

CAPITAL PUNISHMENT AND CRIME CONTROL IN NIGERIA; AN ETHICAL VIEW.

Joseph N. Ogar, Abel Ushie, Udum and *Bassey Samuel Akpan

Department of Philosophy, University of Calabar, Nigeria

Article History: Received 25th January, 2017, Accepted 31st January, 2017, Published 1st February, 2017

ABSTRACT

Capital punishment as a way to clamp down on high crime rate in Nigeria is contestable and has generated stiff debates between its supporters and opponents. However their distinct views, both parties are unanimous on the fact that killing a human being is a matter of great moral concern which demands that caution must be taken and other alternatives exhausted. It should be if at all, as the last resort. We must be sure to have the strongest, most compelling reasons for doing so. What kinds of reasons do we have for and against death penalty? Is it the protection of human life and the achievement of justice? Is this argument convincing enough? However, many were of the view that if we value human life and desire justice, then is sure to support capital punishment. This argument through sound plausible, but I think if examined painstakingly, it will rather show that such position is mistaken and faulty. This paper aimed at showing that capital punishment is neither an effective defense against crimes reduction nor effective means of achieving desired justice. Therefore we lack justifiable grounds or reasons to punish offenders by death. Agreed it is wrong to kill, then killing to correct a gruesome crime is still killing, and by its ontological nature is wrong and should not be carried out by the state or supported by individuals for reasons being that it is immoral and unethical

Keywords: Capital Punishment, Nigeria

1. INTRODUCTION

Capital Punishment or Death Penalty is the execution of a convicted criminal by state as punishment for the most serious crimes known as capital crimes (Bedau, 19). The word "capital" as used here is derived from the Latin word 'capitalis', which means "concerning the head" (Garland, 561). Therefore for one to suffer capital punishment figuratively means to lose one's head. Understandable, death penalty when meted out according to the law is quite different from murder, which is committed by individuals for personal ends (20). Nevertheless, human life has supreme value and so, regimes that often encourage the use of capital punishment, either for political or religious offense, violate the most important human rights; the right to life. Historically, it is sad to recall that death penalty was most times misused for minor crimes, and to suppress political dissent and religious minorities before 19th and 20th centuries like Europe and Latin America (Leiser, 40). While in countries where it is still retained, it is reserved as a punishment only for those serious crimes such as premeditated murder, espionage, treason. Statistics had it that

capital punishment is abolished for all offenses in 88 countries; abolished for all offenses except under special circumstance in 11 countries; retained, through not used for at least 10 years in 30 countries; and retained in 68 countries (Awolowo, 106).

In spite of all, it could be observed that Death Penalty is still in active use (Nagin, 90). In many countries cases of corruption, sexual crimes (adultery and sodomy), religious crimes such as apostasy; in military, offenses such as cowardice, desertion, insubordination, and mutiny are punished with capital punishment (Waston, 78). China performed over 3,400 executions in 2004, Iran performed 159 executions in 2004, The United State performed 60 executions in 2005, between 1976 and 2006, Texas conducted 370 executions; Singapore committed the highest execution rate per capita, with 70 hangings for a population of about 4 million (Farrell, 197) This work however is not so concern with the statistics of the case of capital punishment in the globe but morality of using what is wrong to correct wrong action perpetrated.

2. CAPITAL PUNISHMENT DEBATE

Everybody has a basic human right to life, even the individual who kills; sentencing a man to death and executing means disregarding that privilege. This is fundamentally the same as

*Corresponding author: *Dr. Bassey Samuel Akpan, Department of Philosophy, University of Calabar, Nigeria*

the 'value of life' argument; this is drawn nearer from the point of view of human rights. The counter-contention is that a man can, by their activities, actions, relinquishing human rights, and that a murderer relinquish their privilege to life. Another illustration will make this unmistakable - a man relinquishes their right to life on the off chance that they begin a lethal assault and the only way the victim can spare his/ her own life is by slaughtering the aggressor. The medieval thinker and scholar Thomas Aquinas made this point unmistakably:

Therefore if any man is dangerous to the community and is subverting it by some sin, the treatment to be commended is his execution in order to preserve the common good... Therefore to kill a man who retains his natural worthiness is intrinsically evil, although it may be justifiable to kill a sinner just as it is to kill a beast, for, as Aristotle points out, an evil man is worse than a beast and more harmful (Waston, 78).

