

THE DEATH PENALTY: AN AFRICAN PERSPECTIVE

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ABSTRACT: Global debates about whether the death penalty should be abolished or not typically revolve around three main questions: (1) what are the legitimate purpose of punishment (the purposes argument), (2) whether any acts are so heinous that their perpetrators truly deserve to die (the desert argument), and (3) whether the fact that a community continues to use capital punishment is generally expressive of virtuous, or vicious, character traits among its citizenry (the character argument). This article contends that because the different concerns of these three arguments are not always fully appreciated, abolitionists and retentionists often talk past one another. To illustrate this, we explore the implications of each type of argument in the context of indigenous African morality, showing how each argument takes on new meanings with different degrees of explanatory force. While we do not propose a specific resolution to the global death penalty debate, we do reach conclusions about how participants in this global conversation ought to proceed.

Introduction

The debate on the morality of the death penalty has been long and unending with perspectives largely from Americans and Europeans dominating the discussions. These discussions, as they are now, lean heavy on the worldviews, criminal codes and court decisions of individual states and countries of the various discussants making it difficult for others who are not conversant with the legal bases of the arguments and the worldviews that shape these arguments to fully appreciate their import.

Apart from the criminal codes and court decisions of individual countries, The United Nation's Commission on Human Rights, Amnesty International, and other human rights organizations refer to some provisions of the Universal Declaration of Human Rights and some conventions and protocols to vigorously campaign for the total abolishment of the death penalty all over the world.

The United Nations' Universal Declaration on Human Rights is also referred to in arguments on the morality of the death penalty. By December, 2001, states that had embraced abolition had spread not only into Eastern Europe, but also into Africa. Eleven African countries have become complete abolitionists, and another eleven are abolitionists de facto.¹

It is interesting, however, to note that several countries that appeared to be abolitionists de facto resumed executions after a moratorium of at least ten years.

Thus since the beginning of 1994, ten countries that had previously been considered abolitionists de facto resumed executions and in some states in the United States, executions have taken place after a long period of abeyance. For example, a 1985 execution in South Carolina was the first in that state for 21 years; and since 1990 Arizona, California, Colorado, Kentucky, Oregon, Washington, and Wyoming have resumed executions after a gap of more than a quarter of a century. Even of greater significance were perhaps the two federal executions, the first for 38 years, of Timothy McVeigh and Juan Raoul Garza, sanctioned by the President of the United States, who decided not to exercise his power to grant clemency, in June 2001.²

This paper attempts to take a look at the death penalty from the African perspective. It is a fact that many African countries have at the political level acceded to the abolishment of the death penalty, and some have indeed taken steps to abolish it. But it is the contention of this paper that the political actions of African governments to abolish the death penalty do not reflect the objectives of traditional African morality, conceptions of punishment and therefore the will of a majority of the people. It is our view that the unpopularity of the abolishment may lead to individuals taking the law into their own hands by resorting to instant justice. The paper further contends that the death penalty accords with traditional African thought and practices, particularly with regards to the goals of African traditional morality. This paper therefore looks at the bases of traditional African morality, goals of morality methods and the philosophies the shape punishment regimes for torts and delicts (wrongs against

¹Roger G. Hood, *The Death Penalty: A Worldwide Perspective*, (New York: Oxford University Press, 2002), Pg.2-3.

²Roger G. Hood, *The Death Penalty*, Pg.2-3.

norms and customs). It will also look at the more philosophical question of whether the traditional African norms pertaining to death penalty are appropriate all things being considered.

The Bases of African Morality

There have been arguments among scholars about what actually determines morality in African societies. While some would want to insist that religion is the only determinant of African morality, others argue that at the core of morality in African societies is the solidarity of the people. Arguing for the religious basis of African morality, for example, Asare Opoku said that:

Generally morality originates from religious considerations, and so pervasive is religion in African culture that the two cannot be separated from each other. Thus, we find that what constitutes the moral code of any African society- the laws, taboos, customs and set forms of behaviour- all derive their compelling power from religion. Thus, morality flows out of religion, and through this the conduct of individuals is regulated; and any break of the moral code is regarded as evil and punishable.³

There is no argument about the fact that religion permeates every aspect of African life. The worldview of the African comprises a hierarchy of beings, headed by the Supreme Being (God). After the Supreme Being comes a series of deities or divinities and spirits, who are seen as messengers of the Supreme Being on earth. These are followed by ancestors and the living according the order of primogeniture. In this hierarchy, the Supreme Being is the source and ultimate guarantor of both the moral and social order. Thus all social, moral and religious norms derive ultimately from God, although their immediate administration is in the hands of deities and ancestors.

