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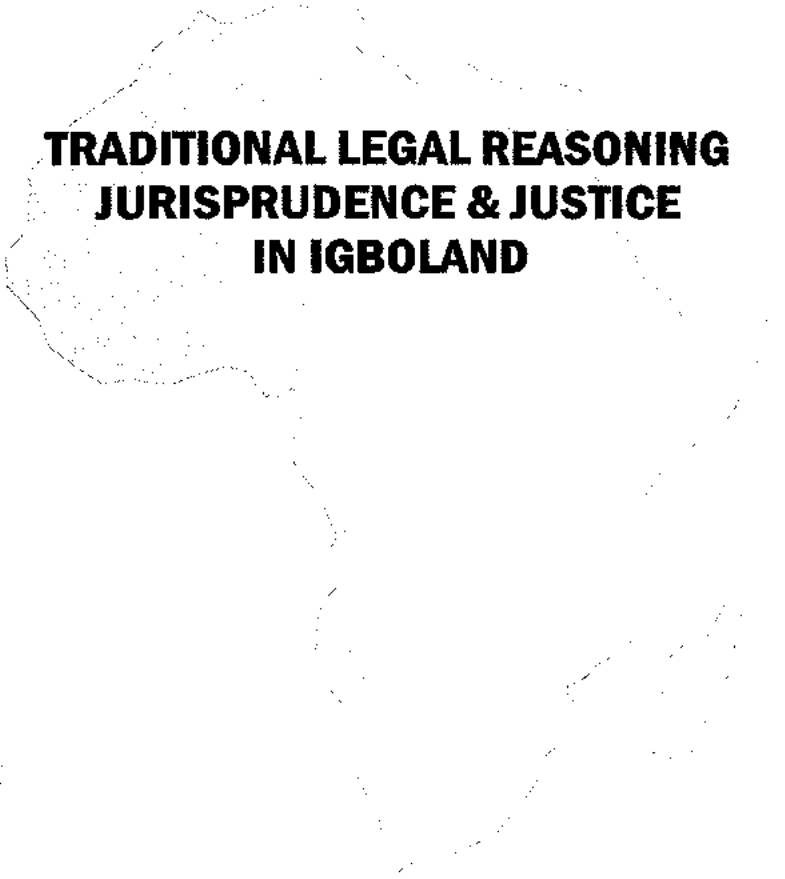


Understanding Africa

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Item Type	Book
Authors	Ike, Obiora F.;Edozien, Ndidi Nnoli
Publisher	Catholic Institute for Development Justice and Peace (CIDJAP)
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Download date	2026-11-16 22:32:33
Link to Item	http://hdl.handle.net/20.500.12424/166581

UNDERSTANDING AFRICA



TRADITIONAL LEGAL REASONING JURISPRUDENCE & JUSTICE IN IGBOLAND

AS A BASIS FOR CULTURALLY ROOTED AND SUSTAINABLE DEVELOPMENT

OBIORA F. IKE & NDIDI NNOLI EDOZIEN

UNDERSTANDING AFRICA

TRADITIONAL LEGAL REASONING JURISPRUDENCE & JUSTICE IN IGBOLAND

AS A BASIS FOR CULTURALLY ROOTED AND SUSTAINABLE DEVELOPMENT

Herr V. Liven,
... so dass sie Afrika noch näher kennenlernen.

Obiora F. Ike & Ndidi Nnoli Edozien

16.03.2005

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Justice and Peace (CIDJAP)
1 - 3 Ikwuato Street
Uwani, Enugu
Enugu State, Nigeria.

First Published 2001

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ISBN 978 - 34677 - 3 - 5

CIDJAP PUBLICATIONS

Typeset & Printed by CIDJAP Printing Press and Publishing House,
Uwani - Enugu, Telephone 042 - 252727

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IN PLACE OF A FOREWORD

Once upon a time, a caterpillar entered the house of a hare when its owner was absent. On his return, the hare noticed the marks on the ground and cried out: 'Who is in my house?'

The caterpillar replied in a loud voice: 'I am the warrior son of the long one whose anklets have become unfastened to fight in the 'Naija' country. I crush the rhinoceros to the earth and make cow's dung of the elephant! I am invincible!'*

The hare went away saying, 'What can a small animal like myself do with a person who tramples an elephant underfoot like cow's dung?'

On the road, he met the jackal and asked him to return with him and talk with the big man who had taken possession of his house. The jackal agreed, and when they reached the hare's house, he barked loudly and said,

'Who is in the house of my friend the hare?'
The caterpillar replied, 'I am the warrior son of the long one whose anklets have become unfastened to fight in the 'Naija' country. I crush the rhinoceros to the earth and make cow's dung of the elephant!

On hearing this, the jackal said, 'I can do nothing with such a man,' and went away. The hare then fetched the leopard, but the caterpillar replied to the leopard in the same manner, and the leopard said, 'If he crushes the elephant and the rhinoceros, he will do the same to me.'

They went away again and the hare sought out the rhinoceros. The latter, on reaching the hare's house, asked who was inside, but when he heard the caterpillar's reply, he said, 'What! He can crush me to the earth! I had better go away, then.'

The hare next tried the elephant and asked him to come to his assistance, but on hearing what the caterpillar had said, the elephant had remarked that he had no wish to be trampled into cow's dung and departed.

A frog was passing at the time, and the hare asked him if he could make the man who had conquered all the animals go away. The frog went to the door and asked who was inside. He received the same reply as the others had been given, but instead of leaving he went nearer and said, 'I who am strong and a leaper have come. My buttocks are like the post and God has made me vile.'

When the caterpillar heard this, he trembled, and as he saw the frog coming nearer; he said, 'I am only the caterpillar.'

The animals, who had collected nearby, seized him and dragged him out, and they all laughed at the trouble he had given.

Maasai folktale, from Radin, African Folktales and Sculpture

**'Naija' is used in place of the original*

PREFACE

This book is about *understanding Africa* today by focusing on its past. It is intended as a contribution to the ongoing global dialogue between cultures and traditions and seeks to promote a universal civilization based on mutual respect, justice, love and world peace.

Pope John Paul II has written in his message of Peace to humanity in the new Millennium:

> *"Perilous is the slavish conformity of cultures, or at least of key aspects of them, to cultural models deriving from the Western world. Western cultural models are enticing and alluring because of their remarkable scientific and technical cast, but regrettably, there is growing evidence of their deepening human, spiritual and moral impoverishment"* [1]

Much of what is known or written about Africa has been described by non-Africans, most of whom are Western "intellectuals", "travelers" and "experts". A general tendency has been "to look down" on Africa and its peoples. Many seem not to understand this great continent.

Africa is not, as most people imagine it to be, a continent with nothing more than a long and melancholy history of violence and barbarism. Inhabited by a people robbed of their past, of everything from their ancestral heritage and freedom, right to their very names, 'Understanding Africa' would elicit an appreciation by the reader of the injustice suffered by its peoples over centuries; which has not yet abated.

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1 *Pope John Paul II, (New year message of Peace 1 " January 2001) Dialogue between cultures for a civilization of love and peace, Losservatore Romano, English edition, Vatican City*

Africa, as we know it, is not simply a *"continent of hunger and heat", nor is it "the land of the dark skinned people whose religion, culture, politics, art and history is uncivilized and primitive".*

Africa is more than warlords, tyrants and bloodshed played out in the stultifying embrace of tribalism. The reality of Africa is more complex than the *"Outsider Cliches"* would have it described. It is even unacceptable to treat the continent as one piece, even though some generalizations may be allowed as applicable.

Africa has had its glorious periods: rich kingdoms, years of pastoral peace and prosperity. And much of this greatness and cultural integrity exists today. Africa is the continent where scientists teach us that humankind first arose, where art, religion and philosophy commenced, and where civilization and culture first began.

To understand Africa, one must understand its time-line and pattern. Africa must be seen in long view, understood as a work in progress, in always unfinished evolution. And the continent has a wealth of values and priceless qualities which it can offer humanity, despite its present economic risks.

In an interconnected and openly pluralistic world, large scale ignorance, bias and prejudices pertaining to traditional African history and culture are increasingly obvious.

