

African Jurisprudence: The Law as a Complement to Public Morality

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Abstract: Every society is governed by certain rules (the law), customs, norms and values; and these are intricately crucial to the maintenance of public morality. Invariably, there is a public morality which provides the cement of any human society; the law, especially the criminal law, must regard it as a primary function to reflect and maintain this public morality. Criminal Codes lay down various offences categorized as criminal or immoral, for they lay down 'Offences against morality' (including rape, elopement, indecent assaults, defilement, detention with sexual intention, prostitution, abortion, unnatural offences and incest); but these are mainly sexual offences or offences related thereto. They do not capture enough of but has prevailed over what count as moral values or public morality. It is thus quite evident that the law reduces the concept of morality to just one small aspect. This narrow interpretation of morality is deficient because it downplays the full involvement of the people who are to be affected by these laws. This is the laxity and bane of current evolution and application of the law among modern Africa states. Thus, the important issue was the critical question of the relationship between the law and morality; should the law determine public morality or should public morality determine the law? This question has confronted major western theorists and jurists for decades. This article adumbrated this claim and concluded that the law, at least, in traditional Africa (as expressed in the experience of the Etsako of Nigeria), is an arm of public norms and morality; in other words, that public morality is a meta-law.

Keywords: Law, morality, public morality, values, complement.

Introduction

Every society is governed by certain rules (the law), customs, norms and values; and these are intricately crucial to the maintenance of public morality. Invariably, there is a public morality which provides the cement of any human society; the law, especially the criminal law, must regard it as a primary function to reflect and maintain this public morality. Criminal Codes lay down various offences categorized as criminal. Although we shall indicate that such codes do regulate on morality, for it lays down 'Offences against morality' (which include rape, elopement, indecent assaults, defilement, detention with sexual intention, prostitution, abortion, unnatural offences and incest), it shall also be indicated that these are mainly sexual offences or offences related thereto and they do not capture enough of but has prevailed over what count as moral values or public morality. It shall be made evident that the law reduces the concept of morality to just one small aspect; and this narrow interpretation of morality is deficient because it downplays the full involvement of the people who are to be affected by these laws. We shall indicate that this is the laxity and bane of current evolution and application of the law among modern Africa states. The critical question we shall address is: what is the relationship between the law and morality? By careful analyses, we shall argue that, rather than the law determining what public morality is, public morality ought to determine what the law should be, and that, apparently, in traditional Africa (as indicated in the *Etsako* experience), such is what obtains—that the law is an arm of public norms and morality; in other words, public morality is a meta-law. We shall proceed, right away, by defining, contextually, some of our key concepts.

Law is taken to mean "the written or unwritten body of rules largely derived from custom and formal enactment which are recognized as binding among those persons who constitute a community or state,

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so that they shall be imposed upon and enforced among those persons as appropriate sanctions” (Curzon, 1993, 219).

- ✓ **Morality** implies the sum total of the norms, mores and laws that form a people’s foundation for action. Etymologically, the term, morality is derived from the Latin, *more*, which means people’s cultural traditions and values. Morality is the foundation for the rightness or wrongness of action.
- ✓ **Values** are virtues. Thus, a value or virtue is an operative habit that is good. Good habits are formed from cherished interior dispositions not mere instincts. Values reflect inclinations and dispositions, “The accessory quality that enables man to use his potencies or faculties correctly, with ease, promptness and pleasure” (Garrigou-Lagrange, 1965, xi).
- ✓ **Public morality** regulates the behavior and values of an individual and community to achieve social order, cohesion and solidarity. It is ‘the total set of ethical-moral and legal-human rights, values, customs, which define and describe, promote and defend a given society’s or community’s common, shared values, vision and public ethos geared towards achieving a desired civilization’. Public morality thus defines law, mores, norms and other aspects of community arrangements.
- ✓ **Etsako**: This is an African culture area with a population of about 264, 509 thousand people and 49, 768 households (NPC, 1994) and well defined traditional social and political order in the northern part of Edo state, Nigeria. By Africa, we mean Africa peoples south of the Sahara.
- ✓ **Law and public morality** means the public ethos which provides the cement of any human society, and that the law, especially the criminal law, must regard it as a primary function to maintain this public morality (Peschke, 2004). In other words, this phrase connotes that law is an aspect and strengthener of wider moral values of a community.

