



Original Article

Oruka's Punishment Abolition as a Challenge to Environmental Ethics

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Abstract: The violation of environmental ethics poses severe threat to humanity. Henry Odera Oruka (1944-1995), a Kenyan African philosopher claims that punishment does not treat or reforms the person who commit crime. This study aims at highlighting the effects of Oruka's punishment abolition on environmental ethics. If Oruka's punishment abolition to environmental ethics is practiced that will be a great challenge in view of the pitfalls of Oruka's theory of abolition of punishment. Contrarily, this study insists that punishment should never be abolished in any human society to avoid anarchy, crime prevalence and recurrence, and the destruction of human environment.

Keywords: Oruka, punishment, abolition, challenge, environmental ethics

Introduction: African environmental ethics deals with the fundamental principles that guide the relationship [interaction] between man and the environment. This involves analysing the basic associated concepts, such as man, environment, spirit, etc., and examining the approaches by which they are known¹. Ideally, the violation of environmental ethics warrants punishment for the offenders, but if Oruka's motion for punishment abolition were to be imbibed, offenders of environmental laws would have to be spared and rather treated.

Environmental ethics critically and ethically look into environmental problems from a philosophical perspective.

It emphasises the application of norms and values and morality to the dealings with or concerning the environment and its constituent elements. It tells of what is right to do to the environment and what is wrong to avoid doing to the environment. Environmental ethics condemns human beings' actions that affect the environment, including a conscious or deliberate attempts at causing species

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extinction for the convenience of humans².

Punishment, an aging control mechanism for checking crimes in society, has been considered a form of human right deprivation by Oruka and his fellows of the reformatory punishment school³. Punishment, according to retributivist and

utilitarian punishment schools, is meted on an offender or a criminal in atonement for the crime committed³. For this paper, to sustain and enforce environmental ethics, there is every need to sustain and duly apply punishment in every human society. It is only one who is guilty of a crime that begets punishment. According to Gonsalves, it is the moral obligation of every individual to be law-abiding⁴. As such, it is unethical for Oruka to think that citizens can freely violate the set laws guiding a society, including its environmental laws. This is because of every citizen of a state/society ought to be law-abiding.

In his sustained pursuit of human freedom (rights), Oruka strongly argues that the citizens of a society only breach the laws as a result of the circumstances beyond their control, and as such those who breach the laws should be treated rather than punished⁵. He blames the state and its agents for the crimes committed by criminals/offenders. He goes on to stress that if the state and/or its agents had not failed in its responsibility, the criminals would not have committed the crimes⁵. It is because of the foregoing that this study embarks on exposing the implications of punishment abolition as it concerns environmental ethics. This study is worried by this Oruka's subjective reasoning about crime commission and punishment. It considers the abolition of punishment as an act against ethics and morality and in the context of its scope, wrongness against environmental ethics.

The fact that not everyone commits certain crimes means that committing crimes is the free-will of the individual and not the result of the forces beyond their control in society. If individuals were really compelled by the forces to resort to committing crimes, all individuals would indulge in crimes at all times. On the other hand, it is in order to control or reduce the tendency of indulging in crimes that punishment had evolved and is being applied and sustained across the ages.

Oruka Punishment Abolition: Oruka's theory of punishment is situated in the reformatory school of punishment. He contends that the punished offender is not reformed by punishment. Oruka, like other scholars in the reformatory school, argues against the potency of punishment upheld by adherents of retributive and utilitarian schools of punishment⁵. The central stance of the reformatory school of punishment characterises or applies to moral philosophy and philosophy of law. Oruka sees punishment as an obstacle to human freedom, justice and wisdom. He also considers it a problem to the philosophy of law across generations and cultures. Any form of punishment that is not targeted at reforming the criminal is not efficacious. In *Punishment and Terrorism in Africa*, Oruka contends against holding the concept and institution of punishment⁵. His position is that the justification of punishment is not tenable both ethically and logically. For Oruka, punishing the criminal alone for his/her crime is unjust, because the state (government) or its concerned agents (like family, school, peer, media, religious institutions, workplace, social groups, etc.) ought to be punished too for failing to put in place what was not in the place that prompted the criminal to have indulged in criminality.