It has thus become necessary to expand the scope of ongoing debate and bring to the fore of academic discourse, values and information that could enhance the world's appreciation of indigenous African societies and cultures.

These values express humanity's most authentic and distinctive features in order to nurture that intrinsically universal cultural "soil" which makes for fruitful and constructive dialogue.

The referred values are not only African. They exist and are appreciated universally. They include shared universal values of *solidarity* expressed through the *promotion of justice*; the value of *peace* which is the primary objective of every society; the value of *life* itself as the most sacred and inviolable earthly reality, for it is not possible to invoke peace and despise life; the value of *education* which enables regard for one's own identity with an understanding of others and *respect for diversity;* the values of *forgiveness and reconciliation* necessary for building bridges over the barriers caused by non-communication and misunderstandings, thereby nurturing the path which leads to peace.

It is our deep conviction that *Understanding Africa* has the potential to reduce xenophobia, and redefine the manifold forms of ethnic bigotry and cultural discrimination which exist globally. Being Africans ourselves, and of Igbo origin, we attempt in this book to reflect upon the way we lived, on the rationale behind this way of life and, most specifically, on how traditional Igbo society coped with issues of justice and legal reasoning. Such issues have become especially relevant in contemporary society as people strive to maintain their legitimacy and originality in the modern world.

The purpose of this book therefore is to share existing knowledge that enlightens the interested mind about the African continent, Africa's traditional values, its cultural beliefs, patterns and the general lifestyle of the African people. In this book, we focus specifically on some aspects of the Igbo people and their culture as a paradigm of what happens elsewhere within the continent.

A deeper understanding of the African continent and its peoples will ultimately breed a profound respect for, and embrace of, African traditional values which, when properly understood, reveal to the discerning mind a wisdom of the ages, capable of providing some solutions to our contemporary search for sustainable development and a peaceful, equitable society.

There is a need to harness the innovative potential in our societies and cultures with a view to effecting a sustainable and self-reliant rationalization and modernization of communities. Our challenge is to search for appropriate paradigms and expressions to define and evaluate cultural, social, ethical and religious conditions relevant to our many African societies.

"*Creating Hope*" for Africa -(*Tsepo*)-, was the Congress theme of the Fourth IPCA Worldwide Conference which we attended in Kroonstad, South Africa in the Jubilee year, August 2000. We had both led some work sessions during that great Congress for several peoples from virtually all the continents of the World on the topic: *"Understanding Africa"*.

The Congress raised many questions concerning the African identity and inspired our own mutual desire and passion to share our reflections of our history and culture, being Africans ourselves, with others. We immediately arrived at the decision to start a joint work for posterity, whilst waiting to board our flight en-route Nigeria at the international Airport at Johannesburg. The book would bear the title: *"Understanding Africa"*.

Having chanced upon another exciting work at the Johannesburg Airport titled: *"Into Africa - A Journey through the Ancient Empires"* authored by Marq De Villiers and Sheila Hirtle (Jonathan Ball publishers, 1997), we received further inspiration which strengthened our resolve and aspirations to jointly co-author this work. What you have now in your hand is the consequence of our resolution and efforts to make a modest; but meaningful, contribution to the great ocean of oral and pre-literary tradition which our ancestors have left behind for us to transmit to other generations. Two of us have produced this book, jointly conceiving the outline, contents, ideas, methodology and conclusions reached. Even though the duties have been divided, the thoughts presented are mutual.

We believe that the time has really come for us to define ourselves, our context and to redefine or even reverse the frames of reference in which

Africa is perceived. This implies establishing relevant values and putting them into the context of our history and authenticity without necessarily denying basic universal truths. This new movement must make changes to the entire process of assimilating teachings from outside by giving definitions which arise from an authentic African framework.

Africa endures and continues to change. One is always amazed at the complexity and diversity of human cultures. Each of them is distinct by virtue of its peculiar historical evolution and the resulting characteristics which make it a structurally unique, original and organic whole. Africa continues to claim its children by imprinting its colour on them wherever they may be and however they are "produced". Africa also marks out its children by impressing its clear physical and cultural features on them, no matter the continent or country in which they possess *"legal citizenship"*.

On the level of both individual and social groups, culture has remained humanity's form of self-expression on its journey through history. Culture, in this context, refers to the entire way of life of a people, past and present, and we have found evidence of a dynamic interplay of factors necessitating progress, adaptation and interaction. Cultural change therefore constantly challenges people to maintain their identity in the face of new conditions. Not surprisingly therefore, culture is marked by stable and enduring elements, as well as by changing and contingent factors. In the words of John Paul II:

> *"A person necessarily lives within a specific culture. People are marked by the culture whose very air they breathe through the family and the social groups around them, through education and the most varied influences of their environment, through the very relationship which they have with the place in which they live".*[2]

Above all else, this work is an attempt to introduce and deepen people's knowledge and understanding of the traditional value systems of the

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2 *Ibid.*

famous Igbo people of Nigeria - and the same would apply in the case of many other African cultures. It argues that there is a strong and valid basis for the theory which postulates an inherent rationality in traditional African culture. It seeks to explore the relationship between justice, jurisprudence and law in traditional Igbo society where, since antiquity, cultural values and behavioral patterns have been fashioned after a rational desire for progress within the context of cultural transcendence and development.

We ask such questions as: What is the good life? How do we attain it? What is the impact of culture on development? What is the link between justice and culture? What is the role of justice, of law, of culture, and of development in traditional Igbo society? What is the underlying philosophy and rationality that guides our legal reasoning? What is the relationship between the individual and community? What is the basis of Igbo law and custom? How do we understand the link between religion and justice. What do Igbo proverbs, folk tales and mythology tell us about justice?

How do we understand social life including celebration, rituals and mannerisms? What potential for development exists in the Igbo cosmo-vision. Has democracy a local content such as consensus and dialogue? Is not age, wisdom and experience a value? How do we explain that a people who existed without a written legal system had harmony, law and order until the introduction of western codified systems? Are there inherent advantages in oral tradition and fireside stories? What is the wisdom behind proverbs and names? What do they tell us about the philosophy and cosmo-vision of the Igbo? These and many more are questions reflected upon in some measure of detail in this book.

The questions we ask are relevant to people the world over and the answers thereto are anchored in philosophy, religion, law, anthropology and sociology which we aim to explore within the context of original Igbo culture and tradition.

In seeking to answer these questions, we seek to explore the possibility of marrying Igbo traditional jurisprudence with modern law practices. We look forward to a time when humanity shall embrace, with renewed vigour, the wisdom inherent in traditional African customs. This work deals with justice and legal reasoning.

"Like Prudhon has written somewhere,

JUSTICE:

under various names governs the world's nature, humanity, science, conscience, logic, morals, economy, politics, history and literature. Justice is that which is most primitive in the human soul, most fundamental in society, most sacred among ideas, and what the masses demand. It is the essence of religion and reason, the secret object of faith, the beginning, middle and end of knowledge. What can be imagined more universal, more strong and more complete than justice?"

African (Igbo) legal reasoning and jurisprudence is infinitely more varied than anything to be found in the manuals of logic or scientific methodology. No argument, least of all moral argument, takes place in a void. There is typically a social context which connects law and justice to precedents upon which original thoughts and arguments can be further developed. The work at hand assumes therefore dimensions of historicity and authenticity, and presides in abstract philosophy whilst asking the practical questions of modern life.

What follows is thus an idiomatic African World, age old and valid in its antiquity, yet fresh and forward looking, ready to face the future, to absorb what is new and useful. In our own times, such a world view if resuscitated, would help the Igbo in their present search for a cultural direction; and restore a character of continuity, harmony therewith improving our ability to perceive the cosmos as a seamless whole.

We will avoid the compartmentalization of emotions, phenomena, institutions and scientific observations as is practiced in some Western societies. The African world is striving for harmony. Mankind, the community and nature are concentric circles, and their consonance defines a structure of moral order. A breakdown in one area affects the others and the consequent disharmony is potentially catastrophic. In Igboland, the ailment of the individual is not seen as an isolated phenomenon, but rather regarded as a sign of general malady. According to this philosophy, individual fertility, for instance, would be interwoven with the regenerative promise of earth and sea. What does all this mean for people who live in the modern age?

