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Law, Morality and the African Cultural Heritage: The Jurisprudential Significance of the *Ogboni* Institution

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ABSTRACT

Many scholars before this time have written about the Ogboni institution in Yoruba land of southwest Nigeria. Instances are William Bascom (1944); Forde (1951); Peter Morton-Williams (1960); J.R.O. Ojo (1972–73); Robert Smith (1976); L.E. Roache (1971); R. Hallgren (1988). However, conspicuously missing in their analyses is the overriding influence and place that the Ogboni institution wields in the conception of law and the moral life of the community. Previous analyses have tended only to incorporate or focus on the religious cum social influence of the Ogboni. Many of the accounts also seem to reflect, by way of allusion, references to their political functions. This paper is interested in establishing the nature and idea of law and morals in traditional Yoruba society seen from the perspective of the Ogboni group. What has the Ogboni phenomena and its operation with respect to the legal dimension of traditional life and Yoruba belief system got to contribute in the understanding of the relationship between law and morality?

Keywords: law, morality, culture, jurisprudence, Ogboni

INTRODUCTION

The beauty of any social or political theory consists not only in the discovery of new facts but also in its ability to extend our knowledge and understanding of the world and its ramified problems in the light of the discovered facts. Relevantly, therefore, in some very important and crucial respect, the ever-recurring problem from one end of the world to another is how all of human experience may be made fruitful for the progressive understanding of a particular object of knowledge. Law is such an object. Law is one of the greatest institutions and social practices ever developed by man. It represents a major step in cultural evolution. It also presents, in its totality, man's (in the generic sense) experience in the light of his contact with the world within and without. In the light of this philosophy of experience, it is a basic hypothesis that without a comprehensive grasp of all experience, law can be presented only in an artificial and contradictory way.

In philosophy of law or jurisprudence, a central concern and subject matter that divides one set of writers from others has been the very nature of law. Being a species of general philosophy, philosophy of law or jurisprudence is occupied

with the academic and intellectual attempts to offer general or specialised philosophical reflections upon the general foundations of the principles of law. In other words, it studies philosophical problems raised by the existence and practice of law. Furthermore, from this general approach, it also seeks to consider other issues that revolve or that are clustered around the notion of law. Such overlapping issues include the notion of equality, justice, rights, authority, legitimacy, order, peace, political behaviour, culture, etc. The overlapping nature of these issues with the concept of law makes the boundary of jurisprudence overwhelmingly interesting on one hand and also parasitic on the other.

In the light of this philosophy of experience, one cardinal, perennial and important debate and controversy in the history of socio-political and legal thoughts in general centres on the relation between law and morality. The importance of the controversy is assumed to centre on the fact that our success in painting a sharp distinction between both concepts or our ability in justifying their inseparability all have grave implications for the nature of political practices and the interplay of political forces not only among individuals within a given political society but also within the realm of interaction between and among nations of the world. In another important sense, it is conceived that whichever way our arguments turn on the supposed connection between them will portend serious and significant impact on our ideas of justice and the role of the law in the whole enterprise.

In the strictly African perspective, the nature of the relation between law and morality is very significant. African politics in general has been tainted and bedevilled with lots of intrigues that make politics and its description quite tasking. It is in general a necessary condition that African politics can only witness and experience peace and wholesomeness only if the free conditions of a true democracy are allowed to translate into healthy reality. Apart from irreconcilable disquisition on what kind of democracy Africa needs, it is also unfortunate that politics in the social and economic world of political actors in Africa is taken at its minimalist dimension. And what is more, at present, the nature of politics in Africa is still held down by lack of consensus on the entrenchment of democratic norms and values.

It is in this sense that Justice Holmes (1920: 1) retorted that the life of the law is not in logic but experience. In the same vein, Claude Ake posited that the entrenchment of both democracy and the values and norms that characterise it will have to emerge not from mere rational or academic blueprint but from practical experience. However, there is no practical experience that is needed to restore normalcy and order into African politics that will involve a wholesome and wholesale rejection or abandonment of moral issues. The emerging picture of politics in Africa in general points to the necessity of the control of power and its apparatus by an external and impartial observer. The democratic engagement in Africa invites the presence of a moral order. Even though rigorous academic spirit seems to have succeeded in whittling away the importance of the connection but

then practical politics of everyday life, especially in Africa seem to justify the need for a web of inseparation between both concepts.

Given the overall importance of distinct experiences in projecting and picturing the essence, nature and limits of law, this paper is concerned with a critical analysis of the supposed relation between law and morality from a distinct African experience. It is somewhat assumed that most African societies bear a major resemblance: the fact that they are heavily cultural and perhaps, cautiously, religious. In order to present, for adequate critical work, the African perspective on the nature of the connection between law and morality, i.e. how Africans view the intersection between the concepts of law and the concepts of morality, this paper shall be concerned with interrogating this connection in the light of the jurisprudence of the *Ogboni* institution in Yoruba land in the south-west of Nigeria.

The Ogboni group is a very powerful traditional institution in the entire Yoruba land. Its activities and influence in the whole sphere of Yoruba life represent the traditional attitude and the natural responses of Yoruba communal life to the moral, legal, social and political life of existence. In a nutshell, it is believed that in interrogating the traditional jurisprudence of the Yoruba people as conceived in the conceptual worldview of this institution will go a long way in assisting us picture the idea of relation the Yoruba people believe exist between law and morality. It is in the light of this that it is believed that the Yoruba people of southwestern Nigeria have their distinctive perception on the relation between law and morality. It is this representative viewpoint or conceptual worldview as projected in the domineering importance of this institution that we are concerned with here.

