

**MORALITY, JUSTICE AND THE CHALLENGE OF EXECUTION OF
WITCHES IN AFRICA**

DOI: <http://dx.doi.org/10.4314/ft.v5i1.2>

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Abstract

The question whether justice can be completely detached from morality seems to be relevant to the discussion of the issues that surround the execution of witches in Africa. In spite of the widespread belief in witchcraft in African societies, it is apparent that part of the West as well as the Judeo-Christian traditions also support this view. However, this does not remove the fact that, there are thousands of individuals who are still sceptical about such belief. This paper agrees with the view of those who believe in the existence of witchcraft. Thus, despite the fact that many scholars have written on the existence of witchcraft in Africa, little or no attention has been paid to the question of moral implications of executing witches in Africa. An attempt to fill this gap facilitates an investigation into the nexus between morality and social justice. The fundamental problem now is, is it morally right to kill? Should witches be killed? If witches should be executed, are there moral and legal bases for such killing? How should we account for the question of sanctity of human life? In this paper, effort shall be made to answer these fundamental questions. The methods employed in this research are critical analysis, philosophical argumentation and conceptual clarification.

Keywords: witchcraft, morality, law, society, justice, religion

Introduction

Discussion on witchcraft as a theme under the metaphysical thinking in Africa is not a novel one. Several scholars, both African and non-African have contributed immensely to the question of the ontological reality of witchcraft. The debate is majorly between two camps. That is, between those who believe in the reality of witches and those who are sceptical about such a paranormal phenomenon. While scholar such as J. B. Rhine has scientifically proved, through his ESP (extra sensory perception theory), the reality of spiritual phenomena in the category of which the practice of witchcraft falls, Albert Mosley is also of the view that the notion of spirits, souls, ancestors, divinities and to add, witchcraft are not less legitimate than notions about germs, genes, electrons and neutrons (MOSLEY 1978, 3). Having considered the debate over the ontological status of witchcraft, Sophie Oluwole (1978) in her own view provided justifications to supporting the reality of such a practice in Africa. However, Peter Bodurin in his analysis submitted a sceptical view that the evidence offered for the existence of psi abilities (witchcraft inclusive) is not conclusive and that the explanation offered for such phenomena is not satisfactory.

Now, what are the issues of philosophical interest in the discussion of witchcraft? L. J. Teffo and A. P. J. Roux (2003) have identified two main issues. The first one is the question of the ontological status/reality of this phenomenon. The second is the possibility of the events attributed to witchcraft. In the light of this, given that so many scholars have severally discussed the debate over the ontology of witchcraft, my main interest as well as contribution to the debate is to bring out the moral and legal issues inherent in the discussion. In other words, giving the fact that, the first question and second questions have being treated extensively by scholars; my main focus is to advance on the works of the scholars who supported the existence of witches in Africa. This shall be done by showing the moral and legal implications of executing witches because scholars on the debate have not been paying attention to this.

The paper is divided into three main sections. The first section starts with a background discussion by considering some cases of witch killing in Africa. The second section discusses the moral issues that surround the execution of witches. Also, due to the nexus between law and morality, the third shall examine the legal implications for the execution of witches without formal trial in Africa

The Ontological Status of Witchcraft and Nature/Activities of Witches

On the question of the ontology and belief in witchcraft among Africans, Aleksandra Cimpric argues that there is a set of beliefs, structured and shared by a given population in Africa that are associated with the origin of misfortune, illness and death, and the set of practices for detection, treatment and punishment that corresponds to these beliefs as well as tends towards witchcraft activities in Africa (CIMPRIC 2010, Web. NP.). From the above development, it could be argued that Africans attribute some unpleasant events/ occurrences such as recurrent death of youths, misfortune and illness to the existence of witchcraft in the society. The implication of such attribution is that, it is believed that witches exist because by logical deduction, it will be absurd and repugnant to reason to argue that what does not exist exhibit certain features. On this note, who is a witch? Or what do we mean by witchcraft? Oluwole in her paper “On the Existence of Witches” argues that Witchcraft is usually regarded as a peculiar power by virtue of which some people perform actions which the ordinary man cannot normally perform (1978, 20). Despite Oluwole’s support for the existence of witches in Africa, her definition is problematic in the sense that it does not really capture who a witch is. One can display extra ordinary power in order to perform certain action without necessarily being a witch. One example of this is Jesus Christ as the Bible recorded. John Middleton and Henry Winter seem to share similar view with Oluwole. They define witchcraft as “a mystical and innate power which can be used by its possessor to harm other people” (MIDDLETON and WINTER 1963, 3). This definition also faces the problem that is similar to that of Oluwole. Furthermore, Nelson Tebbe in his own conception proposed the definition that: A witch is a human being who secretly uses supernatural power for nefarious purposes (TEBBE 2007, 1, 90). In the same