By returning to the origins and taking an incisive look into certain aspects of Igbo culture and tradition, certain questions are answered. This book aims at enhancing original sources and internal potentialities for sustainable development in economic, political, social and other fields of endeavor. Our desire is to contribute the values inherent in our cultural heritage to modern, global society. This is an excursion into those elements inherent in Igbo Thought, as a paradigm for the many African cultures that sustained its people and guaranteed them a certain balance.

It is this balance that we seek to nurture in modern society as we welcome you into the ambience of *Understanding Africa* and symbolically share with you the fruit, ***Kola Nut (Oji)***, and a traditional prayer articulated for our reflection by Mazi E. Lawrence, towards Understanding Africa. [3]

---

3 *Emeka N. Lawrence (M.O.N); Anthology of Creative Writing edited by N. Amadihe Ezeugwu, Jamoe Enterprises Enugu Nigeria Publishers, 1999, p.3*

A TRADITIONAL PRAYER OVER THE OJI (KOLA-NUT)

God the Creator who lives on high
and His eyes see the whole ground;
Who lives under the ground
and no dirt soils Him;
Who lives in waters
and is dry;
Who moves with the winds
the wind is never seen by eyes,
and air is everywhere.
We come with greetings
and with pleadings !

God the Tryst Setter
Who makes trysts with men,
makes appointments with them
where and when He pleases,
and they cannot escape !

God who creates and who destroys,
Who beats up human beings
and consoles them;
crushes them and remains their strength;
Who brings and who takes away
and who creates
before the created knows.
At dawn we open our doors and our mouths.
At night we close our doors
but not our minds !

It is KOLA we bring !
It's all we can offer !
A little baby
can only hold its mother
where its hands can reach !

KOLA is small
And yet Kola is big.
Like the sacrificial food,
It is more important that it goes round
than that it fills the stomach.
Our fathers's fathers
and their fathers before them,
all our ancestors,
saw all the fruits of the land
but they chose Kola
as the prime substance for hospitality
and for offerings!

What an old man lying down has seen,
has the young man ever seen better
though he perches on the highest tree?

Of all food on earth,
only Kola
is not cooked by water and fire
but by spoken word!
The rich can afford it, and the poor can afford it;
And Kola is the biggest offering
men bring to you GREAT GOD;

to whom the swallower of what swallows an elephant
and with a hippopotamus tucked into its mouth
and palmyra as a chewing stick,
whistles freely,
and is smaller than spittle!

It is not that Kola
is the sweetest food on earth,
or that it fills the stomach fastest;
But it's only with Kola
that we pray for life.
And whoever brings Kola
brings life,
and brings health,
and brings prosperity,
and brings peace,
and children,
And what we shall feed them with!
For it's YOU, God
Who brings Kola
and ordains its manner of breaking.

This KOLA
is like a mound in the middle of the arena,
on which we stand and speak in the assembly
of people, and of spirits,
and our ancestors,
and You Great God
the TRYST SETTER.

And the words reach the ears they're made for!
So our fathers' father's fathers
hear my voice!

We are like little innocent children
who washed their stomachs only!
but your eyes see us.
And you can judge
if I've ever touched the wife of relation
or seen the nakedness of a sister;
If I've ever stolen what belongs to any human being
or oppressed a widow
or cheated an orphan;
or borne false witness,
or spoken calumny.
If I've killed any human being
with knife or spear,
or arrow or rope,
or poison or witchcraft,
If I've done any of these things,
May our land
and the Mother Earth EAT ME!

But if none of these is my guilt
but my fellow-man would afflict me
because of anger of the heart or anger of the eye,
then let whoever comes to kill me
KILL HIMSELF!

Anybody who says he must see me and my household
with evil eyes
let his eyes perish in the seeing!
Any person who says an innocent house-hold
may not sleep
make him roost with the chickens.

I pray for the good of the people in the bush,
and the good of those at home;
for the good of those in the hills
and the good of those in the valleys;
for the good of those at work
and for the good of those at play.
But if a man I can stand by does not stand by me
let what kills traitors kill him.
If a spirit I can vouch for does not vouch for me
let what kills spirits kill it.

If anybody would bring poison into this house
let his polluted hand enter his mouth!
Let no guest bring evil to his host
and on his departure
may no hunch grow on his back.
Let a rat not dare to eat the bag of a medicine-man
and let the medicine-man not dare curse the rat.

It is said that an innocent man,
guiltless of any sins big or small,
crosses the waters on a piece of calabash;

that it is with a snail's good tongue
that the snail moves over thorns.
So I'll keep clean my hands.
You will defend me from cows,
a man cannot wrestle with a cow.

If I must suffer for my offences
It is just;
If for the guilt of my children
I'll bear it.

The mouth speaks what earns the jaw a slap.
A man's head shakes the ant's nest,
His trunk suffers for it.

May it be good for the young,
succession is everybody's prayer.
Let who must be head be,
but let the tail have no end.

May it be good for the old:
The vulture prays
that death not kill the aged,
so that they would continue to tell the young
that the vulture is forbidden flesh.

What is good is what we want.
I have not asked you to give that to me only;
Eating up everything alone is bad eating!

If the kite perches,
let the eagle perch.
Whichever denies the other the right to perch,
may it's wing break.

GOD
may we never be in need and find no helper,
A man who has friends is greater than a wealthy man.
Give our wives fruitfulness,
one blow, one fall.
Give us children
and give us the means to feed them
Let any of us or our children
who goes out to work
come back
with plenty of money,
and come back safe.

Let any weed that brushes us
on our departure
brush against us on our way home;
it is not an evil weed.
When we are at the back
let evil be in front;
and when we are in front,
let evil be behind.
Let no illness come
and let no doctor cure.
Let no one be ill
and let no one heal.

But I have not spoken and it is final.

You have the yam;
and You have the knife.
To whosoever you give
and in whatever measure
he will eat!

We break the KOLA-NUT.

PART I

TRADITIONAL LEGAL REASONING

CHAPTER ONE

THE PEOPLE, THE HISTORY, THE PHILOSOPHY

Location And Origin

The Igbo people who share a contiguous geographical area, speak the Igbo language and share a common culture, occupy the area known as Igboland, located on the western coasts of Africa. Today, Igboland exists within the Nigerian polity. It was politically carved out by the British empire at the height of its colonial might. The Igbo territory is inhabited by a branch of the Bantu people and, as archaeological evidence suggests, this Negro race may have originated in the area along the latitude south of Asseler regions and Khartoum in Sudan, and migrated to their present location in the third millennium before Christ. Evidence has it that for over 4,000 years now, the area referred to as Igboland has been inhabited by these people.[4]

According to Professor Afigbo, linguists are of the view that bearing in mind the distribution and alignment of the languages in the Kwa sub-group of the Niger-Congo family, it is most likely that the members of this sub-group separated in the region of the Niger-Benue confluence. Art historians are also beginning to draw attention to this same general area, especially to the region between Bida and Kotonkarfi as one of central importance in the cultural history of the Middle Belt and Southern Nigeria. Until positively contradictory evidence comes to light, it does appear that the historian will continue to look for the cradle land of the Igbo and their Kwa brothers and sisters in this general area.[5]

4 *Afigbo, A.; Ropes of Sand, Studies in Igbo History and Culture, Oxford University Press Ltd. 1981, pp. 6 ff*

5 *Ibid.*

Some general features characterise the Igbo people and seem to distinguish them from other socio-cultural groupings. These include Igbo perspectives on: art, religion & religiosity, marriage & family, elders & ancestors, land, property & ownership, egalitarian societal values, women, celebration & joy. A brief insight into these provide a useful introduction to the Igbo people, their values and way of life.

Igbo Art

Igbo art is a manifestation of the aesthetic, the philosophical, the historical, the human and the divine milieu in the midst of human creativity. It offers itself as music, artefacts, sculptures, paintings, poetry, dance, drama, folktale, proverbs and traditions manifested in vivid, hardly subtle patterns that establish equilibrium and glorify harmony. Each work of art seems to point to the Divine.

