

IGBO JURISPRUDENCE: A DISCOURSE ON THE NATURE OF PUNISHMENT IN TRADITIONAL AFRICAN SOCIETY

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1. Introduction

Punishment under law is basically a technique of social control, and every society has its own means of controlling the social behavior of its citizens in order to attain its desired goals. A philosophical look at this legal exercise is called jurisprudence and this is a study of Igbo jurisprudential look at the theory of punishment. The importance of the legal framework in any society cannot be overemphasized. The law thus, provides, among other things, the penal technique by which those found guilty of offences abhorred by the society are punished. The traditional African society has its body of customary laws, a rich penal system that governs the affairs of its people. Though largely unwritten, prior to the advent of the colonialists, this legal system integrated and fostered the unity of various African societies and ensuring their development.

We shall in this paper, critically assess the notion of punishment as it relates to traditional Africa with particular reference to Igbo society of Nigeria. In doing this, we shall consider what punishment is; why punishment is upheld in the society; who the Igbos are; the traditional Igbo society; and punishment in traditional Igbo society. Finally, we shall critically analyze the notion of punishment as it regards traditional Igbo society.

2. Punishment

Punishment is the authoritative imposition of something negative or unpleasant deemed wrong by an individual or group (Kleining, 259). It can also be defined as the penalty for wrongdoing. Furthermore, it can be defined as the authorized imposition of deprivations of freedom or privacy or other goods to which the person

otherwise has been found guilty of some criminal violation, typically (though not invariably) involving harm to the innocent (Currie, 44). Hobbes views it by reference to imposing pain rather than to deprivations.

From the various definitions given, some points are essential when dealing with the notion of punishment. First, punishment is an authorized act, not an accidental or incidental harm. It is an act of the political authority having jurisdiction over the community, area, state or nation where the wrong occurred or the crime committed. Second, punishment is constituted by imposing some burden or by some form of deprivation or by withdrawing some benefit. Third, punishment is a human institution, not a natural event outside or beyond human acts or intentions. Fourth, punishment is imposed on persons who are believed to have acted wrongly. Fifth, there's no particular or single aim or purpose. The practice, as Nietzsche first observed, is consistent with several purposes or functions. In other words, it is inconsistent with having no purposes or functions whatever.

Punishments are applied for various purposes, most generally, to encourage and enforce proper behavior as defined by society or family. Criminals are judicially punished by fines, corporal punishment or custodial sentences such as prison; detainees can further be punished for breach of internal rules. Children, pupils, students, apprentices and other trainees may be punished by their educators or instructors (usually parents, guardians, teachers, tutors and coaches). Servants are also punished by their masters. Employees are also punished by fine or detention. In organizations such as military and police forces, as well as churches, rigid internal discipline is maintained in the form of punishment. They also have a judicial system of their own in the form of court marshal, canonical courts, and disciplinary panels.

Punishments are carried out for various reasons. In other words, many possible reasons are given to justify or explain why someone ought to be punished. First, "rehabilitation", to rehabilitate or reform the wrongdoer so that they will not commit the offence again is one of the reasons given to justify punishment. The goal is to change the offender's attitude to what he or she has done, and make him come to see that his behavior was wrong. Second, "deterrence" or "prevention", deterrence as a justification for punishment is intended to prevent a re-offence by the offender by imposing a punishment that he or she wouldn't want to experience again. The aim is also to deter others in the community from

committing the same or a similar offence. Third, “restoration”, punishment, for minor offences, may take the form of the offender righting the wrong. In more serious cases, punishment in the form of fines and compensation payment may be considered a sort of restoration. Fourth, “retribution”, this is the practice of “getting even with a wrongdoer. Here, the suffering of the wrongdoer is seen as good in itself, even if it has no other benefits. Retribution sets an important standard on punishment – the offender must get what he deserves, but no more. A murderer thus, put to death is retribution; a thief put to death is not.