Research Background and Statement of the Problem

Today, traditional African values are more challenged (and almost completely replaced by elements of egoism, legalism and protestant ethic leading to the building of what Freud calls super-ego) than ever. Super-ego moves people to do compulsive things simply for desired effect; it is not reflective and essentially non-rational: whatever it is, it is not conscience—which governs the African personality. Therefore, the doctrine of value implies that of obligation devoid of regimentation and restriction. That is why a child or the young requires some special and guided education on values and virtues in order to establish the kind of being he is suppose to grow into by his doing. Values are virtues. Some basic African values include peace, charity, temperance, faith, honesty, truth, sincerity, loyalty, trust, objectivity, discipline, hospitality, humility and co-operation, justice, prudence, and fortitude. One of the weaknesses of contemporary African society is perhaps its erosion of cherished values in its body politic. In other words, there is a relationship between these values and education because the former is the bases for the latter (Simon, 1986, 37). According to Peter Geach (1987, 12), men need virtues and values for whatever men are for—order and development, hence the universal Declaration on Human Rights and similar statutes to reflect human needs. Thus, a value or virtue is an operative habit that is good. Good habits are formed from interior dispositions not mere instincts. Values reflect inclinations and dispositions, “the accessory quality that enables man to use his potencies or faculties correctly, with ease, promptness and pleasure” (Garrigou-Lagrange, xi). Regrettably, contemporary Africa is devoid of her cherished traditional values, particularly in the realm of the formulation of the law. Moreover, Asekhauno (2006) has shown that corruption, immorality and the attendant underdevelopment in modern Africa is both a result of infidelity to and inefficacy of modern oath practice. He, therefore, posited that since the law recognizes oath practice, there needs to be recourse to African traditional oath practice as basis of law and justice in legal theory.

The analysis and search for an authentic legal theory is the essence of jurisprudence. Although the relationship between law and public morality form the core of the epistemic dichotomy between natural and positive law theorists, such dichotomy does not constitute any qualms in African traditional juristic thought. However, modern Africa adopts western legal order, and it emphasizes

individual right and responsibility—solely to the law. And much of the content of the law do not reflect African traditional moral values, therefore, falling short of Lord Patrick's (1965, 17) requirement of law.

Law as Complement to Public Morality

In traditional African communities, Radbruch's claim that "The fundamental principles of humanitarian morality were part of the very concept of legality and that no positive enactment or statute, however clearly it expressed and however clearly it conformed with the formal criteria of validity of a given legal system, could be valid if it contravened the basic principles of morality" (Hart, 1958) applies. And the above principles are what African cultures embrace in emphasizing morality more than the laws. Moral formation in traditional Africa is given to children at a very tender age in order to acquire the habits, attitudes, beliefs, skills and motives that enable a human being to fit into a community. Thus each and every aspect of life contributed to the moral formation of an individual. An individual lived in and was part of the community and it was every one's duty to uphold the community's values. Thus morality was and still is part and parcel of the community. Despite the above, people still bore allegiance to kings, emperors, emirs, obas, obis, elders, etc, which also counted as being moral. But how, one may ask, did those authorities emerge? So, today, how do we account for the diminishing value accorded traditional institutions in Africa other than the interface of modernity and rational law? Let us consider the Etsako experience.