Igbo art is mostly a depiction of society, tending towards its guiding philosophical preoccupation with '*Force*" (energy). Indeed, this phenomenon was most eloquently described in the context of Bantu Philosophy as Force which is "*to the pure African, a vital, universal and omnipotent energy to which all thought and action are related and exist*" [6]

Most apparent in Igbo art are the fundamental dimensions of existence: birth, life & death; and strongly associated with these are the concepts of force (energy) & the Divine (mystery). The Igbo's preoccupation with 'force' may be related to the fact that Igbo art does not concern itself with matter alone. Rather, the spiritual element of human life embodying a breath of the Divine and the manifestation of God's power is ever present. In Igbo land, art points to religion and every work of art seems to say to the beholder: "*Look beneath and beyond me, for what I represent and say is more than what you see and hear*". Igbo art is modest, yet deeply expressive. It concerns itself with life.

6 *Father Placide Tempels, Bantu Philosophy, Presence Africaine Paris 1959, 1969, p.71 ff*

With dances and figures, it depicts humanity in its simplest form showing the Igbo people in their natural environment, immersed in activity and at various stages in their rich ancestry.

Igbo Religion and Religiosity

Of Africans generally, it has been said that they have a profound religious sense, a sense of the sacred. The existence of the divine Being and the invisible spirit world is natural to them, and it seems obvious that this Being should have his mysteries because he surpasses human beings and their capacity for human reason. Religion imbues all of life and there is no split between faith and daily living. There is a great openness to mystery. The Igbo do not demarcate between a strictly material, sensual world and a purely spiritual world. In stark contrast to the dualism present in Greek antiquity and western philosophy, the Igbo view life as a continuum that extends beyond the demise of the material self.

The natural sense of religion, sometimes fostered by fear of the sacred or the desire to obtain benefits and security, is elevated into prayer and includes external movements inspired by deep respect for the divine majesty and transcendence. Worship and celebration involve the whole person, body and soul, and piety cannot be relegated to some private realm. With its symbols, gestures and prayers, religion even accompanies public life, without positing any division between the sacred and the profane. Religion was one of the principal factors which gave unity to life and held it together. There was no dichotomy between life and religion.

For the Igbo, religion permeates all aspects of life. This is a characteristic generic to Africans, of whom it can be said that "*they eat, drink, work, bathe and dress religiously*" (Mbiti). It is not surprising therefore that in traditional Igbo society, the practice of religion was non-institutional and intrinsically woven into society's communal way of life. It is within this context that one best comprehends the Igbo peoples' active participation in the art, religion and philosophy of their community. Thus, even in the most contemporary Igbo societies, sharing - especially of food and evident in the tradition of breaking kolanut' - has remained a landmark of Igbo religiosity, life and practice.

In sharing the Kolanut, hospitality, friendship, mutual exchange and oneness is shown in line with the philosophy: "*If we can eat together then we can dialogue and pray togther.*"

With regard to the religious conceptions of the Igbo people, it may be shortly said that it is a universal belief, circumscribed in their world view that a Supreme Spirit known as *Chukwu (God)* exists. *Chukwu* is all powerful and surpasses all other existing things, whether organic, inorganic or transcendental. In his creative aspects, *Chukwu* is described as *Chineke (the God who creates)*; *Chuwuokike* or *Chi Okike, (all-meaning Creator)*; *Osebuluwa, (the God who fashions and carries the world)*; He is the author of all life, including mankind. He sends rain, makes the crops grow, and is the source from which people derive their *Chi, (Destiny or Soul).*

As a merciful and just God, he grants favours to mankind. Wrong doers are adequately punished by the lesser gods or spirits on His behalf. The supreme Being, *Chukwu,* is never represented in symbols or figures for He is pure spirit. He is referred to as *Obasi di n'elu, (God in the Heavens)* and is thus the creator, and father, of all other revered deities and spirits such as *Igwe, (Heaven or Sky); Amadi Oha, (Lightening); Ala, (the Earth); and Anyanwu, (the Sun)*. These smaller deities are agents of *Chukwu* and carry the petitions of people and their offerings to Him.

Ekwensu, (the devil) also existed, as he was always understood to be opposed to God's plan for mankind and to destroy the harmony within the community. There is also the *Alusi, (the spiritual forces)* surrounding the village and from whom oracles, oaths, swearing, worship and sacrifices were determined.

Ndi Ichie, (the ancestors or the living dead) having joined the world of spirits, intercede for mankind before *Chukwu* and plead mankind's cause. Ancestor worship symbolised community and unity between the living and the departed brethren and elders of the clan, called the "living dead". They are the link between the known and unknown, between earth and beyond.

Though dead, the ancestors are constantly active in the daily human affairs of their families and clans. They intercede for their families before the deities and obtain favors or curses on the living. This is why they are pacified and given food and drinks by the living during religious ceremonies.

Property and Ownership:
In Igboland, the ownership of property is understood as a natural right and as the basis of wealth. Property is usually acquired to safeguard the needs of the individual, the family and the community.

Traditionally, the Igbo people regarded the destiny of the individual and the community as interlinked. The harmonious balance between the community and the individual was perhaps most manifest in the concept of communal ownership, which made every member of the clan a stakeholder. Thus, an individual could own private property but because of the intrinsic ties between the individual, the family and ultimately the community, ownership of property remained essentially communal. *Whatever property was acquired by the individual was based on the individual's right of access and use, in a proximate but not ultimate sense.* In modern Igbo land, the ownership of property has retained its social function and continues to be understood as a social mortgage, in line with ancient African thought: *"It belongs to me but I belong to the community."*

Land In Traditional Igbo Society
In traditional Igbo society, land belongs to no one. Land belongs to the people. *Land is considered to be a sacred heritage transmitted by the forefathers as a bond between the living and the dead, held in trust by each generation on behalf of those yet unborn*

Thus, the three levels of unitary existence are made manifest for the Igbo: the dead ancestors, the present generation and the yet unborn children on whom the future depends. In other words, land is seen as a gift from God for use by generation after generation, in a continuing tradition of the ancestors for posterity.

In Igbo society, land does not typically belong to the individual. Rather, land is owned by the people of the community and its access and use is possible for the individual. Traditional Igbo society succeeded in perfecting the balance between according every person and family a right to the use of communal land, whilst disallowing the appropriation of the land in an absolute sense.

Marriage And Family
In speaking of African values, one can certainly not fail to mention the *sense of family*, to which is connected *respect for life*, both of which are held in high esteem. The family in traditional Igbo society was usually large and extended and there were cases where virtually everybody in a particular village, unit or clan was related to another in a natural sense. Marriage is a great social and cultural event during which various symbols and practices display the interconnectedness of the entire family unit. Marriage is the union, not just of two individuals but of two families and even an entire people.

The child is a great gift of creation and children are appreciated and nurtured. Originally, Igbo society was primarily agrarian and human resources were essential for a good harvest. Yam and Cocoyam were among the most important crops grown, and a rich harvest was recognized as a measure of personal wealth. Given the communal nature of the Igbo, the family unit played a central role and polygamy was seen as a means of extending the family unit, of establishing greater solidarity with society and, with more hands to help on the farm, increased economic prosperity. Valuable therefore in this context is the community atmosphere where loneliness was unknown and life was largely social.

The belief in the interconnectedness between the three levels of existence, namely, the *"living dead" (ancestors)* , the *"yet unborn"* and the *"present generation "* earlier referred to, attributed great value to children who signified the bond of greater solidarity at all levels. As a result of both the enhanced manpower and increased connectivity with *"the other world,"* the *extended family* was believed to allow for increased agricultural productivity and thus, to enhance economic prosperity.

The Elders and Ancestors

Old age in African cultures was accepted as a gift by the gods, a blessing and a reward from *Chineke (God, the Creator)*, and a symbol of wisdom. The elders were highly regarded and often lived within the family ambient to guarantee stability and historicity. As the transmitters of past experience and the existential links between the past and the present, old age or "*Ogonogondu" (long life)* was made an essential part of virtually every communal prayer especially during the breaking of the Kola Nut (Oji). The elders are nearest to the "*world beyond*" in which the ancestors are, and therefore, in the eyes of the living merit high respect and recognition.

