

A PERSONHOOD-BASED THEORY AND THE DEATH PENALTY: AN APPRAISAL OF AE CHIMAKONAM'S THEORY OF RIGHT ACTION

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Zubairu Lawal BAMBALE

Department of Philosophy

University of Pretoria & Ahmadu Bello University Zaria

Email: zubairbambale@gmail.com

ORCID No: 0000-0001-7056-2832

Abstract

Until recently, there have only been what are considered to be moral beliefs/worldviews/cultural practices as moral justification for actions in African ethics. However, recent intellectual activities brought about the development of ethical theories that serve as frameworks for justifying actions as good/right or bad/wrong from an African perspective. Guided by the principles that are derivable from African values, norms and thought, the theories provide systematic, coherent and universal frameworks of moral justification in a way that beliefs or worldviews do not. In this paper, I look into one of the theories. Propounded by Amara Esther Chimakonam, the theory draws from the African normative idea of personhood that Ifeanyi Menkiti proposes. My aim is to show its weaknesses and strengths. I begin with the weaknesses by arguing that, among others, the theory is unsuccessful in adequately accommodating individual excellences, such as interests and rights that it promises to accommodate. I then move on to show its strength by demonstrating that it provides a plausible moral argument against the death penalty from an African perspective.

Keywords: Personhood-Based Theory, African, The Death Penalty, AE Chimakonam, Moral Justification, Relationality

Introduction

Has the debate about the moral justification of the death penalty been exhausted? The answer is no. Although scholars have said a lot about the moral justification of the death penalty from the Western

perspective, the African experience has yet to be adequately explored (OKE 2007). In Western discourses, utilitarian and retributive theories and arguments are the traditional bases for accepting or rejecting the death penalty. On the other hand, traditional beliefs compatible with communality are the basis for accepting or rejecting the death penalty in the African context. However, recent development has brought about theories derived from traditional African beliefs and worldviews. Rather than merely describing what may or may not be good as traditional beliefs do, the theories go further to systematically prescribe what is and is not good. Guided by principles that reflect African beliefs and worldviews, the theories make traditional African precepts compatible with current modern demands. For instance, in addition to recognizing the central place that the community occupies, the theories recognize the place of individuals' interests, rights, privileges and autonomy.

Notable scholars that have developed African ethical theories include Innocent Asouzu (2004), Thaddeus Metz (2007, 2017a), Amara Esther Chimakonam (2021, 2023) and Jonathan O. Chimakonam (2023).¹ The theories are African by virtue of their conformity to the principles of relationality, contextuality and complementarity that underlie thought in Africa (JO CHIMAKONAM & OGBONNAYA 2021; JO CHIMAKONAM & AE CHIMAKONAM 2022). In this paper, I adopt AE Chimakonam's theory to show that the death penalty is generally not morally justifiable as it is undesirable from an African perspective. I will argue that the traditional moral beliefs that seem to suggest that the death penalty is morally justifiable are inconsistent with the African principle of relationality.

I structure the paper into six sections. The first section is the introduction. The second section briefly discusses the three principles that underlie African thought. In the third section, I present an exposition of AE Chimakonam's personhood-based

¹ For instance, JO Chimakonam's (2023) ethical theory of *uze-ezumezu* goes beyond concepts such as *ubuntu*, *ukama* and personhood that are merely framed as traditional moral beliefs. *Uze-ezumezu* theory does this by prescribing that "an action is right insofar as it promotes the individual good, the good of the other or both (common good); it is wrong if it fails to promote at least anyone at all."

theory of right action in the context of how it is rooted in Ifeanyi Menkiti's (1984, 2004, 2018) idea of normative personhood. In the fourth section, I engage the theory intending to show its weaknesses. To show its strength, I demonstrate how the theory provides a plausible argument against the death penalty in the fifth section. The sixth section is the conclusion, where I show whether or not I have succeeded in achieving what I have set forth to achieve. By the end of this paper, I would have shown that AE Chimakonam's personhood-based theory of right action provides a strong argument against the death penalty from the perspective of an African system of thought.

