AN INTEGRATIVE NOTION OF PUNISHMENT IN TRADITIONAL YORUBA CULTURE

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A Thesis in the Department of philosophy,
Submitted to the Faculty of Arts
in partial fulfilment of the requirements for the Degree of
DOCTOR OF PHILOSOPHY

of the

UNIVERSITY OF IBADAN

November 2011

ABSTRACT

A challenge confronting the study of punishment in contemporary society is the justification of the institution concerned with the deliberate infliction of suffering on an offender. Most of these justifications have been anchored on either of two competing theories, namely the utilitarian and retributivist theories of punishment to the neglect of integrative notion of punishment found among the Yoruba. However, these theories fail to account for some elements necessary for an adequate conception of punishment such as proportional gravitation of punishment and the aversion to punishing the innocent. This study, therefore, examined the notion of punishment within the Yoruba culture, which reconciles the physical and non-physical aspects of human existence, in order to arrive at an integrative notion of punishment.

The study adopted the hermeneutic theories of Hans-Georg Gadamer and Jurgen Habermas. Gadamer evolves an interpretive understanding based on the role of tradition and language, while Habermas' notion of praxis and constitutive interests provides the basis for understanding the constitutive interests and social class structure which determines who exercises what responsibilities in any society. These views thus provide the basis for understanding the dimensions of punishment in Yoruba culture. It also employed the conceptual, critical and constructive methods of philosophy. Data were collected from archival and library materials and subjected to content analysis.

The integrative notion of punishment in Yoruba culture goes beyond the discussion of the idea of punishment in western penology within the framework of the utilitarian-retributive debate. It provides for a coherent interconnection among social structure, law and belief system towards the certitude and trust making for harmonious human well- being. Nevertheless, the offender is restitutively reconciled to himself, the victim and the community at large. This underscores the saying that *ìka tí ó se ni oba ń gé* (It is the finger which offends that the king cuts) to buttress the judicious imposition of punishment on the offender as a means of establishing responsibility for human actions rather than disproportional gravitation of punishment which may degenerate into further antagonism and animosity. Besides, the notion constructively addresses the dispensing of justice in the quickest manner possible against the formal and cold procedural nature of justice. Also, the Yoruba saying *bi a ba fi owo òtún na omo eni, a fi t'òsì fà à móra* (when a man beats his child with his right hand, he should draw him to himself with his left) advances a creative and flexible human activity, whereby human beings are amenable to change and deserve integration into the community, though the social relations might have been breached because the crime still remains in people's memories.

The achievement of social order is enhanced by the integrative notion of punishment in Yoruba culture. Therefore, it is recommended that this approach should be incorporated into the adjudicatory system in contemporary penal practice.

Key words: Hermeneutics, Integrative punishment, Justice, Retribution, Traditional Yoruba culture

Word count: 465

CERTIFICATION

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DEDICATION

This work is dedicated to the memory of my teacher and mentor, Professor Olusegun Oladipo (1957-2009), who passed on to glory after a brief illness on Friday 11th day of December, 2009.

ACKNOWLEDGEMENTS

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challenges towards my reinstatement at Olabisi Onabanjo University. May you continue to wax stronger from strength to strength. Amen. You are very wonderful. In addition, I thank both the academic and non-academic staffs of the Department of Philosophy, Olabisi Onabanjo University, for their encouragement and for facilitating an enabling environment to see this work through.

In a special way, I thank my wife, Funke, and my baby girls, Kofoworola and Eniola for their endurance and steadfastness in accommodating my shortcomings during the course of this work. Besides, a gift of baby born when one lest expected in the person of David Oluwamayowa Oladehinde is worth praising the Almighty Lord, for his mercy is everlasting. I thank Dr. Emmanuel Akintona, most especially for his spiritual guidance and moral support. My gratitude will not be complete without mentioning Mr. Ogunlabi, my teacher in Yoruba language, for his readiness to enrich me with relevant Yoruba oral poems during the course of the work. Also I am grateful to the following people: Mr. Victor Adefarasin, Dr. Jide Dasaolu, Dr. Adegboyega, Mr. precious Obioha, Mr. Felix Oyenuga, Mr. Surakat, Miss. Seun Adenugba, Mrs. Funmi Ade- Ali, Mr. Dele Idowu, Mr. Charles Odesanmi, Miss. Tolu Ajayi, Dr. Martin Onwuegbusi, Mr. Jare Aina (N.L.L.), Dr. Babawale Taiwo, Dr (Mrs) Adagbada and many others.

Finally, I express my gratitude to my parents, Chief and Mrs. E. A. Aina, Mr. Tunde Olukoya, (Father-in-Law), Princess (Otunba) Folashade Olukoya, Chief Olumuyiwa Runsewe, Prof. Festus Osiyemi, Wale Aina, Sunday Olukoya, Debo Aina, Bola Olukoya, Yomi Olukoya, Lara and Biodun Kwasima, Segun and Abolore Olukoya, Tunji Aina, Chief & Mrs. Tunde Aina, Mr. & Mrs. Adeyemi and a host of others, who have in no little ways, shown concern at every point of need. I wish to thank Mr. Suleiman Badmus for his readiness to correct and re-correct again when typesetting this thesis.

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INTRODUCTION

The human society is a cooperative endeavour secured by rules and regulations. These rules and regulations are conceived obligations when the general demand for conformity is insistent and social pressure brought to bear on any individual who deviates or threaten to deviate. As a result, individuals who composed a society enjoy a number of benefits and share burdens available only because of the cooperation of their fellows. The social order then enables people to work together for common purposes and to pursue in peace their private interests. But this is realized when everyone, through cooperation, helps to maintain this order[1]. This engenders the fact that only those who enjoy the benefits and burdens of society owe their cooperation and rights to the other members of society. But, if an individual fails to partake in these acts of cooperation, then such an individual has taken an unfair advantage of others. For this reason, punishment must be enforced on such an individual as a means of addressing this contractual agreement[2]. This is to say that the notion of punishment is necessary for the maintenance of this social cohesion.

But one of the problems with the study of punishment in contemporary society revolves around the principle of proportionality, and punishing the innocent as one of its consequents, in which the western traditional theories of punishment are grounded. Most of the philosophical discourses on the study have been grounded historically on two quite contrasting and competing theories: utilitarian and retributive. The utilitarian rationale of punishment principally holds that only future consequences are important to present decisions through the means of incapacitation, deterring and reforming potential offender. It argues that the offender's punishment can be cancelled in as much as it emphasizes the rights of greater number of people not to suffer. Its inadequacy stems from the manner in which it attempts to solve the problem of consequences

based on suffering at the expense of a conception of right. That is, its failure to take account of the relevance of the injustice of certain punishments when determining whether they are permissible or even obligatory. Hence the utility of punishment is the only morally relevant consideration. For example, it could turn out that unjust punishment of innocents would effectively serve the interest of crime prevention of the majority.

Retributivism attempts to fill the void. The retributive justification of punishment claims that the guilty deserves to be punished and no moral consideration relevant to punishment outweighs the offender's criminal desert. The retributivist believes that breaking the law is approximate to taking advantage where others choose not to, and as this is wrong in itself, quite aside from any external consequence, it deserves to be punished. Retributive justice, then, requires that wrongdoers get no more but not less than what is proportionate or just to their crimes. However, the cutting edge, upon which the argument of retributive justice depends, is the implication of the principle of proportionality. Justice demands that any principle of desert must be evaluated in terms of condition whereby, in committing an offence, the offender is meted with the degree of punishment commensurable to the gravity of the offence he committed. For it is not impossible that retributive justice may be lured by one or another form of '*lex talionis'* (revenge), as there precludes the sufficient proportionality principle in this argument. For example, there are some problems with the particularity of distribution of burdens and benefits of punishment. It will be difficult, if not impossible, to evaluate and determine the punishment, in respect to the principle of proportionality, to be meted on a rapist other than serving of jail term. Hence it provokes the need for an alternative theoretical orientation, which this study seeks to provide. This is grounded in the Yoruba ontological practice.

Given the inadequacies of traditional theories of punishment as depicted by utilitarian and retributive theories, my thesis is that the integrative approach to punishment within the Yoruba culture is a more adequate approach to punishment for it does not only engender restitution, retribution and deterrence but it also reconciles the physical and non-physical realms of existence, which provides, above all, the social order which is the goal of punishment. It shows that the course of justice hinges on the integration of the natural and spiritual realms of existence as the vital elements to sustain the unitary nature of justice in the world. The Yoruba people are conscious of the fact that whatever they do or do not do will be accounted for mostly in the spiritual realm. This consciousness affects their daily moral practice. They believe that the wrongs ought to be sanctioned for their wickedness, while the rights are to be rewarded for their good deeds. So the natural and spiritual realms must work together in order to realise an ideal punishment in Yoruba thought system. Thus, integrative approach to punishment engages itself with matters of crime and its attendant punishment, which transcend the traditional theories of punishment. The Yoruba belief is that it is he who commits a crime that should be sanctioned (*ìka tí ó se ni oba ń gé*). And integrative punishment is proportionate to the crime. In the reparatory sense, an injured person must be compensated by the other party for damages done. The Yoruba believe that moral evil committed either against natural beings or a supernatural entity could ignite grievous consequence not only to the individual concerned, but also to the community, if appropriate restorations are not effected. As a result, the culprit is required to first change his ways through renouncement to the community and then offer sacrifices to the spiritual beings provoked. Indeed, punishment, in this tradition, functions not so much to reform or deter potential offenders, but rather to maintain social cohesion by safeguarding a vigorous collective conscience.

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The theoretical framework of the study is anchored on the hermeneutic theories of Hans-Georg Gadamer and Jurgen Habermas. Gadamer's interpretive understanding is based on the role of tradition as a pivotal avenue at understanding events and happening in society which are tradition bound. Habermas' notion of praxis and constitutive interests transcends the perceived inadequacies of Gadamer's exclusive focus on language and tradition. Habermas' hermeneutics impresses the need to go beyond tradition and language and make power relations in society, which constitutes not only the basis for understanding and constitutive interests, but also the social class structure in society which determines who exercises certain power in any given society.

Gadamer and Habermas are relevant to our integrative notion of punishment in traditional Yoruba culture because, they provide for us the opportunity to understand the language of discourse and tradition within Yoruba culture concerning the various dimensions to punishment. And Habermas' hermeneutic approach helps us to understand the power relations in Yoruba culture and the authority saddled with this task of interpretation.

The work is divided into six chapters. Chapter one is on the utilitarian theory of punishment. It addresses the justification of punishment from the utilitarian approach. I discuss the concept of punishment, variant theories of utilitarianism and the critique of the utilitarian theory of punishment.

Chapter two delves into the retributive theory of punishment. It constitutes a response to the inadequacies of utilitarian theory of punishment in chapter one. Here, I elucidate the basic features of the retributive theory of punishment and the weaknesses and responses that arise in connection with the theory. Lastly, I highlight a compatibility of the traditional theories of punishment in the mixed theories of punishment.

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Chapter three is an analysis of punishment in traditional Yoruba culture. I attempt, first, the short historical background of the Yoruba. Also the Yoruba ontological idea is discussed. Afterwards, a descriptive accounts in which punishment is administered in traditional Yoruba culture including the role of the supernatural punishment, the impact of religious and social institutions and punishment within the family.

Chapter four concerns Gadamer and Habermas' hermeneutic theories as theoretical framework. We trace the trends of hermeneutic discourse from the Romantic hermeneutics through the Phenomenological hermeneutics. The essence of this evolutional discussion in the study is to broaden our horizon on the meaning and nature of hermeneutic approaches as well as its impact on our theoretical framework. Afterwards, the theoretical significance of Gadamer and Habermas to the integrative notion of punishment in Yoruba culture will be highlighted.

Chapter five is on the integrative notion of punishment in traditional Yoruba culture. Three issues are discussed in the chapter. First, that the Yoruba notion of punishment transcends the western traditional theories of punishment discussed in the first two chapters. Also, that there appears an integrative approach to punishment given the various aspects and elements that are put together in chapter three. Finally, the anticipated objections to integrative notion of punishment and reply are touched.

The final chapter, chapter six, is on the Integrative notion of punishment and the contemporary society. It attempts to articulate the gains, theoretical and practical, that could be derived from the study of integrative notion of punishment in traditional Yoruba institution and their relevance to the contemporary society.

The Conclusion gives a summary of the main points and arguments of the study.

Endnotes

[1] Order, in this context, is seen as the reflection of the overall patterning of a society and indeed of all societies. And there can be no order where there is no sovereign authority entrusted with the dispensation of justice. However, the definition of order is a constant and highly contested theme in philosophical, political and psychological reflection but its conceptions are always accompanied by meaningful self reflection. In this sense, self reflection is always part of the reality of order, perhaps of social order. For good account of this see Rensger, N.J. 2000. *International Relations, Political Theory and the problem of order: Beyond International Relations Theory?* London and New York: Routledge.

[2] Contractual agreements are an exchange of undertakings or promises, as reflected in our discourse, by which each contractor acquires an obligation to act in a particular way, and a right that his fellow contractors also act in some particular way. And these rights and obligations are conditional and their scopes embrace the legitimacy not just of political institutions but of social institutions more generally. For a good discussions of this and related topics see Lessnoff, Michael. Ed. 1990. *Social Contract Theory*. New York: New York University Press.

CHAPTER ONE
THE UTILITARIAN THEORY OF PUNISHMENT

This chapter attempts to address the justification of punishment from the utilitarian approach. I discuss here that the utilitarian claims that the rightness or wrongness of an action depends on the balance of good over evil that is produced by that action. That is, the justification of punishment is associated with a cost-effective means to certain independently identifiable goods. The chapter is structured, first, to discuss the concept of punishment. I shall thereafter consider the strength and weakness of the utilitarian mode of punishment.

The concept of punishment

The general impression is that the concept of punishment involves the deliberate infliction of some kind of pain on an offender by a person or body of persons who claims the authority to do so. The essentials of this impression can be stated briefly as assuming that there exists a system of equal, basic, inalienable rights, guaranteeing to all citizens a body of equal liberties. By doing certain forbidden things, a person can exceed the bounds of his or her liberties. The offender thus arrogates to himself or herself excess liberties: the scheme of equal rights is upset. In order to restore it, the person's basic liberties must be restricted in an equal but opposite way. This means that punishment is an institution for social protection, and one that does not impose unjustified burdens on individuals who commit crimes (Alexander, 1986:178). These result from the belief that man lives in a community of persons where each pursues his own interest, yet each is expected to respect the interests of others in order to make possible the sharing of the benefits and burdens of life in a civilized society. People must be encouraged not to shift their burdens of restrain on others as they seek their own ends. When this is done, it becomes imperative that acceptable remedies be applied to undo the harm as much as possible. In other words, it is important to take steps that will reduce the possibility of harms being done in

the future. This calls for holding to account those, and only those, who properly are accountable when something unpleasant occurs. Against this submission, Anthony Flew baldly states, though descriptively and precise, five essential and defining characteristics of punishment as thus:

> (1) it must involve the imposition of suffering (or deprivation of privilege); (2) it must involve the suffering or deprivation of the offender; (3) the offender must suffer for his offence; (4) the suffering or deprivation must be imposed by a human agency; (5) the punishing agency must be authorized to impose the punishment (Loftsgordon, 1966: 342).

Implicit in these characteristics are hard treatment involved in punishment and its expressive aspects in reality. This includes authoritative disavowal of the crime committed, symbolic non-acquiescence in it, vindication of the law which has been broken and placing blame squarely on the culprit and thereby absolving anyone else who might have been suspected (Primoratz, 1989:188).

> John Rawls[1] compliments thus that:

> A person is said to suffer punishment whenever he is legally deprived of some of the normal rights of a citizen on the ground that he has violated a rule of law, the violation having been established by trial according to the due process of law, provided that the deprivation is carried out by the recognized legal authorities of the state, that the rule of law clearly specifies both the offense and the attached penalty, that the courts construe statutes strictly, and that the statutes was on the book prior to the time of the offense (Rawls, 1955:8).

I may infer from these arguments that a just punishment must not only involve intentional deprivation of a person's normally recognized rights by the authority responsible, using coercive means if necessary, but must also emphasize the good it will achieve so great that it outweighs the evil of the injustice involved [Mccloskey, 1969:91-92]. For it is necessary in a society, which takes justice seriously, to prefer the infliction of pain as prohibited by law as a means of condemning harmful conduct. To do otherwise would be to fail to protect and vindicate the rights of individuals against misconduct a criminal is principally designed to suffer. However, these

measures, according to Rawls, presuppose that several conditions embedded in pure procedural justice have to be satisfied. First, the offender must have been capable of preventing the act to which the liability is attached. His liability to punishment is determined by his own acts and omissions as specified by those laws. Second, the person must have performed the act with preconceived relevant factual properties. That is to say, he must have been conscious of the undertaking of a liability to suffer punishment as a necessary consequence of such an act. It makes the punishment deserved to be that authorized under a fair penalty schedule. The punitive severity must accord with the principle of proportionality: the graver the crime, the more severe the deserved punishment. In other words, punishment in this line of thought must not be severe as to be inhumane or cruel and unusual. Also, the rights of the accused, convicted and offenders must not be violated all for the sake of punishment. Finally, the undertaking of a liability to suffer punishment was a necessary consequence of such an act. That is, unlawful harmful conduct is preferably prevented before the fact rather than punished after the fact. It is important that compliance under threat is much preferred to non-compliance followed by arrest, trial, conviction, sentence and punishment. As a result, the knowledge of the lawful proscription is never retroactive in nature. It is legally appreciable if the offender consents to assume the liability to suffer punishment involved in the voluntary commission of an offence with the knowledge that that liability is a necessary consequence of it (Rawls, 1955: 1-13). Nino (1983:306) adds:

> Unless we rely on the moral autonomy of the individual, making his liability to punishment depend on his free and conscious undertaking of it, all the burdens imposed on offenders, even in the name of treatment would be unfair even if they are not accompanied by tangible countervailing benefits.

Nevertheless, the value of punishment varies and is determined by the value of what one has done. Thus Kurt Baier (1983: 248-255) analytically states that the given cases of punishment as either deserved or flawed, and that if people attempt to state the necessary and sufficient conditions of something being punishment, they must be able to distinguish between those of flawless punishment and those of punishment whether flawless or flawed. Baier agrees to the fact that deserved punishment is deprivation imposed on someone only if he/she has been properly found to satisfy the condition(s) for which the system of punishment approves. (1983:249). But it will not be deserved punishment where the imponent made a mistake in judging that the offender did satisfy the stated rules. Baier comments that if the accused is found innocent, then an imposition of deprivation after that can neither be punishment nor a miscarriage of justice but rather 'naked, blatant, shameless, mistreatment or victimisation' (1983: 249). This Baier used to draw attention to the distinction between punishment and victimisation with a much quoted article of K.B. Armstrong that victimisation is a mistake because it would include cases such as those of an innocent man who had been found guilty by a court that had meticulously observed formal court procedures, been sentenced to death and been executed (1983: 250).

However, this distinction between punishment and victimisation is rather a conditional case. If it is presupposedly known that the imposition is victimisation, then it cannot be punishment, hence no one who knows or believes that it is victimization can consistently believe that it is punishment, hence those who are unaware of its being victimisation merely believe, wrongly, that it is punishment until they discover that it is victimisation. So the fact that someone discovers that an imposition is a miscarriage of justice does not show that it was or is not

punishment (1983:250). It is therefore an issue of who can know what a punishment is and when victimisation emerges.

Thus deserved punishment is conceived to 'right the wrong of the criminal's disproportionate benefits-to-burdens ratio by imposing greater-than-normal burdens upon her' (Garcia, 1989:270). That is to say 'when I do something bad, I can lose or forfeit some of my normal moral rights against some unwelcome forms of treatment. Similarly, when I do something good, I may add to my rights certain special rights to form of treatment to which I am not normally entitled' (Garcia, 1989:263-264).

However, it may be well to consider how some familiar theories would address the problem of the right to punish. It involves a distinction between a justification of the right to punish in a particular case and the justification of a certain claim that one has a duty to punish in a certain case. Most of the discussions on the traditional [2] conception of punishment agree to the fact that it is justified, but they offer various accounts of how it is to be justified as well as what the infliction of pain attempts to promote. That is, philosophical justification of the practice of punishment rests on a duality of values. These conflicting values point to the utilitarian and the retributive justifications of punishment. The punishing authority, it is agreed, in some cases where it has the right to punish, may decide otherwise on the utilitarian ground that the punishment will probably do more general harm than good. Whereas some view that I have the right to punish a particular person only because he has committed an offence in the past but never merely because I think his punishment will do more overall good than harm in the future. But our discussion for now in the chapter focuses only on the first aspect of the justification of punishment, which is the utilitarian theory of punishment.

The utilitarian theory of punishment

The utilitarian contends that the rightness/wrongness of actions is to be judged by their consequences. 'Action' in this context can be interpreted from two perspectives. According to J.J.C. Smart (1956:344-345), these actions are typified as: extreme and restricted utilitarianism. Extreme utilitarian affirms that rules do not matter whenever estimating consequences of actions taken at any point in time. According to this doctrine, the rightness or otherwise of keeping promise on a particular occasion, for example, depends only on the goodness or otherwise of the consequence of keeping or breaking the promise at the point of execution. It is merely rules of thumb which I use only to avoid the necessity of estimating the probable consequences of my actions at every step. Conversely, with restricted utilitarian, individual actions are strictly directed by their consequences (a) when the action comes under two different rules, one of which enjoins it and another of which forbids it and (2) when there is no rule whatever that governs the given case. In short, the doctrine holds that moral rules are more than rules of thumb. The rightness of an action is not to be tested by evaluating its consequences but only by considering whether or not it falls under a certain rule. So whether the rule is to be considered an acceptable moral rule is, however, to be decided by considering the consequences of adopting the rule. In other words, actions are to be tested by rules and rules by consequences. However, be it extreme or restricted utilitarianism, its conception of punishment is justified to the extent that its practice achieves whatever end-state the theorist specifies. But a most important part of the theory of punishment is the careful articulation of the norms that provide this constraint on the practice and their rationale.

To this end, the utilitarian rationale for punishment principally holds that only future consequences are important to present decisions. The utilitarian will argue that punishment can

be justified on the condition that 'it has beneficial consequences which outweigh the evil of deliberately and intentionally inflicting suffering on human beings' (Burgh, 1982:194). That is, punishment only serves as a referent to the probable consequences of maintaining social order to the effect that wrongs committed in the past are not significant for consideration at the moment. In other words, what the utilitarian advocates attempt to say, is that if punishment is the only realistic means of enforcing compliance with the law, then, in causing the offender to suffer, I should continue to exercise its enforcement in order to create a state of affair in which there will be fewer violators of the law, and less suffering in the world. These beneficial consequences imply that if punishment is the only realistic means of maintaining law and order in the society, then the offender should be made to suffer in order to entrench less suffering. It shows that the offender's punishment can be sustained in as much as it emphasizes the right of greater number of people not to suffer. Implicitly, the point the utilitarian accounts for concerns the institution as a system of rule by justifying its application only to foster effectively the good of the society. This is with the intent that no official should have discretionary power to inflict penalties whenever he /she thinks it for the benefit of society; for on utilitarian grounds an institution granting such power could not be justified. Hence, in the utilitarian's drive to curtail a greater evil, it contends that the society is obligated to inflict pain upon a certain individual or a body of individuals to restrict their liberty in order to promote a favourable balance of utility (Philips, 1986:395). In short, it is a reduction of punishment to the wish of an overall social welfare of the majority. In other words, the value society gains from the punishment are more than the disadvantages incurred by the offender.

In maximizing the majority utility, it follows that punishment should be applied when it leads to an improved situation. Even though punishment aggravates the suffering of the person

being punished, the utilitarian's claim is that punishment, and the threat of punishment, must increase the happiness of the society as a whole. So the utilitarian justifies punishment rather as a means to good than as an end in-itself. Punishment is valuable not primarily because it expresses a right attitude of moral disapproval but it has good consequences. That is to say, the question whether a particular punishment, or system of punishments is justified, would depend on the net value of all its consequences.

Thus far, I need to note that the utilitarian does not take account of the relevance of the claims of justice when determining whether a punishment is morally right. Rather he appreciates the utility of the punishment to be the only morally relevant consideration. This is seen to fall under the category of a theory of good rather than a theory of the right. A theory of good is grounded in the use and value of punishment. By use in this context, I mean that punishment is only justified when it prevents further crime. Punished persons have no rights that stand against their punishment because, in part, punishing them is so often useful in helping to deter others from committing crimes. This deterrent theory will be exhaustively analysed later in the chapter. Also, the value of punishment is more than the disadvantages incurred by the offender. The utilitarian views punishment as valuable as a means only and social in the sense that its immediate effects are what count most. However, most utilitarians agree that not only must punishment have both use and value, but also that there be no other solution that could deter effectively with less distress (Honderich, 1989:55). On the other hand, an idea of right falls under the retributive approach to punishment.

A brilliant illustration by Mccloskey depicts the picture of this theory of good. He develops an imaginary situation where a conscientious utilitarian deliberately bears false witness against an innocent person, in order to promote the greatest happiness for the majority in a race-

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torn community riot. He premised his argument on the fact that the sincere and thoughtful utilitarian, who framed the innocent person may have background knowledge of trouble-makers at work and race tension, which may develop into riots and lynching to reason that a victim named as the guilty, whose conviction will not distress others and who himself is a miserable person, would be ideal as sacrificial lamb. Mccloskey reasons further:

> Suppose a utilitarian were visiting an area in which there was racial strife, and that, during his visit, a Negro rapes a white woman, and that race riots occur as a result of the crime, white mobs, with the connivance of the police, bashing and killing Negroes, etc. Suppose too that our utilitarian is in the area of the crime when it is committed such that his testimony would bring about the conviction of a particular Negro. If he knows that a quick arrest will stop the riots and lynching, surely as utilitarian, he must conclude that he has a duty to bear false witness in order to bring about the punishment of an innocent person (Mccloskey, 1967:127).

I can infer from this argument that the utilitarian is out to justify punishment as a cost-effective means to certain identifiable goods. Whatever account the utilitarian gives of the final good at which all actions depend, the most important consideration in a system of punishment is the prevention of crime. It implies that in preventing crime I will thus be preventing the harms that crime causes by way of disabling the criminal from breaking the law again as well as educating the public on the need to dissuade from crime. It implies that punishment teaches both the culprit and public that crime is prohibited because it is morally wrong, and must not be perpetrated for this reason. I will now look into the variants of utilitarian justification of punishment.

Deterrent and reformative versions of the utilitarian theory of Punishment

The reasons adduced for deterrent positions by the utilitarian point to the following through which crime can be curbed in the society. First, the threat of punishment can deter a potential offender. When a potential offender views that whenever he breaks the law and a

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punishment is attached on conviction, and then he refrains from committing the offence contravening the rule. That is why moral indignation, vindictive feelings and hatred of the criminal are the most usual tactics employed to crime in all societies which proceeds to claim that they are also natural and healthy. This is premised on the belief that the society is aware of what is right and what is wrong: its need to express and gratify its hatred of the criminal is supervening on this knowledge. Primoratz (1989:188) affirms that:

> They cannot be preached away by moralists who want us to learn to turn the other cheek instead, for they are too deeply rooted in human nature. They are also fully legitimate; the whole criminal law is based on the principle that it is morally right to hate criminal. The central function of punishment is to express these feelings in a regular, public, legal way.

From the above position, the deterrent theorist compares punishment then to a sort of electrified fence marking a moral boundary. The pain this fence inflicts on those who try to cross it communicates a moral message to human beings, who are capable of reflecting on the reasons for the fence's standing where it does: the message that there is a barrier fencing off certain ways of acting because they are morally wrong (Hampton,1984:230). Hence people do not need the state to tell them that it is morally wrong to commit crime. But we know that some people are liable to commit such acts in the future, and that shows that not everybody realises vividly enough just how very wrong such acts are. Those who do not are in need of the kind of moral education that is provided when criminals are punished. Also, there may be special difference in the sense that one, who has been punished for a previous offence, may be deterred from committing future crimes. For him, the threat of punishment is enough, as it gives potential offenders prudential reason to obey the law.

Secondly, punishment in this view is determined to incapacitate offenders. If an offender is confined for a certain period of time, such criminal will be less likely to harm others during

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that period of time. The utilitarian is committed and convinced that a spell in prison will teach the offender a lesson and persuade him not to repeat his crime; that exposure to the atmosphere of disciplined work and the corrective attitudes of prison authorities will show him a better way of life; that potential offenders, fearing a like punishment, will forebear for that reason from a like crime. A quip response to this incapacitating impression is merely grounded on a series of unlikely empirical propositions. This is because the education benefits of a person are dubious in the light of statistics on recidivism. Publication of punishment for crime may work as encouragement rather than deterrence; most especially it serves to make potential offenders cleverer about avoiding apprehension (Perkins, 1970:55).

Finally, punishment is traditionally viewed from the utilitarian perspective to reform offenders so that they will not return to crime. Its aim is to help the criminal realise the wrongness of his action and mend accordingly. The ultimate concern here is to prevent and reduce crime. Alfred Ewing (1929:84) argues that for the criminal to be reformed, and not only be deterred,

> he must realise the badness of what he has been doing, and since his previous actions make it very doubtful whether he will do so on his own accord, this badness must be 'brought home to him' and the consciousness of it stamped on his mind by suffering. The infliction of pain is society's way of impressing on him that he has done wrong.

Critique of utilitarian theory of punishment

The inadequacy of the utilitarian theory stems from the manner in which it attempts to solve the problem of consequences based on suffering at the expense of a conception of justice. The deterrent theorist short-sightedly sees the justification of punishment, in its contribution to crime control, through the lenses of its deterrent effects. The theory is opened to legitimize various unjust punishments whenever these turn out to be efficient as well as economical means

of deterrence. That is, its failure to take account of the relevance of the injustice of certain punishments when determining whether they are permissible or even obligatory. This is premised on the fact that the utility of punishment, in itself, only depend on morally relevant consideration. But the critique, among the list of types of injustice which may prove socially expedient, will be limited only to the punishment of the innocent which implicitly crave for the criminal serving as means to an end in the course of justice.

The most familiar objection to utilitarian theory of punishment revolves around the sanctions imposed on an innocent person for the benefit of society. It treats punishment as a way of reducing crime, without reference to desert, through justifying victimization of innocent. I need to note that only those who need to be deterred, reformed and incapacitated are those who committed deliberate crimes in the first place. But in practice, victimization of innocent person would perhaps undermine the reasons for punishment in the first place (deterrence and reformation) by detaching punishment from crime. Baier refers this imposition of punishment as 'branding' the criminal, though innocent, to deserve the community's moral condemnation and the deprivation of certain rights (1983: 247-255). Punishment is to be socially useful to the extent that its communication must be true and delivered to the right person. But if it is inflicted on an innocent person, it can have no desirable effect to the society; it can only confuse, embitter and corrupt both the person punished and everyone else. If it is to be socially useful in the relevant sense, punishment must be deserved and just.

Also, punishment of the innocent implies a set of dangerous precedent for the society. After all, there will no longer be safe haven for people, despite having chosen law-abiding lives. It engenders distressful situation for the society as its members would feel that there is nothing to protect them from being the next target. Mccloskey's argumentation of punishing the innocent,

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for example, attracts two interesting questions: (1) whether it is logically possible to earmark suffering upon the innocent without cause, and (2) whether it is ever morally justified to impose suffering upon the innocent by the utilitarian with the belief that by doing so more overall good than harm will be produced. I need to note that this is a surprising assumption, considering that in that case punishment could hardly serve even as a means of deterrence. This assumption may provoke impossibility on human nature that no matter against which particular theory it is framed, the argument on punishing the innocent assumes just the opposite, that is, that the public can be deceived into believing the accused to be guilty.

Nevertheless, in reaction to the first question, it is logically a mistake to punish the innocent in as much as the punishment involves only the suffering of the offender and for his offence. Besides, it is morally intolerable to unjustly punish the innocent. In short, since the utilitarian is committed to performing this clearly wrong act, the utilitarian justification must be wrong. Sprigge notes a number of criticisms, oft- quoted by Mccloskey (1967:95) in this respect, thus:

> (a) The improbability of the whole situation and of the manner of approaching it;
> (b) the fact that utilitarianism bases its judgment on foreseeable consequences that rest on well-established generations, whereas the person contemplating bearing false witness would be acting on a hunch; (c) that it is dangerous for people to act on such hunches; (d) the certainty of the misery of the convicted man (all the worse for his being innocent) and the uncertainty of the evils the false witness is designed to prevent; and (e) the harmful effects on the agent's character.

Furthermore, the utilitarian deterrence theory for the punishment of the innocent without reference to right-relevant properties of person, 'treat men like dogs, merely to be manipulated' (Lofts-Gordon, 1966:349). It thus uses those who are punished merely as means to further the ends of the society with the denial of respect, moral standing of victims as responsible human agents. As such, this echoes Kantian maxim to treat a human being always as an ends and never

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as means only. In treating man as a means only, I ignore part of his nature- his being a rational being, a person and an end in-itself. The utilitarian deterrence uses punishment to habitually reinforce the wrongness of crime in the minds of both criminals and ordinary people.

But a deterrent theorist may respond by appealing to the deterrent effects of punishment on the person who is punished. Punishing the innocent in the race riot engenders a moral lesson where the happiness of the majority counts through the stoppage of genocide other than through regrettable feel for a misery person. Also, punishing, to the deterrent theorist, in an attempt to make a criminal's future behaviour morally acceptable could not naturally be construed as making use of him. Rather, we should look up to the social utility that would result from this improvement than at the punished person's edification. (Quinn, 1985:331). I strongly object to the commitment of a misery person as sacrificial lamb in order to preserve the life of a majority. Even the hopeless in society should be encouraged to get reformed talk less of a sound moral agent. This argument is supported by Anthony Duff. He condemns the refusal to morally reform criminals on the grounds of hopelessness. To refuse to act on the hopeless being

> is to give up any respect or hope for him as a moral agent; and this we may not do. The point here is not that we can never have empirically adequate grounds for believing that punishment will not in fact bring a criminal to repentance; it is rather that we can never have morally adequate grounds...for treating a person as being beyond redemption. We owe it to every moral agent to treat him as one who can be brought to reform and redeem him-to keep trying, however vainly to reach the good that is in him, and to appeal to his capacity for moral understanding and concern (Duff, 1986: 266).

Finally, the deterrence theory promotes after all punishment with minimal utility value. The punishment of the innocent would after all prove to be as a gross immorality, a crying injustice, an abominable crime and not what it pretends to be. Indeed, it is morally flawed that the action which occasioned the whole proceedings was not properly shown to be a crime, but a

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new crime was committed instead. If a poor man who lies in order to survive is caught, by the utilitarian, for example, he may be punished in such a way that he cannot steal again. But, in an attempt to do this, the society excludes greater evil from her fold while the thief is now reduced even to greater evil [3] (Oruka, 1976).

However, in order to avoid the above charges, I must show that there is something about the offender, apart from the consequences of punishing him, which justifies us in cancelling his right not to be made to suffer. The retributive theory, in as much as it stresses desert, fills this gap.

In concluding this chapter, I have been able to show the strengths and weaknesses of the utilitarian theory of punishment. The utilitarian holds that punishment can be justified only if it has beneficial consequences, which outweigh the evil of deliberately and intentionally inflicting suffering on human beings. It contends that the society is obligated to inflict pain upon a certain individual or a body of individuals irrespective of their right in order to promote a favourable balance of utility. This approach to punishment provokes objections that, first, its deterrence theories commit us to punish the innocent; second, it commits the society to punishment that is disproportionate to crime; and finally, it promotes punishment that after all has no utility value. It is these shortcomings, among others, that the retributive justification of punishment attempts to address with the view that the society is entitled to impose penalties on criminal acts in as much as they are immoral and that the only legitimate function of punishment is to exact desert on perpetrators of immoral deeds.

Endnotes

[1] John Rawls (1921-2002) looks at punishment from his justice as fairness principle which engenders governing the assignment of rights and duties and regulates the distribution of social and economic advantages. See especially Rawls, John. 1985. *A Theory of Justice*. Oxford: Oxford University Press ; and Rawls, John. 1985. Justice as fairness: political not Metaphysical. *Philosophy and public Affairs*. 14.3. 223-51.

[2] Traditional in this sense refers to the Western philosophy. Besides, the basis of our study revolves around the problem of punishment in this school of thought. For a good account of western Philosophy see Bertrand Russell. 2001. *History of Western Philosophy*. London: Routledge. Also, for some general debates and discussions touching on philosophical analysis and criticism see O'Connor, D. J. Ed. 2000. *A Critical History of Western Philosophy*. London: Collier Macmillan Publishers.

[3] Odera Oruka, an absolutionist on punishment, strongly canvasses against punishing individuals but rather submits that some societal factors are responsible for crime. More on this will be discussed in the next chapter. Meanwhile see Oruka, H.O. 1976. *Punishment and Terrorism in Africa: problems in the Philosophy and practice of Punishment*. Nairobi: East African Literature Bureau.

CHAPTER TWO
RETRIBUTIVIST THEORY OF PUNISHMENT

The chapter examines the retributivist theory of punishment. The theory constitutes a response to the inadequacies of cancelling a right merely on the grounds that its cancellation contributes to the preservation of the rights of a far greater number of people at the expense of justice, of what the utilitarian account of punishment commits us to in the last chapter. Justice demands that the guilty be punished, in as much as he has unfairly appropriated benefits by not restraining himself from acting on inclinations in the ways, in which the other members of society did. Also, burdens have been unfairly assumed by both the criminal and law abiding citizens. So in punishing the offender, the benefit is withdrawn by the imposition of a burden, thereby restoring an equitable distribution of benefits and burdens which existed prior to the offence.

In this chapter, I explore the basic features of the retributive theory of punishment with an emphasis that a morally tolerable account of punishment must include the idea that an offender, in virtue of committing an offence, deserves to be punished. I proceed to consider some critique and responses that arise in connection with the theory. The last section of the chapter is devoted to a critical analysis of the utilitarian and retributivist theories of punishment in the mixed theories of punishment.

The retributivist theory of punishment

The retributivist justification of punishment is grounded on two *a priori* norms namely: that the guilty deserves to be punished and no moral consideration relevant to punishment outweighs the offender's criminal desert; and an epistemological claim, that I know with reasonable certainty what the guilty deserves. Criminal laws are similar to moral rules in that they also state standards of behaviour. But these are standards of society, organised into a state

with its legal order; they presuppose the authority of the state and its legal order. They are authoritatively formulated and applied solely through formalized procedures in appropriate institutions. Primoratz (1989: 197) adds:

> Legislative institutions of the state pass criminal laws which determine some of our most important legal rights, and turn their infringements into crimes. It is then up to criminal courts to condemn actions that violate such law and infringe the rights determined by them. By this, punishment vindicates the law broken, reaffirms the rights violated, and demonstrates that its violation was indeed a crime. Thus if there are to be rights sanctioned by the criminal law, if some actions are to be crimes, if there is to be criminal law at all, there must be punishment as well. Where there is no punishment there are no crimes, no criminal law, no rights determined and sanctioned by such law.

Thus the nature of criminal desert is that the offender must be blameworthy and that an offender deserved punishment because he has offended, and so his punishment must relate to his wrongdoing. Unlike the utilitarian theory, retributive justice involves a situation whereby the offender does not require an after-thought consideration of the assessment of moral desert and does not entail unfairly sacrificing individuals for the common good. I have a right to punish a person on the ground that he has committed an offence in the past never merely because I think his punishment will do more overall good than harm in the future. Punishment, in this vein, is deserved in that it is rendered permissible by one's misdeeds. It can fit the crime in so far as it is the crime which determines the extent to which one's moral rights are reduced, and thus determines the extent and severity of punishment which has been rendered permissible. Pincoffs (1983: 267) deduces two points from this inference that

> i the only acceptable reason for punishing a man is that he has committed a crime.
> ii the only acceptable reason for punishing a man in a given manner and degree is that the punishment is "equal" to the crime for which he is punished.

Hart (1968: 231) also explicates three tenets on which punishment cum retribution must depend as thus:

> R1: A person may be punished if and only if he has voluntarily done something wrong; R2: The punishment must match or be equivalent to the wickedness of the offense R3: The justification for punishing is that the return suffering for moral evil voluntarily done is itself just or morally good.

Hart succinctly wants to say that, as reflected in the criminal law, the minimum condition required for liability for punishment is that the person to be punished should himself have done what the law forbids, at least so far as outward conduct is concerned; even if liability is strict, it is not enough to render him liable for punishment that someone else should have committed. I need to note that to say that a man is legally responsible for some act or harm is to state that his connection with the offence or harm is sufficient according to law for liability. Because responsibility and liability are distinguishable in this way, it will make sense to say that because a person is legally responsible for some action he is liable to be punished for it (Hart, 1975: 30). From the R1 definition, having rights generally entails having duties to honour the same rights of others. From this contractual agreement, it seems to follow plausibly that when these duties are not fulfilled, the rights cease to exist. If this is true, then I seem to have a way of showing factually that the offender has forfeited his right not to be made to suffer. An offender, in violating the rights of others, forfeits just those rights he violated, or an equivalent set. Since it is often impracticable to restrain those rights which he violated, I am justified in inflicting suffering in form of losing those rights.

Hence, an offender deserves punishment because there is intrinsic good in the guilty suffering. The retributivist believes that breaking the law is approximate to taking advantage

where others choose not to, and as this is wrong in itself, quite aside from any external consequences, it deserves to be punished. Angelo Corlett (1986: 266) succinctly puts it thus:

> Punishment is justified on the ground that the wrongdoing merits punishment. It is morally fitting that a person who does wrong should suffer in proportion to his wrongdoing. That a criminal should be punished follows from the guilt, and the severity of the appropriate punishment depends on the depravity of his act.

