SOCIOLOGICAL THOUGHTS ON PUNISHMENT AND THEIR RELEVANCE IN AFRICAN SOCIETIES

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Abstract

The sociology of punishment is critical to the understanding of the various justifications of punishment and the various mechanisms employed by society to sanction members who violate social norms. The extant literature on punishment is western-oriented and largely covers developments in developed countries of the world. Undoubtedly, there is a dearth of literature on punishment practices around Africa. The paper therefore discusses some sociological thoughts on punishment and their relevance to African societies. It specifically examines the intellectual contributions of the three foremost founding fathers of Sociology: Emile Durkheim, Max Weber and Karl Marx to the punishment discourse. Furthermore, the African justice system is discussed with case studies from Egypt, Nigeria and South Africa. The effects of the thoughts of Durkheim, Weber and Marx on penal practices in African societies are also discussed.

Key words: Africa; criminal justice system; punishment; society; state.

Introduction

For centuries human societies in order to dissuade deviation from social norms have exerted different kinds of punishments on wrong doers. States have also employed criminal sanctions against law breakers. While these sanctions have historically varied from society to society and from jurisdiction to jurisdiction; their philosophies have essentially revolved along common themes. Punishment refers to the imposition of unpleasant consequences to an offender for his/her offence (Lacey, 1998). The study of punishment is age-long and dates back to the Greek civilization; Plato and Aristotle made contributions and Egyptian and Roman civilizations have evidence of penal theory (Scott,

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2008).Nonetheless, many people consider the history of punishment as a vicious cycle of good intentions gone bad (Blomberg & Lucken, 2010).

Most theories of punishment have western origin and their relevance to African societies have remained debatable. The paper therefore discusses some sociological thoughts on punishment and their relevance to African societies. It focuses on the contributions of Karl Marx, Emile Durkheim and Max Weber to debates on punishment. Also, the African justice system is discussed with case studies from Egypt, Nigeria and South Africa. The paper also discussed the effects of the thoughts of Durkheim, Weber and Marx on penal practices in African societies.

Punishment: The Durkheimian, Weberian and Marxist Thoughts
Theoretical explanations of punishment have largely revolved around retributive, reformative, deterrent, preventive and expiatory strands of thought which are undoubtedly philosophically oriented (see Mishra, 2016). However, this paper focuses on the often neglected sociological thoughts on punishment. It demonstrates the fact that some classical sociological thinkers either expressly or impliedly postulated on punishment.

Sociologists have offered some theoretical explanations to the administration of punishment in human societies. It is noted that sociological traditions on punishment comprise of the thoughts of Durkheim, Weber and Marx as well as those of post-Marxist such as Foucault (Banks, 2017; Cavadino et al., 2013). These strand of thoughts on punishment are briefly discussed below.

The Durkheimian Thoughts on Punishment
Emile Durkheim (1858 – 1917) in his two works: *The Division of Labour in Society* (1960, first published 1893) and his article "Two Laws of Penal Evolution" (1973, first published in 1900) theorized on the issue of punishment (Cavadino et al., 2013).

Contemporary sociological research on punishment is largely influenced by the Durkheimian tradition (Burkhardt & Connor, 2015; Garland, 2013). Durkheim maintained that punishment of crime helps to reinforce the collective consciousness of members of society. This assertion applies to African societies where the sense of community is very high and where transgression from acceptable behaviour is intolerable and appropriately sanctioned. The Durkheimian thoughts on punishment is therefore relevant to the understanding of the administration of various formal and informal kinds of punishment in Africa. The belief in the sanctity of the shared norms and values

of society perhaps explains why transgression of norms is severely punished in many African societies till the present day. It is typical of Africans to feel concerned and some kind of shame when a member contravenes societal norms. Punishing such a member is seen as a mechanism for asserting the sanctity of such norms.

The Weberian Thoughts on Punishment

It has been argued that Max Weber (1864-1920) theoretical tradition, unlike his contemporaries produced little Weberian penology (Cavadino et al., 2013). According to Pratt (1994) Weber saw the quest for modernity as associated in the last century by the rationalization of the forces of punishment. He further stated that this is evident in the development of Justice Department bureaucracies; the professionalization of penal staff; the efforts to plan penal policy instead of allowing characteristic individuals shape it; the reduction of the power of the judiciary to sentence so as to make it conform to the policy objectives of the executive; and the present computerized monitoring of sentencing patterns.