Three African Principles: Relationality, Complementarity and Contextuality

The African experience: society, culture, thought, and ethics, among others, are identifiable by a communitarian outlook. Three principles undergird this outlook: relationality, complementarity and contextuality (JO CHIMAKONAM & AE CHIMAKONAM 2022). Theories developed out of African communal thought will therefore be found to conform with some or all of these principles. Relationality is the principle that the world consists of entities that are "necessarily" related (JO CHIMAKONAM & AE CHIMAKONAM 2022, 10). So, every human being, for instance, exists among other individuals and entities. Every entity is in some way incomplete but could find completion in relating with others in a positive way. This makes it necessary for individuals to complement one another. Complementarity is the principle that "seemingly opposed" entities "can complement rather than merely contradict" (JO CHIMAKONAM & AE CHIMAKONAM 2022, 10). Self-insufficient individuals can complement one another by expressing solidarity among themselves. This is why the idea of complementarity is fundamental in African thought. The individuals as entities and their collection as groups, clans, societies or governments recognize it. Virtually all aspects of human life occur within the purview of this relational thought. So, for instance, the action, law, decision or policy of the individual, society or government can be adjudged as good or bad with reference to how it conforms with relationality. This takes us to another important principle in African thought which is contextuality. This is the idea

that every relationship takes place within a “specific context” (JO CHIMAKONAM & AE CHIMAKONAM 2022, 10). For instance, this principle requires that we must place any action in a context in order to properly determine its moral worth.

The three principles are not only ethical but epistemological and ontological. Basically, they are the foundation of the African thought system (JO CHIMAKONAM & OGBONNAYA 2021; JO CHIMAKONAM & AE CHIMAKONAM 2022). JO Chimakonam (2019; 2023) promotes this idea by developing a system of logic he calls Ezumezu that accommodates these principles. For him, two entities that appear to be opposed can complement rather than contradict each other if they engage in a relationship in a given context. This relationship generates another value that the two entities share by virtue of the complementary relationship. So, for instance, a complementary relationship between A which is true (T) and B which is false (F) can generate a value that both A and B have. This value will be both true and false (TF). The introduction of *njikọka* (relationality), *nmekeka* (contextuality) and *onona-etiti* (complementarity) as supplementary laws makes TF possible (JO CHIMAKONAM 2019; JO CHIMAKONAM & OGBONNAYA 2021; JO CHIMAKONAM & AE CHIMAKONAM 2022). In the next section, I will present AE Chimakonam’s theory that conforms to these principles, making it African.

An Exposition of AE Chimakonam’s Personhood-Based Theory of Right Action

Amara Esther Chimakonam’s personhood-based theory of right action states thus:

An action is right if and only if it positively contributes to the common good while adding moral excellencies to the individuals; an action is wrong if it adds moral excellencies to individuals without contributing to the common good or contributes to the common good without adding moral excellencies to the individuals (AE CHIMAKONAM 2021, 198; 2023, 112).

Communality entails that those individual actions geared towards fulfilling personal/individual goals should be done carefully so that

they do not impede the goals of others that make up society. This is founded on the realization that humans necessarily exist in society amidst others. They should therefore engage in a positive and humane relationship between and among themselves. Scholars have proffered individual accounts of how the nature of the humane relationship should be². Individuals who are able to relate in humane relationships are considered to have attained the status of personhood. These individuals are central to the idea of communality because they are considered to be the ones who are capable of upholding communal values and norms.

One central question that arises from the African discourses on communality is the source of guidance towards humane relationships by individuals. The question revolves around whether or not the community should prescribe norms that would guide individuals' actions or whether individuals should be the moral determinant of their actions. Menkiti (1984, 2004, 2018) argues that it is the community that should guide the individual to attain personhood. Kwame Gyekye (1992) holds that both the community and the individual are involved in the process of the attainment of personhood. Bernard Matolino (2014) argues that an individual is a person by virtue of being human. The implication of these suggestions (Gyekye's and Matolino's) is that personhood cannot be given by the community. For JO Chimakonam (2022), an individual who possesses intellectual and embodied relational capacities is a person. Closely connected to the African conception of communality is the normative idea of personhood, which focuses on the development of individual capacities to relate positively with others. This directly and deliberately involves guiding the community and individual towards what is considered to be the right action.

² For example, Ubuntu, which is typically interpreted as *a person is a person through other persons* emphasizes the importance of interdependence and solidarity (MBITI 1970; METZ 2017a). *Egbe bere ugo bere* (EBUB) states that it is possible for diverse people to live harmoniously and prosper in the same place through mutual toleration without undermining each other's peculiarities (IROEGBU 1995; JO CHIMAKONAM 2023). Ukama presupposes the relatedness of entities in the cosmos and stresses dependent and interdependent relationships between/among human beings on the one hand and other entities such as the environment on the other (MUROVE 2004).