From the above viewpoint, supported by Hart's R2, it is important to note that, in order to render punishment compatible with justice, it is not unjustly to punish the offender but attention must be mustered for the punishment fitting the crime. It seems plausible to rank crime, in terms of their gravity, in the following way: Each law [1] creates a particular sphere of non-interference in such a way that laws prohibiting theft create a sphere of non-interference with regard to our property; and laws prohibiting murder create a sphere of non-interference with regard to our lives. These spheres of non-interference can be ranked in terms of value. The sphere defined by criminal laws would presumably be more valuable than the sphere defined by property laws. Thus I can rank the benefits that result from having particular laws. With this ranking in mind, I can rank crimes in order of their gravity. One crime is graver than another insofar as the law violated defines a more valued sphere of non-interference and, hence, a more valued benefit. In as much as punishment is assumed to remove this benefit, it would be plausible to argue that more valued benefits call for more severe punishments. In other sense, the graver the crime committed the more severe the punishment. If I couple this with the fact that the degree of punishment an offender deserves is the degree that will remove the benefit to which he is not entitled, it follows that the degree of punishment deserved will be proportionate to the gravity of the offence (Burgh, 1982: 203-204).

This argument further indicates the moral apportionment of justice which resembles the principle of justice in the distribution of benefits and burdens. The idea here is that in committing

an offence, I do not think that the offender deserves unlimited punishment exceeding his crime, rather I think of him as deserving a degree of punishment proportionate to the gravity of the offence he committed. Hence the retributivist R3 justifies the amount of punishment in particular cases. While violating the rights of others involves forfeiting rights oneself, it is clear that violating specific rights of others does not entail losing all of one's own rights. If Mr. A steals N200 naira from Mr. B, for example, this does not give Mr. B or anyone else, the right to impose all and any conceivable harms upon Mr. A in return. Nor does Mr. A thereby become available for any suffering to which the community then wants to put him. Similarly, just as an innocent person can complain if forced to make severe sacrifices for the benefit of others, so a guilty person may claim that violation of any rights beyond those forfeited or alienated in order to benefit others is an injustice. If I ask which rights are forfeited in violating rights of others, it is plausible to answer just those rights that one violates: violation constitutes forfeiture. But one retains those rights which one has continued to respect in others. Since deprivation of those particular rights violated is often impracticable, I am justified in depriving a wrongdoer of some equivalence, in terms of some average or normal preference scale, much like the one used by the utilitarian when comparing and equating utilities. Goldman (1979: 45-46) comments further on this that:

> It would be difficult for a wrongdoer to complain of injustice when we treat him in a way equivalent to the way in which he treated his victim, provided that we also have a good...reason for imposing upon him in that way. If he cannot demonstrate a morally relevant difference between himself and his victim, then he cannot claim that he must enjoy all those rights that he was willing to violate. But if we deprive him not only of these or equivalent rights, but of ones far more important, whose loss results in far greater harm, then we begin to look like serious wrongdoer ourselves in multiplying violations of rights. It is at this point that the claim that two wrongs do not make a right begins to apply. A claim of injustice or victimization by the community made by the criminal begins to have merit, although in our anger at his wrongdoing, we are often unwilling to hear it.

From the above viewpoint, if I punish the offender to a degree that exceeds what he deserves, then I treat him unjustly. In other words, any punishment in excess of what the offender deserves should be considered as objectionable as imposing an equal amount of punitive sanction on an innocent individual. When I think in terms of forfeiting those rights one violates, or an equivalent set, there is no special difficulty there. One right or set of rights is equivalent to another for these purposes when an average preference scale registers indifference between the loss of either the one or the other. I also need to adjust our concept of deserved punishment to focus upon intention rather than actual harm, and to allow for excuses. Justice, from the retributive viewpoint, then requires a principle of desert coupled with a principle of proportionality between the gravity of the offence and the punishment deserved.

By desert I mean a situation whereby 'in committing an offence the offender forfeits his right not to be made to suffer' (Burgh, 1982:197). That is to say, by violating the rights of others in his criminal activities, the offender has lost or forfeited his legitimate demands that others honour all his formally held rights. It incorporates the idea that distribution of benefits and burdens is just in as much as everyone gets what he or she deserves. Hence the standard of desert entails, first, that people deserve punishment in proportion to the harm that their actions have caused. It leaves out entirely considerations of blameworthiness as accidental harm would be treated on a par with intentional harms. Also, people must be proportionally punished in accordance with their moral iniquity standard. I need to note that this will run into evidential problem in the course of my discussion in the chapter but not for our consideration here. Finally, people deserve punishment in proportion to the degree to which they have upset the balance of justice. This standard [2] seems to presuppose the adherence to the legal system which establishes a fair distribution of benefits and burdens. The justification of punishment is dependent on the

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justice of the society in question. This is as it should be since we would not be justified in punishing people for violating laws that were unjust.Therefore, in virtue of committing an offence, the offender deserves punishment. Herbert Morris (1968:478) puts the argument thus:

> It is just to punish those who have violated the rules and caused the unfair distribution of benefits and burdens. A person who violates the rules has something others do not have-the benefits of the system-by renouncing what others have assumed, the burdens of self-restraints, he has acquired an unfair advantage. Matters are not even until this advantage is in some way erased. Another way of putting it is that he owes something to others, for he has something that does not rightfully belong to him. Justice-that is, punishing such individuals-restores the equilibrium of benefits and burdens by taking from the individual what he owes, that is, exacting the debt.

The idea is that in punishing the offender, the benefits must be taken away, as a form of desert, in turn for a burden 'thereby restoring an equitable distribution of benefits and burdens which existed prior to the offense' (Burgh, 1982:203). This injustice consists in the wrongdoer's having received the benefits of others' self restraint couple with the further added benefits of his own lack of restraint. Morris' position is relatively a simple one. A person gains benefits from the self denial towards others. In sum, the wrongdoer gets the benefit of others' self-denial and unfairly gains the additional benefit of failing to shoulder the burden of his own self-denial towards others.

It involves the re-distribution of goods after some initial distribution of them has been redistributed by the offender. Here, if I am to morally justify punishment of offenders, we must proffer the reasons for their forfeiting of rights. We may argue that by violating the rights of others in their criminal activities, through unfair benefits, and then they have lost their legitimate demands that others honoured earlier (Goldman, 1979:43). This unfair benefits may be understood, among others, to be thus: (i) the ill-gotten gain, such as money from robbery or cyber crime; (ii) not bearing the burden of self-restraint, as expected in the implicit contractual

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agreement; (iii) the pleasure derived from committing the crime; and (iv) the sphere of non-interference which results from general obedience to the universal law violated. So, when I punish the criminal retributively, 'right reasserts itself by negating this negation of itself' (Day, 1978:505).

Retributive justice then requires that wrongdoers get no more but not less than what is proportionate or just to their crimes. People deserve to be treated in the same way that they voluntarily choose to treat others. There is a dangerous tendency to slip from retributive justice to an emphasis on revenge. Some scholars like Nozick reacted that retributivism, whether in law or morals, without an appeal, tacit or express, to the justice of punishment is inconceivable or inconceivably distinct from mere retaliation or revenge (Nozick, 1981: 366-74). I am not comfortable with this scholarly submission as retributive justice distinguishes itself from *lex talionis* (revenge) or vengeance in several relevant ways. First, whereas revenge strikes out at real or perceived injury, retribution speaks to an objective wrong. Secondly, whereas revenge is wild and insatiable, retribution acknowledges the moral repugnance of assigning unjust punishment to petty crime as well as assigning light punishment to violent, heinous crime. Also, vengeance has a tolerant for injury and delight in bringing evil upon the offending party but retribution has as its weapon a greater social good and takes no pleasure in punishment. Finally, the avenger aspires for retaliatory mode due to something done to him or to his group but retribution is impersonal and therefore demands impartially, not subject to personal bias (Maiese, 2004).

To this end, retributive theory implies that punishment of a person by the state is morally justifiable, if and only if he has done something which is both a legal and a moral offence, and only if the penalty is proportionate to the moral gravity of his offence. This seems satisfactory

but it does not go far enough. The cutting edge, upon which the argument of retributive justice depends, is the implication of the principle of proportionality.

Critique of retributive theory of punishment

Justice demands that any principle of desert must be evaluated in terms of whether it is impossible to discern a condition whereby, in committing an offence, the offender is meted with the degree of punishment commensurable to the gravity of the offence he committed. It is difficult to discern an alleged equivalence between the moral gravity of each offence and specific penalties attached. The contention here is that it is meaningless to speak of such an equivalence, because, for example the terms of the equation are not commensurable. Besides, we need to note that every excess over the just amount must be in the same ethical position as punishment of the innocent, an injustice which seems much worse than non-punishment of the guilty; and that too light a penalty is equally an injustice; and to conclude is to do injustice which seem worse than to do nothing at all in that the principle that all penalties which deviate at all from the just penalty are equally unjust. So, the notion of moral desert altogether such as ranking of crimes and punishments, in our discourse on retribution, in a manner required may take retributive punishment to institutionalise a vendetta mentality that is offensive and degrading to human beings.

For it is not impossible that retributive justice may be lured by one or another form of '*lex talionis'* (revenge), as these precludes the sufficient proportionality principle in the society. For example, there are some problems with the particularity of distribution of burdens and benefits of punishment. It is incoherent, frequently inapplicable and sometimes repugnant to evaluate and determine the punishment, in respect to the principle of proportionality, to be meted on a rapist, speeder, drunk drivers, embezzler and forger, for example, other than serving of jail

term. In other words, it will be morally unjust for a rapist to be raped in order to certify the principle of proportionality. It portrays no good argument for retributive punishment other than a vindictive mentality that is offensive and degrading to human beings in that any excessive punitive measure against the offender is objectionable as imposing an equivalent amount of punishment on an innocent person, as being canvassed by and against the utilitarian doctrine (Philips, 1986:379-8). About the best the notion of fittingness can do is to suggest a rough correlation between the severity of the crime and the severity of the penalty.

Besides the problem of desert offenders ought to satisfy or experience, determinism is another problem for retributive justice. This argument revolves around the long standing controversy between the principles of determinism and freewill. In fact, if a man is given his exact genes and environment, both of which are outside his control, it becomes more difficult to judge someone as guilty. Though this may be short-lived but a resounding argument from the abolitionist like Odera Oruka may be appreciated here, perhaps on the point of determinism.

Odera Oruka examines the implications of the concept of pre-conditions of just punishment. He attempts to relegate the conception of punishment as emphasized by both the utilitarian and the retributive theorists. He contends thus that:

> What is missing in the retributivist and also in the utilitarian view point of punishment is the insight that if we are to deal rationally with criminals, we must first try to dig out the roots or the empirical foundations of the criminal mind (1972:2).

According to Oruka, these 'criminal forces or factors' represent those crimes which are usually the outcomes of factors that are, with respects to those who commit them, natural or unavoidable (Oruka, 1972:13). In other sense, those factors revolve around the 'economic imbalance or condition' which man finds difficult to control. According to Oruka (1972:18),

Criminal factors have to do with such thing as irresponsible parental care, belonging to a despised or poverty-stricken class, discrimination and suppression by the family or society, being a moral or social outcast, mental derangement, a bad education.

Nevertheless, in order to abate these forces that engender crimes, he suggests a balance between social security and social harmony. He opines that reason and not force will serve as the means through which social values, social harmony and cooperation are primal, to the extent that society is free of tensions and security is consequently brought to the fore (Oruka,1972:29) . He concludes with the recommendation of social treatment of criminals (Oruka, 1972:92). This he illustrates with the belief that the expertise in the field be employed to take care of criminals and rid them of their criminal behaviours than the use of punitive alternative, a form of terrorism, in resolving crimes (Oruka,1972:90-1). Oruka claims to be an abolitionist. An abolitionist will hold that man ought not to be punished but rather offence should be treated as a form of disease. Karl Menninger, like Oruka, condemns punishment as a crime. He contends that what distinguishes an offender from the non-offender is a greater sense of hopelessness in the pursuit of his goals. Hence, the 'society must find better ways to enable people to realise their goals' in as much as a corrective response to crime is inadequate, because 'crime is an illness requiring treatment by psychiatrists and psychologist' (Menninger, 1983: 255). But I need to note that despite the laudable structure of relative precondition of just punishment in place in the human society, the will to engage in moral crime still subsists. Many, no doubt, would still be tempted to crime and deterrence seemingly would still be required. To this end, I maintain that the utilitarian and retributive theories of punishment could not sustain genuine and just punishment in as much as the innocent is disproportionately punished.

Mixed theories of punishment

Against these distinctive traditional debates on the concept of punishment, we have those who argue for compatibility between the utilitarian and retributive approaches. First, Hugo Bedau (Bedau, 2005) offers a liberal theory of punishment in practice with a view to grounding retributivist and consequentialist considerations into the larger political and moral concerns of a just society. This involves creating liability to punishment, using sanctions as a threat and an incentive for compliance and actually inflicting the punishment where eligibility conditions are met. Its legitimacy is grounded on its protection of individual rights, its authorization by constitutional procedures and its administration through due process and equal protection of the law (Bedau, 2005). Also, it is unfair to the law-abiding for law-breakers to incur no socially approved cost for their misconduct, for this may ignite a 'class of harmful free riders in the society' (Bedau, 2005).

But Bedau misses the point as his position only attempts to address the problem of justification of criminal justice without reconciling the traditional theories of punishment on which the discourse is grounded.

Like Bedau, Duff focuses on a mode of moral communication as a means of accommodating the shortcomings of both the utilitarian and retributivist's approaches to punishment. He premises his argument on the communication to offenders the censure or condemnation that they deserved. For censure addresses with respects, the person censured both as a rational and responsible agent. Censure constitutes an appropriate, deserved response to the wrong that an individual committed, and seeks to bring him to modify his future conduct only by reminding him of the good moral reasons that he has for refraining from crime. In short, censure is an appropriate way for citizens to treat and respond to each other (Duff, 2008). This act can be

communicated through a formal conviction in a criminal court; through formal denunciation issued by a judge or some other representatives of the legal community and so on. His punishment then constitutes a kind of secular penance that he is required to undergo for his crime. This will assist the process of repentance and reform, by focusing his attention on his crime and its implications.

Similarly, he believes that the penal desert of this nature, between wrongdoing and censure, would have produced pain to an offender for his offence. Its application to public sphere through criminal justice system would merit the situation whereby the person censured would accept the censure as justified and would thus be motivated to avoid crime in future. But the main objection to this approach is that apologetic reparation is voluntary if it is to be of any value and not of expressive or communicative character by the community concerned. As a result, it cannot resolve the problems in which the traditional theories of punishment are enmeshed.

Finally, Michael Philips (1986:394-5) argues that both utilitarian and retributive approaches to punishment are incomplete as they are formulated but that the intuitions upon which they are grounded can be satisfied in a 'variety of complete theories' encapsulated in the state involvement in punishment. He contends that the compatibility theory may be fashioned in such a way that a system of penalties along retributivist's line but still accommodates punishment with utilitarian intent. He believes that the moral justification of state punishment involves the strict application and selection from among the various penalties that fit the crime which consequently affect the production of popular utility in form of deterrent. In this way, I may assign the more severe punishments to the more serious crimes and the less serious punishment to the less serious crimes. But one of the suspicions is strengthened when I consider that most deterrence theorists, like retributive theorists, will tend in practice to match the

seriousness of the penalty to the seriousness of the crime. According to Michael Philips (1986:411),

> The way in which a deterrent theory will do this will depend in part on the theory of the state in which that deterrence theory is embedded. Utilitarian theorists will reject draconian penalties for minor crimes on the ground that such penalties are likely to produce more evil than the crimes they deter. Right protection theorist, on the other hand, might insist that such penalties violate rights.

The state is then responsible to successfully manage both utilitarian and retributive functions in a single system of punishment. The 'variety of complete theory' of the state determines 'what acts the state may prohibit and punish, and to determine what constraints there are on punishment in relation to these acts' (Philips, 1986:413-6). Also the theory emphasizes the legitimacy of a government as being responsible to punish in contrast to what an illegitimate government lacks.

However, the legitimacy rights to morally punish may flourish but 'the relation between the ideal and the actual is especially problematic in the context of punishment' (Duff, 2005) by the state. This also revolves around the question of the preconditions of just punishment by the state. Hence, it provokes the need for an alternative theoretical orientation, which this study seeks to provide. This is grounded in the traditional Yoruba culture.

The Yoruba world-view is composed of two planes of existence: The spiritual existence and the natural existence. According to Kola Abimbola, the spiritual (*Ìsàlú-órun*) is housed by supernatural forces including the *Olódùmarè* (The Supreme Being), the *Òrìsà* (divinities), the *Ajogun* (anti-gods or malevolent gods), *Àjé* (witches) and the ancestors. While the natural world is the domain of human beings, animals and plants (Abimbola, 2006:52). In this worldview, the Yoruba regard the spiritual realm as essential to the welfare of man. As such, it is believed to provide the natural existence with a useful overarching system, which assists man to organize reality and impose sanctions to his life. That is why the Yoruba say *ètó lò fin kìn-ín-ní lóde Órun*

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(Whatever one does, one must be orderly). That is to say the moral standard is partly dispensed through the spiritual world while the other part is gotten from lived experiences (Gbadegesin, 1991:133-141). Thus it is the responsibility of man, as a sensible being, to maintain the delicate balance in between the two realms of existence. This is what assures the happiness and prosperity of the individuals and the community.

In concluding this chapter, I have been able to show the strengths and weaknesses of the retributive theory of punishment. The retributive approach to punishment views that the society is entitled to impose penalties on criminal acts, in as much as they are immoral and that the only legitimate function of punishment is to exact desert on perpetrators of immoral deeds. Despites all odds, the retributivist claims that the resentment or indignation directed toward offenders is fitting rather than merely ill-disguised anger on the assumption that the criminal laws, whose violation makes one eligible for punishment, protect individual rights.[3] But the defects of this conceptual approach revolve around the desert offenders ought to satisfy or experience. For it is noted that retributive justice may be lured by one or another form of '*lex talionis'* (revenge), as these precludes the sufficient practical proportionality principle in the society.

To this end, there are varied views on the evolvement of a compatibility theory, whereby the deficiencies of the traditional theories of punishment could be accommodated. But the scholarly contributions on the issue are met with brick walls. There is, therefore, the need for an alternative theoretical background to the study of punishment. This is found in the traditional Yoruba culture.

Endnotes

[1] I need to note that the law of democratic countries requires that the person liable to be punished, should at the time of his crime, have had the capacity to understand what he is required by law to do or not to do, to deliberate and to decide what to do, and to control his conduct in the light of such decisions. Other works that touch on this theme include Appadorai, A. 2005. *A Substance of Politics*. New Delhi: oxford University Press.

[2] It is the standard Rawls aims at in his original position principle, which can be regarded as the embodiment of the various substantive normative claims that lies at the heart of justice as fairness, intended to model the idea that society should be regarded as a fair scheme of cooperation between citizens conceived as free and equal. See Rawls, John. 1985. *A Theory of Justice*. Oxford: Oxford University Press.

[3] In addition to what was an alluded to earlier in the chapter, rule of law, which mirror moral duties have, among other things, an educative function. They formulate, in a way which, though not infallible, is yet in a sense authoritative, the content of the shared morality. See Mclean, G.F and Ellrod, F.E. Eds. 1992. *Philosophical Foundations for Moral Education and Character Development: Act and Agent*. Washington D.C.: C.R.V.P.

CHAPTER THREE

AN ANALYSIS OF PUNISHMENT IN TRADITIONAL YORUBA CULTURE

The Yoruba speaking people make up one of the major influential forces in contemporary Nigeria. They spread across Ogun, Ondo, Ekiti, Oyo, Osun, Lagos states and a substantial part of Kwara, Kogi and Edo states (Atanda, 1990: 1). This homeland spans the other West African countries of Benin Republic, Togo and Ghana. About twenty-three million people are estimated to live in south western parts of Nigeria, one-and-a half million Yoruba live in Benin Republic, which borders Nigeria to the west. Some of the inhabitants include, Ketu, Sabe, Port-Novo (also known as Ajase). In Togo, the Yoruba occupy the south central regions of the country. Togo's second largest city, Atakpame (ile- anaa) is a Yoruba city. There are about fifty Yoruba villages in Ghana. The belief in Ile-Ife as the cradle of life is one key element of Yoruba culture in Africa and the Diaspora. The conquest myth relies that *Oduduwa* came from east Africa and settled at ile-ife, a place presumed to be the centre of the world. *Oduduwa* had seven grandchildren, the youngest of whom was *Oranmiyan* who founded the present ruling dynasties of Oyo and Benin.

Yoruba land remains divided into politically autonomous kingdoms, each centred on a capital city or town and headed by a hereditary king (*Oba*) who is traditionally considered sacred. The sacred kingship existed immemorial. Hence, *Oduduwa* is conceived as the father of the original crowned rulers. Ile-ife is respected to be responsible for the dispatched beaded kings to all Yoruba kingdom (Lloyd, 1960:223). Thus the claim to the ascendance of the throne must have been sourced from the royal lineage (*idile oba*) and using the description of the royal lineage (*omo oba*). According to Lloyd (1960: 225),

> The lineage is a corporate group, its male members living together and having common rights to land and chiehtaincy title. Elderly men conceive their town as composed of lineages little dependent one on the other, each dependent individually on the Oba. Though tracing their origin   from the hometown of their

founder, they make no attempt to trace genealogically their ultimate descent from oduduwa.

By and large, at the demise of a king, the right to the throne is held by the member of the royal lineage. Those eligible, include: first, a son born to an *Oba* while on the throne except the first son (*Aremo*); the son must have been born to a free woman and not to a slave; he must be free of any indictment or physical blemish. The sacredness of the new *Oba* starts with the custom of eating the excised heart of the late *Oba*. This is believed by tradition that a man who performed these rites, if not eligible by descent for the throne, would die. While an eligible ruler who omitted the rites would not be able to withstand the magic regalia and he too would pass on prematurely. This consecration gives to the *Oba* the wisdom to rule justly. Another sacred character is that the *Oba* may not be seen eating in public place. Also, he may take as many wives as possible but a royal wife may not be seduced by any other man (Lloyd, 1960: 228).

Most Yoruba men are farmers, growing yam, corn and millet as staples while cocoa is their cash crop. Yoruba women control much of the complex market system. Though some Yoruba are now either christian or muslim but belief in their traditional religion continues, and it remains alive too, in the new world countries to which Yoruba were transported to work as slaves. The Yoruba language has an extensive literature of poetry, short stories, myths and proverbs grounded in the *Ifá* literary corpus, which is referred to as the compendium of Yoruba philosophy.

However, the Yoruba-speaking slaves were settled in the present Sierra-Leone after the abolition of the trans-atlantic slave trade. Indeed, the trans-atlantic slave trade facilitated the spread of Yoruba beliefs, cultural practices, and people to Argentina, Brazil, Columbia, Cuba,

France, Haiti, Japan, Mexico, Spain, Trinidad and Tobago, United Kingdom, United States of America and Venezuela.

Punishment in Yoruba thought is referred to as *ìjìyà*, which may consist of flogging, whipping, beating, tying, chaining, imprisonment, execution, ejection or banishment, razing of the house of an offender to the ground, and so forth (Ajisafe, 1946: 36). It is facilitated by the socially defined sins (*èsè*) which violate culturally defined norms and laws to engender the destruction of social harmony not only among the natural beings but also between the natural and spiritual realms of existence. In short, sin involves an offence committed against man within the culture. It destroys the life force of another and especially that of the community. For example, wrongs of this nature are not only committed against the invisible realm but also disrupt the cohesiveness of an ordered world causing injustice.[1] The implication is that one has an obligation to maintain harmonious relationships among members of the community and to do what is necessary to bridge every breach of harmony and to strengthen the community bond, especially through justice and sharing. It shows that the Yoruba strongly hold the principle of justice as its absence may disrupt the communal living. It means that everybody is fairly treated before the law and norms of the land. No individual can be unjustly treated for the crime he/she knows nothing about as its consequence, if attempted, may be grievous for the entire community.

The chapter attempts to consider the various conceptions of punishment in traditional Yoruba system. We shall first discuss the Yoruba ontological idea with the aim of identifying the Yoruba conception of reality from two planes of existence: *Ìsàlú-Òrun* (the spiritual realm) and *Ìsàlú-Àyé* (the natural realm). I will also argue that the two planes of existence are individually subsisting but necessarily dependent on each other. Moreover, I analyse that the spiritual realm plays an overarching role which not only assists human beings to organise reality but also

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impose sanctions of social morality on the natural existence. Nevertheless, the concern for human welfare in Yoruba ontology in order to maintain harmonious cooperation among human beings is strongly focused. Afterwards, a descriptive account of the idea of punishment in traditional Yoruba thought system as embedded in some Yoruba narratives will be exposed.

The spiritual-natural relationship in Yoruba ontology

By ontology, I mean the study or concern about what kind of things exist or what entities there are in the universe. An entity is an existing or real thing. The fact that something exists seems to imply its separateness from other existence or entities. So the ontological idea attempts to identify the ultimate cosmic principle by which things come into existence (Uduigwomen, 2002; 154). According to the Yoruba, the nature of these entities revolves around the relationship between two planes of existence: the spiritual existence and the natural existence. According to *Ifá* system, the spiritual (*Ìsàlú-Òrun*) is housed by supernatural forces including *Olódùmarè* (the Supreme Being), the *Òrìsà* (divinities), the *Ajogun* (anti-gods or malevolent gods), the *Àjé* [2] and the ancestors; while the natural world (*Ìsàlú-Àyé*) is the domain of human beings, animals and plants (Abimbola, 2006: 52).

The Yoruba belief system takes Oló dùmarè (the Supreme Being) as the controller and creators of all living things. That is, He is the originator and giver of life, and in that capacity He is called *Elémí* (the owner of the spirit or the owner of life) (Idowu, 1996: 36). In other sense, He is held as self-existent being, in whom things originated and upon whom all things are dependent. That is why the Yoruba do not hesitate to say:

> *Òrúnmìlá f' èyìntì, ó wo títí: ó ní, èyin*
> *èrò òkun, èyin èrò òsà, njé èyin ò mò wípé*
> *isé olódùmarè tobi?*
> which translates:

> Orunmila leaned back, and gazed contemplatively,

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then he said, 'you who travel by sea, and you who
travel by the lagoon, surely you perceive that the
works of olodumare are mighty? (Idowu, 1996: 36).

Alongside this belief is the attribute that *Olódùmarè* is, in Yoruba saying, 'oba a dake dajo' (The king who sits in silence and dispenses justice). It refers to the Yoruba belief that no wicked humankind will escape the judgement of *Olódùmarè*. The outwardness of humankind and divinities alike do not escape his notice and judgement. It is expected that everyone will follow the dictate of *Olódùmaré*, and failure to do will attract punishment as good deeds are rewarded. The Yoruba believe that good will follow right conduct and evil will follow wrong behaviour. This is illustrated in the *eji-ogbe* poem:

> *Afinitì níí p'erú*
> *Epè ní í, p'olè*
> *Ilè dìdà níí p'oré*
> *Alájobí ní í pa'yèkan*
> *O dá fún òkan-lé-n'ri'nwó irúnmolè*
> *Ní'jó tí wòn ńjà re òdò Olódùmarè*

which translates:

> It is tale-bearing that kills the slave
> It is curses that kill the thief;
> It is covenant-breaking that kills the friend;
> It is consanguinity that kills the maternal – relative
> This is to oracle's response to the four hundred and one divinities,
> On the day they were going to Olodumare in
> consequence of a quarrel (Idowu, 1996: 47).

In short, *Olódùmarè* is the Supreme *òrìsà* and there is nothing that he cannot do. Also, there is no annual ceremony for him but His name is mentioned during ceremonies for the *Orisa* with such expression as *Ki Oló dùmarè gbà à à* [may *Olódùmarè* accept it]. It implies that the *Òrìsà* (divinities) are mere intermediaries between *Olódùmarè* and man. But in time of need, according to tradition, the people by pass all the *Orisa* and offer sacrifices to *Olódùmarè*.

Suffice it then to say that the *Olódùmarè* is the creator, the dependable one, eternal, infinite, all-causing being, there are over one thousand, four hundred and forty (1440) *Orisa*

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(divinities) in Yoruba Pantheon. Each of the *orisa* is endowed with a specialised role to play in the life of mankind in Yoruba belief system (Simpson, 1994: 1-69). The *Orisa* are the mouthpiece of *Olódùmarè*. They derive their powers from the latter and use it independently of Him. They are nearer mankind and that is why they demand for a definite cult. Their ritual patterns vary from cult to cult. They are worshipped by man and in default of which attract punishment. Sacrifices are made to them occasionally in appreciation for their kindness and material blessings.

Nevertheless, the *Òrìsà* are able to foretell the future, prevent evil as well as the provision of antidote against sickness and ill-luck. People consult them for protection against mystery of life such as bad crops, poverty, misfortune and sterility. In this sense, they are important in the welfare of a community. For example, people depend on them in time of war in order to see them through victory. Besides, whenever the community experience epidemic, people tend to consult them through sacrifices to seek relief. In sum, they are benevolent but they sometimes rebuke people who morally corrupt society. As a result, the Yoruba pray and often offer sacrifices to the *òrìsà* in order to gain their attention and favours. Awolalu contends that sacrificial practices in Yoruba culture are meant to showing the submissiveness of man to the spiritual beings. He buttresses:

> Man depends upon supernatural beings for his life and preservation. He attributes human qualities to these beings; they can be happy and well disposed to man if they are well- treated; but angry and vindicative if ill-treated and irritated (Awolalu, 1973: 85)

Awolalu illustrates with the sacrificial rites performed by a farmer before planting season. Thus:

> A farmer before cultivating the land, gathered together his farm implements. Over them he poured a libation of cold water and palm-wine. Then he broke open the tip of the pointed end of a snail and allowed the fluid from it to drip over the farm

implements. Palm-oil was also poured on the instruments and prayer was said. A kolanut was broken to make divination (1973: 83)

The above narration indicates that the farmer has hindsight that in the event where these rites are not performed, he then runs the risk of experiencing fragrant accident on the farm to the extent that work on the farm, at the end of the day, would be fraught with many hazards.

Furthermore, in the spiritual realm of existence, the *Ajogun* (anti-gods) are considered to be irredeemably malevolent. They wage war on both human beings and the *òrìsà*. According to Abimbola (2006: 49), there are two hundred plus one (200 + 1) of these forces in the universe. These forces are all separate and distinct entities, and as such they are individually responsible for a specific type of evil. The warlords are *Ikú* (death); *Àrùn* (Disease); *Òfò* (loss); *Egba* (paralysis); *Òràn* (Big-trouble); *Èpè* (curse); *Èwòn* (imprisonment), *Èse* (affliction). *Ikú* is responsible for the final end of man's life. *Àrùn* is responsible for affliction man contracted through illness. *Òfò* involves the incessant destruction of man's property. *Egba* brings paralysis to man, and so forth. *Ajogun* are designated man's enemies for they work against his interest at all time. But they can be appeased with sacrifices.

The *Àjé* ("witches") or *Ìyámi* (mysterious mother) is another form of supernatural power. The mysterious mothers are beings with dual existences. That is, they have no permanent residence in both planes of existence. Rather they control *Orítaméta Agbàrísáálá* (the three cross roads) on earth where they meet to decide human destiny. This is reflected in *Ofundameji*, a minor *odu Ifa* poem:

Ati rí' ra wa pé;
Awo apasa nile Alárá
Òru loro o rin awo oke ijero
Oje fún bèlèjé ní í sawo òde òrun

which translates:

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We had seen ourselves for long
The priest of Apasa, the one that resided
At the palace of Alara
The spirit straddles the night
The priest of Ijero hill
The one that silently swallows the intestine
The priest of heaven (Elebuibon, 2008: 32).

They use this power to serve as cog in the wheel of human progress. These nefarious deeds are carried out most often by discomforting their victims. But man makes effort to solve problems relating to these forces through consultation with an *Ifá* adept. It is the diviner who relates and reveals the source of the problem as witchcraft practice. In this sense, *Ifá* will prescribe object of sacrifice (perhaps propitiatory type) in order to appease the forces. Also, the '*Ìyámi À jé'* (witches) sometimes cohabitate the *orisa* to foment problems for their victims but with sacrifices to the affected *òrìsà* such life turbulence may be solved. However, the Yoruba believed that the '*Ìyámi À jé'* never strike without reasons. The most common context for the display of their displeasure is in the household, the family and tension out of jealousy among co-wives or children of the same parents.

Finally, the ancestors constitute the link between the spiritual world and the natural world. They are believed to intercede in the welfare of their descendants. That is why the Yoruba say:

Ókú tán, ó d'òrìsà, ód'eni á-kúnle-bo
which translates:

Having died, he (man) becomes a divinity, he
becomes a being to be worshipped on bended
knees (Adegbola, 1983: 117).

In this sense, it could be disastrous for the community where the customs, traditions, ethics and activities left behind by the dead are neglected. To Awolalu, 'offences in these matters is

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ultimately an offence against the forefathers who, in that capacity, act as the invisible police of the family and community' (Awolalu, 1979:61).

The natural world (*Ìsàlú-ayé*) houses human-beings, animals, and plants. Animals and plants are subservient to the whims and caprices of human beings. The ontology of a person in Yoruba belief system is, for the sake of clarity, divided into material and immaterial aspects (Oladipo, 1994:15). According to Oladipo, the material element, *Ara*, is both the physical frame and other tangible material organs of a person. These include: *Opolo* (the brain), *Okàn*, (the heart) and *Ìfun* (the intestine) (Oladipo, 1994:15-16). *Opolo* and *okàn* are said to be responsible for some conscious activities, such as thinking, feeling and so forth. For instance, *Opolo*, for the Yoruba, is connected 'with sanity and intelligence' (Oladipo, 1994:16). When a person is intelligent, they affirm *opolo ré pé dádá* (He is quite intelligent), but if otherwise, they say *opolo re kò pé rárá* (He is insane). *Okàn*, on its part, is the basis of feeling and emotion. For example, when a person displays the act of bravery, they say *ó ní okàn bi kì nìún* (He has a lion's heart), however, if a person is cowardly, he would be said to possess no heart (*kò ní okàn*) (Oladipo, 1994:16). Finally, the Yoruba take *Ìfun* to perform some psychical activities. When a person lacks initiatives, he is regarded as *oní-fun-kan* (a person with only one intestine). That is to say, the person is not resourceful. Also, when a person is without strength, he is referred to as *ko n'ífun nínú* (He has no intestine) (Oladipo, 1994:16).

On the other hand, the category of the immaterial aspect of man includes *Èmí* [3] and *Orí*. *Èmí* constitutes the invisible element responsible for the sustenance of life. In other words, *Èmí*, is a vital force responsible for determining the existence of a person. It is 'closely associated with the breath and the whole mechanism of breathing which are its most expressive manifestation' (Oladipo, 1994:19). The Yoruba believe that *Èmí* is the sole responsibility of *Olódùmaré* (the

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Supreme Being) to breath in man after all other physical parts have been completed by *Orisanla* (the arch divinity). That is the reason why, whenever a person dies, they say: *Èlèmí tí gbá á pàdá* (the owner of *Emi* has taken it back). Nonetheless, *Èmí* cannot exist independent of the physical elements of man. On the other hand, *Orí* is the inner essence of a person. The Yoruba take it to be the creation of *Olódùmaré*, who solely put it in man. The extent of man's achievements depends on the type of *Orí* chosen in heaven. For example, one's *Orí* determines greatness in life. Similarly, the choice of good *orí* assures a life of success and prosperity while that of a bad *orí* fetches man failure in life. Thus *orí* is associated with human destiny and personality. Personality in this traditional Yoruba society depends on the extent at which man is responsible to both his/her family and society. He/she is expected to sustain the financial strength of his/her family whenever the occasion demands. Also, he/she is to foster the spirit of coexistence and brotherhood in his/her community. As a result, man always endeavours in life to improve his conditions with a view to meeting these challenges. What is fundamental here is that the idea of punishment and moral responsibility hinge on the influence of the two planes of existence*: Ìsàlú-Ayé* and *Ìsàlú-Òrun.* In this belief system, the Yoruba recognise the importance of sacrifice as a means of rectifying or modifying an unalterable *orí* chosen in heaven after several efforts at ventures. Hence the chant:

> *Bí o bá máa l'ówó*
> *Bèrè lówó orí ré;*
> *Bí o bá má sòwò,*
> *Bèrè lówó orí re wò;*
> *Bí o bá má kó'lè*
> *Bèrè lówó orí re*
> *Bí o bá má láya o,*
> *Bèrè lówó orí ré wò;*
> *Orí, máse p'ekùn dé*
> *Lódò re ni mo mbo*
> *Wá s' aiyé mi di rere*
> Which translate:

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If you want to have money
Inquire of your head,
If you want to start trading,
Inquire of your head first,
If you want to build a house,
Inquire of your head,
If you want to take a wife,
Inquire of your head first.
Head, please do not shut the gate.
It is to you I am coming,
Come and make my life Prosperous
(Awolalu, 1973: 84).

But the appeasement of *orí* through sacrifice does not neglect the relevance of hard work since man exercises the element of freewill in his earthly existence.

Makinde gives a resounding analysis on the relationship between *orí* and moral responsibility based on the schools of thought in the study: The strong sense of destiny, whereby once destiny is chosen, it becomes impossible to alter it in real life; and the weak sense of destiny which claims that the chosen *Orí* can be altered either through some sacrifices to it in the event that it was a bad one or through human effort in order to maintain the good *Orí*. (Makinde, 1985:62-65) Makinde questions the possibility of a strong destiny in the scheme of things in Yoruba society. In this sense, no person can be held responsible for his doing since he has been fated to be so. Even where a person blames *Òrúnmìlá* for not influencing the initial allotment (*Ìpín*) to be a good one, he may respond that if man is shown the way at the pre-natal state, then he may experience a situation whereby struggling in life and appeal or sacrifice to one's *Orí* becomes impossible. In the same vein, a person may be tempted to mess up a good *Orí* (Makinde, 1985: 64).

On the other hand, Makinde claims that the weak sense of destiny is possible because 'there is no logical reason to expect that every choice of a good *Orí* would lead to a successful

life and every choice of a bad *Orí* to a complete failure' (Makinde, 1985:64). This practical outlook recognizes how important the Yoruba take the issue of moral responsibility and punishment. For example, the Yoruba sanction people for their immoral behaviours, regardless of the nature of the chosen *Orí.* People are also praised as well not for their chosen portion from heaven, but for maintaining the required standard of responsibility in the society. Thus the weak sense of destiny is compatible with the spirit of freewill and moral responsibility and punishment, which the Yoruba strongly celebrate. In this sense, personality formation is communal because the latter is responsible either to modify or re-modify; and through some appropriate sacrifices, a bad *orí* can be reconditioned, so to say, to become a good one.

Now, having clarified the entities constituting both the spiritual and natural planes of existence, I need to note that the relationship between these two realms is not exclusive in nature. Rather, the natural and spiritual planes of existence form the same continuum in Yoruba belief system. They regard the spiritual realm as essential to the welfare of man. As such, it is believed to provide the natural existence with a useful overarching system which assists a human being to organise reality and impose sanctions to his life. As noted in our discussion on the spiritual entities, this is effected through the people's religious beliefs. As a result of this, according to Sodipo (2004:88), 'its explanation must be given in terms of persons or entities that are like persons in significant respects. For it is explanation like this that can reveal the motives that lay behind particular happenings; they alone answer the emotional question why the thing happened here, now and to me in particular'. Thus mishaps, based on observation and knowledge of natural processes without remedy, are consigned to punishment by the supernatural forces. It is to say that the spiritual realm serves as 'a means of resolving some of the significant puzzles of the human conditions' (Gbadegesin, 1984:182). The inhabitant of the spiritual realm is endowed

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with extra-ordinary powers which cannot be perceived by man. It becomes imperative for man to continue to curry their favours for security and knowledge purposes. This is well summarised by Sodipo (2004:89) thus:

> The lorry driver who ties a charm to his lorry-seat and a magical object under the lorry's windscreen is not denying or trying to frustrate any of the general laws by which the motor-vehicle operates. He knows, as well as any scientific man, that if the brakes fail while the vehicle is moving at high speed there could be a serious accident. He is aware too that if the accident is serious enough, some of the passengers could die. But the general laws cannot answer for him the question where and when the brakes will fail, whether they would fail when the lorry is travelling at high or low speed and, should that happen, who of the passenger will be fatally wounded. The scientific man will push the application of general laws as far as it can go; after that chance takes over. But not so in Yoruba traditional thought. Even if a general law says that only one person out of a hundred passengers in a lorry involved in an accident would be saved the Yoruba believe that the gods, not chance, decide who that lucky one shall be and it is certainly worth trying to make oneself the lucky one through a charm or through the necessary sacrifice to some god or gods.

The Yoruba attribute to Supreme Being, *Olódùmarè*, through the *Òrìsà*, those things for which they 'cannot find naturalist explanation' (Oladipo, 1992:49). This belief is also found in Akan culture in Ghana. Kwasi Wiredu (1980:19) gives an interesting illustration to show how people explain away some metaphysical issues, with the story of an imaginary traveller who dies in a bus crash, thus:

> When he originally tried to get on the bus, the bus was already filled to capacity with passengers but just as he decided to postpone his journey and as he is turning to go, a seat is vacated. One passenger, for one reason or the other, has to get off in a hurry. So he gets on. His destination is the very first stop on the bus, and he is in fact, the passenger travelling the shortest distance. But just one mile from his destination the calamity occurs: a puncture and the bus crashed. Unbelievably, everyone on board escapes with minor bruises except one. Alone, of fifty passengers our traveller dies.

