Sentencing Youthful Criminals: The Need to Juxtapose Penalty with Techniques of Character Modification

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Abstract

Crimes are classified as misdemeamour felony. In practice, they are also labeled as heinous or non-heinous offences. In either the former or latter description, different penalties are provided in the code to reflect the seriousness or non-seriousness of the offense committed by an individual who has been properly convicted by a Court of law. The punishment which is carried out in the sentence passed by the Court has objectives which seems targeted at crime reduction in the society. Despite the presumed objectives of each sentence order made by the Court, crime rate among youthful criminals seems to be in the increase. Young persons convicted for criminal offences in rural areas show no less difference from the above. This article adopts doctrinal research method in the analysis of punishment for offences particularly against youthful criminals and found that offence centered sentence may have less impact than when same is considered alongside with the nature of the individual who committed the offence. It recommends an amendment in the law or the use of practice directives which will address the nature of youthful criminals and their level of exposure to complement the punishment directed at offences. The article has reaffirmed the need for sentence orders to be complimented where necessary with character modification techniques for better actualization of the goals of sentence.

Keywords: Youthful Criminals; Character Modification Techniques; Non-Heinous Offences; Custodial Sentence; Penalty

1. Introduction

The distinction between right and wrong is made clear in any given society by law.[1] Law defines acceptable conducts

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1 E Malemi, *Outline of Nigerian Legal System* (Lagos; Grace PublishersInc 1999).

and unacceptable anti-social behaviors in a given society. Each unacceptable behavior or wrong is explicitly described in the code as well as its corresponding penalty.[2] Thus, every offense for which a person is charged is known to law and the pain or loss imposed for going contrary to the laws of the land is equally known to the Court.

The sentence passed for an offense would be deemed valid where the guilt of an offender has been duly established.[3] The above is the only ground upon which the offender can be called a convict. Conviction necessarily precedes sentence because it is the law that the wrong done by the defendant need not be in doubt if he must be punished.[4]The Almighty God illustrated the aforementioned principle when Adam, Eve and the serpent were sanctioned after their individual role in the consumption of the forbidden fruit was established[5]. The law stipulates further that the process leading to the conviction and sentencing in a criminal trial must be expressly recorded in a language devoid of ambiguity so that *prima-facia,* justice will not just be clearly expressed but must be manifestly seen as being done. The case of *Oyediran & Ors v The Republic* [6] shows the Court's approval of the procedure for convicting criminals. In that case, several persons were arraigned before the Court on a 16 count information. They were tried, convicted and sentenced passed on them by a trial Court. On appeal, the decision of that Court was set aside because there was nothing in the record of proceedings of the Court which tied each of the convict to the specific offence committed.

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2 Criminal Code cap C21, vol. 1, Laws of Delta State, 2006 (hereinafter referred to as the Code).

3 Hon Justice Phoebe M. Ayua "Judgement Writing & Sentencing in the Lower Courts: Guiding Principle. Paper delivered on 20/11/2014. p 16.

4 A D Badaiki, *Criminal Law (Rev. edn: Lagos: Lagos State University, 1999) p. 4*

5 Good News Bible (Today's English version: Gasglow: William Collins Sons & Co. Ltd., 1979). Chap. 3 verses 14-17 p.6.

6 (1996) 4 NSCC 252; (1967) NMLR 122.

Also, there seem to be a general sentence passed by the Court on all the offenders whether convicted or not. [7]

The appellate Court in its decision held that justice would be seen done if conviction and sentence are manifestly expressed in the Court's record. It is only when the above is done that doubts which could have arisen regarding the wrong committed by a person would be properly cleared. The Court held further that;

(i) separate findings must be made for each of the several offenders charged together;
(ii) specific offense(s) committed by each of the several offenders charged together must be shown in the Courts record of proceedings;
(iii) that conviction and sentence must be sentenced severally.[8] Thus both the law and the Court supports a thorough and transparent conviction before sentence is passed

The law approves one or more of the under listed as punishments to be passed as sentence after conviction.[9] The Court can either order the minimum or maximum of the following sentence

(i) imprisonment with or without hard labour
(ii) fine
(iii) death sentence
(iv) deportation
(v) binding over
(vi) canning
(vii) order for diposal of property
(viii) order of cost.[10]