Oruka argues against the assumption that criminals are responsible for their actions (i.e. crimes), which implies that they act out of free-will and hence could avoid the crimes if they so wish. He maintains that the notion of free-will or exercising free-will is too metaphysically vague to be used to evaluate a human punishment. He claims that to act intentionally or voluntarily is necessary but insufficient for the determination of criminal responsibility⁵. He also adds that the assumption is criminal and hence moral responsibility must entail the notion of human avoidability. He buttresses the third point with an example of antisocial behaviour, in which a person steals food to avoid starving to death. Such an action is humanly unavoidable⁵, but fails to admonish that other actions of that magnitude and core criminal acts are avoidable. After all, a famished person could still decide not to steal to avoid starvation which could lead to health complications and death. Rather, he only sees the other side of the offender/criminal being pushed by hunger and starvation, which the society failed to provide for the offender until s/he stole the food. For him, therefore, one should be held criminally or morally responsible for an intentional action that is humanly avoidable. So, acting intentionally alone is insufficient for criminal responsibility. Yet, he argues that almost all crimes are committed under the impulse to satisfy either an economic or a psychological need, or the need of a malevolent unconscious ego'; factors which are virtually beyond an individual's control⁵.

For Oruka, crime does not originate from *men's rea* (evil will) but either one's inheritance or social environment¹⁵. These needs constitute the criminal forces to commit crimes¹⁵. This clashes sharply with his admonition of treatment because

treatment is one of the functions of punishment. So, if he agrees that treatment is efficacious, it means the punishment is efficacious. The practice of punishment that does not treat the criminal and excludes the causative forces (the state and or its agent/s) is nothing but legal terrorism⁵. In another self-contrast, Oruka admits the deterrence function of punishment, as he notes that punishment is aimed at maintaining or maximising social security. This admittance contrasts with his argument that punishment is inefficacious, which implies that it does not play any the intended functions. By this admittance, it becomes clear that Oruka's theory of punishment projects a lawless society, where there would be no maintenance or maximisation of social security. This projection is unethical. In the context of this paper, it implies that Oruka himself had unconsciously agreed that punishing those who violate environmental ethics would deter the recurrence of the violation of environmental laws in society. His living adherents ought to take cognisance of this fact.

Be it so, the theory is no doubt a challenge to environmental ethics, because the abolition of punishment, as he insists, would cause social insecurity in the environment, which constitutes a problem to environmental ethics as well as environmental philosophy. Ethically, punishing a criminal cannot amount to terrorism or rights deprivation, because human rights do not preclude punishment. That is why every right has a limitation. There is a need to realise this fact so that people do not over stretch human freedom/rights and in that process violate the rights of others. According to Oruka, "terrorism is an illegitimate infliction of suffering or loss on another, or else it is a

punishment beyond a reasonable maximum”⁵.

It is in view of the above that Oruka reworked his 1976 PhD dissertation on punishment, in general, to what he entitled ‘*Punishment and Terrorism in Africa*’ in 1985. Oruka considers punishment meted out on citizens as terrorism from the state and/or its agents as the duty of punishing offenders/criminals. However, in the 1985 edition, Oruka makes stronger arguments against punishment. Oruka claims that the state is not only responsible for the crime of the criminal, but it also inspires the criminal to indulge in criminality. He argues that the presence of the institution and practice of punishment is a manifestation of injustice in society, and the more the punishment, the greater the extent of injustice in society. He claims that since the crime is committed by the punisher/s and the criminals/offenders (the punishers’ victims), it is a case of injustice for the punishers, who are also guilty, to punish only their victims and exonerate themselves⁵. As a necessity, the practice of pure justice requires the determination of good and evil (crime herein) and the apportioning of corresponding responsibility by objective principles. It is towards establishing such a society that Oruka recommends treatment instead of punishment. The main aim of treatment would be to help the criminal get rid of his/her criminal behaviour. In treatment, criminals are to be considered sick.