However, three points, among others, may be raised from Sodipo and Wiredu's narrations. First, the Yoruba will attribute the ill fatedness of our traveller, out of helplessness, to the wish of the

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spiritual realm, perhaps *Olódùmarè's* sanctions. This is reflected in sayings like *bo se yan tì e nìyen* (That is how he has chosen his portion from spiritual world) or *ibi ti àyànmo e gbé é dé ni yèn* (That is the extent of his chosen portion). Also, this may be the consequence of an inherited family curse. Sanctions of this nature might have been out of ill-treatment of fellow human beings in the time past. That is why the Yoruba say *á o be èsè baba wó lára omo* (we shall revisit the father's punishment on the children). Besides the above instances, further justification of punishment in Yoruba ontology may generate out of the practice of cursing through the aid of some gods. For example, a farmer may curse anyone who steals from his farm and by the invocation of the god's power inflict punishment on the thief. At other times, the victim of some robbery would go to a shrine and ask a god to sanction the culprit in a particular fashion and would promise rewards to the god. The culprit possessed by the god, perhaps by the *Ayelala* shrine, would make his way to the shrine and confess. Most often series of strange death may occur in the culprit's family (Adegbola, 1998: 171-172). Hence, the belief in the deities only serves as a means of averting earthly havoc as well as a kind of comfort in the time of adversity. So prayers often said through a deity to *Olódùmarè* are, to borrow the words from the Akan tradition, meant mostly:

> For material well-being and earthly blessings, such as riches, health, social peace and harmony, fertility, birth of many children, and continuity of life and vitality, and protection from evil, danger or death, petition for healing and longevity (Gyekye, 1996:16).

It implies that the Yoruba are not particularly attracted to the union of human soul with *Olódùmarè* in the spiritual realm but rather aspire for the promotion of human welfare and happiness through some mystical way of fulfilling these needs. So in the event where an *òrìsà* failed to 'deliver on a request sought in prayer, that deity will be censured, treated with

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contempt, and ultimately abandoned by the people' (Gyekye, 1996:16). In short, the spiritual realm serves as a referent point to the Yoruba in their sustenance of the social solidarity, harmony and cooperation values. In addition to this social role, the spiritual realm sanctions moral obligations and responsibilities of the members of the community. These sanctions used to be very effective instruments for the enforcement of morality in traditional Yoruba society. I should note that it is not so much the physical hardship of going through the punishments that confine people to observe the moral codes but rather the threat of disgrace to one's family, and above all to one's offspring (Adegbola,1998: 173). It is believed by the people that whenever misfortunes and disasters, as experienced by our traveller, occurs they most often interpret them as punishment sent by the *Olódùmarè* for bad conduct or inability to act on some moral obligation to the community. Similarly, misfortunes suffered could then be the product of 'unethical behaviour' which serves as lesson for thorough examination of moral behaviour in the community (Gyekye, 1996:18). There is then the need to show that it is the responsibility of man, as a sensible being, to maintain the delicate balance between the two realms of existence. This manifests in the humanistic orientation in Yoruba ontology.

The humanistic orientation in Yoruba ontology

Thus far, I am informed that the Yoruba appeal to the extra-human powers, in the spiritual realm, is merely with the motive of furthering the maintenance of social harmony in the natural realm of existence. According to John Bewaji (2004:399), it is 'mainly intended to lend legitimacy through an already available reinforcement mechanism to what is often taken for granted as morally obligatory'. Indeed, it is what assures the happiness and prosperity of individuals and community. But this harmonious cooperation in Yoruba belief system depends on humanistic basis of the people's moral value.

Hence, I may tarry a while to discuss the meaning of moral value in order to boost my understanding of the humanistic orientation. According to Kwame Gyekye (1996:55), moral value involves:

> A set of social rules and norms intended to guide the conduct of people in a society. The rules and norms emerge from … people's beliefs about right and wrong conduct and good and bad character. Morality is intrinsically social, arising out of the relations between individuals; if there were no such a thing as human society, there would be no such thing as morality. And, because morality is essentially a social phenomenon … consideration for the interests of other and, hence a sense of duty to others are intrinsic to the meaning and practice of morality.

This viewpoint on moral values draws attention to two implications. First, it attempts to affirm that moral discourse is primarily a "this-worldly" affair in which I focus on issues of cooperation, actions, attitudes, emotion and character, Secondly, it espouses social morality wherein humanistic practice is grounded. This represents an ascending order from the austerely commitment to social sympathies of rigorous individualism to the pervasive commitment to social involvement.

Now, on 'this worldly' conception of moral value in Yoruba thought system, man is equated to maintain an interactive course of duty where love, patronage, recognition, compassion, companionship are not only generated but also equitably distributed in the community (Bewaji, 2004:397). Thus the harmonization of these interests account for what is good. The absence of this ethic of responsibility in man's behaviour is *èsè* (sin) in Yoruba parlance. By *èsè*, I mean, in Yoruba belief system, the infractions against man qua man, as well as the spiritual beings. It involves the descending from 'communal covenantal grace into isolated individualism' (Amponsah, 1974:71). In this respect, its consequence brings the calamities not

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only on the culprit(s) but on the family and the community in general, and these are often seen as punishment.

However, there are some sub-categories of *èsè* (sin) that I can use to buttress further on Yoruba moral discourse. These include the concepts of *èèwò* (taboo), *àbùkù* (blemish), *àìmò* (blemish/lack of knowledge), *ègbin* (nausea), *àléèbù* (moral deficiency), *àìda* (wickedness) (Bewaji, 2004: 399-402). According to Bewaji, *èèwò* is conceived from two perspectives. First, it means taboo in religious phraseology to corroborate things prohibited by the spiritual realms, through the *Olódùmarè*, the divinities, and the ancestors. Secondly, its relations to morality deals with things that are wrong to do and for which punishment will be meted out. This is connected with decent and proper behaviour. But it is difficult to clearly distinct between breaches that are purely ethical and merely ritualistic.

Secondly, *àbùkù* (literally as blemish) involves the exhibition of character trait which contradict the expected moral code or norms in the society. The word is sometimes used as a form of rebuke against unwholesome behaviours such as *mà kán ní àbùkù* (To reprimand him/her for immoral behaviour). Human beings with moral blemishes are handicap to associate with the community because they will find it difficult, if not impossible, to express their opinions at public discussions.

Also, *àìmò* is related to *àbùkù* in a sense but in other words it means lack of knowledge. But the sense of its use at moral discourse involves a more episode failure and is easier to expiate and be rid off. For example, when Yoruba say *owò rè kò 'mó* (literally, his hands are not clean in a happening), this *àìmò* could be either big or small act of vice which accumulate overtime to tarnish personality in the community.

The word *ègbin*, in the moralistic sense, involves an act which is despicable and odious to the senses by causing nausea. In other sense, the Yoruba qualify degrees of moral decadence that people display through their outward behaviour as *ègbin*. That is why 'children are brought up with a clear sense of the differentiation of all these degrees of defect of behaviour or character and they mature with the consciousness of the need to internalise the virtues of good behaviour' (Bewaji, 2004: 400).

Àléèbù is cognate to *àbùkù*. This form of blemish, in Yoruba expression, represents a degree of moral deficiencies. For example, a person of negative character is taken to be *oní àléèbù lá'rà* (a bad character being) whereas a person of good character is *kò ní àléèbù là'rá*. Whenever this negative impression is labelled on human being, it is associated with *abuku* to the extent that the community find it difficult to put such a human being in a position of responsibility. It can be expressed as an embodied particular in a human character.

Finally, *àìdaa* is associated with *aimo* but it is only concealed in a person's character. That is, it becomes manifest only when critical situation arises. It is why the Yoruba maxim *a'làìda ekú ara' fu* (literally means: bad character beings are always suspicious of their deeds).

So in avoidance of these sinful acts, a human being must be mindful of his manner of carriage in society and such things as discretion and ability to keep peer confidence should be sustained. 'This-worldly' moral values are further illustrated in the *Ogbè-alárá*, a minor *odu-Ifá*, poem. It presents *Ìwà* as an exceedingly beautiful woman whom *Órùnmìlà* married but lacked good behaviour. After a while, *Órùnmìlà* could not tolerate her bad habit, and he, therefore sent her away. This action attracts to *Órùnmìlà* displeasure from his community. Also his clients deserted him and his divination practice was no longer becoming. In short, he lacked woman,

clothing, and other material things. This prompted him to look for *Ìwà*, visiting all the sixteen

important *Ifá* cult chiefs, with the following song:

> *Ìwà, ìwà là ń wá o, ìwà.*
> *Bó o lówó lówó,*
> *Tó ò níwà,*
> *Owó olówó ni.*
> *Ìwà, ìwà là ń wá o, ìwà.*
> *Omo la bí,*
> *Tá à níwa*
> *Omo olómo ni.*
> *Ìwà, ìwà là n wà o, ìwà.*
> *Bá a níle,*
> *Tá à níwá,*
> *Ilé onílé ni.*
> *Ìwà, ìwà là ń wá o, ìwà.*
> *Bá a láso,*
> *Tá à níwá,*
> *Aso aláso ni.*
> *Ìwà, ìwà là ń wá o, ìwà.*
> *Ire gbogbo tá a ní,*
> *Tá à níwà,*
> *Ire oníre ni.*
> *Ìwà, ìwà là ń wá o, ìwà.*
> which translates:
> Iwa, Iwa is the one I am looking for
> If you have money,
> But if do not have good character,
> The money belongs to someone else.
> Iwa, iwa is the one we are searching for.
> If one has children,
> But if one lacks good character,
> The children belong to someone else.
> Iwa, iwa is the one we are searching for.
> If one has clothes,
> But if one lacks good character,
> The clothes belong to someone else.
> Iwa, iwa is the one we are searching for.
> All the good things of life which a man has,
> If he lacks good character,
> They belong to someone else.
> Iwa, iwa is the one we are searching for (Abimbola, 1975:396-99).

The narration is concerned with the consequence of the absence of *Ìwà* in a man's life. According to Wande Abimbola, there are two senses of *Ìwà* in Yoruba belief system. First, *Ìwà*, etymologically, is composed of two words: *i* (being) and *wà* (to be, to exist). *Ìwà* then means 'the fact of being, living or existing' (Abimbola, 1975: 393). The second sense of *Ìwà* represents character. That is, to say 'the essence of being' (Abimbola, 1975:393-394). I refer to the second sense in our study. It is used in determining a man's life, particularly his ethical practice. It may be either for good or bad character. For example, to a man with good character, we say *Ìwà Okùnrin náà dára*; while a person with a bad character is described as *Oní 'wà burúkú okùnrin*. The Yoruba frown at a bad character. They believe that such a moral disposition leads a person nowhere other than being committed to punishment. So, in Yoruba belief system, character-building mechanism manifests in its entirety with the aim to fostering good *Ìwà* in the individual and to make him a responsible member of the community. That is why an individual who neglect this social practise is referred to as *àkóògbà* (a child that is taught but does not learn) rather than *àbíìkó* (a child that is born but not taught) (Awoniyi, 1975: 375). Such an individual will be punished by the divinities unless he offers sacrifice, which will show that he has repented and which will bring back peace and harmony into the strained relationship which his deviation creates between him and the supernatural realm.

As the above citation shows, the absence of *Ìwà* in a man's life spells doom for destiny. *Ìwà* is the most valuable thing a man must aspire to possess; without it he loses all things, as experienced by *Òrúnmìlà*, perhaps to someone else who knows how to take care of it. That is why it is stressed in the *Ifá* corpus thus:

> *Òbélénké Abínúyoró*
> *Á dífá fún Olóríre ìgba ìwásé*
> *Eni l'órí rere tí kò ní ìwà rere*
> *Ìwà ló máa ba orí re jé.*

which translates:
Obelenke the oracle of the temperament disposition
Ifa said to the person who possessed happy
destiny in the primordial time
However successful a person's destiny may be
If he has no good character
It is lack of good character
That will ruin his destiny. (Orangun, 1988:138)

Implicit in the above poem is the idea that despite a good *Orí*, man after all still needs to manipulate his character in the right direction. In this regard, the Yoruba warn against inordinate ambition, which may lead to destruction (Gbadegesin, 1984:182). This does not give room for idleness in the name of destiny. Rather, man has to display good character that will assist *Orí* 'to make its good destiny a reality' (Gbadegesin, 1984:183). Aspects of good character include the following:

> Respect for old age, loyalty to one's parents and local traditions, honesty in all public and private dealings, devotion to duty, readiness to assist the needy and the infirm, sympathy, sociability, courage and itching desire for work and many other desirable qualities. (Abimbola, 1975: 364).

This is supported by a proverb:

> *Ìwà ni Òrìsà; bí a bá fi hù ù sí ni fi ígbe ni*
> which translates:
> Iwa is the deity, which depending on the
> degree of our devotion to it, blesses us (with
> its beauty) (Abiodun, 1983:27).

Furthermore, a bad *Orí* by man could be changed to *Orí-rere* (good destiny) if a person possesses good character. In other words, *Ìwà* has a corrective influence on *Orí buruku* (bad destiny). Hence the saying:

> *Orí kan kì í buru l'Ótu*
> *Ìwà nìkan ló sòro*
>
> Which translates:
> No destiny is so bad
> that moral rectitude cannot correct it.
> (Emmanuel, 2000:226).

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The implication of this is that man must strive very hard to cultivate a good character so that his life may be good. Lijadu, in *Ogbe-Ate*, adds:

> *Ǹjé bí a bá tè mí, ń o tún 'ra mi tè;*
> *Èèwò tí a bá kà fún mi ń ó gbó;*
> *titè l'á tè mí, n o tun ra mi te*

which translates:

> After I have been made, I have to make myself;
> All the taboos that I am to observe
> will be observed;
> I have been made, and I must also re-make myself.
> (Morakinyo, 1983:78).

It is imperative for *Òrúnmìlà*, indeed man, to maintain some qualities that may bridge the gap between his personality and *Ìwà* in his life. These qualities include: *Ìfarabalè* – calmness, *Ìlutí* – good hearing, *Òtító* – truth – telling, *Ìtéríba* – respect, and *Ìferàn* – love. *Ìfarabalè* – calmness- that is letting reason to control his emotion. The Yoruba maxim *bi oju ba f'ara ba 'lè, yóò r'ímú* (literally, If the eye is patient, it will see the nose). Implicit here is the ethical implications of *ìfarabalè* (patience). Practically, it is somehow difficult to see the tip of the *imú* (nose) without some mental concentration. Man is expected to display this attitude in his outward dealings in life. The inculcation of this moral virtue is the main aim of moral instruction in Yoruba society. Its possession leads man to pursue the kinds of morally commendable actions and behaviour expected in the context of a social morality. This is realised through patience (*sùúru*), the source of *Ìwà*, which should have been exercised by *Òrúnmìlà* in resolving his differences with his wife, *Ìwà*. The tendency to act in haste is cautioned in *Ogbe-meji* poem thus:

> *K'á má fi kán jú-kán jú j'aiyé;*
> *K'á ma fi wàrà-wàrà n'ókun oro;*
> *Ohun a bá fi s'àgbà,*
> *K'á má fi se' binú;*
> *Bi á ba dé'bi t'ó tutù*
> *K'á simi – simi;*

K'á wo 'wájú ojo lo títí
K'á tún bo wa r'èhìn òràn wò,
Nítorí a – ti – sùn ara eni ni
which translates:
Let us not run the world hastily;
Let us not grasp at the rope of wealth impatiently,
What should be treated with mature judgment,
Let us not treat it in a fit of temper;
Whenever we arrive at a cool place,
Let us rest sufficiently well;
Let us give due regard to the consequence of things
And that is on account of our sleeping (end) (Idowu.
                 1996:184-5).

Another quality of *Ìwà* is *Ìlútí* – good hearing. It refers to the ability to listen, obey and put to use whatever has been taught. The Yoruba qualify this with the warning: *Yá'ara láti gbo òrò, ló'ra lá ti fè sì* (literally, be a quick listener and a thoughtful respondent). A man of this character will lead a life devoid of hindrance from both human and supernatural powers governing the universe. (Abiodun, 1975:23-26).

Nevertheless, the second implication of the moral values in Yoruba culture strongly recommends the principle of social practice. By this we mean social reverberations of an individual's conduct of *ìwàpèlè* (good character) in the community. It is due to the fact that a human being, in Yoruba thought system, is part of a social whole. This social practice, that an individual does not and cannot exist alone except corporately, is illustrated by Segun Gbadegesin (1991: 61-62) thus:

The new baby arrives into the waiting hands of the elders of the household. Experienced elderly wives in the household serve as mid-wives, they see that the new baby is delivered safely and the mother is in no danger after delivery. They introduce the baby into the family with cheerfulness, joy and prayer: "Ayo abara tintin" [This is a little thing of joy]. From then on, the new mother may not touch the child except for breast feeding. The baby is safe in the hands of others: Co-wives, husband's mother and step-mothers and a whole lot of others, including senior sisters, nieces and cousins. On the seventh or eight day, the baby gets his/her names, a ceremony performed by the adult members of the household …. The meaning of this is that child, as an extension of the family tree, should be

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given a name that reflects his/her membership therein, and it is expected that the name so given will guide and control the child by being a constant reminder for him/her of his/her membership in the family and the circumstance of his/her birth.

The above excerpt implies that an individual cannot run adrift from the community that nurtures him/her. Rather the individual, through socialization and the love and concern which the community extended to him/her, cannot now see him/herself as an isolated being. This social character is intrinsic to the notion of morality in Yoruba culture. This is grounded in human experiences in living together. The Yoruba maxim in support of this position thus *Ká rìn ká pò, yíye ló n ye ni* (which literally means: walking together is always suitable) (Olowookere, 2004:18). In addition, wisdom is not limited to a given class of people in traditional Yoruba society. Rather, it recognises the contribution of every rational being, old and young, towards the betterment of the whole community. The point here is that every person should have a chance to contribute to the development of the society. This implies that no point of view should be suppressed in the process of deliberation and no arbitrary exercise or power should be allowed. The importance of cross fertilization of ideas in decision making is germane in any society. Hence, man owes his existence to other people, including those of past generations and his contemporaries. Whatever happens to the individual is believed to happen to the whole group, and whatever happens to the whole group is the responsibility of the individuals.

It shows that in realising this objective of communalism, 'every ...child is given moral instruction during the process of socialisation to inculcate a sense of community' (Gyekye, 1987:46). Hence the saying by John Mbiti, 'I am because we are, and since we are, therefore I am' (Mbiti, 1982: 106). But this Mbiti's epithet is wrongly interpreted by Nyasani to merely be the frustration of individual's creativity and ability to innovate, by the communal dictatorship as

'relatively unilinear, uncritical, lacking in initiative and therefore "encapsulated"' (Lassiter, 1999). He further adds that,

> [W]hat we experience in the practical life of an African is the apparent stagnation or stalement in his social as well as economic evolution.... It is quite evident that the social consequences of this unfortunate social impasse (encapsulation) can be very grave especially where the process of acculturation and indeterminate enculturation is taking place at an uncontrollable pace.... By and large, it can safely be affirmed that social encapsulation in Africa works both positively and negatively. It is positive in as far as it guarantees a modicum of social cohesion, social harmony and social mutual concern. However, in as far as it does not promote fully the exercise of personal initiative and incentive, it can be regarded as negative (Lassiter, 1999).

Nyasani missed the point here. 'Personal initiative and incentives' are encouraged in this thought system. This will unfold in the course of analysis. A Yoruba man has an obligation to maintain harmonious relationship among all the members of the community and to do what is necessary to correct every breach of harmony and to strengthen the community bonds, especially through the principle of justice. The Yoruba belief system strongly upholds the principle of justice as its absence may efface the communal living, and justice involves some aspects of punishment. Thus the Yoruba maxim *Ìka tí ó se ni oba ń gé* (literally mean: It is the finger that offends that the king cuts) (Ajibola, 1977:21 and 79). That is to say, the communalistic orientation of Yoruba society emphasizes the notion that an individual's image will depend rather crucially upon the extent to which his or her actions benefits him/herself first but yet satisfy the interest of others which is not, of course, by accident or coincidence but by design. It is important for man to see to his ambitions, desires, and actions but not at the detriment of needs and interest of others. In another sense, human conduct in Yoruba culture demands absolute behaviours grounded in personal and social well-being.

Akiwowo, from the sociological viewpoint, comments on this tensed relationship between communal existence and individual interests in the community. He contends that a

human being is an *asuwa* (a physiological organism) which is enhanced to forming and evolving to *asuwada* (social organism) (Akiwowo, 1983:12). According to him, *Asuwada* is the basis of conscious network of human beings in the society. Thus (1983:13)

> The *isesi* (pattern of doing things) of an individual is directed toward other individuals to a group of individuals who act under the same manner in concert or under a given rule or set of standards. An initiator of an *isesi* is in turn, the object toward whom other individual's *isesi* are directed. The result is, among human beings, a complex network of *isesi* bond which unites every man, woman, or child to another.

Having clarified this, Akiwowo proceeds to explain that human conduct in traditional Yoruba culture translates into the practice of *alajobi* (ties of consanguinity). *Alajobi* signifies the common ties of lineal and collateral relationship (Akiwowo, 1983: 18). *Ajobi* then means a family or a group of related families co-habiting the same compound, units in a village and town. Geneologically, all mankind belong to this tree of *alajobi* because we all share in the *homo sapiens* traits. This however cannot hold sway anymore due to the complex nature of man such as culture, colour, race, religious affiliation, etc. Nevertheless, the *alajobi* bond counts whenever the cord of unity is been threatened. There and then the Yoruba say 'I beg you in the name of *alajobi*'. But the incursion of western individualism has crippled the sustainability of *alajobi* in place for *alajobge* (the co-releationship). The main thrust of this collapse is the unbridled lust for material wealth where the successful ones among blood relations acquired more money, bought new things while the less successful ones were gingered into competition or envy (Akiwowo, 1983: 19).

However, the conception of humanistic orientation is not enough to evolve a harmonious support between the two realms of existence: *Isàlú-ayé* and *Isàlú-òrun*. As noted earlier in the chapter, I pointed to the fact that the Yoruba regard the exercise of supernatural efficacy as

essential to the welfare of human beings. The people believe that rain and sunshine must come in the right proportions in order that farm produces may be well; ill-winds bringing illness and death must not blow; peace and prosperity must prevail in the land. It shows that 'the study of nature engendered a sound correlation between the environment of Yorubaland and the philosophy of its people' (Ojo, 1966: 228-229). Indeed, the physical and biological milieux of Yorubaland are endowed with a great abundance and variety of natural phenomena. These natural phenomena undoubtedly have impacted the lives and livelihood of the people (Ojo, 1966: 229). So, if a man's farm is productive when others are not, it is not hard work. Rather it is either because of the infusion of something in the soil by supernatural means or because his farm is watered by a stream flowing from the land of the gods (Olayemi, 1975: 960-961). All these submissions depend on the intervention of forces other than human. As a result, the down play of a religious basis is in contrast with the spiritual-natural dimension in Yoruba ontology. So the position affirmed by Kwasi Wiredu (1980:6), in the Akan tradition, is in contrast to a true representation of the integrative nature of Yoruba belief system. He contends thus:

> It has often been said that our traditional outlook was intensely humanistic. It seems to me that, as far as the basis of the traditional ethic is concerned, this claim is abundantly justified. Traditional thinking about the foundations of morality is refreshingly non-super naturalistic. But anyone who reflects on our traditional ways of speaking about morality is bound to be struck by the preoccupation with human welfare: What is morally good is what befits a human being. It is what is decent for a man-what brings dignity, respect, contentment, prosperity, joy to man and his community. And what is morally bad is what brings misery, misfortune and disgrace. Of course, immoral conduct is held to be hateful to God, the Supreme Being, and even to the lesser gods. But the thought is not that something is good because God approves of it, but rather that God approves of it because it is good in the first place.

The spiritual- natural dimension in Yoruba moral practice showcases a feeling of family togetherness and of the value of unity and of the extended family in Yoruba culture. This constitutes the basis of the value of unity and humanness in the society. This informed the

Yoruba saying *eníyan ní aso ènìyán* (literally, man is the cloth of man). The recognition of the above ideal makes it possible for people to recognise the importance of showing compassion, generosity and hospitality. It signifies that one should always be open to the service of others' interests and welfare. In addition, this attitude further suggests that the worth of other human beings is equal to one's in terms of basic value, ideals and sentiments. This supportive attitude shows the spirit of brotherhood, which covers not only family relations, but also persons between whom there are no blood ties at all.

The reason for all this is to avoid calamities that may befall the community in the absence of justice. In avoiding these consequences, the society prohibits murder, adultery, robbery, thinking badly of one's neighbours, rape, arson and so forth. They do not hesitate to deal with a recalcitrant that wants to severe the continuum between the two realms of existence. Hence, the point of these prohibitions is to promote discipline and decent living.

The foregoing idea is implicit in the saying that: *Abéré tó bá lókùn ní dìí, kì í sonù* (literally, a threaded needle does not get lost) (Olowookere, 2004:18). A good leader must carry his people along in his problem solving actions. If he chooses a contrary path, then he may find it difficult not only to rule justly but also to win the heart of his subjects. This is why the process of a joint critical examination and evaluation of wants, needs, desires, values, roles and commitments by the people were emphasized. After all, the harmonious and cooperative living captured the Yoruba sayings *ká fowó we wó lowó fin mó* (literally, washing hands together makes the hands clean) (Olowookere, 2004:81). In analysing this proverb, a hand remains unclean if it lacks the support of other hand. Even where it attempts to clean itself, it may not succeed. In relating this to individual rights in the social morality, though each of us can have a sense of purpose or potentials in our individual action, but this subjective desire is impossible to make a

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whole or realise. Rather some of these desires would have to be checked in order to make cooperation possible. Thus individual rights are sometimes seen in the context of communal solidarity. This view is corroborated by Francis Deng (2004: 499-500) that 'no family or group based on family values would allow its members to be tortured or subjected to inhumane treatment with impunity. But it is also a system which imposes on the individual certain reciprocal obligations in the mutual interest of the group'. In some other dimension, potentials need the supports of other beings before actuality is feasible, if not, it may be frustrated. A Yoruba saying in support of this is *Igi kan kò lè dà'gbó se* (literally, a tree cannot make a forest) (Olowookere, 2004:18). But recognition is placed on individual differences as separate human being with his/her own unique capacity and as being with whom one shares at least some experiences, problems and interests. Similarly, this spirit of togetherness can be re-emphasized from another perspective with the Yoruba maxim *omodé gbón à gba gbó n la fi da ilè   Ifé* (literally, it is out of joint decision that the city of Ife is created). It tries to underscore the importance of mutual decision making and understanding in the achievement of social cohesion. I will now consider the various ideas of punishment in Traditional Yoruba thought system.

An analysis of punishment in traditional Yoruba culture

This section is not concerned with the evaluation of the ways through which punishment is administered but rather to attempt its descriptive accounts in traditional Yoruba thought system. Here, I shall consider the following means of sanctions within the belief system of the people: the roles of the supernatural punishment from the Yoruba jurisprudence; Punishment within the family; and Religious and social institutional perspective.

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The roles of the supernatural punishment in Yoruba jurisprudence

From my discussion in the last section, human conduct in Yoruba community prioritizes absolute behaviour grounded in human and social well-being. As a result, when injustice or wrongful behaviour occurs, punishment is sufficiently necessary in order to restore order in the universe. This order includes the intervention of supernatural forces at the critical stage in the lives of human beings. I will exemplify with the narration from *Idin-kanran*, a minor *odu-ifa* poem, where *Obatala* was unjustly imprisoned at *Isolu* City.

> *Odò ǹlá kan ń be lénu àbáwòlú Isolu*
> *Atako, àtabo, àtomòdé ilú ní í máa pón on*
> *Won á maa pón-on mu, won a maa fi we*
> *Kódà, wón a máa pón-on fi foso won*
> *Gbogbo ará ìlú Isolu ni wón mò pè wèrè*
> *Kàn ń be*
> *Tí í máa wódò yìí wáá dérú baà won èèyàn*
> *Okùnrin wèrè yìí sì gbòn, nígbà míì*
> *Yóò se bí ení ń wè*
> *Báwon èèyan bá dódò ré tán*
> *A bèrè sí ní fojú wón rí màbo*
> *Èyí ló wá mú kí wón kéde pé*
> *Bí wón bá fojú kàn wèrè òhún*
> *Kí wón ó mú un*
> *Bí Obàtálá se ń súnmó ìlu yíí*
> *Ìwè bèrè sí ní iwù ù wè*
> *Ó bòrà sílè ó ku pátá nìkan nídìí rè*
> *Ò bá béré síí bomi sára*
> *Àwon obìnrin kan tí wón tìgboro wá a ponmi*
> *Ni wón rákoyìnsi Obàtálá*
> *Ni wón bá se bí wèrè òhún ni*
> *Wón bá ké gbàjarè padà sáàrín ìlú*
> *Ní gbogbo wón bá ró padà sódò*
> *Wón sí si Obàtálá mú bíí wèrè*
> *Fún òpò ojó Obàtálá ń jìyà èsè*
> *Tí ó mowó-mésè ré*
> *Ni inú bá bí i ló bá fowó kan òsù orí rè*
> *Kíá,gbogbo ìlú isolu bá di kíkan*
> *Òjò kò kò rò*
> *Agàn ò towó àlà bosùn*
> *Okùnrin ò lè dìde*
> *Ko sóuńje, ìyàn ńlá ń jàlùú*

Obá bá pe adwon emèwà re
Wón wá pé babaláwo kan kó wa dífá
Anu kunrin bá dífá àmo kò lee jánà
Ohun tó fa sábàbí ísòro ìlú
Ńitorí Obàtálá ò jé kó róye
Nigbà tó bùse gàdà to bùse gèdé
Ni wón tùn pe babaláwo mìíràn
Anu kunrin awo Isolu
Bákan náà lòrò tún rí
Ohun burúku tún wá ń já lohun burúkú
Okan nínú àwon olóyè bá gba oba nímòràn
Kí wón ránsé p'Ogbìgbá afínjú babaláwo kan
Nígba t'Óba ránsé pè é
Ó dífá re lati lè wá ìyanjú sóhun tí won pè è fún
Wón ní k'Ogbigbi ń fomi ígbín pèrò
Kò fi para, kò fi bòjù, kó tó lo sààfin
Gbogbo rè nà ló se
Idí rè é tó fi rí gbogbo wáhàlá
Tí ń selé nílùú Isolu kedere
O so fóba pé alaíse ni wón mú sátìmóle
Ìlú sì nilo omi kan àrà òto ki gbogbo ìlú
Kó lè tùbà kó tùse
Kí wón si fi ìgbin méríndínlógún
Àtì àso funfun baláu tu Obàtálá
Obá ba pàse kí wón tú Obàtálá a lé
Wón sì toro àfóríjì lówo rè
Wón fún un láso ala funfun gboo
Wón sì pèsè obè ìgbin fún un
Gbogbo ohun tí Obàtálá feràn pátá
Gbogbo rè náà ni wón fún un
Wón n lùlú, wón n jò, wòn ń yò
Pèlú Obàtálá, ko lè wure fún won
E ò gbó bí wón se ń korin
Obàtálá to tó fún uǹ- uǹ
Tóó
Obàtálá to tó fún-uǹ-uǹ
Tóó
Obàtálá bá ń wí pé
Anú kùnrin awo òde Isolu
Ogbígbi o wa se fiyí hàn?
Ogbígbi
Anú kùnrin awo òde Isolu
Ogbígbi o wa se fiyí hàn?
Àtoba àtìjòye ba parowa fun-un
Pé kó dakun dábo fiyèdénu
Obàtálá tó tó fún-ùn-ùn

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Tóó
Obàtálá tó tó fún-ùn-ùn
Tóó

  (*Odu Idin Kanran*)

which translates:

At Isolu there's a big river near the entrance to the city
Men, women and children of Isolu fetch water from this
River to drink, or bathe, and sometimes to wash their clothes
With it.
The inhabitants of Isolu are aware of a mad man
Who always comes to this river and molest the people.
This mad man is clever too; sometimes he will pretend
To take a bath, and as soon as people get near him
He starts to harass them.
This made people give warning to everyone .
That whenever they come across him again
He must be arrested.
As Obatala drew near to the city
He felt a desire to take a bath.
He was almost naked, wearing only his pants
and started to take a bath.
Some women came from town to fetch water.
They saw Obatala from behind and they thought
 He was that mad again.
They rushed back to report to the town's people
And they all rushed back to the river.
Obatala was mistaken for a mad man.
He was put into prison.
For days Obatala suffered for the offence
He did not commit
He became angry and touched Osu on his head
All Isolu city became uneasy.
The rain refused to fall.
Barren remain without any issue
Those sick were unable to get better.
No food-there's a big drought.
And the king summoned his chief.
They called one babalawo to advise them
Anukunrin he divined, but he could not pin-point
The actual problem of the city
Because Obatala prevented him from knowing .
After sometime, they invited another priest to come
And advise them-

Anukunrin, the priest of Isolu.
It was the same thing,
And things got even worse for them.
 It was one of the chiefs who advised the king
To send for Ogbigbi, one of the famous babalawos.
When the king sent to him
He consulted his own Ifa, in order to succeed in what
The king invited him for.
Ogbigbi was told to make sacrifice with snail water
And rub and clean his eyes before going to the palace-
which he did.
That is why he was able to clear the particular
Problems they had at Isolu.
He told the king that it was an innocent person whom
They had put in prison.
That the city needed a cleaning of special water
To make everything cool.
Obatala needed to be appeased with
Sixteen snails and a white robe.
The king ordered Obatala to be released
And they begged him to forgive them. (Elebuibon, 1989:15-17)

From the above narration , Obàtálá was unjustly punished by the people of Isolu city for the crime of harassment committed by a mad man at the city river. Injustice, in the Yoruba belief system, destroys the balance and harmony of life. When harmony is disrupted, people experience various forms of suffering and misfortune. Hence, Yoruba maxim *ìká tí ó sé ni obá ńgé* (It is the finger that offends that the king cuts) (Ajibola, 1977:21 and 79). Thus the people of Isolu suffer drought, barrenness, sickness, and so forth, as their punishment for unjust treatment of the innocent. However, there is the need for equilibrium in order to avert further catastrophes. The demand for modified human conducts or actions as claimed by the Yoruba *owó eni l'a fi i tú n ìwà eni se* (With our hands we should put straight our own affairs). This informed the consultation with a diviner to enlighten the community on the cause and restitution expected in order to restore the failed imbalance to existence. Thus the Yoruba maxim *bi eléjó ba mo ejó rè l'ébi kì í pé n'íkunlé* (A person who pleads guilty is not kept long in suspense) (Ajibola, 1977: 12

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and 62). In this line of thought , sacrifice, in form of appeasement to Obà tálá, serves as a means of reparation if there is to be justice. Restitution then involves the infliction of pains as displayed by the people of Isolu city for their unjust behaviours to Obà tálá. In short, justice only thrives in Yoruba society where restitution is practiced to amend what wrongs have distorted . So Obàtálá exercises the spirit of forgiveness in Yoruba maxim *Eni dáríji ni sète ejó* (one who forgives put an end to law-suits)

Punishment within the family system in traditional Yoruba culture

In the traditional Yoruba family system, the paternalistic social arrangement was the paradigm that dictates what role was allotted to who and what role expected from all members of the family. These twin demands of responsibility attract punishment where either of the party involved default. For example, the nuclear family is the mirror of the community. Where the mirror cracks it implies social decadence in the society. Thus the head of the family is expected to be fully alive to his responsibility for the upkeep of his family. He directs the family both psychologically and physically. Psychologically, he makes the rules that are norm-compliant and supervises its execution. Both the mother and siblings are bound by the rule though they have their role assignment in the family. When an action demands for prompt discipline, the father responses with appropriate punishment that commensurate with the offence. And the reasons for the sanctions are never hesitated to be analysed and explained to the child in order to avoid similar offences in the future. In response to this, each member of his family is obliged to heed the instructions of the family head. Everyone watches out for one another and reports untoward behaviours by any erring member to the appropriate quarters for punishment. By the time a child hits the age of distinguishing right from left hand, he must have mastered the relevant values associated with social behaviours, moral proclivity and role expectations. Implicit in this practice

and training are disciplines, which are transmitted by the parents and other older siblings through admonitions, scolding and spanking for untoward behaviour that does not conform to acceptable social and moral standards. Young ones are educated in codes of manners, conventions, customs, morals, superstitious and laws of their community through various members of extended family, kindred and neighbourhood.

But much of the early training of the child is known as the direct responsibility of both parents, especially the mother. The Yoruba word for this training is called *eko*, which is inadequately juxtaposed and translated into English language as education (Fajana, 1966: 17). The full training is a cooperative effort in which members of the more inclusive groups such as age grades must play a part. It is believed that a child, through the process, builds up his code, whether of manner or of morals, item by item, as they come incidentally into the field of his experience (Fadipe, 1991:311). For example, a Yoruba child is taught very early in life to respect age and defer to it. Thus he is educated in the symbolic art of prostrating in the case of a male child or kneeling in the case of a female child while greeting the elderly (Elegbeleye, 2005:85-86). Sometimes, a slight bow of the head and deliberate avoidance of the eye contact when being spoken to by the elderly are behavioural attitude associated with respect for age and the elderly that the child is expected to imbibe into norm repertoire when interacting with elders.

Moreso, good *eko* enhances a blissful married life. There is no doubt that a well trained girl prepared for wedding transcends the possession of beauty. Indeed, the lack of beauty scarely prevents a suitor but the absence of good *eko* marks out a girl for criticism and disfavour within and without the family (fajana, 1966: 17). That is the reason why the Yoruba say *obírín so ìwà nú, o ni oún o lorí oko* (A bad character spinster blames destiny for her lack of suitor). This also reflects in the field of leadership. A rich man without education may be by-passed in favour of a

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poor but educated man in the choice of a leader. The Yoruba saying to this effect is *owo fún ni, kò tó èniá* (wealth is incomparable to a good person/education). Nonetheless, the concept of *eko* (education) might even surprise non-Yoruba speaking person if not to the level of ridicule whenever it is considered rude to give or receive anything with the left hand, and when a girl or woman serves an elderly person without being on her knees (Fajana,1966: 23). Further training and sanctions of a child extend to knowledge of the sanitary and aesthetic norms of people. According to Fadipe (1991; 312),

> The use of the left hand is forbidden for eating. Any child of a neighbour brought
> together with other children for the purpose of partaking in a feast may show lack
> of knowledge and defiance of this convention but, if he should refuse to take
> correction from his fellows, it is the duty of the adults to seek to restrain him. If
> the child remains recalcitrant, the extreme step of thrashing or stopping him from
> eating may be taken. A neighbour who sees a child using his bare hand to gather
> up refuse which she has swept together will feel oblige to warn him against the
> repetition of such action,... on the superstition grounds that to gather refuse with
> the bare hand is to risk having trembling hand at a premature age.

Besides this, there are other ways through which the community intervene in the political, social and economic life of her people with sustainable sanctions. The age grade practice plays a prominent role here. A range of three years often marks an age grade boundary. Fajana (1966: 232) comments,

> The age –group was an association embracing all people born about the same time
> in a town or village who were initiated during a single period of four years to six
> consecutive years. It was a corporate entity, whose members not only felt
> conscious of their unity and of their distinctiveness from both older and younger
> groups in the village but also often acted together.

Among some Yoruba community, these groups are attached to some memorable events in the political history of their community such as when a staff of office is given a ruler, during a significant event and so forth. For example, among the Ijebu people of south- eastern part of

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Yorubaland, the *Awujale* (king) often confers a name on the age-grade after consultation with other chiefs. The name given to the group usually related to an important event that occurred in the life of the reigning king. Fajana (1968: 235) corroborates that the age-grade named '*Obagoroye* in Ijebu-ode indicated that the group was constituted when a new king had just ascended the throne'. Thus age-grading becomes a community wide landmark by which achievement, proper role mastery and value orientation, success and belongingness are measured as attributes of social compliance.

Also, the age-group functions as guardian of public morality. They frown at members who committed an offence or behaved in an unseemly manner. For example, a member found guilty of stealing would be instructed to restore the stolen property and then pay a fine. The fine could be limited but it is to ensure reparation for sin committed. Elegbeleye (2005:87) comments on other influences of the age-grade in a community thus:

> A kind of watertight regime of rules and regulations exist to guide behaviour, hence any slight deviation from the norm is not only frown upon but could earn the erring member direct ostracisation from the group. For this reason such social vices like stealing, laziness, refusing to pay debts, murder, sociopathy, psychopathy etc. are rarely experienced in the traditional setting.

By and large, the above social controls are meant to check behaviours in the community and to enforce the Yoruba maxim that *omo ti ko ní oníberù ni í baje* (A child who has nobody to fear becomes spoil) (Ajibola, 1977:30 and 92). This depicts the punitive sanctity of the recalcitrant on the premise that, despite the fact that members of the family contribute to the upbringing of a child, it is to recognise that each child becomes an adult not to stand alone but rather as a child and as an adult each individual is a representative of the family, clan and community from which he/she takes a name referred to earlier in my discussion. In fact, any child who refused to heed instruction out of their disrespect and lack of manners are meted with shame and disgrace to

him/herself. Such a personality is attributed to in Yoruba parlance as *omo sa a, ekeji aja* (a useless and untrained child or person who is very loose and without culture, and therefore has habits that are next to a street dog without an owner) or *ako igba* (one who does not respond to training). Hence the punishment for contravening the natural laws of obedience and respect for family viewpoints are retributively automatic.