In the light of this, the paper shall set out to examine the state of analyses on the nature of the connection between law and morality as it obtains in the literature. Then an analysis and examination of the Yoruba perspective on the idea of law and morality and their connection will follow.

1. Law and Morality: State of Analyses

It is often granted that in every mature society, there is considerable overlap between legal questions and those of morality. What the law forbids, in almost all instances, are also disdained by instructions, teachings and injunctions of morality. This has been anchored, most presumably, on the ground that both law and morality do their work with the very same item of human behaviour. Hence, a web of inseparation has come to be identified with morality and law with the question asked: what is the precise character, on a specific form, that the relation between law and morality expresses?

In the literature, many intellectual responses have been developed and devoted to an apt analysis of the exact and precise relation that both concepts bear. Significantly, it is believed that what divides one school from the other is an

underlying ideological pretension. In the primary sense, it is often pointed out that, going by the structure of language, the language of morality and that of law represents two different fulcrums though both specifically eliciting an aspect of human behaviour. For example, Nowell-Smith (1954: 190–98) argued that the language of morals involves the demand for reasons for the performance of the expected duty whereas the language of law both in its advanced and crude forms is silent on the search for reasons but openly canvasses for compliance based on the authority backing it. Interestingly, it is argued that the authority behind law is that of command or force not rational authority. One possible meaning of Nowell-Smith's argument consist in the view that the basis of legal obligation is not external to that law itself in which case, from this point of view, there seem to be a distinction between law and morals. But then, it is good to point out that even if this were to be the point raised by Nowell-Smith, then this position can be faulted because even in some judicial cases, clear reasons are supplied that sometimes bear on morality.

Again, in the important sense, the distinction between both concepts has been premised more on the fact that in most cases, there are many legal concepts, rules or questions which are morally indifferent in the sense that they do not appeal to moral or ethical considerations either in their overall nature or significantly, in what it enjoins (Freeman 1996: 57). In fact, this argument runs side by side with the ageless philosophical prescriptions and postulations of Immanuel Kant who contended that law and morality are to be held as distinguishable because laws prescribe external conduct while morals prescribe internal conduct.

The inability on the part of the law to distinguish, again, between what is strictly subjective and that which is objective for the purpose of law has led many jurist to affirm the point of distinction to consist in the fact that one is punishable in form of open external physical sanctions while the other is not, at least in this open physical sense. But then the issue of sanctions is still open to different interpretations and meanings. What then determines the proper context of sanctions – the pains, the injury, rejection, regularity or what? The outcome, at times, depends on attitude, which is itself subject to a host of bewildering interpretations.

Fortunately, what has come to be the statement of problem or the problematic of this paper is given a well-rounded meaning in the analyses of Louis Bloom-Cooper and Gavin Drewry (1976: 1–35). These analyses can generally be seen or defined in four perspectives. These are:

1. The Historical and Causal Perspective. This perspective raises the following questions: has the law, in its contents and features, been influenced by moral principles; conversely, has the law influenced moral principles? In the history of philosophical ideas, the concepts of law and morality have not only been found side by side in human society influencing human behaviour and the development of human societies, it is asserted that a reasonable measure of their coincidence is essential and significant for progress and survival of human society. This

assumption is taken as a matter of social and historical fact. In fact, this historical or causal nexus has come to be integrated into the prevailing culture of a particular society. Historically, therefore, one of the philosophical presuppositions on which existing cultures and societies have derived their survival is the critical, integrative examinations and ultimately, of the acceptance of the intersection of the concepts of law and morality.

2. The Necessity, Logical and Conceptual Connection Perspective. According to this perspective, the following questions appear pertinent: does the concept of law necessarily refer to the concept of morality? Is there a logical, conceptual connection or relation between the concept of law and the concept of morality? Is law indissolubly fused with morality at every point? The controversies over the relation between law and morality seem to start and end here. Positivists, staring with the works of Jeremy Bentham, John Austin and recently, H.L.A. Hart have all postulated in very firm terms that there is no necessary connection between law and morality. According to Hart (1961: 181), "it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact they have often done so". Their intellectual opponents, the natural law thinkers, have also posited that the history of law shows a clear necessary link. It is the disparities in the views of both schools of thoughts that have often led to debates and arguments on the third perspective. Precisely, the famous intellectual exchange between H.L.A. Hart "Positivism and the Separation of Law and Morals" and Lon Fuller "Positivism and the Fidelity to Law – A Reply to Prof. Hart" in the *Harvard Law Review* Vol. 71 (1958) has been hailed as a perfect expression of the meaning of necessity and contingency when it comes to relating law and morals. But then the analyses must go beyond this perspective.