Among the Etsako of Nigeria, *emeza* is a fundamental legal and moral norm; it does not originate from another norm. It is not the creation of any legal or moral mechanism, but is a presupposition of socio-cultural and *jural* thought. It is "meta-legal" in the Kelsenian terms, and meta-moral. Therefore, it is as cultural, social, religious and political as well as it is legal and moral because it has relevant functions in these domains. *Emeza* or *emedi \bar{a} h* is the only standard or reference point for all of justice. Moreover, law, as conceived by the Etsako is hinged on her macro conception of man, God and morality or natural law. Hence, the eternal law is nothing else than the plan of the divine wisdom considered as directing all the acts and motions of creatures. The violation of laws attracts grave sanctions. More so, a propitiatory rite must be performed. Uwemi (2009, personal communication), points out that offenders are automatically interdicted from the society until the stain of their crime has been duly wiped away from the land. The utmost obligation in Etsako is that to divine laws (Uwemi, 2009).

However, in order for man to obey or follow the divine law, one must, first of all, know it. How is this possible? Though the concept of revelation does exist in traditional Etsako society, and although the Etsako cannot read off, as it were, the eternal law in *Oghena's* (God's) mind, suffice it is to say, however, that they do discern the fundamental tendencies and needs of their nature; and by reflecting on these they can come to a knowledge of the natural moral law (Uwemi, 2009). The content of the Etsako legal experience boils down to the general theory that every man possesses the natural inclination to the development of his potentialities and the attainment of the good for man. Every man possesses also the light of reason whereby he can reflect on these fundamental inclinations of his nature and promulgate to himself the natural moral law, which is the totality of the universal precepts or dictates of right reason concerning the good which is to be pursued and the evil which is to be shunned. By the light of his own reason, the Etsako, therefore, can arrive at some knowledge of the natural law in so far as the latter concerns human beings and their free acts, man is not left in ignorance of the eternal law which is the ultimate rule of all conduct (Uwemi, 2009).

It is pertinent to point out here that the term, natural law is not wholly compatible with or exhausted by the law of nature. Laws of nature, (for instance, the law of gravitation and motion) are used analogically; for law is a code or ordinance which guides behavior. Irrational creatures, being irrational, cannot recognize and promulgate to themselves any natural law. All primitive societies more or less apprehend and operate within the framework of natural law but a conscious and reflective appreciation of the moral content of natural law makes a man to be philosophical. The next are human laws in Etsako include all those laws relating to the socio-economic cohesion of the (Etsako)

community. These human laws are enacted with a view to maintaining the social equilibrium of the Etsako for existence and interaction of beings is community centered and, therefore, there is need to forge group solidarity for the maintenance of peace and good neighborliness. Concerning this, the traditions of the ancestors include codes of moral conduct handed down from generation to generation. There are also positive laws enacted to guide the day to day activities of the Etsako in their interaction and relationship with one another. Due moral consideration is taken in the enactment of any human law. Because of their religious basis and their moral import and because of the Etsako legislative processes in which every adult is a potential and actual legislator, though not codified, Etsako human/positive laws are clearly intended for the common good and are generally fair and just. Such laws must not be confused with some past atrocious practices and acts occasioned by past ignorance of the course of nature and executed with great religious dexterity. Without *Osinegba*, it would be difficult in the ultimate analysis to ground morality. In philosophical knowledge, we direct our attention, above all, to existing things themselves and we point to God as a final, non-contradictory reason for existence and being. A rejection of *Osinegba's* existence leads to contradiction in the ultimate explanation of the world. Hence, Krapiec (1983, 229) insists that God is the ultimate cause of the intelligibility of things and of their inclinations and purposes. A law, therefore, that is contrary to the creed and spirit of Etsako philosophy of religion will necessarily be against the tradition of the spiritual powers. Such a law will not enjoy the approval of the ancestors; it would be *contra natura* (against natural order) and will thus lose the power to bind at least *in foro in terno* (in conscience) (Uwemi, 2009). The primary precept of the law in Etsako ontological legality is that good should be done and pursued and evil avoided and on this are founded all the other precepts of the natural law. The precept that good should be done and evil avoided is intuitively known by the Etsako through natural inclinations which predispose the Etsako towards the good considered in relation to their nature in so far as this nature is shared by all other persons. Again, the nature of their inter and intra-personal relationship, the interaction of forces and their closely marked community shared life offer another reasonable reason for the choice of good rather than the evil. For evil brings disintegration, engenders chaos, bickering and above all, severs or nips at the bud the source from where the life-abiding force emanates. It is, therefore, unquestionably true that not only the Etsako epistemology of "good and evil" springs from natural inclination but there are other empirical reasons that satisfy their yearning and give answers to questions posed by existence and also for their assertion that good should be done and evil avoided. Since this precept has intuitive and divine origination, it also attracts human and divine enforceability and sanction.