In Akan moral thought the sole criterion of goodness is the welfare or well-being of the community...what is morally good is generally that which promotes social welfare, solidarity, and harmony in human relationships. The moral value in the Akan system is determined in terms of its consequences for mankind and society. "Good" is thus used of actions that promote human interest. The good is identical with the welfare of the society, which expected to include the

³Kofi Asare Opoku, *West African Traditional Religion*. (Singapore: FEP International Private Ltd. 1978) pg. 154-155.

welfare of the individual. This appears to be the meaning or definition of “good” in Akan ethics. It is clear that this definition does not at all refer to the will or commands of God.⁴

Although the above assertion by Gyekye establishes the importance of community in the moral behavior of individuals, it does not fully grasp the African concept of community. Community to the African not only involves individual living human beings, but also comprises the deceased progenitors or ancestors and even those yet unborn. Therefore, that which is good is not defined only in relation to the welfare or well-being of the living, but also what the ancestors are believed to have approved of. Moreover, Gyekye seems to suggest, that there are differences between the wishes, desires and interests of the supernatural beings on the one hand and that of human beings or community on the other. It is important to note that the ‘goal’ of religion is not too different from the ‘goal’ of morality. Both religion and morality seek to establish an ideal society in which all constituents (spiritual and non-spiritual) contribute to the promotion of social well-being, solidarity and harmony in relationships.

Also emphasizing group solidarity as a factor that determines morality in African societies, Dzobo argues that:

In African indigenous society the moral order, namely, the system of moral values, ideas, normative principles of conduct and obligations, that forms the basis of behaviour, does not derive its origin from the command of a god or from a deal between Africans and their gods The African lives normally not because he owes it as a debt to his god but because it is good for his own well-being and for that of his society ... Ewe morality is her solution to the problem of human relationship and growth. It originates as a response to man’s need to establish a creative community that will make the realization of man’s selfhood possible.⁵

⁴Kwame Gyekye, *An Essay on African Philosophical Thought –The Akan Conceptual Scheme*. (New York: C.U.P., 1987), pg. 132.

⁵Noah Dzobo, ‘Logical Demonology among the Ewe of West Africa’ in *Ghana Bulletin of Theology*, Vol. 4, No.7 (1974), pp. 17-19.

As a result, it seems to me that it is problematic to try to limit what determines morality in African societies to either religion or group solidarity. What appears to be the case as far as the determination of morality in African societies is concerned is the fact that no single individual factor determines African morality. One can say without doubt, therefore, that the two major determinants of African morality are religion and the solidarity of the people, but religion seems to determine the bulk of African morality taking into account its pervasiveness in African societies. The contention that the two major determinants of African morality are religion and the solidarity of the people is reflected in how Africans enforce morality, their conception of crime or sin, and their reaction to an infraction of the moral code.

Objectives and Enforcement of Morality in Africa Societies

Moral education and enforcement is a crucial aspect of African traditional societies. This is because, to the African, morality is the foundation of any society; moral rules are what sustain the very survival of a society. Without rules to govern and regulate human interactions, to ensure social harmony, to protect life and property and to allow individual members the freedom to pursue their interest in accordance with societal norms without fear, communities come crumbling down. In other words, no society can survive without law and order. This comes closer to social contractarianism of John Rawls and Christopher Morris which asserts that individuals unite into political societies by a process of mutual consent, agreeing to abide by common rules and accept corresponding duties to protect themselves and one another from violence and other kinds of harm.⁶

For this reason, there are structures built into African societies that make sure that every member is adequately educated about the dos and don'ts of society. These structures are both informal and formal in nature. Informally, moral education occurs everywhere as and when it is needed and every adult member of the society is a

⁶John Rawls, *A Theory of Justices* (Harvard: Harvard University Press, 1977).

teacher with a responsibility of making sure that younger members are sufficiently brought up in the knowledge of societal norms, rules, standards, regulations, customs and tradition. This is to say that the upbringing of children is not left to parents and immediate family members alone, but that the entire society is interested in what children become. This was why it was not uncommon to see even a stranger rebuking or punishing a child found to be misbehaving, even if it meant meting out corporal punishment. Parents were grateful for such 'humanitarian' actions, and if need be, the child was again punished by the parents for disgracing them.

Formal education in traditional African societies takes place on special occasions referred to as "crisis points" in the life of the individual. These occasions include birth, puberty, and apprenticeship and induction into specialized professions, marriage and death. During these occasions, specialists educate the neophytes on their new positions, what is expected of them, the history and traditions of the society, the ethics of their new status, their duties and responsibility to the society. What is interesting about moral education in traditional African societies is the fact that it is continuous and no one is too old to be educated on the rules governing the society.