3. The Validity and Obligation Perspective. Following the tenor of the second perspective, this perspective raises fundamental questions at the heart of every legal system. For example, it asks: can a rule of law, properly derived (in terms of passing through valid constitutional process) be held to conflict with some moral principle, thus leaving obedience, some say obligation, in doubt? This perspective would mean something like this, echoing the voice of Saint Augustine, can an unjust law, be law indeed? Does morality dictate a whole tune of influence, a partial tune or relatively insignificant tune of influence in matters of obligation to the law? On this count, natural law thinkers have developed the opinion that morality is in some very fundamental way an integral part of law or of legal development in that morality is "secreted in the interstices" of the legal system and to that extent is inseparable from it. Put in proper context, the argument runs that our obligation to obey the law is derivative, i.e. the conformity of the legal norm with some external norm in which case, the conformity of the contents of any legal norm to a higher law counts a lot in the legal validity of that legal norm. Though the positivist do not reject the idea altogether, it must be emphasised that what the positivist maintain, in the strictest sense is the view that once a rule is

laid down or determined, it does not cease to be law just because it is shown to conflict with a moral law (Freeman 1996:59). Again, Hart has provided the modern rendition of the positivists thesis: according to Hart (1958: 599), "it could not follow from the mere fact that a rule violated standard of morality that it was not a rule of law, and conversely, it could not follow from the mere fact that a rule was morally desirable that it was a rule of law."

4. The Enforceability, Criminalisation Perspective. This perspective asks: should legal means be employed in enforcing morality? On what basis should law be employed to enforce morality? Is it on the basis of the connection or relation (whether contingent or necessary) between them or on other grounds? To what extent should the criminal law interfere with or enforce morality?

Admittedly, a very large percentage of debate in Western philosophy has been pre-occupied with these four perspectives on the relation between law and morality. With the exception of the first perspective which scholars in philosophical circles have branded as significantly important in academic fields such as sociology, anthropology, history, law and in recent times, African studies centres, the other three perspectives have attracted a whole train of debates amongst philosophers. Precisely, the field of legal philosophy and jurisprudence has been pre-occupied with each of these three perspectives with several opinions formed on each.

In what follows, I shall attempt to highlight the African cultural perspective. This cultural perspective takes a close observation of the way in which the relation between law and morality is taken amongst the Yoruba people, for instance. Since culture represents a key to the existence of a people, the totality of their characteristics and the inner core of their being, an examination of the workings of the institutions of law and morality amongst them only help to present their distinct views. The basic conviction underlying this approach can be deciphered in the contention of Bewaji (2002) that when we make a critical examination of the diversity of human beliefs in various parts of the world, it seems clear that even the simplest-looking belief system must be acknowledged to have developed from some form of critical examination of events, things, beliefs, etc. Without such philosophical presuppositions and, indeed, expostulations, on the part of members of these societies, it is difficult to see how such cultures and societies could have survived.

2. Law and Morality: from the Yoruba Perspective

In the primary sense, the social unit of the cultural setting of the Yoruba people has been similarly structured like in most other African societies. Even though, in terms of details, there may be differences in the cultural practices, in the comparative sense, a whole lot of similarities are clearly and interestingly

exhibited among these different societies. Even if there are differences now in the cultural setting of these societies in Africa, one very significant interlude in this whole interplay is the colonial dimension added to the African environment. And since colonialism represents a major alteration of the African life, a positive march towards the object of our discussion will be attained by recourse to the traditional setting of the Yoruba people.

From the beginning, it is profitable to contend that two crucial indexes are necessary in a fruitful and profitable investigation and interrogation of the nature of traditional jurisprudence as it obtains amongst the Yoruba people. The abstract nature of the traditional jurisprudence of the Yoruba people, and the distinct picture of law and morality that emerges from it cannot be successfully investigated without recourse to these two indexes. In primary and crude languages, these refer to the religious and the political set-up which existed in this society before the advent of colonial imposition.

In fact, it is not a misnomer to contend that there is a very close link and web of influence between our religious worldview and our political conceptual framework. The Yoruba word for religion is *èsìn* or *ìsìn.* Both words describe on one hand and embraces on the other concepts of 'duty' and 'service'. The concepts of duty and service, again, enjoy an easy translation in terms of moral and social life of the people. This extends to the political and legal realms, too. This is often explained in the light of the fact that what one ought to do as a duty or service to the political and social well-being of the society is what one ought to do in the religious sense.

Thus religion provides a very important framework for understanding the general disposition of the political, the legal, the moral and of course the social life of the people. It is in this sense that we can best understand Roland Hallgren's submission that "to practice religion is to perform social duties" (Hallgen 1988: 8). The interpretation is that religion provides the framework for 'rational' explanation of the political, the social, the moral and the legal. This is because these other aspects of life, it seems, are all interred in the framework that religion provides.

It is often said that whether we like it or not or whether we know it or not each culture operates and generally appraises the conduct, actions and attitudes of its members by recourse to some hitherto existing conceptual frameworks which end up describing or establishing the pattern and possibilities of intelligibility for that particular culture or society. A positive march towards understanding any culture will first consist in adopting a neutral mind or approach towards their conceptual framework or the modus operandi of that pattern of intelligibility which they have raised for themselves. It is in the light of this that a very good work can be done in an attempt at evaluating that conceptual framework through which they operate.

For the Yoruba people, religion in the metaphysical sense provides a pattern of intelligibility for them. In fact, it is a proposition too plain to be contested that the Yoruba people's conceptual framework for understanding the mysteries of life

consist in the positive approach they have adopted towards a peculiar conception of the supernatural. It is this conceptual framework which explains, interestingly, a whole lot of interactions and attitudes that takes place in the political realm.

