backdrop that one can appreciate the time, the involvement of relevant stakeholders in a dispute, the unhindered freedom of expression and the thoroughness that pervades the justice dispensation space of the traditional Africans.

In the bid to ensure justice, appropriate punishment are imposed on offenders, however, genuine reconciliation that fosters social justice is often complemented with forgiveness so as to facilitate social peace. In other words, it is the combination of punishment and forgiveness that enhanced peaceful social co-existence in traditional Africa.

The Philosophical Problems of Punishment

Punishment in society is as old as social interactions, it is a mechanism deliberately designed to forestall the degeneration of conflicts. It is often preceded by an assumed violation of the rights, freedom or interests of one party by another.

Organizations or establishments such as schools, military formation, associations and unions have internal mechanism that ensures discipline in the form of punishment in order to facilitate the smooth running of such organization. In this sense, punishment can be morally wrong or unjustifiable, especially when thorough investigation has not been made with respect to an allegation, when there is miscarriage of justice or when punishment imposed does not commensurate with offence committed. Consequently, the roles of the institution of punishment in the attainment of just society have attracted debates in contemporary society. Some scholars have argued that punishment is undesirable and should be abolished. The Humanitarian theorists represented by Odera Oruka for instance, argued that punishment is inhuman and an evil personified. Evil, according to Oruka cannot be used to correct another evil; a case of two wrongs that cannot make a right. Odera appeals to a sympathetic disposition towards an offender rather than inflict burden on him or her. The offender deserves pity rather than punishment. Perhaps, Odera's position is an extension or a regurgitation of Socrates' position that, no one does evil willingly. Some force or forces that are beyond the control of the offender are likely to be responsible, Odera reasoned. Consequently, he (Odera) argues for the "treatment" of an offender as an antidote to crime (Odera Oruka 1975:89) This position is contrary to the viewpoints of those who subscribe to the justification of punishment. Two notable schools of thought opined that punishment is desirable but they differ on the conditions of its desirability.

Utilitarians and Retributivists have diametrically opposed views on punishment. Punishment to the Utilitarians is value-neutral, the consequences of its imposition are the determinants of its goodness or otherwise, (Michael Palmer 1995:98), its justification is a function of the utility it provides for the greater number of people; 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 over new leaves, then punishment is justifiable. Utilitarians, therefore, consider the morality of punishment in relation to the impact it has on the greater number of people in society, this suggests that the morality of punishment could only be evaluated on the basis of its relations to some particular end, if it could deter more members of society from perpetuating evil thereby enhancing peaceful co-existence then it is morally justified.

To the Retributivists, the justification of punishment is anchored on the principle of deterrence. Punishment construed in this sense has a two-pronged fork.

First, as a social instrument to deter the punished from committing the same offence (in the future) for which s/ he is being punished for. Second, as a preventive mechanism to dissuade others from committing the same offence. It is cognitively appropriate to conclude that, the Retributivism considered the past as well as the crime and anchored the justification of punishment as the appropriate response to wrongful action. In the opinion of Immanuel Kant, as well as Phillip Bean (1999:81), punishment meted out to an offender is justified because it is a response to the wrongful action done. In other words, it is sanction occasioned by one's action. It is a due deserved. Bradley, F H (1973: 26-27) argues that we pay penalty because we owe it.

The moral problems associated with the institution of punishment in ensuring compliance with the laid down social ethics of any group of people include the nature, the degree as well as the justification of punishment to be meted out to an offender in the quest for justice. Justice requires, among other things, that a person should suffer in proportion to his or her moral wrong doing. 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? Is a few months of incarceration adequate punishment for the embezzlers of public funds? Is life imprisonment justified for the theft of a Governor's cell phone?

These and many other questions that borders on the commensurability of punishment with offence has effect in the establishment and sustenance of enduring social order. It is against this backdrop of questions on the commensurability of punishment with offence that Immanuel Kant warned that, "a greater or lesser punishment would treat the criminal as a mere means in pursuit of social purposes, whether protective or philanthropic." Arthur Ripstein (2009 :176) and to do so is to undermine the dignity of the punished and that would be tantamount to a miscarriage of justice. Justice requires that punishment commensurate with offence. Justice in traditional Africa, especially among the Yoruba has answers to these and other questions.

Justice in Yoruba

The Yoruba occupies mainly the South western part of Nigeria in west Africa but, the culture of the people spread beyond to other areas of Nigeria and the Republic of Benin, Togo, Sierra Leone, Gambia, Cuba, South America, the Caribbean, Brazil, Trinidad and Tobago to mention these few.

Among the Yoruba, like other African societies proverbs, folklore, taboos encapsulate moral precepts, societal norms and etiquette that are expected to regulate social interaction for peaceful co-existence. In addition is the Ifa literary corpus. Ifa divination and the stories therein, also provides a guide for human conduct in Yoruba Society. The corpus contains the fundamental religious and moral ideas of the Yoruba, their literary and philosophical systems. (Wande Abimbola 1975:32). Ifa is believed to "store a compendium of information on Yoruba world-view." Olatunde Olatunji (2005:115) It contains sixteen chapters, 256 verses, known as Odu-Ifa. These are knowable through a system reminiscent of deductive logic and mathematical calculus. The moral instructions contained in Ifa is encompassing, it addressed issues that has effects on social interaction and social justice. For instance, the oracles of Odu Ogunda Bede, Odu Ogbe Ale, Odu Aji-Oghe, Odu Ona ara-meji warned against lying, deception, stealing, promise- breaking and other conducts capable of disrupting the social equilibrium. In the dispensation of justice, therefore, Ifa divination could be use to discern the fact of a matter that is not patently obvious to the human beings in some dispute. Moses Oke (2011:415). In other words, Olodumare, the Supreme being, the trusted ideal judge of the people could make pronouncement that would lead to the resolution of conflicts.

