Decolonising Criminology: Africa's Forgotten Contributions

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Abstract

Criminology is often presented as a predominantly Western intellectual tradition, with limited acknowledgement of Africa's contributions. This perspective overlooks the rich body of criminological ideas that developed within African societies prior to colonial rule. These ideas, rooted in culture, philosophy, and communal practices, shaped distinctive approaches to crime, punishment, and justice. Yet, many were dismissed or rebranded as "new" by Western scholarship, with Africans themselves sometimes complicit in this erasure.This paper examines the structures of crime and punishment in traditional African societies and considers how these practices were altered under colonial influence. It highlights African approaches such as reconciliation, restorative justice, community policing, and differentiated responsibility, demonstrating their continuing relevance. By re-evaluating Africa's role in the development of criminological thought, the paper argues for a more inclusive and accurate understanding of criminology's intellectual foundations.

Keywords: Africa; Criminology; Restorative Justice; Culture; Crime; Colonial Influence

1.0. Introduction

The purpose of this paper is to revisit African societies prior to colonial rule in order to uncover the criminological ideas embedded within their cultural and legal practices. My aim is not merely to describe African criminal justice mechanisms but to situate them within the broader discipline of criminology. Too often, criminology is portrayed as a Western intellectual project, while Africa's contributions are either dismissed as customary law or absorbed into Western categories without proper recognition. This erasure overlooks that African societies developed sophisticated theories of crime, punishment, responsibility, and justice that align with core criminological concerns. By drawing on proverbs, philosophies, and practices from different African communities,[1] I demonstrate that reconciliation, restorative justice, community policing, and differentiated responsibility are elements of African law and represent criminological thought. These ideas, rooted in culture and worldview, challenge dominant Western models that privilege retribution and deterrence. Situating them within criminology is therefore not a matter of mislabelling but of reasserting Africa's rightful place in shaping criminological knowledge.

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[1] T M Bande, 'Looking at Tradition Through Fiction. Armah's Exposition of the African World-view' in J A Ayoade and A A B Agbaje (eds), *African Traditional Political Thought and Institution* (Centre for Black and African Arts and Civilization 1989) 102.

In African contexts, criminology, law, and culture were deeply intertwined, and separating them risks reproducisng the very colonial boundaries that excluded Africa from the discipline. Thus, what follows is both a historical and theoretical re-engagement with African criminological contributions, showing how they were transformed or erased under colonial influence and why they remain relevant today.

The introductory part would be concluded with the clarification of the following concepts:

Criminology

This is the scientific study of crime, the agencies of criminal justice administration, and the methods of dealing with crime. Aptly put, criminology is the philosophy of crime and punishment. As a scientific study, it deals with the empirical analyses of crime. It is objective rather than subjective due to the existence of variables such as age, sex, intelligence, wealth, etc. Criminology does not stand in isolation, as it relates to other fields like biology, philosophy, and sociology.

Decolonising Criminology

To decolonise criminology means to interrogate and undo the dominance of Western frameworks in defining crime and justice. It involves recovering suppressed or erased forms of knowledge and recognising the intellectual traditions that colonialism excluded from the discipline. In this paper, decolonising is used to highlight Africa's neglected contributions to criminology and to argue for a more inclusive and accurate genealogy of criminological thought.

Crime and Culture

Given the nature of the African society, these two concepts are considered in the light of each other. The culture of the people determines the acts to be criminalised. For example, the common law can be regarded as a product of the laws and customs in England and Wales. Culture has been defined as the customs, arts, and social institutions of a particular group of people, or the state of intellectual development of a society.[2] African customs are largely unwritten and are susceptible to change with the development of society.

Many legal writers have attempted definitions that failed to capture the entire nature of crime. For instance, in defining crime, Glanville Williams used the concept interchangeably with offence.[3] He defined offence as a legal wrong that can be followed by criminal proceedings, which may result in punishment. This definition is inadequate because it fails to establish the elements required to prove the guilt of an accused.[4] Due to the imprecise nature of attempting a definition of crime, it is better described, as Cararra[5] described crime as not being an entity in fact but an entity in law; it is not a claim but an infraction.