Enforceability and sanction is an essential element in the positivist notion of law. However, the Etsako has a conception where there are series of sanctions jealously backing every law. For divine laws, there are divine sanctions and equally for human laws, human sanctions. All the various shades of law bind the individuals in conscience (*in foro in terno*). Law and order are observed in the Etsako traditional society not out of fear of some law enforcement agents or out of shame, as some myopic cultural anthropologists have wrongly observed, but because the ancestors have so desired and the society so commends. If the ancestors desire law and order, it is because God also desires the same. Hence, Adegbola correctly observes:

Everywhere African morality and law are hinged on many sanctions. But the most fundamental sanction is the fact that God's all seeing eyes scan the total area of human behavior and personal relationships. God is spoken of as having eyes all over like a sieve ((1978, 252).

Therefore, to violate the law of the land duly enacted or "consecrated" is to attract human and supernatural disfavor. Ill-fortune, sickness, famine, or death could be the result of an unlawful act. All these traditional Etsako views and mode of thinking make enforcement of a law all the more necessary (Idara, 2008, personal communication).

Nevertheless, the Etsako legal experience which we have attempted to discuss in the preceding paragraphs is also a direct outcome of Etsako ontology. To reiterate, the terminologies of the Etsako ontology and their concept of existence show that there is an intimate ontological relationship between beings. There is active interaction among beings, a kind of inter-subjective communion. There is a

gradation of forces which in descending order include divine force, terrestrial and celestial forces, human forces, vegetable and mineral forces. The laws, be they human positive laws, or divine laws, have the same general goal or one desirable ideal—social harmony and peace for the good of man and society. This stresses the importance of consensus as stressed in reaching decisions through the notion of mediation—the dominant model of dispute resolution among the Etsako. In this respect, Etsako law differs from the macro Nigerian legal system in which “all or nothing” (victor or vanquished) prevails, but in Etsako sense, there is no adjudicator but mediator. Mediation involves a reflection of much broader cultural postulates directed towards the restoration and preservation of relationships. This underscores the relevance of friends, family and associations in the preliminary dispute prevention and settlement or resolution. Even sanction in form of ostracism is meant to enforce compliance. While adjudication may lead to dissent or some odium, mediation leads to consensus/amity (though there may not always be some unanimity). The way the mediators achieve near consensus and judgment is attestation of their psycho-intellectual prowess, vastness in societal norms and power of sound reasoning. But legal reasoning in Etsako is both dialectical and rhetorical (though the categories of reasonableness and generality are often not closed). The dialectics and rhetoric are often laced with proverbs, maxims, and anecdotes. And with the reality of a macro system of law in the Nigerian federation amidst specific customs, religions and traditions, one can be clear in claiming that there is some legal pluralism in Etsako. I have tried to illustrate this in the following table.

