

African Research Review

International Multi-Disciplinary Journal,

Bahir Dar, Ethiopia

AFRREV Vol. 12 (1), Serial No 49, January, 2018: 48-55

ISSN 1994-9057 (Print) ISSN 2070-0083 (Online)

DOI: <http://dx.doi.org/10.4314/afrev.v12i1.6>

Rescuing ‘Defenseless Selves’: Tasking the Nigeria Criminal Justice System on Capital Punishment in the 21st Century

Chukwu, Ngozi

Department of Philosophy

University of Port Harcourt

Phone: +2348035439733

E-mail: chukwungozi66@gmail.com

Abstract

Nigeria will still make effective use of capital punishment in the 21st century, at least to satisfy the principle of double effect. Better capital punishment than the violence of capital crime. More than the better of two evils, this paper argued that the death penalty is crucial for those facing trails for capital crimes in Nigeria achieving authenticity in Soren Kierkegaard’s view. Such criminals are among the ‘defenseless selves’, those whose individuality has been lost due to external influences. The institution of capital punishment by a criminal justice system that does not jeopardize the ingredients of justice, especially, proper apprehension suspected criminals, competent representation of the prosecuted, prompt prosecution and execution, of those found guilty, could rescue condemned criminals and enable them become ‘individuals’ or achieve authenticity. Moreover, it will reduce the spate of capital crime in the county, as well as economic loss due to amnesty bargains between governments and suspected criminals or due to ransom being paid kidnappers. Thus, even as speculations on abolition of capital punishment continues, the Nigerian legal profession should encourage competent and adequate representation of criminals facing the death sentence for the country to realize more through capital punishment.

Key Words: ‘Defenseless Selves’, Criminal Justice System, Capital Crime, Capital Punishment

Introduction

This paper is motivated by the conviction that in the 21st century Nigerian society capital punishment could afford criminals facing the death penalty opportunity to achieve authenticity in the Kierkegaardian sense. Nigeria is one of the countries of the world in which

due to social, political and economic difficulties, many people tend to resort to capital crime as a means to survive. The number of capital crimes has continually increased in Nigeria. During the second period of military rule in the country (1983 -1999) about six capital crimes were introduced into the Nigerian criminal law. These crimes include arson, oil pipe-line vandalism, exporting mineral ore without authority, electric wires or telephone cables vandalism, and dealing in petroleum product without license. In recent times, kidnapping, human and drug trafficking, have been added to the list of capital crimes in the country. Some Nigerians are now clamouring for rape to be included in the list. Thus, murder is far from being the only crime in respect of which a death sentence could be passed in Nigeria.

Hardened criminals may not as such cultivate feeling of remorse for their act unless they are faced with the enormity of capital punishment. Kierkegaard's third stage of life's way', the 'religious stage' identifies the feeling of guilt as necessary for the realization of a self. According to him, people who are yet to embark on the journey to authenticity, the 'defenseless selves', need an avenue such as a very difficult condition to prompt them into seeking authenticity. With the aid of philosophical analysis, this paper will articulate how capital punishment could be an avenue for those on trials for capital crimes and those on death row, who in this paper are the 'defenseless selves', to begin the journey to authenticity. Philosophical analysis involves the theoretical tools of exposition, speculation and argumentation. These tools will be deployed in discussing Kierkegaard's idea of the 'defenseless selves' and authenticity, the nature of the criminal justice system in Nigeria, and how the system could, through capital punishment, aid those on death row to become what Kierkegaard refers to as 'the individual'.

