

An Indigenous Yoruba - African Philosophical Argument Against Capital Punishment¹

Dr. Moses Òkè*

* Senior Lecturer, Department of Philosophy, Obafemi Awolowo University,
Ile-Ife, Nigeria, E-Mail: rosenhillme@yahoo.co.uk

ABSTRACT

The paper notes that whereas the issue of capital punishment is very old and not alien to any human society, and whereas there is an abundance of literature on Western philosophy of punishment, very little philosophical work on punishment from the African perspective can be cited. By way of filling a part of the lacuna in the literature, the paper examines the Yorùbá culture for its perspectives on the death penalty.

The paper finds in the Ifá Literary Corpus, though implicit, a strong philosophical argument against capital punishment. The argument, explicated and analyzed, turns out to be an introduction of a skeptical epistemological consideration into the debate over capital punishment in a unique way that raises some other jurisprudential issues relating to judicial administration.

The paper concludes that although there may, as would be expected, be other positions on the issue of death penalty in Yorùbá culture, the particular argument examined validly makes its point for the abolition of capital punishment, especially when situated in the context of Yorùbá social ethic, which is essentially communal and humanistic. The enabling cultural context of the Ifá argument against capital punishment was extended beyond its immediate Yorùbá socio-cultural context to the pan-African humanistic social ethic conceptualized in Bantu languages of Southern Africa as 'Ubuntu', thereby giving the argument a contemporary universal relevance and applicability.

1. INTRODUCTION

In contemporary philosophical, political and judicial circles, the debate continues to be lively between those who support and those who oppose the use of capital punishment. In some places, the death penalty has been abolished in deference to the pressure and force of the abolitionists' arguments.² As has been very well put by Owoade (1988:42), the debate over capital punishment, from the perspective of Western jurisprudence, moves in three directions. There are: (i)

the “moral-humanitarian-religious” directions; (ii) “the popular direction i.e. the views, prejudices and superstitions of the man in the street”, and (iii) “the scientific” direction, “i.e. the penological, psychiatric, and sociological views on the subject.”

While there is an abundance of literature on Western philosophy of punishment,³ very little philosophical work on punishment from the African perspective can be cited. This is not unconnected with the relative nascency of African philosophy as an academic discipline.⁴ This late development of philosophy as a distinct discipline that underlies the canonical near-absence of African views in moral philosophy and philosophy of law extends to the view that Africans have little or no reflective ideas of law, except the despotic will of tribal chiefs.⁵

Although the Yoruba in pre-colonial times believed in the sovereignty of their traditional rulers in their respective domains, they also believed that each ‘oba’ (traditional ruler) would ensure that the incidence of any punishment was directly on the offender (that is, as a Yoruba proverb puts it, “ika tí ó sè ni oba n gé”, meaning “The finger that offends is that which the king cuts” (Adewoye 1987:77)). In the present era, the government (‘ijoba’, i.e. assembly of chiefs/rulers) can be said to have replaced the solo ‘oba’ in the administration of justice in Yorùbá land, as in other places.

The widespread acceptance of capital punishment for such offences as theft, murder, treachery, and rebellion is very well reported in Yorùbá folklore, particularly ‘Àlò’ (Yorùbá folk tales). Many of the Yorùbá folk tales (i.e. Àlò) are meant to convey moral precepts, to teach societal norms and etiquettes, to comment on life and living, and to portray the structure of society. Of particular relevance for the present discussion are the ‘Àlò ljàpá’. These are animal stories, in which ‘ljàpá’ (the tortoise, believed in folklore to be the most cunning of all animals) is always the focal, often tragic, character. Most of the stories depict possible and actual situations that mirror the society’s experiences of reality and offer occasions for critical reflection on such experiences. Babalola (1973) and Lawuyi (1988) report many of these folktales, which are usually orally given among the Yorùbá. In most of these tales, the ending is the execution, or other severe punishment, of the convicted tragic character, as ordered by the ‘oba’ (i.e. the traditional ruler or king). In the folktales, death by beheading is the usual form of capital punishment.

However, the Yorùbá believe and say further that the execution of convicts was neither for fun nor to provide the king with blood to drink; rather, it was to mark the king’s dignity (that is, as they say, “Iyì ni Oba n fi orí bíbé se, oba kò ní mu èjè’.). In other words, it was traditionally believed to be a part of the king’s greatness and absolute authority that he should be able to exercise the power of life and death over his subjects, albeit, on the assumption that the king was infallible. The impression that one might get from this is that the Yorùbá people indigenously did not have any objections whatsoever to capital punishment. It

might thus be supposed that indigenous Yorùbá culture unreservedly or uncritically approved of capital punishment.

The objective of this paper, therefore, is to call attention to a strong philosophical argument against capital punishment in indigenous Yorùbá culture that is still very much relevant in contemporary contexts. In Nigeria, for instance, the debate over the death penalty, especially with the introduction of the Sharia legal system in some parts of the country vis-à-vis the 1999 Constitution of the Federal Republic of Nigeria, led to the establishment of a Presidential Committee to deliberate over it and advise government accordingly.⁶ The present argument, when carefully articulated and studied, will be found to be both logically rigorous and philosophically sophisticated, especially when compared with the other arguments in the philosophy of punishment⁷. As is to be expected, however, there could be other arguments for and against capital punishment to be found in indigenous Yorùbá culture that could contribute significantly to the philosophy of punishment.

2. OUTLINE OF THE ARGUMENT

The indigenous Yorùbá argument that is to be articulated herein is to be found in *Ifá*,⁷ the compendium of Yorùbá ancient wisdom and primary culture. It is to be found in that part of *Ifá* titled *Odù Ògúndá –Ìròsùn*.⁸ The relevant thematic passage in the *Odù*, with philosophical import for the present purpose is:

“Orí yéye ní Mòguń,
Kò şè ò rò ló pò níbè.
Dá fuń Ògúndá, tí yí ó peran,
Tí yó fèjè yí Ìròsùn lénu’.
Ifá wí pé “Ìre àìkú”.
Ifá wí pé “Kéléni ó rúbọ,
Kí wọn ó má ti òràn mo láìsè o”.

