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Foreword

As an aftermath of the meta-philosophical debates in African philosophy, loads of literatures are increasingly sprawling in different cognitive areas of the discipline: African metaphysics, African epistemology, African aesthetics, African logic, African socio-political philosophy and other auxiliary dimensions of African philosophy. A new turn in African philosophy today is conversational interaction in African space among philosophers on diverse philosophical issues of interest promoted by The Conversational School of Philosophy. It is within this trend that this book, *The Death Penalty from an African Perspective: Views from Zimbabwean and Nigerian Philosophers* emerges as a first step and as cornerstone to serious further conversations to come among workers in African legal and socio-political philosophy.

In this volume, a pioneering platform is provided for some leading scholars in the Zimbabwean and the Nigerian philosophical communities to pontificate on an African perspective on the topical issue of the death penalty. Though, the issue of moral propriety or otherwise of the death penalty is one of the most perplexing questions that has divided scholars into theoretical camps in Western philosophy, in this book African philosophers are no less in consensus on their cultural perceptions and arguments. Importantly, the Zimbabwean and the Nigerian perspectives presented in this book reflect not only the voices of the authors, the nuances of their cultural worldviews (such as the Igbo, the Yoruba, the Shona, and the Zulu) but also the existing views of stakeholders in Zimbabwe, Nigeria, Botswana and South Africa on the death penalty, which altogether enrich the book’s philosophical production.

The chapters in this book illustrate the diversity of moral perspectives on the arguments for and against the death penalty in African culture. Some of the authors in this volume, such as Adebayo Aina, argued for an interpretative notion of capital punishment, which is an attempt to resolve the grey-areas between the defenders of an abolition and retention of the death penalty. Others, like Jonathan O. Chimakonam, argue the cogency of a suspension of capital punishment's implantation in the Nigerian penal code till when the
human ethical minimum of social goods of human survival is guaranteed to the citizens. Still others, such as Christopher Agulanna, use an Igbo cultural lens to argue that the death penalty is not only anti-morality, it is also incongruent with African ideals. In the Zimbabwean context, Fainos Mangena and Francis Machingura argued for a prohibitionist stance on the grounds of group acts theory and cultural argument. The point in the foregoing few examples is that there is no one African perspective, but several different African views, and sometimes, alternative explanations to the dominant utilitarian and retributivist positions on death penalty in Western legal and socio-political philosophy.

This book is a remarkable contribution from African philosophers to the global debate on the death penalty, its institutions and administrations in a specific context; and in a time of great transformations in our ideas of right and wrong. With its rich contents, lucid but professional language of presentation, the book no doubt has the capacity for stimulating further research interests on the subject-matter. I, therefore, recommend this book for students, researchers, social crusaders, political front-liners and the general reading public that treasure good philosophical literature.

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Preface

Why would the same society that executes someone for a crime frown at another who took own life to atone for his/her crime or simply to free himself/herself from some unbearable burden which the society may have contributed in imposing on him/her? Now, this is a question about the justification of capital punishment or the death penalty as well as suicide. Albert Camus for one sees suicide as the one truly philosophical problem. I do not know any philosopher who holds similar view on capital punishment. But why are opinions divided among philosophers on the justification of capital punishment? What do African philosophers think about this matter? These questions were central in our minds when we first conceived this project.

My co-editor and I felt it was important that we draw opinions from different contemporary African philosophers for some reasons. One, there may be a few isolated articles that treat capital punishment from the African perspective, but there is, on the whole, a dearth of books on this subject matter. Second, the post-colonial Africa takes so much by way of emulation from the colonial Europe. Inasmuch as one can argue that this sort of cultural imitation was inevitable at the time of political independence and may, in fact, have been needful, it is not far-fetched to see the consternation that now trails the implementation of some of the colonially inspired policies like the death penalty. In the pre-colonial imaginary, it was not part of standard practice, at least in most African cultures to execute people for the crimes they have committed. Most would rather ostracise the criminal that has committed what we now call a capital offence. Chinua Achebe's *Things Fall Apart*, Elechi Amadi's *The Concubine*, and John Munonye's *The Only Son* are emblematic reminiscences of the pre-colonial African originary in which one who has committed capital offence was ostracised, his house set on fire and was required to flee the community for seven seasons. But capital punishment? No, not the African way, at least, in most cultures on the sub-continent and the reason is because, it is viewed as a taboo for brothers to shed the blood of brothers. A good number of African thinkers like Elochukwu Uzukwu (1982), K. C. Anyanwu (1984), Udobata Onunwa (1994) and Chimakonam and
Ogbonnaya (2015) to name but a few, have drawn attention to the enormous value many an African culture places on human life. In essence, it does not matter the crime which the bearer of human life has committed, it is simply not up to us to take his life.