Therefore, the focus would be on the criminal forces, just like doctors focus more on the causes of sicknesses than their victims to rid the patients of the diseases. The treatment Oruka proposes is to be of two folds. It would focus on the criminal and the society that produces the criminal forces⁵. The foregoing generalisation, if adopted and applied practically, would

adversely cause and increase environmental problems. Meanwhile, punishment, as a mechanism of environmental ethics, would have averted or reduced such problems, if it is being sustained and applied rather than abolished. Furthermore, Oruka claims that every person is born without the knowledge of good and evil, such that his or her character is mostly the result of inherited character traits and social experiences⁵. People commit crimes because of the ‘desire to fulfill some economic or psychological needs’⁵. There are several ‘criminal forces or factors that induce people to committing crimes, which are found in one’s social experience and the nature of one’s material or economic existence. These forces include ‘irresponsible parental care, belonging to a despised or poverty-stricken class, bad [poor] education, etc’⁵.

Like Odera Oruka, Robert Sommer argues that criminals are victims of social, economic, political and psychological forces in our society⁷. And since society is responsible for the presence of these deviants, it is its moral responsibility to make amends and help them to adjust to these criminogenic forces. If any form of punishment is to reform, it must be such that it enables the offender ‘to see his/her offence as the society does, for which or in whom it is inflicted’⁸. It means that the criminal is punished for the offense committed partly in an effort to treat him or her of the criminal forces³. Oruka calls for the abolition of punishment in favour of what he calls ‘criminal and society treatment’. Again, it is learnt from Oruka that the treatment is to also help change the criminal’s mind and manners and make them become a citizen without criminal tendencies or behaviour. On the other hand, ‘society treatment’ refers to how the social ills, bad conditions or obstacles to

decent existence inherent in a society can be cured or removed⁵.

Treatment focuses on eliminating the basic cause of crime (i.e., the criminal forces that cause the criminal to commit crimes). Oruka remarks that individual treatment helps the criminal to rise above the criminal forces in the society and so it is of primary importance to the individual criminal and of secondary importance to the society. He hints that individual treatment can only be effective if it is co-ordinated with 'society treatment'⁵. Since no type or amount of punishment can obliterate any criminal force, and consequently no criminal can ever be truly reformed or cured by punishment, punishment ought to be abolished. According to him, punishment is intrinsically painful to its recipient and hence intrinsically evil. He goes on to say that treatment can only be painful or unpleasant extrinsically, as a means to an end. For him, punishment is aimed at 'inflicting pain or harm as an end in itself,' while the aim of treatment is to inflict pain on the criminal to rid the criminal of his or her criminal behaviour⁵.

Punishment Abolition as a Challenge to Environmental Ethics: The sharp contrast that first comes to mind in examining Oruka's theory of punishment is the exoneration of a criminal for the crimes they commit. Meanwhile, crimes are against morality, the basis of ethical principles that warrant the institutionalisation and application of punishment. By Oruka's exoneration of the criminal and/or his proposed abolition of punishment, the criminal e.g. a nuclear bomber, who pollutes the environment and poses threat or nuisance to other humans and non-human species of the ecosystem, deserves no punishment. That is merely on the flimsy claim that their criminality

was/is warranted by the forces beyond their control. It is thus unjust for, say, one person (a criminal) or more to eliminate or cause harm to a group or many other persons along with the non-humans in an ecosystem and yet be left unpunished. This is particularly because just as the criminal has rights so also those that become his/her preys have rights that the former violates. To that end, Oruka's position is contradictory and constitutes a severe challenge to environmental ethics. Therefore, this study argues that Oruka's claim that the criminal should not be punished for such a crime against the environment is unethical, as it is a case of violation of environmental ethics.

Environmental ethics, as Leopold observes, entails doing what is right to preserve the integrity, stability and beauty of the biotic community⁹. The otherwise is doing the wrong thing that negates the ideal. This implies that the wrong meted out by an individual [say, a criminal] on the environment warrants punishment. Just as Holmes Rolston agrees with Leopold, humans owe not only their fellow humans but animals and other species that make up the ecosystem the responsibility of caring for them and preserving their lives¹⁰. This implies that an offence against human or non-human species in an ecosystem warrants punishment. Rolston exemplifies this with the case of a butterfly collector who considers eliminating the last members of a rare *Papilio* species to enhance the value of his specimens. It is on that ground that Naess seems to regard all living things as having equal value, at least in principle¹¹. Therefore, Oruka seems to pursue the right of the criminal alone at the expense of other humans that are non-criminal, the state with its agents, the non-human species and the ecosystem as a whole. This also shows the paucity of his conception of punishment and his

subjective contention against it, only because he wants it abolished for the sake of the criminal alone.