Another justification of punishment is “education”, punishment can be explained by positive prevention theory to use criminal justice system to teach people what are the social norms for what is correct and acts as reinforcement. It teaches people to obey the law and eliminates the free-rider principle of people not obeying the law and getting away with it. This is very evident in German criminal law.

Finally, “denunciation” or “condemnation” is another justification for punishment. Punishment can serve as a means for society to publicly express condemnation of a crime. Punishment in this way helps to give society a sense of moral uprightness, tending to confirm its moral right to have a justice system that exerts punishment on those who do not conform to society's norms.

3. The Igbos

The Igbos form one of the three largest ethnic groups in Nigeria. They belong to the Negro race in Africa and speak a language that belongs to the Kwa group of languages found in West and Central Africa (Nwala, 15). In terms of geographical location, the Igbos are occupying the Southern Nigeria between latitude 5 to 7 degrees North and longitude 6 to 8 degrees East (Uchendu, 14). They are bound in the North by the Igala and the Tiv people, in the East by the Ekoi, in the South by the Annang, the Ijaw and the Ogoni people, and in the West by the Bini and Isoko people.

The Igbos occupy mainly Eastern part of Nigeria. They are found in high concentration in Abia, Anambra, Imo, Ebonyi, and Enugu states of Nigeria. There are also large Igbo populations in Delta and Rivers states. The Igbos are a very immigrant race. They are in large numbers resident in Northern Nigeria and in old Ogoja, Calabar, Benin and Lagos. There are also large populations of the Igbos in Europe and

America. As a result of cultural diffusion experienced at home due to colonial incursion and neocolonialism and by the Diaspora much influenced by western culture, much of the traditional practices of the Igbos have undergone serious modifications. This obviously owes to Igbos receptivity and amenability to change (Ottenberg, 103).

4. Traditional Igbo Society

Traditional Igbo political organization was based on a quasi-democratic republican system of government. This system, in most Igbo communities, guaranteed its citizens equality, as opposed to a feudalist system with a king ruling over subjects (Furniss, 65). With the exception of a few notable Igbo towns such as Onitsha, which had kings called Obi, and places like the Nri kingdom and Arochukwu which had priest kings, Igbo communities and area governments were basically ruled by a republican consultative assembly of the common people. Communities were usually governed and administered by a council of elders. Igbo culture emphasizes self-reliance, equality among People, democratic processes, and vigorous competition for social, economic, and political achievement. Traditional Igbo society consists of independent village groups (confederations of villages) and city-states (cities and surrounding territory). These communities were linked by religious and professional groups, a network of markets and shrines they all shared. Igbo culture, undoubtedly, stems from their worldview. A worldview represents the sedimentation of a people's conception of the way things are and how they should be. Kraft (53) in this regard, calls it a “control box” that governs the application of the people's conceptualization of their relationships to reality. Similarly, Okafor sees a people's worldview as “the concepts of the basic notions underlying their cultural, religious and social activities” (13). It is a rational explanation of the order which underlies human lives and the environment. It is mostly derived from myths, taboos, customs, and proverbs of the community. People's worldview draws heavily on their surroundings and their cultural past. It is not static but is constantly being reinterpreted and reformulated in the light of new experiences within the community and stimuli from external contacts (Metuh, 49). The worldview of a people helps them in the explanation, prediction and control of space-time events. To know people's worldview is basically to understand how the people evaluate

life and a people's evaluation of life provides them with a charter of action and justice for behaviour.

The Igbo people of Nigeria also have their worldview, which have much influence on the way they act, live and have their being. It is crucial to enumerate some elements of traditional Igbo worldview. The Igbos believe in the existence of a Supreme Being – God whom they call different names according to sub culture area groups. Among the Igbo names of God are Chukwu, Chineke, and Obasi bi n'elu. Chukwu is made up of two words: Chi (God) and Ukwu (Big). The Supreme Being is called “Chi-Ukwu” to differentiate Him from other gods. According to Fage (20), it means “the biggest Deity of all”. Chineke means God that creates. The people believe that no other deity has the ability to create except the Supreme Being. Obasi bi n'elu on the other hand, means God who lives above. The Igbos accept that the Supreme Being lives in the sky, hence, the name, “Obasi bi n'elu”.

