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An indigenous Yorùbá[1] (African) philosophical argument against capital punishment

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Abstract. **An indigenous Yorùbá (African) philosophical argument against capital punishment** – While there is an abundance of literature on the Western philosophy of punishment, very little philosophical work on punishment from the African perspective can be cited. This, probably, is not unconnected with the widespread belief in some circles abroad that traditional African societies consisted of barbaric bloodletting savages without a critical sense of decent social justice, pre-logical and without philosophy. This belief, which underlies the canonical near-absence of African views in moral philosophy and philosophy of law, extends to the view that Africans have little or no reflective ideas of law, except the despotic will of tribal chiefs. The objective of this paper, therefore, is to call attention to a strong philosophical argument against capital punishment in indigenous Yorùbá culture that is still very much relevant in contemporary contexts. The argument, when carefully articulated and studied will be found to be both logically rigorous and philosophically sophisticated, especially when compared with the other arguments in the philosophy of punishment. As is to be expected, however, there could be other arguments for and against capital punishment to be found in indigenous Yorùbá culture that could contribute significantly to the philosophy of punishment.

key words: capital punishment, moral philosophy, Africa, Yorùbá

Introduction

The issue of capital punishment is very old and not alien to any human society. In ancient Greece (399 BCE), Socrates, according to the records,

[1] By 'indigenous' here is meant 'original, authentic, traditional, pre-colonial, homegrown, and free from foreign cultural influences'.

was sentenced to death for his alleged crimes against the Athenian City-State. In England, not too long ago, capital punishment used to be given for over two hundred offences, ranging from defacing the Westminster Bridge, and consorting with gypsies, to several categories of murder (Gardiner 1956: 24). In Nigeria, as in several other African countries, the death penalty is the usual punishment for a number of offences ranging from arson, treason, and armed robbery to murder.

In philosophical, political and judicial circles, the debate continues to be lively between those who support and those who oppose the use of capital punishment. In some places, the death penalty has been abolished in deference to the pressure and force of the abolitionists' arguments.[2] As has been very well put by Owoade (1988:42), the debate over capital punishment, from the perspective of Western jurisprudence, moves in three directions. There are: (i) the "moral-humanitarian-religious" directions; (ii) "the popular direction i.e. the views, prejudices and superstitions of the man in the street'', and (iii) "the scientific" direction, "i.e. the penological, psychiatric, and sociological views on the subject".

Against the abolitionist position, the anti-abolitionists insist that for capitally punishable offences, the death penalty is still to be preferred to its alternative, which is life imprisonment. The proponents of capital punishment also argue that for the purposes of deterrence and retribution, capital punishment should continue to be administered to those deserving it. As abolitionists argue, however, capital punishment, as experiences have shown, is incapable of deterring would-be offenders. Also, it is argued that retribution is barbaric and unhelpful to either the offender or the society, in addition to its further dehumanization of the society. The abolitionists are also of the view that the proper purpose of punishment should be to reform the offender rather than to revenge on him/her for the offence committed.

While there is an abundance of literature on Western philosophy of punishment,[3] very little philosophical work on punishment from the Afri-

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[2] As reported in Owoade 1988:60, fn. 57: 'Death penalty... America'.

[3] For examples, see Acton (1969), Baier (1977) Brandt (1959), Duff (1985), Gardiner

can perspective can be cited. This, probably, is not unconnected with the widespread belief in some circles abroad that traditional African societies were barbaric bloodletting savages without a critical sense of decent social justice, pre-logical and without philosophy.[4] This belief, which underlies the canonical near-absence of African views in moral philosophy and philosophy of law, extends to the view that Africans have little or no reflective ideas of law, except the despotic will of tribal chiefs.[5]

Although the Yoruba in pre-colonial times believed in the sovereignty of their chiefs in their respective domains, they also believed that each 'oba' would ensure that the incidence of any punishment was directly on the offender (that is, as a Yoruba proverb puts it, "ìka tí ó sè ni oba n gé", meaning "The finger that offends is that which the king cuts" (Adewoye 1987:77)). In the present era, the government ('ìjoba', i.e. assembly of chiefs/rulers) can be said to have replaced the solo 'oba' in the administration of justice in Yorùbá land, as in other places.

The widespread acceptance of capital punishment for such offences as theft, murder, treachery, and rebellion is very well reported in Yorùbá folklore, particularly 'Àló' (Yorùbá folk tales). Many of the Yorùbá folk tales (i.e. Àló) are meant to convey moral precepts, to teach societal norms and etiquettes, to comment on life and living, and to portray the structure of society. Of particular relevance for the present discussion are the 'Àló Ìjàpá'. These are animal stories, in which 'ìjàpá' (the tortoise, believed in folklore to be the most cunning of all animals) is always the focal, often tragic, character. Most of the stories depict possible and actual situations that mirror the society's experiences of reality and offer occasions for critical reflection on such experiences. Babalola (1973) and

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(1956), Gbadegesin (1985), Goldberg (1974), Haag (1968), Hart (1968), Honderich (1984), Lewis (1953), Owoade (1988); Pincoffs (1966), Schedler (1976), Ten (1987), Walker (1980), and Walker (1991).