One can therefore say without fear of exaggeration that no normal adult member of the African society is unaware of the general moral rules of the society and the consequences of a breach of any of them. Many of these moral codes are very well known to the adult members of a given community and have been inculcated from childhood through the normal processes of socialization. During the initiation process they are imprinted on the body and mind of an individual in a very special and practically unforgettable way.⁷

However, with education and all the precautionary measures to prevent lawlessness at every stage of the development of the African within an intensely corporate society, there are endless manifestations of breaches of the moral rules resulting in various

⁷Laurenti Magesa, *African Religion: The Moral Traditions of Abundant Life*, (Maryknoll, New York, Orbis Books 1997).

delicts such as murder and rape among of host of them. This situation, though unfortunate, amply reveals the humanness of the African like any other human being anywhere. Commenting on this, Mbiti observed that:

By nature Africans are neither angels nor demons; they possess and exercise the potentialities of both angels and demons. They can be as kind as the Germans, but they can be as murderous as the Germans; Africans can be as generous as the Americans, but they can be as greedy as the Americans; they can be as friendly as the Russians, but they can be as cruel as the Russians; they can be as honest as the English, but they can also be as equally hypocritical. In their human nature Africans are Germans, Swiss, Chinese, Indians or English- they are men.⁸

This observation about the reality of the 'humanness' has serious implications for African morality and cultural practices. It among other things calls for measures that encourage individuals and groups to pursue cherished values that hold societies together and to discourage them from doing what tears communities apart. To be human therefore is to be able to eschew selfish desires and to seek the general good of all. It is in this regards that there are several measures and methods of enforcing morality in African societies. These measures can be grouped into religious and non-religious categories.

The non-religious moral enforcement measures include such things as giving deserving individuals honorific titles, gifts of value such as a plot of land, livestock, gold ornaments and buildings to start life with and promotion to the council of elders. Others include revealing family treasures and secrets to trusted children while even some elderly members of the family might not have access to such information. It is also an honor for a prominent and respected member of the African society to decide that a particular man or woman marries his son or daughter because of the moral integrity of the individual.

⁸John. S. Mbiti, *African Traditional Religions and Philosophy*, (Second Revised Enlarged Edition) (Oxford: Heinemann 1989), pp. 204-205.

Non-religious moral enforcement measures aimed at discouraging people from engaging in immoral acts include isolation, facing the council of family and community elders mostly at dawn, imposition of fines, casting of insinuations and name calling. During drumming and dancing sessions which are a regular feature of African societies, immoral activities of members of the society are exposed in songs and in drum-language. Again, during festivals such as the *Homowo* of the *Gas* and the *Apo* of the people of *Techiman* in Ghana, people are free to point out what they consider immoral acts of some members of the society including even chiefs and elders without flouting any moral rule or law; something they could not do ordinarily. This is different from what happens in other cultures like the United States where such acts could easily pass for slander and or libel. These are expected to induce shame in the individuals. The description of shame by Bradshaw largely agrees with the African understanding of the word. Indeed, in some African societies people prefer death to shame. He said:

Shame is the source of the most disturbing inner states which deny full human life. Depression, alienation, self-doubt, isolating loneliness, paranoid and schizoid phenomena, compulsive disorders, splitting of the self, perfectionism, a deep sense of inferiority, inadequacy or failure, the so-called borderline conditions and disorders of narcissism, all result from shame. Shame is a kind of soul-murder. Once shame is internalized, it is characterized by a kind of psychic numbness, which becomes the foundation of a kind of death in life. Forged in the matrix of our source relationships, shame conditions every other relationship in our lives. Shame is a total non-self acceptance.⁹

The religious moral enforcement measures include display of magical objects, cursing, covenant and trial by ordeal. It is not uncommon to see magical objects of different shapes and sizes made of plant and animal parts displayed at the entrance to homes, properties and farms warning potential intruders of dire consequences. Those who disregard these objects and intruded had snakes and other wild animals chase them out of the property

⁹John Bradshaw, *Bradshaw on the Family- A Revolutionary Way of Self-Discovery* (Deerfield Beach, Florida, Health Communications 1988).

or were attacked and killed instantly by these animals. Some remained in or on the property for as long as the owner came to find them there but those who managed to escape got hunted by spirits until they confessed the crime and faced the consequences.

Cursing was and still is one of the most potent forms of religious methods of enforcing morality in African societies. The gods were the police of society; they prevented crime, arrested perpetrators of crime and meted out punishment to them and dispensed justice to victims and those falsely accused of crimes. Among the E3e of Ghana, for instance, no crime committed ever remained secret when the victim of the crime or his/her relatives sought answers from the gods. The criminal or his/her relatives come running to the shrine confessing guilt when the gods begin to exert pressure in the form of calamities like sickness, strange diseases, untimely deaths and other strange happenings in the family of the criminal. This is where it is important to note that in African societies, the consequences of an individual's immoral acts are not always only born by the individual and or his/her family, but most of the time, the entire society suffers. Mbiti noted about African societies that, "the guilt of one person involves his entire household including his animals and property.