Among the Igbos, there is a very strong believe in the existence of divinities. The divinities are generally believed to have come into being in consequence of the Supreme Being. The divinities are those spiritual beings or gods that are usually referred to as “agbara” in many parts of Igboland and they usually act as servants of God in His theocratic government of the universe. Their nature is bound up with human experience, hence, they require many temples, shrines, priests, cults, images and offerings to organize the frequent transactions between them and mankind. The divinities usually receive worship which shows man's recognition of their divine nature. The Supreme Being in Igbo Traditional Religion is approached through the divinities which are regarded as intermediaries between man and the Supreme Being. It is believed that the divinities derived their powers and authorities from the Supreme Being. They perform useful functions and as agents and ministers of God, they assist Him in governing the universe.

Another element of Traditional Igbo worldview is the belief in spirits. Spirits, the traditional Igbos believe, are good or evil, benevolent or malevolent. Some of the spirits are conceived from the natural phenomena or forces. To differentiate divinities from the spirits, shrines are usually built for the divinities and priests are dedicated to their service. They are regarded as the appropriate channels through which the Supreme Being could be reached (Awolalu and Dopamu, 7).

Believe in the ancestors is another element of traditional Igbo

worldview. Ancestors are departed spirits who stand in close relation to their family or tribe (Anyanwu, 112). The ancestors, though dead, are still regarded as heads and parts of families and communities to which they belonged while they were humans. They are believed to intervene in the day to day activities and lives of their descendants. Finally, belief in magical forces is another element of traditional Igbo worldview. The traditional Igbo believe that the universe is charged with some kind of forces which can be harnessed and utilized for the enhancement of life. This strong belief in spiritual powers or forces constitutes the source of magic, sorcery, witchcraft, and other forms of occultism. The forces thus, can be used positively and negatively.

5. Punishment in Igbo Jurisprudence

In order to ensure peaceful co-existence and justice among individuals in the society, the Igbos have rules of conduct guiding their activities which when violated, attracts punishment. Punishment thus, comes as a result of crime. Crime in other words, precipitates punishment, and in order to avert crime, the Igbos have laws governing them to ensure peace and harmony. The idea of a legal system thus, is evident in traditional Igbo society. Studies in the nature, sources, justification and impact of these traditional norms have come to constitute the subject matter of Igbo jurisprudence but for want of space, we shall not dwell on it at a subject matter level here. We shall limit however, this inquiry to legal provisions for punishing offenders who break certain laws in a prototype African society. Part of what we want to show here is that Africans had a history contrary to the popular intellectual opinion in the 18th and 19th century Europe. On the whole, the laws which regulate and govern the lives of Igbos have an ordered hierarchy and derive from various sources.

Broadly, Igbo laws can be classified into two: Divine laws and Human laws. Divine laws are laws pertaining to God, divinities, spirits, and ancestors. The breach of these laws is held to be not only illegal but also an offence against a supernatural power. Certain remarkable features are characteristic of these laws. First, they are not written by man, yet, seem to have been written in the hearts of the Igbos. They are usually referred to as part of the Omenala (custom). Okafor (45) remarks that the inability to trace these laws to any historical source or any source whatsoever brings to the fore, the other side of the divine law as the natural law. As the offences or crimes are basically against God, the

creator, divinities, spirits, or ancestors, they are regarded as very grave, hence, attract severe punishments issuing as it were from the divine authority. Third, violation of divine laws is unpardonable. Offenders cannot escape the wrath of the supernatural forces. The offenders must be punished, either during their life time or at the end of it, or even during their next life circle (i.e. when the person reincarnates).