AE Chimakonam (2021, 2023) draws from the African relational principle and the account of personhood that Menkiti (1984, 2004, 2018) puts forward to formulate her theory. According to Menkiti (2004), in addition to biological and psychological makeups, the environment or community is essential to a human being becoming a person. Hence the popular saying by John S. Mbiti: “I am because we are, and since we are, therefore I am” (1970,141). The implication of this is that being a human being is not sufficient for being a person. With the help of the community, the human being must go through a long process of transformation to attain the status of a person (MENKITI 1984). This involves entering relationships with others and the community. It is in the course of this that individuals gain awareness of their being and their place in terms of duties and privileges towards themselves and others (MBITI 1970). The extent to which an individual engages in communal life determines the prospect of attaining personhood. Engaging in communal life consists in living up to the expectations that individual circumstances demand (MENKITI 1984). These circumstances change as one grows from childhood to old age. In this way, only a person can be the giver of justice. This means that acting in a just way towards others is evidence of the possession of moral sense (MENKITI 1984). According to Menkiti, while the African conception of personhood prioritizes duty, the western conception prioritizes rights. This is not to say that African persons lack rights; it is instead to say that those rights, especially when they stand in the way of duty take the second position (MENKITI 1984).

AE Chimakonam (2021) argues that the implication of Menkiti’s account of personhood is that morality is only applicable in a community that has at least two members. This is because only in such a situation will a relationship be possible. This makes the moral evaluation of the action of a person who, for instance, lives by himself/herself on an island impossible. It also makes private individual actions impossible to evaluate. Another reason why AE Chimakonam (2021) thinks that moral evaluation is impossible in the two cases above is that such actions do not affect anyone. She replies to Kai Horsthemke (2018), who argues that by making emphasis on relationships, Menkiti’s argument excludes babies, zygotes, those with mental difficulties and non-humans from the list of things to which we must extend moral relations. This is because

non-humans do not relate with humans in the way that Menkiti's argument contemplates. Babies, Zygotes and the insane are also incapable of relationships in that way. AE Chimakonam (2021) shows through her theory that we should extend moral relations to the environment and babies, etc. She adds that the relationship in situations like that may, however, be a different type of relationship. According to her, healthy or good treatment of animals and the environment is part of morally worthy human actions in Africa (AE CHIMAKONAM 2021). AE Chimakonam (2021)'s theory accounts for solidarity and difference as kinds of relationships. This implies that the action of the individual that only benefits him/her without infringing on collective interest is also morally right. It, therefore, promotes things such as liberty, autonomy, rights and identity (AE CHIMAKONAM 2021).

AE Chimakonam warns that her theory is not absolute because it does not account for every situation (AE CHIMAKONAM 2021). Using the principle of contextuality, she shows that instances abound in which an action may not contribute to the good or individual excellence but still be good given the context. She argues that an action will be right in a situation where it is extremely necessary, having considered everything, for the community to act for the sake of the common good and in violation of individual excellences. Also, an action will be right in a situation where it is extremely necessary, having considered everything, for the individual to act for the sake of his/her excellencies and in violation of the common good (AE CHIMAKONAM 2021).

Engaging AE Chimakonam's Theory of Right Action

AE Chimakonam's personhood-based theory of right action renders virtually all policies, laws and decisions that come from most authorities morally wrong. In modern terms, the government is the agency that formulates policies, laws and precepts for the common good. There is always an individual or a group dissatisfied with government's policies. This is because of the distinctive nature of human interests, needs, wants and biases. While individual actions may, in most cases, not be to the detriment of the common good, policies always neglect some individuals or groups. It is difficult to consider all things in a large community as the two exceptions to the theory ask us to do. Even if it is possible to consider all things, the

two exceptions propose that we can neglect the individual or the common good in certain situations. But it is not just in a few situations that individuals or a group are neglected but in most situations. One may therefore argue that the theory promotes the neglect of individuals or groups. The exception to the theory has turned out to be its general rule. One of the ways to reply to this charge is by arguing or conceding that solidarity and relationality often involve some compromise on the part of individuals. These compromises should not be construed as though they are necessarily harmful to the individual or the groups making them. If an action does not align with the interest of the individual and does not appear to harm him/her or prevent the attainment of personhood, it could still be construed as good.