[2] A S Hornby, *Oxford Advanced Learner's Dictionary of Current English* (4th edn, Oxford University Press 1989) 291.
[3] Glanville Williams, *Textbook of Criminal Law* (2nd edn, Stevens & Sons 1983) 27.
[4] These elements are the *Actus Reus* and the *Mens Rea*. The former connoting the criminalized act and the latter connoting the guilty mind. In the absence of any, the accused would not be criminally liable for the offence charged.
[5] D Seaborne Davies, *et al*, *The Modern Approach to Criminal Law: Collected Essays* (Macmillan 1945).

The Criminal Code[6], using the word 'offence', the Criminal Code defines it as any act or omission which renders the person doing the act or committing the omission liable to punishment under the Code or any other enactment. The Code limits crime to only those acts which it or any other enactment renders punishable. The effect is that customary criminal law is done away with because it is unwritten. The position of the Criminal Code is an apparent injustice to the people because criminal acts ought to reflect the moral turpitude of the people in a given society. To a criminologist, an act is regarded as a crime if it can be shown to offend against the firm and definite collective sentiments of society.[7]

2.0. Traditional Africa

The question is often raised: Did Africa have a body of laws before colonialism? Some Western scholars have denied this. For instance, A.N. Allot claimed that in Africa there was "no creative conscious evolution of legal principles and doctrines, no written process in the courts."[8] Similarly, Isokun argued that "a concept of justice was essentially meaningless in Black Africa."[9] These views reflect the difficulty outsiders face when interpreting legal systems that arose in cultural milieus different from their own.

Contrary to these assertions, African societies did possess well-developed systems of law rooted in culture and tradition. Von Savigny's thesis on the *Volkgeist* is helpful here: law should be understood as the product of a people's culture, not merely as written statutes. From this perspective, the absence of formal codification does not mean the absence of law. Indeed, as the Judicial Committee of the Privy Council observed in *Dawodu* v *Danmole*,[10] African legal practices, such as the Yoruba idi-igi and ori-ojori rules of inheritance, can only be properly understood within their cultural context, in this case, polygamous marriage.

African legal traditions also allowed for flexibility. As Professor Obilade noted, it was common for more than one custom to govern a subject, with general and exceptional rules coexisting.[11] This flexibility was balanced by institutions of accountability. The king, for example, was not above the law. In the Oyo Empire, the Council of Chiefs (Oyomesi) could check the Alaafin's power by compelling him to open a calabash (a symbolic order to commit suicide) when he had lost legitimacy.

These examples show that traditional Africa had its own body of laws, based on philosophies and principles that were meaningful to the people. Over time, however, many of these customs disappeared, either because they were outlawed under colonial rule or displaced by external influences such as Islam in Northern Nigeria.[12]

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[6] Cap 38 Laws of the Federation of Nigeria 2004, vol V, s 2.
[7] Raffaele Garofalo, *Criminology* (Little Brown 1914).
[8] Antony Allott, *Essays in African Law: With Special Reference to the Law of Ghana* (Butterworth 1960).
[9] Akin Ibidapo-Obe, *A Discourse on the Yoruba Philosophy of Law* 11.
[10] (1962) 1 All N.L.R 702.
[11] Akintunde O Obilade, *Nigerian Legal System* (Spectrum Books Limited 1990) 86.
[12] Islamic law came with the Arab Jihadists through North Africa in the 11 th Century A.D. The Sokoto Jihad which was led by Uthman Dan Fodio constituted the landmark event upon which Islam spread to other parts of West Africa.

This raises a broader concern that Westernisation and globalisation may further erode African customs and legal traditions. As Oculi has argued, customary law remains essential not only for its specific rules but for the underlying values it preserves, which are essential to African identity and continuity.[13]

3.0. African World-view on Crime

It is the world-view of people in a given society that would determine its laws, which necessarily includes criminal law. The fact that Africa has her own world-view has been proved beyond any shadow of a doubt by various scholars cutting across different fields.[14] In African societies, the conduct frowned at determines the act to be criminalised. Crime is a reflection of the common desires of the people.