Weber drew a distinction between three types of legitimate authority (i.e. traditional authority, charismatic authority and legal authority) and maintained that legal authority is typical of modern western societies (Cavadino et al., 2013). Legal authority is characterized by bureaucracy, which implies impersonality, the interchangeability of officials, procedure routinization and emphasis on recorded information (see Cavadino et al., 2013). Similarly, Kamenka and Tay (1975) opined that advanced capitalist societies develop bureaucratic-administrative law which are meant to regulate human activities for impersonal collective purposes such as general economic efficiency. The formal analytic attributes of bureaucratic discipline emanate from Weber's studies of the army, church, university, and political party as well as from the organization of emerging social sciences (O'Neil, 1986). Banks (2017) stated that Weber's thoughts on punishment are implied in his postulations on authority and power in modern society. He saw legal authority as engendering an obligation to obey laws which may be rational or irrational, but noted that in a rational system of criminal law, crimes are defined and rules made for adjudicating them.

Weber's thoughts on punishment are relevant to the understanding of the present day African penal institutions. The administration of criminal punishment in contemporary African states are based on written laws that are rational. When laws are violated, the offenders are apprehended and processed for breaching the laws for which they are obliged to obey. The entire trial

process is routinized and well documented and if required another judge can be assigned to take over an existing case. All of these are in line with the characteristics of a bureaucratic organization.

The Marxist Thoughts on Punishment

Karl Marx's (1818 -1883) thoughts on punishment grew out of his concern about the role of capitalism and the relations between production and society; law and related institutions are to parallel the production relations and maintain the capitalist system (Banks, 2017). Marxists see punishment as a form of class control rather than an instrument of crime control; as specific penal methods are believed to be influenced by wider social forces than the central objective of crime control. Therefore, the prison is considered a suitable sanction in so far as it serves the interests of industrial capitalism (Pratt, 1994). Banks (2017) stated that Marxist penologists have observed that punishment regulate the supply of labour and that it is relatively lenient when labour is scarce and of high value and more intense when labour is abundant.

Bonger (as cited in Murphy, 1973) identified two primary sources of criminality: (i) need and deprivation of the disadvantaged members of society, and (ii) greed and selfish motives created and reinforced in competitive capitalists societies. In other words, "criminality is economically based – either directly in the case of crimes from need, or indirectly in the case of crimes growing out of motives of psychological states that are encouraged and developed in capitalist society" (Murphy, 1973, p.234). The Marxist conception of the relationship between the economy and social control is more graphically depicted by Rusche & Kirchheimer (1939) when they argued that there is a tendency for every system of production to discover and use punishments which corresponds to its productive relationships.

The Marxist thoughts on punishment is relevant to the understanding of the operations of the criminal justice system in contemporary African societies. Arguably, deviance is to some extent a fall-out of unequal power relations and criminal law are tailored to suit the aspirations of the ruling class. It therefore implies that punishment may be class-dependent. The rich and powerful are more likely to escape punishment compared to the poor.

The Africans Justice System

Social order is cherished within African societies and behaviours that are capable of disrupting order are negatively sanctioned. These negative sanctions are administered through different forms of punishments meant to serve justice and ensure social order. There were well established mechanisms for

punishing deviations from social norms before the coming of the European colonial powers. However, the nature and patterns of punishment varied from society to society. Undoubtedly, while some of the penal practices have experienced dramatic change in post-colonial Africa, others have endured till the present day. There are documented evidence of penal practices in traditional African societies in the literature.

The old and middle kingdoms of the Egyptian empire had a centralized system of government ruled by pharaohs; the old kingdom with capital at Memphis was divided into provinces and next to the king was the vizier who assisted the king in administration and was in-charge of fiscal and judicial matters (Kisangani, 2002). There were well-established justice system in pre-colonial Nigeria. For example, the Mupun people of Plateau State, North Central Nigeria had justice systems that were rooted in their age-long cultural belief that had instruments for crime detection and punishment (Jonah, 2018). Also, a study found that the Benin kingdom developed practical indigenous legal concepts that helped it to maintain peace until 1897 (Ojo & Ikathor, 2020). Nigerian law was unwritten and transmitted through chiefs, elders and councilors during the pre-colonial period (Nwankwo, 2010).