Clarification of Concepts

'Defenseless Selves':

In his existentialist views, Kierkegaard conceived man as a being whose existence in the world renders him vulnerable to the world's subsuming influences. The world, he noted, seeks to shape our behaviours and to condition us with its values so as to make us fit into its collective scheme. According to him, the influence of the world is opposed to our individual efforts at articulating our private experiences which he identified as the inner world, or the self. It is the inner world, Kierkegaard holds, that makes us individuals different from the crowd. That is to say that our private experiences need to be articulated by us, the recipients, and not to be submerged in the experiences of others. Since the self, as a given is part and parcel of the outer world, it remains defenseless from the clutches of external influences until something like a very difficult situation occurs to prompt one to seek authentic existence. James Christian observes that the loss of the individual, the kidnapping of defenseless selves, is what escalated Kierkegaard's wrath into a blazing crusade, (Christian 2003, p. 429). It is the outer world's tendency marked by ones struggle to belong to the world that Christian refers to as the kidnapping of the defenseless selves. 'Defenseless selves' therefore designates those who in Kierkegaard's view, are hindered by the outer world, from starting the journey of transformation or reformation in order to become 'the individual'. They are the people who need to be rescued and Kierkegaard thinks this could be done by 'creating difficulties everywhere', (Kierkegaard 1994, p. 166). To begin the journey of reformation, as Kierkegaard noted, is not an easy task. In his words, "the majority is quite terrified of becoming, each one of them, an individual... when the individual tries it out, he finds the thought is too great for him, in fact overwhelming" (Kierkegaard 1968, pp. 112-48). The reason stated in this statement is behind Kierkegaard's belief that his major task is to aid others achieve authenticity. Thus, he declared, "Had I to crave an inscription on my grave I

would ask for none other than ‘the individual’ and even if it is not understood now, then in truth it will be”, (Kierkegaard 1945). Kierkegaard made real his words when in Denmark he made it his duty to stand against the system and come to the rescue of would-be individuals who were, according to him, “forcing their way through the narrow pass”. Thus, the life of his philosophy has been ‘the individual versus the crowd’.

In this paper the would-be individuals, the ‘defenseless selves’ are conceived as those criminals being tried for capital crimes, convicted criminals on death row, and suspected criminals yet to be brought to book, even those seeking amnesty in Nigeria. Among such people could be found those who could not continue with the struggle between the private and the public or in Kierkegaard’s view, between the inner world and the outer world and consequently, resorted to crime. They are those who indulge in capital crime in order to make ends meet. In other words, they know the enormity of capital crimes but engage in them as the only way out of poverty or other life threatening situations. Also among them could be found those who due to the overwhelming power of the outer world on them are not even aware of this struggle. This category of people indulges in capital crimes not thinking the moral status of such crimes. Beginning with the time these people are apprehended for crime, and through their trial processes to conviction and punishment, they are totally subject to the criminal justice system. Can they be rescued so they can begin the journey of reformation that could help them achieve authentic existence? What should the criminal justice system in Nigeria do to rescue such people? Rescuing them as implied in this paper is not really granting them amnesty or commuting death sentences to imprisonment. It goes beyond this to helping them achieve authenticity even as they face a hangman’s noose.

Criminal Justice System

The Black’s Law Dictionary defined criminal justice system as “the collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded” (Garner 2009, p.431). Institutions involved include the court, law enforcement agencies, and the prisons. The criminal justice system starts with an enforcement agent like the police whose job is that of preventing crime, detecting its occurrence, and apprehending the malefactor. It then culminates in the punishment of the criminal after the elaborate ritual of trial and conviction, (Golden 1975, p. 69). Regarding this system, the question of whether capital punishment is just or humane, is usually raised. However, there is little or no reason to believe that capital punishment should not be part of the Nigeria criminal justice system. Only the clamour for the abolition of capital punishment from human society could weigh down on the need for such punishment in a country like Nigeria where the spate of capital crimes has continued to increase over the years.

Capital Punishment

This is a type of legal punishment in which convicted criminals are executed based on the death sentence. It is also called death penalty. The death penalty is usually executed after a due process of legal prosecution carried out by the criminal justice system. The Nigeria criminal code states categorically that “subject to the provisions of any other written law punishment which may be inflicted under this code are death, imprisonment, fine, and forfeiture (Criminal Code 1990 s.17). Consequently, crimes for which the death penalty is meted should be the ones recognized by the law as subject to such measure. Capital punishment is therefore different from extra-judicial killings such as assassinations and killings due to jungle-justice.