The spiritual realm is an essential part of African societies. According to a Yoruba adage, "there was a world before we came and the world would remain after we depart". Life is a cycle, consisting of the dead, the living, and the unborn[15]. Hence, the ancestors are still considered as part of the family because they represent the root of the family. Crimes in traditional Africa affect not only the victims but the ancestors .[16]

It also affects the divinities, who are lesser gods. The divinities are regarded as messengers of God sent to man. The notion of crime in traditional Africa transcends the physical as it encroaches into the spiritual arena. For this reason, sacrifice was a common practice in traditional African society, used to appease the gods for crimes, especially taboos, which were seen as more grievous than abominations.[17] By carrying out such sacrifice, the offender was considered as cleansed and it was an assurance that the ancestors who were offended by his crime had forgiven him. The spiritual dimension was an important institution in traditional African society.

Criminal matters in traditional Africa closely resembled civil matters of this present time, as such matter created a creditor and debtor relationship between the victim and the perpetrator respectively. The philosophy behind this was to ensure that the victim is compensated and the perpetrator is reconciled back to society. On this premise, the death penalty was abhorred as a disposition method for a crime.

African notion on *criminal responsibility* is that not all offences come under the same category of blameworthiness. For instance, in the Igbo society, deliberate killing (*ochu ogbun*) was

In less than twelve years, all the original seven Hausa states had fallen. (Full account: Toyin Falola and Biodun Adediran, *Islam and Christianity in West Africa* (University of Ife Press 1983) 137).

[13] O Oculi, 'The Limits of Power: Lessons from Egyptology' in J Ayoade and A Agbaje (eds), *African Traditional Political Thought and Institutions* (University Press 1989) 45.

[14] Oliver A Onwubiko, *The Christian Mission and Culture in Africa, vol 1: African Thought, Religion and Culture* (Bigard Memorial Seminary Enugu 1991) 21.

[15] African societies recognized the physical domain (consisting of the Elders- family- individuals) and the spiritual domain (consisting of the Gods- lesser gods- Ancestors).

[16] Akin Ibidapo-Obe 'The Dilemma of African Criminal Law: Tradition Versus Modernity' (1992) 19(2) Southern. University Law Review 327 at 352.

[17] In the traditional Igbo society, taboos were regarded as *nso* (such as; murder, manslaughter, suicide, and rape) and abomination, as *ala* (such as; maligning a person, stealing, marrying an Osu – second class citizen, and assault)

distinguished from accidental killing (*onya ochi*) which shows different levels of homicide. The former was considered as premeditated killing to which the perpetrator was held liable, attracting a sentence of death by suicide, but the room was given for the perpetrator to escape from the community by total banishment. In the case of accidental killing, the perpetrator was not held criminally responsible, except where the death was the result of a fight between the perpetrator and the victim, in which case it was regarded as manslaughter and not murder.[18]

The notion of accidental killing was also recognised in Yoruba society. A story is told of a hunter who brought an antelope's neck to the king. The King ate the antelope and died, later discovered to have been poisoned by a mushroom lodged in the animal's neck. The hunter was not punished because the people believed the King's death was no fault of his fault. This reasoning shows that Africans distinguished between acts done with intent and those resulting from unforeseeable accidents. Interestingly, even under modern criminal law, the hunter would not likely be liable for manslaughter, since the immediate cause of death was the poisonous mushroom, not the hunter's act. The causal chain was broken, and without intent or foreseeability, liability could not be established.[19]

In Yoruba thought, intention (*aniyan*) is a key determinant of criminal responsibility, encapsulated in the proverb, *"Aniyan ni siwaju ise"* ("intention precedes the act"). If liability rests on intention, then those who lack the capacity to form it, such as children and insane persons, cannot be held criminally responsible. This principle reflects a sophisticated understanding of mens rea that parallels modern doctrines excluding individuals without mental capacity from criminal liability.

In the case of children, the elders of the community are required to perform rituals for a juvenile delinquent. Amongst the *Esan* people in the Edo State of Nigeria, such a ritual is known as *Atukhiuki.* The ritual involved certain items provided by the parents of the child after an inquiry has been made by the elders as to the conduct which was complained about. The child is taken to a secluded spot close to the outskirt where the sacrifice was performed. And for seven days, the child was required not to mingle with other children while staying indoors in his house. The essence of the ritual is to reinforce the parent's duty in caring for the child and signifies the restoration of the child back to society. It also creates an avenue for the child to think through the gravity of his conduct and provides a deterrent for the child and other children from engaging in such conduct.