Sanctions of religious and social institutions

Besides the retributive and reparative punishments from the Supernatural perspective and punishment within the family system, another approach, in the study of the idea in traditional Yoruba culture, is concerned with the utility of punishing offenders. This involves the moral lessons, generated out of religious and social institutions, which human conducts are meant to serve. This I exemplified in the minor *odu-ifá*, *osa-fun-un*, where the big monkey, *Alakedun*, betrayed the trust *Obàtálá*, the arch-divinity, had in him and was subsequently punished. In the narration, *Obàtálá* and other divinities made an oath to abandon palm-wine, and they all vowed not to drink palm-wine anymore. Thus:

> *Gbogbo won ò gbodò memu mo*
> *Ati Obàtálá náà*
> *Obàtálá bára akèrègbè tuntun*
> *O fi àkàsù èko yangan sìnú rè.*
> *A si mà a mú léèkóòkan*
> *Funfun ní kinní òhún*
> *Ó funfun bí emu*
> *Alakedun bá rò pé Obàtálá ti jèèwò*
> *To bá káwon egbé re*
> *O lo so fáwon òrìsà yóòkù*
> *Itàdógún pé, gbogbo òrìsà bá péjù*
> *Sójúbo Obàtálá*
> *Wón ní kó gbé akèrègbè rè jáde*
> *Enú ya Obàtálá, ó gbé akàrègbè jáde*
> *Wón to o wò, kò jo emu*
> *Eko yangan ni*
> *Wón bá so f'Obàtálá pe Alakedun*
> *Ló wá sòfófó fáwon pé*

Obàtálá ̀si ́n jí emu mu
Wón bá bi Alakedun
Ló bá ́n wípé ̋Mo rò po funfun
N se ló funfun
O funfun bí emu"
Obàtálá ni Ọ fe dójú tí mi
Látòní lo, wo inú igbó lo
Má a torí igi dóri igi
Alakedun bá n wí pe
Funfun ni
O rí bíi funfun
Bí emu ló rí

(Odu Osa-fun-un)

Which translates:

Every member had to leave palm wine now
At the next meeting, when all members arrived at
Obatala's shrine
They asked him to bring out the gourd from which
He drinks
Obatala was surprised, and he brought out his gourd.
They tasted it; it was unlike palm wine.
It was solid food made out of maize
They told Obatala it was Alakedun big monkey
Who had come and told them
Obatala still drank palm wine
They asked Alakedun big monkey.
He said, "I thought
It was white
It looked like palm wine."
Obatala said, "You wanted to disgrace me.
As from today go into the bush
And continue to stay there from one tree to the other"
Alakedun was saying.
"It was white
It looked white
It looked like palm wine" (Elebuibon, 1989:35-36)

From the narration, *Alakedun* was banished into the bush by *Obàtálá* for not only betraying the trust of friendship but also for saying what he could not ascertain. Besides this, punishment of

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this nature is meant for forward-looking values. Hence the utilitarian moral lessons point to a basic factor: The implications for oath breaking in Yoruba culture.

Oath- taking [*Imúle*] in Yoruba belief system is reverently upheld. According to Abogunrin (1996: 3), it means 'a solemn agreement of secret pact'. Its rituals include drinking of the water mixed with earth or drinking from the water poured into a hole specifically for the purpose. The agreement becomes sealed, valid and unalterarable after the process. The essence of oath-taking is to maintain cohesion, peace and political stability not only within the community but also with surrounding environs (Abogunrin, 1996: 3). There are two forms of oath taking. First, this involves a form of covenant between the equals that is between a person qua person. Punitive measures are taken against a party who defaults in accordance with already discerned rules and regulation guiding their operation. The other type of covenant (*Imúle*) exercised by *Obàtálá* and other divinities is that between two unequal partners –between man and supernatural being. It is formulated to recognize and respect each other's interest, welfare and estate. It also serves as morale booster and shapes the activities of the contractors to the oath taking.

By and large, the severance of this oath-taking in Yoruba belief system is sinful, and this may adversely affect the whole community. That is why the Yoruba emphasize the fact that covenant breaker will disappear with the earth and be carried away by the earth that would open under his/her feet [*Eníti ó ba dà lé, a balé ló*]. Sin, as discussed earlier in the chapter, is connected with the breach of rituals laws, thus the expression *jèèwò* [to eat the taboo]. The word *jèèwò* comprises all acts of the violation of the Yoruba law. In this concept, *Obàtálá* and the divinities are meant to abide by the norms and rules governing the avoidance of drinking palm-wine. Its disobedience depicts descend from communal covenantal grace into isolated

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individualism. Individualism, in this sense, involves the absence of human and moralistic privileges from others in the community. The individual may be excommunicated from societal functions as he/she loses respect among his/her peer group. While this is in progress, his/her movement in the community would be under close watch as nobody negotiates with him/her to the extent of having regard for his/her advice on matter bordering even his own welfare. And as such, the negative thoughts of *Alakedun*, the big monkey, betrayed the trust *Obàtálá* had in him.

In the analysis given above, based primarily on an analysis of punishment in traditional Yoruba culture, we have shown that the relationship between the two planes of existence, *Ìsàlú-Òrun* (the spiritual realm) and *Ìsàlú-ayé* (the natural realm), is a continuum. In other words, the Yoruba do not regard the two planes of existence as independent but rather there is constant communication between them.

I argued that the spiritual realm is housed by supernatural forces including *Olòdùmaré*, (the Supreme Being), the *òrìsà* (divinities) the *Ajogun* (anti-gods), *Àjé* (witches) and the ancestors. They are believed to lend legitimacy to the conduct of human beings in the natural realm through the fear of the unknown. That is the spiritual world serves as a means of resolving some of the significant puzzles of the human condition. For example, when an event occurs, the Yoruba fall back on their stock of experiences and try to work out its causation and meaning in terms of the situation with which they are already familiar. If nothing in their stock of experiences helps them in revealing it, they regard the incident as mysterious and as the work of supernatural forces, especially if the event defied explanation in respects of established natural processes (Sodipo, 2004:81-91). In fact, the Yoruba are known to be contemptuous of gods who fail to deliver, and the continuous respect for them is conditioned on a high percentage of scoring in meeting their needs, aspiration and security in the community.

Also, the natural realm is primarily meant to cater for the promotion of human welfare and happiness with due recognition for the spiritual realm. The humanistic orientation is grounded in social morality. We argued that social morality in this context is a traditional belief system which not only denied the pursuit of self-interests but also enjoined a moral system where a common and harmonious social life is practiced. It therefore can be meaningful when set within the confines of society. That is when string of interaction exists among mankind in the society.

Thus man is expected to curtail his natural rights to the extent that his actions benefit others than himself. This course of socialisation is inculcated in man from the cradle and germinated to take responsibility to communal welfare as paramount. In this thought system, rights are not suppressed but are seen as secondary to responsibility. Parents, in this regard, are educated on the need to bring up their children according to the ways of community.

In short, individual preferences are challenged to recognise communalistic attitude with this maxim *Á ń pé gbòn ni, a kì ì pé gò* (we come together to be wiser, not to be more stupid). It is against this view that individuals are responsible to maintain the delicate balance in between the two realms of existence. It is what assures the happiness and prosperity of individuals and the community.

By and large, it is manifested, in the study, the lynchpin of Yoruba moral thought system, *iwapele*, and the essence of punishing evil and discouraging immoral attitude, such as murder, adultery, robbery, thinking evil, rape, arson, among others. The best reason for this is to avoid calamities that may befall the community. In essence, ignorance is not an excuse to evade punishment and reproach against bad conduct because the community is prepared, through a series of social interactions, to make people aware of what societal expectations are. These are

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reflected in our analysis of the roles of punishment from the supernatural punishment; the religious and social institutions sanctions; and punishment within the family.

So, I shall in the next chapter attempts to present the theoretical framework upon which our study of the integrative notion of punishment in Yoruba culture is grounded. It is with a view to strengthening our linguistic discourse, tradition and power relations among constitutive interests in the society.

Endnotes

[1]More on the two planes of existence will be discussed in the chapter, see The Rev. Samuel Johnson. 2001. *The History of the Yorubas.* Lagos: CSS Ltd.

[2]The *Àjé* are translated inadequately in English language as witches but they are mysterious mothers or *Iyami.* See Elebuibon, Yemi. 2008. *Invisible powers of the Metaphysical World: A Peep into the world of Witches.* Ibadan: Creative Books

[3]The translation of *Emi* as soul is debatable, but this is the most popular conception in Yoruba thought system.

CHAPTER FOUR

GADAMER AND HABERMAS' HERMENEUTIC THEORIES AS THEORETICAL FRAMEWORK

My theoretical framework in this study is anchored on hermeneutic theories of Hans-Georg Gadamer and Jurgen Habermas. Their approach is grounded on the rejection of the traditional notion of the solitary subject that confronts object and becomes reflective only by turning itself into object. In its place, the scholars put up an idea of hermeneutic enterprise that is mediated by language and tradition linked to social action.

Hermeneutics simply means the study of understanding, in particular, the interpretation of a text, a thing, or human action. According to Palmer, 'it is the most basic act of human thinking' (Palmer, 1994:8-9) as human daily existence involves a constant process of interpretation. This involves the process of bringing to moment from unintelligibility to understanding. Gadamer describes this as 'bridging the gap between the familiar world in which I stand and the strange meaning that resists assimilation into the horizons of our world' (Gadamer, 1977: xii). Thus, the hermeneutical call is to make something that is unfamiliar, distant and obscure in meaning into something real, near and intelligible to man (Palmer, 1994:140). It is derived from the Greek verb *hermeneuein*, that is, 'to interpret', and the noun *hermeneia* is associated with the god *Hermes* who is responsible for making intelligible what are originally beyond human comprehension (Palmer, 1994:12-13). It is also the 'search for original, undistorted message of a written source' (Bauman, 1978:8). Okere notes that hermeneutics 'originally means the investigation of the nature of and principles of correct interpretation of realities whose meaning is not immediately evident' (Okere, 1983: 19). Hence, it is a tool employed in the 'act of elucidation' (Madu. 1995:6).

Hermeneutics was first introduced to address the question of authenticity in christian texts, as there appeared the contraction of the true version versus distorted ones. At that stage, it became imperative to recover the true meaning 'as identical with demonstrating the authenticity of the text' (Bauman, 1978:7). This biblical exegesis was swiftly refocused, in the romantic age, to a 'purposive system' whereby interpreter had to 'plumb the impenetrable depth of the author's spiritual experience' (Bauman, 1978:9-10). It was a state at which the interpreter employed his imagination in line with the author's state of mind. It is no surprise then that the romantic hermeneuts, Friedrich Schleiermacher and Wilhelm Dilthey, diverted the course of hermeneutical task from the text to all human productions - verbal and non-verbal, historical and current.

Dilthey, the mouth piece of this tradition, saw in hermeneutic discipline the foundation for all the *Geisteswissenschaften* (man's art, action and writing) (Palmer, 1994:41). Martin Heidegger took ever-widening scope of hermeneutics to a new level in the twentieth-century. His special kind of hermeneutics was neither concerned with the science of text interpretation nor with a methodology for the human science but to a phenomenological explication of human existing itself (Palmer, 1994:42). Nonetheless, Hans-Georg Gadamer, a pupil of Heidegger, develops the implications of phenomenological hermeneutics contribution to hermeneutics. Gadamer reformulated Heidegger's position to emphasize, among others, the historicity of hermeneutics. Also, Paul Ricoeur, like Gadamer, was influenced by Heidegger's existentialism. His interpretive discourse is a stable bridge linking the epistemological concerns of Schleiermacher and Dilthey with the ontological preoccupations of Heidegger and Gadamer and, in the process, taking thinking in hermeneutics a step further. Finally, Jurgen Habermas, a leading figure of the Frankfurt school of social criticism, develops a Meta- hermeneutics theory

which radically transcends the limitations of philosophical hermeneutics. It attempts to subordinate historical and interpretive character of understanding to critical and universal power of reason.

The chapter will discuss some of the major approaches in hermeneutics discourse including: romantic hermeneutics, Schleiermacher and Wilhelm Dilthey; phenomenological hermeneutics, Martin Heidegger; and Paul Ricoeur's philosophical hermeneutics. However, I need to note that there are various approaches to the problem of interpretation, there are also many similarities. But I focus in the study is on the theoretical contributions of Hans-Georg Gadamer and Jurgen Habermas in the hermeneutic field with a view to bringing to the fore their significance to the integrative notion of punishment in Yoruba culture, in as much as my course of study revolves around meaning and interpretation.

Trends in hermeneutics discourse

The romantic hermeneutics of Friedrich Schleiermacher (1768-1834) and Wilhelm Dilthey (1833-1911)

The romantic hermeneutics of Schleiermacher and Dilthey succeeds in playing down the integrity of the interpreter's own present state of mind, in order to avoid prejudices and distortions that may block objectives and scientific understanding. Hence this age of reconstruction set aside its own subjectivity by means of an effective historical method. It re-echoes the Cartesian and enlightenment ideal of the autonomous subject, who gainfully extricates himself from the entanglement of history and the prejudices that coloured that entanglement.

Friedrich Schleiermacher, the father of modern hermeneutics, occupies a significant position in the theory of understanding. He looks up to hermeneutics as a general principle of

methodology, which underlies interpretation. He believes that man misunderstands naturally because of the changes in word meanings and world-views that have historically taken place, which separate the author from the interpreter. Thus understanding must be sought at each age, as it is a continuous process. He therefore contends that the art of understanding must be given priority of place in the German intellectual movement. This movement, to him, must disengage itself from 'the shackles of blind tradition, superstition and the heteronomy of brute nature' and embrace 'autonomy, reason-informed and reason-driven realms of the human spirits'(Hausheer, 1996 :56).

Schleiermacher remarks thus:

> For a long while I too was satisfied to have found reason. And worshipping the uniformity of the supreme and Single Being, I believe that there was one right thing for every specific case; that action must be the same in all human beings, and that only because each one had been given his appointed situation and place did one human being differ from another…. That each man, each individual, was not a peculiarly constituted creature, but merely an identical element that was everywhere the same…. But now it dawned upon me, and this has become my supreme vantage-point,… that everyman should manifestly express in his own unique fashion the humanity within him, in his own specific mixture of its elements, so that human nature should be revealed in every possible way, and what in the fullness of infinite time and space everything should become realized which can emerge from humanity's womb (Hausheer, 1996 :61-2).

Individuality, in its mixture of elements, then means the celebration of understanding. Fundamentally, understanding is a two-way chain of events in historicity, that is, preunderstanding - understanding. Preunderstanding proves to sustain the fact that nothing can be understood unless it is already known. It is a common experience which cannot be said to be definite or complete. Also, it represents the source out of which I grasp the unique, specific, concrete sense and meaning of a particular human life (Hausheer, 1996:64). Schleiermacher called it the 'comparative-historical' method. The interpreter rootedly studies the general circumstances, the linguistic tradition, the particular literary genre and the historical conditions

of the time before the process of understanding the text begins (Hausheer, 1996:68). Richard Palmer corroborates thus:

> Is it not vain to speak of love to one who has not known love or of the joys of learning to those who reject it? One must already have, in some measure, a knowledge of the matter being discussed. This may be from the minimal pre-knowledge necessary for understanding, without which one cannot leap into the hermeneutic circle (Thiselton, 1980:104).

The point here is that in order to 'leap into the hermeneutic circle', there must have been an 'affinity of spirit' (Bauman, 1978:27) between the text and the interpreter, or a pre-established fact guiding the interpreter before any understanding is appreciated. Indeed, it is thus impossible for understanding to proceed between two indifferent cultural beings except there emanates a common spirit. An individual then understands from within his historical state. Yet the horizon in view is made up of the very element to which it gives meaning. Understanding in this way is circular because I only know meaningfully within this 'circle'. This is called the 'hermeneutical circle' (Palmer, 1994:87). With hermeneutics circle, the eternal movement from particular to the universal and back to the particular, understanding becomes a creative act, a reproductive activity, from which the interpreter brings to the fore the sense of the text, using his own prejudgement, by giving it a new light of expression which is both original and unique. In addition, both the speaker and the hearer must share the language and the subject of their discourse before the principle of pre-knowledge operates in the art of understanding.

Schleiermacher has contributed immensely to the turn of history in hermeneutics. Hermeneutics is no longer regarded as limited to theology, law or literature but rather refers to the art of understanding in linguistic utterances. Furthermore, he claims that what the text means is not what it seems to say to us directly. Thus a disciplined reconstitution of the historical

situation is necessary. This clears the ground for Dilthey, in the latter's methodological principle of discovery of the 'I in the thou'.

Wilhelm Dilthey, on his part, was initially influenced by the general programme outlined by Schleiermacher, but later maintained that only an objective historical knowledge can provide the framework for interpretation. He works assiduously to ascertain the objective qualification of this means of understanding. He packages his argument in his famous doctrine of the human studies or the science of mind. According to Dilthey, 'only in the world of the mind which creatively, responsibly and autonomously, stirs within us, has life its value, its goal and its meaning' (Dilthey, 1976: 172). He, like Schleiermacher, contends that human mind represents the source of human knowledge. In this regard, it is responsible for the connectivity involved in mental states where one's desires, beliefs and actions are conceived. It is to mould an objective human world-view, as conceived in scientific methodology.

Dilthey investigates the nature of the difference between the human science and the natural science, knowledge of minds and knowledge of physical things respectively. He makes it clear that whereas the latter is concerned with physical objects as mere appearances subjected to description, explanation and prediction with higher degree of precision; the former is tailored to deal with real realities where man develops a deeper sense of the physical world. Thus man is creatively free to pursue chosen-ends of value objectively. The human sciences then is the previous moments where man appreciates not merely the outer objective sense and changes but the intrinsic psychological motives producing them as well as its meaning for the people concerned.(Hodges, 1944:12) .

To this end, human sciences deal with what I do understand. That is, they penetrate the known facts of human history. This shows that human mind occupies the upper limit over the

fact of nature. Also, it shows that hermeneutics starts with man. Man constitutes the centre-point of experience, expression and understanding because of his power of willing, feeling and imagining things from a related perspective. Man is the source of meaning and value. This is different from what obtains in natural sciences whereby an explanation of events and processes depends on general laws. By experience, I mean the primary presupposition in understanding. It is clear that the undistorted reality only exists for man in the concreteness of consciousness through this inner-experience. The inner-experience cognises ideas temporally gathered through memory. Indeed, a person's experience trades in things of momentary fact in which both past and future elements are related to map out a 'continuity of mental life in time which constitutes the course of a life' (Dilthey, 1976:185). Knowledge of personal life is thus the same as its experience. For example, the autobiographical context of a person reflects only within a context, the relation of parts to a definite whole. But Dilthey claims that understanding is not only concerned with personal experience but also with the ability to decipher signs or expressions exhibited by others. For example, I can only experience my own personality only by comparing myself to others and be conscious of how I differ from them. It is the foundation on which self-knowledge is built. Dilthey puts it thus 'understanding is our name for the process in which mental life comes to be known through expressions of it which are given to the senses' (Hodges, 1944:21).

Expression then means the type not established by conventional laws but only natural to man. For instance, the natural utterances, the clapping of hands, the laugh or the sigh of facial expression, and so forth, are universally understood by all rational beings. Dilthey denotes it to be life-expression, a standard referent-point through which others are judged. Life-expression is the imaginative experience that disclose more of the 'psychic nexus than any introspection

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because it arises from depths which consciousness cannot illuminate' (Makkreel, 1975:324). It implies that hermeneutics determines the relation between expression and what is expressed.

Hermeneutics, or this relationship, starts with the recognition of 'affinity of spirit'. So, the expression of common experience constitutes the bridgehead which makes communication and association possible among human beings. Dilthey puts it thus:

> A basic experience of what men have in common penetrates the whole conception of the mind constructed world; through it consciousness of a unitary self and similarity with others, identity of human nature and individuality (1976:186).

Hence, Dilthey graduates the individual mental state of understanding to an explanatory standard wherein man can objectify his psychological inclination successfully: the objective discovery of 'I in thou.'(Thiselton, 1980:26). This involves a mixture of critical thinking and scientific explanation in human studies. Dilthey describes the objective mind thus:

> This objectification is always related, in understanding, to experience in which the person becomes aware of his own inner life and capable of interpreting   that of others….(It) shows how the free, rational and therefore, universal will becomes objective in a moral will: Freedom, which has freedom for its content and purpose, is in the first instance, merely a concept, a principle of   the mind and heart destined to develop into objectivity, into a legal, moral, religious and scientific reality ….Objective mind is the absolute idea, but only it itself, in so far as it stands on the ground of finitude, its real rationality retains the aspect of outwards appearance (Palmer, 1994:126).

Dilthey shows objective mind to be the suppression of private concern by man for the interest and purpose of others. Thus a creatively historical event should not be 'momentary and transient' but in a way permanent and enduring. Hodges describes this 'objective mind' to be 'those permanent forms which form outlines in which so much that has sunk from memory into unconsciousness is still expressed for all to read' (Palmer, 1994:208). We may say that interpretation starts with historical reality derived from common features such as language, custom, the family, society, the state, the law and every form of life, and they graduate overtime

into a deep-seated living reality. It is imperative to note that these elementary re-living experiences are, in understanding, graded according to their values for our consciousness and feeling.

Hence, the discovery of 'I in thou' is a dynamic mind structure in which the cognition of objects, values and purpose are related to each other (Palmer, 1994:193). Dilthey employs this structure to alert the mind to the relevance of both indeterminate and determinate in the inter-connectivity of history. According to Dilthey:

> Understanding must try to link words into meaning and the meaning of the parts into the structure of the whole given the sequence of word (Hodges, 1944:45).

The construction then clarifies that understanding the particular in an event is the responsibility of general historical world. It flourishes only in an inductive process: induction organises the series of events into a definite structural pattern in form of parts and a whole. Meaning then signifies the linkage between parts and a whole in the process of human life. That is every expression is meaningful in as much as it constitutes parts of a contextual whole (life). Similarly, to understand a text, each cognised phrase or word is relevant to the meaningfulness of the whole text. Not enough, the category of meaning is life, human world. It is to do justice to a temporal continuum: the sphere of the past is being enlarged through the meaningful present to set goals for the future.

Its application to the study of punishment in traditional Yoruba culture would be objectively considered without prejudice for value-laden concepts. Its operational discourse will then be placed on a scientific pedestrian without recourse for Yoruba ontological consideration whatsoever. By implication, the interpreter has successfully negated those contributory values necessary as a vital extension of the past. In addition, understanding the traditional idea of

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punishment in Yoruba ontology is only a repetition of a past juristic intention rather than an authentic productive exercise that involves the interpreter's own hermeneutical contributions. That is to say the Romantic approach cannot break a new ground in as much as it continues to recircle the traditional Yoruba beliefs on punishment in its drive for objective understanding. Against these limitations, let us consider next the Phenomenological hermeneutics.

The phenomenological hermeneutics of Martin Heidegger (1889-1976)

Phenomenological hermeneutics attempts to address the limitations of the romantic hermeneutics with the introduction of anticipatory ideas wherein the interpreter is equipped with a 'fore-having' or tradition before interpretation begins. Martin Heidegger attempts to proffer hermeneutical method that will disclose to man the idea of life in itself. That is to say, the context of his approach is a large quest for a more fundamental ontology. Edmund Husserl (1859- 1938) influenced the background information to his study of phenomenology. First, that phenomenological study considers man's 'psyche' not as a substantial entity but as an act of revealing intentionality and the way in which it is encountered. Second, it contends that this phenomenon, whatever it might happen to be, must be explained or shown as it really is. This implies a 'presupposition less' subjectivity. Finally, it opines that the being of this entity is known not by some after-the-fact reflection or transcendental construction but directly and immediately by way of a categorical intuition (Dilthey, 1976:201). For Husserl, philosophy needs to be a rigorous science with empirical study as its final goal.

On the contrary, Heidegger rethought the concept of phenomenology itself, so that the method involved takes on a radically different character. He carried out this in form of 'historical, a creative recovery of the past, a form of interpretation' (Dilthey, 1976:229). This philosophical description recognises man as instrumental to the interpretation of the world as he

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sees it from within his new moment in life. Understanding, to him, is not merely an attribute of my being but that which I must know. It should not be a fixed understanding but historically formed, accumulated in the very experience of encountering phenomena. Being will then be investigated by an analysis of how appearing occurs. Hence, ontology will become phenomenology. This will render visible the invisible structure of human existence. It represents the primary act of interpretation which brings to light things from concealment. Fundamentally, his hermeneutics concerned the ontological meaning of human *Dasein*. *Dasein* literally means 'Being-there' or 'Being-here'. *Dasein* technically represents the Being ness of the being, since it characterises the possibility of human existence in contrast to things that are natural things of the world. It is only Dasein's '*Ek-sistenz*' that can inquire into, and observe, its own being; whereas '*existentia*', the traditional meaning of existence, deals with things in the universe, for they cannot question their own being. Understanding then is on the verge of possible interpretative facts of human existence as against qualities that are fitted to describe objects.

In his celebrated work, *Being and Time*, Heidegger characterises human *Dasein* as 'Being-in the world', which reveals the ontological existence rather than stopping at the ontic or factual sense of it. The 'world' of the 'Being-in-the-world' expresses the 'whole in which man finds himself already immersed', (Sheehen,1994:308) surrounded by its known fact revealed through an always pre-grasping, encompassing understanding. It represents the mood or the state-of-mind of the 'self' independent of the world of natural things. That is, to say, man is the source of authentic self-Being short of the external world of 'utensil', to use the word of Heidegger.

The mood in the situational state of mind counts in the world to which man has an established practical relationship of concern. To this end, Heidegger denounces the traditional

content of ancient ontology, for it dogged the wheel of primordial experience at determining the nature of Being. In this sense, tradition must be loosen-up to create opportunity for genuine creative mind in hermeneutics. Hence the world is 'given' to *Dasein* prior to any act of conceptualisation. The *Dasein* knows the possibilities before it knows possibilities (Thiselton, 1980:163). That is to say, man is pre-conceived with ideas before the acts of interpretation which, to Heidegger, is subjected to further possibilities rather than the scientific certainty. Scientific explanation only deals with objects from a limited point of view determined in advanced, which limits its interest to certain phenomena and on that basis settles its methods and its criteria. But, to Heidegger, 'possibility, as an *existantia*, is the most primordial and ultimate positive way in which *Dasein* is characterised ontologically' (Heidegger, 1956:183).

Heidegger clarifies this in his distinction between the term, 'present-at-hand' and 'ready-to hand'. The former, present-at-hand, means the end-point of conceptualising. It entails matters-of-factly things which can be cognised as a thing-in-itself ready to be handled. It is the phenomenological stand of letting the thing which shows itself 'be seen from itself in the very way in which it shows itself from itself' (Heidegger, 1956:41). It is against the scientific world-view developed by Edmund Husserl that all *a prior* judgements and presuppositions should be bracketed or held in suspension in view of the targeted pure consciousness. The latter, ready-to-hand, in contrast, cannot be grasped theoretically. Rather, it is a sort of concern that manipulates things out of experience and put them to use. In this sense, first, the world of *Dasein* is that of practical concern whereby a meaning-given horizon is a 'world' given task. This possibility, secondly, is to prove that understanding is an 'everydayness' affair which becomes intelligible whenever it is useful for some purpose. Finally, understanding the world is a pre-conceptual and pre-cognitive existential (Heidegger, 1956:30-31). In other words, it is not a matter of 'sticking a

value on a naked object' (Palmer, 1994:134). Rather, things in the world are seen as this or as that. Hence, the 'world' of self-Being is the horizon on which 'everydayness' in hermeneutics is practised. According to Heidegger, meaning is then:

> the 'upon-which of a projection in terms of which something becomes intelligible as something, it gets its structure from a fore-having, a fore-sight and a fore-conception (Thiselton, 1980:150).

Methodologically, this conscious understanding of 'fore-ness' is meant to form anticipatory ideals, to make them conscious and acquire right understanding from the things themselves (Gadamer,1975:239). For example, a person trying to understand a text is always performing an act of 'projecting' or 'fore-ness'. He projects before himself a meaning for the text as a whole as soon as some initial meaning emerges. Again, the latter emerges only because he is reading into the text with particular expectations in regard to a certain meaning. This working out of this 'fore-ness' is understanding what is there. It indicates that the interpreter is infested with prejudices, prior mind's eye and prior question, in his preliminary approach to a text. Meaning in this sense is the creation of the interpreter. It is his intent upon reading the text. In other word, the interpreter approaches the text with certain presuppositions, interests, historical understanding and experiences which sum up to shape, overtime, the way he understands the text. This, in turn, actualises the Heidegger 'world hood' whereby it is possible for two different interpreters to reasonably come out with a different interpretation to a given situation or text. Nonetheless, it is important for the interpreter to exercise caution not to introduce a prior stance into determining the meaning of a text before the act of reading even begins. This arbitrariness of inappropriate fore-meaning only comes to nothing in its working-out. Indeed, it is honourable for the interpreter to be both aware of his presuppositions and open to having them challenged by the

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text. Openness here means the willingness of the interpreter to revise and to correct presuppositions newly: it creates the atmosphere of presuppositions without prejudices.

Dasein then is responsible for the understanding of phenomena. The Being-in (Being with) in the 'Being-in-the-world' denotes the disclosed, discovered, unveiled state of *Dasein* (Heidegger, 1956:46). It manipulates a co-state of mind and a co-understanding shared in the interpretation of something as something and of meaning. Understanding in this way should not be a theoretical activity in which the *Dasein* thoroughly examines the object before him as passive. Rather, the temporal disclosure of truth reached by '*Dasein* at a new place of vision' (Heidegger, 1956:46) is authentic. Truth, to Heidegger, is a dynamic concept. It is an existential concept pointing towards a possible and unitary mode of 'Being-in-the-world'. Truth is grappled with temporally through experience of some old experience, which is not definitive in nature but open to experience encouraged by experience itself.

Thus interpreting the idea of punishment in Yoruba ontological practice demands a prior knowledge and question, whereby effective elucidation of familiar world-views on the practice or text is made possible. It involves breaking the hermeneutical circle for a productive horizon in the traditional Yoruba penal system with the fore-meaning. However, the Heidegger's anticipatory ideas could after all be a loose one in the sense that interpreter may merely capture for interpretation self-interestedness aspect in order to pin down a hermeneutic situation. That is to say, due to the openness through loose presuppositions, the interpreter could encourage limited and focused interpretation of the traditional conception of punishment in Yoruba ontology for his whim and caprices. Hence Heidegger's Phenomenological hermeneutics does not explicitly state the conditions under which presuppositions are manipulated in the tradition. We shall next look into the contribution of Paul Ricoeur's philosophical hermeneutics.

The philosophical hermeneutics of Paul Ricoeur (1913-2005)

Ricoeur interpretive discourse is a stable bridge linking the epistemological concerns of Schleiermacher and Dilthey with the ontological preoccupations of Heidegger and Gadamer and, in the process, taking thinking in hermeneutics a step further. Like Hans-Georg Gadamer, Ricoeur is one of the leading exponents of philosophical hermeneutics that was influenced by Heidegger's existentialism. This increased and influenced his concern for an interpretative theory distinct from the scientific objectivism. From his early work in philosophical anthropology through his concern with textuality, semantic innovation to the narrative function, Paul Ricoeur has waged a philosophical battle on two fronts. First, he seeks to override himself of all forms of modern subjectivism and, secondly, all psychologistic theories of meaning, that is all those which equate meaning with authorial intention as grounded in Schleiermacher and Dilthey's quest for objectivism in human science discussed earlier in the chapter. He strongly opposed modern objectivism in favour of the role of philosophy as due reflection. This reflective exercise is 'a reflection upon existence and upon all those means by which that existence can be understood' (Ihde, 1971: 11). He focuses on the evolvement of self-discovery whereby interpretation of human acts, the basic acts of existence, is brought to the fore. This transcends the 'Romantic illusion' of empathetic understanding (Ricoeur, 1983: 194-5) generated by Cartesian revolution which celebrates man as the centre of the world as aped by Schleiermacher and Dilthey. The Cartesian ideal provokes the notion that truly objective knowledge must be presupposition less or foundational grounded upon some rock- solid, objective foundation (Madison, 1994: 301). But this unique subjectivity, according to Ricoeur, in his book *History and Truth,* is expressed thus:

> The philosopher has a specific way of fulfilling in himself the historian's work.
> This consists in making his own "self-discovery" coincide with a recovery of

history....I think it applies to the whole group of philosophies which we may broadly call reflective, whether they take their starting point from Socrates, Descartes, Kant or Husserl. All these philosophies are in search of the authentic subjectivity of the authentic act of consciousness. (1965: 32)

From the above viewpoint, Ricoeur attempts to develop an articulated notion of the 'subject' which would be free from all forms of modern subjectivism. This existential motivation he held fast to in his conception of hermeneutics, as will be alluded to later, as an attempt on the part of the reflecting subject to come to grip with ' the desire to be and the effort to exist which constitute us' (Ricoeur, 1974: 266).

In the second front, Ricoeur attempts to further rid of the notion of modern subjectivity altogether. He criticised both Schleiermacher and Dilthey of committing the 'positivist illusion of a textual objectivity which closed in upon itself and wholly independent of the subjectivity of both author and reader' (Ricoeur, 1983:194-195). This inadequacy in interpretation engenders in Ricoeur 'a distinct and irreducible mode of intelligibility' (1976:72). He explicates further thus:

Explanation finds its paradigmatic field of application in the natural sciences. When there are external facts to observe, hypotheses to be submitted to empirical verification, general laws for covering such facts, theories to encompass the scattered laws in a systematic whole, and subordination of empirical generalisations to hypothetic-deductive procedures, then, we may say that we explain.... Understanding, in contrast, finds its originary field of application in the human sciences..., where science has to do with the experience of other subjects or other minds similar to our own. It relies on the meaningfulness of such forms of expression as physiognomic, gestural, vocal or written sign and upon documents and monuments, which share with writing the general character of inscription....The necessity of interpreting these signs proceeds from the indirectedness of the way in which they convey the other mind's experiences indirectly, not directly, to us....This continuity between direct and indirect signs explains why "empathy" as the transference of ourselves into another's psychic life is the principle common to every kind of understanding, whether direct or indirect ....Interpretation is not a third term, nor as I shall attempt to demonstrate, the name of the dialectic between explanation and understanding . It is understanding applied to the written expressions of life (Ricoeur, 1976:72-73).

Against this introductory style, Ricoeur addresses the steps to take or what an interpreter should note when confronted with a text. He grounds his hermeneutics enterprise on a comparison note with a correspondence between the inner structure as the discourse of the writer and the process of interpretation as the discourse of the reader. On the inner structure as the discourse of writer, Ricoeur contends that discourse is 'the event of language' (Ricoeur, 1976:9). Like Gadamer, Ricoeur holds the 'conviction that discourse never exist for its own seeks for its own glory, but that in all of its uses it seeks to bring into language an experience, a way of living in and Being-in-the-world which precedes it and which demands to be said'(Ricouer,1983:196). That is to say events always vanish while the language system sustains and remains endure to communicate the temporal existence of the message, which testifies to its actuality. What he attempts to say, in other words, is that it is out of discourse that existence of language is grounded. So, an act of discourse is not merely transitory and vanishing, but rather it can also be identified and re-identified as the same so that we may say it again or in other words.

I may even communicate or translate the events, through discourse, from one language into another. But through this endurance, it preserves an identity of its own which can be called the "propositional content" such as "Fela lives on" for example. This propositional content shows that discourse has a structure in the synthetic sense in form of the 'intertwining and interplay of the functions of identification and predication in one and the same sentence' (Ricoeur, 1976: 11). Discourse then provokes a concrete whole which is the dialectical unity of the event and meaning in the sense. This dialectics represents a significant theory of discourse as its guideline. I may explicate this from another sense that all discourse is understood as meaning in as much as all this train of thought designate the propositional content which transient the event and endures. It connotes that meaning and event are always, as in the linguistic of

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discourse, articulated. According to Ricoeur, 'the suppressing and surpassing of the event in the meaning is a characteristic of discourse itself. It attests to the intentionality of language, the relation of noesis and noema in it' (Ricoeur, 1976: 12). From this perspective, he affirms that meaning connotes both noetic and noematic. That is to say reference of discourse is connected to its speaker in relation to the event side of the dialectic. As a result, the mental meaning of the event can only be deduced nowhere else other than in discourse itself. It implies that utterer's meaning has its mark in the utterance meaning. Hence, no mental entity need be hypothesized or hypostasised in as much as the utterance meanings are inferred from the utterer's meaning. However, Ricoeur cautions misunderstanding of events in the dialectic of mutual understanding. He comments that:

> Most of our words are polysemic, they have more than one meaning. But it is the contextual function of discourse to screen, so to speak of the polysemic of our interpretations, the ambiguity of discourse resulting from the unscreened polysemic of the words. And it is the function of dialogue to initiate this screening function of the context. The contextual is the dialogical. It is in this precise sense that the contextual role of dialogue reduces the field of misunderstanding concerning the propositional content and partially success in overcoming the non-communicability of experience (Ricoeur, 1976: 17).

What Ricoeur attempts to reiterate here is that in the course of dialectic of event and meaning, language manifests itself to bring to the fore private experience to public realm. That is the transformation of the psychic into the neotic, exteriorization of impression to the expressive level. When language is transformed into a text, it assumes a life of its own, independent of that of its author. Ricoeur expresses that 'the text's career escapes the finite horizon lived by its author. What the text says now matter more than what one circumference of a meaning that has broken its moorings to the psychology of the author' (Ricoeur, 1981: 201). He exemplifies further, on the inner structure of the writer to meaning, with relation between sense and reference

developed by Gottlob Frege, in his famous article, 'On Sense and Reference' (Frege, 1970: 56-78). In brief, what Frege attempts to say here in relation to our dialectic of event and meanings is that the sense represents the subjective or the utter's meanings in the dialectic. While the objective side of discourse is reference which alludes to the utterance meaning. As a result, the sense correlates the identification and predicate functions in the linguistic structure, and the reference relates language to the world.

By and large, my discussion of the inner structure as the discourse of the writer only subject hermeneutical task to the field of vicious circle in understanding. There is no opportunity to grasp new information other than what has been embedded in the discourse. It shows that a theory of discourse has not matured to the level of a theory of text in as much as it only expressed the famous slogan that hermeneutic meaning as 'to understand an author better than he understood himself'. It is in attempt to release hermeneutics from this one-sidedness of a non-dialectical concept of discourse as well as psychologising and existential prejudices that Ricoeur tasks himself. He comments thus:

> Hermeneutics as issuing from Schleiermacher and Dilthey tended to identify understanding in the recognition of an author's intention from the point of view of the primitive addresses in the original situation of discourse. This priority given to the author's intention and to the original audience tended, in turn, to make dialogue the model of every situation of understanding, thereby imposing the framework of intersubjectivity on hermeneutics. Understanding a text, then, is only a particular case of the dialogical situation in which someone responds to someone else (Ricoeur, 1976: 22).

So Ricoeur, against this odd, attempts to initiate the correct definition and usefulness of hermeneutics through the process of interpretation as the discourse of the reader.

By interpretation, Ricoeur means not to a particular case of understanding, alluded to above, but rather 'to the whole process that encompasses explanation and understanding or

comprehension.' (Ricoeur, 1976: 74) which is pristine to the original interpretative behaviour at conversation level. This process involves a kind of dynamic interpretative reading of text. Ricoeur is able to resolve the dispute between explanation and understanding. From what has been said, it is impossible and obvious that interpretation cannot be reduced to 'understanding', in the narrow Romantic sense. At the same time, there is, according to Ricoeur, a legitimate, though strictly limited, place for explanatory techniques of a purely objective nature in the overall interpretive process. He resolves that 'the first time understanding will be a naive grasping of the meaning of the text as a whole. The second time comprehension will be a sophisticated mode of understanding, supported by explanatory procedures....At the end, it satisfies the concept of appropriation ....Explanation, then, will appear as the mediation between two stages of understanding' (Ricoeur, 1976: 74-75). He forges ahead that understanding is a guess. By guess, in this sense, is to surpass the mistake committed by the Romantic school regarding the reproduction of intention of the author. Rather, to construe the verbal meaning of the text in as much as the text is within the semantic space autonomy of its author. However, I conditioned the arts of sound guesswork from three viewpoints: First, that the understanding the verbal meaning of a text is construed in a holistic manner in the sense that the presupposition of a certain kind of whole is implied in the recognition of the parts. Second, that it is imperative to consider the act of reading from a certain viewpoint but this must be related to the whole which is considered the cornerstone of the text. Finally, this case of the horizon, though open the work to several readings, but I must be aware of the fact that these readings are ruled by the prescriptions of meaning belonging to the margins of potential meaning surrounding the semantic nucleus of the work.

The validation of these guesses is not subjected to logic of empirical verification. Rather, it involves logic of uncertainty and of qualitative probability. In short, an interpretation, to Ricoeur, must in addition to this probability in a given context be more probable in another interpretation. Indeed, there are conditions of 'relative superiority' for resolving this conflict, which are derivable from the logic of subjective probability. Ricoeur comments thus:

> It is true that there is always more than one way of construing a text, it is not true all interpretations are equal. The text presents a limited field of possible constructions. The logic of validation allows us to move between the two limits of dogmatism and scepticism. It is always possible to argue for or against an interpretation, to confront interpretations, to arbitrate between and to seek agreement, even if this agreement remains beyond our immediate reach (Ricoeur, 1976: 79).

