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Just and Unjust Justice System: A Critical Assessment of Criminal Culpability in Law

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Abstract

This paper examines the criminal justice perceived link between legal and moral blame, a claim between just and unjust criminal justice systems. Most of the criminal law's culpability and excuse doctrines for crimes are derived from the criminal law's account of moral responsibility for action as prescribed by the ruling class. To evaluate how well our legal blaming judgments and legal excuses actually track defensible accounts of moral blame and moral excuses in the light of appropriate application of rules enacted by an oligarchic few on the generality of the masses, this paper dwelt extensively on how the criminal law provides a competing accounts of criminal justice in the dimension of just and unjust justice system. The data used in the study were derived from secondary sources. The findings reveal that just and unjust justice system has created the problem of assessment of culpability. After making long and short term recommendations, it was concluded that for the justice system to once again perform its role in the dispensation of justice, fundamental steps must be taken in the right direction which is the reconstitution of the constitutional base.

Keywords: Just, Unjust; Justice System, Culpability, Criminal

Introduction

The criminal justice system is comprised of three major institutions which process a case from inception, through trial, to punishment. A case begins with law enforcement officials, who investigate a crime and gather evidence to identify and use against the presumed perpetrator. The case continues with the court system, which weighs the evidence to determine if the defendant is guilty beyond a reasonable doubt. If so, the corrections system will use the means at their disposal, namely incarceration and probation, to punish and correct the behavior of the offender.

Throughout each stage of the process, constitutional protections exist to ensure that the rights of the accused and convicted are respected. These protections balance the need of the criminal justice system to investigate and prosecute criminals with the fundamental rights of the accused (who are presumed innocent). Though a number of rights derived from the Constitution protect the accused from abuses and overreaching from law enforcement officers, the arguably most important of these rights are the Miranda advisement and the Fourth Amendment prohibition against unreasonable searches and seizures. Miranda rights are the familiar refrain of police dramas. "You have the right to remain silent. Anything you say can and will be held against you in the court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you." Though we are all familiar with these rights, officers are nevertheless required to remind arrestees of these rights before they are questioned.

The other major restriction on the investigative stage of a case is the prohibition on unreasonable searches and seizures. This prevents officers from searching a suspect or his home without a warrant. There are exceptions for extenuating circumstances, such as when an officer is in "hot pursuit" of a suspect or where evidence might be destroyed, such as when a suspected drug dealer runs into a restroom. Much like the law enforcement stage of a case, there are dozens of restrictions on the court's ability to prosecute a case, including the right to confront one's accusers, the right against incriminating one's self, the right to counsel, and the right to a jury trial. The primary purpose of all of these protections is to ensure a fair trial for the accused.

The defendant has a right to be represented by either an attorney of their choosing, or, if they cannot afford one, court-appointed counsel. The jury must be a fair cross-section of the community, which in most cases will not lead to a jury composed of a single race or gender. If the defendant is convicted and the charges merit jail time, they will be sent to the corrections system for punishment. Typically, this involves probation, incarceration, or both. Probation can be either supervised or unsupervised. Supervised probation requires the offender to check in regularly with an officer to ensure compliance with the terms of his probation. Unsupervised probation means that a person only faces jail time or other punishment if they run further afoul of the law. Incarceration is also a common outcome of criminal trials, especially in more serious cases. The convict is housed in either jail or prison. Jails are usually located in each county and are for less serious offenses. Jail terms usually do not exceed one year. Prison terms are usually for longer than a year and almost always involve serious felony offenses.

The primary constraint on abuses in the correctional system is the right to be free of cruel and unusual punishment. There are many ways in which this prohibition has come into play in our corrections system, including jail overcrowding, improper medical care, and in physical abuses at the hands of corrections officers. Though violations do occur, they usually will not result in a suspension of one's sentence. Rather, the remedy is typically injunctive relief and/or monetary damages obtained through litigation.

provocation, rotten social background, and battered person syndrome versions of both reasonable and unreasonable self defense e.t.c makes a complete mess of the criminal justice system because of the avalanche of inconsistencies: it stands it own provision on its head and is nothing other than an intellectual exercise.

