

VIOLENT CRIMES, ECONOMIC DEVELOPMENT AND THE MORALITY OF CAPITAL PUNISHMENT IN NIGERIA: A RETENTIONIST PERSPECTIVE

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Abstract

Violent crimes such as murder, armed robbery, kidnapping and terrorism are the cruelest, most inhuman and disparaging crimes plaguing Nigeria today. Lately, kidnapping and terrorism have taken the centre stage leading to horrible bloodshed and serious economic set-backs. For this reason, many civilized nations governed by law impose the severest punishment – death penalty – on such heinous crimes. The paper examines the abolitionist and retentionist arguments on capital punishment, showing how issues raised by the opposing viewpoints could be used to reform the criminal justice administration in Nigeria. Particularly, the paper challenges the anchorage of abolitionist argument on the perceived failure of capital punishment to deter criminality, showing that there is yet no empirical basis for such a lofty conclusion. Besides, the work broadens the logic of contemporary capital punishment debate beyond the issue of ‘right to life’ argument of most human rights activists, positing that the philosophy behind this mode of punishment is theoretically and practically complementary with human rights defence. As a way forward, it makes a case for a selective retention of death penalty in Nigeria’s penal system in cases of culpable or intentional homicide which is currently on the increase.

Keywords: Crime, capital, punishment, criminal, law, development

Introduction

The term “capital” derives from the Latin *caput*, used by the Romans to refer variously to the head, the life or the civil rights of an individual. Capital punishment, thus, implies the idea of “chief”, “principal”, or “extreme” penalty (Davies, 2004). It refers to “the execution of a criminal under sentence imposed by competent public authority”. In other words, it is the legal infliction of death penalty by the state on a convicted criminal, for an injurious crime, “after due process of law” (Uduigwomen, 2005). On the other hand, criminal law (also known as penal law) is the body of statutory and common law that deals with crime and the legal punishment of criminal offences. It is the branch of law that defines crimes, stipulates procedure for preventing and investigating crimes and fixes punishment for them (Yakubu & Oyewo

2000). Conventionally (and for our purposes here), crime is defined as “an act or omission in violation of criminal law that the state recognizes as injurious to the public and to which it attaches penal sanction” (Catholic Encyclopaedia 1967). Put succinctly, crime is any culpable act (or intent to commit an act) or omission prohibited by the law and punishable by the state (Matthias, Rescoria & Stephen 1980).

Capital punishment for heinous crimes has existed all through the history of mankind long before the creation of court systems. As civilization progressed, different societies incorporated capital punishment into their legal codes. One of the first examples of the establishment of capital punishment into the criminal justice system was Hammurabi’s code. Hammurabi was king of Babylonia

around 1750 B.C. He came up with the idea of an “eye for an eye”, “a tooth for a tooth”, judicially known as *lex talionis*. Both Greeks and Romans invoked the death penalty for a wide variety of offences. In Anglo-American criminal law, in the Nigerian criminal code and in a host of other countries, capital punishment has been a customary response to certain kinds of crimes. Methods of inflicting the death penalty have ranged from stoning in biblical times, crucifixion and burning under the Romans; beheading in France; lethal injection, electrocution and gaseous asphyxiation in the United States of America (Berkson, 1975).

However, from the latter half of the twentieth century till date, the application of capital punishment or death penalty has come under a barrage of criticisms. Today, there is a raging controversy over the justification of capital punishment; whether or not it works and if it is morally right or wrong. In Nigeria, particularly, the controversy and agitation for the abolition of capital punishment has not been well pronounced until recent times. Part of the academia and some human rights activists in the country contend that this form of legal punishment is cruel and anachronistic. As champions of the abolitionist crusade, they question the morality and effectiveness of capital punishment. They provide us with statistics of various countries that have abolished death penalty *de jure* or *de facto* from their statute books as an indication that this form of punishment has become unpopular with a view to making Nigeria join the bandwagon through deductive argument. Today, our criminal justice system is in peril of being overrun by western iconoclasm under the aegis of humanistic penal philosophy. The truth about crime situation in Nigeria today is that we are currently witnessing an upsurge of violent crimes which has exacerbated the economic and development problems of our country. Worse still, Nigeria is yet to have a

proactive police force that could effectively combat crime and our prisons are far from being formatory facilities.