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7 *Ibid.*
8 *Ibid.*
9 Malemi (n 1).
10 *Ibid.*

Practice procedure which seems unregulated appears to support the role of some factors which the Court may consider in passing her sentence in line with statutory provisions.[11] The factors will enable the Court to apply her discretions in either reducing the sentence for a convict or making an order for the maximum sentence provided for the offence committed. For example, young and first-time offenders are given mild sentence when convicted as against notorious criminals who may be ordered to serve the maximum sentence provided for the same offence in the code.[12] The application of either a mitigating or aggravating factor in punishing convicts seems not to have reduced the incidence of crime or the number of youthful persons who get convicted for criminal act. Perhaps, the sentence passed for offences is limited in means through which the character of persons who are prone to crime can be modified. This paper explores the nature of offenders who are convicted for same offence and are punished likewise. It presents a comparative analysis of punishment goals as applied in the sentence passed in other jurisdictions and suggests punishment techniques geared towards character modification to be used as complement to sentencing orders made by Courts. The aforementioned is discussed under parts II, III, and IV of this paper respectively. Part I is the introduction and part V concludes the paper.

2. Youthful Criminals: Nature and Criminal Tendencies

It would appear that the intuition to conceive and carry out criminal acts is not determined by age, background or educational qualification of persons. Crime is committed by persons of different age bracket – young, old or even middle aged. Criminals are also found in the circle of the poor, rich or the so called average members of the society. The illiterate,

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11 Ayua (n. 3).
12 *Ibid*.

semi-literate and literate can lure or be lured into crime. So, criminality is a common feature of human beings.

However, greater number of the younger population who reside more in rural areas whose economic status is low, with little or no educational qualification seems to be charged and convicted for crimes such as stealing, assault, malicious damage, breaking and entering and membership of secret cult.[13] The youthful nature of such persons and the circumstances of their background may be responsible for their involvement in certain types of crime.[14] For example, young persons below and of 21 year old are presumed to be easily distracted so; may not be involved in criminal activities that will require rapt attention for a long time.[15] Also, they lack the stamina to sustain any rigorous task particularly when such is needed for the commission of crimes.[16] The above may be among the factors responsible for their involvement mainly in offences such as conspiracy and stealing.[17]

The commission of offences such as malicious damage, breaking and entering, rape, assault and sometimes murder and arson tend to be the major preoccupation of persons more than 21 years old and those who aspire to remain youthful.[18] Perhaps, increased physical growth and mental development, more enduring capability as well as higher risk taking intuitions that may have been acquired as age advances add to the new perspective on crime that are more tasking and more demanding, committed by persons in that class.[19] The criminal tendencies of the aforementioned group of criminals appear to be more in non-heinous offences. It would appear that the

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13 R. Bura ' What are the Characteristics of Youth Crime & Youth Criminals' www.preservearticles.com accessed 18 September 2023; 7:30 am.
14 *Ibid.*
15 *Ibid.*
16 C.H. Shireman & F.G Reamer, 'Rehabilitating Juvenile Justice' (1986) *Columbia University Press* p.1.
17 *Ibid.*
18 *Ibid.*
19 Bura (n. 13).

motive for the crime committed by them is different from that which motivates their counterparts from different environment and situation to crime. The differences between these criminals of same age appear not to have been accommodated by the statute on criminal offences and same seems neglected in practice directives meant for general application.[20] Yet differences exist in the make-up of persons who commit offences. It would seem that a total disregard to the latter is responsible for the increase in the rate of certain offences and the notoriety in the offences committed by same criminals over the years. The above is the query of this article.

3. Comparative Analysis of the Application of the Theories of Punishment in Sentencing

Both in ancient and modern times, a wrong is punished through negative rewards.[21] Perhaps the justification for the above is that the offender is not ignorant of the wrong done and that he may have pondered over the consequences of his act and its effect on the direct victims before embarking on it. Thus, where cane is used to inflict pains on him or he is ostracized as he would traditionally be punished or sentenced to terms of imprisonment as provided in the criminal statute, the aim may be to address more than the wrong done. A particular sentence may serve three beneficial goals namely as justice to the person who has been wronged, justice to the convict who has gone contrary to the laws of the land and justice to the society which norms have been violated.[22] Sentencing objectives include

(i) reformative means for changing the offender
(ii) deterrent measures to keep the offenders and others away from crime

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20 Criminal Code (n. 2).
21 D. Lloyd, The Idea of Law (Penguin Books, 1999).
22 Josiah v State (1985) INWLR (Pt.1) Justice Oputa.