Conceptual Issues

In this section of the paper, major and relevant concepts are defined for the purpose of clarity:

Culpability: Friedmann (1971), defined culpability as a term in criminal law that refers to the blameworthiness of the accused. An accused is culpable when he or she is sufficiently responsible for criminal acts or negligence to be at fault and liable for the conduct. Alemika (1990) advanced that culpability often implies some knowledge of the wrongfulness of one's actions. However, it is not always necessary to show gross, or wicked, or criminal negligence, something amounting, or at any rate analogous, to a criminal indifference to consequences, before a jury can find culpable crimes proven. Omaji (1984), conceives of culpability to mean any behaviour deserving of condemnation or blame especially as wrong, Culpability descends from the Latin concept of fault. Quinney, and Wildman, (1973) defined culpability as a measure of the degree to which an agent, such as a person, can be held morally or legally responsible. Culpability marks the dividing line between moral evil, like murder, for which someone may be held responsible and natural evil, illegal, or harmful. Standards of culpability are set by state laws, which vary by state.

Just criminal justice: This refers to the extent to which codified laws are strictly applied in criminal justice, the decisions of the upper class is expressed in legal documents and is expected to serve a blanket value meant to be adopted in the given cultural milieu. It implies fairness in the administration of justice where no one is above the law and fundamental human rights is deemed to be guaranteed.

Unjust criminal justice: Criminal justice cannot be separated from social justice because the kind of justice enacted in our nation's criminal courts is a reflection of the opinions of the elite reflected in the codified document known as the constitution. It is unjust to the extent that it is selective in the application of punishment, some offenders are deemed as above the law, negating the doctrine of equality before the law which represents a slap on justice.

An Unjust Justice System, A Conflict Perspective of Culpability

Omaji (1984), argued that the criminal justice system cannot be divorced from the historical process of the society, criminal justice is determined, influenced, and shaped by the economic base. Karl Marx's belief is that the motivating force in the history of mankind is the manner in which men relate to one another in their bid to wrest livelihood from nature. Consequently, he considered the first historical act to be the production of material life itself, this he described as the foundational condition of all history.

To Marx, it was the quest for a sufficiency in eating and drinking, for habitation and for clothing that were man's primary goals. In order to satisfy both the primary and secondary needs, men engage in antagonistic relationships as soon as they leave the primitive, communal stage of development. Thus, the emergence of division of labour in the society led to the formation of

labour in the society which will lead to the formation of what Karl Marx called antagonistic classes.

Philips (1980), noted that Karl Marx stressed the history of all hitherto existing societies is the history of class struggles. The lower class have suffered from the cruelties of despicable rulers, the operational myth circulating cultural values upheld the infallible doctrine of rulers; it was presumed that 'the king can do no wrong.' In fact, whatever the character of the ruler, his subjects were told the king is incorruptible. In modern times, rulers are a little more sophisticated in how they pull the veil of deceit, (Philips, 1980).

The bourgeoisie who run the show have been learning, for years, how to keep peasants down and in all those years they have learned pretty well what crap the gullible will swallow and so it has been stewed to the taste of the proletariat. Old kings who were perceived unjust were ousted by privileged subjects, and the new usurpers were very meticulous in how they set up their government. A nice representative group of the fat cats sat down to create a government that would protect their wealth and privileges against the hard working stiffs. The revered founding fathers in the constitutional drafting process were not ordinary farmers, artisans, soldiers, politicians or the majority of the people in the country, but they were the elite who were anxious to exploit that majority and to protect and expand their wealth.

The Constitution they drew up made sure that the elite would control the government and that the rights of property would be sacrosanct. Any constitutional document that is fully analyzed would unveil how the elite cleverly protect themselves. Various calls being made for constitutional reforms are nothing other than clandestine assembly of elites who are appointed as members of the drafting committee, the constitution is being reviewed in a cult like manner after due consultations with the power brokers in secret meetings. With a great deal of unsavory tactics the elite were able to achieve the desired ratification for a constitution which is not premised on egalitarianism.

Friedmann, (1971), submitted that the constitution is extremely important for elites. It ensured that they would be the masters of the country; they would be in control of the country's government; they would enact the laws and they would enforce those laws, in their bid to convince the masses that a wonderful paradise had been created and, to the present day, they keep grinding out loads of garbage to keep those innocents content.