(I.e. “There are too many heads
at Ògún’s shrine [or, in the mythical
town called Mogun.]
Many of the heads are of innocent persons.”
Cast for Ògúndá,
Who would kill an animal,
And smear Ìròsùn’s mouth with its blood.
Ifá Oracle prescribes a sacrifice, lest
someone is falsely accused and convicted.”)

That is to say that most of those who had been given capital punishment in the community did not deserve to have been executed. This claim is elaborated in the *Odù* with the following story.

In a certain mythical town there lived two brothers, *Ògúndá* and *Ìròsùn*. There were also the king and other townspeople. On the way to their farm each day, the two brothers passed by the shrine of *Ògún*, which served as the public execution ground, and which was therefore always littered with many human heads. One day as they passed by the shrine, *Ògúndá* remarked that most of the heads at the shrine were those of persons who were not guilty of any capital punishable offence. His brother objected, arguing that everyone who was beheaded at the shrine must have deserved the capital punishment. The debate between the two brothers continued for a long while, with *Ìròsùn* always maintaining that 'to be punished is to be guilty', while *Ògúndá* maintained that 'punishment does not imply, confirm or establish guilt'. To drive his point home, *Ògúndá* mentally constructed a possible situation in which an innocent person was convicted of a capital offence, as in a set-up, miscarriage of justice, or flawed judicial procedure.

In the story, the king had a favorite pet goat that was treated like a human member of the royal household. It was well fed and given royal respect by everyone in the town. One day, *Ògúndá* trapped the goat. He waited until night fell and his brother had gone to sleep after getting very drunk. He then slaughtered the goat, letting its blood make a trail to the entrance of his brother's bedroom where he deposited the dead goat after smearing the sleeping man's mouth with its blood. He went further to stick the head of the goat in *Ìròsùn's* mouth.

When the goat was declared missing the following morning, the king sent his servants out to search for it, vowing that whoever had kept the goat in his or her custody, not to talk of having injured or killed it, would suffer the death penalty. Following a tip-off from *Ògúndá*, the king's servants found the dead goat at the entrance of *Ìròsùn's* bedroom. They also noticed the bloodstains on *Ìròsùn's* clothes and lips. He was woken up and made to carry the dead goat on his head to the king's palace where the townspeople and a jury were already waiting for the trial of the alleged killer of the king's favorite goat. The case was speedily disposed of, as there was an overwhelming preponderance of evidence against the accused, with perhaps none in his support. As already decreed by the king, the penalty was death by beheading at the shrine of *Ògún*.

As *Ìròsùn* was being led to the shrine, *Ògúndá* emerged and sought the permission of the king to say something. He declared to the consternation of the people that it was he, and not *Ìròsùn*, who killed the king's goat. He further informed the audience that he had set his brother up in order to prove the point that very many of those previously executed at the shrine of *Ògún* were possibly innocent of the charges levied against them and for which they were convicted and condemned. By extension, he wanted to show why capital punishment was bad and so should be discontinued in the town.

Ogunda's submission was well taken by the king and the townspeople, especially because he was a respected and reputedly wise person in the community. The submission also seemed to have agreed with the unarticulated or unexpressed thinking of the reflective members of the community that innocent persons were sometimes judicially executed.

The king, on reflection, was also convinced of *Ogunda's* point and he was remorseful for all the death sentences that he had passed and enforced in the past. He realized that another innocent person would have been mistakenly killed if the truth had not been volunteered after his judgment. That is, assuming that the enforcement of the judgment on the convict was to be immediate and irreversible, an innocent person would have been executed while the guilty one went away unknown and undetected. Thus, upon realizing that for a variety of reasons, any case could be proved against anyone, even when the person was innocent of any offence, the king ruled that *Ìròsùn*, the convict, should be set free. End of story.

The explanatory story, as it has been used in this paper, comes from the published text of *Odù Ògúndá* in the compressed 16-book format of *Ifá Literary Corpus*, known as *Sixteen Cowries/Èérìndínlógún* (Bascom 1980). There is, however, no significant difference between this documented text and the verbal recitals of the *Odù*, as given by practicing *Ifá Priests*⁹ using the enlarged 256-book format of *Ifá Literary Corpus* (comprising the 16 major *Odù*, known as *Ojú Odù*, and the 240 derived or mixed *Odù*, known as *Ọmọ/Àmúlùmálà Odù*, wherein the story occurs in *Odù Ògúndá-Ìròsùn*. However, owing to the multi-dialectical nature of Yoruba language, there may be different lyrical and stylistic renditions of an *Ifá* text, but the essential content of any *Odù Ifá* verse is constant among trained priests and priestesses, although the priests/priestesses do not all know the same number of verses of any or all of the *Odù Ifá*. The portion of the *Ifá* verse used in this paper ('*Orí yéye ní Mògún; tàisè ló jù*') is popular and has in fact become a proverbial saying among the Yorùbá, although it cannot be shown or said that many of those who use the passage proverbially fully comprehend the background story and/or its legal/jurisprudential/philosophical import, because most *Ifá* priests and priestesses, and others too, do not engage in the philosophical kind of critical reflection on the cultural document that *Ifá* is (Abímbólá 2006: xix).

Some questions might arise at this point, although they are not the immediate concern of the present discussion. Two of such questions are; what happened to *Ògúndá* after his confession? What would the king have done if it had been his child or wife or another person that was killed instead of a favorite goat?

Moreover, it needs be emphasized that the philosophical point of *Odù Ògúndá - Ìròsùn* is not a rejection of punishment for wrongdoing, but a rejection of a particular type of punishment, to wit, capital punishment. Therefore, it is reasonable to say that on abolishing capital punishment, a society will still have

recourse to other non-capital types of punishment that will reasonably allow for future reversal of judgment in the event of credible mitigating evidence. This will be an acknowledgement of the fact that an innocent person who could not prove his or her innocence now, for one reason or the other, might yet be able to prove it or have it proved in the future. In such cases, the innocent recipient of punishment would have suffered only for his or her inability to establish his or her innocence, which is a duty to one's self.