[4] Expressions of such views will be found in Horton (1967), (1977), and (1982).

[5] For views to the effect that Africans lack a conceptual and correct analysis of the concept of law, and that even if Africans had indigenous systems of social control, such systems lacked any trace of legality, legal concepts and logical elements, and that there is no African jurisprudence, see: Holleman, 1974: 13; and Driberg, 1934, & 1935, among others.

Lawuyi (1988) report many of these folktales, which are usually presented orally among the Yorùbá. In most of these tales, the ending is the execution, or other severe punishment, of the convicted tragic character, as odered by the 'oba' (i.e. the king). In the folktales, death by beheading is the usual form of capital punishment.

However, the Yorùbá believe and say further that the execution of convicts was not to provide the king with blood to drink; rather, it was to mark the king's dignity (that is, as they say, "Iyì ni Oba n fi orí bíbé se, oba kò ní mu èjè'.). In other words, it was traditionally believed to be a part of the king's greatness and absolute authority that he should be able to exercise the power of life and death over his subjects. The impression that one might get from this is that the people indigenously do not have any objections whatsoever to capital punishment. It might thus be supposed that indigenous Yorùbá culture unreservedly or uncritically approved of capital punishment.

The objective of this paper, therefore, is to call attention to a strong philosophical argument against capital punishment in indigenous Yorùbá culture that is still very much relevant in contemporary contexts. The argument, when carefully articulated and studied will be found to be both logically rigorous and philosophically sophisticated, especially when compared with the other arguments in the philosophy of punishment.[6] As is to be expected, however, there could be other arguments for and against capital punishment to be found in indigenous Yorùbá culture that could contribute significantly to the philosophy of punishment.

Outline of the argument

The indigenous Yorùbá argument that is to be articulated herein is to be found in *Ifá*,[7] the compendium of Yorùbá ancient wisdom and primary

[6] As contained in the references in note 3 above.

[7] Ifá is the corpus of the root (primordial) culture of the Yorùbá people all over the world. Ifá has been variously described as the ancient wisdom and pathfinder of Yorùbá progenitors (Lijadu, 1908; Lijadu, c. 1996; and Apega, 1924). It has also been

culture. It is to be found in that part of *Ifá* titled *Odù Ògúndá -Ìròsùn*.[8] The relevant thematic fragment of the Odù with philosophical import for the present purpose is: "Orí yéye ní mògún, tàisè lójù" (i.e. 'There are many heads at the execution ground, but most of them belong to innocent persons'). That is to say that most of those who had been given capital punishment in the community did not deserve to be executed. This claim is elaborated in the *Odù* with the following story.

In a certain mythical town there lived two brothers — *Ògúndá* and *Ìròsùn*. There were also the king and other townspeople. On the way to their farm each day, the two brothers passed by the shrine of *Ògún*, which

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described as the unwritten scriptures of the Yorùbá (Bascom, 1969). Abimbola (1977) described Ifá as a body of all-round wisdom sent to the human race from the Supreme Being through his messenger, Òrúnmìlà'. Abimbola (1983) further described Ifá as a body of knowledge containing many branches, and as an academic discipline. In the account of Makinde (1983), Ifá is a repository of knowledge. Ifá is all embracing in scope, ranging from ceremony to eschatology and including such mundane matters as family life, friendship and recreation. It covers science, religion, society, morality, politics, law, education and philosophy. It can be rightly described as the complete encyclopedia of authentic Yorùbá culture. Also relevant to the characterization of Ifa are Abimbola (1965), Hallgren (1988), Alade (1998), Elebuibon (2005). The nature, functions and other relevant details of Ifá are also discussed in the following: www.ifafoundations.org, www.globalchange.com/challenge.htm, www.ackland.org/art/collection/african/ifa.html, www.americanifa.org/pages/1/index.htm, www.utexas.edu/conferences/africa/2004/database/divination.html, www.geocities.com/solarguard/africa/ifa.html, and www.metmuseum.org/explore/oracle/ifa.html.