"Law and Order;", liberty and justice for all;" "Equality before the law" are just a few of the elegant phrases that are so palatable to the unsuspecting public. Those fancy phrases are great PR devices -- that work. "Law and Order," a very good one, an important principle for maintaining an elite-approved society. Behind it are laws which...

To assert and reassert control, the bourgeoisie enacted repressive laws. The more fearful the upper class become, the more repressive their laws turn out to be. The capitalist love to have ineffective people speaking, publishing and demonstrating. It permits them to convince the gullible of how much freedom they enjoy. But effective voices are silenced and harassed.

Quinney and Wildman (1973) observed that power by tradition takes place within a criminal justice system, i.e., within a certain normative and institutional structure aimed at crime control and criminal justice. More specifically, the exercise of penal power paradigmatically takes place within the different existing criminal justice systems that have been developed within the framework of the democracy. The right to punish has traditionally been emphasized as the essence of state power, and accordingly the modern criminal justice system has been developed as a system for the exercise of the state's penal power. The criminal justice system is in this regard most often viewed as the only existing self-governing system for the administration of punishment.

Marxists offer explanations to criminal justice based on the structural and class differences that exists in any capitalist society. Their analysis of the process centers on ways by which laws are formulated, supported, enforced or even abandoned depending on the class interest they protect in any historically determined social formation (Quinney, 1977). It was maintained that the class that controls the means of production also controls the state and other institutions. It also formulates the laws and defines acceptable and unacceptable behaviours, (Quinney and Wildman 1973).

Alemika (1990), opined that criminal laws are a product of specific form of interactions or struggle among certain historical forces and relations of production. This struggle takes the form of imposing bourgeoisie values on the proletariat, and criminalizing lower class values with the main objective of furthering the capitalist domination. Thus the central thesis in the argument of an unjust justice system is that in law most acts declared as criminal are prohibited because they were considered by those in power to be injurious to the vested interest of their class (Omaji, 1982).

The state, in a capitalist society is the instrument mostly used to propagate bourgeoisie ideas. Marx (1975) explained that, "the state is an organ of class rule, an organ of oppression of one class by another". Criminal law and criminal justice remain one of the principal serving the interest of the capitalist class. Modern capitalist societies are conceived on the bases of the control one class by another. The state and the criminal justice system are among other instruments used to secure this arrangement. The criminal justice system which reflects the underlying class division in the society, rather than serving all the people in an impartial manner, tend to fracture the social solidarity of a society.

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Crime in Nigeria

Crime rate in Nigeria has assumed a worrisome dimension. In the light of the worsening crime situation, and the ineffectiveness of the crime control apparatuses, Nigeria is experiencing a prevalence of rising crime waves, criminal intentions and varying degree of delinquencies. Nigeria has been on the global crime map since the 1980s (Dambazau, 2007). The nature of these crimes includes armed robbery, rape, burglary, food and drug adulteration, smuggling, human trafficking, drug trafficking, money laundering, internet scam, advanced fee fraud (419) and other illegal activities. A report revealed a "training school" for jobless youths as armed robbers at Ajegunle area of Lagos. The training school according to the report includes planning strategies of co-operation, launching an attack and escaping with loots. The ages range between 18 and 28. The training school conducts interview for recruit. It was also revealed that the training school is where the bandits prepare programmes on which area to raid and plan how to operate different types of fire arms and ammunition. Suspects were nabbed during their morning training session where they were working out modalities on a number of houses to be raided for the week (Daily Sketch, 1990; Aremu and Ahmed, 2011). Sadly, there are reports of crimes committed mostly by the youths at virtually every corner of the country. Criminality has become an integral part of the nation's daily life.