Table (1): Structure of Legal pluralism in Etsako

Sources of Law in Etsako	Affective Case	Justice	Goal
Norms, custom, values, tradition	Immorality, crime, disagreements, and deviance	Mediation	Retribution and restoration
Proverbs, maxims, Taboos,	Immorality, crime, disagreements, and deviance	Mediation, retribution and restoration	Retribution and restoration
Nigerian State	Immorality, crime, deviance and rational behavior	Adjudication and Sanction	Restitution and retribution
Religions	Immorality, crime and deviance	Mediation, retribution and restoration	Retribution, restitution and restoration

It could be deduced from the preceding Etsako conception that in the African legal system, the law and (social) justice are intrinsically connected. Hence, among the Etsako, the idea and concept of *emedioh* (due process) is to enable disputants to say all their grudges and for the wise jury or judges to listen attentively, ask questions, apportion blame and reprimand/punish and reconcile them. Full reconciliation is achieved through mediation in interpersonal, family, inter-communal squabbles—though this required negotiations too. Difficult cases is settled through oath-practice and divination (Asekhauno, 2010); issues of offence to the ancestors/deities were settles through divination, negotiations, beseeching, religious rituals/rites, and propitiation of those ancestors and deities—again to re-establish the harmony necessary for the well-being of the community; issues of land and other types of property were settled through inheritance and arbitration of those experts vast in the disputants. Hence, there is African Land, Property, inter-communal, Public, Company/association, Family law and jurisprudence (all these are based on tradition and public morality). Accordingly, the prevalent, extant socio-cultural milieu was one in which conflicts not only occur, but necessarily did. It is milieu that had no shortage of legal skills in an un-institutionalized legal framework. This apparent lack of institutional arrangement was what shocked and misled the colonial administration/its officials into the false assumption that the traditional Africa had no kings, authority or laws. From the colonialist assumption, the conclusion that traditional Africa had no legal system was drawn. But that argument is flawed on at least one serious note that lack of an institutionalized political and legal framework did not result from lack of a centralized kingship system. A lack of both never meant the absence of law and order. Yet, to fill the wrongfully perceived gap, the British colonial administration in a proclamation order of 1900 created native courts. The courts were powered by law to adjudicate

on customary matters. In 1956, a reform bill replaced the native court with customary court. In establishing this court in Etsako, the colonial government through the District Official (DOs) was careful to locate them well spread. Initially, these courts were presided over by the DOs who were resident in Auchi. As time went, on the Dos were replaced by the indigenes of the area where a court is located. These reforms brought problems. Recall that the early educationists were ex-slaves and early Christians and so ready hands for employment as members of the court. These drew protest from many quarters since it was perceived that these new employees will be aristocrats and take presidents over other members of society, a violation of existing norms whereby the people take part in appointing their leaders and jury. Consequently, people avoided these courts as much as possible (though criminal offenses were taken there). These situations were worsened by the introduction of taxes and tax evaders were arraigned before those courts. Again, this point exacerbated the fear of partiality, injustice, non-objectivity. This forced government to introduce native police to bring about law and order although with a little success. One must point out that though various post-independence Nigerian constitutions still recognize customary laws (there is doubt whether these constitutions also uphold mediating duty of traditional structures). Another point to note is that pre-independence jury was staffed by unprofessional hands while post-independence jury is staffed with professional arms; this has pushed down the consensus judgment in village/clan councils. What seems in today's court of justice include adjudication rather than mediation; imposition of decisions; and 'all or nothing' decisions—which are absent in Etsako (traditional Africa) justice system. This has led to the gradual erosion of the efficaciousness of and reliability of modern court of justice.

It is a fact that among Etsako, and indeed, all traditional African societies, one finds that morality permeated every aspect of life and this had to be reflected in the Etsako law. Laws, unlike as we know them today, were unknown outside of stiff general norms; and codes of behavior and moral values, albeit unwritten, were deeply ingrained in every member of the society and this is what curbed vices and other improper behavior. So, morality, as understood in the Etsako/African world-view was law in a sense. Among the Etsako, Law was also a command of the monarch as the voice of the gods/ancestors. Thus, among traditional African societies, there is no clear-cut distinction between law and morality since the rules of conduct did in a way amount to law. Breaking such precepts meant one isolating himself from one's community; and the society was such that one could not exist outside a community—hence, attracting the wrath of gods/ancestors or banishment or exclusion of one from his/her community was dreaded some to compliance.