[8] An 'odù' is a section of Ifá, comparable to a chapter in a book. There are as many as 256 of such sections in the Ifá corpus, each one dwelling on a set of interlocked themes presented as a body of coded knowledge on a specific set of related matter which only the initiated, the reflective, or the wise can understand. There are primary 'Odù' called 'Ojú Odù' (16 in number), and 240 derived or mixed 'Odù' called 'Àmúlùmálà Odù' or 'Ọmọ odù', *Ògúndá - Ìròsùn* is a mixed Odù, its signature or divinatory configuration being

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This is a mixture of *Odù Ìròsùn méjì* and *Ògúndá méjì*.

served as the public execution ground, and which was therefore always littered with many human heads. One day as they passed by the shrine, *Ìròsùn* remarked that most of the heads at the shrine were those of persons who were not guilty of any capitally punishable offence. His brother objected, arguing that everyone who was beheaded at the shrine must have deserved the capital punishment. The debate between the two brothers continued for a long while with *Ògúndá* always maintaining that 'to be punished is to be guilty', while *Ìròsùn* maintained that 'punishment does not imply, confirm or establish guilt'. To drive his point home, *Ìròsùn* mentally constructed a possible situation in which an innocent person was convicted of a capital offence, as in a set-up.

In the story, the king had a favorite pet goat that was treated like a human member of the royal household. It was well fed and given royal respect by everyone in the town. One day, *Ìròsùn* trapped the goat. He waited till night fell and his brother had gone to sleep. He then slaughtered the goat, letting its blood make a trail to the entrance of his brother's bedroom where he deposited the dead goat. He went further to rub some of the animal's blood on his sleeping brother's lips and clothes.

When the goat was declared missing that night, the king sent his servants out to search for it, vowing that whoever had kept the goat in his or her custody, not to talk of having injured or killed it, would suffer the death penalty. Following a tip-off from *Ìròsùn*, the king's servants found the dead goat at the entrance of *Ògúndá*'s bedroom. They also noticed the bloodstains on *Ògúndá*'s clothes and lips. He was woken up and made to carry the dead goat on his head to the king's palace where the townspeople and a jury were already waiting for the trial of the alleged killer of the king's favorite goat. The case was speedily disposed of, as there was an overwhelming preponderance of evidence against the accused, with perhaps none in his support. As already decreed by the king, the penalty was death by beheading at the shrine of *Ògún*.

As *Ògúndá* was being led to the shrine, *Ìròsùn* emerged and sought the permission of the king to say something. He declared to the consternation of the people that it was he, and not *Ògúndá*, who killed the king's goat. He further informed the audience that he had set his brother up in

order to prove the point that many of those previously executed at the shrine of *Ògún* were possibly innocent of the charges levied against them and for which they were convicted and condemned. By extension, he wanted to show why capital punishment was bad and so should be discontinued in the town.

Ìròsùn's submission was well taken by the king and the townspeople, especially because he was a respected and reputedly wise person in the community. The submission also seemed to have agreed with the unarticulated or unexpressed thinking of the reflective members of the community that innocent persons were sometimes judicially executed.

The king, on reflection, was also convinced of *Ìròsùn*'s point and he was remorseful for all the death sentences that he had passed and enforced in the past. He realized that another innocent person would have been mistakenly killed if the truth had not been volunteered after his judgment. That is, assuming that the enforcement of the judgment on the convict was to be immediate and irreversible, an innocent person would have been executed while the guilty one went away unknown and undetected. Thus, upon realizing that for a variety of reasons, any case could be proved against anyone, even when the person was innocent of any offence, the king ruled that from that day the death penalty was to be abolished in his domain. (End of story.)

Some questions might arise at this point, although they are not the immediate concern of the present discussion. Two of such questions are; what happened to *Ìròsùn* after his confession? What would the king have done if it had been his child or wife or another person that was killed instead of a goat? The point to take here is that the story is only an analytical device rather than a factual historical account.

Moreover, it needs be emphasized that the philosophical point of *Ògúndá - Ìròsùn* is not a rejection of punishment for wrongdoing, but a rejection of a particular type of punishment—capital punishment. Therefore, it is reasonable to say that on abolishing capital punishment, a society will still have recourse to other non-capital types of punishment that will reasonably allow for future reversal of judgment in the event of credible mitigating evidence. This will be an acknowledgement of the

fact that an innocent person who could not prove his or her innocence now, for one reason or the other, might yet be able to prove it or have it proved in the future. In such cases, the innocent recipient of punishment would have suffered only for his or her inability to establish his or her innocence, which is a duty to one's self. Although the appeal courts offer some hope, there is no guaranty that an innocent convict will be able to prove his or her innocence at the appellate levels of any judicial system. Depending on the facts of each case, the society might also have to compensate the innocent convict in some way whenever his or her innocence is proved.