However, Nalla (2010) in his review of the state of crime and punishment in Africa stated that African criminal justice systems has been significantly influenced by long histories of colonial rule. He further observed that although many African countries gained independence in the early or mid- 20th century, civil war, ethnic violence, unstable political systems and military coup d'états have undoubtedly shaped the indigenous social control mechanisms, the police role and the judicial system. He opined that African legal systems follow one or more of the following traditions: i. Civil; ii. Islamic; iii. Common law; iv. Custom. Moreover, Nalla (2010) noted that murder is considered a serious offence in Africa and that part of western, middle and southern African countries have high rates of murder compared to northeastern, southwestern and northwestern regions. In Nigeria, the law provides for convicted persons to be sentenced to death penalty, imprisonment, fine, canning and haddi lashing, forfeiture, deportation, probation/suspended sentence, community work and plea bargain (Idem & Udofia, 2018). There is an unprecedented increase in the number of capital punishment decisions in Egyptian courts in modern legal history (Arafa, 2022). But, there has been a decline in the use of corporal punishment in some African countries. For example, the following African countries have prohibited all corporal punishment: Zambia, Mauritius in 2022, Seychelles, Guinea in 2020, South Africa in 2019, Benin in 2015, Cabo Verde in 2013, South Sudan in 2011, Republic of Congo, Kenya, Tunisia in 2010 and Togo

in 2007 (Global Initiative to End All Corporal Punishment of Children, 2018).
Arguably, the traditional African society differs from contemporary African society in many ways. Today, unlike in the pre-colonial period, laws are written and enforced by formal agencies of the criminal justice system. These criminal justice agencies such as law enforcement, courts and corrections are sometimes perceived by citizens to be slow in the administration of justice. The delay may not be unconnected with the increasing workload of criminal justice officers. More so, as a result of increasing urbanization, rapid population growth and the digital revolution, new patterns of crime like high-technology crimes such as cyberstalking, online romance scam, business email compromise have emerged. Effectively policing communities has become challenging today than it was in the pre-colonial era when the population was not as large.

Also, unlike in the pre-colonial era there seems to be a growing decline in the use of informal social control mechanisms and increased reliance on the formal social control mechanism. However, where such formal social control mechanisms are perceived to be slow or in-effective, people unfortunately tend to resort to self-help for example, the use of vigilante justice otherwise known as "jungle justice".

Case Studies: Egypt, Nigeria and South Africa
In this section the justice system of three African countries namely: Egypt (North Africa), Nigeria (West Africa) and South Africa (Southern Africa) will be briefly discussed.

Case Study 1 Punishment in Egypt
Crime and punishment exited from time immemorial in Egypt and as the laws evolved Egypt has adopted various laws based on European laws and eventually some Islamic laws (Abubakar, 2015).   It is important to note that the concept of justice was not a post-colonial phenomenon in Egypt. According to van Loon (2014), the concept of justice was all-important in ancient pharaonic Egypt as it was engrained in every facet of its society and culture. He further noted that law occupied a pre-eminent position in the life of the ancient Egyptian and rule observance was widely cherished virtue. Pharaoh was the head of the state and presented the highest judicial authority administering divine justice on the god's behalf to his subjects. There were prescribed punishment for offences, for example, economic sanction were administered as punishment where a private individual had been victim of theft. The convicted thief was made to return the stolen goods and in addition, made to pay compensation which could amount to four time the value of the good he/she stole. However, those who stole goods

belonging to the state received heavier punishments. Similarly, those who stole from the king paid eighty to hundred times the value of the goods they stole. These cases also attracted punishments that incorporated a corporal element such as a beating, forced labour or in exceptional cases, death penalty (van Loon, 2014).