Table 1 Summary of Reported Crime Cases Between 1994 – 2003

Offence	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Murder	1629	1585	1561	1730	1670	1645	1255	2120	2117	2136
Attempted Murder	259	321	37	250	248	220	76	253	267	233
Manslaughter	20	25	21	18	27	14	101	14	13	6
Suicide	200	229	238	272	313	323	146	241	152	191
Attempted Suicide	291	120	77	58	43	30	41	27	29	38
Grievous harm	17167	1630	1760	1472	14362	15931	9756	15241	17580	17666
Assault	46924	46543	52747	42815	40764	33881	17909	37531	29329	29125
Child stealing	131	175	146	303	107	147	101	116	55	39
Slave dealing	33	16	7	17	11	21	11	45	17	18
Rape/ Indecent	2364	2364	2198	2585	2249	2241	1529	2284	2084	2253
Kidnapping	461	415	373	377	282	342	243	349	337	410
Aberration offence	685	462	419	435	516	456	376	434	277	306
Armed Robbery	2044	21109	2419	2181	2286	2291	1877	2809	3889	3497
Demand with Menace	777	243	88	128	112	63	133	122	88	80
Theft/Stealing	69341	70542	71338	58095	54506	32974	29127	40796	35231	33124
Burglary	7858	7690	6390	7706	5548	4928	3768	5523	2683	2769
House Breaking	10532	10568	9237	8562	7847	5979	3636	6059	5448	4706
Store Breaking	6137	5646	4235	4729	4036	3643	2446	3089	2973	2990
False Pretence	13546	13524	13057	11950	12037	9996	7927	10234	9134	9508
Coining Offence	100	8	10	14	14	7	4	32	6	15

Table 2: Age Distribution of Prisoners

Years	16 – 20 Years	21 – 25 Years	25 – 50 Years
2009	31,700	39,045	63,100
2010	40,150	34,600	65,140
2011	19,122	28,705	75,491
2012	16,236	57,736	80,134
2013	25,317	28,049	73,071

Source: Nigerian Prison Service, 2013

Demonstration of Culpability in Criminal Justice

Griffith et al (1980) advanced that for a criminal conviction to succeed there needs to be a demonstration of culpability. On the whole, the accused will be culpable if at the time of the offence he or she was not exempt from liability. The act which is the subject of the prosecutionist (Actus reus) is properly attributable to the accused; for example, the accused may not be culpable if the act was indirectly caused by someone else or if the act was involuntary, within the confines of the law the accused must have had a mental state commensurate with the carrying out of the act, at the time of the act (Mens Rea). The state of mind may reflect an Intention to cause harm, or a reckless disregard for the fact that harm may result.

Alemika (1990), in his attempt to give the concept of culpability a common denominator he posits that the minimum requirements of culpability should be such that a person is deemed not guilty of an offense unless he acted intentionally, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense. If the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist. When a person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation (Savelsberg & Joachim 2004).

Also culpability is assumed when a person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

Modes of Culpability

The levels of *mens rea* and the distinction between them vary between jurisdictions. Although Common Law originated from England, the common law of each jurisdiction with regard to culpability varies as precedents and statutes vary, from one country to another, according to Quinney and Wildman (1973) some countries like England, Scotland and U.S.A. have different modes of culpability.

England

- (i) Direct Intention: the actor has a clear foresight of the consequences of his actions, and desires those consequences to occur. It's his aim or purpose to achieve a clear consequence.
- (ii) Oblique Intention: the result is a virtually certain consequence or a 'virtual certainty' of the defendant's actions, and that the defendant appreciates that such was the case.
- (iii) Knowingly: the actor knows, or should know, that the results of his conduct are reasonably certain to occur
- (iv) Recklessness: the actor foresees that particular consequences may occur and proceeds with the given conduct, not caring whether those consequences actually occur or not
- (v) Criminal Negligence: the actor did not actually foresee that the particular consequences would flow from his actions, but a reasonable person, in the same circumstances, would have foreseen those consequences

Scotland

- (i) Intention: the accused willingly committed a criminal act entirely aware of his actions and their consequences. Intention is necessary for murder and for assault.
- (ii) Recklessness: the accused was aware the criminal act could be potentially dangerous but did not give a second thought to its consequences, for example involuntary culpable homicide.
- (iii) Negligence: the accused unintentionally committed the criminal act by accident for one reason or another. However this tends not to be a valid excuse.

United States

Title 18 of the United States Code does not have a culpability scheme but relies on more traditional definitions of crimes taken from common law. For example, malice aforethought is used as a requirement for committing capital murder (Griffith et al 1980).

an accused's level of self-control is measured necessarily introduces an element of inequality in the way in which actions of different persons are evaluated and must therefore be avoided if the underlying principle that all persons are equal before the law must hold sway.