Tasking the Nigeria Criminal Justices System on Capital Punishment

Convicted criminals on death row could be considered would-be individuals in the Kierkegaardian sense. Those of them who resorted to crime because they were terrified of becoming an individual are those if helped to begin the journey to authentic existence, may actually arrive. This is because they already know what the struggle involves and perhaps because no support was given them, they could not overcome the overwhelming power of the outer world. The character of Nigerian societies mangiest in the celebration of wealth irrespective of how it was gotten has created a system in which the poor seems to have no place. One who has started the journey of reformation may be tempted to backslide in view of the degrading and ill-treatment that the poor is subjected to in such system. In the same vein, one who has not yet started that journey may be totally discourage from doing so. Thus, capital criminals in Nigeria include armed robbers, kidnappers, drug traffickers, human traffickers. Again, in Nigeria where there is systematic prejudices manifest in religious, cultural and political rivalries, many people may be ignorant of the struggle between the outer world and the inner world. Such people may not even think of beginning the journey to reformation. Religious extremists who may eventually form insurgencies like the Boko Haram sect, commit murder indiscriminately, assassins recruited mainly for political reasons, militants responding to ethnic bigotries and social injustices, may all be among the novices with respect to the private experience and public world conflict. Activities of the categories of people mentioned above have continued to increase worldwide, and seem to have escalated in the 21st century. The following table gives a clear indication of the rate at which capital crime has increased in the United States of America in recent time.

Table 1: Size of Death Row by Year (1968-2015)

1968	517	-1982	1,050	1996	3,219	2010	3,158
1969	575	1933	1,209	1997	3,335	2011	3,082
1970	631	1984	1,405	1998	3452	2012	3,033
1971	642	1985	1,591	1999	3527	2013	3 054
1972	334	1986	1 781	2000	3593	2014*	3,123
1973	134	1987	1,984	2001	3581	2015*	3,158
1974	244	1%8	2,124	2002	3557		-
1975	488	1939	2,250	2003	3374		
1976	420	1990	2,356	2004	:3315		
1977	423	1991	2482	2005	3254		
1978	482	1992	2,575	2006	3228		
1979	539	1993	2,716	2007	3215		
1980	691	1994	2,890	.2008	3207		
1981	856	1995	3.054	2009	3175		

Sources: Bureau of Justice Statistics “Capital Punishment” for Years 1968-2013

***NAACP Legal Defense and Educational Fund, Inc. “Death Row USA” for Years 2014 and 2015**

Table 1 shows that the number of inmates increased tremendously from the late 1990s to the early 20s and tended to decrease slightly from 2010 to 2015. The slight decrease could be due to some factors other than reduction in crime. In recent times, commuting death sentences to life imprisonment or lesser jail terms seems to have become a norm. Added to this is the attitude of granting state pardon or amnesty to perpetrators of capital crimes as witnessed a