The validity of these claims can be best discussed when considered in the light of a comparative analysis traditional Yoruba religious thought with Christianity, for instance. One eventful outcome of the colonial interlude was not only the imposition of colonial culture but also the staggering effect of Christianity on the hitherto existing African religious beliefs. According to this comparative analysis, it is often said that African traditional religious thoughts are essentially characterised by a 'this-worldly'[1] spectre.

Granted that European technical and cultural terms can be misleading in some senses and even though there are very strong beliefs in the ancestral world, the mystic importance of sacrifices, prayers and libation, and a whole lot of beliefs and practices which connect the living with the dead among the Yoruba people, we can, for one moment grant the truth of this claim, for the sake of argument. Once this is so, we can from this infer the view that Yoruba people do not see a severing of links between the political and the religious. The religious is meant to provide explanation for the afterlife and if indeed it is this worldly then it presupposes that the political is subsumed under the religious, since the political is essentially a worldly affair.

But then, that African traditional religion is not patterned along the line of the Christian religion does not make it essentially 'this-worldly'. In Christianity, there is always the evidence of disharmony just in case religious life or ethics conflict with social, legal and political life or ethics. But in traditional religious beliefs among the Yoruba, there need not be a disharmony between both frames of life in the sense that, from the outset, both are not separated. This again adds colour to the view that religion and politics are inseparable since religion, in the first instance, provides the framework for rational explanation of the political, etc.

The religious metaphysics of the Yoruba people consist in the belief in the existence of the supernatural world of extra human powers. According to Wande Abimbola (1976: 151), the Yoruba people are a deeply religious people with a strong belief in the existence of supernatural powers. This is because these supernatural powers are believed to affect the everyday life of man – the political, social, moral, legal, physical, economic, psychic, etc. – for good or ill. In other words, for the Yoruba people, it is a correct relationship to God (*Olodumare* or *Olu orun*) and the divine sphere consisting of gods or the deities, i.e. *Orisa*, ancestors, i.e. *babanla* which guarantee the good life here on earth. Traditionally, therefore, the idea of atheism is peculiarly strange to the Yoruba people (Idowu 1963). According to Hallgren (1988), if it is the case that traditionally, there had always existed a belief in the Supreme Being among the Yoruba people, it is very

[1] The terms 'this-worldly' and 'other-worldly' are terminology framed by Max Weber to describe religions that have the tendency towards the celestial and those that are essentially terrestrial. However, in reference to African traditional religion, this characterisation was used by Peel (1968: 6, 289–90) and Comstock (1979: 7).

likely that notions of atheism now prevalent among contemporary Africans must be borne out of contact with the West. In his words:

> …Questions from European scholars concerning the existence of a supreme God were considered rude or stupid. Beliefs seems to be self-evident within the traditional Yoruba culture and to question the existence of an almighty God would be like doubting the existence of kings (Hallgren 1988: 23).

Traditional Yoruba religious thought has always been plagued with incessant criticism on the status and persons of the several *Orisas*, i.e. deities or gods. In the midst of many possibilities, it is clear that the idea of the *Orisa* is clearly accepted among the Yoruba. The disagreement comes when the status of the *Orisas* is to be determined in relation to Olodumare. The conflict of ideas can be seen in the multiplicity of views. While Ulli Beier (1980: 62) contends that the Yoruba people see the multiplicity of gods merely as aspects or facets of the same divine force, i.e. that they are part manifestations of the divine spirit, Kevin Carroll (1967: 42) classifies the Orisas as "creatures of gods" and personifications of godly attributes. Significantly, however, the idea of the Orisa is prominent among Yoruba and placed in proper perspective, the whole of the Yoruba believe in the creator and Almighty God, and their thoughts are daily directed to Him through the lesser deities (Jones 1946: 120).

These deities, in one significant aspect or the other seem to be connected with the Yoruba idea of *Ori*, i.e. personality or Head. In its normal day-to-day rendition, the term *Orisa* refers to any Yoruba deity as distinct from the Almighty God Himself. But put in the proper context, the idea of *Orisa* in Yoruba language is derivative from the concept of *Ori.* According to Bolaji Idowu, both ideas of *Ori* and *Orisa* derive from Olodumare who is regarded as the Great *Ori* from whom all *ori* derive (Idowu 1963: 9). From these, it follows that no one chooses an *ori* without an appropriate *orisa*. To choose an *ori* is also to choose an *orisa*. Since the *ori* determines the destiny of man here on earth having been chosen from heaven, it follows that there is a corresponding influence between the life here on earth, the *ori* chosen and the *orisa* that backs it. In all these, it is clear that the life of man and everything that has to do with man revolves around his *ori* and his *orisa*. *Orisa* and *ori* seem to co-operate and influence the fate and life of man. Wande Abimbola classifies the deities or gods, alongside the ancestors, as good supernatural powers. According to him, these powers are held in high esteem in Yoruba land since they control the day-to-day life of the people. In the words of Abimbola:

> The good supernatural powers aid man in his daily life, they are, however, sometimes angry with Man if he neglects his duty either to his fellow

> man[2] or to the supernatural powers. Through Orunmila, the mouthpiece of the gods and ancestors, it is always possible to find out when and for what reasons the supernatural powers are angry (Abimbola 1976: 151).