In some other cases that may not require “divine Intervention”, their resolution, it is believed have to be done by the people themselves. In this sense, at the nuclear family setting, the head of the family has the duty to settle disputes. He is expected to hear every side to a case before making any pronouncement. Even at that the pronouncement tends toward reconciliation rather than the determination of who was right or wrong. At the level of the compound or extended family, the oldest man (Olori Ebi), has the responsibility of presiding, he is assisted by other adults in the extended family. This however does not preclude the intervention of other adults in the community, if conflict arises between children, wives or youth hence, it is often said *agba ki wa loja ki ori omo tuntun wo* (where there are good elders orderliness prevails)

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

Justice and Forgiveness

Justice administration among the Yoruba is however, directed towards social justice not legal justice. The enhancement of cordial relationship is more paramount in the justice system. 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. In a bid to ensure peaceful co-existence, the Yoruba frowns at an attitude of obduracy; everyone including the gods is vulnerable to appeasement. In the case of the gods, forgiveness is usually solicited through (ebo) or sacrifice to appease the gods whenever the gods are wronged. Individuals and the community also explore the opportunity offered by the spirit of forgiveness in Yoruba society by formally apologizing for their wrong doings. The socio-ethics of the people provided for forgiveness as expressed in the saying that, *Omo ale lari inu ti koni bi, omo ale lanbe ti ki gba* (It is not out of place to be aggrieved however, it is only a bastard that does not respond positively to appeal)

The need to forgive even when one seeks justice has limited the weight of law in Yoruba society. Interestingly, the opportunity provided by forgiveness does not encourage the violation of the laws of the land. Folklores common among the Yoruba teaches the need to forgive even when one imposes punishment. The popular tale of the tortoise captures this

The ubiquitous tortoise stole from his father-in-law's farm. He was caught and as punishment tied to the stump of a tree on the footpath leading to the market. This was meant to expose him to ridicule of market women. In the morning those who heard the story and saw the tortoise tied to the stake condemned him for stealing and made all sorts of smear remarks. The father-in-law felt good and was not in a hurry to release him. At the end of the market session, when the traders were returning home, they still met the tortoise tied down. This was considered to be wickedness on the part of the father-in-law. Consideration changed as they sympathized with the tortoise and condemned the father-in-law for his high-handedness. They argued that though stealing from any farm was a terrible thing to do, the father-in-law should have considered that what the tortoise stole from his farm was probably meant to feed the farmer's daughter and grandchildren. (Akin Alao (2009: 18)

This is why a Yoruba proverb says; *Bi a ba niki a be igi nigbo, a o be eniyan mo.*

(If you should demand for the full swing of the sword of justice, it would wreck unimaginable damage.)

Ti a ba ni ki a da ina ejo bi o ti gun to, a o sun ile (You don't make fire so as to commesurate with the length of a snake, if not it would wreck unimaginable damage.)

Ti a ba ni ki a wo dundun ifon, a o ho ara de eegun (A reaction that commensurate to the bite of the bedbug would produce a disastrous effect)

In the discussion above, it is cognitively appropriate to establish that the Yoruba 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, especially when the offence is deliberately committed provision for forgiveness is available.

People will always forgive a wrong doer who apologizes since this is a confession of ignorance (Sophie Oluwole 2014: 47) and the communitarian spirit in Africans encourages forgiveness in all situations, this also accounts for why social justice in traditional Africa was directed towards reconciliation. The determination to pay evil with evil prolongs social strife... and undermines the possibility of reconciliation. (Sophie Oluwole 2014: 48) This demonstration of forgiveness is not restricted to the terrestrial world, the celestial world also complements punishment with forgiveness in order to have a peaceful social co-existence.

Conclusion

The paper observed that justice involves holding individual, group of individuals or institutions accountable/ responsible for their behavior, this responsibility includes the imposition of punishment for wrongs committed. It also noted that contemporary society has not fare better in terms of maintaining an enduring socio-order because of the pursuit of punishment related justice. A recourse was therefore made to the traditional African society specifically, the Yoruba world view where punishment and forgiveness facilitates social peace and justice. It is however evident that colonialism, neo-colonialism, globalization and their attendant influences especially in the area of culture, have tainted much of the traditional practices of the Yoruba but, up till date the Ifa oracular divination, Oath-taking, proverbs and folklore still continue to enjoy some patronage. However, efforts need to be directed to re- enact some of these traditional practices in contemporary justice dispensation and the quest for enduring social order. Contemporary society is overwhelmed by heinous acts such as terrorism, violent conflicts, unreserved agitation for justice by parties in dispute and excessive claims to right without a corresponding attention to the duties we owe others in the society.

All of these continually put the 21st century human society in at the verge of precipice. Strict adherence to the principles of justice especially through the imposition of punishment without consideration for forgiveness cannot guarantee social peace. The terrorists in Mali, Kenya, Nigeria, Algeria, Cameroon etc believe rightly or otherwise that their rights or deserts has been encroached upon. Consequently, the killing of the innocent ones is seen as a veritable means of imposing punishment on the embattled states. In the same vein, the states need not insists on the imposition of the full swing of the law on the terrorists, if they lay down their arms.

The social justice that can facilitate peaceful co-existence in contemporary society is that which complements punishment with forgiveness as demonstrated by the Yoruba.

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