parlance, Geschiere (1997) opines that African witches – who may be female or male – are widely thought to be people who use their occult powers to inflict harm on other community members, often people in their immediate social circle whom they envy or against whom they harbour grudges. From the array of definitions given above, what is so essential about witchcraft operation is that, it is a paranormal activity and witches display mystical innate power. Another deduction is that, it is widely accepted that the activities of witches are evil because they cause suffering, pain, sickness, misfortune and death to their prey with their mystical power.

Some Cases of Witch Killing in Africa

The fact that most witch killings in Africa take place in rural areas is largely dependent on the level of sensitisation and moral values of the people of the area. John Comaroff and Jean Comaroff hinted that “Witch killings rose dramatically in the early 1990s” (COMAROFF and COMAROFF 1995, 85) in Southern part of Africa and since then ethnographic accounts have described such occult epidemic as they affect rural and urban areas of this part of Africa. Considering these cases:

In 1995, for instance, the High Court in the North West Province of South Africa sentenced five young men who had killed a prominent villager, Motlhabane Makolomakwa. They had burned him to death, claiming that he had murdered their fathers and turned them into zombies. Each was convicted of murder. At sentencing, the judge considered two mitigating factors: that the killings had been motivated by “a belief in witchcraft” and that “on the day in question the [defendants] had also drunk liquor. (TEBBE 2007, 215)

The incidence of mob violence which results in killing of witches is more profound in African societies. There was a particular case in the year 1994 in South-west Nigeria. In this case, a woman was accused of being a witch and was believed to have killed the children of the second wife of her husband. She was stoned and then set ablaze by a group of the community residents. The suspect had apparently confessed to her family that she caused the accident of her husband which led to his death as well. Community members supported and justified the killing of the suspect by criticising the manner in which the police dealt with such cases. Also, in South-East Nigeria, there was a case of a man who was arrested by the police for killing her own daughter by taking the child to the bush and poured acid on her, claiming that she was a witch and she was responsible for his misfortune in life Here is another case of witch accusation against children in the province of Zaire in Angola:

My aunt said I must leave. The neighbours beat me and burnt me. They said either you must admit to being a witch or we will kill you. There is no place for you here. I went to the church, but they gave me water to drink that made me sick. I said to neighbours, let me sleep somewhere, even in your toilet, but they refused. I was caught by some soldiers and they said, you are a witch - we saw

you flying with birds. They said they were going to kill me, but I escaped. (ALSTON 1994, 25)

When the child accused of witchcraft makes her confession, she does not hesitate to accuse in turn the person who supposedly transmitted the witchcraft power to her. These public accusations have serious consequences for adults. The problem is that, it is not impossible for the child to wrongly accuse an innocent person. This could actually cause strong reactions within the people of the community that could lead to violence which could also lead to the death of the accused.

One fundamental point to be raised here is that, the history of every human society shows evidence of such beliefs and practices, whether in the past or in contemporary times. In the ancient time, the practice of killing witches was rampant as indicated in Judeo-Christian religion, which was expressly stated in the Scriptures in Exodus Chapter 22 verse 18 to be precise that “Thou shall not suffer a witch to live”. Granted that morality is founded on religion in Africa as Makinde puts it, will it be morally right or wrong for the believers/devotees of Judeo-Christian religion in Africa to or not to execute witches in their communities? (MAKINDE 2007, 290). In this case, the religion seems to provide an important platform for them to do this as act of pious devotion. We must not forget the fact that Africans belong to one religion or the other and there are moral codes and modes of conducts that have their source from their respective supreme Beings to whom they pledge their allegiance. At this juncture, it suffices to now ask this fundamental question which is; is there any moral and legal justification for killing witches in Africa? Theodore Petrus hinted that “... If the government does not agree with us, then we need visible changes in the justice system...” (PETRUS 2009, 210). But why should there be execution of witches without formal trial? What will be the moral consequences of such practice in Africa? Answer to these and many more will be provided in the next section. These questions are so germane in the sense that activities/practices of witchcraft are taken to be inherently evil in African communities and Africans believe that all witches are evil.