The pollution of the individual is corporately the pollution of those related to him whether they are human beings, animals or material goods".¹⁰ Trial by Ordeal is the situation where a suspect or suspects of a crime are taken to a shrine to prove their innocence. The methods used during the 'trial' differ from shrine to shrine and from society to society. But in Ghana, some shrines simply ask the suspects to sit on a sacred stool one after the other after libation prayer and the performance of some rituals. The innocent ones would sit on the sacred stool and sit up without difficulty, but the guilty party would not be able to sit up after sitting on the stool. Normally after this, the criminal confesses the crime and is taken through some rituals to restore him or her into the society.

¹⁰John. S. Mbiti, *African Traditional Religions*, 201.

It is clear from the foregoing that in African societies, social order, peace and harmony are not only essential but are also sacred and that everything in the forms education and enforcement is done to make individual members of the society and groups within it live up to moral standards of the society. What makes the maintenance of the solidarity of African communities even more crucial and inevitable is the sense of deep corporate existence, where an offence against an individual is an offence against a group or groups and the consequences of a crime are not borne only by perpetrators but are borne also by families, groups and entire society. These realities of African societies shape how they deal with crimes, especially those crimes that have the potential of disintegrating and destroying society.

African Conception of Crime or Sin

In every society, there are acts that are considered evil, criminal or sinful. This is because these evil acts offend strong and definite dispositions of the collective consciousness of the society and as a consequence evoke punishment. In other words, the evil or criminal or sinful act according to Radcliffe-Brown “offends some strong and definite moral sentiments and thus produces a condition of social dysphasia”.¹¹

For E3e of Ghana for example, sin is sin. Any sinful act or conduct is considered socially harmful and morally blameworthy. Sin or evil is therefore, “doing that which is contrary to the will and direction of Deity. It includes any immoral behavior, ritual mistakes any offences against God or man, breach of covenant, breaking of taboos and doing anything regarded as abominable and polluting”¹²

But, it appears, it is not all sins which are grievous. Some are more vicious than others and therefore, attract more punishment, expiation and sacrifice. In other words, any evil act committed must receive the appropriate sanctions.

¹¹A.R. Radcliffe-Brown. *Structure and Function in Primitive Society* (London: Routledge and Kegan Paul, 1952), p.

¹²J.O. Awolalu, “Sin and Its Removal in African Traditional Religion” in *Journal of the American Academy of Religion*, Vol. 44, No. 2. (1976).

Writing about southern E3e in general, Abotchie noted that certain offences described under the moral code are considered sufficiently serious to merit state intervention; that is, the individual affected should not be left to seek redress all by himself. According to him, by this distinction, the Ewes recognize what he referred to as “the law of public delicts” as against “the law of venial offences” dealt with privately. On the distinction he notes:

The distinction between public and private delicts is thus based on the degree of gravity of specific crimes. The degree of gravity is determined by the seriousness of an offence per se, such as culpable homicide, robbery or adultery, or by the frequency with which less serious offences like falsehood, indebtedness or filial disobedience are perpetrated.¹³

The above observation categorizes offences into two groups: serious offences and less serious offences but fails to discuss what constitute(s) the basis of this categorization. In other words, one wonders what makes one offence serious and the other less serious. And even within the category of “serious offences”, there are some that are considered more serious than others.

To understand and appreciate what constitute(s) moral evil in African societies demands discussion of certain terms used in describing the various infractions of the moral law. Among Ewes of Ghana for instance, such terms include *Vodada* or *Agodzedze*, *Sedzidada*, *Nuvo* or *Busu*. *Vodada* or *Agodzedze*, refers to acts which cause ordinary disruption of human relationships. It can, therefore, mean an offence. For example, when one is wrongly accused of an offence he or she had not committed, it is *vodada*. But when an act concerns minor moral deviation, it is *Sedzidada*, the *breaking of law*, or deviation from the moral code. An example of *Sedzidada* is to go to sea on Tuesday which is the day the sea god rests and therefore should not be disturbed.

When, however, a serious deviation occurs whether it is against a neighbor, society or deity which seriously endangers human relationships or communal peace and harmony, it becomes *Nuvo* or *Busu*, disaster, sin or calamity – something that must never be done under any circumstances. No matter the justification, it is

¹³Chris Abotchie, *Social control in Traditional Southern Eweland of Ghana: Relevance for Modern Crime Prevention*. (Accra: Ghana Universities Press, 1997), p. 12.

always wrong. An example is taking of human life. The word *Nuvo*, which means “a horrible thing”, is used for “sin”. It appears, therefore, that moral evil and sin are used synonymously. *Nuvo* connotes more than just a “horrible thing”. It is, as Gaba observes, “the breach of prohibitions imposed on man by his object of worship, or the doing of anything that is displeasing to spirit powers with the result that the displeased spirit powers manifest themselves adversely in human affairs”.¹⁴

Discussion of the various terms so far has shown that among E3e, and for that matter Africans in general, moral evils or sins can be grouped into different categories depending on:

the extent of the particular taboo or prohibition that has been broke

the extent to which the offender, through the breaching of these prohibitions, has caused the spirit powers “to manifest themselves adversely in human affairs

3. who is offended and the type of redress necessary.