Telling the truth is one of the core values of African societies (METZ 2017a). The theory of AE Chimakonam (2021, 2023) permits telling lies that conflict with this core value. Assuming a husband (A) is the only person that knows that his wife (B) committed a wrong that is punishable by death. Assuming that if A testifies that B committed the offense, a riot that will lead to loss of lives and properties will erupt. If A lies to a mob or even a court by saying B did not commit the offence, the theory AE Chimakonam (2021, 2023) formulated will not consider A's lie to be wrong. This is because A's actions will avert riot (common good), and it will make him happy to save the life of his loved one (individual excellence).

A government policy or decision based on capitalist ideals may contribute to the common good and the excellences of some individuals who subscribe to capitalism. Yet, it may not contribute to the excellences of some individuals who are socialists. The policy may improve the economy (common good) and also add to the excellences of the individuals whose ideological leaning is capitalism. Yet it may not add to the excellence of the individuals who are socialists. Here the actions or policies contribute to the common good and add to the excellences of some but not all individuals. In this case, and according to AE Chimakonam, the policy is morally right even though it does not contribute to the excellences of the socialists. The conflict, in this case, is not between persons and the common good. Therefore, the theory does not account for all the individuals that it asks us to consider.

It is also possible for an act to add to individual excellence without affecting the common good. Supposing an individual eats pork or engages in religious activities that only him/her knows about. It is hard to see how this affects the common good since no one knows that he/she does such things. For instance, his/her action will not indoctrinate anyone nor will it affect public feelings. According to the theory of AE Chimakonam (2021), this action will be wrong since it does not contribute to the common good. The use of the active word “contribute” appears to be too strong. One of the ways to mitigate the problem may be by clarifying that “contribute” may also be passively construed. Such that not having any effect at all is considered a contribution. Within the context of covid-19 spread or prevention, let us take the example of not wearing a mask in an open place occupied only by one individual. Other than the individual, no other person inhabits the place. Assuming he/she is coronavirus free, the individual could have a farm that is only accessible to him/her. In this case, not wearing a mask while working on the farm contributes to the well-being of the individual by at least easing his/her breath. However, it does not necessarily affect the common good by spreading or preventing coronavirus since he/she does not discharge droplets or get in contact with some.

I agree with AE Chimakonam (2021) that a normative account of personhood does not necessarily exclude the environment from the list of things to which we should extend moral relations. However, unlike her, I argue that even Menkiti’s account of personhood does not necessarily exclude things such as the environment. First, in African thought, the environment, which includes trees, waters, forests, mountains and animals, is part of the community. The human community is only part of the communities that exist in the environment. The environment is too important (for Africans) to be neglected in the scheme of moral engagement. The shrines are mostly located in the forest, rivers, or mountains. Typical African life is hardly possible without the environment. It is not just implied but expressed in the African worldview that the environment must be treated with dignity. Even AE Chimakonam (2021) agrees, in a stricter sense, that an individual’s being is indeed connected to other beings, such as animals and the environment. Consequently, Menkiti’s emphasis on humane relationships is with reference to the attainment of personhood. His idea of right and wrong is with

reference to human relationships among themselves. It may not have talked about their relationship with other non-human entities. However, human relationships do not exclude their relationship with other non-humans. That is why I find the example of the island of lone existence³ that AE Chimakonam (2021) gives to be an inadequate rendition of the position of Menkiti. She does not tell us what kind of individual exists on the Island. It could be an individual who has had a communal experience to the extent that he/she attained personhood. It could also be an individual who has had no communal experience. This is possible if someone drops a child of seven years or less on an island. It is possible for an individual to not be exposed to a communal experience where he/she is secluded in an automated house that provides all things required for human life. The difference between the first individual and the second is that the former has some sense of morality while the latter does not. The action of the first should have moral worth, while that of the second should not. This is because, for Menkiti, only individuals who have attained personhood should be held morally accountable (MENKITI 1984). He consistently only talks about moral obligations between and among human beings. He talks about attaining personhood, which he said can only be done through engagement with fellow humans. He also demonstrates that only upon the attainment of personhood does one owe moral duties, while he specifically talks about the duties to fellow humans and the community. He does not argue that duties should not be extended.