Conceptualisation: Morality and Justice

Etymologically, morality is derived from the Latin word *moralitas* which means manner or character. It could also mean the principle by which we judge actions that are right or wrong, good or bad. Morality is concerned with how people conform to standards of behaviour or character based on such principle. Morality is, at the very least, the effort to guide one’s conduct by reason (NIEUWENHUIS, 2010, 1). Meanwhile, justice according to John Rawls simply means fairness (RAWLS 1971, 1). It should be noted that laws are put in place in human society in order to ensure justice. On a general note, law is the civil codification of public conceptions of morality. Thus, laws are made according to people’s beliefs of good and bad, right and wrong. Laws either have the goal of promoting good behaviour or punishing bad behaviour, that is, to ensure justice. Thus, morality informs the law. In other words, it

is a common belief to argue that the best way to achieve obedience to the law is for people to internalise the moral principles that underlie the law. Now, considering the overlapping link between moral issues and legal issues, it is pertinent to understand that scholars have variant views on the nature of the relationship that exists between the two. One common question that triggers the controversy is that, is it in all cases that morality must set the pace for legality? According to H. L. A. Hart, it is in no sense a necessary truth that law reproduces or satisfies certain demands of morality, though in fact they have often done so (1961,181). Whereas in Freeman's view, once a rule is laid down or determined, it does not cease to be law just because it is shown to be in conflict with a moral law (1996, 599). Also, According to Gluckman:

The push and pull of Barotse jurisprudence consist in the task of achieving justice while maintaining the general principles of law. This is clearly demonstrated in the fact that while at some time; the judges are compelled to go against their view of the moral merits of cases in order to meet the demand for certainty of law. On the other hand, they try to vary the law to meet those moral merits. (1963, 198)

From the definitions given above, it is obvious that Hart and Freeman defended a separability thesis where law is clearly differentiated from morality. However, the problem with these two scholars is that they failed to acknowledge the possibility of the overlapping relation between the two which I think Gluckman recognises. It should be noted that many debates about the law, when they are not merely debates about how legal precedent mechanically applies in a particular situation, are also ethical debates.

Focusing on the nexus between morality and law against the background provided above, the modern legal system allows that no one should be held guilty until it is proven by the law court with evidence. However, how do we establish the criminality of the activities of a witch at the court of law? The above question raises a moral problem because if the law finds it difficult to establish the criminality of such a practice, the obvious consequence will be that witches will be given free hand to continue their evil activities. Let us consider the moral issues in executing witches in Africa.

The Moral Issues in Executing Witches in Africa

According to Mbiti "African moral system has a religious foundation" (MBITI 1969, 62). , For Wiredu, "morality in Africa is founded on culture" But for Makinde, morality is irreducibly social (MAKINDE 2007, 290).Thus, Coetzee submits whether one takes a 'particularists approach' or one adopts the 'universalists stand point', it is so essential to understand that morality is a social phenomenon (COETZEE 2003, 321). In other words, society, people's traditions and religions determine group's morality. For Kwame Gyekye, morality is:

a set of social rules and norms intended to guide the conduct of people in a society...because morality is essentially a social phenomenon, it can emerge only in a human society in which there is an overriding concern for harmonious and cooperative living consideration for the interest of others and hence, a sense of duty to others, are intrinsic to the meaning and practice of morality. (GYEGYE 1996, 55)

Thus, if morality is irreducibly social (i.e society defines what is morally right and wrong), it will not be irrational to conclude that killing/executing witches is morally right or wrong depending on the views of the members of the society who are the moral agents in that moral universe. However, are there moral facts about the execution of witches? Now, if an African society supports killing of witches, will such act be right because the society sanctions it or the society approve such act because it is the right thing to do? There seems to be a moral problem here. The point here is that, the question of whether a witch should be executed at all will mainly arise in circumstances or on the condition that the crime of which he/she was accused does or does not bear mandatory moral consequences.

I think my point will be better put with the aid of these hypothetical statements:

1. If morality is irreducibly social, then the society decides what is moral.
2. If the society supports killing of witches, then it is morally right to do so.