This presupposes that penance or punishment differs from act to act depending on the above Categorization. According to Abotchie:

The forms of punishment range from fines to the death penalty. Crimes such as willful murder or homicide through witchcraft or evil magic are considered grievous enough to justify capital punishment or sometimes total banishment.... Incurrigible thieves may be condemned to death, banished into exile or sentenced or ignominious public torture. The incestuous, adulterers, rapists and violators of taboos are required to perform specific purificatory rituals in addition to paying the appropriate fines, while contempt of court, assaults, and insults are punishable by fines¹⁵

¹⁴C.R. Gaba, “Sin in African Traditional Religion” in *The Ghana Bulletin of Theology*, Vol. 4 No. 1. (1971)

¹⁵Chris Abotchie, *Social control*, p. 14.

Indeed, offences that attract the death penalty must be grievous and for that matter are infractions of major prohibitions; while the minor prohibitions are those crimes which require specific purificatory rituals in addition to paying appropriate fines.

It is important, however to note that the death penalty for certain crimes among the E3e, about whom the above observation was made, is a thing of the past. With the establishment of centralized political administration of all tribes that constitute Ghana as a result of foreign influence, the power to decree the death penalty among others as was vested in the traditional chiefs has now been taken over by modern law courts. It is therefore a criminal act for anyone else irrespective of his/her status in society to impose and execute the death penalty.

The categorization also shows that acts that receive the severest punishments are acts which seriously threaten the *Summum bonum* or the “greatest good” of every society. Values that a society cherishes and encourages emanate from, perpetuate and reinforce the highest good or ideal, the *summum bonum*, after which individuals and groups within that society strive in life. Those whose character and conducts are seen to be in consonance with the *summum bonum* and enhance its achievement are usually recognized, praised and decorated with the highest award of the society in most cases. On the other hand, negative and abhorred values are values that distract and retard attainment of the *summum bonum* attract very harsh and severest punishments and condemnation. In other words, the *summum bonum* is the pivot around which a society’s ethical code revolves.

A person, to the E3e, like other African societies, is a gregarious animal, not by instinct, but in the main from a more or less obscure sense of collective self-interest. And as noted by Bertrand Russell “when a man belongs to a larger community, the scope of his duties and possible sins become greater and the considerations involved become more complex, but there is still a code to which he must conform on pain of public obloquy”¹⁶

¹⁶Bertrand Russell, *Nightmares of Eminent Persons and Other Stories* (London: Bodley Head, 1954), p. 28.

This is even more complex in African societies because they are comprised of supernatural beings, the living and those yet to be born, as well as the living. The main supernatural forces include *Mawu* (God) *mawuwo* (divinities) and *Torgbiwo* (ancestors). These forces are believed to be omnipresent and omniscient and benevolent and are regarded as the source of justice and fair play, and who hold the power of life and death over man.

Thus, most social, moral and religious norms derive ultimately from the Supreme Being (God), although their immediate administration is in the hands of deities and ancestors. Therefore, strict adherence and loyalty to the moral laws serves as a means to maintaining that link between human beings and the source of their being, *Mawuga*. It also promotes interpersonal relationships, and thereby ensures societal harmony and peaceful co-existence. It is not only a social responsibility to be obedient to the moral laws, but it is in the main a religious obligation owed to oneself, the divine beings and society. This is because it is the community that gives the individual an identity and the platform to express ones humanness.

This conception of community as comprising both spiritual and quasi-physical (human) beings influences the African conception of evil and their attitudes towards criminal acts and how they deal with them. Taboos associated with the spirit beings form an important element of African morality. They are seen as practical and effective ways of dealing with ethical matters. With their prohibitions, they cover almost every aspect of life, providing what amounts to negative rules of behaviour, namely, what is not to be done. Most, if not all, of their prohibitions are considered to have been divinely sanctioned. Hence their contravention is considered offensive to the deities, the ancestors, and/or the Supreme Being, and is liable to bring disaster upon the guilty, and indeed upon the whole community, unless elaborate and appropriate purificatory ceremonies are performed. Awolalu noted that:

Society, as conceived by Africans, is a creation of God and it is a moral society. In African communities, there are sanctions recognized as the approved standard of social and religious conduct on the part of individuals in the society and of the community as a whole. A breach of, or failure to

adhere to the sanctions is sin, and this incurs the displeasure of Deity and His functionaries.¹⁷

In addition, the feeling of corporateness among Africans is aptly demonstrated in their attitude towards crime situations; one person's sin or shame affects the whole group. As Mbiti notes, "the guilt of one person involves his entire household including his animals and property. The pollution of the individual is corporately the pollution of those related to him whether they are human beings, animals or material goods".¹⁸