The above passage indicates that hermeneutic task should involve a result of the productive imagination. This is provoked by the kind of world opened up by the depth semantics of the text, a discovery, which has immense consequences regarding the sense of the text as autonomy object.

To this end, explanation to comprehension put into consideration the paradigmatic nature of the sense of the text as something confronting us, something discussed. Comprehension seeks to grasp the world-propositions opened up by the reference of the text. It factors in structural analysis which constitutes both the justification of the objective approach and the rectification of the subjective approach to the text. Structural analysis also aims at performing a segmentation and then establishing various levels of integration of parts in the whole. So I am enjoined from identifying understanding with some kind of intuitive grasping of the intuition underlying the text. This undoubtedly creates 'a new mode of being' (Ricoeur, 1976: 88) in form of appropriation from the text itself.

Appropriation is concerned with bringing to the fore those cultural heritages of the past from distanciation. It is the self-interpretation of a subject who thenceforth understands himself better, understands himself differently, or simply begins to understand himself (Madison, 1994: 326).Ricoeur corroborates thus:

> The existential concept of appropriation is no less enriched by the dialectic between explanation and understanding. Indeed, it must lose nothing of its existential force. To "make one's own" what was previously "foreign" remain the ultimate aim of all hermeneutics....Interpretation is completed as appropriation when reading yields something like an event , an event of, discourse, which is an event in the present moment. As appropriation, interpretation becomes an event (Ricoeur, 1976:91-92).

From this view point, the understanding of an author better than he understands himself requires the exhibition of the power of disclosure implied in his discourse beyond the limited horizon of his own existential situation. Indeed, the process of distanciation, of atemporalization, is the fundamental presupposition for the enlarging of the horizon of the text. It is the responsibility of the reader to actualize the meaning of the text. A text is, by its very nature, addressed to someone or to 'an audience which extends in principle to anyone who can read' (Ricoeur, 1981:139). In any event, without an audience to reactualize it, the meaning of a text would remain forever undecidable. Thus reading is the concrete act in which the destiny of the text is fulfilled. That is to say the actualisation of the meaning in a text by the reader is severed by the alienation of distance. This estranged distance is corrected by historicism, which constitutes the epistemological presupposition that the content of literary works and in general of cultural documents receives its intelligibility from its connection to the social conditions of the community that produced it. It is essential that textual interpretation primarily depends on 'certain socio-cultural needs and as a response to certain perplexities well localised in space and time' (Ricoeur, 1976: 89-90). Thus to understand a text is contemporaneous to light up our own

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situation. The point is that the text depends on its readers for its actualization, but in the process of reading, readers are themselves actualized by the text. Indeed, the reader experienced an enlarged self. Ricoeur remarks that,

> In general we may say that appropriation is no longer to be understood in the tradition of philosophers of the subject, as a constitution of which the subject would possess the key. To understand is not to project oneself into the text; it is to receive an enlarged self from the apprehension of proposed world which are the genuine object of interpretation (Ricoeur, 1981: 182-183).

With this, Ricoeur distinguishes his hermeneutic enterprise from a return to the Romanticist claim, with the need for a critical counterpart in the concept of comprehension. He affirms that it is only through this epistemological complement that appropriation can be liberated from the shackle of hermeneutical prejudice. He quips that:

> Not the intention of the author, which is supposed to be hidden behind the text; not the historical situation common to the author and his original readers; not the expectations or feelings of these original readers; not even their understanding of themselves as historical and cultural phenomena. What has to be appropriated is the direction of thought opened up by the text....what has to be appropriated is nothing other than the power of disclosing a world that constitutes the reference of the text. In this way, we are as far as possible from the Romanticist ideal of coinciding with a foreign psyche. If we may be said to coincide with anything, it is not the inner life of another ego, but the disclosure of a possible way of looking at things, which is the genuine referential power of the text (Ricoeur, 1976: 92).

So Ricoeur's submission on hermeneutics revolves around the believe that interpretation must be conditioned with the injunction of the text, rather than the 'narcissistic ego'(Ricoeur, 1981: 192) of the reader that follow the arrow of the sense, and that tries to think accordingly, which engendered a new self-understanding. It is the text, with its universal power of the world discourse, which gives a self to the ego (Ricoeur, 1976: 95).

However, Ricoeur is found culpable of his association with tradition in his interpretive action. We cannot overflog the rebuttal of the critique of tradition here as this will be

exhaustively discussed under Gadamerian approach. But his philosophical hermeneutics suffers from inadequacy mainly in the area of assessment of discourse in sense and reference. His hermeneutics is focused closely on a specific object in the text. It suffers from the fact that in it the explanation dimension of every text does not take sufficiently into account the human responsibility of assessment. This assessment stems from his theory of meaning; with particular reference to his separation of the two concepts of sense and reference. As discussed in the study on discourse, Ricoeur links sense to explanation and reference to understanding and speak of a movement from explanation to understanding (comprehension) which is described as a movement from sense to reference. It is this which causes problem and mostly because of an inadequate understanding of sense and of its relation with reference. For when Ricoeur says to understand a text it is to follow its movement from sense to reference: From what it says, to what it talks about, he merely implies a sort of textual idealism.

Idealism, in the sense, that the same referent can be meant in different ways, that is, as having different determinations, by the use of different expressions. Hence it is erroneous to speak of an aim towards the referent. The meaning itself is not aimed at all. Rather the meaning act is an aim at the referent and does not aim at, but only instantiates, the universal meaning. Therefore, it is impossible to explain the sense of the idea of punishment in Yoruba ontology independent of the referent as having certain determinants. Ricoeur is inexplicable enough on his consideration of reference to reality, in what situation it occurs and how an interpreter arrives at it. If the truth of the text is the world disclosed by it, according to Ricoeur, and if one remains unclear about the nature of the disclosed world, then, the issue of truth itself remains obscure in Ricoeur's Philosophical hermeneutics. There is then a lacuna between the sense and its reference. Hence the truth of the idea of punishment in Yoruba thought, then, would call for an

identification of semantic linking within the discourse and the simultaneous referential constitution of the sense in the act of reading. Ricoeur's theory of hermeneutics must be complemented by a theory of reading. Only then would psychologism and arbitrariness be avoided. The next discussion on hermeneutical tradition is one of our theoretical frameworks: Hans-Georg Gadamer's philosophical hermeneutics.

Hans-Georg Gadamer's philosophical hermeneutics (1900-2002)

Hans-Georg Gadamer, a theoretician of philosophical hermeneutics, develops the implications of Heidegger's contribution to hermeneutics. He queries the methodological foundation spelt out from Schleiermacher to Dilthey on the basis that method itself is questionable. He affirms that the emphasis on scientific method merely presented an 'iron-procedure of self-conscious reasoning' (Gadamer, 1975: 9) which cannot break a new ground. Rather, the conditions which the human sciences pursued are far more important than this inductive logic. Inductive logic is merely concerned with establishing similarities, regularities and conformities to a law which would make it possible to predict the individual phenomena and processes.[1] Thus human science cannot be studied from the method of natural science. He comments that:

> The real problem that the human sciences present to thought is that one has not properly grasped the nature of the human sciences if one measures them by the yardstick of the increasing knowledge of regularities (Gadamer, 1975:6).

From this point of view, the socio-historical world cannot be raised to a science by the inductive procedure of the natural sciences. He compliments thus:

> The individual case does not serve only to corroborate a regularity from which predictions can in turn be made. Its ideal is rather to understand the phenomenon itself in its unique and historical concreteness. However, much general experience is involved, the aim is not to confirm and expand these general experiences in order to attain knowledge of a law, e.g. how men, peoples and states evolve, but

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to understand how this man, this people or this state is what it has become- more generally, how has it happened that it is so (Gadamer,1975:6).

Hence method cannot merit any new truth but encourages the recycling of the kind of truth already implicit in the method in as much as knowledge is simply to establish regularities. He contends that understanding will continue to elude man as it is a subjective process in which man is philosophically grounded. He remarks:

> Understanding itself proved to be an event, and the task of hermeneutics, seen philosophically, consist in asking what kinds of understanding, what kind of science it is, that is itself changed by historical change (Gadamer, 1975:276).

Thus Gadamer's philosophical hermeneutics slants towards the human context within which scientific understanding occurs as well as accounting for the necessity for repeated attempts at critical understanding. He takes understanding to be, like Heidegger, a situational position of man within a process of tradition wherein both the past and present are constantly fused. (Madison, 1984:304) Palmer comments thus:

> We understand a given text, matter, or situation not with an empty consciousness temporarily filled with the present situation but rather because we hold in our understanding, and bring into play a preliminary intention with regard to the situation, an already established way of seeing, and certain ideational 'pre-conceptions' (Palmer, 1994:176).

This preconception is bound by subjective seeing and understanding of the present standing which is tradition based. Preconception, in this sense, is similar to its usage in Heideggerian discourse as 'fore-ness', 'projecting' or 'fore-meaning'. It involves the conscious awareness of one's own bias, so that the text, action or sign may present itself in all its newness and then be able to assert its own truth against one's own understanding. It is a retrospective intellectual return to the starting point, that is, 'from the blurred copies to the pristine clarity of the proto-type' (Bauman, 1978:27). It engages the mind with a new idea, insight, as against what

is perceived and felt in its freshness from the source. Also, it indicates that we can only understand out of a shared historical belief. It will encourage the value of common understanding of new visions and conception of life. Finally, this trend will also generate new insights, and 'institutions about all or many aspects of human life' (Hausheer, 1996:48-9).

Tradition, then, connotes the horizon within which man perceives the world. It also contributes to the stream of conceptions within which we stand, and we must in this state be prepared to distinguish fruitful presuppositions from those that imprison and hinder our thinking and seeing faculties. Richard Palmer metaphorically expressed this idea thus: 'We are immersed in the medium of our tradition which is as transparent to us and therefore as invisible to us, as water to a fish' (Thiselton, 1980:306). The interpreter is automatically filled with anticipatory ideas gathered from the present tradition in which he finds himself towards a text. This horizon, to Gadamer, represents the prejudices in which certain values, attitudes or institutions turn authoritative within such a tradition. Though by 'prejudices' I mean a judgement passed before all the factors responsible for a situation have been finally examined. Okere nips the relevance of prejudice on the bud as thus 'the vain quest of historians who pursue the goal of history without presuppositions only in fact hides the dogged obstinacy of the presuppositions which remain undiscovered but continue to influence and determine the historian' (Okere, 1983: 60). I am expected to employ 'true prejudices' that is, prejudice which are justified by rational knowledge in making our judgments. And true prejudices are developed through a critical awareness of our prejudices and correct them in our effort to hear what the text says to us. This is not to proffer a prejudice-free apprehension but rather to maintain a flexible set of them, which encourage effective history (Gadamer, 1977: xxviii). It shows prejudices to be integral to all understanding as against wilful bias or bigotry in the tradition. In addition, Okere affirms that 'without its

negative overtones, prejudice is another word for all the background- historical, linguistic, cultural, etc., from which no philosophical speculation, be it ever so rarified, can be free, because in it and by it, it is, moves and has its being' (Okere,1983: 61). Therefore, the interpreter, in his hermeneutic state, has to recognise the importance of his present tradition or prejudices, in shaping the meaning of the text. Gadamer writes about this situational interpretation thus:

> Every time will have to understand a text handed down to it in its own way, for it is subject to the whole of the tradition in which it has material interest and in which it seeks to understand itself. The real meaning of a text as it assesses the interpreter does not just depend on the occasional factors which characterize the author and his original public. For it is also always co-determined by the historical situation of the interpreter and thus by the whole of the objective course of history.…The meaning of a text surpasses its author not occasionally, but rather always. Thus understanding is not a reproductive procedure, but rather always also a productive one. It suffices to say that one understands differently when one understands at all (Gadamer, 1977: xxv).

This understanding is realized through the process of 'temporal distance'. According to Gadamer, temporal distance is:

> A filtering process…. It not only lets those prejudices that are of a particular and limited nature die away but causes those that bring about genuine understanding to emerge as such. It is only this temporal that can solve the really critical question of hermeneutics, namely of distinguishing the true prejudices, by which we understand, from the false ones by which we misunderstand. Hence the hermeneutically trained… mind will make conscious the prejudices governing our own understanding so that the text, as another's meaning, can be isolated and valued on its own (Gadamer,1975:266).

Hence temporal distance is not something that must be surmounted, as subsumed by the historians, but rather to recognise the distance in time as both a positive and productive possibility of understanding. After all, understanding process is in fact an infinite process so that at the long run true meaning emerges which reveal unsuspected elements of meaning. All these raise the point that meaningful understanding of a text, given the necessary effort and goodwill, demands not only reflective exercise on past events, but also speak of something new. This

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fusion of horizon, between the text and the interpreter, takes the form of the logic of the question (Gadamer, 1975:333). It shows the 'logical structure of openness' (Gadamer, 1975:325) whereby questions which are implicit are asked in all experience. I cannot have experiences without asking questions. Hence the openness that is part of experience is precisely the openness of being this or that. These attributes represent the structure of a question. It is important that every true question must achieve this openness. True openness then must attract both negative and positive judgments. Gadamer (1975:328) opines thus:

> This is the basis of the essential relation between question and knowledge. For it is the essence of knowledge not only to judge something correctly, but at the same time and for the same reason to exclude what is wrong.

Gadamer further claims that there is no definite method to ground this thought of idea and questioning. Every sudden idea has the structure of a question, which presses itself on us. That is why it is impossible to understand an object that turns away real questions. That is to say, to understand the questionableness of something is always to question it. It is a conversational approach conditioned by the fact that the partners to it do not talk at cross-purpose. Rather the art of conversation herein requires absolute understanding of the parties involved. This dialectical conversation must exercise discipline of understanding. Gadamer (1975: 347) adds that

> A conversation is a process of two people understanding each other. Thus it is characteristic of every true conversation that each opens himself to the other person, truly accepts his point of view as worthy of consideration and gets inside the other to such an extent that he understands not a particular individual, but what he says. The thing that has to be grasped is the objective rightness or otherwise of his opinion, so that they can agree with each other on the subject.

All this shows that a conversation has a spirit of its own, aided by language which bears its own truth within it, that it reveals something which henceforth exists. Herein, partners to conversation depend on the linguistic process. According to Gadamer, language is the middle

ground in which understanding and agreement concerning the object takes place between two people. (Gadamer, 1975:345-346). I shall also see later in the course of our discussion that language is the medium in which the tradition conceals itself and is transmitted. Nevertheless, Gadamer illustrates with the linguistic process by which two different languages conversant is made possible through translation. Thus the translator must translate the meaning to be understood by the nature within the context of dialogue or discussion. This does not mean that the translator arbitrarily translates the meaning of the native. Rather the meaning must be preserved in a way that its linguistic expressions are presented in a new way. Indeed, reaching an understanding in conversation presupposes that both partners are ready for it and are trying to recognise the full value of what is alien and oppose to them. Thus 'every translation is at the same time an interpretation. I can even say that it is the completion of the interpretation that the translator has made of the words given him' (Gadamer, 1975:246).This conscious process is the tradition in conversation because the partners have to relax their independent authorities to fill the gap of understanding. What Gadamer attempts to prove in essence is that hermeneutical problem is not one of meaning of language but rather proper understanding of that which takes place between the parties in a conversation is a necessary precondition that language is meant to understanding.

Bringing this then to textual interpretation, Gadamer contends that every translation that occurs must not only be expansive but also clearer and flatter than the original text. Texts are permanently fixed expressions of life which have to be understood, and that implies that one partner in the hermeneutical conversation, the text, is expressed only through the other partner, the interpreter. Hence, the text brings to the fore an object of language which is made possible through the aid of the interpreter to show that there is a commonly shared understanding and

reaching agreement. Understanding focused on the text implies that the responsibility placed on the interpreter is to providing a re-awakening strategy on the meaning of the text. He comments:

> In this the interpreter's own horizon is decisive, yet not as a personal standpoint that one holds on or enforces, but more as a meaning and a possibility that one brings into play and put at risk, and that helps one truly to make one's own what is said in the text...[that is] fusion of horizons. We can now see that this is the full realisation of conversation, in which something is expressed that is not only mine, or my author's, but common (Gadamer, 1975: 350).

This commonality is made possible through language. Language, then, is the universal medium in which understanding itself is possible. The mode of realisation of understanding is interpretation.

And within this interpretative discourse, understanding is provoked through the existence of linguistic tradition, which is itself special object and understanding is precisely interpretation. According to Gadamer (1975: 351), linguistic tradition is 'tradition in the literal sense of the word' that is handed down to us. It is not just something that has been left over, to be investigated and interpreted as a remnant of the past. Rather, it involves re-awakening of past tradition aided through memory to become part of our world, and so what it communicates can be directly expressed. To Gadamer, 'to understand it does not mean primarily to reason one's way back into the past, but to have a present involvement in what is said'.(Gadamer,1975: 353) From this viewpoint, a text is not meant to recollect the past but rather concerned with what it says. The understanding of written source is not a reproduction of something that is past, but the sharing of a present meaning. In this sense, the interpreter is strictly detached from all contingent factors and grasped in its full ideality, in which alone it has validity: the written words makes the reader the arbiter of its claim to truth.

On the second aspect of the relationship between language and understanding, Gadamer contends that understanding is already interpretation because it creates the hermeneutical horizon wherein the meaning of a text is realised. He believes that the text can only be made to speak through interpretation. But no text is capable of this if it does not speak the language that reaches the other person. Hence, it is imperative for interpretation to find the right language if it wants the text to speak. Gadamer (1975: 360) quips:

> When we are concerned with the understanding and interpretation of linguistic texts, interpretation in the medium of language itself shows what understanding always is: an assimilation of what is said to the point that it becomes one's own. Linguistic interpretation is the form of all interpretation, even when what is to be interpreted is not linguistic in nature.... We must not let ourselves be confused by these forms of interpretation which are not linguistic, but in fact pre-suppose language. It is possible to demonstrate something by means of contrast, e.g. by placing two pictures alongside each other or reading two poems one after the other, so that one is interpreted by the other. In these cases, demonstration seems to obviate linguistic interpretation. But in fact this kind of demonstration is a modification of linguistic interpretation. In such demonstration we have the reflection of linguistic interpretation, which uses the demonstration as a visual short-cut. Demonstration is interpretation in much the same sense as is a translation which summaries the result of an interpretation or the correct reading aloud of a text that must imply decision on the questions of interpretation, because one can only read aloud what one has understood. Understanding and interpretation are indissolubly bound up with each other.

Gadamer (1975:340) comments further that:

> It is true that a text does not speak to us in the same way as does another person. We … must ourselves make it speak. (It) is not an arbitrary procedure that we undertake on our own initiative but that, as a question, it is related to the answer that is expected in the text. The anticipation of an answer itself presumes that the person asking is part of the tradition and regards himself as addressed by it…. We described its realisation as the fusion of the horizons of understanding, which is what mediates between the text and its interpreter.

To this end, the interpreter is tradition-bound, with the aid of linguistic tradition as well, to creatively shed more light on the intended meaning of the text by the author. It is undoubtedly

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true that the interpreter is in a better situation to update the facts in the text rather than mere "naïve assimilation".

However, the limitations preferred against Gadamer's version of Philosophical hermeneutics are that it merely grounds its discourse on traditions. Thus it is incapable of generating the means through which correct interpretations of textual meanings can be conclusively arrived at and, secondly, that, because of this, it inevitably results in subjectivism and relativism. Also, if the immanent tradition is taken as the scope of all possible understanding, then there cannot be objective knowledge or means through which to identify and uncover the basic reason or ideological elements of that tradition. For instance, in application of the approach to the idea of punishment in Yoruba ontology, it will be difficult to hermeneutically understand the meanings of concepts and practices within the tradition, in as much as it is the tradition itself I will continue to glorify. In other words, the idea of punishment in Yoruba ontology cannot be distinguished from the tradition it interprets and thereby becomes unavailable to the practical project of emancipating us from 'traditional claims which are false but appear to be legitimate' (Foster, 1991:124-125). According to Habermas, an astute critique of Gadamer on tradition and methodological issues, it is only when hermeneutical understanding is hinged on critique that it no longer needs to be tied to the radius of convictions existing within a tradition (Habermas,1980:208). This leads to a theory of hermeneutics which cannot establish some autonomy from the tradition which it interprets but merely succumbs to a 'contextual relativism'. But contrarily, Gadamer's understanding of hermeneutics does not aspire to objectivity but rather to intersubjective agreement. Agreement which takes the form of agreeing that it is in the interest of the discussion to continue to talking despite disagreement. Truth in understanding is similarly not measured by correspondence of propositions with some immediately given non-human

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reality or standard. Truth emerges in the events in which we commonly find ourselves, in and through our discourse. The constraints on truth are more ethical than epistemological.

Despite these numerous appeals against Gadamer's philosophical hermeneutics, I still appreciate its anticipated contributions, as one of our theoretical frameworks, to the study of the idea of punishment in Yoruba ontological discourse. This is premised on the fact that Gadamer describes understanding as embracing three distinct but inseparable moments: the initial understanding of meaning, interpretation and application to the situation. Understanding in this sense involves what happens in the to-and-fro motion of conversing with the mythological stories, prose and poetry on the idea of punishment in Yoruba culture. This may be likened to the buoyant movement of play. Through the play, the game presents itself; through the event of understanding the idea of punishment in Yoruba culture, the meaning understood is actualised in a specific situation. Through understanding, a meaning comes into being and appears in a particular version of itself (Klemm, 1986:235). Also, Understanding, to Gadamer, is always interpretation. I am able to comment on the play of being in understanding because I always already understand. Understand in this line of thought represents the fact that 'we all find ourselves in the world as products of specific historical, cultural and intellectual context' (Hallen, 2002:59). As a result, the prejudgements or prejudices that I inherit from our linguistic tradition determine who I am as a player and make my openness to the conversation possible. So, through interpretation, the two horizons of the text on the idea of punishment in Yoruba culture and the reader are brought into creative correspondence without obliterating the difference. This act of interpretation is a temporal movement that is never complete, never perfect, and always different (Klemm, 1986:235). Finally, understanding is always already application. If understanding actualizes a meaning of punishment in Yoruba culture in the event of

conversation, the universal meaning and the particular event codetermine each other. The meaning will not only concretize, but also the interpreter's presupposition or own being comes into play. By bringing a meaning into a situation, the interpreter acts to become in a certain way. It shows that the event of understanding is the practice of the interpreter (Klemm, 1986:236).

Furthermore, Gadamer implicitly suggests that when we reason in a solidarity respect, as carried out on the idea of punishment, for example, practical reason may speak again. When I live and think in solidarity, I take over the norms, interests, purposes, and customs of the traditions in which we live. From living in solidarity, the discussion concerning the meaning and significance of these norms, interests, purposes and customs on the idea of punishment in Yoruba culture can proceed.

Jurgen Habermas' meta- hermeneutic discourse (1929-   )

He is a leading representative of the Frankfurt school of social criticism. The institution owes its origin to Hegel and Marx for their primary concern for reason which, when properly located in historical group, can transform the world (Rasmussen, 1996:12-16). Thus the Marxian famous eleventh thesis on Feuerbach, "philosophers have always interpreted the world, the point is to change it", is an idea alluded to Hegel who, in his *Phenomenology of Spirit*, developed the concept of the moving subject which, through the process of self- reflection, comes to know itself at ever higher levels of consciousness (Hegel, 1977). Against this tradition, Habermas focuses on the theoretical framework premise on the fact that modern inquiry into the historical contingency of human knowledge justifies the conclusion that there is no epistemological starting point which is absolute in the sense of being independent of subjective consciousness. At the same time, he aspires to justify an alternative which could still serve as a foundation for both objective theoretical knowledge and for the practical goal of overcoming the domination of

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ideology in social action (life).[2] In other sense he aims to pursue his social theory which, on the one hand, is not endangered by ideology, while, on the other hand, its critical thrust is not exhausted by the endless repetition of acts of reflection which have no theoretical consistency. He follows the tradition of dialectical and uses all relevant methods to understanding.

In justification of this approach, Habermas alluded to a number of constructive projects, all of which are in some way based on his argument for the power of reason. The first project concerns the examination of psychoanalytic theory as a test case for self-reflection. Also, the development of a theory of communicative competence with the aim to identifying the linguistic characteristics of authentic speaking. This represents the core of his meta-hermeneutic discourse and seeks to provide rules by which to aim at free agreement and to critique the nature of distorted interests. Finally, his proposed framework for the understanding of social action and of history in general. It is a framework which goes beyond the perceived inadequacies of Gadamer's exclusive focus on language. However, the concern in this interpretive discourse is on the social action and history where Habermas presented social conditions conducive to a critical- rational discussion of public issues by private persons in the public sphere of life. My discussion on this will be enhanced with highlights on the Freudian psychoanalysis for self-reflection and ideal speech theory for objective communicative competence because most discourse proffered by Habermas interwoven.

Habermas grounds his critical consciousness on "depth-hermeneutics" or "meta-hermeneutics" in order to transcend the limitations of Philosophical hermeneutics (Habermas, 1980:200-205). Meta-hermeneutics aims at, first, to rescue from philosophical hermeneutics its assumptions about the historical and interpretive character of understanding. Secondly, to subordinate them to the critical and universal power of reason. Third, to instrumentally apply

those hermeneutic assumptions in order to penetrate the ideological claims of tradition (Foster, 1991:127). On the historical and interpretive character of understanding, Habermas contends that hermeneutical understanding requires a critique and it needs not be tied to the apron-string of convictions existing within a tradition. That is to say hermeneutics must be incorporated into some larger, independent framework. He adds:

> Understanding-no matter how controlled it may be- cannot simply leap over the interpreter's relationships to tradition. But from the fact that understanding is structurally a part of the traditions that it further develops through appropriation, it does not follow that the medium of tradition is not profoundly altered by scientific reflection....The methodic culturation of prudence in the hermeneutic sciences shifts the balance between authority and reason. Gadamer fails to appreciate the power of reflection that is developed in understanding. This type of reflection is no longer blinded by the illusion of an absolute, self- grounded autonomy and does not detach itself from the soil of contingency on which it finds itself. But in grasping the genesis of the tradition from which it proceeds and on which it turns back, reflection shakes the dogmatism of life-practices (Habermas, 1977:357).

From the above viewpoint, Habermas indicted Philosophical hermeneutics of making false claims to universality. Instead, he argues for the human capacity of self-reflection. Self-reflection is fundamental for the discovery of man himself and social conflicts of building compromise.[3] It brings to consciousness the determinates of the self-formation process. Also, it reveals the structure of distortion which consequently helps to eradicate the obstacles towards an authentic consensus. Habermas adds that 'for the pursuit of reflection knows itself as a moment of emancipation. Reason is at the same time subject to the interest of reason. I can say that it obeys an emancipator cognitive interest, which aims at the pursuit of reflection' (Habermas, 1971:212).

Indeed, the reflective act of the subject helps him to discover these hidden or distorted interests. All subject-object formulations are instrumental. Habermas sometimes relates psychological behaviour as an example to meta-hermeneutic phenomenon. He employs scenic

understanding to translate the meaning of the pathologically frozen communication pattern which had proven difficult and unconscious to public communication. The doctor reflectively interprets the transference situation of the patient as a repetition of early childhood experiences. It represents the construction of dictionary for the hidden idiosyncratic meanings of the symptoms. 'Scenic understanding' is therefore based on the discovery that the patient behaves in the same way in his symptomatic scenes as he does in certain transference situations. Such understanding 'aims at the reconstruction, confirmed by the patient in an act of self reflection, of the original scene' (Klemm, 1986: 211-212).

Also that Philosophical hermeneutics is latently relativistic and conservative in its nostalgia for tradition. He furthers that,

> Hermeneutics tends to accept the authority of the tradition; its deepest wish is to let the tradition speak again with the force it originally conveyed. But what about the more realistic appraisal of the tradition as an ideological vehicle of domination and oppression? Hermeneutics can be blind to the distortion of the tradition itself, a distortion that affects the whole of language and not just parts within it. Moreover, wary of violating the historicity of thought, hermeneutics is unwilling to take a fully critical stand in exposing structures of oppression and proposing suggestion for a free society (Klemm, 1986: 203).

On the basis of this philosophical claim for the power of reflective activity, on tradition, Habermas argues secondly for the philosophical position that reason gives us a standpoint which is not confined to or defined by any particular tradition. As such, reason, as it secularizes, free itself from its more mythic and religious sources and becomes ever more purposive. That is to say, it is more inclined to the means to the exclusion of ends. Indeed, it is a purposive-rational action which dissociates itself from its redemptive and reconciliatory possibilities but rather be used and calculating. However, this power of reason is distinguished from' instrumental reason' which only pride in manipulation with force for the purposes of social control. It represents the

ever-expanding manoeuvring by those who are in positions of power in the modern state to dominate and control society for their own calculating purposes. Also, I may illustrate further by the communication between a slave-owner and his slave. This communication is ideologically distorted when the slave-owner and his slaves are together convinced that 'we are happy and fulfilled in our positions', and our relationship is as it should be. Every one pretends as though they consent to this when in fact this is a false consensus because the slaves were not consulted about their agreement independent of the ideology of the slave-owner and his power to enforce the apparent legitimacy of the ideology. This illustration on the exercise of power is closely related to the occurrence of ideologically distorted language. Power can manipulate language into the deception that a situation to which they did not freely agree is legitimate. According to Habermas,

> Language is also a medium of dimension and social power; it serves to legitimate relations of organised force. Insofar as the legitimations do not articulate the power relations whose institutionalization they make possible, insofar as these relations merely manifest themselves in the legitimations, language is also ideological. Here, it is a question not of deceptions as such (Habermas, 1977:360).

Hence, if we are to eliminate this distorted language-game, then it is imperative to construct a theory of rationalization in no-instrumental terms. The construction revolves around a theory of 'communicative action' based on a philosophy of language.

Finally, in order to penetrate the ideological claims of tradition and realize understanding through communicative action, Habermas devoted considerable attention to evolving what he calls "a theory of communicative competence" or "a universal pragmatics", which aims to identify the linguistic characteristics of ideal speech situation. 'Universal pragmatics' is an effort to implement hermeneutics and render it more scientific, by demonstrating the objectivity of consensus. It is not proffered to seek a common consensus but rather an actional consensus

which is justified through its objectivity, namely through the objective evidence, free of any ideology and belief, and accepted by the community scientists. Such an objectivity, according to him, is possible both in natural and human praxis. It is for this reason that he develops the linguistic tradition model in objectivity. The validity of speech is its objectivity which is communicated by the speaker and the hearer. Like Gadamer, he accepts the unique role of the language as the 'house housing being' (Held, 1980:261) that is the common and fundamental characteristics of human acts. It coordinates relationship between inner and outer nature. Thus the ideal speech situation represents a central objective of his meta-hermeneutics and seeks to provide rules by which it aims at free agreement and to critique the nature of distortions in ideology. Distortions in ideology are informed by the scope of specific incomprehensive acts and instances. Distorted communication is provoked by the rules which deviate from the recognised system of linguistic rules. Thus meta-hermeneutics addresses this practical problem of "systematically distorted communication" or simply distorted language through communicative action (Foster, 1991: 123). In this situation, the subject does not recognise the intentions which guided his expressive activity. But rather to construct a theory of rationalization in non-instrumental terms, it would be necessary to construct a theory of communicative action.

Communicative action is a conditioned rationality which cannot be imposed by either party, 'whether instrumentally through intervention in the situation directly or strategically through influencing decisions of the opponents' (Habermas, 1992: 287). That is to say it has within it a claim to validity which in such a dialogue can respond with either a yes or a no based on reason. So the theory of communicative action 'is that of rational dialogue which is directed towards a search for consensus (truth) among the participants in the dialogic environment' (Irele, 1993: 79). Consensus, according to Habermas, is objective and subjective alike because the

decision is made by an inter-subjective community with the help of objective criteria.[4] It implies

that it is only through the process of idealization backed by an apparent interest in autonomy and

responsibility that understanding is certain. Habermas comments further that:

> Only in an emancipated society, whose member's autonomy and responsibility had been realized, would communication have developed into the non-authoritarian and universally practiced dialogue from which both our mode of reciprocally constituted ego identity and our idea of true consensus are always implicitly derived....Only when philosophy discovers in the dialectical course of history the traces of violence that deform repeated attempts at dialogue and recurrently close off the path to unconstrained communication does it further the process whose suspension it otherwise legitimates: Mankind's evolution toward autonomy and responsibility. My fifth thesis is thus that the unity of knowledge and interest proves itself in a dialectic that take the historical traces of suppressed dialogue and reconstructs what has been suppressed (1971: 314-315).

To this end, intersubjective dialogical meaning is fixed on structures which develop within the

cultural level of linguistic communication through some theoretical guides. These theoretical

propositions include, among others, the following:

(a) In the case of a non-deformed language-game there is a congruency on all three level

of communication. Linguistic expressions, expressions represented in actions, and those

embodied in gestures do not contradict one another but rather supplement one another by meta-

communication. (b) Normal communication conforms to intersubjectively recognised rules; it is

public. The communicated meanings are identical for all members of the language- community.

(c) In the case of normal speech the speakers are aware of the categorical difference between

subject and object. They differentiate between outer and inner speech and separate the private

from the public world. (d) In normal communication intersubjectivity of mutual understanding,

guaranteeing ego-identity, develops and is maintained in the relation between individuals who

acknowledge on another (Habermas, 1986: 213-214).

Besides being equipped with the above theoretical propositions, the speaker in a dialogue must also be furnished with basic qualifications of speech and symbolic interaction call "communicative competence". Communicative competence is the mastery of an ideal speech situation. The situation engenders (1) a formal strategy whereby speaker to a discussion unconstrained consensus (truth); (2) despite the inviolable distance between the partners, it is possible to achieve a significant discourse, which calls for understanding under conditions of individuation (freedom); and(3) this promotes universal understanding and the necessity of universalized norms (Justice). Any understanding, or genuine consensus, is premised on these conditions which emphasize an inter-subjective mutuality or reciprocity in understanding, of share knowledge, of mutual trust and of accord with one another. They are relevance in the structure of language because language itself reflects the infrastructure of speech situations in general. Irele adds thus:

> The ideal speech situation is that formal condition which must obtain if a community of speaker is engaged in a discourse where the speakers have removed themselves from all practical activities in order to test a claim. The situation expresses those conditions of interaction that are necessary for participant in such a discussion to reach a rationally motivated consensus (Irele, 1993:80).

Habermas comments that:

> No matter how the intersubjectivity of mutual understanding may be deformed, the design of an ideal speech situation is necessarily implied in the structure of potential speech, since all speech, even of intentional deception, is orientated towards the idea of truth. This idea can only be analysed with regard to a consensus achieved in unrestrained and universal discourse (Habermas, 1986: 232).

From this viewpoint, Habermas considers consensus as the precondition of any rational discourse and as the rational way of setting social rules as well as linguistic games. This consensual agreement and understanding Habermas developed in terms of procedural qualities of the communication necessary to make the public will formation rational and for it to issue in a

genuine rather than mere *de facto.* In other words, it is meant to shed light on the correct understanding of political structure in a society.

He re-establishes the possibility of a critical social theory with the possibility of avoiding the problems of critical theory bedevilling his predecessors in the field through a suggestive different notion of justice and reason. The problem revolves around the critical subjective consciousness of scholars in the school of criticism before him. Society is conceptualised and understood as class society, a self- developed society by means of class struggle dictated by an outside factor, and not an homogenous society or better, community. Hegel, aware of this fact, had tentatively posed a solution by reconciling the dichotomy of classes in model of a universal Ego. But his reconciliation of subject and object had a reversed effect: it stops the revolutionary march of history instead of furthering it, because the entire democratic consensus is reduced arbitrarily to a subjective, even if it is self- claimed universal consensus. Marx, on his part, has rightly put in check the Hegelian solution, but even Marxian self- proposition of the proletarian universal class as the authentic consensus of class conflicts ends up with a rather solipsistic monopolisation of the proletarian class. Perhaps, as a class society without any visible concrete and reasonable solution or conciliation, conflicts are inevitable. Worse still, the conflicts of interests, ideologies, reason and beliefs are often superficially diagnosed. In addition, Marx's radical dissolution of class society turns to be on the long run utopian, anti-historical and even anti-dialectical.[5] Moreover, Kantian belief in the magic of formal ethics as the unique solution could not help matters because it turns out to be impracticable. Even his emphasis on the infallibility of transcendental reason confirms only the status quo of conflicts and thus suppresses any desire of consensus. Hence the mono logical solipsist methods used by these scholars turn out to be the new dogma. As a result, this could not lay claim to foundation of society.

Against this defect, Habermas sought another way to deal with these conflicts with the dialogical way of the public sphere, *Offentlichkeit* or consensus grounded in justice and reason. He contends that public sphere is a realm in which political power relations can be discussed openly, in which debate proceeds in accordance with standards of critical reason and not by simple appeal to traditional dogma and authorities (Held, 1980: 261). He depicts the *polis* of the Greek city state as ideal where the community of the city represents the common interest of the people. Such a public sphere is hardly to be found in our complex society, not because of absence of debates and forums but because of the fact that we possess neither standards of critical reason nor the necessary conditions of such a public sphere. Indeed, a validity of a decision would be related to 'rational consensus' to the extent that it passes a test of inter-subjective universalisation: a norm is justified only if all could agree to it under ideal conditions (Bohman, 1996: 203). Thus the contemporary public sphere points to the various distorted forms of debates, which is manipulated, dictated debates and a lack of commitment to rational self-determination in social order.

To this end, Habermas alluded to the fact that the basis for its resolution is in language where the ideal of mutual understanding without force lies. What is required here is not just a public sphere of social actors but also the law as the result of deliberative procedures of argumentative and will formation that translates normative arguments and social values into a language that is generally binding as well as intelligible to systemic structures.[6] Hence the systemic structure prepares the way for development and power sharing formular in society. It involves the formation of a social sphere in which citizens relate to one another only on the basis of the life-world bonds of legal regulations. So power relations in the social class structure depends on the way in which individual life and public mores mutually limited each other. It

gives the individual the chance to know itself as always embedded in an overarching universal as a constitutive element. (Forst, 1996: 143) Habermas adds that:

> Law, grounded on reason generated in the public sphere and received and filtered in political institution, builds the bridge between the language of the life-world and the claims of different social actors, on the one hand, and the codes of economic and bureaucratic institutions on the other.... There is no 'meta-discourse' beyond the multiple social and political spheres and institutions; but there is the requirement that any social arrangement must in principle be justifiable to all those affected (Forst, 1996: 142-143).

The important point here is that law, as conceptualised in the public sphere, is a system of coercible rules and impersonal procedures that along the line involves an appeal to reasons that all citizens should, at least, ideally find acceptable. It is the will of a lawgiver with the power to punish those who do not comply; to the extent that they are actually enforced and followed, they have an existence somewhat akin to social facts. Sometimes, these social facts are not fixed but subjected to adjustments and corrections. In this case, to account for fairness demands for a supplementary discourse theoretical approach with a theory of 'fair compromise'. A compromise is fair if (a) its being established is more advantageous for all the parties than the absence of any negotiated arrangement; (b) it effectively excludes the possibility of 'free-riding' and (c) it puts no one in the position of contributing more than one receives from the deal (Ferrara, 1996: 125-126). In short, the solution is to confine the need for agreement to general norms that demarcate and regulate areas of free choice. Hence, the dual character of law: on the one hand, legal rights and statues must provide something like a stable social environment in which persons can form their own identities as members of different traditions and can strategically pursue their own interests as individuals; on the other hand, these laws must issue from a discursive process that makes them rationally an understanding on the basis of validity claims.

By and large, the tension between praxis and constituent interests is drowsed with the presupposition that those who participated are free and equal in the sense that each is entitled to be convinced, through the exercise of his or her autonomy- competency, which the norm in question could meet with the resumed agreement of all affected. This delicate balance of the inter-connection between reason, autonomy, and inter-subjective agreement must be maintained within the normative force or validity of a consensually achieved agreement constituting genuine authority (Baynes, 1996:251).

In sum, Habermas's meta-hermeneutical theory of reason has been able to challenge the ability of any hermeneutical philosophy of practice to resolve the practical problem of ideological domination in social action. As a result, the course of interpretation of the idea of punishment in Yoruba ontology will be boosted by critical considerations. Similarly, meta-hermeneutics creates an intellectual atmosphere, which Bodunrin characterises as 'freedom of enquiry, openness to criticism, a general type of scepticism and fallibilism and non-veneration of authorities' (Bodunrin, 1985: xii). Its rationalisation as well encourages diversity of opinion on the idea of punishment in Yoruba ontology and unity of purpose to fashion out a coherent and consistent interpretation of the concept in Yoruba thought system. Constitutive interests in the traditional Yoruba culture are then empowered with capacity for critical reflection upon the reason for action within the context of a possible public or inter-subjective agreement between free and equal participants. However, the end result of Habermas' appeal to critical reason, in the study of punishment in this tradition, as the means to certain knowledge about true and false emancipation, is merely to show meta-hermeneutics itself to assume the feature of an ideology. That is to say, Habermas, in his discourse over the reconstruction of understanding the idea of

punishment in Yoruba ontology to a higher level, will enthrone his own norms and ideas as self-evident and absolute.

Cumulatively, a careful look at the dispute on the problem of interpretation between Gadamer and Habermas, shows that they share its fundamental characters in the nature of *Verstehen* (understanding). Gadamer and Habermas agree to the fact that the objective of worldview or praxis should be understanding and not pure knowing as submitted to by Dilthey. Also, they affirm that the root to understanding is no other than language; language intertwined with praxis and linguistic analysis to flourish the empirical context of indirectly communicated life experiences. The communicative acts however are not entirely accepted by them but their differences are seen in their manner of describing these worldviews. In this context, Habermas shares with Gadamer concretely constructed social circumstances as the universal character serving as the common ground to any consensus and understanding.