Although the appellate judicial system offers some hope, there is no guarantee that every innocent convict will be able to prove his or her innocence at the appellate levels of any judicial system, especially in the case of especially vulnerable convicts such as the drunken *Ìròsùn*.

3. PHILOSOPHICAL ANALYSIS OF THE ARGUMENT

Ògúndá - Ìròsùn emphasizes the ever-present possibility of error in the judicial process. It demonstrates the theoretical possibility of justice being miscarried on every occasion. The *Odù* introduces an aspect of epistemological skepticism into jurisprudence. It is based on the thesis that we cannot be absolutely certain (in the sense of having had all the relevant evidence, such that all reasonable doubts have been eliminated) of any claim or truth that concerns matters of fact and existence. In addition, it shows that with respect to the facts of a case, there is no theoretical limit to relevant evidence in law (Òkè & Amodu, 2006: 160). Hence, every judgment must leave room for possible reversal without extra loss to the convict in the event of possible future exonerating evidence. Such a reversal will not be possible where the convict had already been put to death. Therefore, in the indigenous reflective thought of the Yorùbá, as presented in the *Odù Ifá* called *Ògúndá - Ìròsùn*, capital punishment is not the best option and should be abolished, no matter how grievous the alleged offense.

Although the argument against death penalty in this paper is based on a passage from the sacred text of Yoruba culture, the argument, in order for it to be plausible, neither requires nor includes reference to the will or command of a deity, or some other religious doctrine or injunction, such as that the death penalty should be abolished because God or some other tenet of religion forbids it, or that divine wrath would befall whoever applied the death penalty. Rather, by employing "the method of deductive ratiocination of African philosophy" (Okafor 2006:42), it has been possible to articulate a non-theological and a non-religious version of an argument against capital punishment from *Odù Ifá*. In particular, subscription to Yorùbá worldview or religion is not a condition precedent to the appraisal of *Ògúndá's* epistemological argument. In other words, *Ògúndá's* argument against the death sentence can subsist without loss of plausibility outside any particular religious or metaphysical context. The argument articulated from the story rests entirely on human reason and empirical observations by persons (here represented by *Ògúndá* and his brother, *Ìròsùn* - both of who were described as princes - in a specified ancient human community called *Mòguń*). In

this regard, it is to be noted that Ifá is not exclusively a religious text. As remarked by Maulana Karenga (1999: iii):

The Odù Ifá is a corpus of sacred texts designed essentially to answer questions of human life through the process of divination. But as Awise Wande Abimbola has pointed out in his seminal works on the Odù, they contain a wealth of knowledge and teachings in the realm of various fields including art, literature, medicine, history, religion and ethics.

Odù Ifá has also been described as a repository of knowledge and an encyclopedia of Yorùbá culture (Makinde, 1983), and as “the ancient wisdom’ of the Yorùbá people (Makinde, 1985: 58). In the view of Kola Abímbólá (Abímbólá 2006: xviii), Ifá is the “main indigenous sacred Text” of the Yorùbá, which “many specialists within traditional (and contemporary) Yorùbá societies” use in “a hermeneutical manner” to produce “cultural philosophy” when “they interpret, analyse, evaluate, and comment on the poems contained in the Odù Ifá in a critical and reflective manner”. The perspective of each specialist will therefore determine his/her focus of engagement with the “cultural ‘document’”. Kola Abímbólá’s focus on Ifá as “the sacred Text of Yorùbá Religion” (ibid; 28), for instance, was influenced by his viewpoint “that we can only truly understand the Yorùbá if we understand the roles of the religious and the spiritual in their culture”. Hence his engagement with Ifá was to “identify the religio-philosophical properties that unify the different manifestations of this culture...the philosophical ideas that form the basis of the practices of Yorùbá Religion in contemporary societies” (ibid: 33). Thus, just as the Ifá Literary Corpus contains philosophical ideas that underlie the practices of Yoruba Religion, so does it also contain philosophical ideas, which could be articulated from it, that underlie other aspects of life, including law, in traditional and contemporary societies. Gbadegesin (1991: 76) is very explicit on this point. He says: “it is true that the most important religious and moral ideas of the Yorùbá are contained in the *Ifá* corpus. But, as is clear to even the traditionalists, *Ifá* is not only a religion. It is, as Abimbola puts it, also ‘a literary and philosophical system’”. Abimbola (1971: 73-89) goes further to describe Ifá as “the store-house of Yorùbá culture inside which the Yorùbá comprehension of their own historical experiences and understanding of their environment can always be found”.

We cannot sustain, therefore, with respect to Ifá, the supposition of a necessary connection between every African ethics-related discourse and religion as had been maintained by some notable African scholars.¹⁰ Arguments against the supposition of a necessary connection between religion and ethics in African cultures, and for a humanistic thesis of social ethics in African cultures, had been persuasively advanced by many eminent African scholars.¹¹ Ògúndá’s argument could thus be regarded as a non-religious rational discourse that happens to occur within a particular Yorùbá tradition-protected (sacred) cultural text. As

such, the argument from Ifá could readily find contemporary relevance and applicability in any other cultural context.

In order fully to appreciate the universal relevance and applicability of the Yorùbá indigenous argument against capital punishment discussed above, all that is required is a critical consideration of its empirical basis and logic. Empirically, it is true that miscarriage of justice does occur in all jurisdictions even after all due care had been taken and all appellate avenues exhausted. Logically, since no one knows which case would involve or would not involve a miscarriage of justice, such as a wrongful conviction, all judicial verdicts are inherently fallible.