In Igbo tradition, natural laws govern man, and he is expected to abide by the dictates of these laws which are the laws of reason. Man by nature, the Igbos believe, is endowed with reason, therefore, must be rational in dealing with nature. Rationality serves as a connecting factor between divine law, natural law and moral law in traditional Igbo society. Moral law for the Igbos, is not distinct from divine or natural laws. More so, morality and religion overlap in traditional Igbo thought. Morality within the confines of reason alone possible in western ethics is abhorred in Igbo tradition. An act in traditional Igbo society is bad or immoral either because it offends God or the ancestors or because it is contrary to Omenala (custom of the land). Omenala thus, in this case, becomes the 'grundnorm', using Kelson's terminology, after which the validity of every other law and norm must be determined.

"Human laws" is the second classification of Igbo laws. The Igbos make laws on a wide range of matters, ranging from economic, social, and political matters. The Igbos do not have a permanent legislative body or a specialized legal institution with powers to make laws. Laws are nevertheless, made by Oha (an adhoc general assembly), Ndi Ichie (elders), or Umunna (a male line of descent from a founding ancestor with groups of compounds containing closely related families headed by the eldest male member).

On economic matters, laws can be made in respect of the use of the market places, ownership and control of certain economic trees and common natural resources such as lakes and streams that provide fishes for human consumption and for the market. On the social aspect, laws can be made to give social directives on the use and maintenance of public facilities like roads, village squares, springs, etc. Laws can also be made to ensure political issues, especially to govern the political and diplomatic relationship between one village and another.

A crime, in Igbo thought, is really an act that breaks the law (divine or human) and is punishable by law. Crimes in Igboland include: homicide, incest, suicide, arson, theft, altering of land boundaries,

unmasking a masquerade, adultery, killing or eating of a totem animal, eating food sacrificed to divinities, sexual relations by a widow while still in the period of mourning her dead husband, having sexual relations with or marrying an Osu (an outcast) by a freeborn (diala), a woman climbing a tree, a woman breaking kolanut, etc.

We shall consider some crimes in relation to how the criminal justice is administered in traditional Igbo society. The case of homicide in traditional Igbo society is regarded as very grave, not only against the society but also a violation of the divine law. Life is believed to have come from God, the creator of the world. Therefore, shedding another's blood is an abomination – aru. Even in times of war, those who participated in it, especially those involved in killing, undergo ritual cleansing. In the event of one killing another, such is expected to hang himself or is banished from the community. If the person flees, his family is excluded from most community privileges and also have their properties confiscated. This is usually the case with killing one's kinsman. The case is different if the murderer is from another village. A typical example is depicted in Achebe's *Things Fall Apart* when the wife of Ogbuefi Ezeudo from Umuofia village was killed by the people of Mbano. The people of Umuofia resolved to be compensated with a young man and a virgin or embark on war against Mbano. Okonkwo, a great Umuofia warrior, was delegated by his community to carry the message to Mbano. Achebe records that Okonkwo "returned from his mission two days later with a young lad of fifteen years old and a young virgin" (67). Thus, in the execution of retributive justice, the young virgin was given to Ogbuefi Ezeudo as wife while the young lad, Ikemefuna was murdered on the community's wish. Even in the case of accidental killing, heavy compensation is paid. Punishment thus, as could be seen above, is both compensatory and expiatory in nature. This takes care of both the human and divine disharmony created by the offence of murder. In the case of having no empirical proof for murder, especially murder through spiritual poisoning or other occult means, the suspect would be required to swear before a deity that he is innocent. It is believed that after a year or two and no harm befalls the accused, then he would be acquitted by the supernatural tribunal. Otherwise, the deity or ancestors would either kill him or inflict him with some grave punishment in the form of blindness, small pox, death of family members, etc. An alternative to oath swearing

will be to make the suspect drink the bath water of the diseased in order to prove his innocence and the effect would be same as in swearing.