Nevertheless, in modern African societies, the situation is different. Society is now state-structured, and, therefore, according to several but hierarchical sets of laws. For example, in Nigeria, the state is run according to the hierarchy laid out in various Sections of the national constitution, recognizing: (i) The written law; (ii) The common law and the doctrines of equity; (iii) Any established and current custom or usage; and (iv) The principle of justice, equity, and good conscience. Despite this structure of statutory legal systems, however, customary law is only applicable in so far as it is not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law. Then, it should be noted (from some decided cases) that what was deemed as natural justice, equity and good conscience was what the colonial masters considered as such and it had completely nothing to do with what the Africans considered as natural justice, equity and good conscience. This is simply because African customs and cultures were considered as primitive and barbaric—regardless of whether or not they were good or bad or apply. Nonetheless, written laws were set and put in place, and were supposed to set the moral standard in the emergent society. But the nationalist resistance and current search for inward options posed the untenability of the colonial stance because it lacked the firm grip of the law as service to public morality.

According to Lord Delvin, "there is a public morality which provides the cement of any human society, and that the law, especially the criminal law, must regard it as a primary function to maintain this public morality" (1965, 17). Our various penal codes lay down various offences categorized as criminal. Although it could be argued that it does regulate on morality, for it lays down 'Offences against morality', which include rape, elopement, indecent assaults, defilement, detention with sexual

intention, prostitution, abortion, unnatural offences and incest, these are mainly sexual offences or offences related thereto. They do not capture enough of but has prevailed over what count as moral values or public morality. It is thus quite evident that the law reduces the concept of morality to just one small aspect. This narrow interpretation morality is deficient because it downplays the full involvement of the people who are to be affected by these laws. This is the laxity and bane of current consideration and practice of the law among modern Africa states. Thus there are two issues here: one, the African condition; and two, the critical question of the superiority of which relationship between law and morality.

Regrettably, in many African states today, those statutes and their values imposed by the colonial rulers still obtain. Even in the post-independent era since the late 50s and early 60s, many laws have been conceived, drafted, and passed by legal experts, governments and military juntas without involving the people targeted objects of such legislation or their cherished values. This non-participation and non-involvement of in law making by the peoples from diverse cultures the laws are meant to serve is the root cause of the dangerous gap between the law and public morality—the emerging established National Law Reform Commissions in Africa may have this to contend with.

But the real issue is, should the law determine what public morality is or should public morality determine what the law should be? This question has confronted major theorists in jurisprudence for decades. Natural law theorists (also termed natural justice) adduce a philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative and judicial action; it is also moral law (Garner, 2009, 1127). However, positivist theorists aver that law is law once it achieves the propose for which it was made—whether it be moral or not.

Then, what is likely to happen if the law in contemporary African states continues to ignore or underestimate the power and the influence of the culture, morality, values and the common good of the people for which the law is made? The people are also likely to ignore, undervalue and undermine such law because it is alien, unmindful and irrelevant to their worldview and philosophy of life. The manifestations of this defect are violence, immorality, insecurity and underdevelopment. Thus, in Africa, it could be shown that inculcating these values is the best since they have worked through her entire history before colonial incursion, it is a blend with the universal principle of education that one embraces that which he knows best (commonsensical), it will encourage cultural exchange/acclturation/interdependence, etc. How can he therefore extricate himself from this immobile condition? Is it necessary to do this? Three arguments contend.