Although Ògúndá's epistemological argument against death sentence has been re-constructively articulated from the Yorùbá (African) cultural context, it could acquire a universal relevance. The possibility of error in human judgment of matters of fact and existence is universally acknowledged as an inherent part of our human nature (Ayer 1956: 39-40; Ayer 1981: 63; & Popkin 1967: 449 - 460). This universal human fallibility, particularly in judicial matters, is what Ògúndá's heroic effort in the story from Ifá Literary Corpus above sought to demonstrate in a dramatic way in Odù Ògúndá-Ìròsùn. Epistemologically, wherever and whenever the possibility of error cannot be completely eliminated, thereof human beings ought to be cautious, if they cannot be silent, by way of being circumspect in every judgment on the ground that evidence is yet inconclusive either for or against the case at hand. In law, this leads to the view that for judicial proof, there is no theoretical limit to evidence (Òkè & Amodu, 2006:160). Hence, it is a sound argument that every society should abolish any form of punishment that tends to suggest that all possible evidence relevant to a case had been obtained, presented, and considered such that any future revision or reversal of the consequent verdict in the case is ruled out, as in the case of death sentences.

Although Ògúndá-Ìròsùn does not overtly allude to it, its abolitionist argument on death sentence is better appreciated in the context of its cultural social ethic. So situated, as would be done below, the thrust of Ògúndá's epistemological argument for the abolition of death penalty is a call on the community to live up to its responsibility to its members in conformity with its avowed view of humanity as contained in Yorùbá social ethic.

Yorùbá social ethic is characterized by a communal humanism that emphasizes the interdependence of the individual and the community. In Gbadegesin's expression, "The purpose of individual existence is intricately linked with the purpose of social existence, and cannot be adequately grasped outside it.... individuality and community thus become intertwined" (Gbadegesin, 1991:58). The interdependence between individuals and the community requires that the individual should be committed to the sustenance of his or her community as much as the community should be committed to the preservation of the life of all its members. Human beings are thus conceived in indigenous Yorùbá culture as

the ultimate agents for the “continued existence of the community” (Gbadegesin, *ibid.*), in virtue of which they are endowed with an inherent individual worth, such as is not accorded to other beings in nature. It is on the basis of their unique conception of the human being that the Yorùbá within their traditional and indigenous culture “understood the universality of human rights.... recognized and defended human rights”, and had institutional “measures to ensure that these rights are enforced, protected and proclaimed in culture, custom and tradition” (Bewaji, 2006: 51). In Yorùbá indigenous culture, therefore, the community has a duty to protect the humanity of all persons, irrespective of the circumstances of their lives or their social pedigrees. Thus, even when certain inadequacies or deficiencies are noted or alleged in particular individuals, the principle of universal humanity still requires that the essential dignity, the inherent worth of such persons be acknowledged, protected and respected in meting out any social sanction on them.

The existence of social arrangements to assess and deal with those who fall short or are alleged to fall short of social expectations or who violate social rules in Yorùbá culture “does not mean that their humanity is in any way compromised” (Bewaji, *ibid.*). As such, when humanity is being considered, Yorùbá indigenous culture does not discriminate between the accused, the convict, and the righteous. In its conception of humanity, Yorùbá indigenous culture shares an essential similarity with the views of other human cultures, notably those of cultures of modern societies, which have culminated in the 1948 United Nations Charter of Universal Declaration of Human Rights, which in contemporary cultures highlights “the need to have equality of respect and treatment for the humanity of all humans” (Bewaji, *ibid.* 51; 64), irrespective of the diversities of their existential circumstances, perfections, and shortcomings.

For the Yorùbá, in their indigenous culture, of all the rights that humans have “by virtue of their being humans and for no other reason except this” (Bewaji, *ibid.* 51), the most fundamental, in terms of making the other rights not only possible but also meaningful, is the right to life. The ultimacy of the right to life is expressed in the following Yorùbá sayings: “Èmí lójù” (‘Life is the most important’); “Bá ò kù, ìse kò tán” (‘If we are not dead, we still have roles to play’); “Èmí gígùn ló n sànyà” (‘It is a long life that compensates for suffering’); and “Èni tó kú ní tirẹ tań” (‘Only the dead has forfeited all that he or she has, including rights, humanity and essential worth’). Thus, as rightly noted by Bewaji (*ibid.* 62), “for the Yorùbá, life is valuable in itself”. For the Yorùbá, therefore, human life ought not to be deliberately taken, as is done in death penalty, for any reason whatsoever. It is for this reason that the community ought not to follow the way of the murderer through the use of the punishment of death on its members for offences against the community.

When the foregoing discussion is linked to the Yorùbá indigenous argument against death penalty, Ògúndá appears to have reasoned that the existence or retention of death sentence in Yorùbá society was at variance with the

foundational humanist principles of Yorùbá culture (Gbadegesin, 1991: 61 – 82). More specifically, Ògúndá's reasoning appears to be that the primacy of human life, in the context of an avowal of a communal duty of unconditional protection of every person's right to life in Yorùbá culture, is intolerably compromised by a judicial system that allows the society to kill people for offenses committed or allegedly committed against the society. Ògúndá's intolerance for the compromise is exacerbated by the demonstrated constant possibility – logical and empirical – of wrongful innocent conviction of an accused person at any level of the judiciary. On the 14th of May 2007, for instance, a Nigerian daily newspaper, (*The Nation*), reported the pathetic story of two policemen, Simon Edibo and Sunday Ndidi, who spent 17 years on death row before they were freed of the charge of armed robbery and murder for which they were condemned to death by the High Court of Delta State, which verdict was confirmed by the Appeal Court. Unfortunately, before The Supreme Court could set aside the judgments of the lower courts, one of the convicts, Sunday Ndidi, had died on the death row.