Politically, the traditional Yoruba societies combine effectively a host of kingdoms with a distinct ruler in charge of the respective kingdoms. According to Robin Law, the sovereigns in each of these kingdoms claim and trace their origins to Ile-Ife (Law 1977: 145). However, the Oyo Empire, ruled by the *Alafin* claimed authority over the other kingdoms based on the alleged inheritance of the primacy of Oduduwa, the progenitor of the Yoruba people (ibid. 145). According to Robin Law, the hegemony of the Oyo Empire, symbolised by the *Alafin*, over other states and kingdom in the Yoruba kingdom, was justified not on the essential character of the rule of the *Alafin* but basically on the basis on which that rule was promoted. According to Law, this relates to the distinctive dynastic seniority which the *Alafin* claims over other kings and sovereign in the wide Yoruba kingdom. This family of kingdoms[3] principally derives from Ile-Ife, the cradle of Yoruba civilisation with Oduduwa being the progenitor. Of interest is the fact that these kingdoms manifest a cultural affinity, a phenomenon that finds its utmost explanation in the fact that they bear a common ancestry. One favourable item of this similarity and cultural affinity is the sameness of social and political organisation headed by a sovereign, the king, i.e. the *Oba*.

3. Yoruba Politics and the Jurisprudence of the Ogboni Institution

In traditional Yoruba society, the connecting link between the religious and the political was prominently provided by the *Ogboni* institution. Given the prominence of the *Oba* in Yoruba land, all legislative, executive and judicial powers were reposed and conferred on the *Oba*. Admittedly, the Yoruba style of governance was a monarchy. The Oyo kingdom before the nineteenth century provides a good example of this monarchical structure. The *Oba* referred to as the *Alafin* was the head of this monarchy. He was, however, surrounded by series of

[2] According to popular Yoruba religious beliefs, underlying every religious system is the responsibility of the individual in promoting the good of the collective or the whole society. This is often defined as a moral duty. See Ulli Beier (1975: 48).

[3] Oshamba Imoagene (1976) classified these family of kingdoms into three types: first, the maximum hereditary restriction system of the north and north-west, i.e. the Oyo and the Ekiti kingdoms which offered full security to holders of political office through its highly restricted scope for upward mobility by the general populace. These societies were highly patrilineal. The second, the minimum hereditary restriction system of the south and south-east, i.e. the Ijebu and Ondo. An open system was the means of appointment into political offices in which both male and female lines of descent were recognised. The third, the Ibadan and Abeokuta kingdoms with a more equalitarian style of appointment provided more mobility channels for its citizens. These consisted of various grades of title holders whose political positions were not hereditary.

bodies who acted as advisory bodies. In actual fact, their roles and place in the structure of governance is more than advisory. They have the power to make or mar the rule and reign of any unwilling sovereign. One such powerful body in the then Oyo kingdom was the Ogboni.[4]

Many scholars before this time have written about the Ogboni cult.[5] However, conspicuously missing in their analyses is the overriding influence and place that the Ogboni institution wields in the conception of law and the moral life of the community. Previous analyses have tended only to incorporate or focus on the religious cum social influence of the Ogboni. Many of the accounts also seem to reflect, by way of allusion, references to their political functions. This section of the work is interested in establishing the nature and idea of law and morals in traditional Yoruba society seen from the perspective of the Ogboni group. What has the Ogboni institution and its operation with respect to the legal dimension of traditional life and Yoruba belief system got to contribute in the understanding of the relation between law and morality?

Essentially, the Ogboni institution is a secret group. No one, except members can really know the depth of its practices. But then, its influence in Yoruba societal life is not a secret. In fact, the Ogboni's are, more or less, the lawmakers in the respective Yoruba enclave they have found themselves. This is because, in traditional Yoruba society, the Ogboni is the body of all the elders in the community. According to Daramola and Jeje, in the traditional Yoruba community, there is no observed difference between the members of Ogboni and the council of elders. In the more factually relevant sense, it is the members of Ogboni that become members of the council of chiefs or elders in the land (Daramola and Jeje 1970: 160). From this it is decipherable that they wield utmost constitutional powers both in the religious sense and then in the judicial/political senses. To this end, they can be described as a group with integrated social, political and legal influence.

The overall dominance and prominence of the Ogboni institution seem to have been derived from two closely interconnected sources: in the first instance, they control the political life of their community and secondly, they possess the power of the sanctions of the gods. The mystical fusion of both sources of power has elevated them to the status of the most dreaded institution in Yoruba land. This is captured in the observation of Robert Smith that the Ogboni group is devoted to the worship of the earth, which wielded both religious and political sanctions. They alone, according to Smith (1976), control the "Byzantine Quality" characteristic of traditional Yoruba system of government, which effectively means in the language of Smith, the "fusion of political, judicial, and religious

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[4] The Ogboni cult is a powerful institution in Yorubaland even in contemporary times. Their influence cut across the entire Yorubaland. In the present dispensation, especially among the Oyo, Abeokuta and Ijebu Yoruba, the Ogboni cult is still as influential as before. In fact, certain titles in Yoruba chieftaincy universe are still indicative of the presence of the Ogboni. These are the Oluwo, the Asipa and the Apena among the Abeokuta, Oyo and Ijebu Yoruba respectively.