(iii) restitution for victims of crime
(iv) means of incapacitating offenders[23]

The above objectives are contained in the penological theories that are properly described as Reformation/ Rehabilitation Theory, Deterrence Theory, Retribution Theory and Prevention Theory.[24]

3.1 The Theory of Reformation

The inclusion of an offender's welfare in his punishment scheme got a fair attention after the age of reasoning.[25] The French Revolution of 1789 may have changed the status quo ante in punishment through the idea of enlightenment.[26] The message canvassed for at that period is that offenders should not solely be punished through means which deliberately cause them agony as a tit for tat for their wrong but that the means employed should also create enough room to enable them reflect on how the wrong attitudes acquired can be changed while paying for the wrong done.[27] .

The prison was the ground to practicalize the goals of reformation/rehabilitation since imprisonment was the commonly adopted punishment technique.[28] In 1777, prisons in England witnessed some changes under the reign of John Howard.[29] First, offenders were put into different rooms depending on their age, type of offence and sex. They were given the space and time to reflect on their condition and how they could become useful to themselves.[30] The liberal provisions were meant for offenders to have a re-think of their

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23 Malemi (n 1).
24 Badaiki (n. 4).
25 J Mulcahy 'The Evolution of Punishment and Rehabilitation (2019) *Irish Criminal Law Journal* p. 1.
26 *Ibid.*
27 *Ibid.*
28 Badaiki (n. 4).
29 *Ibid.*
30 *Ibid.*

wrongful act, be apologetic about the acts and take positive steps towards changing themselves[31].

The reformation idea was exemplified in the United States of America in 1829 in the prison cells built outside Pittsburgh and near Philadelphia.[32] The cells were spacious and devoid of noise to provide the serenity that encouraged self-meditation on what will become of offenders after their jail term.[33] So, while offenders were denied the privilege of social interaction (which is a kind of punishment), they were at the same time made to retrain themselves for a future life. In that manner, punishment had an undertone reflection of reformation.

A replica of the reformatory system practiced in Norway, appeared to have yielded more positive result in that the county witnessed a decline in the number of persons who repeated the offence for which they had been convicted and punished before.[34] It would appear that the feat they achieved was due to the amenities the government provided for prisoners at the correctional centres.[35] The above would have been the motivating factor which gave the prisoners the right disposition to welcome the retraining of character. Thus, by 2014, Norway's policy on reformation in punishment was said to have produced the lowest recidivism rate of 20% worldwide.[36] The Indian model engaged instructors who were made to take inmates through meditation courses that would lead to inner peace and help overcome negative attitudinal behaviours such

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31 Mulcahy (n. 25).
32 *Ibid.*
33 *Ibid.*
34 J. Erwin 'The Norwegian Prison Where Inmates Are Treated like People' (*The Guardian* Archived, 17-Nov. 2010).
35 P. Laura 'How Norway is Teaching America to Make its Prisons more Human' (2019) *Huffpos*t Accessed 17 June 2020.
36 C. Sterbenz, 'Why Norway's Prison System Isso Successful' (Business Insider Archieved, 17 June, 2020).

as anger and aggression.[37] The emphasis thus far appears to be on character modification through a retraining of behavior.

Presently, there are policy statements on provisions for educational and vocational training programmes, treatment centres and counseling units in most correctional centres across Nigeria.[38] There are doubts whether the retraining is internalized by offenders or the acquired skills are applied meaningfully in the life after the correctional centres.[39]

The ideology behind reformation is that the offence committed is not as important as the offender whose character ought to be worked on.[40] So, the punishment for an offence should equally focus on the person of the offender and on how he can relinquish his anti-social behaviour and return to his inborn good natures which is devoid of any bad influence from the society.[41] Thus, punishment and rebuilding of character are sought for at the same time through same process.