Poverty, violent crimes and economic development

Taking a critical look at violent crimes in Nigeria and the factors responsible for them, we can place the blame for most of these atrocities on the whole range of economic conditions associated with poverty, social injustice and inequality. Though not excusable, the problem of violent crimes in Nigeria has been exacerbated by the high rate of unemployment and economic hardship which has pushed many jobless youths some of whom are graduates into various deadly crimes. It is paradoxical that while most crimes are promoted by poverty, violent crimes at the same time retard economic development. Economic growth, simply put, is the increase in the standard of living in a nation's population with sustained growth from a simple, low-income economy to a modern, high income economy. It is obvious that no nation can achieve meaningful economic development in an atmosphere of violent crimes, such as armed robbery, terrorism, arson, militancy and kidnapping. The role of the government in this regard, therefore, includes the formulation of policies and laws (in our context, a penal code) that could help improve the economic and social wellbeing of its citizens and deter criminality.

Violent crimes and capital punishment: the role of the state

The role of the state with regards to violent crimes and punishment may be considered germane in the light of Aristotle's argument (1905). It amounts to gross negligence of duty for the state to ignore its moral and constitutional duty to defend the safety and security of their decent citizens by leaving them at mercy of violent criminals. This calls for the government to take appropriate legal

measures to protect the lives and property of people living within its boundaries. As Locke puts it, the “chief end of men uniting into common wealth, and putting themselves under government, is the preservation of property”. It is important to point out, here, that the Lockean perspective of property includes life and material possessions. Since individuals cannot in isolation act effectively in defence of the said rights, it was rational, Locke thought, for each individual to abandon his own freedom to act on personal defence in the hands of the state which would act to secure the natural rights of all. Let it be said, here, that individuals in the Lockean theory did not abandon their natural rights but only their freedom to act against others in order to secure these rights. This distinguishes legal punishment (a lawfully imposed pain, suffering or deprivation imposed on the criminal for violating the criminal law) from illegal punishment (e.g. the killing of a criminal) usually carried out by lynch mob or unauthorized persons through unauthorized means.

For positivists like Bentham who combine positivism with normative consequentialism, the questions of whether we should maintain a criminal law at all and of what kinds of conduct should be criminalized are to be answered by trying to determine if this method of controlling human conduct is likely to produce a net increase in good. Such a perspective seems inadequate in as much as his definition of the principle of utility is ambiguous with regards to “personal good” and the “common good” and also logically inconsistent with respect to its commitment to the welfare of the criminal and the society. Crimes are not merely ‘private’ affairs which concern only those directly involved in them because they threaten social order, public safety and cause social volatility’ (Becker, 1975). Crimes also involve taking unfair advantage over those who obey the law, and

undermine the trust on which social life depends (Dimock, 1979). Thus, the political community, under the auspices of the state, speaking through the law, claims the right to declare such violent evil actions (e.g. murder, armed robbery and kidnapping) criminal as long as sanctions are not executed retroactively. The state, therefore, is continuously forced to fight an uneven fight against all forms of the destructive as part of its efforts in crime control.

Justice Oputa in his work, “Crime and the Nigerian Society”, defines crime control as all efforts and activities designed to hold the volume of crime in effective check, to keep it from spreading, to restrict and prevent crime infection and contamination and to protect the society against the activities of violent criminals (1975). In order to achieve this lofty objective, responsible government controls crime by means of proactive laws, effective policing (which involves prompt detection, apprehension and prosecution of suspected criminals), impartial judiciary (the court system) and correctional agencies (the prisons), which could deal promptly and decisively with all criminal activities in order to produce repressive or deterrent effects on habitual or potential criminals (Membere, 1982). For this reason, many governments like Nigeria impose the severest punishment – capital punishment - on violent and capital crimes. In itself, this awful punishment is not something desirable but it is forced by an ice-cold brutal reality. The reality is that the back door to paradise is closed for such criminals.