Again, we must not ignore the changing dynamics in the post-colonial African thought. In this connection, one may argue, and this is hardly incorrect that the cultural embeddedness of the pre-colonial mindview need not remain the beacon of contemporary social engineering in today’s Africa ensnared in the gripping influence of transculturalism. In fact, in what Hans Georg Gadamer (2000) calls the melting or “fusion of horizons”, one may legitimately tone down the primordial African orientation toward the death penalty and in turn, elevate the morality of the death penalty which has come to be accepted in many places as not only proper but pragmatic. What then is the position of African philosophy in all of this?

African philosophy may still be in its infancy, perhaps, in the words of W. E. Du Bois (1993), “the seventh son” among other philosophical traditions, but it is nonetheless growing, aspiring and innovating. A new wave of thinking for example, called Conversational Philosophy developed by Jonathan Chimakonam and endorsed by the University of Calabar-based circle called The Conversational School of Philosophy is leading innovation in African philosophy. This school has called African philosophers to duty—to employ what they call the tool of conversationalism, which is somewhat technical, to study reality, open new vistas for thought and unveil new concepts from the African place. An epistemic vision such as this is keen on innovation and creativity that matter for today’s world rather than cultural excavations. In times like this, it has become pertinent for African philosophy and philosophers to look forward. Yet again, and this is not gainsaid by the conversational tradition, there is room left, and there must be, for the diffusion of the old into the new. It is in this connection that Janheinz Jahn (1961) talks of the “valuable past” and Bogumil Jewsiewicki (1989) talks of the “usable past”. All new ideas are welcome but some old ones die hard. How may we then negotiate this hiatus between old and new in the debate on the death penalty was for us a project that demanded the collective industry of African philosophers. It must be stated at this point that this was the main reference frame we had in sight at the commencement of this project.
It is something that may be agreeable to many that the goal of punishment in a modern society is to ensure stability by reducing crime and increasing harmony and social balance. The justification for punishing offences stems from the assumption that humans are rational entities, who, unlike the other entities in the universe, are free and capable of making informed and reasonable decisions. They should therefore be punished when they abuse this freedom. They must face the responsibility which the willful exercise of their freedoms attracts. But here comes utilitarianism, an ethical doctrine propagated by Jeremy Bentham which by its famous principle of ‘greater number’ appears to adduce that punishment can only be justified if it offers a guarantee of eliminating greater evil for the greater number. How on earth is this supposed to be the case? We may as well accept the fact that utilitarianism does not recommend retribution. But the mainstream ethicists tend to think otherwise. Retribution for them is cardinal to the functioning of the modern state machine. Where argument ensues is with the scale of what is admissible as a punitive measure. Some, typically called the retentionists have no qualms stretching this to include the death penalty where a capital offence is involved. Others, typically called the abolitionists consider the death penalty anomaly for the civilised humanity and would not accept it. This position may actually be described as a modern-day secularization of Christian ethics on the sanctity of life. Neither in ancient Greece nor in Rome nor pre-Christian Europe was there any prevailing belief that the death penalty for serious crime was wrong. The liberal anti-death penalty stance is a Christian perspective, rooted in Christ’s ‘slave morality’, as Nietzsche will put it. It is important to note that though this volume sustains the argument against the Death Penalty, it was not influenced by Christian morality. In traditional Africa, premium was placed on human life. Specifically, taking of the life of a member of the family or clan or anyone related by blood was an abomination. And because in traditional Africa, people lived in communities made up of people with common ancestry, death penalty as a punitive measure was something difficult to conceive. As a result, ostracizing the culprit from the community and setting his house on fire was widely preferred. Chapters 1, 2, 3 and 4 in this volume variously speak to this concern.