[5] Instances are Morton-Williams (1960); Smith (1976); Forde (1951), Bascom (1944), etc.

concepts and the division of responsibilities". Their privileged and controlled access to the gods, i.e. orisa and their presumed privileged role as the custodian of the voices and the sanctions of the gods in traditional Yoruba land in relation to the idea and ideal of law are prime factors in the suggestive heading traditional jurisprudence and the Orisa-Ogboni phenomenon.

In proper political parlance, they are referred to as the Oyomesi the Oba's council of senior hereditary chiefs. The Ogboni or Oyomesi was charged or had the responsibility of the final voice in the selection of the *Alafin*, advising the *Oba* and could engineer his removal if his actions were detrimental to the heritage of the land or unsatisfactory (Daramola and Jeje 1970: 160). In modern parlance, the *Oyomesi* was regarded as the legislative body of the land. In conjunction with the king, rules are made for the general guidance of the people. The institution of the *Oba* represented the judicial body in the land. Being the highest judicial voice in the land, the *Oba* was assisted by the cult of *Sango*, the chief religious cult.

In this kind of monarchical structure based on hereditary, the Yoruba jurisprudence and system of laws reflected or manifested a fluid and creamy display of positivism and naturalism, although with a tilt towards naturalism in its final composition. This assertion is to be held with a bit of caution though. The *Oba,* often referred among the Yoruba people as *Alase, igba keji Orisa*, i.e. the sovereign, the second to the deities or gods, issues the law for the regulation of the lives of the people. These laws, though made in conjunction with his council of elders comprising the members of the Ogboni were believed to be the promulgation of the gods. To this end, these laws were held in high esteem. The council of chiefs was believed to serve the varying interests in the community even though their position was hereditary. They all ensure that the promulgation of the *Oba* turns out in favour of the different communities they represented. Again, the Sango cult was also represented in the decision-making council of the land. He advises the *Oba* on religious and spiritual matters. He makes the interests and the claims of the gods known to the *Oba* (Awe 1977: 149).

It is in this sense that it is claimed that Yoruba jurisprudence manifests a theistic metaphysics in which the legal or the moral are by-products or epiphenomenon of the relative interference or actions of the gods. The positivist aspect of Yoruba jurisprudence consists in the assertion that the sovereign in the land makes and issues the law. In this sense the will of the sovereign is accepted as the law for the regulation of lives. But the *Oba* is not alone in this matter. He has around him council of chiefs and religious priests who ensure that his laws are in conformity with the requirements and dictates of the gods of the land. These dictates and requirements are rooted in the covenant between the original settlers and the gods. In most cases, these covenants contain dos and don'ts for the land. In the process rules, laws and moral regulations were invented for the guidance of the society.

The picture one gets concerning the relation between law and morals consist in the view that, in traditional Yoruba society, laws and morals are closely and necessarily related. This is so because in Yoruba thought system, as exemplified

in the importance of the Ogboni cult, laws are expected to and must conform to the demands of the gods. Whatever positive laws or actions are put forth by the sovereign, i.e. the Oba, the Ogboni cult, as custodians of the divine oracle and laws, ensure that the sovereign does not exceed its authority. The seriousness of this conceptual connection between legal rules in terms of positive laws and moral rules in Yoruba worldview is often projected and demonstrated by recourse to the practice of what is called 'the opening of the white calabash with egg'. Daramola and Jeje described this practice thus:

> In the olden days, when a particular community wants to demonstrate the masculinity or masculine prowess of its monarch, the council of elders gathers together to prepare 'the egg' in a white calabash for the monarch. Once the monarch succeeds in opening the calabash and actually sees the egg in this white calabash, the end is a 'glorious' exit from earth (Daramola and Jeje 1970: 160).[6]

The basis for this practice consists in what Daramola and Jeje describes as a conflict between personal sovereign pride as exhibited in his actions, laws and reign and communal expectation and tradition. In the traditional sense, law and morality are not differentiated especially as means of social and communal control. This is because they (the laws and moral injunctions) not only reflect and embody the traditions of the people, but also in the sense that they have over the years come to represent a vital, moving force or aspect of traditional culture. In this traditional culture, it is unlikely that what is forbidden by the moral life of the community will be found enjoined expressly in their laws. The impossibility of the converse also stands. In this kind of traditional society, laws and morals bear the essential character of taboos and therefore have the same source: the gods of the land.

In fact, conformity to established tradition[7] best describes the basis for which the practice of opening of white calabash is done. As conceived so far, Hart's separability thesis that "it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact they have often done so" does not hold in this kind of traditional jurisprudence. In fact, the structure of traditional jurisprudence as conceived among the Yoruba so far posits the view that it is a necessary truth that law and morality must necessarily coincide. The necessity is borne out of the fact that, among Yoruba people, whether in traditional or modern times, the concept of *Iwa* is so paramount.

The most important pursuit and standard way of life consist in the concept of *Iwa*. Among the Yoruba, *Iwa* ordinarily means character, but in a deeper sense, without the qualifier, good *Iwa*, an average Yoruba man or woman has the understanding of the concept of *Iwa.* As the most important pursuit, embedded in

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6 The present writer did the translation from Yoruba to English.