Philosophical analysis of the argument

Ògúndá - Ìròsùn emphasizes the ever-present possibility of error in the judicial process. It demonstrates the theoretical possibility of justice being miscarried on every occasion. The *Odù* instances the introduction of epistemological skepticism into legal theory. It is based on the thesis that we cannot be absolutely certain (in the sense of having had all the relevant evidence, such that *all* reasonable doubts have been eliminated) of any claim or truth that concerns matters of fact and existence. In addition, it shows that with respect to the facts of a case, there is no theoretical limit to relevant evidence in law. Hence, every judgment must leave room for possible reversal without extra loss to the convict in the event of possible future exonerating evidence. Such a reversal will not be possible where the convict had already been put to death. Therefore, in the indigenous reflective thought of the Yorùbá, as presented in the *Odù Ifá* called *Ògúndá - Ìròsùn*, capital punishment is not the best option and should be abolished everywhere.

However, the argument is not strictly against capital punishment alone. It could also be applied to all bad or tyrannical laws, just as it could be a viable critique of bad judicial processes. This is as a consequence of making a goat rather than a person the victim of the criminal offence, as we have in another folktale titled "Ta ló pabuké Osìn?"(Who killed the King's hunchback?) in which the tortoise lied to have been the

killer of the King's human hunchback. 'His' expectation was that 'he' would get the gift that the King promised to give whoever killed the hunchback. Instead, 'he' was executed for an offence that 'he' did not commit.

Conclusion

The above jurisprudential conclusion does not preclude the divinatory signification of *Odù Ògúndá- Ìròsùn*; rather it complements it. Divinatorily, the Odù, in the portion of it used in this paper, signifies the imminence of an injustice or a miscarriage of justice, or that such injustice or miscarriage of justice had actually taken place. Whichever is the case, the Odù goes further to prescribe how to prevent or redress the injustice or miscarriage of justice. The details of this aspect are parts of the Ifá diviners' professional trade secrets.

It is to be noted that this indigenous argument is not based strictly on moral grounds. This is because its conclusion does not arise solely from a moral evaluation of capital punishment. The rejection of capital punishment is also not just from a practical or pragmatic or teleological or some other consequentialist consideration. This is because the argument does not claim that capital punishment is bad, unjustifiable or undesirable because of the practical or utilitarian reason that it never achieves its intended purpose or purposes such as deterrence and psychosocial balance. Similarly, the rejection is not based on metaphysical considerations such as that human nature forbids the killing of persons, or that human life is sacred and should never be taken by anyone for any reasons whatsoever, etc. It is also noteworthy that the Ifá argument is not a religious or a theological one. Its premises make no reference to God, the will of God, the judgment of God, or post-life existence, in support of the conclusion that capital punishment is inherently objectionable. Finally, it is to be noted that unlike the classical humanitarian argument against the death penalty, the point of *Ògúndá - Ìròsùn* is not just that capital punishment is cruel, wicked and inhuman.

Yet, in spite of the above, this objection to capital punishment in

Ifá is neither a casual nor a flimsy pedestrian expression of a wish, ideal or opinion. Rather, it is a strong argument arising from a skeptical epistemological standpoint with sharp ethical and legal implications, and demonstrated in a logical and scientific way.

The argument can be outlined as follows.

Premise 1: The Epistemological Premise

If we can always be mistaken about our judgments, then, if we are reasonable, we should never act with finality on any judgment. (That is, we should always leave room for possible future corrections).

Premise 2: The Rationality Premise

If we judged wrongly, the rational thing to do about it is to make compensatory corrections upon the discovery of our error, which may be at any point in time.

Premise 3: The Logical Premise 1

If we had acted with finality on a fallible judgment that later turned out to be false, we would never be able to make the necessary and rationally required amendment.

Premise 4 (General Conclusion): Logical Premise 2

It is unreasonable, undesirable, and unjustifiable not to correct one's exposed errors; immoral, inhuman, and morally unjustifiable when human life is involved, just as it should be both morally and rationally objectionable in law.

Premise 5: The Factual Premise

We have been mistaken about some of our judgments in the past, and can always be so mistaken in the future.

Conclusion

It is both unreasonable and bad to act with irreversible finality, as in the use of capital punishment, on any judgment of human conduct.

In this argument, the action consequent upon judgment is capital punish-

ment. Since a dead person cannot benefit from the detection of error in the judgment that led to his or her death, it is both rationally and morally preferable to reject than to support capital punishment. What the known fact of "*Orí yéye ní mògún tàisè lójù*" demonstrates very clearly is that judicial error is always a permanent possibility. According to *Ògúndá - Ìròsùn*, then, capital punishment is tantamount to foreclosing appropriate correction upon detection of error in the judgment that gave rise to the punishment. Capital punishment should therefore be discontinued because it is rationally, morally, and socially unsatisfactory when compared to other forms of punishment, irrespective of the gravity of the offence allegedly committed.

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