Ancestor worship expressed the respect and debt of the present generation to those who lived before, thereby showing belief in a "life after life", a continuity of existence on a plane beyond that which the eyes can see *"Ala Mmuo" (the land of the spirits)*. It was also an expression of the belief in the continuity of the human race, and a deeply religious and existential understanding. The ancestors were often offered food and Kola Nuts and called upon at major religious functions.

Egalitarian Society

Traditional Igbo society was fundamentally egalitarian without infringing upon the liberty of the individual in life, speech, movement, self-sustenance and independence. It was a balanced society wherein the community and the individual complemented one another. John Mbiti aptly expressed the philosophy of this communal society as: *"I am because we are and since we are, therefore I am "*.

The traditional Igbo systems were able to harmonise care of the old, encouragement of the young, and reverence for the dead. The orientation of the Igbo was egalitarian, and in modern terms one may refer to it as democratic. The Igbo peoples recognized no king or lord *(Igbo enwe Eze)*, but rather looked up to great and strong leaders, who achieved their status by hard work and endeavour. Leaders were never imposed amongst this people, and this tradition reinforced the freedom of the individual to disagree, protest and even rebel within the community.

Respect for Womanhood

The Earth is "mother", a female deity. After *Chukwu (God), Ala (the Earth)* is the primary deity worshipped in Igboland. The society carried this respect and reverence for the female deity over to the woman, and it found its expression in various aspects of the culture including names like *Nwanyi bu Ife (the woman is light) and Nneka (mother is the greatest).*

The issue of gender in contemporary Africa may be seen as a contentious one, especially vis a vis modern feminist and human rights campaigns. This work adopts the opinion, without much debate, that the Igbo woman was adored as the real authority in the family. In traditional Igbo society, the roles of the female and their male counterparts, were clearly allocated, and covered all aspects of life: agriculture, trade, the economy, social life, politics and various other cultural aspects.

The woman played a central role in all of these, and the requisite roles allocated for either by society were based upon nature and experience. In all, there seemed to be a separation of roles, but a link and inter-dependence amongst the sexes ensured the fulfillment of both gender needs and roles. In spite of modern interpretations to the contrary, the Igbo woman upheld her dignity and integrity in traditional Igbo society. The subject of womanhood in Igbo society is vast, fascinating and, although most alluring, remains outside the scope of this work.

African Values:

During a Congress in Enugu, Nigeria, of the Vatican Pontifical Council on Inter religious Dialogue on the theme: *Africa's contributions towards universal human and spiritual values*, Professor John Mbiti presented several values that Africa ought to share as its gift to the world: Celebration, the Joy of life, Laughter, Respect for Womanhood, Forgiveness, Reconciliation and Spirituality. There is, first and foremost, a common value that imbues the African soul in all its cultures, and that is the *Joy of Life*. It has often been observed to be true that the ability of the African to laugh, to celebrate and to share with others the joy of life through hospitality and openness is unrivaled anywhere in the world.

Despite the hardship, the poverty and the daily drudgery experienced by the people, the African (Igbo) spirit soars above any given situation. Joy and laughter facilitates optimism and even enthusiasm and helps in overcoming difficulties. The phenomenon of celebration and rejoicing extends to all stages of life from conception, and even till death. The religious sense of reverence for the divine majesty, rejoicing in the Lord, in nature's gifts, and in cultural celebrations enriched the community. The basic festive attitude of the Igbo was shown in gestures, drums, dances, music, swaying, and songs.

Africa's spirituality made it possible to give each being in creation a *Chi*, an identity, a soul, a unique destiny which made it free, unique and therefore respectable. Value was given to entire creation and there was no sense of 'chance' in events as they happened, for in Igbo cosmology, the *Chi* was already pre-destined.

The reality of sin -in both its personal and communal forms- was, and to a large extent still is, very much present in the consciousness of the Igbo, as are the rites of purification, ablution and expiation. The road to peace is forgiveness and reconciliation, and traditional Igboland practiced this through rituals and religious ceremonies. These are values that modern African societies need to rediscover and share with others in the search for authentic and sustainable, culturally-rooted development. This will be our contribution to the ongoing dialogue of cultures and civilisations in the new Millennium.

Things Fall Apart:
There is no doubt that modern Africa, and concretely modern Igboland, is at a crossroads, subject to many forces and currents, and that we are beginning to witness a certain disjunction between traditional culture and the demands of modern life. As a result of modernization and the disintegration of traditional social structures, conditions of conflict and poverty are undermining the family and leaving the African youth bereft of values and discipline. Many young people seem to lack orientation and there is a widespread alienation amongst them. The challenges in this area are enormous and in some cases things have fallen apart.

The authors of the present volume do not presume that much of the *Original Africa* described in some of the pages of this book still exists as an ideal without adulteration and threat.

There are conflicts and contradictions including tensions in the way we perceive ourselves as Africans who have become converted to new religious movements such as the Christians, the Muslims, Buddhists or members of a new emerging cultural and technical universe. Many attempt to give up their identity completely, lose their originality as Africans and do not succeed in becoming Western, Asian, or other.

The challenges of social and cultural globalisation and exchange has affected some of the people of Africa in many negative ways. Infact, there is a trend to jettison original cultural authenticism by even some of Africa's sons and daughters. It brings in its wake a dilemma for the peoples of the continent.

What is at stake is the erosion, not only of that religious and spiritual outlook on life which characterised African culture but also the organic unity between faith and real life. We place at the centre of discourse, some of Africa's original values within the ambient of the great struggle between good and evil, between life and death, between love and all that is opposed to love.

Family values, once the strength of Africa are being eroded; family uprooting disturbs both issues of morality and identity. A critical area is urbanisation as many African cities witness galloping population trends. Uprooted urban populations are beginning to lose contact with the values of tradition; their sense of integrity, and appreciation of the sacredness of life are beginning to dissolve.

The ills of modern society are appearing in many places as they accompany urbanisation, migration and modernisation. Some of these are- prostitution, children of the streets, inhuman living conditions, structures of oppression, to mention but a few. In many places, the traditional processes of the education of youth seem to have collapsed.

Many families are under severe stress, by reason of situations of war or because their members are refugees or displaced persons. The rights of people are often abused in manifold ways and this poses dangers to the African peoples and their right to integrity and dignity.

This book takes note of the current situation and, in fact, makes it a point of departure. Africa must urgently rise to the challenge and prepare herself to engage the rest of the world within a composite framework located in a purely African reality, in spite of emerging constellations of global forces with their resonant implications.

In order, therefore, to understand contemporary Africa, one must return to it's great cultural heritage and pre-literary history, much of which is still unknown, rediscover it and place it at the service of inter-cultural dialogue. This is the exercise of the next chapters of this work.

"People who do not look back to their ancestral cultural heritage cannot look forward to posterity" - Ozor Neife Ozoike (92 years old).

CHAPTER TWO

LANGUAGE AND THE CULTURAL ORIGINS OF JUSTICE

The Igbo idea or notion of justice is not easy to define. The Igbo prefer to describe rather than define. They elaborate or show the meaning of a concept or an idea in natural terms. This is so because a description based on natural experience expresses and clarifies an idea more clearly than a limiting definition could do. According to the English dictionary, *"define"* means: "to delimit; to mark out; to show clearly the form of something; fix; state contents or meaning precisely". [7]

Justice as an ideal in Igbo Thought is not defined. Sometimes in trying to explain the concept, the elders focused on its opposite, injustice, in bringing the concept into practical and clearer understanding. Examples are given of justice in *proverbs, wise sayings, prayers, folk tales and stories* bearing relation to practical life. St. Thomas Aquinas used the scholastic method to define justice as *"the strong and firm will to give to each his or her due"*.[8] Marxist philosophers looked at the concept theoretically as *"to each according to his needs and from each according to his ability."* Aristotle suggests that justice implies the notion of *"treat equals equally and unequals unequally, but in proportion to their relevant differences."*[9] His view is that distributive justice employs geometrical proportions.