- **Historical argument:** Historical studies have reasonably shown that indeed Africa has had a long history of human culture and history, morality and law, legal system and other social systems which have allowed it to grow, protect and promote human life in the most hostile physical environment and extend the gift of life to all other continents of the world. Moreover, Africa, over the years, has provided the world with necessary relations for survival for centuries through her moral values, norms and philosophy; if this is true and good, then it must be brought to bear/reflected first, in Africa.
- **Inducted argument:** In Africa, it could be shown that inculcating these values is the best since they have worked through her entire history before colonial incursion; it is a blend with the universal principle of education. This argument may be guilty of induction, but one embraces that which he knows best (commonsensical), it will encourage cultural exchange/acclturation/interdependence, etc.
- **The identity argument:** The danger warning of any holistic approach to cultural exchange and enrichment is instructive. Wisdom is like fire, when it is extinguished in your home, you get it from the neighbor...But a stick in your neighbor's house can never kill a snake in your house...? (an *Afemai* legend). Agreed that there is no culture so perfect that it cannot learn from another, but while positive borrowing could be encouraged, a total abandonment on the bases of one's primary (effective) culture is suicidal. The fourth argument is associated with

the third: the immediate consequence of culture extinct is culture conflict because the extinct cultural values still exist in the mind. This tension between tradition and modernity produces disordered personality, then disordered society. Because workable traditional historical values are so far-reaching and vast, an integrated existence/ordered society can only obtain by prioritizing them as of higher status in this modern era. But the challenge is how to build an African and enable him to live, truly modern, but truly African (AMECEA, 1986).

- **Globalization argument:** The controversial moral issues are globalised in the world-village. Rather than based on the immemorial tenets of natural law, they are based on the principle of ethical and moral relativism/subjectivism—an exaggerated but false sense of liberty for all to do wthey want, feel and desire; what an implication for public morality! How can we make public legislation on the issues face to face with globalization without regards for public morality? These issues are crucial in African world-view and vitology (Nkafu, 1999): they include allowing abortion, homosexuality, lesbianism, gay sex/marriages, human cloning, surrogacy, in-vitro fertilization, pornography abuse, and other physical abuses. Because these issues are moral/legal, the dilemma is that there is no uniform paradigm to impute in the making of relevant universal laws. This dilemma is compounded by the new religious moralities preached in Christian and Islamic theologies.... But the situation is remediable in an African legal order.

Therefore, to achieve an African legal system, Africans, in their various segments, must: 1. Meet/sift extant values to see whether they apply in modernity. Core values—greeting, generosity, tolerance, hospitality, etc. should be encouraged. 2. Sift values to replace/abolish some inhuman practices (such as forceful shaving of a widow’s pubic hair, drinking of corpse water, etc). 3. Get new replacements for extant inapplicable values.

The criteria set out above could be met on serious consultations/cooperation. We must strive for a model which incorporates international human rights standards with cherished human/African values. There need to be moral re-armament. To achieve this, five paradigms contend.

- a. There is need for mind liberation and inward looking to break with colonial mentality. This will produce a regeneration of minds strong in African values and their legislation would also reflect such.
- b. (And though not recommended) Import a completely practice from the west. Though this will reduce the dilemma confronting modern legal theorists, it will compound the problem on the continent since it will divorce morality from legality. Imagine the Nigerian Parliamentary (2010) importation of rules of hierarchy from the USA!
- c. This begins in the study of cross culture in order to sift the good in all and consequently adopt same, for there is some good in every culture. This point is even necessary for ‘a’ above.
- d. Because of ‘c’ above, there is the need for a synthesis of some of the models under consideration. Accordingly, ‘a’ would lead to openness; ‘c’ will encourage education and selection; and it poses the theorem. This is founded on the fact that there is need to resolve all the fragmentations discussed earlier on and possibly embrace modernity. The goal of all these is to get at efficacious schemes in every culture—such as traditional oath-practice—in Africa. Thus African jurists should be empowered and educated on this need and nature of participation in the generation of their laws. To succeed, research and subsequent formulation of law should involve multidisciplinary efforts of jurists, philosophers, moralists, sages/cultural representatives.
- e. More specifically, the Land Use Act should be repealed having failed. It failed because it does not recognize that before the coming of the west, Africans already possessed and used land for various purposes; these must be recognized any useful legislation on land.
- f. Similarly, legislation on agricultural activity must recognize the agrarian nature of traditional Africa; this would be inclusive of majority of Africans and respect their activity and rights.
- g. There should be legislative intervention on the institution of customary tenancy.