In like manner, the family of the insane person is held criminally responsible for his offence. The rationale being that, if they had been observant and dutiful enough, they would have recognized the mental state of the offender and sought the required medical assistance.[20] Asides from these peculiar circumstances, criminal responsibility was borne on the individual(s) that perpetrated the crime rather than the collective (involving family members). This is encapsulated in the Yoruba

[18] F U Okafor, *Igbo Philosophy of Law* (Fourth Dimension Publishers 1992).
[19] Section 317 of the Criminal code, Cap C38 L.F.N. 2004, defines manslaughter as when a person unlawfully kills another in such circumstances as not to constitute murder. Those circumstances for murder are outlined under section 316 of the criminal code.
[20] n 18.

saying, "*Ika t'oba se l'oba n'ge"*, meaning that, it is the finger that offends that the King amputates. Traditional Africa also recognized defenses available to an accused person such as compulsion or necessity. In the Yoruba society, a hungry man or traveler who stole crops from a nearby farm was not guilty of stealing as he had done so on the ground of necessity, provided that, he did not take more than he required for the satisfaction of his immediate hunger.

The adjudicatory system in traditional Africa was simple, cheap, speedy, and devoid of those technicalities that characterise the modern justice procedure. The judiciary system was presided over by local chiefs and his council (in chiefly African communities), or the council of elders (in acephalous African communities). However, when it concerned more complex issues in chiefly societies, it was adjudicated by the king's council or king-in-council.[21] The King's court was the apex court, having both original and appellate jurisdiction. The King had vast powers in his court but he was expected to exercise those powers judiciously.[22] When the matter was such that offended the gods of the land[23], the spiritual institution (such as the *Ogboni* cult in the traditional Yoruba society) was vested with jurisdiction to adjudicate.

The people in the society found this system convenient because relatable concepts were adopted. The parties in dispute were afforded a fair hearing as captured in this Yoruba saying, "*A kii fa ori eni lehin eni"* meaning that, "you cannot shave a man's head in his absence". Equality of parties was the central theme of this system of justice especially in criminal matters where no party is considered totally at fault or completely culpable. The essence was to ensure that relationships are not severed at the end of the dispute. Gluckman after observing the judicial system of *Barotse* on the Upper Zambesi made the following remarks: "The society places supreme significance on the fact that the villages must remain united."[24]

The social status of the parties in dispute was not taken into cognisance. As the Yoruba people say, "*Aso kii tobi, ki oolu ma lu",* meaning that, the cloth cannot be so big or rich that the mallet cannot beat it. The disputants were also afforded legal representation either by a family member or any other person who could bring forth the case of the party before the king-in-council.[25]

The disposition method in traditional African society was founded on the philosophy of reconciliation and rehabilitation. The parties to be reconciled were the dead, living, and the unborn, which meant that certain physical and metaphysical rituals were required to appease the gods. Physical rituals involved restitution and compensation paid to the victim and apology where appropriate. Sanctions in the form of compensations and restitutions were recurrent, for instance, the Igbos applied restitution (*ikwa ochu*) for cases of homicide, whereby a boy or girl of the

[21] This was the system operated in traditional Yoruba society, whereby the quarter head (*Baale*) or the *oba-in-council* adjudicated over complex disputes.
[22] n 9.
[23] For instance, in the traditional Igbo society, a breach of religious taboo or an abomination offended the gods of the land.
[24] M Gluckman, *The Judicial Process Among the Barotse of Northern Rhodesia, in Sociology of Law*, Aubert (ed) Penguin p. 16.
[25] Toriola Oyewo, *Issues in African Judicial Process: With Particular Reference to the Customary Courts of South-Western Nigeria* (Jator Publishing 1999).

offender's family would be sent to replace the victim. On the other hand, the metaphysical ritual involved propitiatory sacrifice by the elders to the ancestors or deities, which signified rebirth and assurance of forgiveness.[26] The sacrifices were usually carried out in respect to grave offences, which were regarded as offences against the gods of the land. The participation of the elders shows the readiness of the society to accept the offender, underscoring the notion of a "communal bond" that should not be broken. The Yoruba believe in the imperfection of man which makes him prone to occasional mistakes for which he should not be treated harshly.[27] It is captured in this Yoruba proverb, "*Bi a ko ba gbagbe oro ana, a o ni ri ore ba sere"* (If we do not forget the offence of the past , we shall soon be bereft of any friends).