This conception of and attitudes towards sin have two significant implications for morality in African societies. Firstly, it makes it a duty for every member of the society to be concerned about the conduct of each other. Commenting on the Akan of Ghana, Bishop Sarpong notes that:

The evil consequences of infringement ...affect the whole society. When a girl under the physiological age of puberty commits fornication, she is deemed to threaten the society with pestilences, untimely death, drought or famine. It is therefore, of concern to me that every young girl of age in my society should keep the taboo on sex relations. As a good citizen, I have the right and duty to make any girl observe it meticulously whether I know her personally or not. There is no ethics for the sake of ethics; nor is the observance of ethical norms a purely individual affair. Everyone is everyone else's keeper.¹⁹

It is worthy of note that punishment for the commissioning of fornication is not limited to only the young girls but also to the men who engage them in such acts. The men are severely sanctioned for failing in their responsibility provide good moral examples to the young ones and to prevent crimes that have the potential of harming the entire society.

Although the above comment was particularly on taboos on sex relations, it holds for any other stipulation of the moral code. This is because, norms are usually established by society, and members are obliged and encouraged to cherish and observe these rules for the common good of the whole group.

¹⁷J.O. Awolalu, "Sin and Its Removal in African Traditional Religion" in *Journal of the American Academy of Religion*, Vol. 44, No. 2. 1976.

¹⁸John. S. Mbiti, *African Traditional Religions*, 201

¹⁹Peter K. Sarpong, "Aspects of Akan Ethics" in *Ghana Bulletin of Theology*: Accra, Vol. 4, No. 3. 1972.

Secondly, they have no choice but to apply the 'sanctions recognized as the approved standard of social and religious conduct' without fear or favor irrespective of the social, economic, and religious status of the culprit, since failure to do so is an affront to the spirit beings and the consequences devastating to the entire community. This is why most of the time the imposition of the death penalty on an individual in traditional African societies and especially its application was collaboration with the family of the culprit. Indeed, it was the family members who arrested and led the culprit to the 'ritual of no return', because the conduct of the culprit was not only a source of shame to the family but was also an invitation of all forms of calamities upon innocent members of the family. Abotchie observed that:

As a proud and scandal-detesting people, the paramount need for members of the lineage to avoid being thrown into the socially shameful state of penurious insolvency in consequence of the criminal proclivities of its members, or indeed, the need to avoid the dreaded sanctions of the gods, gave each lineage member, a moral mandate to keep surveillance over the actions of other members²⁰

In fact, the feeling of solidarity among Africans is such that some even argue, and rightly so, that there is nothing like private morality in African societies. And it is from this perspective that punishment regimes of traditional African societies should be viewed.

Traditional African Culture and the Death Penalty

History has shown that the death penalty was one of the punishments meted out to individuals and groups who committed heinous crimes against other individuals and society at large in almost all cultures of the world. It was only as recent as the nineteenth century that some individuals started campaigning against the use of the death penalty as a form of punishment for crime and calling for its abolishment in the world.

²⁰Chris Abotchie, *Social control*, p.14.

It has been noted that:

During the 1980s and the 1990s, many countries abolished the death penalty. As of 2006, 128 countries had abolished the death penalty in law or in practice, including all of Western Europe, Canada, Australia, and most Latin American, South American, and African countries. The United States is the only Western democracy that still uses the death penalty. Another sixty-nine countries and territories still have the death penalty, but most of them do not execute any prisoners in one year. Both the United Nations and the European Union support abolition the death penalty. In fact, admission to the European Union is contingent upon abolishing the death penalty.²¹

It is significant to note that the African Union - the umbrella organization of all African states - has not officially declared support for the abolition of the death penalty; neither has it any provisions that require from its members to take steps to abolish it. It is also equally important to note that in spite of the rigorous campaigns by the United Nations, the European Union and other international organization against the death penalty, several countries of the world are adamant and rather openly and loudly expressing their support for the death penalty by actually executing criminals.

Several reasons have been adduced in support of abolishing the death penalty; these include the position that it is discriminatory, cruel and inhumane, it does not give the criminal the chance to reform, it is expensive, innocent individuals could unjustly be killed and when their innocence is established, there is no way to bring them back to life. Some even argue that the death penalty is no punishment at all, because after all, every human being shall die and therefore putting someone to death is doing something that will inevitably come one day. Others also are of the opinion that the deterrent value of the death penalty is not too different from that of life imprisonment without parole and therefore, instead of the death penalty, criminals should be kept in prison for life without the chance of parole.

However, it appears that the African culture has but little problem with the various arguments against the death penalty and therefore seems to accept the death penalty as a legitimate punishment for certain specific crimes. In the first place, the argument from discrimination does not arise at all in the African context.

²¹Judith Boss, *Analyzing Moral Issues* (4th Ed.), (New York: McGraw-Hill Companies, Inc., 2008), p.250.