Abolitionist versus retentionist arguments

One of the major arguments against capital punishment is that it does not deter criminality. The retentionists, on the other hand, reject the deterrence-only theory of criminal justice, insisting that the retributive value of capital punishment should also be considered. Looking at both positions critically, we must

concede that there is no conclusive statistical demonstration that capital punishment is a better deterrent than are other alternate punishments. However, deterrence is less than decisive for either side. Dismissing capital punishment on the basis of non-deterrent value would require the elimination of all prisons as well because they do not seem to be any more effective in the deterrence of crime. If we execute murderers and there is in fact no deterrence effect, we have killed a bunch of murderers. On the other hand, if we fail to execute murderers and doing so would, in fact, have deterred other murderers, we have allowed the killing of a bunch of innocent victims. Suffice it to say that capital punishment is a retributive justice, and no direct correlation to murder rates can be logically applied with respect to its deterrent value. Actual statistics about the deterrence value of capital punishment are not available because it is practically impossible to know who may have been deterred from committing a crime on its account. One thing is very clear, most potential criminals would think twice before committing a capital crime if they know their lives are at stake (Bailey, 2). It is reasonable, therefore, to believe that capital punishment is useful for the formation of the internal restraints so necessary as to control crime and thus has a strong deterrent effect on presumptive criminals.

Another criticism raised against capital is that it is inhumane and barbaric and thus can never be accepted in a civilized society (Van den Haag, 1975). It is maintained that putting an end to someone's life is cruel and unusual form of punishment. Beccaria, an early abolitionist, believes that capital punishment is inherently barbaric, representing the "war of a nation against a citizen whose destruction it judged to be necessary or useful" (Beccaria, 1964). The retentionists, on the other hand argue that the crime of murder is inhumane and uncivilized, and thus, insist that

punishment must fit the crime. Retentionists maintain that by murdering, the offender has so dehumanized himself that he cannot remain in the community of the living. The social recognition of his self-degradation through deliberate assault on the victim's life is the punitive essence of execution (Van den Haag, 1975). Hence, it would amount to injustice for the state to impose identical unpleasantness for un-identical offences such as awarding life sentences for culpable homicide in place of death penalty. In fact, it can be reasonably argued that supporting armies and waging war is far more barbarous than the death penalty. Therefore, I find it hypocritical that the same countries who have abolished capital punishment simply because it is "barbaric" to defend public safety in such a way (Jayewardene, 1973), are at the same time prepared to enforce political power and defend their territorial claims through infinitely more violence and bloodshed than the capital punishment would ever require. It seems to me that those nations are just trying to rationalize their apathy and scorn for any institution that does not serve their self-serving and political interests.

When the society ignores her moral and legal duty to defend the safety and security of its decent and law abiding citizens and leaves them at the mercy of violent criminals, they are not being "civilized" but negligent and permissive. It is based on a vague humanitarian philosophy that makes fetish of the idea that the taking of life is barbaric under every circumstance.

The abolitionists also contend that it is wrong for the state to kill in order to show that killing is wrong (Hertzberg, 1992). They argue that two wrongs do not make a right; therefore executions are state sanctioned murder. They posit that no one, not even the state has the right to play God. In response to this, it is argued here, that it is wrong to label capital

punishment “state sanctioned murder”. The dictionary meaning of the term ‘murder’ is the unlawful killing of a person with malice and afore thought. Logically, the term ‘murder’ cannot be used to describe executions since the death penalty is something prescribed by the law. To do so is an obvious abuse of semantics. Equating execution with murder is like equating incarceration with kidnapping. Consequently, the abolitionist argument, here, is guilty of aiming a death blow against the legal system as such. If a state governed by just laws lacks the right to impose proportionate punishing sanctions against criminals in order not to ‘copy’ the criminal act, then the state would, as a consequence, have to dissolve. The abolitionist argument, here, is in other words, anarchist by its nature and breathes an undermining hate toward every punishing authority. The state gives soldiers legal rights to kill in war which we do not call murder. Similarly, the police in an extreme emergency situation kill but we do not call it murder, If a citizen in an extreme situation of self-defence kills, it is not called murder. But when the state in the interest of public safety executes a murderer we also call it murder. This creates an irrational feeling around such a penal sanction. It is, therefore important to use the right word in the right context.