Rehabilitation is also based on same principle of changing the offender for good. Perhaps, the difference between the latter and the former is that the latter focuses on the change in the character of the offender through non punitive measures such as an order for community service, the former expects the change in behaviour to occur during the punishment process namely; while serving imprisonment terms.[42]

Reformation policy appears to make a projection on how the prisoner would move forward after he had atoned for his

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37 'Finding Enlightenment while Locked up: Prison Inmates Learn to Meditate' (WBBC, 23 Oct., 2015).

38 T. Deebom 'Status of Training Facilities in Vocational Education Training Programmes in Nigerian Prisons in Rivers State' (2018) *Asian Journal of Science and Technology*<www.academia.edu> (accessed 21 January 2023).

39 *Ibid*.

40 N. Smith 'Rehabilitation' (2008) Encyclopedia of Criminal Justice accessed 19 January 2020: 12:00pm.

41 *Ibid*.

42 Badaiki (n. 4).

sins.[43] The expectation is that the incidence of crime will reduce because a large number of previous offenders will be disinterested in wrongs having been exposed to the right ways of living. The presumption is that the society where the offenders returned to may have moved on with better citizens whose behaviours would have been altered as a result of the retraining in character at the correctional centres. But, the reality may not be a true reflection of the above in many States, Nigeria inclusive.

The objectives of the reformation principle imbedded in punishment through imprisonment appear to have been whittled down over the years in some developing countries. Many convicts leave the prison cell only to return within a short period after committing similar offence or other offences. The situation does not project a bright future for youthful criminals particularly those who all the years have lived in rural areas where development is retarded. The rates at which correctional centres are patronized by previous offenders tend to suggest that there may be a strong attraction to crime which is better promoted inside the cell than outside the four walls of the cell. Perhaps, it is because the right motivation is not given in the cell for proper reflection on life or what the avenues created for exposure to the right attitudes/skills and knowledge that would equip those in there to integrate into the larger society that is better than where they are coming from is missing. In most cases, the conditions under which prisoners are housed in correctional centres expose some of them to more hardened criminals who offer free tutelage to first time offenders with the anticipation of recruiting them into their folds. Sometimes, the naïve in crime who are the subject of this article are given false lessons about criminal proceedings in

[43] C Ovey, 'Ensuring Respect of the Rights of Prisoners under the European Convention on Human Rights as Part of their Reintegration Process' (Archived 27-07-2014 at the Wayback Machine Registry of the European Court of Human Rights).

Court so that the longer they stay in the correctional centre; the deeper the wrong lessons that will harden them towards crime are learnt.

Some schools of thought have attributed the aforementioned to the unfriendly situations many face upon release from correctional centres.[44] Perhaps, the latter and the argument that rehabilitation is a breach of fundamental human rights may be the weakness in the use of imprisonment to achieve its robust objectives in reforming youthful criminals with little or no exposure.[45] The questions which this article tends to address are why will the old system of punishment which tends to focus more on offense than on the offender continue to be the norm even in the face of its inadequacies as shown in the increase in crime rate?

Are there no other ways of reforming youthful criminals who commit certain type of crime with attention drawn to their peculiar characteristics? Is it not possible to complement the old imprisonment technique of sentencing with character modification practices?

3.2 Theory of Retribution in Punishment

Retribution appears to be the primary aim of any form of punishment in pre and post Code days.[46] Retributive punishment may have gained the full support of great philosophers such as Emmanuel Kant and Hegel.[47]The principle of retribution is built around the policy that he, who has committed an offence, must pay for the wrong he has done because:

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44 Malemi (n.1).
45 Badaiki (n. 4).
46 O. Balogun 'A Philosophical Defence of Punishment in Traditional African Legal Culture: The Yoruba Example' (2009) *Journal of Pan African Studies* Vol. 3:3.
47 Badaiki (n. 4).