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7 *(Cf. Collins General English Dictionary, London and Glasgow, Ed. Mcleod, W.T.,Copyright, 1902 (1977,p.22).*

8 *Aquinas, T, Summa Theol. Illa Illae, qt. 58, Pars ila Illae, Rome 1952*

9 *Aristotle Nichomachean Ethics, Book 5, II, 113b, Penguim Classics,1976,*

In Igboland, the people did not read Aristotle or any of the philosophers to determine justice. Rather, the core of the Igbo concept of justice is evident in the proverbs, wise sayings and prayers which we shall now reflect upon.

TRADITIONAL IGBO PRAYER

Nke onye diri ya (Let every person receive what is his or her due)
Onye iro m diri, ma m diri (May my enemy live but may I live too)
Ya bara onye, bara onye (Let progress and what is good reach to all)
Onye anwuna, m'ibe ya efula (May no one die, may the other not be lost)
Ogburu onye n'onye ga-ala (May who kills another go with the deceased)
Njo na njo zu kwara (May evil be met with evil)
Mma na Mma zu kwara (May good be met with good)
Egbe bere, Ugo bere (Let the kite perch and let the eagle perch)
Nke si ibe ya ebela nku kwa ya! (If one refuses the other the right to perch let, its wing break)
Ehaa (Amen).

JUSTICE IN TRADITIONAL IGBO PRAYER

The simple prayers of the Igbo peoples said during the breaking of Kola Nut at functions elucidate the concept of justice and clearly entail some of the ideas shared universally and mentioned in the introduction to this chapter. Aristotle's views about *"a proper proportion or relationship between individuals"* is involved. This would mean *"a proper respect for people's rights and properties", (Nke onye diri ya); equality of distribution of goods, (Ya bara onye, bara onye),* often understood as **distributive justice;** *the idea of fairness, (Onye iro m diri, ma m diri)* known as equity; *impartiality* in *inter-human relationships, (Onye anwuna ma ibe ya efula); the principle of balancing good or evil in adequate proportion, (Ogburu onye n'onye ga ala),* which is like the Jewish "Lex Talonis" and which for the Igbo can also be called ***legal justice;*** and *the notion of co existence of live and let live, (Eg be bere Ugo bere)* which is equivalent to *social* or ***commutative justice.***

Dr. Theophilius Okeke summarises these Igbo traditional notions of justice thus:

"In general, justice insists on strict equality between giving and taking; on the equality of individuals before the law; on equal distribution of rights and duties in the community. Psychologically, it is a certain innate passion for proportion; a demand for an equality in human affairs; a wish to restore and establish justice in a world full of inequalities. Justice is not static but dynamic; it is not given; it is not a fact but rather a task. It's achievement is the work of culture and not of nature. The level of justice a society attains is the measure of its humanisation, that is, of its culture" [10]

IGBO TERMINOLOGIES FOR JUSTICE

"OTO": STRAIGHT; FAIR; JUST.

In the four terminologies for justice among the Igbo of Nigeria, as will be seen in many other the last three letters in each word is noticed to be the same verb, "OTO": to stand erect, straight, fair, just. Each of the words "Aka kwu oto", "Ikwuba aka oto", "Obi kwu oto", and "Ikpe kwu oto"contains this symbolic word "Oto" which means "straight" because the Igbo's definition and description of justice is a practical one. Justice refers to that which is straight, not disfigured, not partially but completely upright and equal in its geometric proportions. This notion suggests clearly the ideas contained in the general philosophical conception of justice which include "equal", "Impartial", "fair", "just", "good judgement", "upright", "straightforward", "honest", "good will", "exchange", "reciprocation".

There are four main words which describe the notion of justice:

a)	"Aka kwu oto"	Keeping hands straight
b)	"Ikwuba - aka oto"	Straight handed
c)	"Obi kwu oto"	Straight heart
d)	"Ikpe kwu oto"	Straight judgement

10 *Okere, T. Justice and Fairplay, 1976, p.59*

"AKA KWU OTO"
"Aka means hand
"Kwu" means stand, remain, be, stay
"Oto" means erect, straight, upright, fair, just

Literally speaking, "Aka kwu oto" means "a standing hand, "a straight hand", "a hand placed erect". In moral conduct, the word expresses the notion of "uprightness "straight handedness". Applied to a person, the sentence can read: "Mazi Okonkwo bu onye aka ya kwu oto", meaning: "Mr. Okonkwo is an upright man"

"IKWUBA AKA OTO"
"Ikwuba" means keeping straight
"Aka" means hand
"Oto" means erect, straight, upright, fair, just

When put together, Ikwuba aka oto means literally "keeping one's hand straight", "the act of being straightforward, just, upright, frank". Ikwuba aka oto is in the present participle and is an action still in becoming, the act of being honest, fair in dealing with others, a person who is impartial. The word "Oto" (straight) is the symbolic word and decisive element denoting justice in the word-structure.

OBI KWU OTO
"Obi" means heart
"Kwu" means stand, be , remain, stay
"Oto" means erect, straight, upright, fair, just

The word "Obi" can also mean the central house in a family where the elder or family head receives visitors and performs family duties. On the village level, "Obi" is the chosen central meeting place for the village community. It could also refer to the village square. When the Igbo speak of a person as "Onye obi kwu oto" (one whose heart is straightforward and clean), they mean a morally just man, a fair and impartial person, a straight forward and transparent person; not corrupt.

IKPE KWU OTO"
"Ikpe" means case, decision judgement, verdict
"Kwu" means stand, be, remain, stay
"Oto" means erect, straight, upright, fair, just

"Ikpe kwu oto" literally designates a straight judgement, a straight case, a straight verdict. In its moral content, it expresses the idea of justice in a conflict between two or more parties. "Ikpe kwu oto" means *"a true and impartial judgement"*. It is the *"judgement delivered justly and without partiality."* In this case, the persons are not regarded when the judgement is delivered nor is their wealth, status or race. *Ikpe kwu oto* is an objective judgement which considers only the matter brought for consideration in a conflict between parties. The judgement depends on regard for specified customs, rules or laws and is often decided by an appropriate authority.

IGBO SENSE OF JUSTICE THROUGH PROVERBS.

Proverbs have been defined as *"short, pithy, traditional sayings in common use."* Among the Igbos of Nigeria, the art of speaking vividly with imagery, natural flavour and in proverbial form is very common. It is the culture of the people just as it is the way of life of many rich cultures in other parts of the universe.

Dr. Chinua Achebe attested to this fact thus:

> *"among the Igbo, the art of conversation is regarded very highly and proverbs are the palm-oil with which words are eaten".*[11]

11 *Achebe , C., Things Fall Apart, Heinemann, London (1958), (1981 ed), p. 5*

This manner of speaking and lifestyle among the Igbo help in the education of the youth in oral history and tradition through short and pithy traditional wise sayings and proverbs. They epitomise pre-literary philosophy, wisdom and African Thought which could be rediscovered today as a sustainable means of moving an ancient culture forward in a modern society. It is through these proverbs, folk tales and wise sayings that the Igbo communicate their reflection of reality to the world outside them. An Igbo saying expresses this very clearly as:

*"**Ilu bu abubo eji eri okwu**": Proverbs are the vegetables which nourish speech or proverbs are channels for philosophy*

Edel May and Edel Abraham rightly observed in their joint anthropological work that: *"the Igbo people have a deep moral heritage. They speak in proverbs, as they embody the events of life in names and put maxims in folk tale. It follows that to understand their moral life and moral values we need to look into the meanings of some of their proverbs, the meaning of names and the morals behind their folk tales".* [12]

"Njo diri onye mere ya" - "Let evil remain with the evildoer". This in essence means: "*Let the evil man be repaid with evil*". This proverb expresses ideas on *retributive justice*. The person who commits a crime must bear the responsibility of the act; something similar to the German concept of "Ausgleichende Gerechtigkeit" (distributive justice).