From the above platform, one can morally justify the killing of witches especially from a utilitarian stand point. Thus on a theoretical guide, utilitarians tend to assess the moral value of an action or a decision by appealing to principle of utility which considers whether the action or decision promotes the greatest amount of happiness for the greatest number of people that are concerned with or affected by it. On this note, it can be concluded that the killing of witches is morally right as long as the majority support it. In line with this, act consequentialism/utilitarianism of the simplest variety is the view that, “an action is morally right if and only if no alternative would lead to a better outcome for all affected” (FELDMAN 2010, 715). In other words, if the alternative which is not killing/ non-executing the witches would not lead to a better consequence, such killing will be morally justified. The perennial problem now is that, is the utilitarian argument convincing enough to support the case of moral justification for killing/executing witches? Or should we accept the utilitarian position as final on this matter? I think the answer is no from Kantian point of view. On the contrary, Kantian practical imperative states a different view entirely, especially on the question of sanctity of human life. According to Kant, (KANT 1978, 4, 23). One fundamental question here is; can we separate morality from sanctity of human life? The next section attempts to answer this question.

The Question of Sanctity of Human Life

Is morality compatible with sanctity of human life? The question of sanctity of human life has generated series of debates among the ethicists as well as social and political philosophers on issues such as: abortion, euthanasia and other bioethical issues such as cloning and human experimentation. What does sanctity of human life mean? To understand Kantian notion of sanctity of human life, a passage in which the term is used in the [Metaphysics of Morals] has become the best-known source for the subsequent belief that Kant's understanding of human dignity required that individuals should be treated as ends and not simply as means to an end. Precisely, Kant writes; "Act in such a way that you treat humanity, whether in your own person or in any other person, always at the same time as an end, never merely as a means" (KANT 1978, 4). According to David Gushee:

The concept of sanctity of life is the belief that all human beings, at any and every stage of life, in any and every stage of consciousness or self awareness, of any and every race, colour, gender, character, behaviour, physical ability/disability, potential, class, social status, etc., of any and every particular quality of relationship to the viewing subject, are to be perceived as persons of equal and immeasurable worth and of inviolable dignity and therefore must be treated in a manner commensurate with this moral status. (2006, 4)

Haven established that morality is irreducibly social; can we remove morality from sanctity of human life? My answer to this is no. Given the value we placed on human life, it is believed that human life is sacred and deserves respect. Let us compare these two analogies:

Analogy 1:

Whosoever kills must be killed
X is a witch and X has killed
Therefore, X must be killed

Analogy 2:

Whosoever kills must be killed
Y has committed abortion (killed)
Therefore, Y must be killed

My contention on the above analogies is that, if analogy 1 is taken by the African society and other societies where witches are being executed, analogy 2 should as well be granted because they both committed similar offence. (Given that the pro-lifers considered abortion as killing or murder). In other words, if the conclusion for the second analogy will not be accepted in African society, there is no point accepting the first analogy as well since both the witch and the person who committed 'intentional abortion' have killed. However, I am not ignorant of the fact that someone may want to raise an objection that I have used false analogy in order

to reject the killing of witches on moral ground. Their argument may be based on the fact that when abortion is committed, the person involved has only succeeded in killing her own baby which does not really concern other people. But my contention is that, witches also kill their children too and whichever way it is appraised, killing has taken place and life is lost, be it through abortion or witchcraft activities.

On The Question of Morality and Law

Does law ever form part of morality? The nexus and the overlapping link between morality and law make this question to be fundamental as I have discussed earlier. Essentially, our moral choices are often made in accordance with a particular dominant legal system of the day. Thus, to the best of my knowledge, I am not sure if there is any African nation whose legal system permits execution of witches without formal trial. Such execution according to the judicial body is termed ‘Extra Judicial Killing’ (EJK). But then, if we want to go by the way of formal trial, will there be any facts or evidence that could legitimately establish an accusation against a witch at the law court? Thus, is the act of witchcraft justiceable? If justiceable, is it morally right, and if not, will the reverse be the case? For instance, like the case that I mentioned earlier where the High Court in the North West Province of South Africa sentenced five young men who had killed a prominent villager, Motlhabane Makolomakwa. They had burnt him to death, claiming that he had murdered their fathers and turned them into zombies through witchcraft power.

Now, the law of the land had already condemned the action of these young men. But were they really wrong? If the sentencing is legally justified, is it also justified morally? If it is acceptable that there is a moral obligation to obey the law as Socrates made Crito to understand, then it may be argued that such sentencing is morally justified. The problem now is that, if killing of witches is legally and morally condemn, how do we seek redress for the injustice and evil perpetrated by the witches? One worrisome parlance in Yoruba which can be interpreted to support the action of these young men says: *ki ile to pa osika, opolopo nkan yi o ti baje*. (Before justice is done/ before punishment comes upon an evil doer, a lot of damage would have been done). In other words, if these five young men decided not to adopt jungle justice through the extra judicial killing, would it be possible for them to file a suit against the man that they have allegedly taken to have killed their father and ruined their destinies? I am not sure if this is possible. And for the purpose of argument, if it is granted that it is possible, the problem that they will likely encounter rests on the question of facts and evidence that they need to present at the court of law. Thus, the issue of witchcraft presents a problem of justice/injustice because it is difficult to establish the authenticity of the crime committed by a witch or someone with witchcraft spirit who has acted with his/her own supernatural power. This is simply so due to the nature of crime committed by the witches which is not empirically established like the act of robbery or the case of assassination. One essential question raised by Teffo and Roux remains that: why link the misfortune to a specific person as the cause who has then to be executed for the alleged deed? (TEFFO and ROUX