In a conversation with Horsthemke (2018), AE Chimakonam (2021) concedes that Menkiti's idea of personhood talks about how a person can come to be. She hints that while Menkiti's thought might not impose duties on the environment or other humans, such as the mentally disturbed, her theory does accommodate such duty. However, my engagement with AE Chimakonam (2021) demonstrates that even Menkiti does accommodate duty to the environment. If part of the basis of moral actions towards men is the

³ The example of the island of lone existence is proffered by AE Chimakonam to back up her claim which she believes represents Menkiti's position. The claim is that morality only makes sense in a situation where at least two individuals share a place of abode. On the island of lone existence, only a single person exists and because his/her action does not affect any other individual, such action cannot be morally evaluated.

recognition of the contribution they make to the being of an individual, moral actions can be extended to the environment since the environment also plays a role in the being of an individual.

Drawing from the idea of the individual seeing others as an extension of his/her self, one may argue that contrary to the popular interpretation of Menkiti (1984, 2004), the individual is not subordinated to the community. Menkiti (2004) clarifies that the “I am because we are” principle should not be interpreted to mean “he is because we are” or “you are because we are”. For him, that is the trajectory that the process of attaining personhood follows. This demonstrates that the individual sets the ontological standard of his/her being, not the others or even the community. Societal norms and precepts are structured to ensure the realization of individual yearnings. We could say that these norms and precepts are indirectly the makings of the individual, not the society. So, the issue of individual excellences conflicting with the common good does not come into play. Common good and individual excellences are the same. Even if they are not the same, which makes conflict of interest possible, we can resolve that in favor of the community. This is because the common good is an embodiment of what I will call the highest individual excellence. Highest because the being of an individual is dependent on it. It is only when the individual comes to being that other excellences come up. Those common goods that may seemingly conflict with individual excellences are necessary because that is how the nature of reality is, imperfect. Even the individual deprives himself of some desires to get to those that may appear to be more important.

The Death Penalty is Morally Unjustifiable and Undesirable: An Analysis Based on AE Chimakonam’s Personhood-Based Theory of Right Action

Societies consider punishment as an integral part of their social systems. With the exception of the anarchists, most scholars agree that punishing wrongdoers is morally right but disagree on the grounds that should justify it (RAWLS 1996). Ordinarily, punishment conflicts with values such as forgiveness, compassion, and mercy. Its approach is essentially coercive and sets out to deliberately cause harm and suffering that we ordinarily deem immoral. This informs the need to justify punishment if we have to

carry it out (CRAGG 1992; SCHAUER & SINNOTT-ARMSTRONG 1996).

Of the kinds of punishment that are known to human societies, the death penalty, otherwise referred to as capital punishment, generates more controversies. This is because capital punishment presents us with the unique problem of the intentional termination of human life for wrongful conduct. It raises the issue of human beings' moral values and dignity. From the perspectives of the West and on divergent grounds, some philosophers agree that capital punishment is morally permissible (POJMAN 2005). For example, Immanuel Kant (1991) argues that it is morally right to impose the death penalty for the offence of murder because it is the only punishment that adequately fits the crime. He argues that anyone who kills another invariably forfeits his/her life. On the other hand, philosophers like Jeremy Bentham (2000) argue that the death penalty is morally excusable only if it brings about good consequences, such as deterring others from committing wrongful acts. While Kant's justification is derived from a retributive theory, Bentham's is derived from utilitarianism. These two theories represent the dominant theories and arguments for the justification of the death penalty in Western discourse.

From an African perspective, beliefs, worldviews and cultural practices of respective individual cultures inform their moral judgment about the death penalty. At varying lengths, these cultures share a common feature which is communality, and so do their moral judgments about the death penalty. Consequently, the African justification of the death penalty is rooted in communality and the relational principle that guides it. For instance, according to the Igbo moral belief, an argument on the justification of the death penalty would be that such kind of punishment is wrong because it threatens life, which is essential to having a communal experience (EMEDOLU 2018; JO CHIMAKONAM 2018). On the other hand, we could have an argument from the Igbo perspective which says that the death penalty is morally right. This is because those who willfully deprive other people of their lives deny the inherent capacity of humans to associate freely and harmoniously with others which results in communal well-being (UDUMA & NWEKE 2018). We can see that, although there are elements of utilitarianism and retributivism, these arguments are primarily communal. Other

African cultures, such as the Yoruba and Hausa, also share this communal orientation regarding the moral justification of the death penalty (AINA 2018; BALOGUN 2009). Theories, like AE Chimakonam, try to provide a general African framework of moral justification that conforms to communal norms and principles such as relationality while accommodating cultural diversities.