The injustice always occasioned by the occurrence of a miscarriage of justice, such as in a wrongful conviction, is what Ògúndá in his argument in Ògúndá-Ìròsùn wanted to see abolished in his society. In this regard, it is to be noted that in Yorùbá indigenous culture, “injustice to one is injustice to all members of the society” (Bewaji, op.cit: 64), as is aptly expressed in the following Yorùbá proverbial sayings. “Àrùn tó ń se Abóyadé, gbogbo ọ́loya ló ń se” (‘whatever is plaguing a member of the community of Oya’s devotees, (i.e. devotees of the Yorùbá River Deity) is plaguing every member of that community of devotees’); “Ìkú tó ń pa ojúbà ẹ̀ni, òwe ló ń pa fún ni” (‘the death that is consuming one’s peers is proverbially warning of one’s own impending similar death’); “Ohun tó bójú, ló bá mú” (‘whatever affects the eyes affects the nose’); and “Èni tí kò ì kú, kò mọ́ ikú tú má a pòun” (‘the living are ignorant of the manner of their death’). It is in the interest of everyone, therefore, and the duty of everyone as well, to see to the abolition of any form of punishment, such as death sentence, that violates the essential dignity of any human being, no matter how grievous the alleged offence or how obvious the guilt of the accused might seem. Otherwise, such punishment is awaiting everyone else in the society where it was not abolished. As the Yorùbá say “pàsán tí a fi nàyáálé ń bẹ́ lájà fún ìyàwó” (‘the cane that was used to beat the senior wife is waiting in the ceiling for the junior wife’)

The above outlined cultural context, housing Ògúndá's argument for the abolition of death sentence, finds a broader expression in an indigenous African social ethic that is discernible among the Akans of Western Africa (Busia, 1962: 33; Gyekye, 1987: 155), and many Bantu societies of Southern Africa. The pan-African social ethic under reference is conceptualized as ‘Ubuntu’ in the Bantu languages of Southern Africa (Panse), and has been described as “a traditional African philosophy that offers us an understanding of ourselves in relation with the world” and “defines what it means to be truly human” (ibid). It is regarded as a “traditional African concept”, “a sub-Saharan ethos or humanist ideology

focusing on peoples' allegiances and relations with each other" (Wikipedia). As advanced by Tutu (Wikipedia), and discussed by Teffo (1998: 240 – 241), the central point of Ubuntu is that human beings are inextricably connected to one another in concrete, rather than abstract, ways, such that the humanity of one is defined by the humanity of the other person and by membership of a community. Ubuntu, as Teffo describes it, "is a social ethic, a unifying vision enshrined in the Zulu maxim: *umuntu ngumuntu ngabanye* (one is a person through others). According to Bishop Tutu, Ubuntu is the "essence of being human" that makes or perhaps should make people "open and available to others, willing to be vulnerable...know that they are diminished when others are humiliated, diminished when others are oppressed, diminished when others are treated as if they were less than who they are" (Tutu, Wikipedia) In his further characterization of Ubuntu, Teffo (ibid.) presents it as an indigenous African humanist ideology. He observes that from the Ubuntu perspective, "African societies placed a high value on human worth, but it was a humanism that found expression in a communal context rather than in the individualism of the West". Explaining further, Teffo says, "Ubuntu or humanness implies a basic respect for human nature." This Ubuntu humanness is seen in a person's relationship with other members of his/her family or community. In such relationship, for a person with Ubuntu, "The dignity, safety, prosperity, health and development of all people is the most important priority". Moral judgment is thus based on how humane a person's behavior is towards other human beings. As succinctly put by Ahianzu (2006: 33), "Ubuntu is about people and more importantly about *relationships between people*". Thus, "an UBUNTU view of life is synonymous with concepts such as cooperation, mutual respect and support as well as unity within the community" (Teffo, ibid, 240). Hence, if as Tutu says of Ubuntu, "We belong in a bundle of life" (Tutu, ibid; also Thabo Mbeki, 2001: 9; Louw, 2001:15; and Nussbaum, 2001: 4.), then we need, as a community, and as individuals, to be considerably and consistently *open, rather than finalistic*, in our opinions and judgments of ourselves and other fellow human beings.

Placed in the wider context of Ubuntu, Ògúndá's argument for the abolition of death penalty in traditional Yorùbá society was based on the view that human society's judicial and penal systems ought to be humane in conformity with a due recognition of an ever-fallible humanity. Ògúndá's argument was that the African cultural avowal of communal protection of everyone's human rights and respect for the human dignity of all, was patently not in sync with either the policy or the practice of judicially killing offenders or alleged offenders in the community, especially when it was granted that the judicial system was always vulnerable to error.

4. CONCLUSION

The above jurisprudential conclusion does not preclude the divinatory signification of *Odù Ògúndá- Ìròsùn*; rather it complements it. Divinatorily, the *Odù*, in the portion of it used in this paper, signifies the imminence of an injustice

or a miscarriage of justice, or that such injustice or miscarriage of justice had actually taken place. Whichever is the case, the *Odù* goes further to prescribe how to prevent or redress the injustice or miscarriage of justice. The details of this aspect are parts of the *Ifá* practitioners' professional trade secrets.

It is to be noted that this indigenous argument is not based strictly on moral grounds. This is because its conclusion does not arise solely from a moral evaluation of capital punishment. The rejection of capital punishment is also not just from a practical or pragmatic or teleological or some other consequentialist consideration. This is because the argument does not claim that capital punishment is bad, unjustifiable or undesirable because of the practical or utilitarian reason that it never achieves its intended purpose or purposes such as deterrence and psychosocial balance. Similarly, the rejection is not based on metaphysical considerations such as that human nature forbids the killing of persons, or that human life, *simpliciter*, is sacred and so should never be taken by anyone for any reasons whatsoever, etc. It is also noteworthy that the *Ifá* argument, although extracted from a sacred text, is not a religious or a theological one. It is a secular argument based entirely on empirical human observation and logical reasoning within a humanist social ethic. Its premises make no reference to God, the will of God, the judgment of God, or post-life existence in support of the conclusion that capital punishment is inherently objectionable. Finally, it is to be noted that unlike the classical humanitarian argument against the death penalty, the point of *Ògúndá - Ìròsùn* is not just that capital punishment is cruel, wicked and inhuman.

Yet, in spite of the above, this objection to capital punishment in *Ifá* is neither a casual nor a flimsy pedestrian expression of a wish, ideal or opinion. Rather, it is a strong argument arising from a skeptical epistemological standpoint with sharp ethical and legal implications, and demonstrated in a logical and scientific way. The argument has also extensionally involved the Yorùbá social ethical context within which it arose and which made its jurisprudential thrust better appreciated.