Aquinas is stating that specific settings change an awful act (murdering) into a decent demonstration (slaughtering to repair the infringement of right done by the individual executed, and slaughtering a man who has relinquished their natural value by slaughtering). Before engaging in the argument for or against capital punishment, it will be worthwhile to ask whether we ought to punish people for various crimes by killing them, is a major dispute that cannot be undermined. For those who support it they claim that, The death penalty forever expels the most noticeably bad criminals from society and demonstrate significantly to the rest of us living than putting them behind bars indefinitely. It is undeniable that dead criminals can't carry out any further violations, either inside jail or in the wake of getting away or in the wake of being discharged from it. While it may be true that existing widespread public support for capital punishment may stem from three (3) main sources to include

- (1) Danger
- (2) A desire to protect human life
- (3) A desire to see that justice is done.

People feel terribly angry in the face of gruesome crimes and as such, would not want it to be considered little (Berns, 66).

3. CAUSES OF CRIME

Imperatively, knowledge of the root cause of a thing or problem is ultimately 70 percent success into solving the said problem. It implies that if we are able to diagnose some of the causes of crime and do everything to tactically avoid such causes, we would as well have successfully been able to avoid the consequences of such crimes. Hitherto, poverty, hunger, unemployment among other variables has been identified as some of the remote causes of crime. However, most people

across the globe explained criminal behavior in religious view, where they see crime as a product of the devils handiwork, or a consequence of man's fall to grace. However, we often address the criminal as one without the fear of God, and seduced by the devil to commit one crime or the other. To Charles Darwin, crime is viewed as a behavior which occurs from social biological and psychological factors (Fancher, 87). Going by these, freewill and responsibility played little part in understanding and solving crime. Today, in western world, at least three main positivistic schools of thought: The biological, Psychological, and the sociological. While criminological thought is attributed to the psychological and sociological schools, the biological school attributes crime to extra chromosomes factors (Beccaria, 86). A recapitulate on psychological thought or school associates criminality with mental conflict, repressed desires, and misplaced aggression, going by these theories, crime could be soon as a form of substitute behavior that compensates for abnormal urges and desires. We observe that all theories have their pitfalls to include the psychological theories, but that notwithstanding, we cannot overlook its significant role in criminal justice policy. From all said, it becomes seemingly lucid that criminal tendency are sometimes result from interplay of internal and external factor in which case it is difficult to determine with apparent ease whether the criminal was or not influenced against his own will therefore much care be taken to ensure that punishment meted should be commensurate to the crime, be able to deter others but imperatively reform the criminal even through with our eyes aimed at gaining retributive justice. According to Beccaria, crime is the result of deliberation and choice, therefore, criminals should be responsible for their conduct and punishment meted to them is justified. On the other hand, if crime is the result of hereditary factors, then crime is beyond the criminal control and so punishing criminals is unjust (90). Karl Menninger cautions that punishment [treatment] to a crime [illness] should be seen as treatment for the crime [illness] which everybody expects that any sick person before a physician desires to come out better and not worst. Understanding his view, at worst capital crime should attract life imprisonment not death penalty after all, 'two wrong cannot make a right'. Speaking against capital punishment for capital crime, Joel Feinberg argued from the point of incongruity that may likely result if we juxtapose death with penalty and Capital with punishment. He maintains that a punishment has an expressive function with a message of social condemnation. That is, a way of saying what you did was wrong and you must never do it again. A penalty on the other hand may be seen as a 'licensing fee' that is the price to be paid for doing the prohibited action. No more moral lesson is gained or learned [95 - 97]. On the strength of the foregoing articulations and being found wanting in the face of moral assessment, the question then is that morally speaking, should capital punishment continued to be practiced or be abolished. If the practice of capital punishment were to serve as a deterrent to others have we achieved this. Taking the case of Niger Delta militancy, and the Boko Haram terrorism, it could be stressed that moral lessons are gradually taught through dialogue rather than the use of instruments of coercion and force.