(i) he is aware of the accepted behaviour and the consequences of acting contrary to the approved conduct so, must pay for the injustice done to another;
(ii) where the offender is unpunished, the victim(s) of his wrong may take laws into their hands thereby avenging the wrong through their own means;
(iii) the society may feel disappointment and lose hope in the justice system.[48]

Therefore, retribution may be seen as a means of preventing the breeding of crimes because a wrong that is immediately addressed mitigates the effect of its injury on the victim(s).[49]

It may be immaterial whether the wrong doer sufficiently pays for his misdeed through his sentence or whether the direct victim(s) of his misdeed is/are adequately compensated for the injury done. Retribution is not vengeance.[50] If the latter were implied in a retributive order, those convicted of arson will have their property burnt and those found guilty of malicious damage would have what they own destroyed to pay for their wrong.[51] Retribution is also not a means of subjecting offenders to endless pains otherwise it may be termed unlawful and perhaps labeled as evil within Christendom.[52] It may even be difficult to equate wrong with punishment otherwise, capital punishment may not be an appropriate order for gruesome murder and an order for the payment of fine would be insufficient for what may have been stolen from a victim of crime or as an adequate reward for the property destroyed during crime.

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48 *Ibid.*
49 Malemi (n. 1).
50 A M Abubakar 'Conviction and Sentence in Magistrate Courts: Guiding Principles' (Proceedings of training organized by the National Judicial Institute11th-13th July 2016).p. 5.
51 Malemi (n. 1).
52 Badaiki (n. 4).

The purpose of retribution seems to be to assuage the emotions of the victim of a wrong and to some extent address his pocket. Retribution is considered by some school of thought to be the only sound reason for punishment.[53] Other objectives may be achieved alongside retribution but they may be of secondary benefits.[54] The need to assuage the emotions of victims of wrongs appears to be the justification for the various terms of imprisonment recommended under the criminal Code for non-heinous offences.[55] The inclusion of an order for payment of some sum of money as compensation to the victim of a wrong to augment the expenses he may have borne in the treatment of his injury or to defray the cost of criminal litigation instituted as a result of the wrong done to him may be regarded as part of the other benefits which must necessary flow from the retributive punishment.[56] Therefore, the objective of a retributive order is to bring the offender to terms with the wrong he has done and make him experience part of the loss suffered by the victim for his misconduct.[57]

However, the restoration policy of retribution seems to have little or no impact on youthful offenders as intended by the law. The order of compensation if and when made by the Court may be ignored or paid by persons other than culprits particularly when a stricter penalty such as imprisonment or a lesser one such as fine precedes it. The position with compensation accompanying fine is that money means little or nothing to offenders because more often than not, their relatives are eager to part with fund to get their own back into the fold not minding the crime that has been committed. Where relatives are hesitant or incapable of securing such release, the offenders cohort in crime are prepared to undertake the task.

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53 *Ibid*.
54 *Ibid*.
55 Section 390 of the Code (n. 2).
56 Section 255(1) of Criminal Procedure Act; section 78 Penal Code.
57 Abubakar (n. 50).

Perhaps, the financial obligation is met quickly to spite the victim and send a message that he had embarked on a fruitless exercise.

The purpose of retribution in punishment appear not to be met in sentence passed against youthful convicts who may not feel the impact of the financial obligation that are tied to the wrongs they've done. Retribution may be better served in complimentary punishment techniques which address the behaviour of a young offender with the aim of changing the unwholesome trait.

3.3 Theory of Deterrence in Punishment

The Oxford Advanced Learner's Dictionary puts the meaning of deterrence as the use of a person or an object to make somebody less likely to do something.[58] The intentional application of the principle of deterrence in punishment is to make a condemnable act unattractive and for members of the public to shun such act. In deterrence, lawful punishments are used to prevent unlawful behaviour.[59]

The notion of deterrence in punishment seems to have its root in Jeremy Bentham's theory of utility.[60] Bentham's position is that the utility of punishment is to attain greater good for greater number.[61] Man to him is moved majorly in every of his action and inaction by pain and pleasure.[62] Therefore, the safest way to put him on track as far as approved behaviour is concerned is to ensure that any criminal act attracts great and noticeable pains that will dissuade the