Another argument of the abolitionists is that we should value all human life even the most despicable ones. Hence, capital punishment is deemed to be a desecration of the sacredness of human life. In response, it is contradictory to oppose capital punishment on the basis of the sanctity of human life when murderers are those who display the very least reverence for human life. Obviously, those who descend into the mental maelstrom of murder tend to be precisely those who have left reason and common sense behind. Any crime which involves bloodshed is a bestial act which reduces the worth of the culprit to that of a

beast. Therefore, the abolitionists have a lot of gall claiming that they are motivated to oppose the death penalty by the above reason when the only people they are interested in protecting are those who display the very least reverence for it.

Kant (1991) holds that murderers deserve equal or exact proportion of punishment with the severity of their crime in accordance with the principle of retribution. He maintains that capital punishment far from degrading the convict, affirms his humanity, his rationality and responsibility for his actions.

The risk of executing the innocent is another major objection to capital punishment. It is argued that a miscarriage of justice that results in the execution of an innocent person cannot be undone (Amnesty International, Whiteman www.quixote.org). There is no denying the fact that the innocent could be executed in error owing to some human factors like prejudice, conspiracy and false evidence. However, where the necessary legal principles are followed the risk of the innocent being executed can almost be avoided. These include ensuring that the burden of proof is very high so as to prove the guilt of accused beyond all reasonable doubt; making room for experienced defence counsel as well as the placement of necessary appeals. The state should take every reasonable precaution, including the utilization of criminal technologies such as the DNA tests against the danger of error (Sherrill, 2001).

The abolitionists also contend that there is an alternative to the death penalty in life imprisonment without parole. They maintain that paying the ultimate price extinguishes possibilities for reform and rehabilitation for the person executed as well the opportunity for him to make creative compensation for the evil he/she has done. This proposal fails to take into account all the terror criminals unleash on

others (including murders they commit) within the prison wall and also when they kill upon release or escape from prison. As long as the criminal lives, there is always a chance that he will strike again. It is also quite clear that our prisons are far from being good reformatory centres as our experience in Nigeria have shown. In view of this, the criminal justice system should be structured in such a way that the murderer is not given a chance to repeat his crime. For a society that values public safety, there is no better way to deal with the crime of murder than through capital punishment. Once again, this favours the idea of its retention.

In addition to the foregoing contentions, abolitionists argue about the futility of combating violence with 'violence', that you cannot fight fire with fire. Labeling capital punishment a form of violence as Etuk opines (Etuk, 2000), in order to rationalize its abolition has no foundation in the real world. It is just like calling the dog a bad name in order to hang it. Law enforcement and punishment, which is to crime as water is to fire, are clearly distinguishable from the act of violence.

Finally, the most clichéd abolitionist argument is that executing a criminal will not bring back his victim. Therefore, the murderer should not be punished as fit the crime. In response to this, mere execution is not the purpose of capital punishment. Justice is all about enforcing the consequences of one's action to endorse personal responsibility. The argument of the abolitionists, here, appears weak in that it ignores the law of natural justice. Suffice it to say that by killing, the murderer has upset an ontological balance which needs to be balanced through appropriate restitution.

Conclusion

The case for the retention of capital punishment in our criminal jurisprudence is

undoubtedly a persuasive one, especially as if rightly asserts the fact that such an extreme penalty evidently deters criminality in our society. Suffice it to say that any society where violent crimes are properly controlled has great potentials of attracting investors which could stimulate economic development of such a society. In this regard, the argument for the abolition of capital punishment is not acceptable in view of the rising tide of violent crimes in Nigeria and its dire socio-economic consequences. Moreover, it must be understood that the collective consensus by which all human society like ours prescribe extreme penalties for certain degrees of offences was more informed by notions of justice and respect for human life than otherwise – a respect which in my view is better served by striking an equilibrium between the criminal's right to life and the victim's right to life.