I conclude this chapter by noting that hermeneutics is an individual enterprise concerned with making clearer the content of texts. The interpreter equips himself with some presuppositions such as traditions and historical understandings, genuine prejudices and interest; and his artistic creation and objective language in his approach to the art of understanding. This tradition, according to Barry Hallen, does not prevent invention or close as new interpretations are made as a natural and normal part of making tradition meaningful to the people who inherit it. Because of this, these societies will inevitably either eliminate or amend tradition as time passes and re-interpret them so that they again become newly relevant to the present generation (Hallen, 2002: 65).

I have been able to show the differences in approach carried out by the hermeneutics scholars. But the significant strength of the studies is that their literatures on the subject matter

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often imply the desire to seek for an objective truth. For instance, in his attempt to parallel human studies with natural science method, Dilthey employs a disinterested objectified mind attitude in his interpretation. Ricoeur opted for interpretation grounded on the appropriation of the text contextual drive rather than narcissistic ego.

However, my preference for Gadamer and Habermas as theoretical framework of the study is based on the fact that, first, Gadamer's interpretive understanding is based on the role of tradition as a pivotal avenue at understanding events and happening in society which are tradition bound; and second, Habermas notion of praxis and constitutive interests impressed the need to go beyond tradition and language and invoke power relations in society which constitutes the basis for understanding. It is not only for the constitutive interests but also the social class structure which determines who exercises certain power in any society.

Gadamer and Habermas are, therefore, relevant to our integrative notion of punishment in traditional Yoruba culture because they provide for us the opportunity to understand the language of discourse and tradition within Yoruba culture concerning the various dimensions to punishment. Habermas' hermeneutic approach aids the understanding of the power relation in Yoruba culture and the authority saddled with this task.

The next chapter will attempt to show the integrative notion of punishment in Yoruba culture with the aid of our theoretical frameworks highlighted above in this chapter, thereby overcoming the inherent flaws in the traditional theories of punishment.

Endnotes

[1]This was developed by J.S. Mill to corroborate the English tradition of which Hume has given more effective formulation in his Treatise. See David Hume. 1973. *A Treatise of Human Nature*. Reprinted from the original edition in three volumes and edited, with an analytical index, by L. Selby-Biggie. Oxford: Clarendon Press. Also see A.J.Ayer. 1979. *Hume*: *Past Masters Series*. Oxford: Oxford University Press.

[2]Habermas attempts to transcend the Kantian ideal conditions of epistemology of *synthetic a priori* principle with pursue of a social theory on both epistemology and practical levels. It is to fulfil the Kantian programme without falling into his formalism. For explicit discussion on Kantian formalism see his three critiques: *The Critique of pure Reason, The Critique of practical Reason and The critique of Judgement* in Encyclopaedia Britannica, Inc. Chicago, Auckland.

[3] More light will be shed on fair compromise in our discussion of public sphere latter in the work. See Kai Nielsen, 1971. 'Grounding Rights and a Method of Reflective Equilibrium' *Inquiry: An Interdisciplinary Journal of philosophy and Social Sciences*. 25. 277-306.

[4]We can see from this argument that the objective-subjective consensus represents a reformation of the Kantian model of *synthetic a priori* principle. This is the keystone of the whole architecture of the system of pure reason and even of speculative reason. See Bernard Carnois. 1987. Trans. by David Booth. *The Coherence of Kant's Doctrine of Freedom*. Chicago and London: The University of Chicago press.

[5]Admittedly, both Hegel and Marx's theoretical designs reacted not only to the events and the effects of the French revolution, but above all to a rapid acceleration of industrialisation. See Marx and Engel. 1975. *Collected Writings*. Vol.I. London: Lawrence and Wishart.

[6]This is one of the main points of Habermas's analysis of Law. H.L.A.Hart provides a good statement of the concept and duality of law. See. his *The Concept of Law*. 1967. Oxford: The Clarendon Press.

CHAPTER FIVE

THE INTEGRATIVE NOTION OF PUNISHMENT IN TRADITIONAL YORUBA CULTURE

The aim of this chapter is to establish the integrative notion of punishment as manifested in the traditional Yoruba belief system, with a view to determining the significance of its combined functions in the criminal justice system. It attempts to address the problems confronting the western traditional theories of punishment as discussed in the first two chapters, where it is evidenced that crimes could not be suppressed other than the use of force, which is not an effective means of curbing crime in the society. This chapter will relive the outcome of the descriptive account of the idea of punishment in chapter three coupled with the interpretive frameworks of Gadamer and Habermas, in chapter four, grounded in Yoruba linguistic tradition and social class relations between the *Oba*-in-council and the subjects in the community as well as the traditional belief in the analytical submissions, that there is an integration between the natural and the spiritual realms of existence. The activities and actions of the spiritual realm usually harmonise with those of the natural in an interactive manner and are used to causally explicate events in the cosmological belief system (Balogun, 2005: 128).

Indeed, the Yoruba are conscious of the fact that whatever they do or do not do will be accounted for mostly in the spiritual realm. This consciousness affects their daily moral practice. They believe that the wrongs ought to be sanctioned for their wickedness, while the rights are to be rewarded for their good deeds. So the natural and spiritual realms must work together in order to realize an ideal punishment in Yoruba thought system. By integration, in this context, I mean the coordination of inherent consistency in the dispensation of justice grounded in the retributive, utilitarian and restitution forms of punishment against the flaws noted in the traditional theories of punishment earlier discussed. In other words, the Yoruba, in this understanding, therefore,

believe in the existence and beingness of the unknown, which has a direct influence on their own being. It is this existence of the invisible beings that play an overarching role in integrative justification of punishment, which engenders a standardized balance of social equilibrium in which genuine reconciliation between parties to a dispute, human well being and social harmony are settled in the society. This enhances a 'collectivist approach to justice and fairness', to borrow Olaoba's words, whereby the principle of '"give-a-little, get-a-little"' is encouraged towards the restoration of harmony between litigants in such a way that there is "no victor, no vanquished" adjudicatory system among the Yoruba (Olaoba, 2002:47).

This work is then planned to discuss concrete issues such as injustice, stealing, murder, lying and so forth which are grounded in some narrations in traditional Yoruba culture, with the intent to critically discuss on the significance of the punishment from the integrative perspective.

The integrative notion of punishment in Yoruba culture

I shall deliberate first on the traditional adjudicatory pattern in the natural realm in Yoruba culture with a view to showing the effect of the integrative notion of punishment to conflict resolution. The people have a way of settling their civil and criminal disputes by means of an institution as old as the history of the people themselves. In the people legal culture, it is difficult to distinguish among the legislative, executive and judicial role in the dispensation of justice. Olaoba carefully captures the adjudicatory pattern among the Yoruba. He submits that the type of cases varies from the minor family disagreement to the community wide disputes. This he expresses thus:

> In the minor courts at the family and quarter levels, the cases handled include quarrels among wives…, squabbles between friends or playmates…, abduction, adultery and destruction to farm trees. The family and quarter heads served as the adjudicators. If the dispute involves two families, it will be transferred to the Oba's court (Olaoba, 2002: 49).

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In general, adjudicators have reputation to protect and are strictly expected to uphold the governing norms of the community. In other words, they are expected to be outstanding in their dealings for the following reasons:

> First, power is invested on them by the norms and customs of the society. Second, such power is at a representational level. Third, these categories of officers of law are susceptible to intimidation, indignity and indictment should they fumble and flounder against the generally acceptable principles and practice of legal norms. Lastly, they stand the risk of public molestation (Olaoba, 2002: 60).

Nevertheless, the *Oba*-in-council [1], popularly referred to as *Igbimo*, was responsible not only to handle all cases which were believed to be accepted by the subjects, but also to impose punishment. These cases could be heard in public particularly at the market place or tried behind closed door in the court. The elders and impromptu officers of law constitute adjudicators on cases that are never prepared for in public domains, perhaps in market places and on the street where there are urgent need for litigation; whereas arbitration behind closed door is both formal and prepared for by the *igbimo*. The *Igbimo's* sanction was usually based on a consensus of the adjudicatory chiefs. In this respect, all council members are equal before the law. Though the *Oba* might have a final say on any matter before the council, but this must not be to his whim and caprices as the consequence of such action may be grievous to himself, the litigants and the community. However, in any of the trials, both the accused and accuser were physically present. The accuser would charge the accused in person, and the accused would give his or her own defence. Members of the *Igbimo* would subject both parties to cross examination.

Cross examination, according to Olaoba, is 'anchored on justifiable and equitable network of ideas, perceptions and the preponderance of Yoruba traditional jurisprudence (Olaoba, 2000: 4). The basic elements in the art of cross-examination are cross- examiners and cross-examinees. Cross-examiners include the adjudicators, respected elders and the ancestors.

The ancestors are responsible for the provision of spiritual guidance at adjudication which serves as cautions to the elders at the point of deliberation and pronouncement in dispute settlement. Olaoba (2000: 4) opines that:

> The beauty of the ancestors may be imagined rather than demonstrated. As a matter of fact, the elders have been considered as ancestors who are the wisdom lore of Yoruba society. The presence of the ancestors is significant in providing spiritual dimension to the actualisation of Yoruba jurisprudential thought.

Cross-examinees, on the other hand, are the litigants (the accused and the accuser) and eye-witnesses to the dispute. The eye-witnesses comprise the biased individuals to the course of both litigants and other objectified personalities interested in the acquisition of knowledge in traditional Yoruba legal practice. Olaoba (2000:5) submits that the eye-witnesses

> have the wherewithal to make or mar the process of cross-examination due to the weight of evidence adduced by them. They could constitute a large- than-life dimension to the thesis of cross-examination, thereby complicating the dispute in vogue.

By and large, witnesses would be called. After thorough scrutiny and deliberation on the case, the council decided to adjudicate on the proviso that 'all disputes that would trigger off public mistrust and ancestral discredit were handled with utmost dispatch and without let or hindrance' (Olaoba, 2002: 66). Sometimes, cross-examination brings to the fore hidden evidences not known to the litigants at the point of committing the offence and this engendered the spiritual intervention of ordeal practice and oath-taking methods. But in the event where there were no witnesses or the cases were not well established, the accused would be left to his or her conscience[2] (Onadeko, 2008: 15-28). Nonetheless, Adewoye (1977: 5) remarks that,

> It was a court of morals. The chief and his court were concerned with nothing other than the substance of each case. This is why it was not uncommon for the chief and his supporters to deliver end-of- trial homilies to the parties to a dispute- homilies that were 'invariably as instructive as they (were) edifying'

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The objective of this practice among the Yoruba was to reach a decision that would be accepted as fair by both parties, so that the dispute could be resolved. Adewoye (1977: 5) compliments:

> This is why those who administered justice in the various communities were usually the elders and the rulers. They drew no distinction between their executive and judiciary functions; the two were complementary one to another in the ruler's task of maintaining peace and order. In dispensing justice, they saw themselves essentially as peace makers, called upon at each instance of a dispute, 'to assuage injured feelings, to restore peace, to reach a compromise acceptable to both disputants'.

This also reflects that both the litigants and their witnesses are abreast with the trend of proceedings to the extent that they are pre-eminently in the know of the outcome of the dispute before the final pronouncement. It shows that the art of cross-examination in the Yoruba juristic tradition enhances the dispensing of justice in the quickest manner possible rather than the formal and cold procedural nature of justice hinged on technicalities in western adjudicatory system. Olaoba (2000: 14) quotes Anthony Allot on the latter's remark on the quality of evidence in African legal tradition thus:

> The roles of evidence are elastic and less likely to work injustice in the African context than English rigid rules. African justice often has the qualities of being arbitrage, consensual of simplicity and publicity. The law and procedure are intelligible and acceptable to the people, and the *vox populi* often gains a hearing not least when bystanders join in and give their opinion on the merits of the case. In brief, judicial procedure reflects the common African principle of popular consent.

These informed the fact that it is the responsibility of the community to perform the role, among others, of an impartial arbiter at all time in *Ìsàlù-ayé*. This is against the view that if otherwise the whole community may spell doom. There is a narration in support of this caution in *Otura-Rete* poem. It narrates how *Akapo* (an *Ifá* priest) allegedly reported *Òrúnmìlà* for not

responding to the needs of his wife and children to *Olódùmarè*. *Olódùmarè* was annoyed without listening to *Òrúnmìlà's* version of the allegation. However, having listened to *Òrúnmìlà*, *Olódùmarè* decreed that henceforth parties to quarrel should be present before any pronouncement by the arbiter (Elebuibon, 2004:38-43). Implicit here is that a leader should embrace the process of dialogue as a means of promoting mutual understanding, as emphasised by Gadamer and Habermas. This would enable a leader to base his decision in sound judgment. This idea is implicit in the saying that: *Agb' èjò enìkan dá, àgbà òsìkà ni* (One who judges based on one side of the story is a wicked elder) (Olowookere, 2004:23). I need to note here that decision on dispute settlement and sanctions is not subjected to the arbitrariness of the *Oba*. But rather there will be thorough deliberation by the *Igbimo* before any punitive measures are decided. The point here is that every member of the council should have a chance to contribute to the adjudicatory process of the society. This implies that no point of view should be suppressed in the process of deliberation and no arbitrary exercise of power should be allowed. In short, the Yoruba proverb which compliments this is *á ń pé gbon ni , a kì í pé go* (literally, we come together to be wise, not to be more stupid). The proverb emphasizes the importance of cross fertilization of ideas in the decision making process. This is important at this point when leadership question is a serious issue in Nigeria. The point here is that a leadership that cherishes consensus in decision making is more useful than one which is opinionated and more interested in him/herself. The Yoruba political culture only recognizes leaders and not rulers. Even the political head, that is the *Oba*, could be put to trial whenever found wanting.

This is why the *Oba* throws open to the people issues which are hardnut to crack. I need to emphasise that this represents the genesis/means through which norms and regulations governing the community emanate. In this situation, the town crier is ordered to summon the

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townspeople to the palace for deliberation. J.D.Ojo descriptively accounts for this situation as being quoted by Olaoba (2001: 8) thus:

> Difficult matters of those needing a consensus or the backing of the townspeople were spotted and earmarked for a general discussion by the townspeople. A date was fixed and on the preceding night, the chief would sendout a man to ring the bell to the townspeople warning all the men, women and children not to go anywhere the following morning and that whoever disobeyed the order would be punished. The bell ringer also announced the place of meeting which is generally the chief's residence or if it was considered too small, the market-square.

Also, the purpose of dispute settlement in Yoruba culture was not only to discover who was really guilty or innocent, but also reconciliation of parties to dispute. To reconcile means the restoration of what is out of harmony, in this sense between the natural and spiritual realms of existence. The restoration of concord may entail no more than open acknowledgement of harm caused and experienced by both parties respectively as prerequisite for reconciliation. Olaoba (2002: 47) adds that:

> Reconciliation is seemingly the basic objective and sine qua non of Yoruba indigenous judicial procedure. The restoration of peace and harmony, through effective adjudication, was joyously celebrated through provision of food and drinks by the litigants…. The celebration symbolised the end of the dispute. The hearing and summoning fee paid by the litigants, which facilitated the seating of the court, financed part of the expenses for the celebration while the rest was used for sacrifices to the ancestors.

The above position is premised on the fact that justice demands fairness and commitment from all parties to a dispute. Implicitly, where there is injustice in this respect the society will be vulnerable to disintegration out of disharmony between the worlds of existence. I will next evaluate this in relations to the integrative ingredients in our discussion on the injustice and punishment of the innocent highlighted in the third chapter which attempts to explicate the roles of supernatural realm in punishment. From the narration, *Obàtálá*, as attributed to as human

being, was faced with the hard fact of life: nobody is all-knowing; the partial nature of human knowledge; and the limitation in human knowledge and power. Against this submission, he was advised by *Ifá*, Yoruba god of wisdom, on the danger of being embarrassed on his propose journey to Isolu city but did not heed the instruction. Hence he was punished. *Ifá*, according to Yemi Elebuibon, 'is a principal divinity in Yoruba religion, culture and belief systems' (Elebuibon, 2004: vii). That is, *Ifá* is the embodiment of law and order as well as harmony in Yoruba culture. He knows that the ultimate end of the world is good and he is prepared to preserve it at all time against the attacks of evil forces that are prepared to raining curse on mankind. This informs *Ifá* to facilitate communication between the planes of existence because he foresees that man, in his weakness and ignorance, sit down in a bewildering and terrifying world, and would need help and reassurance. *Ifá* then stands for balance and social harmony in the society (McClelland, 1983:12). Nevertheless, *Ifá* corpus includes the Yoruba historical past, presents and future life, the nature of both natural and supernatural things, the relationship between them, the phenomena of human life and destiny, and so forth (McGee, 1985:90). In other words, the *Ifá* corpus serves as the compendium of the Yoruba thought system. According to Wande Abimbola (1975: 32),

> [It is]…the storehouse of Yoruba culture inside which the Yoruba comprehension of their own historical experiences and understanding of their environment can always be found. Even until today, Ifa is recognized by the Yoruba as a repository for Yoruba traditional body of knowledge embracing history, philosophy, medicine and folklore.

However, the *Ifá* corpus is divided into two functional parts, *Odu* and *ese Ifá*. The *Odu* (a chief or a head) is two hundred and fifty-six (256) in number, sixteen (16) principal and two hundred and forty (240) minor (Bascom, 1967:17). Some believed that the sixteen principal *Odu* (*oju odu*) are mythically qualified to have descended from heaven and that the minor *odu* (*omo*

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odu) act as subordinate to the former (Abimbola, 1968:9). The role of *Odu Ifa* terminates at the point of divination process. Indeed, the verses represent the key to the active system of divination. By divination, we mean the desire to know that which is obscure. In other words, it is the 'act of obtaining information about unknown happenings or future events from supernatural sources by means of signs and occult techniques' (Awolalu, 1979:120). That is why the Yoruba would say

> *Ifá ló lòní*
> *Ifa ló lòla*
> *Ifá ló lotúnla pèlu*
> *Òrúnmìlà ló ni jó mérèerin*
> *O saa da aye*

which translates:

Ifa is the master of today,
Ifa is the master of tomorrow,
Ifa is the master of the day after tomorrow,
To Ifa belongs all the four days
Created by orisa into the world (Abimbola, 1965:4).

It then implies that had *Obàtálá* heed divination, he would have gotten the best out of his adventure to Isolu city and be relieved of the helplessness and embarrassment he put himself. Another implication of divination is that the Yoruba do not believe that a person, however wise or powerful, can on his own volition determine what would happen to him in the world. This reflects in the means and method employed by *Obàtálá* as a tradition in the thought system to gain the assistance or favour of supernatural realms in the act of knowing the prospect of his journey. It shows the limitation of human knowledge and power. That is why the Yoruba do not hesitate to say:

> *Bí òní tirí, òla ki írí béè,*
> *Eyiyi ló mú kí babaláwo má d'ífá*
> *Ororún*
> which translates:

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Because each day has its own peculiar problems,
the babalawo (Ifa Priest) has to cast his Ifa
(to divinize) every fifth day.

Against the above submission, we are able to realize that *Obàtálá* is bound to be punished for his act of disobedience to offer sacrifice before embarking on the journey. This brings to light the significance of sacrificial rites as a guide towards the fulfilment of dreams in life. Its purpose is to establish a form of ritual communication between all the forces of the universe, with the understanding to avert the wrath of these superior beings (Awolalu, 1979:134-142). Man needs to offer sacrifice to the benevolent forces so as to continue to enjoy their support and blessings. On the other hand, he needs to appease the *Ajogun* and *Àjé* in order that they might not oppose him whenever an important project is embarked upon. I then experienced, out of neglection of sacrifice by *Obàtálá*, the obstacle he encountered on his way.

However, the relevance of sacrifice is found in the *odu* of *Iwori*. Here, *Ebo* (sacrifice) and *sìgídi* (human effigy) engaged in a battle of seniority and proficiency. As they are fighting one day, God intervened and decided to put a stop to this by asking them to come for a test after seven days. *Ebo*, the son of *Òrúnmìlà*, reported to his father, which the latter divinized and prepared offerings to *Esu*. Nevertheless, both *sigidi* and *Ebo* were separately locked up without food, water and visitors for seven days. At the end, charm fainted on the fourth day and when he came round, he was prepared to concede seniority and pre-eminence to sacrifice. He was instantly released, enfeebled, humiliated, and dejected. That is why *Òrúnmìlà* addresses his followers not to rely on charms because its strength is temporal while sacrifice will endure much longer and triumph in the end.

Sacrifice then serves as a means of avoiding problem or disaster in life. And this is effected through *Esu* (the police man of the universe), who shares a little of the attributes of the benevolent and the malevolent forces. Had it been that *Obàtálá* performed the sacrifice, *Esu* would have supported him to avert his imprisonment at Isolu city. Thus the Yoruba maxim *ení rubó l'ésuu gbé* [literally, it is only he that sacrifice that *Esu* supports]. It is believe that once *Esu* receives the prescribed sacrifice, he will forbid *Ajogun* from harming the supplicant. In short, *Esu* represents the principle of order and harmony and the agent of reconciliation.

Nevertheless, we should not allow this to arrest our attention but rather to consider hermeneutically the consequences of punishing the innocent in Yoruba thought system as encapsulated in the narration. *Obàtálá*, though out of his commission and omission (of sacrifice), was unjustly arrested by people of *Isolu* city for the crime of harassment committed by a mad man at the city river. Though it is ethically right to arrest deviants in the communal setting but this was wrongly executed by the people. In this sense, the retributive approach aims 'to requite upon the doer "an act not only harmful to others but immoral and blameworthy" ' (Fadipe, 1991:223). The wrong doer is the mad man whom the Isolu community indeed have the right to correct but mistakenly imprisoned *Obàtálá* to suffer in place for the offence he did not commit. Justice demands, in Yoruba belief system, that only the offender ought to be punished. This is corroborated with the Yoruba saying that *òbe awun ni a fin pa awun, eni ti o yo idà yio ti ipa idà subú* [The tortoise's knife is used in killing him, one who draws sword will fall by the sword] (Ajibola, 1977:29 and 94). Obviously, the mad man deserves to be punished for wrong done. But, on the other hand, an act of injustice is committed by the people of *Isolu* city for wrongful imprisonment of the innocent, *Obàtálá*. After all, the Yoruba maxim *Ìka ti o sè ni oba ńgé* (It is the finger that offends that the king cuts) shows that the offender will surely receive his desert of

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punishment. Rather the *Oba*-in-council decided otherwise to unjustly punish the wrong person and its retribution will not only terminate with the council members alone but create anxiety for the whole community at large. That is why the Yoruba say *eni da eéru ni eéru í to, ohun ti a se ní í to ni* (Ashes spread towards the direction of the thrower, man's act follows him) (Ajibola, 1977: 17 and 71). Thus the people of *Isolu* city suffered drought, barreness, sickness, etc., as their retribution for unjust treatment of the innocent. This depicts the destruction of the balance and harmonious existence in the social morality of Yoruba culture. It also provoked the saying *bí elésè bá n'jìyà olódodo a má a nípin-ín-níbè* (If a sinner is being punished, the innocent always shares from it) (Olowookere, 2004:40).

This informed once again, in the narration, the consultation with an *Ifa* adept, *Ogbigbi*, after some futile attempts by three other diviners. The futility is not unconnected with the unjust imprisonment of *Obàtálá* and the commensurate punishment meted out by him in respect to the pestilence. It is appreciated in the Yoruba maxim *àparò tó ba t'olóko jé tó n fò s'okè, tàkúté tí kó kúrò lójú kan ni yí ò ba tirè jé* (The patridge that destroyed the farm and was jumping up in happiness, it is an immobile trap that will also destroy it in return) (Olowookere, 2004:29). It shows that the supernatural realm of existence does not support the oppressive nature of man qua man. Thus it becomes impossible for man to be favoured whenever unfair human conducts are exercise.

However, there is the need for equilibrium in order to avert further catastrophes. With the payment of obeisance to this supernatural realm, the source of the problems of the people of Isolu city was made clear to *Ogbigbi*. There and then that the king was informed that an innocent person was unjustly imprisoned. Hence the demand for modified human conducts or actions as claimed by the Yoruba *owo ení l'à fí i tún ìwà ení sé* (with our hands we should put straight our

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own affairs). In essence, this saying emphasizes that an individual, in his outwardness, takes into account what he considers to be the expectations of others to act toward him in a certain way (Sofola, 1978:68). These mutual expectations and a person's evaluation of them represent the social role the people of *Isolu* city must display. This Yoruba belief will give added strength to the basic benefits derivable by Isolu people by reinforcing this with a sense of personal and group commitment to one another. Hence it bestows on the *Isolu* people to work hard to mend and retie the cord of human recitations that have broken with Obatala. This act must be treated with all sense of responsibility. The consultation with a diviner to enlighten the community on the cause and reparation expected in order to restore the failed imbalance to existence. Thus the Yoruba maxim *be elejo ba mo ejo rè l'ébi, kì í pé n'íkúnlé* (A person who pleads guilty is not kept long in suspense] (Ajibola, 1977:12 and 62). Similarly the Yoruba do not hesitate to say *ìdúró kò sí, ìbèrè kò sí f'éni tó gbó'dó mi* (There is neither standing nor bending for one who has swallowed a mortar) (Olowookere, 2004:73) in order to buttress the essence of impatient on the part of culprit to reparate on his misconduct. In this line of thought, sacrifice, in form of appeasement to *Obàtálá*, serves as a means of reparation if there is to be justice.

Retributive justice then involves the infliction of pains as displayed by the people of Isolu city for their unjust behaviours to *Obàtálá*. In short, justice only thrives in Yoruba society where reparation is practised to award what wrongs have distorted. So *Obàtálá* exercised the spirit of forgiveness in order to avoid being referred to as *alaseju* (Immodest attitude) in the Yoruba saying *eni tí a sè tí ko dárí jin ni, bó ba fún ni lóbì kí a má jeé* (one who we offended and did not forgive us, if he gives us kolanut, we should not eat) (Olowookere, 2004:59). The Yoruba also believe that *eni dá ríji ni sete ejo* (one who forgives puts an end to law-suits) and where an individual does otherwise, the community restrains relationship with him because they are assure

that such a human being could disproportionately punish his offenders. Hence, it is important to let go of any wrongs whenever communally addressed by the people.

People should note that the spiritual realm is not merely meant to create fear on the people. Elias debunked the fear of supernatural forces in the following words:

> This classic restatement of an outmoded theory of religious origin of laws shows the writer to be oblivious of the elementary fact of the psychological motivation underlying moral conduct, fear of ridicule or of legal penalty is not peculiar to the European, and that African law does not so weakly abdicate its function in favour of an all pervading supernatural authority (Elias, 1956:61).

From this viewpoint, the belief in spiritual realm provides the Yoruba an overarching system that helps them to organize reality and impose punishment to their life. Spiritual realm takes up the adjudicatory responsibility where the *Igbimo* finds difficult to continue the course of trial cases. At this point, the accused is advised to swear to oath or exposed to an ordeal. The belief in the magical efficacy of oath could be well guaranteed. After the oath had been administered, the matter was left to the judgement of the gods of the land whom the people believed would bring misfortune to those who perjured themselves. Oath-taking was no mere solemn assertion of talking 'the truth, the whole truth, nothing but the truth' which is synonymous with the western court; it was a self imprecation, charged with punishing power. It is taken on the names of some dreaded gods or sacred objects charged as magical phenomena symbolizing the kind of punishment the oath taken to befall him if he swore falsely. But if misfortune befalls the oath-taker soon after the swearing, he would be pronounced guilty and would condemn him.

Ordeal, on the other hand, is practiced in Yoruba culture in order to create an appropriate dispensation of justice like oath-taking. Trial by ordeal connotes 'the most ancient specie of trial in Saxon and old English law, being peculiarly distinguished by the appellation of Judicium Delor judgement of God' (Ebijuwa, 2007:78). It is believed by the Yoruba that judicial

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pronouncements here are not 'necessarily unfair' as it involves 'a mixture of oath-taking and endurance test in cases where hard evidence or witnesses could not be sourced'(Ebijuwa, 2007 :78-79). According to Ajisafe (Ajisafe, 1946:41), ordeal is conditioned on:

> When one of the parties fears that his opponent is
> taking advantage of his unfortunate condition.
> When judicial proceedings have not been successful in
> clearing up the matter.
> when robbery has been committed and the culprit cannot be
> detected by ordinary means.
> When one is suspected of practicing witchcraft.
> When any one's death is suspected to be due to the
> foul play of a person or persons unknown.
> When the secrete of a society or kingdom or state is
> being revealed to an unauthorized person in a
> hostile state and the traitor is unknown ….

A resounding description of the ordeal practice is the lengthy comment of Peter Morton-Williams' submission on the Ogboni court among the Oyo-Yoruba by Olaoba (Olaoba, 2002: 44) thus:

> The Apena hears the dispute and make s a judgement intended to reconcile
> the parties. They both pay a fine and provide animals for sacrifice, the
> blood of which is poured over the edan. If it is obvious that one of the
> parites must be lying and because he is pressing false claims, the quarrel
> cannot be satisfactorily mended, an ordeal is imposed. The edan are placed
> in a bowl of water …. The disputants are required to drink. It is
> confidently expected that the one who put his case falsely will die within
> two days.

Furthermore, traditional Yoruba beckon on to the spiritual realm in the circumstance where a thief and stolen property are difficult to trace. They commit the robber to the gods for adequate punishment, and in some cases the thieves are revealed publicly by the gods or made to confess publicly or return the stolen property to where it can be seen by its owner. This is in consequence of the impact of the spiritual realm which makes the thief suffer physically or internally. He may be subjected to prolonged torture, illness, paralysis, partial blindness until a

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propitiatory sacrifice is offered by the culprit(s). That is also why odu *ogbe-irete* warns against stealing thus:

> *Bí oba ayé kò rí o*
> *oba̩ òrun wò o.*
> *O dífá fún amú'kùn sèkà*
> *tó so pé oba ayé kò ri oùn*
> *oba òrun wò o láti se ìdájó*
> *Which translates:*
> *If the earth king does not see you,*
> *the heaven king is looking at you.*
> *Thus declares the oracle to the one who steals under*
> *the cover of darkness,*
> *who says that the earthly king does not see him.*
> *God sees the thief and will surely punish him*
> (Adewale, 1986: 54- 66).

From the above viewpoint, the implication of truth-telling is the promotion of the good of all in the community. The religious and social institution systems do not tolerate liars as with the belief that they would never find favour in the presence of the supernatural beings. From our narration in the chapter three, *Alakedun* is seen as a feeble character, a misfit and a cheat in the community's circle. He attempts to generate rancour and hatred between *Obàtálá* and other divinities. This, through the spread of false rumour, could set up commotion in the community. The effects of *Alakedun*'s wind of rumour show what damages lying could unleash on the community. A narration in support of the consequences of teling lies or to be a tale bearer is also found in the verse of *Èjì-ogbè*, a major *odu* poem. In this poem, *òtító-inú* (rectitude), *èké* (liar) and *òdàlé* (covenant breaker) decided to embark on a distant journey and consulted the *Ifá* which enjoined them to be truthful and faithful to the people in their land of sojourn. Each of them acted according to his name, *Èké*, lied; *òdàlé*, broke covenant between him and other people; while *òtító-inú* was truthful and honest to people. At the end, he became prosperous and wealthy

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and returned with abundant properties. While *Èké* and *Òdàlé* languished in misery, poverty and penury in the land of sojourn. This informed the saying thus:

> *S'òtító, s'òdodo*
> *S'òtító o, sì tún s'òdodo*
> *Eni s'òtító ni'malè 'gbè*

Which translates:

> Be truthful, be righteous
> be truthful and be righteous
> he who is truthful is the one supported
> by the divinities (Adewale, 1986:62-64).

In short, the liar and the untruthful like Alakedun has nothing to contribute to the general well-being of the community. Rather, people of such character would destroy the social fabric of the community. Thus this saying:

> *Èké pa obì, kò yàn*
> *Òdàlè pa obì, kò yàn*
> *Onínú re pa obì, o yè peregede*
> Which translates:
> The liar cast the Kolanut, it is inauspicious
> The covenant –breaker casts the kolanut, it gives
> bad omen
> The good natured casts the kolanut,
> It is plainly auspicious (Sofola, 1978:122).

So, a liar, like *Alakedun*, becomes useless to *Obàtálá* due to his character. A liar cannot give evidence on any issue or to stand as witness for anybody, for he will bear false witness. Besides, honesty, love and rectitude are beyond the purview of *Alakedun* in as much as he deliberately attempted disgrace of his master before other divinities. In this light, Alakedun has become an unworthy servant to only cohabitate in the bush. Thus the Yoruba saying that *eni tó bá puró, á jalè* (She/he that lies will steal) corroborates the people's position on the avoidance of attitude that may create uneasy tension in their ontological belief system. They believe that

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human community has its full meaning and significance within the transcendental centre of ultimate meaning. Similarly, where an individual or the community creates disaffection between the planes of existence, its punishment may be grievous. For example, there is a story in Abimbola's work (2006: 86) where Awotunde accounts for the displeasure of *Sonponno*, the god of smallpox.

> When Sonponno kills a person, no one should rejoice. For if there are any (funeral) celebrations he will be annoyed that despite the evil he has done to these people, they are still happy. He will then affect many other people. God has given Sonponno such a power that if he kills in anyone's family they must not be angry that people are not aware of the evil that he has done. This is why people usually call Sonponno "Alapadupe" (The owner of kill and thank). Anyone that Sonponno kills, we should not say that he died, but rather 'O yolo' (He rejoiced and went), because if it is said that the person died, (o ku) Sonponno will be annoyed that people are calling him a murderer.

The narration shows that there cannot be any hiding place for criminal offenders in Yoruba society. It motivated the saying that *fijà f' óloun jà, f' owó 1'érán (*Leave the fight to god and look on) with the proactive course for social justice. It also enlightens the society on the need to inculcate morally commendable conducts expected in the context of a social morality. (Gyekye, 1987:67) In short, it shows punishment in this context as not limited to the relationship between natural beings qua natural beings but also encompassed that of spiritual being. Here, greater value is attached to the feeling of communal fair play and justice, with the motivational belief that an individual must exercise restraint and take responsibility for his/her actions. If otherwise, the efficacy of the moral sanction and punishment ensued. This is reflected in the Yoruba saying that *A mú 'kun sè 'kà bí oba aiyé kò rí o, ti ò run wò ó.* (If an individual who stealthily commits crime is not detected by man, God is there to dispense justice). Hence the community need to offer sacrifice to these supernatural forces in order to survive. They also need to appease the benevolent forces so as to continue to enjoy their support and blessings. More so,

they need to reparate the malevolent forces so that they might not oppose them whenever an important endeavour is embarked upon. In the narration, the moral pollution of murder has to be cleansed by special ritual experts in order to appease spiritual realm that are believed to have been offended. Until the expiation is done, the entire community stood a real and imminent danger of suffering a disaster. The serious moral breach has destabilized the fundamental peace, balance and spiritual realms. For example, the spiritual realm hates any act of violence and injustice, any instance of breaking the social order and violating specific bans. All these attract to the natural realm punishment with shortage of agricultural produces, famine, infertility, drought or illness. These beliefs are premised on the fact that there is a continuum between the spiritual and natural realms of existence. Also, that life goes on beyond the grave for the Yoruba and is a continuous action and interaction with the ancestors. Integrated approach to punishment is reflected herein that culprits will not only be sanctioned but commensurability is also emphasized towards appropriate justice.

A story in support of the above saying is grounded in *Alopipa* (story-telling) which is meant to teach good behaviour patterns, social conduct, and sanction, repercussion for errant and anti-social behaviours like stealing, laziness, defiance, insincerity and so forth. We may present the story of *Ìjàpá ati Àsá* (Tortoise and the Eagle).

Ní ìgbà kan, ìyàn mú púpò ní ìlú Ìjàpá. Àwon è nìà ati eranko kò rí ońje je, ebi ǹ pa olúkúlùku; nwón mú owó lówo, nwon kò rí ońje rà, tènìà-teranko l'ó rù hanngogo. Sùgbón Àsá kò rù, kò tilè mò pé ìyàn ńmú. Àsá jé àgbé paraku, ò sì gbón púpo; bí ó ti ko'ko etí lé bé l'ó ní oko egàn. Nígbà o kíyèsi pé òjò kò n íí rò danindanin ní àgbègbe ìlu ré ni odún tì à ń sò'tàn rè yí, ó fura pé ìyàn lè wà ni odùn ná; ìrírí rè gége bí ògbólógbó àgbè ti fi dá a lójú pé bí òjò kò bá ti rò dáadáa ni àkókò rè, ìyàn ńbò nùun. Torí ná ni ó se fò lo sí òke-òkun ní'bi tí o rí i pe òjò ńro, ó lo dá oko ńlá kan sí òhún; ó gbin orísirisi ewébe, ilá, ata, isu, ège- ó gbin gbogbo rè lo súà. Ngbàtí ìyàn màa fi wora ní ìlú Ìjàpá ati Àsá, ohun-ògbìn oko À sá t'ó wá l'òké-òkun ti gbó, ó si tó to kórè. Àsá á máa fò lo síbè lójoojúmó lati jeun ati láti mú ońje bò wá fún àwon mòlébí rè.

Ìjàpá ti ńsàkiyèsi ìrín Àsá, ó rí í pé ó má a ńjáde lo síbìkan láàro, a sì ma apé púpo lóhún; k ìí mo ìgba tì ò màa iń wolé dé. Ilè à ti sú dáadaa ki À sá t'ó wolé ki àwon ará ìlú má baà mo àsírí ibi t'o ti nri ońje. Gbogbo bi iyan ti mu to, ti gbogbo enia gbe tojutimu, ara Asa ati awon ara

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ile rè kàn ńdàn ni. Ìjàpá wá furá pe jíjáde ti À sá njáde láráró yen, ońje l'ó lo ńmú bò fún awon ibatan re.

Ìjàpá wá dide ní ojó kan, ó lo bá Àsá ní àfèmójú, ó ní 'Òré mi, Àsá, o kú ojó méta kan o. Ìgbà gbogbo ni mo ṁ bèèrè re dé'lem, nwón a ni o já de. Jòwó òré mi, ebi ni kò jé kín g' lè sùn ṁojú l'órí eni tí mo fi wá ri wa ri o lá fèmójú báyí. Wo owó mi b'o ti ri té éré bíí tie èrà, wo e sè mi bákannà, wo bi ara mi ti hunjo bi ara 'rúgbó, wo gbogbo ara mi bí mo ti rú to. Ìyàn yí nfé gbé mi lo l'o ri yí. Bí èmi onílé-olóna bá fi báyi, o lé f'okàn wo bi ìyàwo àti awon omo mi de'bi t'o ti ńri ońje je. Kín g sa ti liè jeun, ki ng yo, o tán!'

'Òré mi, Ìjàpá, kò sòro fún mi lati ràn o lówó, sùgbón òrò re sòro. Eni t'o f'onje si o lénu l'o ngéje lówó; bi mo mu o lo sìbe, o kó ni sàì fi ibi su mi. Ng kò lè soore gb'ikà o.'

'Ó ti o, k'á tu'tó iyen dànu. Ojó pé ti mo ti fi ìwà játijáti sílé. Ìpáta omodé l'o si ńwò mó mi lára yen; agbà ti dè nisisiyí, ng kò jé s'oro bí èwe mó. Dákun mú mi lo. Ebo t'o bá yán fún mi ni ng o rú ú, ng kò je fi e sè mi te ibi ti o ko fesè sí rárá.'

Àsá se Ìjàpá ní hóo, ó ni kí ó wá bá òun ni à fèmójù ojó keji kin won lo sí bè. Bí ákùko èkéta ti ko ni Ì jàpá àti À sá gbèra, fe-e-e-e, ò di òkè- òkun. Nigati nwon dè 'bé, nwón je, nwòn mu; Àsá gbé isu kan, ó ni ki Ì jàpá mú'kan bé. Ìjàpá ni kò burú, o gbé 'kan; ó pon s'éhin À sá, nwón padà si ilé.

Nígbàtí nwón dé'lé, Ìjàpá mú isu fún ìyàwó rè, ó sè é, òun àti awon omo rè je e. Ìjàpá wá rò ó o títí pé, Àsá t'o ní òun ò gbodò kó isu méji ábòntori méta yí, ahun ni, ko fé ki àwon omo òun sanra bí àwon tirè ni. Tí oun bá lo so fun à won eiye yì ókú, òun á mú won lo sibè; nígbàtí àwon b á ṁbò, enìkòòkan nìnú àwon eiye yen ni yió bá òun ru isu kò òkan, ilé kún niyen. L'ó bá gbéra ó d'ilé Atíòro ti ó je bii akòwe egbé àwon eiye, ó kò, ó rò fún un. Àtíòro bá pè'pade àson eiye ní pàjáwiri, nwon pinnú ninú ìpàdé yí pè lilo l'àwon ó tèlé Ìjàpá lo sí oko Àsá; inú bí won pé Àsá t'ó je alága àwon, kò lè mù àwon lo si'bi ońje k'awon lo jeun, o sí ri í pe awon ńku lo fún ebi, jije l'àwon ó je oko rè run.

Gbogbo won bá sígun, Àtíòro l'ó pon Ìjàpá, ti Ìjàpá ká owó méjèèjì mó on ní abíyá t'o díí mú pinpin, ó dif e-e-e-e, nwón nfó lo. Nígbàti nwón fó da òkun sí tán, nwón dé ibi orita meta kan. Àtíòro kò mo'bi ti yíó gbà, l'o wa mbèère l'òwo Ìjàpá pé, 'Ìjàpá, òna da; Ìjàpà, òna dà.'