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58 A. S Hornby (ed.) Oxford Advanced Learner's Dictionary (8th edn.; Oxford University Press, 2010).
59 Badaiki (n. 4).
60 *Ibid*.
61 F. Adaramola*, Basic Jurisprudence* (3rd edn.: Lagos; Raymond Kunz Communication, 2004). p. 34.
62 *Ibid*.

citizenry from committing same.[63] Deterrence viewed from that perspective may be the significant feature of punishment.[64]

Deterrence operates at two levels namely, at the level where specific individuals may be touched and at the level where the generality of the people will feel the impact of the severity of punishment given to an offender and make a rethink of their ways.[65] The presumption which however is rebuttable is that a severe punishment will stop the offender from committing an offence in future.[66] Similarly, the generality of the people will learn great lessons from the effect of the legal sanction which another is made to suffer from his unlawful behaviour.[67]

There is a perception that punishment of any magnitude has never deterred people from committing crime.[68] The magic wane which dissuades the commission of crime is the fear of being caught not the punishment they will face after being caught.[69] Another opinion held on deterrence is that certain categories of persons would never be deterred by the outcome of a penal measure. The former class of persons are those who have resolved to commit crime so, no type of threatening measure or perceived sanction will deter them from anti-social behavior.[70] The latter class is those who are inclined to commit crime always because of the immediate benefits they receive from the act which cannot be gained through lawful act.[71] Therefore, the use of imprisonment as a deterrent measure for non-heinous offences committed by youthful offenders may be inadequate in certain circumstances judging from the aforementioned.

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63 *Ibid.*
64 Badaiki (n. 4).
65 *Ibid.*
66 Abubakar (n. 50).
67 *Ibid.*
68 Malemi (n. 1).
69 *Ibid.*
70 *Ibid.*
71 *Ibid.*

It would appear that deterrence will have good effect on individual offenders and the general public where it is possible for many to perceive the sentence served by offenders. Where punishment is seen rather than imagined as it is the case with the sentence served in prison cells, it may be difficult for the goals of deterrence to be met. Perhaps, a near practical deterrence major in sentence is the execution of persons convicted for arm robbery through firing squad in their localities. Such sentence order may have great positive influence on the character of young persons. Therefore, the inclusion of character modification techniques to compliment the sentence ordered by the Court against youthful criminals may help reduce their involvement in crime and preserve a feature that is bright for them.

3.4 Theory of Incapacitation in Punishment

The confinement of offenders has always been used as a means of incapacitating them.[72] What incapacitation does is to prevent offenders from committing further crime due to their confinement. Their confinement helps to exclude them from activities and communications which may have exposed them to further criminal acts.[73] Thus, terms of imprisonment ordered for non-heinous and heinous offences is aimed at guaranteeing peace in the community where prior to the arraignment and subsequent conviction of the wrong doer, he may have terrorized and made inhabitable for law abiding citizens. There is also the belief that where criminals are removed from their known habitat and left with strange people, they are bound to conform to rules and make positive adjustments to their attitudes towards life.

The principle of incapacitation may not be achieved where jail break occurs frequently. The convicts who are

[72] Abubakar (n. 50).
[73] Badaiki (n. 4).

supposed to be confined may gain freedom illegally and resume their criminal activities. The young among them may stray into the wrong hands where whatever good nature they may have left may be further destroyed. Youthful criminals may get better bargain than the above while serving their punishment with complimentary sentence order included in the statutory provisions for the offense(s) committed.

4. Selected Sentencing Techniques for Character Modification

In *Yakubu v. State*,[74] the Court of Appeal in Nigeria defines sentencing as the judicial determination of a legal sanction to be imposed on a person found guilty of an offence.[75] The Court held further in that case that in sentencing, specific order of Court is made with the aim of punishing a person whose responsibility for wrongdoing has been established.[76] Sentence passed by the Court draws a convict to the legal consequences of the wrong he confessed to or perhaps denied initially but was subsequently linked to his person after due judicial process has taken place.[77] Therefore, the unexpressed import of sentence includes:

(i) It makes clear the position of the law on the nature of punishment for the offence that have been confessed to or established through conviction;

(ii) It points directly to the wrong doers conscience for a moral evaluation of his involvement in the offence committed;

(iii) It establishes the fact that the law will always protect the tenets of lawful behaviour and punish any unacceptable conduct so labeled in the society.[78]

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74 (2015) LPELR-40867 (CA)
75 *Ibid*.
76 *Ibid*.
77 *Idu v. State* (1996) 9 NWLR (Pt. 470) 83 @ 89 paras E-F.
78 Abubakar (n. 50).