AE Chimakonam's theory is not restricted to justifying particular kinds of actions, laws or policies. It can, therefore, be used as a basis for justifying any kind of action or policy. When used in the context of moral justification of punishment, a critical look at the theory will show that it renders nearly every death penalty morally wrong and undesirable in especially a relational society. This is a society that prizes three core African values formulated into principles: mutual relationships (relationality), the context of those relationships (contextuality) and complementation, as the highest goal of such relationships (complementarity) (JO CHIMAKONAM & AE CHIMAKONAM 2022).

Most death penalties seem to contribute to the common good (such as deterrence) or the excellences of some individuals (the victim's family, for instance). But they do not seem to contribute to the excellence of the individual whose life was or is to be terminated. AE Chimakonam's theory prescribes for relational societies such as the Igbo, Yoruba and Hausa a clear standard by which they can determine the morality and desirability of the death penalty while yet conforming with the relational principle. It reconciles the contradiction that arises from the justification of the death penalty that is based on moral beliefs and provides guidance on how to resolve cases in exceptional circumstances. For instance, the argument against the death penalty that is founded on the Igbo belief in the centrality of life (JO CHIMAKONAM 2018; EMEDOLU 2018) is problematic. This is because it conflicts with another belief that places a high price on communality. The argument supporting death penalty on the ground of the protection of communal interest which the Yoruba believe is central to their existence (AINA 2018) is inconsistent with their belief in the sacredness of life.⁴ From the perspective of the Hausa, death penalty

⁴ Another argument against death penalty from the Yoruba perspective has to do with the possibility of sentencing the innocent.

is morally right if the action of the wrongdoer threatens the attainment of *zaman lafiya* (harmony), which in turn leads to human and communal well-being (BAMBALE 2022). The death penalty subordinates the individual to communal well-being, which is a form of the common good. It contradicts the Hausa belief in the primacy of life that protects it from being used as a means to serve other ends.

While arguments in favour of death penalty are derivable from some African beliefs, these positions do not cohere with other beliefs. Even if such incoherence does not exist, the conditions of a relational society make death penalty undesirable. However, the undesirability is not systematically prescribed in such a way that relational societies can apply in usual and unusual cases. AE Chimakonam's theory makes this prescription by stating that "an act is right if and only if it positively contributes to the common good while adding moral excellencies to the individuals..." (2021:198; 2023:112). By accommodating the individual and the common good, the theory provides a relational framework of moral justification for the death penalty that is not challenged by individual-community conflict. So, it is not enough to declare death penalty morally right because it contributes positively to the common good. Other than the common good, we must take the interest of the wrongdoer into account. In addition to a positive contribution to the common good, the termination of the life of a wrongdoer will be justifiable only if it positively affects him/her. The death penalty may appear to positively contribute to the common good by bringing about deterrence or maintaining order. This meets the first condition of AE Chimakonam's theory. The second condition that has to do with the positive contribution of the death penalty to the wrongdoer must be met. This condition is nearly impossible to fulfil in the context of a relational society that seeks to improve rather than eliminate its citizens. A relational society's main goal is guiding the individual to attain personhood. This entails making the individual to engage in positive relationships with others. Unnatural termination of life through the death penalty is hardly conceivable as positive in a society that considers it sacred and central to the well-being of the community and the individuals.

The intentional taking of life may be coherent with the idea of the centrality of life if society believes that criminal wrongs take