Ìjàpá bá fi owó kan di À tíòro mú, ó fi owó keji juwe ò na, kí ó tó mu owo wá lè láti di Àtíòro mú, bèsé ni eiye na ye t'o yí ra si òna, owo Ìjàpá keji wón l'ará Àtíòro, àfi fiiri-poo! Nile, Ìjàpá túká yańgàyánga, o ku d'orun.

Which translates:

Once upon a time, there was a great famine in tortoise land. There was no food for both human beings and animals, every individual was starving, they have money at hand but they could not get food to buy. Both human beings and animals lost a lot of weight. But the eagle looked robust. Hardly was he aware that there was famine. The eagle was a resourceful farmer who was wise as well. He had farm nearby his house and very far away. When he realised that there would not be much rain in his land at that particular year this story was told, he envisioned that there might be famine that year due to his experience as a renowned farmer. This made him sure that if there was no regular rain at its season, there would be famine. For this reason, he had to fly to a foreign land where it rained. Whence he cultivated a big farm, he planted different kinds of vegetables, okro, pepper, yam, cassava-he planted many crops. At the time the famine was being noticed in tortoise and eagle homeland, what the eagle planted in the foreign land had

matured, which were ready for harvest. The eagle usually flied there everyday to eat and to bring food for his family.

Tortoise thereby noticed eagle's movement. He saw that eagle went out to undisclosed place in the morning where he did stay for long period of time but no one knew the time he would return back home. The day would have already gotten very dark before eagle returned so that the secret of where he sorted for food would not be made public to his community. As the famine bite harder, everybody lost weight but the eagle and his household were just looking well fed. Tortoise therefore observed that the eagle's frequent outing usually in the morning might have been the reason for his sort for food for his family.

Tortoise then took it upon himself to meet eagle early in the morning one day. He said, 'my friend, eagle, quite some time. I often asked after you at home but they did not disclose to me where you have e gone . Please my friend, hunger has been the reason for my sleepless night and that is why I have come to see you this early morning. Look how tiny my fingers are, also my legs. Look how lean I am, the famine has terribly affected me. If the head of a family like me could be like this, then you could imagine how my wife and children will look like. Don't let my entire family be starved to death, I beg of you, take me to where you sort for food so that I can eat and be satisfied, that's all!.

'My friend tortoise, it is not difficult for me to render you a helping hand for but all because of your unpredictable attitude. It is the finger of the person that feeds you you bite later; if I take you there, you will eventually make me regret my action. I cannot do you a favour and get sanctioned in return.'

'Impossible, such can never happen. I have done away with my bad habit. Gone are the days of my immature behaviour. I am a matured person now, I cannot talk like a baby anymore. I beg of you to please take me along. Whatever you ask me to do I will do, I will not contradict your decisions.'

The eagle confirmed tortoise promise, he asked him to come early before day break so that they could go to his foreign farmland together. As soon as the third cock crowed, tortoise and eagle set on their journey straight to the foreign farm. When they got there, they ate, they drank; eagle took one yam, he asked tortoise to take one as well. Tortoise consented and took one; eagle backed tortoise, they returned back home.

When they got home, tortoise gave the yam to his wife, she prepared and served their children. Tortoise then had a deep thought that the eagle who instructed him not to take two tubers of yam talkless of three must be stingy, for he did not want his children to be well fed like his own children. If he informed other birds, he would take them there; on their way back, each of the birds would carry a tuber of yam on his behalf and at long run his house would be filled. He went to Atioro's house, the secretary of the bird association, where he discussed the matter with him. Atioro then summoned an emergency meeting of the birds where they decided to go with tortoise to eagle's foreign farm; they were annoyed and disappointed that eagle, the Chairman of their association, could not take them to where he fend for his family, despite the fact that he knew their plight of dying of hunger. They would invade and destroy his farmland.

They all set on the journey. Atioro backed tortoise and placed his two hands in Atioro's armpit while they flew. As soon as they crossed the sea to a crossroad, Atioro did not know where to head other than to ask for tortoise's guidance. Tortoise therefore held Atioro with one hand while he described with the other. But before tortoise could place back his hand, the bird spread his wings and headed for the way. As a result, tortoise's other hand slipped off and down he fell and scattered, and died (Babalola,1977:97-99).

The above story depicts two contrasting personalities at play in Yoruba thought system. The first ˌÀsá, represents a disciplined, prudent, honest and hardworking being while Ì jàpá portrays the self-interested attitude. From the story, the Yoruba conception of work involves productive activity rather than other forms of activity which may be done for their own sake. The primary aim of concern is the production of the material means of sustaining and reproducing human existence. That is to say Asa intends to transform nature in order to produce the material conditions of life. According to Gbadegesin, 'all activities which may indirectly lead to the production of such material conditions of life, but which do not have this as their primary purpose cannot be characterised as work' (Gbadegesin,1991:217). So Asa's situation, as a farmer, who is interested in tilling the soil, is to transform nature primarily for the purpose of procuring the means of existence. The Yoruba strongly hold the idea that work is the only panacea for poverty. They say *A kì i mú isé je, ká mú ìsé je* (Literally means: you cannot escape work and escape poverty) to emphasise the fact of life that any individual who refuses to work for his daily living must not be assisted as a form of punishment in order to deter other idle hands in the society. That is why they appreciate the value of work not only with the expression but also in their various ways of greeting people at workplace. Thus *e kú isé* (literally well done) or *e ma ya'se* (literally, Please kindly hasten up at work). It shows that hard work is a moral obligation and human beings should inculcate the habit of hard work. The Yoruba do not hesitate to reprimand idler in their economy with the expression *òsìsé wá l'òrun, eni máa jée wá n'ibóji* (literally means: the worker is in the sun, the one who reaps the benefit is within the shade) (Ajibola, 1977:29 and 93) in order to encourage hard work. It is no surprise then that the Yoruba children are taught the following rhyme at cradle:

> *Isé loògùn ìsè*

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> *Múra síse òrè mi*
> *Isé laa fi d'eni gíga*
> *Bí a ko ba r'éni fèhin tì*
> *Bì òle làá ŕi*
> *Bí a ko bá r'éni gbókanlé*
> *À á te'ra mósé eni*
> *Iyá ré le lówó lòwò*
> *Kí bàbá re le'sin lékàn*
> *Òtító ni mo so fún o*
> *Oun tí a kò ba jiyà fún*
> *Sebí kì í tó jó*
> *Oun tí a ba sisé fún*
> *Ní i pé lòwò eni*
> *Which translates:*
> *Work is cure for poverty*
> *Be hard-working my friend*
> *For one can become great*
> *Only through hard work.*
> *When we have no supporter*
> *We may appear lazy.*
> *But in such a situation*
> *It only pays to*
> *Keep on working hard.*
> *Your mother may be wealthy*
> *While your father be affluence*
> *But I tell you the truth*
> *What I do not suffer for*
> *Do not last long*
> *But what I work hard for*
> *Last longer than expected*

It is this hard -working principle coupled with the prudential inclination that À sá put into practise on his farm. But it does not end here. One needs to apply prudential reason in order to succeed. To be prudent, we mean to engage oneself in action that is just and good only when it agrees with the truth of real things. This truth is clearly shown in the virtue of practical wisdom called *oye* in Yoruba parlance. *Oye*, on the other hand, is the good which is in accordance with reality. Hence Àsá represents a wise being who savours all things as they really are. As a result, Àsá, having thoroughly observed the weather conditions at the time, reacted appropriately to the concrete situation. He then puts into use practical reason to practical decisions with the concern

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for the means to those ends. Thus it is improper for a person to rush into decision and action without proper consideration and well-founded judgement. Àsá instantly grasps an unexpected situation and deciding quickly by having his major farming at a place where there will be raindrop in order to have fruitful harvest. It implies the sagacity in Àsá which represents a perfect quality whereby when confronted with an imminent event of famine, he refused to close his eyes instinctively but rather decided for the good by having alternative farm at a distant place. So the decisions of prudence and the intuition of providence by Àsá depend on his experience of life and the alertness of his instinctive capacity of evaluation (Munoz, 1996: 31-67).

Besides, Àsá also displays the quality of responsibility to fellow beings as practice in Yoruba belief system. By responsibility, we mean 'a caring attitude or conduct that one feels one ought to adopt with respect to the well-being of another person or other persons' (Gyekye, 1996:63). Thus Àsá helps Ìjàpá and his family out of the distress of hunger . It is the responsibility of being in traditional Yoruba community to show concern for the welfare and needs of others but not to the detriment of the interests of the individual . Indeed, Àsá is expected to be responsible first to his family through the provision of all their needs and this is realised only through hard work. After all, the Yoruba do not hesitate to say *bí inà bà jó ńi to jó omo ení, tì ara eni la n koko yà njú* (If fire burns one and one's child, one will try to put out one's own first) (olowookere, 2004:43).

However, in a circumstance of famine , Àsá is obliged to consider his neighbour in the scheme of things in order not to provoke the punishment of the invisible realm. This we shall look into later in the discussion. But the successful fulfilment of this dual responsibility by À sá would be an ideal for the most satisfactory functioning of traditional Yoruba society.

I will now look at the self-interestedness of Ìjàpá in the story. The traditional Yoruba society condemns the celebration of egocentric attitude. They believe that its principle denied beings opportunity of reaching out to the opposite-other, that is other human beings in the community, other than oneself as constitutive dimension of one's being . In this line of thought , Ìjàpá confines his interest around his individual subjectivity using himself as the yardstick in terms of his needs and desires . Ìjàpá advances this self-interested motive by reporting Asa to the latter's associates as a means to achieving an end. Thus Ìjàpá initially presents the motive towards the actualisation of the interest of others in order to save the life of the community from famine. But this 'enlightened self-interest', to use the words of Asouzu, is merely pretentious to seeing to the interest of other persons 'as a necessary instrument towards the realisation of' his personal interest (Asouzu, 2001:63). So, Ìjàpá only aroused the emotions of À sá's associates with the intention of dumping them as soon as his interests had been served. The implication of this egocentric attitude of Ì jàpá transcends to some multiplier effects . First, Ìjàpá manipulates situations to his advantage only and to be the only option through the revelation of À sá's plantation at distant . Indeed, he sees to the painting of À sá as a bad character which is merely self –deceit with some grave consequences. Secondly, an eagle eye view of this unwholesome attitude of Ì jàpá, as a general rule, may turn the society to a survival of the fittest. Asouzu (2004:64-65) captures these consequences of egocentrism thus:

> Any form of unjust restriction of the rights and privileges of others, invariably rebounds on the actors. Any form of restriction of the rights of others is an indirect self-restriction, any form of exclusion of the rights and privileges of others is an indirect self-exclusion, and any form of negation of the rights and privileges of one's own rights and privileges. Whenever a person... makes himself exclusive, he automatically delimits himself.

From the above viewpoint, it shows that the Yoruba traditional thought system decries any form of self-centeredness which may result to stealing, greediness, dishonesty and so forth, as associated with the Ìjàpá in the narration. Nevertheless, we may say that this attitude is borne out of the fear of the unknown by Ì jàpá in order for his family to survive the famine. But this does not sound enough as a reason. For this anti-social behaviour to grab everything for oneself must be discouraged.

In short, the punishment for this anti-social behaviour in Yoruba ontological practice is death. Ìjàpá betrays the trust of friendship with his egocentric attitude. And its resultant effect is what the Yoruba express that *awón irúnmòle ti mu u* (literally means the divinities have caught up with him) or *alajobi tí da a* (The family divinity has judge) to show the ultimate meaning of existence in Yoruba ontology. Implicit here is the belief that human society belongs to one ancestral tree (*alajobi*). And as such, human relationship must not only be cordial but must be respected. But in the event where a party to this contractual agreement betrays the trust, the community *imale* (divinity) will right the wrongs through punishment. Hence faithfulness and loyalty among relations (*alajobi*) are jealously guided in the community. Thus compliments Orunmila:

Ofófó n íi p'erú.
Èpé, won a sí p'olè.
Ilè dídà ní p'ore.
Alajobi n íí payekan t'óse 'bi
A jo gb'órilè, a j'eku;
A jo gb'órilè, a j'eja;
A jo gb'órilè a je'koko ìgbín;
Àsé dowó ilè a jo mu.
Which translates:
Tale-bearing kills the slave.
Curses, they kill the thief
Covenant-breaking (betrayal) kills the friend.
Tutelary divinity kills the relation who does evil.
We on the earth ate rat together;

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> *We on earth ate fish together;*
> *On the earth we ate snail together;*
> *To the earth belongs the rule (Adewale, 1986: 65)*

Hence the act of selfishness by Ì   jàpá against À sá in our narration creates a tension between the physical and spiritual realms   . And this actualises easily the negation of Ì   jàpá's existence.

In sum, the Yoruba believe that the spiritual realm is efficacious to influence or dictate the events in the natural realm. Herein, in the course of dispensation of justice in the world, the Yoruba will usually appeal to the harmonious integration of the two realms of existence which constitute the vital elements that help to sustain the unitary nature of their world. In other words, whenever there is imbalance between the two world of existence, nature is supposed to grind to a halt, life force is reduced to a minimum and as a result crops fail, birth stagnate and death prevails, until the cosmological order is restored by integrative means by the people. There are two ways these contradictions are handled. First, the transgressing person may be coaxed back into humanity, by means of collective reconciliation, prayers to the ancestors, elaborate admonitions, ritual cleansing, judicial action, and payment of fines. Secondly, the person may be declared as hopeless and treated accordingly. Thus far my concern in the course of this work is on the first aspect from which integrative punishment emerges.

The second is the conspicuous absence of emphasis on enforceability. As discussed earlier, the Yoruba tread cautiously before breaking the law of the land because of their ontological and moral conviction that a breach of the law would upset the ontological order. Okafor elucidates on the philosophy behind this in his comparative analysis between the western legal positivism and the traditional African practice, the separability thesis and the non-separability thesis respectively. Okafor posits that legal positivism is 'a theory which recognises

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as valid laws only such enforceable norms as are enacted or established by the instrument of the state' (1984:157). It implies that only strictly representational 'command' of a recognised authority is the law. The 'command', according to Okafor (1984: 159) quoting the Austinian imperativist's school, involves:

> i. A wish or desire conceived by a rational being, that another rational being shall do or forebear.
> ii. An evil to proceed from the former, and to be incurred by the latter, in case the latter comply not with the wish
> iii. An expression or information of the wish by words or other signs.

It implies that the command is an order grounded on threat by the sovereign which are to be obeyed by his /her subjects. It strictly excludes the 'positive morality', 'divine laws' and 'laws lay down by private individuals and institutions' (Okafor, 1984: 159).

Suffice it then to say that legal positivism is enmeshed in the separability thesis whereby positive laws and moral and teleological considerations are sheaved away, okafor instead confines the traditional African experience to the non-separability thesis where laws are sourced from the African ontological practice whereby both human and divine laws are noted and collapsed with the intent of a peaceful and harmonious human existence in the society. Divine laws represent the exclusive wish of the supernatural being and its breach is regarded 'as an offence not against man or human society but directly against the supreme Being' (Okafor,1984: 160). Human laws, on the other hand, 'are those laws relating to the economic, social and political life of the community. Their breach is considered less severe and the offender liable to public obloquy' (Okafor, 1984: 160).

Nevertheless, Okafor justifies that this jurisprudence, grounded in the ontological framework, features the belief that decision makings are collectively based in as much as the 'concept of the sovereign' that issues command is strange to African culture 'which recognise

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only leaders and not rulers, seniors but not superiors'. He explicates further that it is joint decision of all the community or their 'representatives, who are usually elderly men of unquestionable moral character believed to be next to God after the ancestors is wisdom. The laws so made are certainly ordinances of reason. They are not command' (Okafor, 1984:162).

The relevance of the ancestors is not underrated in his proof. Okafor shows that the African creeds underwrite the African positive laws which do not contradict the tradition of the ancestors. The ancestors are responsible to transmit 'codes of moral conduct handed down from generation to generation'. This shows that 'for African positive law to be a valid law, it must be seen as morally adequate' (1984:162). Nwakeze (1987:103) compliments that African legal tradition 'duly takes into cognisance the survival of the community through the amicable settlement of disputes, acceptable to all parties concerned. Thus the role which the African legal systems play is basically reconciiatory'. I need to say it here that collective conscience saves it all in African juristic practice. So, the positivistic demand for enforceability mentioned earlier is a mirage in African jurisprudence. Rather sanction less force characterise the legal practice. Okafor (1984:161) adds:

> The legal positivist's doctrine that only enforceable norms are laws indeed, a doctrine based on their concept of a sovereign with the absolute power to secure obedience to its command or law, is contrary to the African social and political reality "in which the principle of equality is respected; in which the use of force is minimal or absent; and in which there are leaders rather than rulers and political cohesion is achieved… by consensus rather than by dictation".

The above analysis implies that law and order are maintained without regard for enforcement agents in as much as decisions are conscientiously taken and attempts to contravene them is meted with the wrath of the ancestors and supernatural disfavour. Okafor (1984; 163) continues that 'these are the lively consideration and conviction which bind the African's conscience and

dispose him to obey the law whether or not there is a permanent or *ad hoc* power to enforce the law'.

To this end, it implies that justice is realistic in African legal experience to mainly promote and protect the interest in the community. Nwekeze (1987: 103) adds, oft-quoted in Holleman's issues in African law,

> That the relations between man and his fellowmen are not governed by law alone, hence in the determination of a lawsuit law is not taken as the only determining factor. The whole social setting and relationship of the parties and their position in the community are taken into consideration; and in the interest of justice 'legal rules' are sometimes thrown overboard.

It is belief that to upset the ontological social order was to provoke calamitous reprisals to fall, not only upon the culprit but the whole community of which one is a member. It shows that the Yoruba society will always experience a considerable set back whenever offences are committed. Integrative punishment and not force serves as a serious and adequate deterrent to deviant behaviour in Yoruba society rather than what the traditional theories of punishment advocate.

Finally, there is a necessary connection between law and morality. The current of the connection boils down to the ontological belief discussed above in the African penal system. Justice strongly holds where the instruction of the spiritual realm is abide by which is grounded on the moral belief as discussed by Bewaji in the third chapter. As a result, any adjudication that does not toll this line will be met with calamitous consequences in the community. And in avoidance of this that the family, perhaps the community, strenuously embarked on the training and discipline alike any erring members, as discussed in the chapter three, who attempted to provoke disaffection and disharmony between the planes of human existence.

Given this conceptual framework, integrative punishment in Yoruba culture transcends the traditional theories of punishment in western penology. It surmounts the problem of proportionality in which the western penology is familiar. Here, to rehash, the retributivist requires that wrongdoers get no more but no less than what is proportionate or just to their crimes as against the utilitarian rationale for punishment which claims that an innocent could be punished in as much as the interest or utility of the majority is served or if the punishment is the only realistic means of maintaining law and order in the society. To this end, this could not be realized in the western penology in that it is practically impossible to discern a condition whereby, in committing an offence, the offender is meted with the degree of punishment commensurable to the gravity of the offence he committed. So, the problem with the principle of proportionality, and punishing the innocent as its consequent, has been the core cog in the wheel of the western punitive system which historically seems difficult to surpass. Rather the integrative punishment engages itself with matters of crime and its attendant punishment which transcend this. As noted in our discussion, the Yoruba do not hesitate to say *ìka tí ó se ni oba ńgé* (Literally, it is the finger that offenders that the king cuts) (Ajibola, 1977:21 and 79) to buttress further the fact that the innocent person should not be punished. The Yoruba belief is that it is he who commits a crime that should be sanctioned. And, whoever commits a crime cannot escape no matter how long he hides. Even, after he admits his wrongdoing and is punished for that he remains in people's memories as a wrongdoer. It is in the light of not attributing blame to the innocent that the Yoruba apply the integrative punishment to issues, which are complicated and complex. Hence the submission of being discharged and acquitted in western penology, where the trial cases are assumed to be both inconclusive and lacking merit, is not synonymous with the integrative punishment. Rather, in an importance sense, integrative punishment recognizes and

incorporates the salience of oath-taking and ordeal practices in both civil and criminal matters. It indicates that the issue of 'justice delayed is justice denied' does not reflect in the Yoruba penal system. Adjudicatory services herein are painstakingly rendered adequately with precision without irritating adjournments found in the contemporary justice system. I need to note that the delay in pronouncement on cases are in most cases due to the absence or cautions of concrete evidences which is not a barrier with the integrative punishment practices in the Yoruba penology. In equal vein, the congestion of prisons and its adjournment of cases by trial judges experienced in contemporary society are avoidable instances where the traditional Yoruba adjudicatory system grounded in integrated punishment is upheld.

Nevertheless, integrative punishment is proportionate to the crime. In the reparatory sense, an injured person must be compensated by the other party for damages caused either through his/her unwillingness or under a mis-apprehension. The Yoruba believe that moral evil committed either against natural beings or supernatural entity could ignite grievous consequence not only to the individual concerned but also to the community if appropriate restorations are not affected. As a result, the culprit is required to first change his ways through renouncement to the community and then offered sacrifices to the spiritual beings provoked. The moral sanctity is to cleanse the society of injustice and unwelcome attitude.

Anticipated objections to integrative notion of punishment in Yoruba culture and reply

The primary anticipated objection to the integrative notion of punishment hinges on the questioning of the background to the theory itself. The theory is beclouded by the social morality as expressed in the Yoruba culture which is in part codified in the civil and criminal laws, and whose condemnation of crime punishment is taken to express. Fundamentally, one might raise doubt as to its soundness, its homogeneity, and the consistency and authenticity of the judgement

it passes on crime through punishment. Its response to the challenges of the principle of proportionality in punishment is cloudy going by its ordeal and oath taking approaches to punishment. I may say that it instils anticipated fear of attempting crimes in the first place rather than engaging in the proportional dispensation of justice where punishment fits the crime committed by the offender.

Besides, integrative approach to punishment might be taken to believe uncritically that the social morality of society is self-authenticating that its principle are moral axioms and that punishment is conclusively justified once it is shown to express the emphatic moral condemnation of actions offending against the ontological practise whereby the supernatural realm provides the natural realm with a useful overarching system which assist human being to organise reality and impose sanctions to his life. But, to what extent can this go even where morality itself is morally flawed?

Also, an eagle-eyed view of the integrative approach to punishment in Yoruba culture might be thought to assuming that social morality is a much more homogeneous set of beliefs and attitudes than the reality of most contemporary societies would warrant. I need to note that contemporary society is as typically pluralistic and conflict-ridden in the area of morals as in other fields of study. It is factual that there can never be a moral consensus among all human beings. It is indeed true that the reality on the ground is the lack of moral consensus. People vary greatly in the way they view issues. Some have no moral opinions of their own but accept the opinion which has been laid down by their custom or traditions. Some have highly developed moral convictions and a strong sense of right and wrong. Some adjust this sense of right and wrong depending on the circumstances. Whether it suits them. Therefore, what I now have today is almost as many moral opinions as there are human beings. However, there are still a great

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number of people who have common ground on a number of issues but as can be seen these mostly contain nothing fundamental and everything can still in most cases be interpreted in ways that will suit the individual or even probably evade the issue altogether. To this end, on many moral issues, I am likely to find not one acceptable stand but two or more different and even mutually opposed views, supported by significant sections of society. My dilemma then is which of them is to be expressed in law and in punishment for offending against it? (Hart, 1964: 39-41).

These, at the end, raise dust as to the consistency and authenticity of the condemnation conveyed through punishment. Integrative punishment may breed double standards where in some instances questions of shame and hypocrisy can rise and one might suspect that punishment is not much more than a 'fetishistic surrogate' for a value which is not given expression in other area of life (Primoratz, 1989: 204).

However, my responses to these anticipated objections of soundness, homogeneity, and consistency and authenticity of punitive measures levied against integrated approach to punishment may after all not assume to damaging its construction but rather to point out the conditions of its proper applications. It should be noted that the part of the Yoruba social morality, which co-extend with its jurisprudence, are basically sound. To digress awhile, integrative punishment is capable of addressing the problems associated with the principle of proportionality, and punishing the innocent as one of its consequents, in which the western traditional theories of punishment is synonymous. Hence the traditional Yoruba social morality flourishes from time immemorial and its strengths learn credence to its accessibility and dynamism which motivate cultural experiences. After all if I cannot accept the moral outlook of a society, it is imperative that we withhold support when it expresses moral condemnation through punishment. Integrated approach to punishment is rooted in this justification.

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Punishment, in this tradition, functions not so much to reform or deter potential offenders, but rather to maintain social cohesion by safeguarding a vigorous collective conscience. Implicitly, integrative notion of punishment offers an account of punishment which ascertains a measure of moral consensus despite the anticipated criticisms. It justifies those punishments that are based on this consensus and, at the same time, refuse justification to those that transcend it. In fact, social morality is the bases on which the contemporary jurisprudence is grounded. Thus society legitimately expresses moral condemnation by punishment only when its conscience speaks strongly and unequivocally with one voice. Hence, sincerity is necessary in this punitive approach to sanction rather than furthering conditions that promote double standard in punishment. Musa Mushanga (1972: 42) comments on the sincerity in punishment that 'the reformation through prisonisation had little effect in deterring these offenders'. Rather that the problem of crime is not to create more laws, but to do away with the social, economic, political and ecological conditions that imperceptibly turn people into criminals.

In the analysis given above, based on the integrative nature of punishment, we have shown that the Yoruba criminal justice system abhors wrongdoings and frown at impropriety of manners. It does not hesitate to blame and punish alike offenders adjudged to contravene her value system. They believe in a continuity of life and a community of interest between the two realms of existence. Conflicts to them are a part of life which must not be allowed to be resolved by individual parties in order not to disrupt the social order. A strong sense of sanction is meted to the individual who acts or contravenes the common good of the community and its values despite the protection of individual interests.

The idea of integrative punishment in Yoruba thought system is after all man's response to meet the challenges of his time. In this regard, I have shown that, through hermeneutic

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interpretation, a more critical study of the past is brought to the fore, in the present, in order to make room for strong punitive measures for the best future of contemporary society.

Also, I have realized that integrative notion of punishment emphasizes the belief that he who commits a crime should be punished proportionately. So, the punishment of the innocent in any given disputes or circumstances is frown at. That is the reason why the ordeal practice is to be embarked upon in order to exhaustively root the heart of a case, especially when the issue hinges on complicated and complex grounds. It is believed that when the innocent is punished unjustly for a crime that was committed by another, the consequences for the society can be deadly and grave. In fact, punitive measures are not treated at prima-facie level, but rather transcend the immediate offenders on to the family and community where the offender is necessarily a member. Implicit here is the idea of reconciliation whereby the offender is restitutively reconcile to himself, the victim concerned in the case and the entire community at large. This aspect of punishment is significant to Yoruba culture. This transcends the traditional theories of punishment where justice is inappropriately dispensed and the innocent is unjustly punished in order to satisfy the interest of the majority.

In general, I have discussed that the concept of integrative punishment is of importance in the Yoruba conception of punishment not simply because of its connection with social control, as in the way of philosophy of reconciliation, appeasement and reconstruction of social order and cohesion, but more importantly, because of the crucial role it will play in determining the direction of the contemporary criminal justice system. It is this that the next chapter addresses.

Endnotes

[1]The composition of this council varies across Yoruba land. Membership is strictly based on traditional title holders while the honorary chieftaincy is merely advisory. See The Rev. Samuel Johnson. 2001. *The History of the Yorubas*. Lagos: CSS Ltd.

[2]The reason for the reference to conscience will be disclosed in the course of discussion in the chapter.

CHAPTER SIX

INTEGRATIVE NOTION OF PUNISHMENT AND THE CONTEMPORARY SOCIETY

My discussion in the last chapter has widened our horizon on the relevance of the Yoruba integrative punishment as a vital source on the challenges of criminal justice system. The study centres on peaceful coexistence and cohabitation as the watchword of the Yoruba people. It logically proves that punishment is sound when the two realms of existence are consciously recognised in the dispensation of justice. Hence the community attempt to purge herself of acrimony that might tend to tear the society apart. Besides, they evolved traditional adjudicatory system, which integrated the retributive, utilitarian and restitution forms of punishment as grounded in the spiritual and natural realms, as a means of enforcing the direction of the traditional institutions of justice.

But one of the new challenges the contemporary African jurisprudence is bedevilled with is the legacy of colonial culture, handed down to our African elites after independence, which 'constitute and inform our enigmatic present' (Serequeberhan, 1994: 13). The current challenge contrives a cloud of problems that hinges on what Oladipo refers to as 'cultural dislocation' [1] (Oladipo, 2009:119). Whereas pre-colonial traditional institutions provided a coherent interconnection between social structure, law and belief system, which is integrative in orientation to providing the certitude and trust making for harmonious well-being; the post-independence structures have only produced accumulations of complex cultural fragments, which aspire to promote and support unified communities. Sequel to these ' irreversibly impregnated' (Abraham,1992: 14) fragmentations is the fact that the contemporary African society does not either punish appropriately or take the current economic immorality and crimes grounded in fraud, embezzlement of public funds, corruption and abuse of office seriously.

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Rather, many people celebrate and protect their own relatives and friends who use these economic crimes to uplift their own areas and people. It is against this 'unfortunate cultural situation' (Abraham, 1992: 38) that the Yoruba adjudicatory system is confronted to examine, with due reflection, the past for a more critical study of the present in order to establish an adequate criminal justice system for the future.

In this chapter, I will articulate the kind of gains, theoretical and practical, that can be derived from the study of integrative theory of punishment of Yoruba traditional institution to the contemporary society. In doing so, I will establish first the parameter within which African cultural practice is challenged by contemporary society with particular reference to the degenerated criminal justice system in post-independence structure. Some questions requiring urgent attention here include, among others, the reason(s) for the collapse of the pre-colonial adjudicatory system in Africa: Why does justice fail us in contemporary age in Africa? Could it either be the consequence of the interrupted human history in Africa by colonialism or the current impact of globalization? Should I continue to ape alien criminal justice at the detriment of my culture'? Finally, the theory of integrative punishment and the contemporary society will be discussed. This is with a view to redefining the foundation of criminal justice system in post-independence Africa, in order to organize the society for mutual well-being and social justice.

The challenges of post-colonial criminal justice system

For the sake of clarity, I discussion in this section is twofold. The first deals with the historical thrust of colonialism on the African jurisprudence and its apparent social breakdown. The colonial model of civilized governance was characterized by other foci of tradition, which emphasized that law descended from the state authority; that it was the main means of control in the social order; that it was essentially about order and obedience, rather than about the

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expression of social solidarity and consensus, among others. In short, they operated 'the concept of development as a goal that was outside the cultural purview of the Africans and had to be externally designed and given to them' (Deng, 2004: 505).[2] Moreover, John Murungi (2004:521) condemns this colonial jurisprudence as largely the 'jurisprudence of subjugation'. He opines that:

> Violence was an essential feature of this jurisprudence. In the eyes of Africans, colonial law was a concrete manifestation of this violence. It was a coercive power in its raw sense. Jurisprudence was the justification or validation of this violence. It was the gunman situation *writ large.*

By implication, people in the satellite state and those in the metropolitans were in a comparable position, facing different systems of 'rules' and 'agencies' for settling their disputes, among which they chose in the process of maximizing their individual interests. Martin Chanock eluded that 'law just jostled along in a crowded universe of tactical resources for disputing and modes of social control' (1998:221). As a result, repugnancy clause of the Supreme Court ordinance No.4 of 1876 (Nigeria), for example, was enacted to 'allow for the regulation and control of local customary laws and practices' (Akpotor, 2007:69). It is engrafted only to subordinate and if necessary to whittle away those customary practices that have been subjectively judged "uncivilized" or "inhuman" (Akpotor, 2007: 70) using the metropolitan laws as standards and values. But unfortunately the colonizers were not critical enough to reason that if law was a universal phenomenon, as a means of resolving conflict, and if it was not conveniently written down as applicable to African jurisprudence, then it bestowed on them to find out what it was through studying what people did to resolve their disputes. So it is highly unwelcome to subordinate African customary rules and cultural practices to English law and tradition all because some aspects of the former are 'barbaric'[3] to the latter (Akpotor, 2007: 72). In short, one

does have to buy wholesale any or all of the pervasive western illusion in order to preserve the idea of law as a distinctive cultural and historical category. It is this manner of repression against 'African juristic ideas' (Chanock, 1998:51) that Wamba-dia-Wamba (1991: 239) puts it thus:

> This is why the expatriate personnel, from imperialist countries, are more at ease in these national state structures, functioning as if they were made by, and for, that personal, than are the majority of the natives who have to bear these structures' repressive hierarchical weight. In these conditions, to be intelligent, reasonable, rational, civilized, etc. is to be receptive to, and to function according to, the logic and rationality governing these structures.

These fundamental changes and thoughts led to the 'apparent social breakdown'. The alien punitive legal order on the indigenes was authoritarian firm in nature which engendered an increasing punishment, without positive response, on the community. The 'disarray of a new order of authority and solidarity' provoked the more 'danger of throwing off all restraints' by the natives. Indeed, this has given way to what William Abraham commented to be 'the greatest dislocation from traditional cultures' (1992:16). Martin Chanock (1998:135) quizzically describes thus:

> Early in the nineties European method of administration of justice were introduced. From that time, unwittingly perhaps, but all the same effectively the communal structure of the native was destroyed. No more could a clan be considered as a body. No more could a father speak for his son or vice versa; the offender must come forward in person. In this the European came with hisindividualism and thrust it on the native. If there is any one thing more than all others which has changed and spoiled a primitive people with no education for guidance, it is this individualism. I hate individualism because it has suddenly torn the son from the father, or one man from another. I hate it because it gives a false air that a person should not consider the feelings of others in his action. I hate it for it's selfish and because it has propagated crime. But individualism has come to stay and has to be faced. The native shook itself and found that after all his relatives have not adhered to him…. Where a mere twig served to keep watch on a garden or over anything thorns and guards cannot keep away thieves now; where a grass door with a piece of wood across kept burglars away,'alonda' and doors with locks and safes inside are insufficient now: where compensation paid by many lessened murders, hanging of the criminals has increased it: where a mere word suffced of old, 25 lashes fail now. All this is the result of

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individualism, and it proves that the punishment by individual imprisonment and flogging where applied people who live according to a collective system is a failure and other means should be sought to check the growing crime.

As if this cultural degradation is not enough, the formal content of rules, constituting the law, often had no relation to the ways in which disputes are resolved in the court of law and even where 'rules' are applied their content-in-action is often negotiable. Negotiation, in this sense, is that the applied rules in action are often not a gapless system which potentially regulates the whole of social life of the people. Rather, it depends on the 'old values-laden debate about the cultural worth of law' (Chanock, 1998: 222). This recalls the essence of Akpotor comments that 'the doctrines of equity in England could not be applied fully in Africa because of differences in social structures, conditions, social and moral values' (Akpotor,2007:71). This has inadvertently affected the practice of criminal justice system today wherein pronouncement on cases with abundant evidence are unnecessarily delayed for years out of judicial rigmarole such as abuse of *exparte* motions, jurisdiction of hearing, adjournment of hearing due to the non-appearance of the accused in court, etc. A prominent example is the on-going murder trial of late Alhaja Kudirat Abiola for over ten years. The two -count charge brought against the suspects reads thus:

> Count One: that you Major Hamza Al-mustapha, male, Mohammed Sani Abacha, male, CSP Mohammed Rabo Lawal, male, Alhaji Lateef Shofolahan on or about the 4th of June 1996 in Ikeja and in the Ikeja Magisterial District did conspire amongst yourselves to commit an offence to wit: Murder and thereby committed an offence punishable under section 324 of the criminal code law cap 32 vol.2 law of Lagos state of Nigeria 1994.
> Count Two: that the five people on the 4th of June, 1996 at about 9:30a.m. in the Ikeja Magisterial District did unlawfully kill one Alhaja Kudirat Abiola and thereby committed an offence punishable under section 319 of the Criminal code law cap 32 Vol. 2 law of Lagos state of Nigeria 1994 (Tell Magazine, 1999:14-19).

This type of formalism continues to delay the means of obtaining justice in contemporary society. Indeed, this handicap sometimes spurred an intense pace of 'self-help' justice which have re-shaped and reformed our modes of social control in the society. This colonial practice informed the view that the forms, institutions and processes of 'contractual' legal systems were imposed upon the indegenes rather than evolved by them. William Abraham quips that:

> Social control is typically weakened, as the instruments and sanctions of traditional cultures are thwarted without equivalent substitutes. Punishment … appears formal and cold, and its very purpose becomes a topic of debate among different theories, whereas in the traditional society its purpose is always agreed (1992:17).

In sum, African legal institutions, like other cultural facets of colonized society in sub-Sahara Africa, were truncated in such a way that:

> Cultures, not only by their political hegemony of local coercion and the introduction of new social institutions, new ways of doing things, and new reasons for doing them, but also by their juxtaposition of local cultures within newly defined geographic boundaries, which did not coincides with any previously existing (Oladipo, 2009:15).

And all this cultural denial by the colonial administration were replaced with, to quote William Abraham,

> New systems of education, an inquisitive and acquisitive attitude towards nature, the promise of mass literacy, scientific approaches to disease, the infrastructure of modern communication and commerce, cultural and religious enrichment, an expanded vision of moral ideas and ideals, the suppression of tribal warfare, party politics, and techniques of management and government unavoidable in the modern state. It brought ideals of constitutional government in contrast with sacred tradition, the ideal of legal egalitarianism and an impartial judiciary intended to pursue it, an efficient though impersonal civil administration (1992:27).

Having addressed, partly, the cause of the failure of punitive system in Africa by colonialism, our next focus in the discourse is on the problem of in-between cultural situation in which we

find ourselves today. A situation that leads me to accommodate myself to actions that is offensive to our dignity. In essence, I need to restore the lost continuity caused by the gap invented by colonial experiences. It is of the essence for Africa thinkers to 'elevate itself resolutely to a profound thinking of its essential problems' in order to tackle 'its historical, cultural, political and economic subordinate status or "maturity" imposed on it by colonialism' (Serequeberhan, 1998:9). Hence, Serequeberhan aptly attempts to eulogise cultural nationalism. He contends that the cultural elements when properly cultivated constitute the critical cutting edge of African philosophical tradition (1994:6). But he missed the point as the traditional dogmatises cannot help me out of the wood of my alienation forces. But rather, according to Abiola Irele, 'they unfit us mentally for the urgent tasks we have to undertake, which we are undertaking but in a muddled frame of mind, in order to create a new and viable society' (1982:22). Irele furthers that we cannot meet the challenges of the scientific and industrial civilization by draping ourselves with our particularism (1982:22). Instead the 'frame of mind' should shift its course from the traditional culture towards a new point of 'orientation determined by the impact of an alien culture, specifically, western culture' (Irele, 1982: 15). This implies that I should not hesitate to ape what is western in orientation in as much as science and technology is the means to progress and development. This is quite unfortunate! However, Kwasi Wiredu differs from Irele. He views that while the traditional societies incorporated some forms of critical thinking, the overwhelming anachronism, authoritarianism and supernaturalism that come with many other aspects of any tradition must be replaced with the analytic and critical methods that allow for the regeneration of knowledge and betterment of human conditions (Wiredu, 1980:1-25). So I should employ critical rational discussion rather than throwing away the baby with the bath water.[4] For there is no reason why a society whose traditional set of

values has been destroyed should, of its own accord, become a better society. Damise Masolo, quoting Popper on Fallibilism, comments against holistic revolution of thought to drive home this argument that:

> In this way (i.e., by critically discussing and rejecting as erroneous old   theories) we arrive at a fundamental new possibility: Our trials, our tentative hypotheses, may be critically eliminated by rational discussion. The 'carrier' of a hypothesis has an important function in this discussion: he has to defend the hypothesis against erroneous criticism, and he may perhaps try to modify it if in its original form it cannot be successfully defended (2001:92).

To this end, it seems the neglecting of values lie at the core of my problems during and after colonial experiences: I opine then that pure jurisprudential processes and structures without the desired values can be harmful to a society. They can prevent good government and human flourishing as is clear in the post-independence Africa where 'pure procedural' criminal justice only favours African elites section of its citizenry while other categories are disproportionately represented in the criminal justice system.[5] So a procedural structure of justice constructed on critically considered moral grounds is bound to be sensitive to such outcomes.

However, history cannot be remade in so far as the colonial state has become an African reality that cannot be wished away. At the same time, it is important to revamp the 'role of indigenous values and institutions in the development of Africa' (Deng, 2004:506). That is to say the traditional criminal justice system has a contemporary vitality, which is valuable, to sell. It is a noteworthy challenge for African philosophers not only to utilize indigenous institutions, but also to 'rationalize and formalize them' for contemporary society (Deng, 2004:506). This is what Oladipo strongly upholds, in his work *Philosophy and Social Reconstruction in Africa.* He poised for a cultural synthesis in order to reconstruct African cultural thinking. He comments thus:

It should be clear that the African situation today demands the restructuring of social and political theory. The point is to enable us transcend the kind of thinking, which in the past was predominantly concerned with images and representations, to provide for Africa a new paradigm of self-appraisal and, also, an integrated vision of African rebirth in the contemporary world, which is emancipatory and reassuring. This is the reconstructive aspect of African social thinking. Its primary task will be to develop a framework for feeling; perceiving and interpreting reality and also serve as a basis for defining the essential elements of Africa's place and interest in the contemporary world (2009:130).