If a loose punishment system encourages the prevalence of heinous crime, the absence of punishment in-to-to spells doom for society. The loose punishment of offenders of the environmental crimes in Nigeria's Niger-Delta Region¹² warranted the continuity of the crime until emergent crops of revolutionists rose to challenge the injustice, and soon afterward, the fight for freedom became politicised till date. The offenders, the industrialists of multinational oil companies and their elite accomplices, of the environmental crimes against people of the region are [or have been] left unpunished. Consequently, many more have got involved in the crimes, including the emergent evil-monger freedom fighters. If right from the inception, the offenders of the crime against the people were duly punished, more criminals/offenders and the latter crimes would not have emerged. Oruka's punishment abolition motion holds pending doom for the society in all regards, including in matters of environmental ethics, norms and values, and law and order in general.

Scholars variously conceive African worldview of environmental ethics in different conceptions. Yet, they all stress the right attitude towards both human and non-human species that inhabit the ecosystem¹³. Accordingly, Ogungbemi, who conceives environmental ethics as ethics of nature-relatedness, stresses the right attitude and peaceful co-existence towards nature for survival and sustainability of the environment itself¹³. This study considers Ogungbemi's conception as being materialistic and anthropocentric. African environmental ethics stresses communitarian peaceful co-

existence, anchored on the priority of the community's wellbeing as the basis of the individual's wellbeing¹⁴. Similarly, Ubuntu [I am because you are] is equally an ecological concept in that it considers both the spiritual and physical wellbeing of humans and non-humans in the ecosystem, which is co-relational and interdependent¹⁵. It implies that without others, one is nowhere. So, Oruka's case for the criminal against the state and its agents is a case of one against many instead of the reverse, which does reflect African worldview, reality and communalism. As a challenge to African environmental ethics and African being in totality, Oruka's view and advocacy of punishment abolition are inimical to the ethics and reality of Africa.

Ekwealo simply emphasises the idea of 'live, let's live'¹ which means that the criminal should live and let others live too, not the otherwise, simply because others have distanced themselves from criminality, despite being enveloped by the same or similar 'uncontrollable, conditions. Therefore, Oruka's theory of punishment emphasises separatism in the ecosystem, as it considers only the criminal at the expense of all other humans and non-humans in the ecosystem. Separatism, as well as individualism, is non-African and unethical. As Oruka has confirmed, action is humanly unavoidable for an individual if the person can refrain from it only at the cost of losing or doing serious damage to his life or at the cost of doing serious damage to his well-being or that of his community. Thus, it is ethical to punish a criminal for doing wrong that affects himself/herself and/or the community. This reality points to why Oruka's punishment motion clashes with or completely challenges environmental ethics, environmental laws, that should ordinarily protect and sustain humans and

non-humans in the ecosystem. Again, one should be held criminally or morally responsible for an intentional action that is humanly avoidable. This study considers this Oruka's notion as individualistic and misleading. Criminality is the free-will of the criminal and thus his/her crime commission is undoubtedly intentional at all times. So, acting intentionally alone is insufficient for criminal responsibility. But as Oruka argues, almost all crimes are committed under the impulse to satisfy either an economic or a psychological need, or the need of 'a malevolent unconscious ego'; factors which are virtually beyond an individual's control.

Environmental problems, which concern environmental ethics, are of different dimensions. Globally, the major problems are loss of biodiversity, hazardous waste, climate change, ozone depletion, risks associated with nuclear technology, pesticides, overpopulation, urbanisation, depletion of natural resources, human health and disease, desertification, deforestation, pollution and poverty¹⁶. The effects of these problems are faced by both humans and non-human species of the ecosystem. De Beer, Dreyer and Loubser further note that these problems concern the erosion of the planet's biophysical base, and basically anchor on social, economic and political factors or dimensions¹⁶. Agreeing with De Beer, Dreyer and Loubser, Francis notes that the environmental crisis in Africa basically arises from economic, social and political factors, whereby poverty is central to the economic factor, religious bigotry and ignorance are to the social factor and dysfunctional leadership or bad governance constitutes the political factor¹⁷.