This argument is borne out of the bitter history of some countries, especially the United States where there has been discrimination based on race and color mostly affecting minority groups, particularly people from black origins. It has been noted for instance that:

Of the 20,000 homicides that occur in an average year in the United States, fewer than 300 convicted murderers are sentenced to death. Of the people sentenced to death row, 99 percent are poor and have to rely on public defenders. While blacks make up only 12 percent of the U.S population, they represent 43 percent death row inmates. According to Amnesty International, however, the greatest predictive factor in giving the death penalty is not the race of the criminal, but the race of the victim. Although blacks and whites are victims of murder in almost equal numbers, 80 percent of death penalties involved white victims²²

Clearly, the situation described above does not apply to traditional African societies, not even to modern African countries, except may be when African countries were under colonial dominations. This is because the traditional African judicial system is closely related to the traditional religion. Commenting on law and resolution of conflict in African societies, Magesa argues that:

It is hard to separate law in African tradition from custom, taboos, divination, mediumship, ordeals, and the expectations of sharing, harmony, play, and good company in general. It is also difficult to separate it from the structures of family, lineage, clan, and the various solidarities. While distinctions can be made with regards to levels of significance, all are considered, nonetheless, within the realm of tradition.²³

It is significant to note therefore that those tasked to adjudicate cases see it not only as a social responsibility but also as a religious duty, a deviation from which is regarded as sin in African tradition. Moreover, a verdict reached in a case is deemed to be the decision of the ancestors who are normally consulted prior to the final determination of the case. Any verdict that does not reflect the custom and tradition of the society is challenged at all levels including resorting to religious means such as divination, mediumship and ordeal.

²²Judith Boss, *Analyzing Moral Issues*, 253.

²³Laurenti Magesa, *African Religion: The Moral Traditions of Abundant Life* (Maryknoll, New York, Orbis Books. 1997), p. 269.

Furthermore, the meaning and point of adjudication in African societies is not to force a decision on one party, but rather to obtain concurrence on the judgment by both parties. A successful judgment is one that brings about concurrence, acceptance of guilt on the part of the offender and reconciliation between the litigants. The appropriate criteria for judgment in African societies therefore includes a properly constituted body of persons sanctioned by the community, a public hearing of individuals in the conflict accompanied by their relatives, counseling of criminals by relatives, admission of guilt by the parties, and the application of punishment regime according to customs and traditions of the people. Factors such as gender, race, social status or class have nothing to do with judgments in African societies in general and in Mafi-E3e societies in particular. One can therefore say without fear of exaggeration that the processes by which the death penalty is imposed and applied in traditional African societies are free from any form of discrimination.

On the issue of the cruelty and inhumanness of the death penalty, the traditional African position is that the death penalty is an imposition by the criminal himself/herself and executed by an appropriate authority; not an imposition by the society. For the African cruelty is understood as inflicting undeserved pain on an innocent individual or a group of individuals without authority. Once the criminal is aware of the consequences of his/her evil act not only on himself or herself as an individual but also on the society as a whole, and that the only way to avert those consequences is to go through propitiatory rites which sometimes include execution, erodes the cruelty clause. In other words, in African thought, cruelty is appropriate given that the criminal brought it upon himself or herself. After all the cruelty visited on the family and the society by the actions and inhumanness of the criminal's conduct is nothing comparable to what the criminal tastes through the death penalty. Among the E3e of Ghana, the criminal was buried to the neck-level alive and left in the forest for predators to feed on.

Moreover, the death penalty in African societies is a religious category aimed at 'destroying sin' and its consequences as well as renewing relationship with the spirit world and even more

important to utterly destroy the 'sinner' so that he cannot reincarnate into human society any more. For Africans man is a material and an immaterial being, a physical and a spiritual being as well. The physical body perishes while the spiritual part survives death. The death penalty is believed to be able to completely annihilate he both the physical and the spiritual components of man such that the possibility of reincarnation is erased.

Apart from the death penalty, there are other forms of punishment that are believed to completely annihilate the human being. Among Tongu-E3e of Ghana, for example, the corpses of those who have been found to have taken human life through witchcraft and other spiritual means or have been involved in abortion are 'cremated' as a form of punishment and also to prevent their reincarnation. In other cultures, the corpses are dragged on the principal streets of the community with people hooting at them before 'burial'; usually they are buried differently from how normal people are buried.²⁴

With regards to the argument that the death penalty does not give room to the criminal to be rehabilitated or reformed, it is worthy of note that in African societies, the death penalty is always resorted to when all other attempts to reform the criminal fail. The observation made of the Twana of East Africa by Magesa is representative of the African situation. He said:

Throughout a man's life...his behavior is being either deliberately or unconsciously moulded into conformity with the social norms for law and order. At every stage, moreover, pressure is brought to bear upon him in the form of sanctions, definite forms of social control restraining him from violating established rules of conduct.²⁵

It is when all attempts have failed that even closed members of the family of the criminal who are aware of the consequences of the anti-social behavior of their kinsman would demand that 'the ritual of no return' be performed for him or her in order to restore

²⁴Harry.L.K. Agbanu, "Moral Evil and Cremation among Mafi-Ewe of Ghana", M.Phil Thesis, University of Ghana, 1999.