7 Tradition, as used here, describes the rules and regulations of that society. These regulations, though largely unwritten, are not mere human pronouncements as the living dead (ancestors) are the ultimate executors of the regulations. See Anthony Echekwube (2002: 29).

the concept of *Iwa* is the idea of a good moral standing in the society. This is reflected not only in interpersonal relations but also in public and communal life. The concept of *Iwa* is a standard or aspiration in-built into the framework of societal institutions. In other words, *Iwa* must be reflected in the laws of the society, the collective aspirations of the societal norms and regulations. It appears very strong a view that in Yoruba land, the basic standard for which every attempt at and enterprise of communal and collective is to be evaluated and judged consist in the approximation and reflection of the concept of *Iwa*. This is true in marriage, dressing, in communal service, kingship matters and legislation, religious worship and family affairs. The necessity of the concept of *Iwa* in these various strands of communal life explains a lot about the incessant warfare between the council of chiefs and elders and the *Alaafin*, the Oba in the then old Oyo Empire.[8]

The main goal of the Ogboni institution, looked at from these judicial and legal perspectives, is the promotion of law and order in the community according to the laws of the gods. The awareness is created that sin, that is, an offence against the norms of the society is punishable. There are sanctions against offenders. Acts of sacrifice and rites of purification only remedy serious crimes against the norms of the gods. Therefore, in order to maintain harmony with oneself, the community and the environment of which one is actively engaged in interaction, one is expected to adhere strictly to the norms, rules and customs of the land, as enunciated by the elders, that is, the Ogboni cult who are seen as the custodians of the cultural tenets of the people. This belief is premised on the ideal understanding that when one member sins against the gods, the consequences do not stop with him alone but also to the family and the immediate community.

Admittedly, in this traditional legal structure, laws and morals have the same source: from the gods, the orisa. It is this that the Ogboni cult strictly enforces. In union with the gods, the Ogboni cult ensures that moral injunctions and laws of the gods are observed while strict punishment is brought to bear on the person who violates the rules and regulations (custom) of the people. In the functional sense, therefore, the Ogboni cult is seen as an integrative force in Yoruba land since it is the champion of human law and morality emanating from the gods. It is in this sense that Morton-Williams contended that the Ogboni cult sees the source of the moral law as emanating from the Earth and the ancestors.[9] It is in this vein

[8] According to Bolanle Awe, in the eighteenth century this kingdom was the scene of a series of conflict in which power alternated between the Alaafin and his chiefs. The issues that sparked these conflicts have been differently interpreted by different historians…whatever the issues were, they certainly represented the factors that engaged the attention of the ruler and his chiefs (Awe 1977: 149). Daramola and Jeje have provided one of the reasons: according to them, the conflict stems from the fact that the actions of the monarch are irreconcilable with the standard norms and expectations of the people. See Daramola and Jeje (1970: 160).

[9] This point bears a remarkable similarity with the conception of justice in Igboland. Just as the Ogboni cult has a close linkage with the earth goddess who is regarded as the source of human law and morality in Yoruba land, Ike and Edozien (2002: 53) also posited that Ala, the earth goddess has all the noble attributes especially of being the source of human morality. In their words, "Ala, the earth goddess is believed to share in the justice of the supreme God (Chukwu)…As a result of

that William Bascom (1969: 92) sees the Ogboni as an Earth God while Daryll Forde (1951: 18) on his part classifies the earth as the orisa of the Ogboni.

Interestingly, the idea of sanctions does help in differentiating morals from laws simply because in traditional Yoruba land, punishment and sanctions are the sole prerogatives of the gods. If any one goes contrary to the legal and moral prescription of the land, it is not too necessary that he or she be caught. Every member of the community is aware of the grave danger inherent in breaking the laws and rules of the gods. The gods visit such offender in the relevant way.[10] This also explains why, in Yoruba land, the Ogboni group is regarded as an esoteric group because of the extra human powers at their disposal to visit punishment and sanctions on erring members even if they are not caught breaking the rules or laws of the land.

The philosophical vision or conception of the relation between law and morality that emerges out of the jurisprudence of the Ogboni among the Yoruba people can be conveniently sketched in the Ogboni idea of the relation between Heaven and Earth. While it appears that Heaven and Earth are opposites, in actual fact, according to Ogboni cult, they co-operate together in harmony. This harmonious interaction is often projected by the Ogboni's image called *edon*. The *edon* consist of two brass or bronze figures, one male and the other female. This image is seen as a harmonious union between man and woman. Being different sexes, they are dissimilar, but necessarily bound to each other, chained and dependant (Hallgren 1988: 56).

Interpretatively, this image represents the harmonious relation between Heaven and Earth where the king represents the earth and impliedly, the law while the Ogboni represents the Heaven and impliedly, morals. Morals do not change just as the Heavens do not change speaking of the character of the deities and the Almighty God while law will have to change reflecting its conformity with the Heavens, i.e. morals. In this kind of philosophical vision, "power is divided between the king who represents the earth and its laws and the Ogboni representing Heaven" (Hallgren 1988: 66) and its morals that laws will have to conform to. On the whole, co-operation between law and morals is needed, just as co-operation is needed between Heaven and Earth, and between a man and a woman, to ensure justice, social continuity and harmony.

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the Igbo's reverence for "Ala" law and order was guaranteed in traditional Igbo society, and legal sanctions were imposed on the people from the world of the Sacred".

[10] There is a popular proverb in Yoruba land which conveys the import of this assertion. Among the Yoruba people, it is said that *Omode bu iroko, on boju wehin, ojo kan ko ni iroko npa ni* meaning that "a little child insults the gods and looks back not knowing that it is not in a single day that the gods fight back."