Griffith et al (1980) stressed that a law once enacted in accordance with the laid down procedure is law no matter how immoral or unjust it may be in its context. The basic assumption is that if law must prescribe for society norms of conduct, it is of paramount importance that the law must be certain or reasonably ascertainable, any modern legal system no matter its ideology depends upon certainty, clarity and system of concepts and classifications. It is a social need that the law must be applied impartially and consistently. The demand of the fast expanding modern economy and the increasingly complex nature of the society obviously call for a clear distinction between the law as it ought to be and the law as it is. The law as it is, is either the expression of the sovereigns wishes (Hort, 1961) or a hierarchy of rule contained in the constitution; consequently, there can be no talk of a piece of law being valid or invalid on grounds of extra-legal considerations. However, the alarming growth of totalitarian regimes with its attendant devastating onslaught on established values, the shattering effects of wars, and the growing insecurity and uncertainty of our time obviously call for development of ideological control which could prevent the cloak of legality being cast around every abuse (Savelsberg & Joachim 2004).

For any piece of legislation to be valid law or at any rate be an effective law, it must take cognizance of legality, publicity, practicability, generality, prospective application, and clarity as well as be capable of addressing the needs of the less privileged (Friedman 1971). Friedman in his submission said:

... to achieve a modicum of justice, the law must find a response not only to the concentration of economic power in the hand of the "over mighty subject". It must also find way to counter and moderate the helplessness of individuals who, in a less and less sufficient economy is increasingly dependent on forces which unchecked can completely control and dominate his economic life (Friedman, 1971).

Laws are made to guide the day to day affairs of man in the society. Social justice could only be achieved if everyone in the society is subject to the law and not above the law. If laws are effectively made and efficiently followed, there will be peace and orderliness in the society. Respect for law and its institution is a cornerstone for democracy and good government of any society.

Griffiths et al (1980), elaborated the role of the criminal justice system from the functionalist orientation, they posited that, criminal justice system is part of

The basic premise is that all members of the society share the same values and uphold a universal view of the penal system. But due to the value contradiction the economically powerful class imposes its values and view on the rest of the society. Thorstein Sellin (1938) observes that:

The character of these criminal laws, the kind or type of conduct they prohibit, the nature of the sanction attached to their violation e.t.c depend upon the character and interest of these groups in the population which influences legislation . the social values which received the protection of the criminal law are ultimately those which are treasured by dominant interest (Alemika, 1990, p.5).

The criminal justice is expected to stabilize the society by correcting offenders. By so doing , it rejects the disequilibrium caused by criminal acts. In essence the criminal justice system has as its objective, the reformation and rehabilitation of deviant members of the society but these are not done with genuine intentions, because Marxists maintained that punishment in capitalist societies is a process of enforcement of bourgeoisie law aimed at class consolidation and control. Punishment is meant to educate convicted offenders to accept and preserve capitalist economic interest. It is a process of protecting and promoting capitalist order, the order that ensures the social and economic hegemony of the capitalist class.

Conclusion

The grammar of the criminal law gives meaning to the whole concept of just and unjust justice system. Likewise, the structure of culpability assessments and factual analysis provides the basis from which we can derive the meaning of another's actions. As interpreted from the point of view of the constitution. Assessments of culpability within the framework of just and unjust justice system is holistic, requiring an analysis of risks, reasons, and decision-making conditions, and it is the sum of these parts that gives rise to our normative judgment about whether the actor's reasoning and behavior is truly criminal. Ultimately, the criminal justice manifests indifference, wickedness, or malice towards a given class of people or category. Thus, we need not choose between descriptive and normative criminal justice because they are all figments of deceptive imaginations. Judgment is derived from the codified body of laws which may assign privileges to a given class and criminalize the values of the conflicting class. the conceptual, structural, normative, political, and comparative foundations of criminal justice system remains a fractured and disjointed piece of puzzle of inequality, just criminal justice system is a mere tool of convenience adopted by oppressors to justify why the lower class should accept the social order of domination as desired by the ruling elites.

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