Deterrence was adopted in appropriate cases, which sometimes manifested whenever the public ridicules the perpetrators of stealing and other miscreants. It was usually the case that the family of the offender would be stigmatised. This is a clear case by which other members of the society would be deterred from perpetrating such crime, as seen in this Yoruba proverb, "*Eniti o jin si koto o ko ara yoku l'ogbon"* (The person that falls into a ditch warns the others).

Punishments such as whipping, banishment, selling into slavery, razing an offender's house, castration/emasculation, fines, public disgrace, *et cetera* were adopted in dealing with offenders. Banishment was the punishment reserved for more grievous offences such as sorcery, witchcraft, and sacrilege.[28] The death penalty was hardly applied in traditional African society because it was not in line with her ideologies of reconciliation and rehabilitation. Even when it was pronounced, an avenue was given for escape (banishment). One of such rare occasions was seen in the Oyo Empire, where the custom forbade the Aare-Ona-Kakanfo from losing a battle, in the event of which he was expected to commit suicide. The belief was that man should not be allowed to take the life of another man. God alone should be a decider of that. Okafor opines that only God has the right of divine vengeance, not man; therefore, a man should refrain from taking life. Even if life is taken in war, a killer would still be required to offer sacrifices of purification.[29]

It is still debatable whether prisons were in existence in traditional African societies. As observed by Professor Ibidapo-Obe, even though prisons existed in traditional Yoruba society, they existed only as pretrial detention in the Ogboni's house and not as a method in which crime was dealt with.[30] It is my submission that the prisons were not a method applied to deal with a crime because it defeats the purpose of reconciliation of parties and restoration of the offender back to the society, as the prisons that exist in modern Africa are characterized as homes of oppression and inhumane abuses.

[26] Akin Ibidapo-Obe, 'The Death Penalty and the African Tradition: Lessons for Modernity'. Presented at the National Dialogue on Death Penalty in Nigeria, Organised by the Federal Ministry of Justice at the Sheraton Hotels and Towers, Abuja on the 13th November 2003, p 9.
[27] n 9, 15.
[28] ibid. 13-14.
[29] n 18, 13.
[30] n 26, 14.

Criminal evidence is that aspect of evidence adduced in criminal proceedings. In traditional Africa, hearsay evidence was admissible, there was no reason to deny a person with credible evidence from admitting such even though he was not a direct witness. Also, the evidence that bothered the character of the accused person was relevant. The accused was not only judged by his acts but also his character (both past and present). As the Yoruba people say, "*Iwa nii ba ni de saare*" (a person's character is the hallmark of his person until death).

Oath-taking in traditional criminal courts was done with those symbols that represent the local deity of the people. All African societies had local deities upon which they swear.[31] In the Igbo society, the witnesses swore by the *Ala* or *Ofo* staff. The staff represented righteousness, legitimacy, and authority. The witness held the staff on the right hand while testifying. There was a guarantee that the testimony given was true because of the fear and reverence of the people towards their local deities. The people believed that false testimony attracted dire consequences, such as death, insanity, etc.

The personnel making up the *law enforcement* in traditional African communities were largely natives of the land. The age grades, masquerade and the chief priests[32] are popular examples of the agencies used to enforce the law in society. These agencies had a sense of identity in that community because they were part of a family or kinsman. Never was it found that an outsider was a member of any law enforcement agency. It was based on this practice that justice was administered properly such that minor issues were handled speedily and judiciously by them. They understood the moral ethos and were able to tolerate certain acts. Even when stiff and harsh methods were adopted by these agencies, there was an underlying belief that it was fair, simply because they were members of the community.[33]

Flowing from the above, a key question arises: why did the colonial authorities not retain African systems of crime and justice, given their effectiveness and efficiency? A common view is that the imperial powers failed to adopt the African way because they could not comprehend it. However, Professor Ibidapo-Obe has argued that the colonial masters did in fact understand the African notion of crime but, in pursuit of their own colonial aspirations, deliberately suppressed it and replaced it with European models. This interpretation more convincingly explains the systematic displacement of African practices under colonial rule.[34]