Argument for and against Capital Punishment
We shall look at it from two angles

- a. Deontological [apriori] arguments based on natural rights or virtue and
- b. Utilitarian or consequentialist arguments.

Deontological, is the assertions that death penalty is wrong by its very nature as it violates the right to life. In fact amnesty international stands on this, and it is not compromising (schabbas, 90). Virtue argument against death penalty argued that death penalty should not be practice because the process is cruel and not humane. It brutalizes the society at large, desensitizes, and as well, dehumanizes participants of the judicial process, also on account that it throws off the possibilities of rehabilitating or redeeming the perpetrators. Morris argued also that without proper retribution, the judicial system further brutalizes the victim's family and friends amounting to secondary victimization (104).

Wrongful convictions

No criminal justice framework is impeccable, and shortcoming prompts to miscarriages birth cycles of justice. Notwithstanding when every one of the benchmarks for a fair trial are maintained, wrongful convictions can still happen. Numerous nations that practice the death penalty, sometimes, don't meet these guidelines. For example, in Japan, the arraignment's inability to uncover exculpatory proof has prompted to various wrongful convictions (Kazuko, 1252). In India, prosecutorial offense has prompted few prominent instances of wrongful convictions (Kazuko, 1252). Death penalty is opposed on this grounds because every criminal justice system is fallible, therefore innocent people many inevitably be executed by mistake and it would have been too late to correct giving its irreversibility nature of such punishment. Though supporters of death penalty are of the views that the criticisms apply equally to life imprisonments which can be imposed in error and that incarceration is also irreversible if the innocent dies in prison.

Right to Life

The death penalty is a foreswearing of the most essential human rights; it abuses a standout amongst the most crucial standards under broadly acknowledged human rights law - that states must perceive the privilege to life. The UN General Assembly has called to an end to the death penalty and human rights associations concur that its burden breaks central revered human rights standards. Tradition is rapidly moving towards a position in support of worldwide abolition. Critics of death penalty frown that it amounts to violation of the right or the right to life or of the sanctity of life. The right of life is inviolable and may only be taken in self-defense or as an act of war. These are some exceptional cases for violation. To administer death penalty on a criminal, he or she should executed would have his/her right to life violated (Von, 659). However, defenders of death Penalty see nothing wrong with depriving victims of Capital crimes of their right to life. In addition, the death penalty is regularly connected in a biased way, infringing upon the guideline of non-discrimination.

Cruel and unusual punishment

Opponents of death Penalty argued that it is inhumane the method of execution meted to victims of death penalty. While proponents retort that, that is not enough to deter after all

even incarceration are also in inhumane with its attendant production of severe psychological depression. Sweden has since a long time ago worked effectively at global level for the aggregate abolition of the death penalty. In Sweden's view, the death penalty is an inhuman, merciless and irreversible discipline that has no place in a modern legal system, and its abolition should be an organized project for the Governments in endeavors to advance and increment regard for human rights (Siennick, 534). A great part of this movement today is facilitated by the EU, as per the EU Guidelines against the death penalty. The General Affairs Council has additionally embraced arrangements on exchanging merchandise that can be utilized to complete the death penalty, torment or other unfeeling or inhuman treatment or discipline (World Medical Association, 1).

Anger

Some people uses anger as felt in the face of terrible crimes as a justification for death penalty and nothing should be compromised (Berns, 1979, 4). Agreed it would be discrediting if we fail to react over a capital crime so committed but anger by those who take people's lives may not itself justify punishing by death especially when the person killed and the one to be killed by capital punishment are of great varying and irreconcilable status (Kant, 96).

Doing Justice

Supporters of capital punishment do so because to them they want to see justice done. That they want the murders punished by death. Here we see that the desire may be commendable but the capital punishment or death penalty often fails to achieve the desired compensation as it amounts to using two wrongs to make a right and we should far be moving away from this enslaved position because they 'eye for an eye' disposition is even more betraying as no two eyes may be the same quality position hence the long anticipated justice may remain far fetch. Even so, our legal system may reflect differently in that many kinds of homicide may required punishments that are less severe than death. The moral advantages for any society is to have criminal reformed so as to contribute their original quota at the long run for the overall benefit of the society rather than subscribed to the 'eye for an eye principle' (selling, 1980; 68).