While conceding to the fact that capital punishment may not always have a successful deterrent effect in all cases, one also wonders if a lighter punishment for capital offences or, indeed, any humanistic penal philosophy (such as reformationism/rehabilitationism or life imprisonment) would have served better in its place. Therefore, to believe imprisonment would hold the chance of rehabilitation for gleeful and unrepentant murderers would be fatuous because their future dangerousness is undeniable. In so far as crime is a compulsive inclination in a depraved human nature, I think no humanistic philosophy of punishment can produce and sustain any meaningful reformation. We must not forget that capital punishment as an element of penal philosophy has never been an end in itself, but a means of keeping within manageable proportions the common inclination in every human being to be calculatingly aberrant, especially when he considers the punishment to be light. While conceding that capital punishment may be excessively harsh for some categories of

offences, I submit that this penal sanction is apt, just and equitable for all cases of intentional and wilful homicide which do not fall within excusable cases in our criminal code and, hence, should be retained. I do not see the reason why the murderer's life should enjoy more sanctity than the victim's life. Criminal punishment is governed by law and equity and not a matter of emotional vituperation, otherwise, anomie will take over the society.

Recommendations

Pursuant to retentionist philosophy, before death penalty is passed on anyone the government should put in place adequate measures that could make capital punishment justifiable and worthwhile in Nigeria. To this end, the following ten point proposal should be vigorously pursued by the government so as to improve the penal system.

- (1) Government should play its constitutional role adequately by addressing the socio-economic factors that make criminal activities attractive. In other words, there is a pressing need to deal with those socio-economic conditions of poverty and injustice which often provide the breeding grounds for violent crimes (e.g. the Niger Delta problem). Steps should be taken urgently to create sustainable jobs for the teeming population of unemployed Nigerian youths and this should go beyond mere rhetoric.
- (2) Capital punishment may be imposed only for murder related crimes (including terrorism, armed robbery and kidnapping) for which death penalty is prescribed by law at the time of its commission. In other words, there is a case for a selective retention of capital

punishment in Nigeria. This is a departure from the extreme retentionist position which accommodates drug peddling, rape, petty stealing, religious offences and other non-homicidal crimes.

- (3) Capital punishment may be imposed only when guilt determined by clear and convincing evidence leaving no room for an alternative explanation of the facts. DNA (deoxyribonucleic acid) tests should be conducted for accused persons, where necessary, to avoid the execution of innocent persons.
- (4) Capital punishment may be carried out only after a final judgement rendered by a competent court allowing all possible safeguards to the defendant including adequate legal assistance for the less privileged to avoid miscarriage of justice.
- (5) Anyone sentenced to death shall receive the right to appeal to a court of higher jurisdiction without any obstacle to ensure that instances of prejudice, bias and hasty judgements are checkmated.
- (6) Those sentenced to death through appropriate legal means should not be kept waiting *ad infinitum* on the death row. It is possible that the number of Nigerians who have been on death row for more than ten years is far than is officially acknowledged. This situation in the criminal justice system is quite absurd. Capital punishment would be a very useful and powerful deterrent if sentence is carried out consistently and without much delay. Criminals are not stupid people. Their nefarious activities will remain unabated once they know that the death penalty is not

- easily enforced, that it is just kept out there in some half-hearted manner by politicians to sound tough on crime. Executions, therefore, should be carried out within five years (at the least), so that it can finally exercise its deterrent effect and also help save tax payers money.
- (7) Capital punishment should be carried out in such a manner as to inflict the minimum possible pain on the offender. The method of hanging operational in Nigeria or shooting by firing squad should be replaced immediately with what might be called a decent device, like the use of lethal injection as practiced in civilized countries like the United States of America. The government should give thought to the sensibilities of the public as well.
- (8) A moratorium should be placed on death penalty in Nigeria to enable the government reform the criminal justice system which includes the police, the courts and the prisons. It is evident that there has been a subtle and informal regime of restraint in confirming death warrants by the government twelve years. This apparent unofficial moratorium placed on capital punishment in the country is politically motivated and totally misconceived. In this circumstance, we recommend a regime of restraint that will be based on a sense of statutory duty through the enactment of a law on moratorium rather than on executive discretion and political expedience, which could ill-conceived and detrimental to the general public.
- (9) The Nigeria Police, specifically, should be adequately staffed, trained, equipped and mobilized to combat the wave of violent crimes in the country. This is important because the onus of detection, apprehension and prosecution of criminals lies with them.
- (10) Urgent steps should be taken by the government to halt the glamorization and promotion of violence in the entertainment industry which breeds crime among the youths. If this and other recommendations made in this paper are not carried out, the government will lack the moral justification to execute criminals.

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