Beyond its immediate Yorùbá context, the discussion has been extended to the larger pan-African indigenous socio-ethical perspective known as 'Ubuntu', a communal humanist ethical standpoint that is dominant in many traditional African societies and is considered relevant in the contemporary world. As put by Ahiauzu (op. cit: 36), Ubuntu "embodies a fundamental aspect of the way Africans see themselves and their relationships with others", the ethos of which, in the opinion of Teffo (op. cit: 241), "is one single gift that African philosophy can bequeath to other philosophies of the world, in particular Western philosophy".

On a meta-discourse level, the discussion in this paper complements the point that many have sought to make against the tendency to deny the existence and possibility of African jurisprudence and thus to exclude African texts from the body of classical texts in law and philosophy of law. In particular, it substantiates,

in a factual way, and gives empirical fiber to Idowu's (2001, 2004, 2006) recent theoretical challenges of the exclusion of indigenous African thought from the canons of jurisprudential literature.

ACKNOWLEDGMENTS

The assistance of Dr. Abiodun Agboola, PhD, an internationally renowned Ifá High Priest, who is also a Lecturer in Rural Sociology at Obafemi Awolowo University, Ile-Ife, Nigeria, is hereby acknowledged. His personal recitation of the verse of Odù Ògúndá-Ìròsùn for me, as well as his inviting me to other group recitations at Ifá Festivals in various places in Nigeria, has helped to corroborate Bascom's documented story (in W. Bascom, 1980: 482 - 489) used in this paper and to establish that it is reliable, constant and standard among the community of Ifá priests/priestesses.

REFERENCES

- Abímbólá, W. (1968), *Ijinle Ohun Enu Ifá*, 1, Glasgow, UK: Aim Press.
- (1971), "The Yoruba Concept of Human Personality", *La Notion de Personne en Afrique Noire*, Paris; Centre National de la Recherche Scientifique, (73-89).
- (1976), *Ifá: An Exposition of Ifá Literary Corpus*, Ibadan: Oxford University Press.
- (1977), *Ifá Divination Poetry*, New York: NOK Publishers Ltd.
- (1978), *Awon Oju Odu Mereerindinlogun*, Oxford: Oxford University Press.
- (1983), "Ifa as a Body of Knowledge and as an Academic Discipline", *Journal of Cultures and Ideas*, Vol. 1, No. 1:1-11.
- (1987), *Ijinle Ohun Enu Ifá*, 2, Oxford: Oxford University Press.
- (1997), *Ifá Will Mend Our Broken World*, Roxbury: Aim Books.
- Abímbólá, Kólá. (2006), *Yorùbá Culture: A Philosophical Approach*, Birmingham: Ìròkò Academic Publishers.
- Acton, H.B. (Ed), (1969), *The Philosophy of Punishment*, London: Macmillan.
- Adewoye, O. (1987), "Proverbs as a Vehicle of Juristic Thought Among The Yorùbá" in *Obafemi Awolowo University Law Journal*, 3 and 4: 1-17.
- Ahianzu, Nkiruka (2006), "Ubuntu and the Obligation to Obey the Law", *The Cambrian Law Review*, volume 37
- Apega, Rev D.O. (1924), *Ifa: Amona Awon Baba Wa*, Ode- Remo: Imole Oluwa Institute for the Ancient Wisdom of the Yorùbá.

- Ayer, A. J. (1956), *The Problem of Knowledge*, London: Macmillan & Co. Ltd: 39-40.
- (1981), *The Central Questions of Philosophy*, England: Penguin Books Ltd: 63.
- Babalola, A. (1973), *Akojopo Alo Ijapa*, Ibadan: University Press Ltd.
- Bascom, W. (1969), *Ifa Divination: Communication Between Gods and Men in West Africa*, Bloomington: Indiana University Press.
- (1980), *Sixteen Cowries: Yorùbá Divination from Africa to the New World*, Bloomington and London: Indiana University Press.
- Baier, K. (1969), "The Concepts of Punishment and Responsibility", in *The Philosophic Exchange*: 38-42.
- Bewaji, J. A. I., (1992), "A Critical Analysis of the Philosophical Status of Yoruba Ifá Literary Corpus", in *Wiener Reihe*, Vol. VI: 142 – 155.
- (2003), *Beauty and Culture: Perspectives in Black Aesthetics*, Ibadan, Nigeria: Spectrum Books Ltd;
- (2004), "Ethics and Morality in Yoruba Culture", K. Wiredu (ed), *A Companion to African Philosophy*, Malden, MA: Blackwell Publishing Ltd; 396 – 403.
- Brandt, R. B. (1959), *Ethical Theory of Punishment*, Englewood-Cliffs, New Jersey: Prentice-Hall Inc.
- Busia, K. A. (1962), *The Challenge of Africa*, New York: Praeger.
- Davidson, Basil (1978), *Africa in Modern History: The Search for a New Society*, England: Penguin Books Ltd.
- Driberg, J. G. (1934). "The African Conception of Law", in *Journal of Comparative Legislation and International Law*, 230, 1934: 237-8; and *Journal of African Society*, 34, 1935.
- Duff, A (1985), *Trials and Punishment*, Cambridge: Cambridge University Press.
- Essien, Christine (2004), "Overview of Perspectives of Death Penalty as Regards Vulnerable Groups (Children, Women and the Poor)", Paper presented at the Public Consultation on Crime, Punishment and the Death Penalty, Hamdala Hotel, Kaduna, Nigeria, (18 April).
- Gardiner, G.A. (1956), *Capital Punishment as a Deterrent and the Alternative* (London).
- Goldberg, S. (1974), "Does Capital Punishment Deter?" in *ETHICS* Vol. 85 No. 1.

Gbadegesin, S. (1985), "Can there be an Adequate Justification for Capital Punishment?" in *Social Justice and Individual Responsibility in the Welfare State*, Stuttgart: Fran 3 Sterner Velag, 227-233, (Proceedings of the 11th World Congress of Philosophy).

----- (1991) "Individuality, Community and the Moral Order", Chapter 3 in his *African Philosophy: Traditional Yoruba Philosophy and Contemporary African Realities*, New York: Peter Lang.