The world's first civilian police forces emerged in Egypt and Mesopotamia (Adamson, 1991). The history of the present day Egyptian police force has been traced to the British occupation of 1882 (Nasr et al., 2004). The Emergency Laws of Egypt are complemented by a penal code that vested on the state wide detention powers. There are also special provisions for combating terrorism in the penal code (United States Department of State, Egypt Country Reports (see, Nasr et al. 2004). Against the backdrop of weak security and breakdown of law and order that pervaded the Mubarak's regime, the proliferation of weapons, women became vulnerable to sexual violence in public spaces. This gave birth to a youth-led vigilante groups in the post-Mubarak era that fought the emerging threat of sexual violence against women in public spaces in Egypt from 2011 onwards (Tadros, 2014; 2015).

Case Study 2. Punishment in Nigeria
There existed well established justice system in Nigerian societies long before the advent of British colonialism. However, the contact of the indigenous justice system with that of the British colonialists triggered conflicts. This was perhaps acknowledged in the assertion that "the structure of the justice system in Nigeria provides an interesting example of the conflicts that can arise when an institution is imposed upon a colonized people" (see, Pate & Gould, 2013, p. 109).More so, there was clash between the Western criminal justice system imposed by the British and the established indigenous system (see, Pate & Gould, 2013).

The Hausa/Fulani, Igbo and Yoruba are the three major ethnic groups in Nigeria. The Hausa/Fulani pre-colonial system of administration was based on Emirate system The Emir who was assisted by some office holders was the paramount authority and powers were centralized. The law was based on sharia (Islamic Legal System) (see, Babatola & Johnson, 2023).

The village/village group devolved by kindred and family unit was the largest political unit among the Igbos of South East Nigeria. Powers were decentralized and direct democracy was used in decision making. The Council of Elders was the highest decision making body. Scholars have identified two types of offences that existed in the pre-colonial Igboland namely: abominations or *aru*, which

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were considered public offenses and or acts repulsed by the earth called *mmehie*, which were considered private offenses. Perpetrators of abominable acts such as murder of one's parents, incest, killing or eating a domestic animal dedicated to the gods, or any other offence against the goods, may as a punishment be dedicated to the shrine of the gods, thus becoming *osu* (meaning outcasts). M*mehie* offenses, which may include burglary, robbery, stealing and so on were punished by shaming, restitution, a fine, compensation, a communion feast, or sale into slavery (for a repeated offender) and not by imprisonment. Offenders who committed abominable acts were sent on permanent exile and in addition dedicated to a god (Onyeozili & Ebbe, 2012).

The Yoruba (South-West Nigeria) pre-colonial political system was headed by an Oba assisted by a Council of Elders who implemented the laws. The Oba's court was the highest in the Kingdom (Pre-colonial Traditional Political System in Nigeria, n.d.). In the pre-colonial Yoruba society the *Oba*, Elders and Chiefs administered and offences such as incest, stealing, adultery and treasonable felony were considered serious crimes and were severely punished to maintain peace and order in the land (Akeem, 2006). Ayelala is said to be a famous deity in Yoruba land mainly worshipped among the Ilaje and Ijaw people of Ondo State (Ojo, 2014). Crimes are classified into two: social and spiritual crimes. Offenses that disrupt societal cohesion such as fighting, stealing, lying etc. constitute social crimes, while serious offenses such as murder, incest, killing of sacred animals etc. were considered spiritual crime (see Ojo, 2014). It has been observed that Ayelala is effective in detecting and punishing different types of crimes and can thus be invoked in civil and criminal matters (Ojo, 2014).

Pate and Gould (2012) noted that "corporal punishment is by no means exclusively used in the adult and juvenile justice systems in Nigeria. Parents are free to use corporal punishment in home, both in the northern and southern regions of the country" (p.113). Article 18 of the Criminal Code (South) and Article 295 of the Penal Code (North) provides for the use of corporal punishment.