Going further, one of the twentieth century vocal voices in the abolitionist camp is the Swedish philosopher Ingemar Hedenius (1969). He vehemently recommended the total abolition of punishment due to the legal flaw which allows for some innocent
people to get punished as a result of lack of absolute certainty in legal proof. However, the brilliant Kenyan philosopher H. Odera Oruka (1985) transcends the conclusion of Hedenius and argues that punishment should be abolished not just because some innocent people suffer but because, and this is curious, “most criminals are never “responsible” for their crimes”. How is this so? Oruka, developed an ethical theory called the “Human Minimum” and uses it to negate all arguments that uphold retribution. According to him, there is a set of rights which a responsible state must guarantee to her citizens to enable them act rationally and be held responsible for the free exercise of their wills. These rights include health, security and subsistence. His argument is that anyone who lacks any of these three basic rights cannot act rationally and as such should not be held responsible for his crimes let alone subjected to punishment. His conclusion appears to be that since most states especially in Africa do not guarantee the human minimum, punishment ought to be abolished. If Oruka’s argument about ordinary punishment is tenable, and it should be, then where is the point in talking about the death penalty at all? And this is where the puzzle lies.

The chapters in this collection focus squarely on the death penalty debate and views are drawn from Nigerian and Southern African philosophers out of which Zimbabwe feature prominently. It is aimed at unfolding the African philosophers’ perspective to the debate. Contributors have been influenced by the traditional African order which placed premium on human life and which abhorred the killing of those related by blood rather than by Christian ethics. This is not to suggest that in traditional Africa, killing of people was not practiced, it was; but our point is that killing of people (excluding twins who are considered as evil in some pre-colonial societies) related by blood was considered an abomination and since at that time, people of common ancestry lived in communities and clans, it was difficult to have a system that legalised killing as an acceptable form of punishment. In our world today, we can generalise this ideal on the ground that humanity is the same irrespective of race, culture and tongue. For this, contributors in this volume hold fast to their debt to the African continent as African philosophers and have argued against the death penalty not because the Christian ethics condemns it but because the traditional African morality abhors it. Similarly, they have not argued in favour of the death penalty merely because the traditional morality condemns it.
but also because, it is one of the colonial ideas which should not be integrated into the postcolonial African ethics.

It is our hope that the ideas espoused in this book will contribute to the ongoing intellectual debate and possibly shape the public policies especially in Africa haunted by the ghost of colonialism and stalked by the shadow of Eurocentricism. This book fundamentally attempts to teach us, one and all, the Westerner and the African, the modernist and the traditionalist, that there is a thin membrane called rationality between humanity and the lower class animals which when taken lightly and breached, shall have all of us doubting our humanity. Such a time as ours when humans legalise the killing of other humans in the society is without doubt, a dire time and whether it makes the society stable or not, it is certainly something the African philosopher has to re-think.

J. O. Chimakonam
Dürnstein, March 10, 2017
Acknowledgments

The authors have benefited from the ideas of others, past and present, in composing the chapters in this book. The editors have also benefited from the kind assistance of some persons in preparing this work. Some of those that deserve mention include Dr. Ada Agada as well as the postgraduate students of one of us, Mr. Aribiah Attoe and Mr. Victor Nweke as well as the editors at Vernon press for having faith in this project. Also, we thank Mr. Dick Masala, the University of Zimbabwe Publications Technical Editor, who helped with indexing. The editors also wish to express their gratitude to the Vice-Chancellors and the senates of University of Zimbabwe and University of Calabar for giving us the spaces to carry out this project. We have worked hard to eliminate errors in this book but in the case some infelicities still survive, the editors humbly accept responsibility as imperfect mortals. The authors of the chapters are however responsible for the views expressed in their chapters.
Dedication

To the victims of xenophobic attacks in South Africa; is this the beginning of the end to the African brotherhood?
Introduction

Africanizing the Death Penalty Discourse: Philosophical views from Zimbabwe and Nigeria

Fainos Mangena

The death penalty is one of the most contentious issues in the Social Sciences and Humanities today, particularly in the fields of ethics and Jurisprudence. It is contentious because opinion is divided when it comes to whether this form of punishment deals decisively with the crime of murder. Recent developments from around the globe seem to point towards the direction of the total abolition of the death penalty. In Zimbabwe and Nigeria, for instance, human rights organizations such as Amnesty International have done a lot of advocacy to have the death penalty removed from the constitutions of these two countries for the following reasons: Firstly, it should be observed that most progressive nations have abolished the death penalty at law and in practice, and Zimbabwe and Nigeria are among the few African nations left. Secondly, it should also be noted that the death penalty has not really deterred crime in Africa just as it also failed to deter crime in the West where it originated.