4.0. The Western Influence on African Criminological Ideas

The influx of the white man on African soil came the introduction of laws that were alien to African ideas. These laws served as tools of administration and were applied without any attempt to adapt them to the African situation. The result was that certain acts which the people regarded as normal

[31] A P Anyebe, *Customary Law: The War Without Arms* (Fourth Dimension Publishing Ltd 1985) 35.
[32] T N O Quarcoopome, *West African Traditional Religion* (African Universities Press 1987) 179.
[33] n 16, 21.
[34] ibid, 15.

were criminalised under these new laws[35]and acts which were frowned upon by the natives were decriminalised .

For instance in Nigeria, the Criminal Code was introduced without consideration of the culture of the people. The Criminal Code which operated in the entire country manifested significant cultural differences between the Nigerian culture and the English common law. The Penal Code was introduced later on the 30th day of September 1960, in a bid to address these cultural differences in the Northern part of Nigeria.[36] Both these codes had similar cultural values which were reflected in the general theories of criminal liability, defenses, and justification, although religious peculiarities had their impact in the formulation of some offences.[37]

The criminalisation of the act of bigamy under the criminal code is a classic case of cultural difference on display. This offence has its root in the notion of monogamy[38], which is believed to have been founded on Christian values. Section 370 of the Criminal Code provides that; "Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife is guilty of felony, and is liable to imprisonment for seven years…"

Polygamy is a practice rooted in the culture of various Nigerian societies, which renders the above provision a *dead letter* law. Such a law is honoured more in the breach than observance because it does not reflect the reality of the society in which it operates. As expected, there is only one reported case on the prosecution of the offence of bigamy in Nigeria.[39]

In *R* v. *Princewill*, Mr Justice Read expressed his surprise over the lack of case law in that area, holding as follows, "I have not been referred to, and I have been unable to find a reported case on section 370 of the criminal code. In my experiences on the Bench first as a Magistrate and then as a Judge since 1964, I have not seen a prosecution under this section." The accused in this case was sentenced to imprisonment for one month only, as opposed to the maximum sentence of seven years.

The non-acceptability of this offence was also displayed in Ghana, whereby Allott observed there to be only one reported case on the offence which did not reflect the required elements of the offence of bigamy, as bigamy requires that a person who is married under the Marriage Act would again contract another marriage within the ambit of the Act when either of the spouses is still alive. It is argued that the offence would not affect marriage conducted under customary law after being married under the Act. This was the situation in the only reported case of bigamy in Ghana,

[35] The Criminal Code (applicable in Southern part of Nigeria) was derived directly from the Queensland Code of Australia, while the Penal Code (applicable in Northern part of Nigeria) from the Sudan Penal Code, which on its part was based essentially on Macaulay's Indian Penal Code of 1860.
[36] O B Egwuatu, *Culture and the Definition of Crime in Nigeria*, 4
[37] ibid, 5
[38] A marriage between a man and a woman.
[39] *R* v. *Princewill* (1963) NRLR. 54.

rendering it not a true case of bigamy. Indeed, if the offence of bigamy is to be rigorously enforced, ninety percent of African men might find themselves in jail.[40]

Also, the acts of adultery and fornication are frowned at by many societies in Africa, as in the Igbo society the act of adultery is *omeruru ala*[41] which demands propitiatory sacrifice to the gods as a remedy for the offender to be restored. However, the introduced Criminal Code which was designed for a Euro-Christian society did not contain an offence that prohibits the act of adultery.[42] The description of adultery in Africa is having sexual relations with a married woman, while adultery in Western conception is having sexual relations outside marriage. Consequently, a married African man who has sexual relations with an unmarried woman has not committed adultery.[43] One can only wonder why the Criminal Code did not criminalise the act of adultery since polygamy has been made an offence under the code. This is a reflection of the hypocrisy of the English custom, prohibiting a man from marrying more than one wife but creating an avenue by which the married man can have sexual relations with another woman.[44] The Penal Code, later introduced in the North, criminalised the acts of adultery and fornication under sections 387 and 388, respectively. However, many of the Muslim faithful of that part of Nigeria believe that the act of adultery cannot be properly dealt with by criminal prohibition, which is evident in the lack of reported prosecution of this offence. This could explain why the Northern states have, since 2000, opted for the Sharia Penal Code.[45] Again, this lends credence to the fact that external norms cannot determine the acts to be prohibited in a particular society.