- h. Indigenous oath system should be revitalized and reemphasized as the ultimate common adjudicator:
 - i. Modern States, particularly African States, should re-introduce cultural/ indigenous oath practice and formalize it within modern court system.
 - ii. Indigenous oath system should be granted and entrenched in the State/national Constitution, and should be the standard oath-form at all swearing-in ceremonies and Board/Formal meetings.

Accordingly, we must reject a whole-sale application of western strategies because they do not reflect our effective values. We need, however, a blend of opposites: traditional/public morality couched in public law, or vice versa. Legal experts, Law Reform Commissions, and African Parliaments should fully ensure that adequate consultation and scientific study of various peoples' public morality are made so that these laws are in conformity with people's centrality of the human person, the community and the most cherished values on which African societies have been founded, nurtured and developed.

Conclusion

But it must be mentioned that while most African philosophers (Wiredu, 1993; Oladipo, 1995; Gyekye, 1997) variously canvass the need for enculturation without compromising basic identity, they do not tell us what aspects of traditional African culture apply vis-à-vis modernity. Thus, we set forward, in this article, some criteria for judging the relevance of values in the past to the circumstances of the present. This is why Gyekye (1997) believes that one is "right in saying that every human society consists of some arrangements and institutions—social, political, legal, and so on—established to meet the various needs of the society. These arrangements clearly are based on ideas, for we know they were not thoughtlessly established, nor did they occur randomly."

But the fact is that, by changing our thoughts, the west, through their many faceted colonial expeditions, changed the African world; now, it is high time we changed western thoughts (those not appropriate to the African condition) with African values and reality. If law is ever necessary, as Dennis Lyord contemplated many years ago, what should it look like? On the determination of the grounds of the law and social responsibility, the Sophists, many years ago, had distinguished two grounds—natural and conventional, with the first prior to the second; and to these Critias added a third: the gods/religion—to deal with man's surreptitious immoral acts that could have social consequences. This trichotomy was carried on till the medieval time when even the scholastics saw the need for supernatural (God) involvement/partnership in social engineering and order. In recognition of this view, the law recognizes the tenets of Sharia as the basic norm of Islamic culture; and it is so stressed. It must get down to other ethnicities, no matter how minute, to extricate any useful elements of their cultures which has helped build their order for national/state legislation. More so, Article 38(1) of the U. N. Charter recognizes international custom—which is "evidence of a general practice accepted as law"—(Bazuaye and Enabulele, 2006, 8) and *jus cogens* (all-time binding peremptory norm) as strong sources of International law because they are considered to uphold public morality. In fact, a treaty is void if it conflicts with *jus cogens* (Bazuaye and Enabulele, 161). Perhaps, *jus cogens* form the bases for the recognition of human and international human rights by the various articles of the U.N. Charter and other regional organizations—again which must be recognized by municipal law. So thought-out, ought not then municipal and other law to conform to these requirements? Similarly, do judicial precedence and ratios of a case not amount to accepted/adopted standards for deciding future cases?

Hence, there is a need to revisit our cultural and traditional norms and values in which morality was treated in a holistic approach and each person was compelled to live in accordance with the effective and all-encompassing moral standard of his/her community. We need a blend of opposites: traditional/public morality couched in public law, or vice versa not the present dualism. Legal experts, Law Reform Commissions, and African Parliaments should fully ensure that adequate consultation and scientific study of various peoples' public morality are made so that these laws are in conformity

with people's centrality of the human person, the community and the most cherished values on which African societies have been founded, nurtured and developed. The day this critical synthesis is achieved, that day the deadly dualism or dichotomy be erased—efforts at achieving this goal is should be a challenge contemporary academia.

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