In recognition of environmental ethics, as the means of controlling humans'

interaction with the environment in ethical and acceptable ways, successive Nigerian governments have made conscious efforts towards protecting the Nigerian environment, which involves enacting and enforcing legislations with penalties for offenders, as ways of checking environmental activities in Nigeria¹⁸. Oruka's views on punishment and demand for punishment abolition undoubtedly constitute a challenge to the existence, operation, enforcement and sustenance of the policy. Nigerian environmental policy is contained in the 1999 Constitution of the Federal Republic of Nigeria. According to section 20 of the Constitution, the State is empowered to protect and improve the environment and safeguard water, air, land, forest and wildlife. This is the same state that Oruka indicts and requests to be punished along with criminals for their crimes. Meanwhile, the state had enacted laws to guide the use of and interaction with the environment. And, the state consistently warns against breaching the established laws.

Besides, Section 2 of the Environmental Impact Assessment Act of 1992 (EIA Act) states that the public or private sector of the economy shall not undertake or embark on projects or activities without prior consideration of the effect on the environment. The provision of this Act aptly reflects environmental ethics. The breach of the stipulations of this Act and other related laws and regulations enshrined to safeguard and sustain Nigerian environment amounts to the imposition of punishment (the attached penalties). Of course, breaching a set law warrants punishment to deter recurrence and its perpetration by others or its prevalence. This should be the case with the breach of environmental laws (ethics). As such, if Oruka's theory of punishment as well as punishment abolition were to be

applied, the breach of such laws and others in general would attract no punishment. The environment with its embodiments would be continuously destroyed by criminal-minded individuals. The sustained efforts toward protecting the Nigerian environment had further led to the creation of the Federal Ministry of Environment, which oversees and enforces environmental laws in Nigeria. The Federal Environmental Protection Agency (FEPA), established in 1988, had been replaced with the Federal Ministry of Environment since 1999.

FEPA has several regulations (environmental regulations) under it. According to the Federal Environmental Protection Agency Act of 1988, each state and each local government is guaranteed by law to establish its own environmental laws and agency within its jurisdiction. Several states have enacted their respective environmental protection law agency, charged with the responsibilities of monitoring and controlling the disposal of waste in the states. The instituted agencies advise the government on all environmental policies, identifying and proffering solutions to environmental protection problems, enforcing and monitoring environmental protection ethics and conventions. Some other states have also enacted Environmental Pollution Control Law, with the agency charged with the responsibilities of controlling pollution and protecting the environment from unhealthy waste management practices. Examples include Federal Capital Territory, Lagos, Cross River, Rivers, Akwa-Ibom, Ondo, Edo and Delta, among others.

Conclusion: This work maintains that Oruka's punishment notion, which is misleading, subjective and practically unrealisable, constitutes a severe policy

challenge to the enforcement of environmental ethics in Nigeria and any part of the world, if adopted, used and applied or brought to practical reality. It contends otherwise that punishment is efficacious and justified morally, ethically, legally, religiously and conventionally. Thus, it should never be abolished in view of its essence, functions and the implications of its abolishment. Abolishing punishment allows for anarchy, crime prevalence and recurrence, and the destruction of human environment with its embodiments, humans and non-humans. Treatment is part and parcel of punishment and talking about treatment means talking about both punishment and treatment, which implies that Oruka contradicts himself to that end. It is unethical and immoral to punish one person for the crime of another, as Oruka claims. Crime is personal and punishment is non-transferrable. Human rights do not preclude punishment. Committing crime is the free-will of the criminal and so the criminal must be punished accordingly and alone, because there are many other citizens, whose conditions are worse or more severe than those of the criminals. Meanwhile, although their conditions are also caused by the purported 'forces beyond the control of the criminal', they never resort to criminality as the way-out.

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