The Western ideologies whittled down Africa's belief in the supernatural realm. The white man, to stamp his influence on the African soil chose to refer to such beliefs as *juju or witchcraft* to reduce its relevance, attributing the many misfortunes of the native people as a result of those beliefs. This was further reinforced by the outlawing of these acts under sections 210 and 216 of the Criminal Code and the Penal Code, respectively. Subsection (d) of section 210 provides that, "Any person who directs or controls, presides at or is present at or takes part in the worship or invocation of any juju which is prohibited by an order of the State Commissioner; is guilty of a misdemeanour and is liable to imprisonment for two years".

The white man regarded the belief in witchcraft as unreasonable, suggesting that it does not exist. But why outlaw an act that cannot be done?[46] Unfortunately, Nigerian judges have adopted this same line of reasoning, holding in a plethora of cases[47] that the belief in witchcraft is unreasonable.

[40] n 16, 19.
[41] E C Onyewuchi, 'Justice Administration in Igbo Society' 1991, Bachelor of Laws desertion, University of Lagos.
[42] *Aoko* v. *Fagbemi* (1961) 1 All NLR. 400, where the accused was not convicted for an allegation of adultery, since adultery was not criminalized under the criminal code (operating in the south) though it was a moral wrong.
[43] n 16, 20.
[44] ibid.
[45] n 36, 7.
[46] ibid, 9
[47] As in these cases: *Gadam* v. *R* (1954) 14 WACA, 442; *R* v. *Konkomba* (1952) 14 WACA, 236; *Aiguokhiam* v. *State* (2004) 7 NWLR, 566; *West* v. *Police* (1952) 20 NLR 71, to mention a few.

For instance, in *R* v. *Nwaoke*[48], the accused was convicted in the High Court for the murder of the deceased on the ground that he caused the death of the deceased who died as a result of suicide, by pointing a juju at the deceased, and repeating words, to this effect "…since you refuse to pay me my money this juju will kill you, or since you refuse to pay me you shall no more eat or drink." Six days later, the deceased was found dead, having committed suicide by hanging from a tree. The Judge at the trial court considered the facts and opined that the case did not come within the ambit of English decisions regarding the effect of facts directly causing death. The Judge held that "…to the native mind, juju may be a well-grounded apprehension of serious harm and even of death if not immediate, yet inevitable and irresistible."

The West African Court of Appeal (WACA) reasoned otherwise because, as between the threat and the death, there was the interposition of acts by the woman herself *"...* which we are unable to say was the immediate consequence of the accused's invocation of juju." The accused was acquitted on that basis.[49] The trial court's judgment appears more consistent with African beliefs and values. By contrast, the approach of the WACA reflected a judicial mindset shaped predominantly by Western legal training, with little or no engagement with African ideological perspectives.

In terms of criminal procedure, Western ideas swept away the less complex mode of adjudication that was prevalent in traditional African communities. The court system, the foreign language employed, and how trials were conducted were all alien to the native man. The lawyers of the accused and the prosecution are required to dress in black robes while wearing a wig, which is indicative of their wholehearted embrace of the English way. The fact that local languages are not allowed in criminal trials has contributed to the complexities of the system. Ironically, judges and lawyers that speak native languages are required to refrain from communicating in such language in the courtroom.

In most cases, the accused person is left with a poor interpreter to contend with, leaving him to wonder whether justice would be served in his case. Contrary to the traditional procedure, this foreign procedure did not involve the victim. It is an adversarial system of adjudication, involving only the State prosecutor and a defence counsel of the accused, while the victim is assigned the role of a prosecution witness. The accused and the victim are both denied of cheap and speedy dispensation of justice under this foreign criminal procedure.