"Isi kote ebu ya gba ya" - "*The head that touches the wasp has to be stung by the wasp*". Like the above, this means that the person who causes trouble or occasions an unjust act should be repaid in the same measure to balance the bad deed done. This proverb also shows the individual responsibility attached to one's actions because it expresses the idea that whatever one does accompanies one. The English would put it differently, thus: "As you make your bed, so will you lie on it".

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12 *Edel May and Edel Abraham, Anthropology and Ethics, Spring Fields, 1959, p.108*

"Ife onye koro na amiri ya" - "*Whatever a person sows the person shall reap*". This proverb, drawn from simple, natural phenomena, shows the Igbo understanding of natural justice. One does not cultivate rice and reap potatoes (natural law), so naturally, bad behaviour and unjust deeds shall have consequences on the actor. Whereas with good deeds justice and goodness shall follow. The proverb highlights the principle of responsibility: you reap what you sow.

"Onye na emeghi ihe iyi,, adighi atu egbe-igwe egwu" - "*The person who did not swear falsely or break an oath before the gods does not fear the sound of thunder*". In content, this proverb means that a clear conscience fears no accusation. The just man lives a fearless life. It is an expression of righteousness and integrity in personal life style. It is a praise for personal justice and straight-forwardness.

The Igbo always admonish children with the words: **"Nwa m kwuba aka gi oto"** - which means *"my child be upright and just in your actions!"*.

Similarly, **"Nke onye butere, ya were isi ya buru"**, "*what a person does shall be borne by the person on one's head*".

To show how fearless and contented one is, having done the just and right thing the Igbo say: " **Onye na adighi ihe omere ihe anaghi eme ya**" which means, "*One who did no wrong progresses in life and is not harmed*".

In cases where someone was charged or suspected of having been unjust one proves one's innocence by saying "Aka m di ocha" which means literally, "*my hands are clean*". Otherwise translated it means: "*My conscience is clear; I am free of any injustice against anybody; I did not commit any crime.*"

Truly in Igbo land, the traditional man abhorred injustice since it was an offence against the earth (Ani) and was punishable by the gods. One did not hesitate to expose crime or injustice to the public for scrutiny even if it involved one's own kith and kin.

Justifying oneself was a typical manner of exposing one's integrity in traditional society whether before the people or before the gods. Often, the elders would say: **"Ikenga m kwu oto"**, literally meaning *"my staff of integrity and honesty is straight and upright"*. It expresses the idea that the gods know of the justness of the person concerned. Hence, the gods would even vouch for some ones integrity.

It was believed that the just must surely meet with blessings: **"Ukwu gbara apiti na eri ihe ome"**, literally meaning *"the feet which laboured in soil enjoy the fruits of the soil"*. This shows that good living has its rewards, an idea which belongs to the sphere of personal justice.

In another context, the traditional Igbo says **"Ncheta ana echeta onye ezi omume bu ngozi"** which means *"The remembrance of the just man is a blessing"*. The unjust man is worried and distracted because he fears the evil consequences of his deed. An Igbo proverb expresses this point thus: **"Onye mere ihe ojoo na aga o na ege nti"** which means *"the unjust man is anxious and worried because his conscience disturbs him and as he moves about, he puts his ear on the ground and listens to what people say about him"*.

This proverb is put vividly in another way: **Agwo loro. Nsiko na eche uche"** which means that *"the snake that swallowed a crab cannot be at ease"*. Also, when an unjust or evil man has been caught or charged people tell him: **"Osisi kwuchiri uzo na eri ube mma"**, which means *"The tree standing on the road path is cut with a knife by passers - by"*. Further, **"Ihe akputara na agiga ite na ala na agiga onu"** meaning that *"what one brings out of the cooking pot ends up near the mouth"*.

To show that justice is the basis of a stable society and can only proceed by interdependence, reciprocity and equality amongst the people, the Igbos say in one of their proverbs, **"Aka nni kwo aka ekpe, aka ekpe akwo aka nni; fa nabo adi ocha"**. This means that *"The right hand washes the left hand and the left hand washes the right that both may be clean "*. It expresses reciprocity in inter human relationships.

Justice refers to a balance in relations. The following proverb expresses the principles of equitable treatment and interdependence for the good of all. *The dog in Igbo mythology would say: "**I dalu m a dalu m gi, o bulu egwu**"*, meaning: *"If I fall for you and you fall for me then it is play"*

The idea of equity in justice is expressed through another proverb which demands that a man be justly paid for the work he has done and he who did nothing should have no reward, thus **"Onye nagbacharo okpofu a ma eli ife"** which means that *"the person who does not sweat may not eat"*. Sweat is a sign of a person who has worked hard in the fields and therefore merits food. Whereas the person who did not sweat is lazy and should not be rewarded for indolence.

The next proverb is a figurative way of saying what material justice entails: *"Each to be paid according to his or her contribution"*; *"To each according to his desserts "*.

Justice expresses the continuous search for balance and harmony by human kind in history. It is therefore a meaningful basis for reciprocity, proportionality and exchange. What one gives is often what one gets out of a situation, known or unknown. In the search for justice, there is also the search for meaningful peace. Without justice, there is no peace. Thus, justice is the basis and the pre-condition for peace, progress and inter-human balance and relationship in original Igbo society. Justice links humankind with the Divine, with nature and with fellow human beings.

FOLK TALES AND MYTHS RELATED TO JUSTICE

Injustice was looked upon in Igbo Traditional Thought as a grave offence against nature in as much as it was a deprivation of the rights of another bestowed by nature itself. Injustice was therefore discouraged and fables depicting the punishment due to it were narrated to children as a lesson. Additionally, if one was unjust, justice was meted out either by the society or its legal structures or by the gods which abhorred injustice. In some cases, nature itself punished the offender. The Igbos believe that there is natural justice embedded in the universe which no one could escape.

People were warned in these words:

"I mee njo, mmadu afuro gi, muo afu gi", *which means:*

"If you commit injustice and no human eye sees you, the spirits will see you".

An Anglican missionary and anthropologist, G.T.Basden, in a description of the "primitive life, customs and animistic beliefs" of the Igbo people of Nigeria after he had lived among the Igbos for thirty-five years wrote in his book, "Niger Igbos" that:

> *"the Ibo, in common with other West African tribes, have a great fondness for fairy tales. They have a big stock of legends and folklore. The Ibo is a good story-teller, with a faculty of putting into reality fables ".*[13]

From our research on the notion of justice in pre-literary African societies, folk tales and myths related to justice are of great help because they express elements of oral tradition which transmit value and meaning for analysis and teaching. In some of the fables and myths, animals and birds are endowed with human powers and faculties and illustrate that which the myth or fable wishes to show or to teach the community of human beings.

With mythology and fables, the idea of justice is highlighted and the moral call for a good life without anxiety is established. There is a call that humans practice fairness in their behavior towards another. Life is depicted as a sort of contract in inter-human relationships. In pre-literary society, myths and stories served as powerful means of emphasizing the way people should live in a just and harmonious atmosphere to be happy and content. It served as a most effective manner of educating the youth. We shall now read some of the stories narrated.

[13] *Basden, T.G., Niger Ibos, Frank Cass, London, (1938), rep. 1966, p.236*

WHY MONKEYS ARE GOOD JUMPERS
FABLE DEPICTING COMMUTATIVE JUSTICE

"In the olden days, the fruit of a certain tree was enjoyed by all animals and birds generally. At the head of the animals was the tortoise. He called a meeting to discover who really was the owner of the tree. Meanwhile, neither bird nor beast was to touch the fruit. One day, however, a monkey, being very hungry, took the forbidden fruit. When the tortoise was made aware that the fruit had been stolen, he called another meeting to discover the culprit. All declared that they were innocent of the charge. Not being satisfied with their denial, he called upon each to swear an oath and to undergo a trial by ordeal. Each was to swear and then throw himself down from the tree. If he were innocent, no harm would befall him. If guilty, then he would perish.