many countries of the world. Yet capital punishment still thrives. A report released by the Nigerian Prisons Service on 31st October 2014 shows prisoners on death row as numbering 1,588. This number however, does not include those sentenced to death for violating the Sharia law. The Federal Government and the Nigeria Supreme Court have repeatedly declared unconstitutional the Sharia Law and its sentence of death by stoning as passed on Safiya Hussaihi and Amina Lawal for adultery in the year 2000. Despite this declaration, on June 25, 2015, nine people were sentenced to death in Kano State by a Sharia Court of Appeal in Rijiyar Lemo. They were accused of blaspheming against the prophet Mohammed, contrary to sections 110 and 382b of the Sharia Penal Court Law year 2000, (Uncovariom, 26/06/2015). Death penalties passed by Sharia Courts may be a clog to the move towards the abolition of capital punishment. Ivan Sumonovic, Assistant Secretary-General for Human Rights of the United Nations has noted that there has been a decline in the number of countries upholding capital punishment in the last 40 years. According to him, in 1975, about 97 percent of countries were executing criminals, but in 2015, only 27 percent of countries handed down the death penalty. He however disclosed that in 2014, there had been a 28 percent increase in the number of people condemned to death, stating that “it represents an overall increase in Member states resorting to death penalty to prevent terrorism or drug related offences” (Sabater 2015). On the world’s spectra, Asia ranks the world’s most populous continent with great nations like China, Japan, India, Singapore, etc. all pro-capital punishment. 36 states of the United States, most of the Caribbean, Botswana, Zambia and other countries of the African Continent, also have capital punishment enshrined in their legal codes. Thus, a greater percentage of the world’s population still sees capital punishment as a viable and effective option for dealing with capital crimes.

There is doubt whether the ‘no capital punishment policy’ of the UN would ever be carried through in the 21st century. Bright, P. commented that “...we are going to have death penalty into the twenty-first century; there is no question about that. We are going to have much greater use of the death penalty than we have had before” (Bright 1995, p. 281). Why not, when all around us we witness violence and are very aware of the fear of crime. Reacting to the voices condemning the Indonesia execution of the death penalty, the president of Indonesia, President Joko Widodo lamented “Now we have 4.5 million people in rehab and at least 1.5 million people who cannot be cured. This is the picture of Indonesia’s future, our next generation...Drugs are entering villages, ruining our young ones, are being sold at campuses; even universities have drug problems. This is an emergency” (Gilbert 2015). The situation in Indonesia may not be significantly different from what obtains in Nigeria. Though Indonesia’s main headache may be just drug-related offenses, Nigeria has wide spread types of crimes as identified in the introduction to this paper. In Nigerian, the spate of murder committed through insurgency and politically motivated assassinations has remained relatively high during the past five years. Kidnapping has become the order of the day and it seems to affect almost every citizen of the country. Even as I prepare this paper, a colleague, Dr. A.D. Lebari of the Faculty of Management Sciences University of Port Harcourt, kidnapped on October 17, 2015, is yet to gain his release. His case is but one of such incidences the university community has witnessed in recent times. The press conference called by members of the Academic Union of Universities (ASUU), University of Port Harcourt Branch, has not even helped the situation. With the rate at which crime is increasing in Nigeria, Nigerians cannot help but believe in the importance of the integrity of the process of capital punishment. The Nigerian government may have articulated the inevitability of capital punishment in dealing with crimes in the country, at least in this century, hence, Nigeria’s abstinence from the resolution on a Moratorium on the use of the Death Penalty at

the UN General Assembly on December 18, 2014. Earlier, on March 20 2014, when the government received the recommendations of the review on Nigeria done under the Universal Periodic Review of the UN Human Rights Council in October, 20, 2013, the country's delegation stated, "Much as we acknowledge the desirability of a moratorium on the death penalty, it is not feasible to implement at this time under a Federal system that guarantees a measure of autonomy to its federating units", (www.handso.com.info/bancadati/schestato.php? Idecontinente=258nome=Nigeria). Now that it is obvious that the capital punishment still remains viable and effective in Nigeria in the 21st century, the question re-surfaces, how can the criminal justice system through capital punishment be of help in the quest for authenticity?