4. Conclusion

Even though the Ogboni institution is still practised in these modern times, it is no doubt true that its overall importance as it existed in the traditional Yoruba legal structure has diminished significantly. A relative corroboration of this can be discerned in the fact that many of the laws in operation and enforcement today in Yoruba land have all been taken over by the presence of the modern state. Again, a major clue to its diminished influence consist in the fact that many of the laws that the Ogboni institution protected and tried to enforce as the custodians of the divine oracles are branded as customary laws in the present dispensation and many of such laws are branded as repugnant to natural justice, equity and good conscience.

More importantly, the status, position, authority and power of the Ogboni and its place in the structure of traditional Yoruba jurisprudence is and has undergone rapid change, in part due to foreign cultural influences, introduction of cash economies, modern technology, industrialisation and the changing patterns of population consequent upon rural-urban migration.

In conclusion, whatever way in which it is conceived, the argument and the analyses so far have been highlighted to prove the point that before the advent of colonial rule, traditional Yoruba society had its own system of laws and the procedures for their administration. That a system of laws and their administration in totality was not as sophisticated as the structure in western countries is not a basis for the denial of the legal characteristic which the dwellers of such societies believe them to possess. For, there is a world of truth in the statement that, no matter how simple looking a belief system or culture is, from which their laws, taboos and customs originate, the fact of their survival as a people, with a distinct sense of culture, is enough evidence of their ability to engage in critical examination of their own beliefs and significantly, of the worth of their laws in guiding and regulating their destinies.

References

Abimbola, W. 1976.
IFÁ An Exposition of Ifa Literary Corpus. Ibadan: Oxford University Press.

Awe, B. 1977.
The Iyalode in the Traditional Yoruba Political System. In: *Sexual Stratification: a cross-cultural view,* Alice Schlegel (ed.). Columbia: Columbia University Press.

Bascom, W. 1944.
The Sociological Role of the Yoruba Cult-Group (reprinted 1969).
1969 *The Yoruba of Southwestern Nigeria*. New York: Longman.

Beier, U. 1975.
The Return of the Gods. The Sacred Art of Susan Wenger. Cambridge: Cambridge University Press.
1980 *Yoruba Myths*. Cambridge: Cambridge University Press.
Bewaji, J.A.I. 2002.
Language, Culture, Science, Technology and Philosophy. **Journal on African Philosophy** 1(1).
Bloom-Cooper, L. and Drewry, G. 1976.
Law and Morality. London: Duckworth.
Carroll, K. 1967.
Yoruba Religious Carving (Pagan & Christian Sculpture in Nigeria & Dahomey). London: Longman.
Comstock, G.L. 1979.
The Yoruba and Religious Change. **Journal of Religion in Africa** Vol. X/1: 1–12.
Daramola, O. and Jeje, A. 1970.
Asa ati Awon Orisa Ile Yoruba. Ibadan: Onibonoje Press.
Echekwube, A. 2002.
Traditional Social Institutions and Human Rights Promotion in Nigeria. **Enwisdomization Journal** 2(1): 26–37.
Forde, D. (ed.) 1951.
The Yoruba-Speaking People of South-Western Nigeria. Ethnographic Survey of Africa: Western Africa, Part IV. London: Longman.
Freeman, M.D.A. 1996.
Lloyd's Introduction to Jurisprudence. London: Sweet and Maxwell.
Hallgren, R. 1988.
The Good Things of Life. A Study of the Traditional Religious Culture of the Yoruba People. Loberod: Plus Ultra.
Hart, H.L.A. 1958.
Positivism and the Separation of Law and Morals. **Harvard Law Review** Vol. 71, 593–629.
1961 *The Concept of Law*. Oxford: Clarendon University Press.
Holmes, Jnr. 1920.
The Common Law. Harcourt, Brace.
Idowu, B. 1963.
Olodumare. God in Yoruba Belief. New York: Longman.
Ike, O.F. and Edozien, N.N. 2002.
Understanding Africa, Traditional Legal Reasoning, Jurisprudence and Justice in Igbo Land. Enugu: CIDJAP Publications.
Imoagene, O. 1976.
Social Mobility in Emergent Society. Canberra: The Australian National University Press.

Jones, R.W. 1946.
Orisa Oko, the Yoruba Goddess of the Farm and Agriculture. **Nigeria Magazine** No. 23, 118–121.
Law, R. 1977.
The Oyo Empire c. 1600 – c. 1836. Oxford: Clarendon Press.
Morton-Williams, P. 1960.
The Yoruba Ogboni Cult in Oyo. **Africa** 30(4): 362–374. London.
Nowell-Smith, P. 1954.
Ethics. Baltimore, MD: Penguin Books.
Ojo, J.R.O. 1972–1973.
Ogboni Drums. **African Arts** (6)3: 50–52.
Peel, J.D.Y. 1968.
Aladura: A Religious Movement among the Yoruba. Oxford: Oxford University Press.
Roache, L.E. 1971.
Psychophysical Attributes of the Ogboni Edan. **African Arts** 14(3): 48–53.
Schlegel, A. (ed.) 1977.
Sexual Stratification: a cross-cultural view. Columbia: Columbia University Press.
Smith, R.S. 1976.
Kingdoms of the Yoruba. Norwich.

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