The case of incest is another breach of the divine law. Incest is sexual activity between persons who are bloodily related, as such, cannot be married to themselves. Often, offenders are sold into slavery as they are thought to have polluted the land. They have offended the earth goddess. In some Igbo communities, the culprits are banished for two months. If they are below the age of eighteen, they are required to bring white fowl each and fetch water and firewood for the earth goddess priest continuously for two weeks. If they are adults, besides being banished for a period of three months, they will be required to bring two fowls, a basket full of yam and cocoa-yam, a pot of palm wine, and a lump of chalk (Ndubuisi 69). Only then, would the impending danger from the earth goddess be averted.

Unmasking a masquerade is another serious offence in traditional Igbo society. The masquerades which perform during important ceremonies are believed to be the spirits of the ancestors. To unmask a masquerade therefore, is an abomination, for it is akin to killing an ancestral spirit. Such act, the traditional Igbos believe, would make the ancestors withdraw their good services from the community. One guilty of the act is liable to death and his body taken to the forest and burnt. Theft is also frowned at in traditional Igbo society. A suspected thief is usually given a public trial at the village square. If found guilty, will be seriously flogged and sometimes striped naked and decorated with ashes depending on the gravity of the offence. He will also be fined. More so, he automatically loses membership of his age grade and other organizations he may belong. He may however, regain his membership of the associations if proven he had turned a new leaf.

Adultery is another odious crime in traditional Igbo society. It is seriously frowned at. It is seen on the part of the woman involved as great dishonesty and disregard for her husband, and on the part of the man as an encroachment on the private life of another man. As a punishment, the woman involved is banished from her husband's home for one month. At the expiration of the period, she would come in the company of her kindred with two pots of wine, a basket full of yam and cocoa-yam, and a fowl to apologize to her husband and his people. If the apology is accepted, she would be reabsorbed into the family with a strong pledge to be of good behavior. Her male counterpart on the other hand, is also

meant to apologize to the woman's husband and his people accompanied by his own kindred and two pots of wine, a basket full of yam and cocoa-yam, and a fowl. If he is a titled man, would be striped of all his titles until he is forgiven. However, he is not banished as the woman.

Lying is another distasteful crime in traditional Igbo society. Lying entails dishonesty, insincerity and betrayal of trust. A liar is viewed in traditional Igbo society as one whose character is feeble, a misfit, and a cheat. He is considered a threat to the wellbeing of the community. Lies in traditional Igbo society attract fines ranging from yams, fowls, goats, cows and money depending on the intensity or effect of the lie. A liar is debarred from witnessing and serving as a member of a committee or panel and could also be suspended from being a member of the town's union and Age grade.

It is pertinent to state at this point that in traditional Igbo society, in the case of violation of laws concerning interpersonal relation, the procedure involves much of human agents. The aggrieved party may first appeal to the head of the family of the offender or a body of village arbitrators. If this fails, the aggrieved party may summon the Amala, a higher body than the former with some members of the extended family and close friends of the litigants in attendance. If this also fails, other institutions may be appealed to, such as the Age grade, the Dibia fraternity, various titled societies, town union and Mmanwu (masquerade) society. When all these fail, then, as a final resort, a submission is made to the supreme tribunal in form of oath swearing, which after the stipulated period, would reveal the guilty. The punishments that may ensue include death, ostracism, banishment, fine and forfeiture of valuable properties.

6. Further Analysis

Obviously, underlying the notion of punishment in any society is the desire for order and peaceful coexistence without which happiness; the summum bonum which all men seek becomes a mirage. Law thus, is promulgated, backed with some measure of sanctions which manifests itself in an organized society in the form of punishment to achieve peace and harmony. Authorities are constituted to ensure observance and maintenance of law. Constituted authorities are therefore, indispensable insofar as peaceful coexistence among men is concerned. Without constituted authorities, Hobbesian state of nature in which man's life was

'solitary, poor, nasty, brutish and short' will undoubtedly, be the case. Traditional Igbo society, much aware of this fact, had constituted authorities that arbitrate in all matters concerning the members of the community. This manifests in the form of Ndi Ichie, Umunna, Oha, Age Grade, etc.