One reason for both the pro-capital punishment and anti-capital punishment believing in the importance of the integrity of the process is that the moral basis for such punishment is not just vengeance, but also justice. Everyone has interest in justice. The aim of achieving justice is the moral ground for punishment emphasized by the retributivist theory of punishment. In his religious existentialist views, Kierkegaard demonstrated that the feeling of guilt is instrumental in the journey to discover the individual's self. No process could instil in a criminal the sense of guilt like one which actually ensures justice. Once the process is just and the punishment, irrespective of the nature, is accepted as justifiably inflicted, the convict would be naturally disposed to feel guilty. Any pleas to clemency from those prosecuted of crime, usually comes after the trial processes. Though some people attribute this to fear of the threat of capital punishment, it could as well result from the convict's fulfilment in the trial process, that justice has indeed taken place. It is this fulfilment that could make one sentenced to death willingly accept the penalty. At the point at which the sentenced accepts death penalty as just even though severe, he or she could be said to have transcended the inner world/outer world conflict. One at this time could be said to have begun the journey to authentic existence for one could then think "I am the one who committed this crime; I was pushed to do it by so and so; truly, I no longer deserve to continue living". If a thought as this is born out of wishful thinking, it could lead one to committing suicide. However, for one who has actually began the journey to authentic existence through feeling of guilt motivated by the belief in the integrity of the criminal justice system, the only option would be to allow the law to take its own course. Can we witness those on death row in Nigeria willing to go through the hangman's noose? It is such situation, more than amnesty and plea for clemency that should justify statutory pardon for criminals on death row.

If the ingredients of justice are lacking in the criminal justice system, the fulfilment that could create in a criminal on death row a sense of guilt may not be achieved. With respect to the criminal justice system, justice starts with the apprehension and bringing to book, perpetrators of crime. Three ingredients of justice could be identified regarding the prosecution of capital crime: the existence of incorruptible judges, unbiased prosecution based upon the law and a responsible exercise of discretion, not influenced by politics, race, or other prejudices and the representation by a competent counsel to fulfil the requirement of the adversary system. It is unfortunate to note that the ingredients of justice are in jeopardy in Nigeria's criminal justice system today. Those who perpetrate capital crimes in Nigeria are hardly apprehended and brought to book. Most of them are dreaded for being in possession of weapons more sophisticated than those possessed by law enforcement agents whose duty it is to apprehend criminals and bring them to book. Unfortunately, it is suspected criminals in this category that governments usually bargain amnesty deals with. Some of those accused of capital crime waste their lives due to jungle justice. Either they are lynched by angry mobs or

they are subjected to extra-judicial killings by law enforcement agents who lack adequate weapons and skills with which to arrest and bring them to book. In trials of cases of capital crime, we witness pressure on elected judges, cases being plea-bargained out of court with the discretion of judges even without the knowledge of the victims of the crime committed, and lack of adequate representation for the poor. These factors are responsible for delay in prosecution of capital crimes and execution of those convicted of such crimes. They also constitute a clog to the importance of capital punishment towards the quest for authenticity. Many facing the death sentence in Nigeria do not really give a damn to whether they would actually be executed or not. The rich among them always hope to get their cases plea-bargained out of court or get state pardon after sentencing. On the other hand, the poor amongst them feeling distrust about the justice system remain on death row in prisons brewing more mischief. These facts could be the reason that even though the death penalty persists and the number of crimes for which it is inflicted increases, criminals are not deterred.

In this 21st century where capital punishment proves inevitable for checkmating violence and crime, there are enormous challenges for the criminal justice system in Nigeria. This is where Kierkegaard's role is required on the part of the key players in the Nigeria criminal justice system. In the Nigerian system, nothing is as more worrisome as the inability of law enforcement agents, especially, the police, in apprehending and bringing to book, perpetrators of capital crime. Most amnesty deals with criminals in Nigeria is as a result of lapses in the duty of law enforcement agents. Adequate training and equipping of these agents will not only reduce extra-judicial killings. It will also ensure that governments spend less on amnesty deals and individuals as well as governments and institutions spend less on ransoms for kidnapping. More especially, boosting the efforts of law enforcement agents will aid perpetrators of capital crimes, who are among the "defenseless selves" to seek authentic existence by confronting situation of capital punishment which can bring about the feeling of guilt in them. Good representation of the prosecuted in general could challenge undue influence that a judge may receive from political, cultural and social pressures. It could also challenge the abuse of discretion by the prosecutors. Thus, competent and adequate representation of criminals standing trial for capital crimes is a key to ensuring that the sentence is justifiable. Consequently, it is a key to those on death row building up confidence in the criminal justice system. Nigerian law students and those who go into the legal profession should find a way to dedicate themselves to representing those on trial for capital crimes rather than focusing on some fairly trivial things that are not stressful. When he received the Nobel Prize, Elie Wiesel said that our lives are not our own but belong to those who need us desperately, (Wiesel 1986, p. 12). If those being prosecuted for capital crimes are adequately represented, it will boost their hope on the justice system. Consequently, they will be convinced that justice is done if they are eventually convicted. Their trust in the system can instil in them the feeling of guilt which is necessary for them becoming "individuals". The sense of guilt will not be achieved if they cannot trust the justice system.