Case Study 3: Punishment in South Africa
The pre-colonial South African societies had well established modes of punishment. This is graphically depicted in the writings of Thornberry (2011) who stated that the establishment of a colonial legal system by British administrators in the Eastern Cape in the 1850s, meant that they were confronted with the task of governing a Xhosa-speaking population with different forms of punishment whereas compensation payments, reckoned in

cattle, were the standard punishment for most wrongs in pre-colonial Xhosaland. He further pointed out that corporal punishment was common within the family, but not so in public punishments. Also that British legal thought, considered compensation payments only in civil cases and fines paid to the state were used for minor crimes; while major crimes required imprisonment, corporal punishment, or death.

Furthermore, Thornberry (2011) noted that this difference created a problem for administrators who wanted to legitimize the colonial legal system. To incentivize Africans to use the colonial legal system there was need for the expectations of compensation payments to be satisfied.

The South African Criminal Justice System (CJS) just like those of many African countries is perceived as being inefficient. This seeming inefficient, coupled with its high crime rate has been identified as causal factor in the proliferation of vigilante groups. This scenario was vividly captured by Sekhonyane and Louw (n.d) who argued that South African high crime rate and inefficient criminal justice system cause many people to feel insecure and held to ransom by criminals resulting in decreased public confidence in the police and the courts. They opined that this development has made many people to resort to self-help safety measures such as use of the services of private security organization and vigilantism for those who can afford private security arrangement.

The People Against Gangsterism and Drug (PAGAD) is a popular vigilante group established against the background of some of the most violent and crime-ridden coloured townships in Cape Town, South Africa, in the 1990s (Bangstad, 2006). It has been argued that the public lynching of Rashaad Staggie, a notorious gang leader in Cape Town, as well as the killing of 24 drug dealers by members of   PAGAD made the group to be recognized as vigilantes in South Africa (Monaghan, 2007). Fourchard (2011) maintained that vigilantism and community policing could be best seen as two sides of the same security mobilization process and not clearly distinct.

Effects of Durkheimian, Weberian and Marxist Punishment Thoughts on Penal Practices in Africa
Durkheim, Weber and Marx's thoughts on punishment have great impact on the punishment practices in African societies both in the pre-colonial era and up to the present day. Durkheim's arguments that punishment helps to reinforce the collective consciousness of society finds expression in punishment practices in

Africa. For example in traditional society's violations of norms and values such as murder, adultery and incest are considered grievous and therefore may require ritual cleansing as a form of punishment (see, Friday and Eze, 2019). Arguably, the essence of the cleansing is to reinforce the belief that such behaviours are intolerable and offends the entire community. Similarly, Weber's rational authority has significant impact on legal systems in Africa. The modern legal system is predicated on rational laws and the administration of criminal justice is governed by bureaucracy. The Marxist postulate of criminal justice system as being controlled by the ruling class have influenced the perception of many people in Africa who believe that the poor is typically more likely to be punished for crime than the rich.

Overall, Durkheim, Weber and Marx's writings on punishment find expression in penal practices in African societies up to the present day. Arguably, Africans use the instrument of punishment to reinforce adherence to shared norms and moral order. Also, some social norms are now codified into laws which are enforced through the bureaucracy of the criminal justice system. Nonetheless, the criminal law is perceived as being used to maintain capitalist order.

Conclusion

This paper examined the classical thoughts of the three selected founding fathers of sociology: Durkheim, Weber and Marx on punishment. This paper demonstrates that they expressly or impliedly postulated on punishment and that their thoughts on punishment is relevant to African societies. The growing resort to self-help and vigilantism by citizens in contemporary Africa societies is a red flag that signals the existence of some underlying larger problems in African penal system. Whereas punishment of offenders helps to encourage conformity to the norms and values as well as laws in African societies, its' rational and impartial application is fundamental to the establishment of a just and equitable society.

.Given that penal policies and practices are dynamic and largely evolving, there is need for African sociologists and particularly criminologists to continue to interrogate the emerging issues around African penology.

Recommendations

The following recommendations are made:
1)   To address the dearth of studies on African pre-colonial penal practices, there is need for African criminologists to further explore this area of study.

2)   There is need to also explore how the thoughts of other sociologists apart from Durkhiem, Weber and Marx have influenced the sociology of punishment.

3)   There is also need for relevant government agencies in Africa to constantly sensitize citizens on why they should avoid vigilante justice ("jungle justice") as punishment for offenders and always seek only legal means of punishment.

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