4.CONCLUSION

The cases of death penalty as experienced in Nigeria in the struggle to stop Boko Haram, on one side, armed robbers, and on the other side Niger Delta Avengers' have left Nigerians worst than they were as we witnessed troubles multiplied, more hardship experienced, more bombing, obstinately etc. The usual reasons given in favor of death penalty are much less oriented and weaker than they appeared (Currie, 34 – 38). Government should enlist counselors, psychologist moralist, peace and conflicts crusaders moralists, etc to trouble zones with their wealth of experience to calm tension in trouble zones. Again it is the position of this paper that people be protected from violence, and ensure a just society with people peacefully co-existing. It must be borne in mind that, death penalty does not give protection from attack nor guarantees

justice for those offended. Therefore both proponents and opponents of capital punishment have to do a better thing by thinking on how we can check violence in our society. Government must do more to devise strategies that will make our society safer, less violent and more respectful of human life. On the part of our leaders, a better distribution mechanism should be adopted to distribute the wealth of the society to help reduced hardship and biting effects of poverty. While also ensuring that both the leaders and the led respect the law of the society before which all are equal.

5. REFERENCES

- Awolowo, O., *Thoughts on Nigerian Constitution*, Ibadan, Oxford Univ. Press., 1966
- Beccari, Cesare. *On Crimes and Punishments*. Trans. Henry Paolucci. Indianapolis. Bobbs-Merrill, 1963.
- Bedau, H. A. *The Death penalty in America*. New York: Oxford University Press, 1982.
- Bedau, Hugo Adam. 'Capital Punishment.' In Tom Regan (ed), *Matters of Life and Death*. Third Edition. New York: McGraw-Hill. 1993, pp 160–94
- Berns, Walter. *For capital punishment: crime and the morality of the death penalty*. Lanham: U Press of America, 1991.
- Currie, Elliott. *Confronting crime: an American challenge*. New York: Pantheon, 1985.
- Fancher, R. E. (2009). Scientific cousins: The relationship between Charles Darwin and Francis Galton. *American Psychologist*, 64(2), 84–92.
- Feinberg, Joel. *Doing and deserving: essays in the theory of responsibility*. Princeton: Princeton U Press, 1974.
- Feinberg, Joel: *The moral limits of the criminal law*. New York: Oxford U Press, 1988.
- Garland, D. (2001). The Cultural Uses of Capital Punishment. *Punishment and Society*, 4(4), 459–487.
- Kant, Immanuel, and Ladd. *The metaphysical elements of justice*. New York: Macmillan, 1985.
- Kazuko Ito, Wrongful Convictions and Recent Criminal Justice Reform in Japan, *University of Cincinnati Law Review*, Sep. 8, 2013, p. 1252.
- Leiser, B. M. (2001). Capital Punishment and Retributive Justice. *Free Inquiry*, 21, 40
- Menninger, Karl A. *The crime of punishment*. Chicago (Ill.): Stone-Brandel Center, 1968.
- Morris, H, 'Persons and Punishment,' *The Monist*, LII, 475, 1968.
- Morris, H. *Punishment of Death*. Beverly Hills, Calif; Sage, 1980.
- Nagin, Daniel S. "Deterrence and incapacitation." *The handbook of crime and punishment* (1998): 345-368.
- Ogar, Joseph N, Bassey S.A 'Historical Perspective on Social Justice' *STM Journals* Vol.6, issue 3, 2016,7.
- Schabas, William. *The abolition of the death penalty in international law*. Cambridge: Cambridge U Press, 2002.
- Sellin, Thorsten. "The Penalty of Death". *American Journal of Sociology* 87, no. 5, Mar., 1982: 1237-1239.
- Siennick, Sonja E. "Deterrence and the Death Penalty." *Criminology & Public Policy* 11.3 (2012): 535–537. Web.
- World Medical Association. "WMA Statement on the Right of Rehabilitation of Victims of Torture." *World Medical Journal* (2013): 1. Web.