The ineffectiveness of the police has been considered a major factor contributing to the increase in the crime rate in Africa. The police being agents of oppression, have contributed to the woes of the native people. The introduction of technological gadgets such as guns, radio cars, CCTV

[48] (1939) 5 WACA 120

[49] Also, in *Mohammed Gadam* v. *R* (1954) 4 WACA 442, where the accused believed the deceased had cast a spell on his wife to make her barren, struck the deceased with the handle of a hoe to break the spell in accordance with local custom. The accused claimed the defense of mistake of fact under section 25 of the Criminal Code. The court refused the defense on the ground that, the belief in witchcraft is unreasonable and cannot come within the ambit of that section.

etcetera, have done little to prevent crime rate increase. Experience in Africa shows that the solution is community policing, which other western nations have started adopting.

Concerning penal sanctions, Western ideas did not encourage the reconciliation of parties and the rehabilitation of the perpetrator(s). Sanctions like imprisonment and the death penalty put the perpetrator of an offence in such a condition that they deny him access to society. His situation does not change even after being released on bail, as he is considered an "ex-convict" who should no longer be associated with by other members of society. Our courts have not helped matters, as they prefer to adopt imprisonment as a disposition method, even where the law prescribes lighter punishments like fines as alternatives.[50] Unfortunately, the Western countries that founded these disposition methods have embraced other alternatives such as, home leaves, suspended sentences, work release, probation, *etcetera*.

The criminal justice system in Africa has been robbed of veritable evidence, as little regard is placed on the white man's god by Africans. Witnesses prefer to swear on the Bible or Koran because they know that the consequences of a perjured testimony are not as stiff as when using the traditional means, like swearing by the Ogun, Ala, or Ofo staff. Many African countries' constitutions are not autochthonous, having been founded on Western ideologies and patterns. The effect was that customary criminal law was not retained, as in Nigeria section 36(12) of the 1999 Constitution (as amended) provides that, "a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law".

Since customary criminal law, like any other branch of customary law, is largely unwritten, its application has been expunged by the above-stated provision. This provision has far-reaching effects, as the penal laws in operation do not exhaust all that the people see as wrong and harmful in society.[51] The essence of criminal law is being defeated in Africa because the values of the people are not reflected under the penal statutes.

5.0. Lessons from African Criminological Ideas

The humanistic philosophy underpinning African criminological thought offers valuable lessons for contemporary criminal justice systems. Central to these traditions was an emphasis on reconciliation, reparation, and restoration of communal bonds, rather than retribution and deterrence. These principles resonate with modern concepts of restorative justice, which only recently gained traction in Western criminology but have long existed in African societies.

Another lesson lies in the nuanced treatment of responsibility. African societies distinguished between intentional and accidental acts, recognised the diminished responsibility of children and the mentally ill, and incorporated families and communities into processes of remediation and rehabilitation. This holistic approach contrasts with modern systems, which often isolate offenders and neglect communal dimensions of accountability. African practices also highlight alternatives

[50] n 16, 25
[51] n 42.

to punitive sanctions. Community policing fostered mutual respect between law enforcers and society, while disposition methods such as compensation, restitution, and apology sought to restore harmony rather than alienate offenders. The rejection of prisons and the death penalty in favour of banishment or reintegration underscores a philosophy that valued human dignity and collective stability.

Taken together, these approaches challenge contemporary systems to reconsider the balance between punishment and restoration. They demonstrate that crime control can be effective when it addresses not only the physical act but also the spiritual, social, and cultural dimensions of wrongdoing.

6.0. Conclusion

This paper has examined the African approaches to crime and punishment that existed prior to colonial rule and demonstrated their relevance to criminology. These practices, grounded in reconciliation, restorative justice, differentiated responsibility, and community-based enforcement, highlight that African societies developed sophisticated criminological ideas long before Western models became dominant. Colonialism did not replace a legal vacuum but rather displaced existing systems with frameworks that often undermined African values.

Preserving and revitalising these ideas requires deliberate effort. Article 29(7) of the African Charter on Human and Peoples' Rights underscores the duty of individuals to protect and strengthen positive cultural values in the spirit of tolerance, dialogue, and consultation. In this context, decolonising criminology entails both recovering Africa's intellectual contributions and integrating them into global discourse.

The way forward lies in identifying and sustaining those cultural practices that best promote justice, dignity, and social cohesion, while selectively drawing from other jurisdictions where appropriate. Such an approach would not only safeguard African cultural heritage but also contribute to building stronger, more inclusive, and more contextually grounded criminal justice systems.