The Code provides for the use of custodial and non-custodial sentence as sanctions for penalizing unlawful acts. The former appears to be the first and most commonly used sanction by the Court even for non-heinous crimes committed by youthful criminals.[79] The justification for the above may be seen in the decision of the Court in *Ali v. FRN*[80] where it held that the essence of imprisonment is to:

(i) meet the expectations of the society because the latter ought to return the bad done by the offender;
(ii) deter potential offenders and make the commission of crime unattractive;
(iii) protect the public and society by ensuring that criminals and recalcitrant offenders are taken out of circulation;
(iv) provide interregnum for dangerous criminals to reflect pending their rehabilitation to normalcy.[81]

Thus, the Court would readily imprison persons convicted for heinous and non-heinous crimes because of the aforementioned objectives and may totally disregard other factors such as the nature of the offender and what happens to him thereafter.

Sentence passed by the Court seems to be in accordance with the provisions of the statute defining the punishment for offences.[82] So, sentence may be described as offence centered with little attention paid on the type of person who committed the offence. In certain cases, it may be the effect of the offence on the public that may determine whether a harsh or mild sentence will be passed on an offender as illustrated in the cases reviewed below. In *Cyril Uzoloke v. The State*,[83] the life

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79 U. Ezekwem, 'Exploring Non-Custodial Sentencing in Magistrates Courts' (Proceeding of training organized by the National Judicial Institute 24th-26th July, 2017). p. 2.
80 (2016) LPELR- 40-472 (CA).
81 *Ibid*.
82 Criminal code (n. 2).
83 (1963) NMLR 125 copied from Badaiki (n. 4).

imprisonment order made by the trial Court for the offence of grievous bodily harm on an eight year old girl was reduced on appeal.[84] The appellate Court held that though the cruel act of the appellant deserves a severe punishment, a term of imprisonment exceeding twenty years would only be appropriate in wholly exceptional circumstances and when the crime *being punished affects the society at large*.[85] (Italicized is mine for purposes of emphasis). The defendants in the case of *R v. Adebesin* & *Anor*[86] were sentenced to ten and eight years of imprisonment upon their conviction for burglary by the Court of first instance. The sentence passed by that Court was altered on appeal and the terms of imprisonment increased to fifteen and twelve years respectively.[87] The Court held further that the protection of the *public should be given priority when determining the terms to fix* (Italicized is mine).*[88]*

Perhaps, sentence passed on youthful convicts will have meaningful impact on what they may become after the wrong they committed where little emphasis is placed on character modification goals. The above could be achieved where the Court evaluates and considers the type of person that has committed an offense, not just the type of offense a person has committed.[89] Thus, a sentence which would reflect the under listed is needed:

(i) one which will officially and physically show a condemnation for every unlawful behavior;[90]

(ii) dissuade the convicted criminals and other persons from indulging in criminal activities

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84 *Ibid*.
85 *Ibid* @ 126 per Onyeama JSC (as he then was).
86 (1940) WACA 197.
87 *Ibid*.
88 *Ibid*.
89 W. Osler *Foundation of Family Medicine* "It is more important for a doctor to know what type of a person has a disease than what type of disease a patient has".
90 Abubakar (n. 50).

(iii) make efforts to isolate and group together criminals who committed similar offences and keep them within the reach of the community which members have been wrong for the duration of the sentence order
(iv) allow the serving of punishment in a place where many will see and form value judgment over what is right or wrong
(v) create room for the victim of the offense to appreciate that justice has been done in his case.
(vi) equip the offender with adequate knowledge for proper evaluation of himself and what the future will hold for him where he turns from his negative traits to positive behaviour.[91]

It would appear that the Administration of Criminal Justice Act has given legal authority to the aforementioned through its provisions on the consideration to make while passing non-custodial sentence.[92] Section 311 of the Act urges the Court to consider the following when passing sentence after conviction:

(i) the goals of punishment;
(ii) whether the goals of punishment can be served through means other than imprisonment;
(iii) the interest of the offended, the offender and the community;
(iv) the notoriety of the offender in crime.[93]

The Act also makes explicit provisions on the punishment of non-heinous crimes without recourse to imprisonment.[94] Thus, offenders of less grievous crimes can be sentenced to community service and/or made to pay compensation, be put

91 *Ibid.*
92 Ezekwem (n. 79).
93 Administration of Criminal Justice Act, 2015 (hereinafter referred to as the Act).
94 Ezekwem (n. 79).

on probation, have suspended sentence or be granted parole.[95] There are similar guidelines in the Code yet; the application of same seems to be in oblivion.

Community service is one of the non-custodial sentence order which may aid character modification among young persons convicted for crimes outside urban areas. Such service includes sweeping, cutting of grasses, maintaining law and order in public institutions and places such as schools, primary health centers/hospitals, police stations, Courts, markets, churches and mosques for some period of time. The duration for such service may be determined by the nature of offense committed and the age of the offender. The sentence may include an order that will require counselors to be engaged to educate the convict on good behaviour and professionals who will expose them to skill acquisition training on specific days of the week whilst on punishment. Older convicts could be confined together in places within the community but outside their homes and made to cultivate food as part of their community service. The terms of the sentence would be carried out under thorough supervision to be monitored by persons engaged for that job. The latter is another way of creating job opportunity for those who reside in the community.

The aforementioned sentence technique could easily be applied in rural areas because of the closely knitted family setup which exist there. For example, there is adequate information on persons who live there which is available to almost all who are domicile there. Thus, any sentence served within the community would speak volumes on the character of the offender as well as that of his friends and relatives. Sentence orders made in that direction will most likely change the character of young offenders and deter others as young as they are who may wish to follow suit unlike when the convicts

[95] Sections 461, 454, 455 and 460 of the 2015 of the Act (n. 93).

are made to serve their sentence in prison cells located outside their community.

The practical application of the above is where the solution lies. This paper hereby suggests the following so that modern day punishment for non-heinous offences will have purpose and direction:

(i) there should be a uniform guideline on when to use the various non-custodial sentence for non-heinous offences;
(ii) there should be rules to limit the exercise of discretion by individual Courts on non-custodial sentence when cases different from the ones specified occurs;
(iii) proper supervision of non-custodial sentence can be achieved with the employment and training of personnel to carry out the job;
(iv). designated places can be acquired by the government in different communities for use for such punishment to be served by offenders who hail from the communities concerned;
(v) the proceeds from the services carried out by offenders can be used to set up businesses for them after their sentence and for payment of compensation to the victim of their wrong.

The above does not in any way limit the suggestions on the use of non-custodial sentence to punish non-heinous offences.

5. Conclusion

Crimes are integral part of existence[96]. Every society seems to have realized that, hence, the legislation on wrongs and sanctions for wrong doers who could be old, young or of middle age. Youthful persons among the criminals deserve

[96] Badaiki (n. 4)

special attention for certain reasons, one of which is that they make up a size of a nations population that can determine her development. The innate good character they may have developed prior to their involvement in criminal activities can be refund through character modification techniques.

This article has found that sentence passed on youthful criminals who reside in rural areas may have corrective effect where it is served within the community where the crime was committed. The actualization of the above may require but not limited to the under listed:

(i) the use of practice directives to spell out sentencing tense for youthful criminals in the hinterland of various ethnic groups in Nigeria.
(ii) provision on the use of uniform guidelines on when to use various non-custodial sentence for non-heinous offences.
(iii) uniform guidelines on specific characteristics of youthful criminals which ought to be considerers in line with the nature of offense committed when making sentence orders.
(iv) rules to limit the exercise of discretion by individual Court when making non-custodial sentence order.
(v) proper supervision of non-custodial sentence order by persons engaged to carry out the task in each community.
(vi) provision of designated places where such sentence can be carried out
(vii) provision of facilities and personnel to ensure proper character training and skill acquisition for offenders serving their sentence.

The article has established that the nature of persons convicted of crimes need to be considered alongside the offense committed for effective sentence order to be made.