Against all this submission, my contention below then will be to emphasize that there is a suitable tradition of punishment in Yoruba thought system, which will not only significantly address some of the pending criminal justice issues but also serves as paradigm case on how some traditional practices and institutions can be reviewed in light with what are required in contemporary theories of punishment, without necessarily jettisoning their root and branch. In other sense, if I wish to create a legitimate system of law for all Nigerians, perhaps punitive theories, then it is imperative to align historical and cultural experiences with contemporary legal notions and techniques. This is what I intend to accomplish with the integrative theory of punishment in the next section.

Integrative punishment and the contemporary society

From the discussion above, the impact of the colonial sponsored justice system in post-independence Africa, could be seen to derive mostly from the perception of the system's concept and practice as alien, and prone to abuse and corruption. Ajume Wingo captures it all thus:

Nowadays in most Africa it is nearly impossible to hold government agents…accountable. First, no one…knows what the state agents are supposed to be doing in the first place. There is no checklist that I or anybody is aware of that tells the citizens the dos and don'ts of government officials. As such, corruption is the order of the day. Second, colonial legacy looms. The colonial officers answered to their home government, never to the African people, and since independence, the new African elite have failed to reverse that form of accountability. Colonialists attempted to destroy all of the African past, a legacy taken over by African elite who failed to look into their unwritten past. Good

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legislators never destroy old institutions, no matter how bad they   may be; they only change, transform, or transfer the energy to good institutional arrangements (2001:169).

The above underscores the reasons why Africa was caught up in the bi-polar context of east-west power contest. Within such a context, Africa found itself to be a theatre in the all-embracing spheres of influence. SSo the influence breeds a culture of violence and force into the socio-political culture of a newly emerging independent Africa. That is enough. The settlement of disputes and conflicts demands for an 'old institutions' grounded in the integrative theory of punishment to address most of the anomalies bedevilling contemporary criminal justice system. This theory employs a dynamic conflict resolution strategy whereby victims, offender and the entire community are involved and participate in the definition of harm and search for resolution acceptable to all concerned. As a result, opportunities for the achievement of justice are more pronounced with an institution of integrative punishment than that of contemporary African state criminal justice system.

One of the major challenges to address is on how to mete out justice and in the quickest manner possible. This problem revolves around the intruded 'formalism and cold' nature of justice, one of the relics of colonialism, on the traditional institutions alluded to in the last section. Legal formalism brings to the fore high crime rate by the permissiveness that they ascribe to the formal dispensation of justice. It inculcates a 'routine oppression rather than a liberating justice' (Chanock, 1998:125) which makes justice be cold in nature. I may recall the war on corruption whereby numerous counter legal motions are instituted by the accused in order to evade arrest and subsequent pervasion of justice in Nigeria, for example. The latest in rank of this exploitation is the discretionary system grounded in the plea-bargaining principle. The corrupt practice involves the striking between the state and the corrupt official a plea-bargain

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after which certain charges may be withdrawn. The court at this point does not participate in the negotiation and turn the other way against justice by refusing to deny the plea-agreement when she is not convinced of the guilt of the accused. The court would not refuse to accept the suggested sentence, since she is indirectly part of the abusive game, even where the court is not satisfied that it would amount to a just sentence. A fitted example was the trial and sentence of the former Inspector-general of Nigeria Police Force, Mr. Tafa Balogun, over corrupt enrichment and abuse of office to the sum of seventeen billion naira. By plea-bargaining with the state, he was only jailed for two years out of which he had spent seventeen months in incarceration. Indeed, it is perversion of justice on the part of the less-privileged in the society on whom such a huge amount would have provided some basic social facilities.

However, the Yoruba integrative punishment is rather quick and informal. It is quick in the sense of being inclusive in nature. The system embraces the victims, offender, their families and the general community involved in defining the forms of punishment and reconciliation. It exhaustively addresses the interests of all parties to the conflict. It is engendered by the dialogic nature of Yoruba jurisprudence. John Murungi adds:

> Although it may strike one as obvious, an African is an African in the context of other Africans, and, as a human being, he or she is a human being, in the context of other human beings. What African jurisprudence calls for is an ongoing dialogue among Africans on being human, a dialogue that of necessity leads to dialogue with other human beings. This dialogue is not an end in itself. It is a dialogue with an existential implication. It aims at living in accordance with what one is, which implies living in accordance with what one ought to be. Although one is what one is, one is what is dialogically. To be dialogical, this necessarily is to engage others, leaves open what one is, and calls for dwelling in this openness (2004:525).

This 'openness' involves social solidarity system whereby no family or group would allow its members to be unjustly punished or subjected to inhumane treatment with impunity. It is also a

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system which restrains individuals on certain reciprocal obligations as the mutual interest of the group (Deng, 2004:501-2). This humane people centeredness is reflected in the treatment of offenders. Offenders are encouraged to understand and accept responsibility for their actions. The offender is expected to accept accountability with discomfort but not so harsh as to degenerate into further antagonism and animosity, thereby alienating the offender. Strenuous efforts follow chastisement to integrate the offender back into the community. The institutions of social control are formal agents of re-socialization, hence providing offenders support through teaching and healing. By teaching and healing, I mean the reasons for inculcation in the offender traditional institutions of criminal justice system and the implications for flouting them.

The above goal is realized through an informal court system. In the trial, both the accused and the accuser were physically present. The accuser would charge the accused in person, and the accused would be allowed to give his own defence. In addition, members of native court's jury would subject both parties to examination. Witnesses would be requested. After serious deliberation on the case, the *Oba* would sum up the decisions. Besides the court type, disputes could also be given instant adjudication when they happened in a public place. Such instant adjudication is referred to as 'street ad hoc court'. The mediating elder(s) might or might not be known to the parties involved in the quarrel beforehand. This thorough airing of complaints 'facilitates gaining of insight into and the unlearning of idiosyncratic behaviour which is socially disruptive' (Gibbs, 1973:374). Participants in this sense are free to express their feelings in an environment devoid of power. If people involved in a conflict participate and are part of the decision making process, then they are more likely to accept and abide by the resolution. This brings to a hold to conflict as it provides opportunities for stakeholders to examine and bring about changes to the society's social, institutional and economic structure.

More so, the integrative punishment further prevents greater conflict and revenge in contemporary society. It implicitly emphasizes the fact that genuine reconciliation demand for peace as the foundation for humanity to realize its highest essence. For it is the basis of advances in knowledge, culture, prosperity, mutual relations and development as a whole. All this is realized through the practice of inherent natural morality in the dispensation of justice. For the Yoruba, the concept of punishment means the upholding of the principle of natural rightness or wrongness on the assumption that morality is a natural property inherent in humankind, an instinctual kind of impulse which creates feelings of acceptance or rejection of what is either good or bad. What it means is that law becomes unenforceable and meaningless when its moral import is jettisoned. In other sense, law receives its moral sense of obligation when rendered and evaluated in a moral sense rather than what the 'separability thesis' claim in western penology. In fact Yoruba jurisprudence is used on a daily basis, with emphasis in the harmonious relationship between the two realms of existence in order to settle dispute at different levels, and it is therefore central to the idea of reconciliation. This testifies to the dynamism and vibrancy of the belief system, which revolves around deterrent principle including fear of harsh punishment, supernatural retribution, curses, ostracism and gossip. It develops a deep respect for human values and the recognition of the human worth based on a philosophy of humane principle.

To this end, integrative punishment conveys genuine reconciliation which transcends established normative rules, institution and formal procedures, which are inadequate to resolve conflict, to a creative and a flexible human activity that is undertaken for the sake of humanity as a shared community. Individuals in such cultures are enjoined to think in terms of what the society can gain from them so that all can prosper. Rather than chasing the shadow of self-aggrandizement. In other words, it involves the principle of adjustment of personal interest to the

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interests of others even at the possible cost of some self-denial. It provokes the acceptance of responsibility, as alluded to earlier, to the point of willingness to be part of the search for a solution. In fact, it is not an alternative to conflict but a transformation of the conflict. Both parties to conflict would be able to define the stakes involved and relate them for the sake of the wider community as well as for the future of next generation.

This further touches on the conscience of those involved in the dispensation of justice, a proved challenge to the adjudicatory system in contemporary society. The Yoruba endeavoured to observe law and order because of their ontological and moral conviction that a breach of it would upset the ontological order. It poses a serious challenge on the contemporary society where social control is found ineffective and unpopular. It is important to note that it is the general belief that to upset the ontological order is to invoke calamitous reprisals to fall, not only upon one's head, but also upon the whole community of which one is a member. It assists to minimize most difficulties associated with matters of justice and fair play. This integrative punitive approach may have its weaknesses but these are counteracted by the socio-legal-ritual structure of the society. This adjudicatory experience makes arbitration a viable alternative towards conflict resolution in the society. Indeed, individual differences are recognized and appreciated automatically as part of the judges in its own case. That is to say every adjudication can be overruled at any time by a more superior verdict provided by the unity of purpose grounded on all whose interests are at stake and one that is rooted on the ultimate foundation of meaning as is represented in the deities and spiritual forces. Innocent Asouzu, in his work *The Method and Principle of Complementary Reflection*, explicates further on this 'ontological character of truth' thus:

> The issue of legality, justice and fair play transcends mere litigation and arbitration of mortals. For this traditional African, there are no strict differences

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existing between formal court proceeding and the law deriving from the binding force of the transcendent complementary unity of consciousness. This naturally leads to a fusion of horizon between the factual and the logically in a way that generally helped safeguard the ontological character of truth (2004:188).

This underscores the argument that the performance of ritual and the explicit public verbalization towards the maintenance of social control is preserved. For example, when every party to oath-taking is aware of its integrative punitive measures in the event of derailment, then sanctity of social control will be jealously guarded. This is, however, not the type for political gains as being the current trend among Nigerian politicians where, though not confirmed, that godfather needs the assurance of political subordinates by engaging them in a ritualistic covenant. Rather, this mystical link forces both in the making and enforcement of Yoruba law and custom, before contact with the Europeans, is of crucial importance. The fear of breaking such Laws and customs, involving integration of the two realms of existence in traditional criminal justice institution, will provide an effective preventive factor in contemporary society. The crucial issue here is on the importance of integrative punishment on the society in its perennial attempt to control big crimes or offences. In short, these practices, which in the absence of institutionalized prisons, served as society deterrent measures to protect the society against crimes of any form.

I may conclude that the Yoruba theory of integrative punishment is adequate to meet the challenges posed by the criminal justice system in contemporary African society. This theory employs the integration of the natural and spiritual realms of existence as the foci to conflict resolution strategies. It emphasized the judicious imposition of punishment on the offender as a means of establishing responsibility for human actions rather than disproportional gravitation of punishment which may degenerate into further antagonism and animosity. Above all, this idea of social control system evolved out of the unity of the cosmos orientation, which encouraged the

rebirth of African belief in human being as capable of change and, therefore, deserves a second chance rather than the alien idea of punitive practises of victimization inherited by the African state criminal justice system.

It is noteworthy that the traditional institution of legal system is particular about the disapproval of wrongdoing rather than the punishment of wrong-doer. Thus collaborative efforts, as a process of justice-making, make it an opportunity for dialogue amongst the victim, offender, the family and friends, and the community. As such, all complaints and issues relevant to the case are harmoniously resolved for the well-being of the community.

It is demanding upon the African state criminal justice system to retrace her steps and constructively embrace the traditional institutions rather than the continual celebration of formal and cold nature of justice. Doing this, she will address the apportionment of justice and in the quickest manner possible in the contemporary society.

Endnotes

[1] I contend that this cultural dislocation for now detests healing till date for it is responsible for Africa's political stagnation, epileptic economy, and social crisis. See Kwasi Wiredu. 1995. *Conceptual Decolonisation in African philosophy: Four Essays*. Selected and Intro. by Olusegun Oladipo. Ibadan: Hope publications. See further work that is associated with dislocation Olusegun Oladipo. 1999. *Beyond Survival: Essays on the Nigerian Condition*. Ibadan : Hope Publications.

[2] More light will be shed on neglect of cultural purview of the Africans later in the course of discussion.

[3] Barbarism as a concept in this context belong to the school of cultural relativism which is purely subjective. See O.B.Olaoba. 2002. *Yoruba Legal Culture*. Ibadan : FOP Press. Also, see David Laitin. 1996. *Hegemony and Culture: Politics and Religious change among the Yoruba*. Chicago and London: The University of Chicago Press to prove that Africans were not barbaric but rather endowed with their socio-political patterns even before the incursion of colonial practice.

[4] This is what Segun Oladipo refers to as 'the third way' in African Philosophy. For a good account of this see Olusegun Oladipo. Ed. 2002. *The Third way in African Philosophy: Essays in Honour of Kwasi Wiredu*. Ibadan: Hope Publications

[5] It has been observed over the years that only the few elites in society reliably afford the legal expenses involved in the prosecution of justice while the downtrodden are always denied assess to justice out of the formal and cold nature of jurisprudence. See Justus Sokefun. Ed. 2005. *Issues in Corruption and the Law in Nigeria*. Ago-Iwoye: Faculty of law O.O.U.

CONCLUSION

I have established the integrative notion of punishment in traditional Yoruba culture. Punishment involves the infliction of some kind of pain on an offender by a person or body of persons who claim the authority to do so. There are some basic conditions that must be put into consideration before punishment is deserved. These include imposition of suffering on offender; the compulsion that an offender suffers for his/her offence; a recognised authority/agency saddled with the task of administration of justice; and the promulgated laws must not be retro-active in nature. But most of the studies on the justification of punishment have been based historically on two quite different and competing theories: utilitarian and retributivist justification of punishment.

In chapter one, I have shown that the utilitarian is only concerned with infliction of pain upon a certain individual or a body of individuals in respect of its good in order to promote a favourable balance of utility. As a result, this approach provokes the objection that, first, deterrence theories commit us to punish the innocent; second, it commits the society to punishment that is disproportionate to crime; and, finally, it promotes punishment that after all has no utility value. In chapter two, the retributive theory counteracted this position with the view that the society is entitled to impose penalties on criminal acts in as much as they are immoral and that the only legitimate function of punishment is to exact desert on perpetrators of immoral deeds. However, this was short-lived by the desert which the offender ought to satisfy or experience. It is noted that retributive justice may be lured by one or another form of 'lex talionis' (revenge), as there precludes the practical and sufficient proportionality principle in the society. Besides, the mixed theories of punishment are concerned with the compatibility between the utilitarian and retributivist approaches to punishment. This could not satisfactorily address the deficiencies in the traditional theories of punishment.

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Chapter three steered discussion on the concept of punishment to the Yoruba thought system. Here, I descriptively analysed the roles of punishment from the supernatural punishment, punishment within the family, and the religious and social institutions. Thus chapter four presented the theoretical framework upon which discussions in chapter three are grounded. I evolved an extensive exploration of the trends of hermeneutic discourse with the preference for Gadamer and Habermas' hermeneutic theories. Moreover, chapter five established the integrative notion of punishment as manifested in the traditional Yoruba belief system with a view to addressing the challenges faced by the traditional theories of punishment and meeting challenges in contemporary penal practice. These include the conspicuous absence of emphasis on enforceability, the non-separability thesis, conscientious dispensation of justice, a resounding cross-examination, etc.   The final chapter, six, exposed the shortcomings of the imposition of foreign legal system on the traditional African jurisprudence and profered the essence of the Yoruba theory of integrative punishment into the adjudicatory system in contemporary penal pratice.

This research applied a combination of Gadamer and Habermas' hermeneutic framework to the conception of punishment in Yoruba culture. The theoretical frameworks provided for the study the opportunity to understand the Yoruba language and tradition within the culture, perhaps the various dimensions to punishment and power relations and authority responsible with this task. From this viewpoint, I am able to understand that punishment in Yoruba thought recognises the relationship between the two planes of existence, *Isalu-orun* (the spiritual realm) and *Isalu-aye* (the natural realm) to be independently subsisting but form a necessary continuum. As a result, when injustice or wrongful behaviour occurs, punishment is sufficiently necessary in order to restore order in the universe. This order includes the intervention of supernatural forces

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at the critical stage in the lives of human beings. Also, sanctions are dictated by the numerous religious and social institutions. Finally the impact of punishment within the family is not left out.

The thesis of this work is that the integrative approach to punishment within the Yoruba culture is a more adequate approach to punishment, for it does not only engender restitution, retribution and deterrence but it also reconciles the physical and non-physical realms of existence, which provides, above all, the social order which is the goal of punishment. The thesis abhors wrongdoings and frowns at impropriety of manners. It does not hesitate to blame and punish offenders adjudged to contravene her value system.The system abhors deception in place of objective truth to the extent that the ordeal practice and oath taking mechanism are germane to instill in people conscientious attitude in the jurisprudence. Besides, it emphasizes the belief that he who commits a crime should be punished proportionately. Hence the punishment of the innocent in any given disputes or circumstances is frowned at. All these amiable features hinge on cross-examination in Yoruba juristic practice. The practice makes possible for the litigants to understand the reasonableness of the disputes and the essence of justice and fairplay without further rancour in the society.

By and large, integrative approach to punishment in Yoruba culture would help to redefine the foundation of criminal justice system in post-independence Africa through reconstructing the society for mutual well-being and social justice.

REFERENCES

Abimbola, K. 2006. *Yoruba culture: A Philosophical Account*. Birmingham: Iroko Academic
      Publishers.

Abimbola, Wande. 1965. 'Yoruba oral Literature'. *African Note*. 2.2.

Abimbola, Wande. 1968. *Ijinle Ohun Enu Ifa-Apa Kinni. Glasgow:* Aim Press and Publishers.

Abimbola, Wande. 1975. *Sixteen Great Poems.* Lagos: UNESCO.

Abiodun, R. 1983. Identity and the Artistic process in Yoruba Aesthetic Concept of Iwa.
      Journal of Cultures and Ideas. 1.1.

Abogunrin, S.O. 1996. Covenant in the ethical system of the Yoruba. Africana Marburgensia. 29.
      1 &2.

Abraham, William.1992. Crisis in African Culture. *Person and Community: Philosophical
      Studies I*. Kwasi Wiredu and Kwame Gyekye. Eds. U.S.A.:C.R.V.P.

Adegbola A.E.A. Ed. 1998. *Traditional Religion in West Africa*. Ibadan: Sefer

Adewale, S.A. 1986. Ethics in Ifa. *Religious and Ethics in Nigeria.* Abogunrin, S.O. Ed.
      Ibadan: Day Star Press.

Adewoye, O. 1977. *The legal profession in Nigeria: 1865-1962*. London: Longman Nigeria ltd.

Ajibola, J. O.1977. *Owe Yoruba*. Ibadan : Oxford University Press.

Ajisafe, E. A. 1946. *The Laws and Customs of the Yoruba people*. Abeokuta: Fola Bookshops.

Akinjogbin, I.A. 2002. The Yoruba ebi system of government and social organisation. I.A.
      Akinjogbin. Ed. *Milestones and concept in Yoruba history and culture*. Ibadan:
      Olu-Akin Publishers.

Akiwowo, Akinsola. 1983. Ajobi and ajogbe: variations on the theme os sociation. Inaugural lecture series 46. Ibadan: University of Ife press.

Akpotor, Akporoyomo.2007. African System of Law and Western Values: Between fixation and change. *Philosophy and Social Change: Discourse on Values in Africa*. Temisan Ebijuwa. Ed. T. Ebijuwa. Ibadan: Hope publications.

Alexander, Larry. 1986. 'Consent, Punishment and Proportionality'. *Philosophy and Public Affairs*. 15.2. 178-182.

Amponsah, K. 1974. *Topics on West African Traditional Religion I*. Accra: McGraw-Hill FEP

Asouzu, Innocent, I. 2004. *The Method and Principles of Complementary Reflection: In and Beyond African Philosophy*. Calabar: University of Calabar press

Atanda, J.A. 1980. *An Introduction to Yoruba History*. Ibadan: Ibadan University Press

Awolalu, J.O. 1973. Yoruba sacrificial practice. *Journal of religion in Africa*. v. 2.

Awolalu, J.O. 1977. The philosophy and psychology of worship. *Orita*. 11. 2.

Awolalu, J.O. 1989. *Yoruba Belief and Sacrificial Rites*. Essex: Longman Group Ltd

Awoniyi, Timothy. 1975. Omoluwabi: The Fundamental basis of Yoruba Traditional Education. *Yoruba Oral Tradition*. Abimbola, Wande. Ed.Ibadan: Ibadan University Press.

Babalola, Adeboye. 1977. *Akojopo Alo Ijapa Apa Kinni*. Ibadan: oxford University Press

Baier, Kurt. 1983. The concept of punishment and responsibility. *Morality in practice.* J.P. Sterba. Ed. Belmont, California: Wadsworth Inc.

Balogun, Oladele. 2006. The Role of 'Orisas' in causal explanations in traditional Yoruba thought: Implications for contemporary Africans. *Orisun: Journal of Religion and Human Values*. 4 &5.

Bascom, W. 1965. *The Yoruba of South western Nigeria*. New York: Holt Rinehart and Winston.

190

Bauman, Zymunt. 1978. *Hermeneutics and Social Science: Approaches to Understanding.*

London: Hutchinson and Co. Ltd.

Baynes, Kenneth. 1996. 'Public Reason and personal Autonomy'. *Handbook of Critical Theory*.

D. Rasmussen. Ed. Oxford; Blackwell Publishers Inc.

Bedau, H. A. July 8 2005. 'Punishment'. *Stanford Encyclopaedia of Philosophy*. Retrieved:

April 17, 2007, from Metaphysics Research Lab, CSLI. Stanford University.

Olowookere, G. A. B. 2004. *Egberin Ijinle Owe Yoruba ati Itumo won ni Ede Geesi*. Lagos.

Concept Publications Ltd.

Bewaji, J.A.I. 2004. 'Ethics and morality in Yoruba culture'. Kwasi Wiredu. Ed. *A Companion*

to African Philosophy. U.K.: Blackwell Publishing

Bodunrin, Peter. Ed. 1985. *Philosophy in Africa: Trends and Perspective.* Ile-Ife: University of

Ife Press Ltd.

Bohman, James. 1996. Critical theory and Democracy. Rasmussen, David. Ed. *Handbook of*

Critical Theory. Oxford; Blackwell Publishers Inc

Burgh, R. W. 1982. Do the guilty deserve punishment? *The Journal of Philosophy*. 79.4. 193-

210

Chanock, Martin. 1998. *Law, Custom and Social order: The Colonial Experience in Malawi and*

Zambia. Portsmouth: Heinemann

Corlett, J. A. 2001. Making sense of Retributivism. *Philosophy*. 76. 295. 77-110.

Day, J.P. 1978. Retributive Punishment. *Mind: New Series*. 348. 498-516.

Deng, Francis. 2004. Human Rights in the African context. *A Companion to African philosophy*.

K. Wiredu. Ed. U.S.A., Oxford, Australia: Blackwell publishing Ltd.

Dilthey, Wilhelm. 1976. *W. Dilthey: Selected Writings.* Trans. By H.P. Rickman. Cambridge:

Cambridge University Press.

Don, Inde. 1971. *Hermeneutic Phenomenology*. Evanston, Illinois: North western University Press.

Duff, A. 1986. *Trial and Punishments*. Cambridge: Cambridge University Press.

Duff, A. Jan. 3, 2008. Legal Punishment. *Stanford Encyclopaedia of Philosophy*. Retrieved: 18 April, 2008, from Metaphysics Research Lab, CSLI, Stanford University.

Elebuibon, Ifayemi. 1989. *The Adventures of Obatala.* Oshogbo: A.P.I. production

Elebuibon, I. 2004. *Ifa: The custodian of Destiny*. Ibadan: Penthouse Publications Nig.

Elebuibon, I. 2008. *Invisible Powers of the Metaphysical world: A peep into the world of witches*. Oshogbo: Ancient philosophy Institute.

Elegbeleye, O.S. 2005. The Yoruba Personality Assessment Criteria. *Studies. Tribes Tribals*. 3.2. 85-91.

Ebijuwa, Temisan. Ed.2007. *Philosophy and Social Change: Discourse on values in Africa*. Ibadan: Hope Publications.

Elias, Teslim.1956. *The nature of African customary law*. Manchester: Manchester

Emmanuel, A. 2000. *Odun Ifa (Ifa festival).* Ilupeju: African Books Publishers Ltd.

Ewing, A.C. 1929. *The Morality of Punishment.* London: Kegan Paul, Trench, Trubner &co.

Fadahunsi, A. & Oladipo, O. Eds. 2004. *Philosophy and the African Prospect: Selected Essays of Professor J. Olubi sodipo on Philosophy, Culture and society.* Ibadan: Hope Publications.

Fadipe, N. A. 1991. *The Sociology of the Yoruba*. Ibadan: Ibadan University Press.

Fajana, A. 1966. Some aspects of Yoruba traditional Education. *Odu.* 3.1.

Fajana, A. 1968. Age-group in Yoruba traditional society. *Nigeria magazine*. 98.

192

Ferrara, Alessandro. 1996. The Communicative paradigm in Moral theory. *Handbook of Critical Theory.* D. Rasmussen. Ed. Oxford; Blackwell Publishers Inc

Foster, Matthew. 1991. *Gadamer and Practical Philosophy*. USA : The American Academy of Religion.

Forst, Rainer. 1996. Justice, Reason, and Critique: Basic Concepts of Critical Theory. *Handbook of Critical Theory.* D. Rasmussen. Ed. Oxford; Blackwell Publishers Inc

Frege, Gottleb. 1970. On Sense and Reference. *The Philosophical writings of Gottleb Frege.* Peter Geach and Max Black. Eds. Oxford: Basil Blackwell.

Gadamer, Hans-Georg. 1975. *Truth and Method.* London: Sheed and Ward,

Gadamer, Hans-Georg. 1977. *Philosophical hermeneutics,* Trans by Linge, David. London: University of California Press.

Garcia, J.L.A. 1989. Deserved Punishment. *Law and Philosophy*. 1.8.2. 263-277.

Gbadegesin, S. 1984. Destiny, Publicity and the Ultimate reality of human existence: A Yoruba Perspective. *Ultimate Reality and Meanings: An Interdisciplinary studies in the Philosophy of Understanding.* 7.3.

Gbadegesin, S. 1991. *African Philosophy: Traditional Yoruba Philosophy and contemporary African Realities*. New York: Peter Lang.

Gibbs Jr., L.L.1973. Two forms of Disputes settlement among the Kpelle of West Africa. *The Social organisation of Law*. Donald Black and Maureen Mileski. Eds. New York: Seminar Press

Goldman, A.H.1979. The paradox of Punishment. *Philosophy and Public Affairs*. 9.1.42-58.

Gripaldo, Rolando. 2010. *History, Philosophy and Culture.* Quezon City: C and E publishing, Inc.

Gyekye, K. 1987. *An essay on African Philosophical thought: The African conceptual scheme 1*.

       Cambridge: Cambridge University Press.

Gyekye, K. 1996. *African Cultural values: an Introduction*. Accra: Sankofa Publishing Co.

Habermas, Jurgen. 1977. A Review of Gadamer's Truth and Method. *Understanding and Social*

       Inquiry Fred Dallmayr and Thomas McCarthy. Eds. Notre Dame, Indianapolis:

       University of Norte Dame Press.

Habermas, Jurgen. 1980. The Hermeneutic Claim to Universality. Trans. by Joseph Bleicher.

       Contemporary Hermeneutics: Hermeneutics as Method, Philosophy and Critique.

       London: Rout ledge and Keg an Paul.

Habermas, Jurgen.1986. On Systematically distorted Communication. *Hermeneutical Inquiry,*

       Vol.II: The Interpretation of existence David Klemm.Ed. Atlanta: Scholars Press.

Habermas, Jurgen. 1992. *Post-Metaphysical Thinking*. Cambridge, Mass: MIT Press

Hallen, Barry. 2002. *A Short History of African Philosophy*. Bloomington, Indianapolis: Indiana

       University Press

Hampton, J. 1984. The Moral Education Theory of Punishment. *Philosophy and Public Affairs*.

       13.

Hart, H.L.A. 1964. *The Morality of the Criminal Law*. Jerusalem: The Magnes Press.

Hart, H.L.A. 1968. Prolegomenon to the Principles of Punishment. *Philosophy, Politics and*

       Society. Second Series. Peter Laslett and W.G. Runciman. Eds. Oxford: oxford

       University Press.

Hart, H.L.A. 1967. The concept of law. Oxford: The Clarendon Press.

Hart, H.L.A. 1968. *Punishment and Responsibility*. New York: Oxford University Press.

Hart, H.L.A. 1975. Responsibility. *Responsibility: Selected Readings.* Joel Feinberg and

Hyman Gross.eds. California: Dickenson Publishing Company Inc.

Hausheer, Roger. 1996. Three Major Origination of the Concept of Verstehen: Vico, Herder, Schleiermacher. *Philosophy. 41*.

Hegel, W.F. 1977. *Phenomenology of Spirit*. Oxford: oxford University Press

Heidegger, Martin. 1976. *Existence and Being.* Intro. By Werner Brock. London: Vision Press, Ltd.

Held, David. 1980. *Introduction to Critical theory*. London: Hutchinson

Hodges, H. A. 1944. *Wilhelm Dilthey: An Introduction*. London: Kegan Paul, Trench Turner and co. Ltd.

Honderich, Ted. 1989. *Punishment: The Supposed Justifications.* Cambridge: Polity Press

Hopkins, A.G. 1969. A report on the Yoruba, 1910. Journal of the historical society of Nigeria. v. 1.

Ibie, Osamaro. 1992a. *Ifism: The Complete Works of Orunmila. II*. Lagos: Efelu Ltd.

Ibie, Osamaro. 1993c. *Ifism: The Complete Works of Orunmila. VI and VII*. Brooklyn: Athelia Henrietta Press Inc.

Idowu, E. B. 1996. *Olodumare: God in Yoruba belief*. Ikeja: Longman Group Ltd.

Irele, Abiola. 1982. *In Praise of Alienation*. An Inaugural lecture delivered on the 22nd of Nov. 1982 at University of Ibadan. Ibadan: Samgys Printing co.

Irele, Dipo. 1993. *In the tracks of African Predicament: Philosophy and Contemporary socio-Economic and political Problems of Africa*. Ibadan: Options book and Information services.

Janz, Bruce. 2009. *Philosophy in an African Place*. Lanham, New York: Lexington Books.

195

Klemm, David. Ed. 1986. *Hermeneutical Inquiry, Vol.II: The Interpretation of existence*. Atlanta: Scholars Press.

Lassiter, J. E. 1999. African Culture and Personality: Bad social science, effective Social Activism, or a call to Reinvent Ethnology? 3.2.1. http://web.africa. Ufl.edu/asq/v3/v3i2a1.htm.

Lofts-Gordon, D. 1966. Present-Day British Philosophers on Punishment. *The Journal of Philosophy*. 63.12. 341-353.

Lloyd, P.C.1960. Sacred Kingship and government among the Yoruba. *Africa*. xxx. 3.

Madison, G.B.1994. *H*ermeneutics: Gadamer and Ricoeur. *Rout ledge History of Philosophy*. viii.

Madu, Okechukwu. 1995. *African Symbols, Proverbs and Myths: The Hermeneutics of Destiny.* Owerri: Assumpta Press.

Maiese, Michelle. 2004. Retributive Justice. *Beyond Intractability*. Guy Burgess and Heidi Burgess. Ed. Conflict Research Consortium, University of Colorado, Boulder.

Makinde, M.A. 1985. A Philosophical Analysis of the Yoruba Concepts of Ori and Human Destiny. *International Studies in Philosophy*. xxii.

Makkreel, Rudolf. 1975. Dilthey: *Philosopher of the Human Studies.* Princeton and London: Princeton University Press.

Masolo, D.A. 2001. Critical Rationalism and Cultural Traditions in African Philosophy. *Explorations in African political thought: Identity, community, Ethics*. Teodros Kires. Ed. New York, London: Rout ledge.

Mbiti, J 1982. *African Religions and Philosophy*. London: Heinemann.

McClelland, E. 1982. *The Cast of Ifa among the Yoruba.* London: Ethnographical.

Mccloskey, H.J. 1967. Utilitarian and retributive Punishment. *The Journal of Philosophy*. 64. 3. 91-110.

McGee, Albert. 1983. Some mathematical observations on Ifa. *Journal of Cultures and ideas*. 1.1.

Meninger, Karl. 1983. The crime of punishment. *Morality in practice.* J.P. Sterba. Ed. Belmont, California: Wadsworth Inc.

Morakinyo, O. 1983. The Ayanmo myth and Mental Health Care in West Africa. *Journal of culture and ideas* 1.1.

Morris, H. 1968. Persons and Punishment. *Monist.* Lii. 4. 475-501.

Munoz, L.J. 1996. *Virtues: An Inquiry into Moral Values for our Times*. Ibadan and Lagos: Sefer Books ltd.

Murungi, John.2004. The Question of an African Jurisprudence: Some Hermeneutic Reflection. *A Companion to African Philosophy*. Kwasi Wiredu. Ed. U.S.A., Oxford, Australia: Blackwell publishing Ltd.

Mushanga, Musa. 1972. Punishment and deterrence. *Mawazo*. 3.3.

Nino, C.S. 1983. A Consensual Theory of Punishment. *Philosophy and Public Affairs*. 12. 4. 289-306.

Nozick, Robert. 1981. *Philosophical Explanations*. Cambridge, Mass.: Harvard University Press.

Nwakeze, P.C. 1987. A critique of Olufemi Taiwo's criticism of " Legal positivism and African legal tradition". *International Philosophical Quarterly*. xxvii. 1. 105.

Ojo, G.J.A. 1966. *Yoruba culture: a geographical analysis*. London: University of London press.

Okafor, F.U. 1984. Legal positivism and the African legal tradition. *International Philosophical Quarterly*. xxiv. 2. 94.

Oladipo, O. 1992. *The Idea of African Philosophy*. Ibadan: Molecular Press

Oladipo, O. 1994. The Yoruba Conception of a Person: An Analytico-Philosophical Study. *International Studies in Philosophy,* xxiv. 3

Oladipo, Olusegun. 2009. *Philosophy and Social Reconstruction in Africa*. Ibadan: Hope Publications.

Oladosu, Jare. 2001. Choosing a legal theory on cultural grounds: an African case for legal positivism. *West African Review. 2.2.* retrieved Oct. 16, 2011, from http://www.icaap.org/inicode? 101.2.2.2.

Olaoba, O.B. 2000. *The significance of cross-examination in Yoruba tradition jurisprudence.* Ibadan: John Archers ltd.

Olaoba, O. B. 2001. *The town crier and Yoruba palace administration through the ages*. Ibadan: John Archers.

Olaoba, O. B. 2002. *Yoruba legal Culture*. Ibadan: FOP Press.

Olayemi, Val. 1975. The Supernatural in the Yoruba Folktale. Abimbola, Wande. Ed. *Yoruba Oral Tradition*. Ibadan: Ibadan University Press.

Onadeko, Tunde. 2008. Yoruba Traditional Adjudicatory Systems. *African Study monograph*. 29.1. 15-28

Orangun, A. 1998. *Destiny: The Unmanifested Being*. Ibadan: African Odyssey Publisher.

Oruka, H.O. 1976. *Punishment and Terrorism in Africa: Problems in the philosophy and Practice of Punishment*. Kampala: East Africa Literature Bureau

Palmer, Richard. 1969 *Hermeneutics: Interpretation Theory in Schleiermacher, Dilthey, Heidegger and Gadamer.* Evanston: North western University Press.

Perkins, L.H. 1970. Suggestion for a justification of punishment. *Ethics*. 81.1.

Philips, M. 1986. The justification of punishment and the justification of political authority.

   Law and philosophy. 5. 3. 393-416.

Pincoffs, E.L. 1983. Classical retributivism. *Morality in practice*. J.P. Sterba. Ed. Belmont,

   California: Wadsworth Inc.

Primoratz, Igor. 1989. Punishment as language. *Philosophy*. 64. 248.

Putti, Joseph. 1991. *Theology as Hermeneutics: Paul Ricoeur's Theory of text Interpretation and*

   Method in Theology. Bangalore: Kristu Jyoti Publications.

Quinn, W. 1985. The right to threaten and the right to punish. *Philosophy and Public Affairs*. 14.

   4. 327-373.

Rasmussen, David. 1994. Critical theory: Horkheimer, Adorno, Habermas. *Rout ledge History*

   of Philosophy, Vol.viii. Richard Kearney. Ed. London and New York: Rout ledge.

Rasmussen, David. 1996. Critical theory and philosophy. *Handbook of Critical Theory.* D.

   Rasmussen. Ed. Cambridge, Mass.: Blackwell Publishers.

Rawls, J. 1955. Two concepts of rules. *The Philosophical Review*. 64. 3. 1-13.

Ricoeur, Paul. 1965. *History and Truth.* Trans. By Charles Kelbley. Evanston: North western

   university.

Ricoeur, Paul. 1974. The Question of the subject. *The conflict of interpretations: essay in*

   hermeneutics. Don Ihde. Ed. Evanston: North western university.

Ricoeur, Paul. 1976. *Interpretation Theory: discourse and the surplus of meaning.* Texas:

   Texas Christian University Press.

Ricoeur, Paul. 1981. *Hermeneutics and the human Sciences.* Trans. by J.B.Thompson.

   Cambridge: Cambridge University Press.

Ricoeur, Paul. 1983. On Interpretation. *Philosophy in France Today*. A. Montefiore. Ed.

Cambridge: Cambridge University Press.

Rugege, Sam. 1995. Conflict resolution in African customary law. African notes. 1.

Serequeberhan, Tsenay. Ed. 1991.*African Philosophy: The Essential Readings*. New York:

Paragon House.

Serequeberhan, Tsenay. 1994. *Hermeneutics of African philosophy: horizon and discourse.*

New York, London: Rout ledge

Serequeberhan, Tsenay. 1998. Philosophy and post-colonial African. *African philosophy: an*

Anthology. Eze, Chukwudi, E. Ed. U.S.A., Oxford: Blackwell publishing Ltd.

Simpson, G.E. 1994. *Yoruba religion and Medicine in Ibadan*: Ibadan: Ibadan University Press

Smart, J.J.C. 1956. Extreme and restricted utilitarianism. *The Philosophical Quarterly*.6.25.334-

354

Sodipo, Olubi. 2004. Notes on the concept of cause and chance in Yoruba traditional

thought. *Philosophy and the African prospect: selected essays of Professor J.*

Olubi Sodipo on philosophy, culture and society. A. Fadahunsi & O.Oladipo. Eds.

Ibadan: Hope Publications

Sofola, J. A. 1978. *African culture and the African personality: what makes an African person*

African. Ibadan: African resources Publisher Co.

Thiselton, Anthony. 1980. *The two horizons: New Testament hermeneutics and philosophical*

description with special reference to Heidegger, Bultman, Gadamer and

Wittgenstein Exeter: The Paternoster press.

Uduigwomen, A.F. Ed. 2002. *Footmarks on African philosophy*. Somolu: Obaroh and Ogbinaka

Publishers Ltd.

Wambia-Dia-Wambia, A. 1991. Philosophy in Africa: challenges of the African philosopher.

African philosophy: the essential readings. Serequeberhan, Tsenay. Ed New York: Paragon House

Wingo, Ajume.2001. Good government is accountability. *Explorations in African political thought: identity, community, ethics.* Teodros Kires. Ed. New York, London: Rout Sledge

Wiredu, K. 1980. *Philosophy and an African culture*. Cambridge: Cambridge University Press

Wiredu, K. Ed. 2004. *A companion to African philosophy*. Oxford: Blackwell Publishers.

APPENDIX 1

Definition of terms

Àjé- a word for witches, who can be both benevolent and malevolent.

Ajogun-   malevolent gods or anti-gods.

Alajobi- relations by blood

Alajogbe- ties by neighbourhood(s)

Alàkédun- the name for a big monkey

Àsá- Eagle bird

Ebo- a word for sacrifice

Èké- liar

Èsè- sin committed against human being/Supernatura being.

Esu- the policeman of the universe.

Ifá – the divinity responsible to reveal the past and future

 Igbimo- a wordfor representative in governance/ council.

Ìjàpá – name for tortoise

Ìjìyá – a word for punishment on sin committed. It may be human/ divine punishment.

Imúle – a word for agreement/ covenant/ oath-taking.

Ìsàlù- àyé – a word for earth.

Ìsàlù- órun – is the word for heaven.

Ìwà – a word for character or moral rectitude.

Obàtálá – the name of the arch-divinity in Yoruba pantheon.

Òdàlé - a word for betrayal/ convenant breaker.

Olódùmarè – the name of God, the Supreme Being.

Orí – is the inner head of man responsible for human destiny.

Òrìsà – a word for the divinities in Yoruba pantheon

Òrúnmìlà – is the name of the originator of *ifá* divination.

Sìgídi – is a word for human effigy.

APPENDIX lI

Glossary

Justice

The study of justice transverses all disciplines in human endeavour. It is susceptible to different manipulations/ interpretations grounded on one's ideological perception. Generally, its common featureis the idea of a proper proportion or relationship between individuals which Hart (1967: 155) formulated as 'treat like alike… and treat different cases different'. So , justice, in this thesis, is meant to facilitate social harmony not only among the natural beings but also between the natural and spiritual realms of existence.

Punishment

The thesis employs an integrative approach to the concept of punishment which emcompasses restitution, retribution and deterrence as as avenue to establish genuine reconciliation between the natural and spiritual realms towards maintaining social order.

Retribution

Retribution, in the thesis, graduates an ontological order of human conduct which is unalterable and inevitable. Its emphasis in the study is the promotion of sufficient desert for crime committed with any form of moral consideration. Retribution notes in the study that man has a natural right to be accountable for his deeds.

Law

The thesis recognises the importance of the compatibility of divine and natural laws in the study as a fall-out that African legal tradition embodies the 'non-separability thesis'.