Conclusion

Everyone accused of capital crime facing trial in Nigeria is desperately in need of a competent lawyer. Rather than the call for the abolition of capital punishment, which we all know is not realizable in this 21st century Nigeria, competent and adequate representation for those facing such trials should be advocated. It is not enough for death sentences being commuted to life imprisonment or for state pardon being granted those on death row. These measures would

not be fruitful if those facing the death penalty do not first of all achieve authenticity. Even if the death sentence is actually executed, so far as prior to execution the sentenced was able to become 'an individual', it is better for him or her and the entire society. A convicted criminal on death row gaining freedom without self-realization could lead to him perpetrating the crime for which he was sentenced and released, or even another type of crime. In the same vein, jungle justice, extra-judicial killings and amnesty will only continue to make nonsense of the criminal justice system. Nigerians should look forward to those on death row coming forward to confess their guilt, accepting death sentence and actually looking forward to the sentence being executed. This attitude will show that "defenseless selves" have been rescued and at this juncture other measures may be employed to help them live out their "salvation", according to Kierkegaard.

References

- Bright, P. (1995). Capital punishment and the criminal justice system: Courts of vengeance or courts of justice. *The American University Law Journal*. Vol. 45. NO. 239, 1995, pp. 279-299.
- Christian, J. (2003). *Philosophy*. 8th ed. USA: Wards-worth.
- Federal Republic of Nigeria (1990). *Criminal Code, Cap 77, Law of the federation of Nigeria, 1990. S.17*.
- Death Penalty Information Centre, USA, (April 1, 2015). Death row inmates. Retrieved January 20, 2018 from www.deathpenaltyinfo.or/death-inmate-state-deathrowyear
- Garner, B. A. ed. (2009). *Black's law dictionary*. 9th ed. USA: WEST.
- Gilbert, K. (March 10, 2015). Capital punishment in the 21st century. Retrieved December 15 2017 from <http://www.thguildie.co.uk/features-capital-punishment-in-the-21st-centure>.
- Golden, M. P. (1975). *Philosophy of law*. New Jersey: Prentice-Hall, Inc.
- Kierkegaard (1968). *Sickness and death. Fear and trembling and the sickness unto death*. Watter Lowrie, trans. Princeton: Princeton University Press, 1968. Print.
- Kierkegaard, S. (1941). *Concluding unscientific postscript*. Swenson, D. F. , & Lowrie, W. trans. 1941. Quoted in William F. Lawhead (2002). *The voyage of discovery: A historical introduction to philosophy*. 2nd ed. Australia: Wadsworth.
- Nigeria Prisons Services (Oct. 31, 2014). Prisoners on death row. Retrieved December 10, 2017 from <http://swww.handsoffcarn.info/bancadati/schedastato.php?ideoutinente=258nom=Nigeria>
- Osamor, B. (2004). *Fundamentals of criminal procedure in Nigeria*. Abuja: P. Dee-sage
- Sabuter, M. (2015). No room for death penalty in the 21st century UN. Retrieved from <http://www.org/apps/news/story.asp?>