Gyekye, Kwame (1987), *An Essay on African Philosophical Thought: The Akan Conceptual Scheme*, Cambridge: Cambridge University Press.

Haag, V. D. E. (1968), *Deterrence and the Death Penalty*, Atlantic Highland, New Jersey: Humanities Press Inc.

Hart, H. L. A. (1968), *Punishment and Responsibility*, Oxford: Clarendon Press.

Holleman, J. F. (1974), *Issues in African Law*, The Hague: Moulton and Co: 13.

Honderich, T. (1984), *Punishment: The Supposed Justification*, Harmondsworth: Penguin Books.

Horton. R. (1967), "African Traditional Thought and Western Science", *Africa*, 37:50-71,

----- (1997), "Traditional Thought and the Emerging African Philosophy Department: A Comment on the Current Debate" in *Second Order, An African Journal of Philosophy*, VI/1.

----- (1982), "Tradition and Modernity Revisited", in Hollis, M. and Lukes, S. (eds.), *Rationality and Relativism*, Oxford: Blackwell.

Idowu, E. Bolaji (1962), *Olodumare: God in Yoruba Belief*, London: Longman Group Ltd.

Idowu, W. (2001), "African Jurisprudence and the Politics of Social History: An Inquiry into the Dilemma of Cannonisation", *Lesotho Law Review*, Vol.14, no.1:1– 27.

----- (2004), "African Philosophy of Law: Transcending the Boundaries between Myth and Reality", *Africa: Myth and Realities, Enter Text On-Line Journal, an Interactive Interdisciplinary e-Journal for Cultural and Historical Studies and Creative Work*. <http://www.brunel.ac.uk/faculty/arts/EnterText>, vol.4, no.2, Winter: 52 – 93.

----- (2006), "Against the Skeptical Argument and the Absence Thesis: African Jurisprudence and the Challenge of Positivist Historiography", *The Journal of Philosophy, Science & Law*, Volume 6, July 1: 34 – 49.

<http://www.miami.eu/ethics/jpsl>

Karenga, Maulana (1999), *Odù Ifá: The Ethical Teachings*, Los Angeles: University of Sankore Press.

Lawuyi, O. B. (1988), "The Tortoise and the Snail: Animal Identities and Ethical Issues Concerning Political Behaviour among the Yoruba of Nigeria", *Second Order, An African Journal of Philosophy*, (new series). Vol. 1, No: 2: 29-40.

Lewis, C. S. (1963), "A Critique of the Humanitarian Theory of Punishment" in *Holbourne University Law Review*.

Lijadu, E. A. (c.1997), *Ifa Mimo Alabalase*, Ado-Ekiti: United Star Printers Ltd.

Lijadu, E. M. (1908), *Orunmila*, Ado-Ekiti: Omolayo Standard Press of Nigeria (2nd reprint, 1972).

Liyong, Taban Lo (1997), *Homage to Onyame*, Lagos: Malthouse Press Ltd.

Louw, J. D. (2001), "Ubuntu and the Challengers of Multiculturalism in Post-Apartheid South Africa", *Quest: An African Journal of Philosophy*, vol. Xv, no. 1 – 2, 15.

Makinde, M. Akin. (1983), "Ifa as a Repository of Knowledge", in *Odu: (A Journal of West African Studies)*, No.23; also Presented at the XVIIth World Congress of Philosophy, Montreal, August 21-27, 1983.

----- (1985), "A Philosophical Analysis of the Yoruba Concepts of Ori and Human Destiny", *International Studies in Philosophy*, XVII/1: 53-69.

----- (1988), "African Cultures and Moral Systems: A Philosophical Study", *Second Order (New Series): An African Journal of Philosophy*, vol.1, no.2: 1- 27.

Mbeki, Thabo, (2001), "I Am African", *Quest: An African Journal of Philosophy*, vol.xv, no. 1- 2: 9.

Murungi, John (2004), "The Question of an African Jurisprudence: Some Hermeneutic Reflections", in Wiredu, Kwasi (ed.) (2004), *op. cit*; 519 – 526.

Nussbaum, B. (2001), "African Culture and Ubuntu", *Perspectives*, vol. 17, Issue 1, 4.

Okafor, Fidelis (2006), "From Praxis to Theory: a Discourse on the Philosophy of African Law", in *The Cambrian Law Review*, (special issue on 'The Possibility of African Legal Theory'), Volume 37: 37 -48)

Oladipo, Olusegun (1988), "Metaphysics, Religion and Yoruba Traditional Thought: An Essay on the Status of the Belief in Non-Human Agencies and

Powers in an African Belief System”, *Journal of the Indian Council of Philosophical Research*, 7(2): 72 – 83.

Oluwole, Sophie B., (1984), “The Rational Basis of Yoruba Ethical Thinking”, *The Nigerian Journal of Philosophy*, 4(1 & 2): 14 – 25.

Opoku, Kofi A. (1974), “Aspects of Akan Worship”, C. Eric Lincoln (ed.), *The Black Experience in Religion*, New York: Doubleday.

----- (1978), *West African Religion*, Accra: FEP International Private Ltd.

Owoade, M.A. (1988), “Capital Punishment: Philosophical Issues and Contemporary Problems in Nigeria”, *Second Order (New Series): An African Journal of Philosophy*, Vol. No. 1:41-61.

Owomoyela, Oyekan (1981), “The Pragmatic Humanism of Yoruba Culture”, *Journal of African Studies*, 8(3): 26 – 32.

Panse, Sonal, “Ubuntu – African Philosophy”, <http://www.Buzzle.com/authors.asp//authors762>

Pinconffs, E. L. (1966), *Classical Retributivism: The Rationale of Legal Punishment*, Atlantic Highland: Humanities Press.

Schedler, G. (1976), “Capital Punishment and Its Deterrent Effect”, in *Social Theory and Practice*, Vol. No.1: 47-66.

Taiwo, O. (2003), “Ifá: An Account of a Divination System and Some Concluding Epistemological Questions”, in K. Wiredu, (ed.), *A Companion to African Philosophy*, Malden, MA: Blackwell Publishing.