away human dignity that protects the individual from being killed. Both Metz (2022) and Gyekye (cited in METZ 2022, 277) do not agree that criminal wrongs necessarily take away the right to life. Matolino (2014) also agree that the rights of individuals may be curtailed and suspended, and wrongdoers may be punished if they act in a way that injures other persons. He does not talk about the extent to which one may however be punished. He, however, adds that punishment must be with the view to protect the right of others whose rights criminal actions threaten. Although Matolino was not particularly talking about death penalty, one may infer from his use of “curtailing” and “suspension” that this does not include death penalty. Curtailing and suspension all imply some form of restriction and not necessarily elimination. However, his idea of the basis of punishment could accommodate death penalty. While Metz considers the capacity for a humane relationship as a limiting factor for punishment, Matolino considers right protection as the limiting factor of punishment. For Metz, punishment such as death penalty that ends one’s capacity for humane relationship should not be carried out. For Matolino, in so far as punishment protects the right of innocent persons, it may be carried out. To this extent, Matolino’s justification does not necessarily reject death penalty. It all depends on the nature of the offence and the capacity of the wrongdoer to carry it out. Terrorists whose sole aim is maiming and killing innocent human beings and whose capacity to threaten the right of others is too potent to be subdued may be justified in being killed. It all depends on communities’ capacity for fighting crime. If the community believes executing them will be the best way because keeping them in prison will not prevent a further threat to the rights of others, it may kill them. Even more serious is where the wrongdoer’s action threatens virtually everyone’s rights, including the community that seeks to protect rights.

While Metz’s capacity-based conception of ethics does not give room for the death penalty, a personhood-based conception, at least according to Menkiti, could do that. For Metz (2017b), every human being has the capacity for humane engagement, including criminals. But according to Menkiti, not everyone attains personhood. Also, it is possible for a person to cease to be one (a person). So, the community may not be precluded by criminals’ capacity for relationality from punishing them. However, the

problem arises again on the moral right of the community to punish someone it is responsible for training to be a good person. We could find the solution in AE Chimakonam's (2021, 2023) first exception clause, which states that:

An action X (for one thing) is a communal exception in a case Y if and only if there is an extreme group necessity, all things considered, to violate adding moral excellencies to the individuals in order to sacrifice to the common good for the sake of collective interest (2021, 116).

Using the principle of contextuality, AE Chimakonam's exception clause allows a relational society to treat a person in a way that violates his/her excellence in certain situations. This exception clause anticipates unforeseen circumstances that humans, government and courts may face when making decisions. The ongoing Russia-Ukraine war underscores the usefulness of contextuality at least in the context of the death penalty debate. For instance, Russia is contemplating lifting the moratorium it places on the death penalty. It seeks to execute the Britons it captured as mercenaries fighting for Ukraine⁵. However, since the absence of strict rules makes them arbitrary, contextual decisions are likely to be abused.

It may be argued that there can be a situation in which death may contribute to an individual's excellence too. For instance, someone who is extremely poor or sick may be happier to die than be alive. Death will seem to contribute to the excellence of the terrorist who aspires to die because she/he thinks she/he is going to paradise. However, the uncertainties of death make it difficult to arrive at a rational conclusion on the effect of death on the deceased excellences. For instance, assuming the individual believes in heaven and hell, we cannot know where he/she eventually ends up. Even the individual does not know with all certainty whether or not he/she will end up in heaven. This raises the issue of the nature of

⁵ Dmitry Medvedev Vows to Reintroduce Death Penalty. 2022. WebMD. [Online]. Available from <https://thebarentsobserver.com/en/security/2022/02/dmitry-medvedev-calls-russia-reintroduce-death-penalty> [Accessed 26 February 2022].

individual excellences, which the theory of AE Chimakonam (2021) does not clearly expose. Should we apply an objective or a subjective test? For instance, the terrorist may think dying will add to his/her individual excellence because he/she will end up in heaven while unknown to him/her he/she is ending up in hell. To use another example, one may prefer to eat a given food in a restaurant that he/she thinks contributes to his/her excellences. However, unknown to the individual, the food is unhealthy or even poisoned. The objective test of determining individual excellence is also problematic. First, it undermines the autonomy of the individual since entities that are external to the individual's self have a stake in determining his/her moral worth. Second, it demands the individual to know too much, including future occurrences. The individual in the unhealthy food example above is expected to know things such as the content of the food, how the food was prepared and the strength of his antibodies.

Conclusion

In this essay, I examined one of the theories of ethics that is rooted in African communal thought and principles. I showed how the theory (propounded by AE Chimakonam) is distinct from African communal beliefs by virtue of its being in tune with contemporary social demands of the recognition of the interest, rights and well-being of the individual in the moral schema that hitherto emphasizes communal interest at the expense of the individual. In spite of the challenges I demonstrated that the theory faces, I show that it provides us with a plausible argument (the sort that moral arguments based on moral beliefs could not provide) against the death penalty from an African perspective.

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