2003). In order to create a room for the argument of Teffo and Roux, it is not impossible that there may not be connection between the activity of a witch and the death of Mr. X, but such nature of causal link is difficult to ascertain in some cases. However, in an attempt to unravel this causal problem, Sogolo thinks that to understand this phenomenon we have to refer to what he calls primary causes because a combination of the different categories of causes will provide a fuller explanation of this and other phenomena in African life (SOGOLO 1996, 205). The kind of problem to which witchcraft is supposed to provide a solution draws on human relations, and it has thus to be understood in a meaningful cultural context. But then the fundamental problem still remains that; how do we establish those categories of causation at the court of law? In another attempt to establish this nature of causation, a good example given by the Yorubas of Western Nigeria is that: *aje ke lana, omo ku loni, tani o mo wipe aje lo pa omoje?* (This is interpreted as: a witch cried yesterday, and a child dies today. Who does not know that the witch killed the child?). The fundamental question still remains that, will such purported link between the cry of a witch and the death of the child be tenable as the acceptable evidence at the court of law? I do not think so because such conception of causation is not scientific and could not be proven at the court of law. Is it possible that something else might have happened to the baby that causes the death? It is my contention, alongside Makinde's view that such proverb assumes too much in the way of necessary causal connection (MAKINDE 2007, 91). The problem now is that the question of morality and justice will be at stake if the society takes into consideration the killing of its members who have not been proven beyond every reasonable doubt to have committed a crime.

However, in an attempt to defend or justify the execution of witches, a point might be raised that, witches are being killed in order to ensure justice, but is extra judicial killing (EJK) morally right? Is morality compatible with extra judicial killing? Would African societies approve it as a universal law as Immanuel Kant (1978, 31) suggested in his Categorical imperative? I don't think so.

On medical ground, I am not ignorant of the fact that some sicknesses defer medical attention from my African experiences. But my point is that, it is an obvious case to see that whenever autopsy is carried out on any dead body, the medical practitioners will always have something to say. It is either they link the cause of the death to one sickness or disease. This suggests that it is not all cases of death attached or associated to the activities of witches that are truly so.

Another argument that could come in defence of EJK in witchcraft related crime is the question of deterrent. In other words, it is believed that punishment is a means of discouraging others from committing similar offenses. But the problem is, does the killing of witches really deter others? Considering the nature of the practice of witchcraft being a spiritual phenomenon, we have never heard of a situation where a witch pushes for voluntary withdrawal of membership due to the way other witches are being killed in the society. Karl Menninger also condemned the idea and ideal of

corporal punishment or even killing to combat crimes. In his view, “the practice of inflicting punishment on criminal is itself criminal” (MENNINGER 1969).

Conclusion

In the foregoing discussion, the moral and legal arguments were harnessed and examined as they applied to the justification of killing/execution of witches in African societies. The perhaps more important point to make at this juncture is that, this paper was not written with the aim of supporting the practice of witchcraft, the paper only attempted the moral/legal consequences of killing people in that category without formal trial.

This paper is concluded with a recommendation that EJK should be condemned in all African societies because there are cases of mere accusation cited in this paper. In other words, the cases of witchcraft should always be thoroughly investigated before judgment is pronounced on any one that is accused of witchcraft because failure to do so will always raise moral problem if those who are wrongly accused fall victims of extra judicial killing.

This paper submitted that the push and pull of the nexus between morality and law consist in the task of achieving justice while maintaining the general moral principles by which African societies are guided. Thus at some points the idea of flexibility is needed especially when there is a clash between morality and law, the judges must be ready to go against their view of the moral merits of cases in order to meet the demand for certainty of law and on the other hand, they must try to vary the law to meet those moral merits. If the case of witchcraft could not be established by law court for lack of empirical evidence, the society should device a means of unraveling the mystery behind such practice so as to ensure justice for the victim of witchcraft.

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