Teffo, L. J. (1988), “Ubuntu: A Challenge to the Corporate World in South Africa”, in Oladipo Olusegun (ed.), *Remaking Africa: Challenges of the Twenty-First Century*, Ibadan; Hope Publications :239-251.

Ten, C. L. (1987), *Crime, Guilt and Punishment*, Oxford: Clarendon Press.
The Nation, 14 May 2007, Vol. 1, No. 0286: 1 & 5,
<http://www.thenationonlineng.com>

Walker, N. (1980), *Punishment, Danger and Stigma: The Morality of Criminal Justice*, Oxford: Basil Blackwell.

----- (1991), *Why Punish? Theories of Punishment Reassessed*, Oxford: Oxford University Press.

Wiredu, Kwasi (1982), “Morality and Religion in Akan Thought”, in H. Odera Oruka and D. A. Masolo (eds.), *Philosophy and Cultures*, Nairobi: Bookwise Ltd.

----- (1992), "Moral Foundations of an African Culture", in Kwasi Wiredu and Kwame Gyekye (eds.), *Person and Community: Ghanaian Philosophical Studies, 1*, Washington DC: The Council for Research in Values and Philosophy.

----- (1996a), *Cultural Universals and Particulars: An African Perspective*, Bloomington and Indianapolis: Indiana University Press.

----- (1996b), "On Decolonizing African Religions", in J. G. Malherbe (ed.), *Decolonizing the Mind*, Pretoria: University of South Africa.

Yahdudu, I., (2003), "Comments on the debate on the death penalty", in *The Guardian*, Sunday, 24 August.

¹ By 'indigenous' here is meant 'aboriginal, authentic, traditional, pre-colonial homegrown, not alien, not foreign, not imported'.

² As reported in Owoade 1988:60, fn. 57: "Death penalty... America".

³ For example, see Acton (1969), Baier (1977) Brandt (1959), Duff (1985), Gardiner (1956), Gbadegesin (1985), Goldberg (1974), Haag (1968), Hart (1968), Honderich (1984), Lewis (1953), Owoade (1988); Pincoffs (1966), Schedler (1976), Ten (1987), Walker (1980), and Walker (1991).

⁴ Okafor, F. U., (2006), "From Praxis to Theory: a Discourse on the Philosophy of African Law", *The Cambrian Law Review*, VOL. 37: 37-48.

⁵ Expressions of such views will be found in Horton (1967), (1977), and (1982). For views to the effect that Africans lack a conceptual and correct analysis of the concept of law, and that even if Africans had indigenous systems of social control, such systems lacked any trace of legality, legal concepts and logical elements, and that there is no African jurisprudence, see: Holleman, 1974: 13; and Driberg, 1934, & 1935, among others.

⁶ See: Essien, Christine (2004), "Overview of Perspectives of Death Penalty as Regards Vulnerable Groups (Children, Women and the Poor)", Paper presented at the Public Consultation on Crime, Punishment and the Death Penalty, Hamdala Hotel, Kaduna, Nigeria: 1 April; and Yahdudu, I. (2003), *The Sunday Guardian*, 24 April.

⁷ As contained in the references in note 3 above.

⁸ *Ifá* is the corpus of the root (primordial) culture of the Yorùbá people all over the world. *Ifá* has been variously described as the ancient wisdom and pathfinder of Yorùbá progenitors (Lijadu, 1908; Lijadu, c. 1996; and Apega, 1924). It has also been described as the unwritten scriptures of the Yorùbá (Bascom, 1969). Abimbólá (1977) described *Ifá* as a body of all-round wisdom sent to the human race from the Supreme Being through his messenger, Òrúnmìlá'. Abimbólá (1983) further described *Ifá* as a body of knowledge containing many branches, and as an academic discipline. In the account of Makinde (1983), *Ifá* is a repository of knowledge. *Ifá* is all embracing in scope, ranging from ceremony to eschatology and including such mundane matters as family life, friendship and recreation. It covers science, religion, society, morality, politics, law, education and philosophy. It can be rightly described as the complete encyclopedia of authentic Yorùbá culture. Also relevant to the characterization and content of *Ifá* are Abimbólá (1965, 1968, 1976, 1977, 1978, 1987 & 1997), Abimbólá (2006), Bascom, W. (1969, 1980), Bewaji, J. A. I. (1992), & Taiwo, O. (2003). The nature, functions and other relevant details of *Ifá* are also discussed in the following: www.ifafoundations.org, www.globalchange.com/challenge.htm, www.ackland.org/art/collection/african/ifa.html, www.americanifa.org/pages/1/index.htm, www.utexas.edu/conferences/africa/2004/database/divination.html, www.geocities.com/solarguard/africa/ifa.html, and www.metmuseum.org/explore/oracle/ifa.html.

⁹ An 'odù' is a section of *Ifá*, comparable to a chapter in a book. There are as many as 256 of such sections in the *Ifá* Literary Corpus, each one dwelling on a set of interlocked themes or theories presented as a body of coded knowledge on a specific set of related matters which only

the initiated, the reflective, or the wise can understand. Abimbola (1977:15) refers to *Odù* as “categories of poetry in the Ifá literary corpus”, each with “its own distinct signature and character”. There are primary ‘*Odù*’ called ‘*Ojú Odù*’ (16 in number), and 240 derived or mixed ‘*Odù*’ called ‘*Àmúlùmálà Odù*’ or ‘*Ọmọ odù*’, *Ògúndá - Ìròsùn* is a mixed *Odù*, comprising of *Odù Ìròsùn méjì* and *Ògúndá méjì*. A version of the passage used in this discussion can be found in Bascom, W. (1980): 488.

¹⁰ Including Idowu 1962: 146; Mbiti 1969: 2; Opoku 1974: 286; Opoku 1978: 2, and Makinde 1988: 1-27.

¹¹ Among whom are Davidson 1978: 49; Wiredu 1982, 1992, 1996a, and 1996b; Owomoyela 1981: 26-32; Oluwole 1984: 114-25; Oladipo 1988: 72-83; and Liyong 1997: 79.