From what has been revealed so far on crime and punishment as it concerns traditional Igbo society, it is obvious that the traditional Igbo society has an organized system premised on reason contrary to the views of some western thinkers who hold that Africans lack rationality and are uncivilized. G. W. F. Hegel, for instance, in his *Philosophy of History*, postulated that Africans are not only less developed in civilization and morality, they are less developed metaphysically. They exhibit the natural man in his completely wild and untamed state (20). This is false. Punishment in traditional Igbo society is a product of reason aimed at ensuring peace and harmony in the society just as it is in western communities; and the punishment is meant to be in proportion to the offence committed. This, undoubtedly, is justifiable for justice requires that a man should suffer in proportion to his moral wrongdoing. Murder in traditional Igbo society which attracted death penalty still stands the test of time; hence, we have capital punishment practiced in virtually all societies in the globe today. Punishment for stealing, adultery, incest, and other vices is also crucial to ensuring the unity and maintenance of the ontological hierarchy leading to peace and harmony. Fair hearing is accorded to all involved in cases to ensure justice and equity. More so, none is above the law of the land, hence, titled men are striped of their titles in the event of a serious crime. Some are even banished depending on the intensity of the crime.

Some reservations, however, are expressed. First, is the place of women in the society. Women in traditional Igbo society do not contribute meaningfully to the polity. Basically, they are expected to take adequate care of the children and the kitchen, and not be involved in political matters. This is true as women are not part of Ndi Ichie, Umunna, Dibia fraternity, Age grade and so on. Second, is the lack of power separation, the three arms of government – Executive, Legislature and Judiciary tend to be fused in traditional Igbo society. The same group of people involved in making laws also interprets and enforces the laws. This contravenes democratic principles. Third, is the much belief in spiritualism, traditional Igbo society is hyper spiritual! Virtually every

happening is given a spiritual interpretation. This is wrong. Some occurrences can be naturally explained. This hyper spiritualism has somewhat led to idolatry which is wrong as the Almighty God is no more the object of worship. Fourth, punishment in traditional Igbo society could be harmful to the innocent. This is so because members of the family of a man found guilty of crime sometimes suffer. When a murderer is banished, he is banished together with his family. This is wrong for one should bear the consequences of his crime: 'whatsoever a man soweth, that shall he also reap'. The case of Ikemefuna in Achebe's *Things Fall Apart* is very pathetic. The young lad was killed for the crime committed by others. Finally, oath taking is believed to reveal truth concerning crimes. After taking an oath, if one dies, falls ill or experiences misfortune within the stipulated period, it is concluded that such is guilty. This, for us, may not always be true. Humans as finite beings experience mishap from time to time. So, if one experiences any within the stipulated period after the oath taking, it is no convincing proof that he is guilty of the offence. There's no observable necessary connection between the incident and the oath taking, going by Hume's thesis. As a finite being, man can experience misfortune at any time; and when it happens, it is no convincing proof that one who took an oath within the period is guilty. It could happen by chance.

7. Conclusion

Punishment in traditional Igbo society is a product of reason to ensure peaceful coexistence in the society, thereby, averting anarchy and injustice. Punishment in traditional Igbo society is carried out for various reasons: rehabilitation, deterrence, restoration, retribution, education, and condemnation. All these are geared towards giving the community a sense of moral uprightness, tending to confirm its moral right to have a system that revels on justice and equity, thus, ensuring happiness for the members of the community. Indeed, traditional Igbo society has an organized political system premised on reason, contrary to the views of some western thinkers that Africans are lacking in rationality and organized political system. However, some problems are associated with the system such as: nonparticipation of women in political matters, lack of power separation, hyper spiritualism, and suffering of the innocent.

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