Thirdly, there has been increasing calls for people in these two countries to return to their founding values of ubuntu/umunna which promote peaceful ways of conflict resolution rather than adopting the Western value system which is not in sync with African realities. It is for these reasons, among others, that quite a number of researchers have come to the conclusion that the death penalty has outlived its usefulness and must therefore be abolished. Most of the contributors in this book volume are convinced that it is high time the death penalty was abolished especially in sub-Saharan Africa for the reasons stated above. From Harare to Lagos, there is a philosophical conviction that sub-Saharan Africa will be a better place without the death penalty. The sub-Saharan African cultures
under scrutiny in this book include the Shona of Zimbabwe, and the Igbo and Yoruba of Nigeria.

The chapter by Fainos Mangena and Francis Machingura is a philosophical appraisal of the current debates on the death penalty with a view to showing that the death penalty contradicts the value systems of sub-Saharan Africa which in summary points to the direction that no one has a right to take another person's life. They argue that in sub-Saharan Africa, particularly in Shona culture, conflict resolution has a communal dimension, the idea being to benefit both the victim and the perpetrator of murder and to create social harmony.

In another chapter, Jonathan Chimakonam, takes the argument further when he argues that the death penalty does not discourage would-be-offenders from committing acts of murder. In a bid to bolster his argument, Chimakonam asks the following critical questions: Is it really plausible to suppose that the taking of human life can deter would-be-murderers? How can a person whose rationality distinguishes him from the brutes, legislate the taking of the lives of others as a form of punishment? His view is that despite similarities and differences between human cultures, they are all united in the possession of human life. For Chimakonam, human life is the same whether one is Japanese or American or German or Jew or African. For this reason, it would therefore be out of order for one human being to pronounce a death sentence on another for whatever reasons.

In his rebuttal of the retentionist argument, Chimakonam presents a two-tier argument, namely: The argument from the human minimum and the argument from the freedom theory of punishment. With regard to the first argument, Chimakonam borrows Henry Odera Oruka's human minimum theory as a basis to deprecate the death penalty as it is applied in Nigeria today. His position is that Nigeria fails to provide the human minimum, that is, “the rights to physical security, health and subsistence” (Oruka, 1997, p. 86). Since Nigeria has not guaranteed this human minimum it does not have any moral authority to punish by death.

In the second argument, Chimakonam develops a discourse about the formation of three different types of communities in order of importance. He presents the political community as one in which human beings and/or persons freely consent to the limitation of their freedoms. Thus, he views crime as the unlawful constriction of a person's range of freedoms by another, and he sees punishment as
a further restriction on the range of freedom allowed to persons by a state. Chimakonam considers freedom to live as of fundamental importance to the extent that even the state has no right in diminishing this kind of freedom. Chimakonam thus rejects the death penalty on that basis.

Clive Zimunya, Joyline Gwara and Isaiah Munyiswa do a comparative analysis of the Western and African underpinnings of the death penalty. Beginning with the Western underpinnings of the death penalty, they draw their insights from the two main theoretical viewpoints, namely; the forward-looking and backward-looking approaches to punishment. Their claim is that while the forward-looking approaches to punishment put emphasis on deterrence, and the backward-looking approaches emphasise on punishing someone because they deserve it by virtue of having committed a crime, the problem is with the justification of these approaches in toto especially when applied in the context of non-Western cultures, for instance, in the Shona and Yoruba cultures of Zimbabwe and Nigeria respectively. With regard to these cultures, Zimunya, Gwara and Munyiswa argue that while they retain the phrases forward-looking and backward-looking, the areas of emphasis are somewhat different. In these cultures, it is groups or families or communities that commit crimes, and similarly, it is groups or families or communities that merit punishment for crimes committed. Thus, the forward-looking and backward-looking justification of the punishment must be based on this reality.

Adebayo A. Aina postulates that the death penalty has no strong roots in African culture. His argument is specifically placed within the context of the Yoruba culture of Nigeria. His position is that the death penalty does not serve the interests and needs of African peoples, particularly the Yoruba people, for the following reasons: Firstly, the death penalty seems to contradict the principle of human dignity which is valued so much in Yoruba culture. Secondly, Aina argues that justifying the administration of the death penalty on utilitarian and retributive grounds and ignoring the integrative notion of punishment is not only unfair but also out of order. It is out of order because utilitarian and retributive theories have no capacity to explain African phenomena without adulterating it.

In his chapter, Tarisayi Andrea Chimuka argues that despite people battling with the issue of the death penalty in Shona society, there are other practices such as runyoka and ngozi which, in themselves, appear to be different forms of the death penalty. Arguments
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