²⁵Laurenti Magesa, *African Religion*, 271.

peace and harmony to the family and the society at large. One can say as a result that the death penalty is applied in African societies to those individuals who have gone beyond reformation and rehabilitation; they are simply unsalvageable. They are usually hardened criminals who would rape, rob, terrorize and even kill innocent people. When the society feels threatened and held hostage by acts and behaviours of the individual criminals, it decides that their continuous existence is of no use to the welfare of the society they are supposed to contribute to.

In addition, for the Mafi-E3e, the fundamental aim of any punishment regime is deterrence. The death penalty has been known to have a very high deterrent value for the African because the type of death one dies is of immense significance to the African. This brings into view the soteriological goals of ancestorhood. To become an ancestor is the ultimate goal of the life of the African, because it indicates that the individual has led a noble, moral and a fulfilling life worthy of emulation by the living and integration into the community of super humans or spirit beings. Failure to attain such an ultimate goal is a failure of one's entire life. Therefore, the African would want to anything to secure a place in *tsiefe* (the land of the dead) as E3e of Ghana call it.

One of the critical qualifications of ancestorship is the type of death one dies. To become an ancestor, one must not die a shameful death as a result of diseases like epilepsy, HIV/AIDS, madness among others. One must also not die at war, get drown, die through accident and attack from a wild animal. This is because such deaths are considered punishment from the spirit world for crimes committed against both human and spiritual beings. The most shameful death in traditional African societies was to be executed as punishment for a crime committed. In fact you were treated as though you never existed and no one would want to associate you with any good memories of the family or community. You are simply a disgrace to the family and the society.

One can say, therefore, that even though it is a fact that all men and women are mortals and will at a point in time die, the type of death an individual dies is of crucial significance to the African. The death penalty and the accompanying rituals does not only end the physical existence of the criminal, but also permanently sever relationship between the criminal and the living and above all, blocks the chances of the criminal reincarnating into the world of the living.

Conclusion

Since the interaction of Europe and American with the African continent in the eighteenth century, African traditional beliefs and practices have never been the same. The Europeans and Americans did not see anything good in African beliefs and practices and therefore described everything African in derogatory, inadequate and prejudicial terms such as primitive, barbaric, heathen, animistic, polytheistic, and fetish among others. With Christianity, colonization and formal western education as tools, Africans were forced to abandon their traditional ways of thinking and doing things and to embrace western culture clothed in the Christian religion.

Though some traditional leaders fiercely resisted these attitudes of the westerners, their negative impact on the traditional cultural and religious values and practices of the African has been enormous. Most traditional beliefs and practices have either been eroded or adulterated. However, the most negative impact of western interaction with the African continent is on the mentality of the 'modern' African, to the extent that many educated Africans look down upon the traditions of their people. Of immense significance as far as this paper is concerned is the erosion of indigenous religious beliefs and practices and all the moral values they encouraged and the gradual abandonment of the communal way of living. This is because the structure of western formal education has made them to believe that everything African is inferior and everything European or American is superior.

It is within this general context that most traditional beliefs and practices including the death penalty are debated and discussed today. Several African countries today have followed western prescriptions to proscribe the death penalty; some have completely abolished the death penalty while others still have it on their books but do not use it. In Ghana, for example, there has not been any official execution since 1979.

However, there have been several unofficial executions in which citizens have regrettably exacted death on suspected criminals through mob actions. These supposed criminals are stoned, butchered, clapped or burned to death. It is significant to note that this unfortunate situation in which some innocent including

common thieves and pick-pockets lose their lives is not limited to Ghana alone but is widespread throughout the African continent. This I contend is an indication of the people's lack of confidence in the modern judicial systems of the various countries to deal with crime and to mete out appropriate punishment for even heinous crimes such as murder, and armed robbery. There have been countless occasions when known hardened criminals have been arrested but released legally within days only to come back to attack and sometime kill people they suspected to be police informants. This is an indication that the modern legal system is woefully ineffective in dealing with crime and criminals in African societies.

It is therefore my contention that African countries will continue to face problems with maintaining law and order as long as they continue to depend on western prescriptions, unless they device means of incorporating traditional law enforcement mechanisms into their operations. After all, even in today's modern society, when so called modern law enforcement methods fail to produce desired results, individual Africans resort to traditional means to address their peculiar difficulties. This means that 'modernity' has failed to purge even the most sophisticated African of his cultural identity and therefore the need to integrate indigenous practices with contemporary practices to meet the needs of the African.

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