All the animals assembled and proceeded with the trial. As each prepared to fall, he sad: "Let me fall and die if I am guilty of stealing the fruit". All of the birds and beasts passed safely through the ordeal until it came to the turn of the monkey to swear and fall. He, the guilty one, changed the words and said, "Let me jump from tree to tree if I have stolen the fruit". He immediately became an expert jumper and has remained so ever since".

Lesson And Moral Content of the Fable:
"Why monkeys are good jumpers"

This fable demonstrates a case of commutative justice. There are many transactions that are too personal in scope to be determined by the natural or positive law. In such a case the parties concerned determine what they should do by free agreement or mutual contract. The animals in the fable had made a contract amongst themselves and were bound by it. No one was to eat of the fruit of the tree. As far as this contractual relationship was concerned all of the animals were equal before the law which they had made for themselves.

In a case of commutative justice the failure to render the "quid pro quo" incurs the obligation to make restitution. This is so because commutative justice places all citizens on equal judicial footing in a social complex. In the fable narrated about the monkey there was no constituted legal structure but there was the *trial by ordeal* whereby justice could be rendered and the unjust or cheating party punished. "*Each was to swear and then throw himself down from the tree. If he were innocent, no harm would befall him. If guilty, then he would perish* ".

In the trial which followed, all of the animals and birds proclaimed the words dictated to determine the unjust one among them. "*Let me fall and die if I am guilty of stealing the fruit*". Since they were innocent, the criteria of judgement proved them innocent. The monkey was conscious of his violation of the contractual relationship and violation of commutative justice.

Afraid of death, the monkey changed the words of trial to read: "*Let me jump from tree to tree if I have stolen the fruit*". With this, he engaged a new contract and received a dispensation of justice in accordance with newly established criteria. This explains why monkeys jump from tree to tree and have remained so ever since.

For the Igbo this fable has deep moral content. The first lesson is that one must keep to one's contracts in the spirit of commutative or contractual justice. The second lesson is that since all are equal before the law, one who breaks the law will surely be caught by the arms of justice. The third is that truthfulness is a great virtue and its opposite is the violation of honesty and justice for which proper compensation would be made to balance the injustice done and re-establish the lost harmony.

WHY THE EYES OF THE TORTOISE ARE SO SMALL

FABLE DEPICTING NATURAL JUSTICE

"A Tortoise made friends with a Rabbit and persuaded him to burrow a large hole in order to trap a leopard. When it was prepared, the Tortoise went to the Leopard and told him that he knew where a Rabbit dwelt and it would be easy for them to catch it. The Leopard agreed and followed the Tortoise. The Tortoise had already instructed the Rabbit to have ropes in readiness with which to tie the Leopard and had arranged the program of operations. On arrival at the hole, the Tortoise first thrust in his hand. He brought out a few hairs and made the excuse that his arm was not long enough to take a firm grip of the Rabbit. He then said to the Leopard, 'Put in your hand'. The Leopard did so, and the Rabbit immediately bound it with rope. The Tortoise said again with your other hand. The Leopard did as he was advised only to have that hand seized and bound. The Tortoise then urged him to thrust his feet in to assist him to free his hands. These also the Rabbit tied with ropes. The Tortoise then said, 'Put in your head and bite the Rabbit with your strong teeth and kill him!'

As soon as the Leopard did this, a rope was passed around his neck and he was completely helpless. The Tortoise and the Rabbit then proceeded to kill the Leopard. The meat was taken to the Tortoise's house to be cooked, and the old Rabbit and her five young ones were invited to partake in the feast."

"While the meat was cooking, the old Rabbit left the house for a short while whereupon the Tortoise seized the opportunity to betray the little ones. He ordered them to replenish the fire. Then he told each one in turn to lift the lid of the pot in order to see if the meat was cooking properly. As each peeped into the pot, the Tortoise gave it a push so that, in turn, they all fell into the boiling water. The old mother Rabbit returned ignorant of all that had happened during her absence. The Tortoise told her to check the fire. She did this and then lifted the cover of the pot to see whether the meat was cooked.

The Tortoise, who was waiting for the opportunity, gave her a push and she too fell into the boiling water. The water did not kill the Rabbits; only the youngest died from being suffocated by the pressure from those above it. In due time, the Tortoise reckoned that the meal was ready and raised the lid of the pot. Immediately, the old Rabbit and four of the young ones leaped out. They had managed to keep themselves above the water with the exception of their tails. These had been scalded and this is the reason why the tails of Rabbits are white.

As the Rabbits sprang out of the pot, she flicked her tail and sprayed the boiling water on the eyes of the Tortoise causing him to be blind. As he groped about, he missed the food and the Rabbits ate it. He cried, 'Anum" (female Tortoise) my wife, bring a pin, bring a lance to open my eyes!' His wife did as she was bidden, but only succeeded in making a little opening. This is the reason why the eyes of the Tortoise are so small".

Lesson and Moral Content of the Fable:
"Why the eyes of the Tortoise are so small".

In the myth narrated above, the Tortoise committed grave acts of injustice against: the Leopard whose murder he planned and co-ordinated; the Rabbit whom he wanted to deprive of the right to share in their booty, although both of them killed the Leopard; and the five young Rabbits who were innocent but almost boiled to death because of the greed of the Tortoise. In the first place, the Tortoise had deceived the Leopard by luring him into a catch for he Rabbit, although all necessary plans against the Leopard with the Rabbit had already been made. Then he had attempted to deprive the Rabbit itself the right already agreed upon to share in their booty. The attempt to deprive the Rabbit of his rights was against the contract made and was therefore a violation of commutative justice. Lastly, the innocent young Rabbits were almost boiled to death, in fact, one of them died in the hot water and all this because the Tortoise was very greedy.

For the Igbo, such a fable was a moral teaching whereby people are

warned to do good and behave justly because even if they cheat their partner, nature will still exact justice on the offender. We notice that the Tortoise lost both ways. He neither ate the Leopard which he had so much coveted nor did he go away from punishment for he became blind. Many African societies believe that nature is the true and highest judge which brings about justice even when there is no legal institution to pacify the wounded. His blindness and the fact that he did not taste of the meat of the Leopard are cited to show that, even in nature, justice exists which punishes the unjust and wicked.

IGBO NAMES AND THEIR RELATION TO JUSTICE

The significance of names cannot be neglected because names are records, living personal memories of persons and events.

> *"There is more in names, more joy, sorrow, pathos and passion, more tragedy and more comedy, more humanity and inhumanity than is possible for some civilized people to realise".* [14]

The attitude of "*what is in a name*? was never adopted by the Igbo, unlike many other cultures which give names to people just for the sake of a name, an identity.

A person's name in tradition has a peculiar and existential meaning. This explains why the naming ceremony in Igbo land is accompanied with feasting and joy. In a large family, the names given by relations and parents to the children reflect the joys and sorrows, fears and prospects of the people. On the occasion of taking a new social title, attaining some specific religious or social status, or when a remarkable event takes place in the life of a person, the name one adopts expresses this fact.
Thus, with insight into the relevance of Igbo names, we find in them a reflection of the Igbo perspective and philosophy on justice.

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14 *Wieschoof, W. H. A., Social Significance of Names Among the Ibos of Nigeria, Publ. In American Anthropologist, Nr. 2, Vol. 43, 1941, p.212*

On closer study, it becomes clear that Igbo names bear much religious sentiment. They express one's dependence on God, one's innocence before God and fellow persons and contain much advice for life. In giving names to the child, justice, good living and morality was inculcated in the life and essence of the child. Igbo names contain much of the social idea of justice.

TRADITIONAL NAMES & JUSTICE

Igbo Name	Meaning
Chukwugekpelum	God will be my judge and advocate
Nkemdirim	May what is mine be left to me
Achookwu	Do not trouble or offend another
Chukwujiofo	God acts with equity, God has justice
Oboadinma	Revenge is not good
Chukwunweobo	Leave revenge to God alone
Ekwutosi	Do not speak evil or gossip against another
Nkemakonam	May I never lack or miss that which belongs by right to me
Omenamma	One who is orderly, just, good and moderate
Onyeachonam	May nobody offend me or do me injustice
Onyekauwazulu	For whom is this world complete? Who has all he wants?
Uzoma	Good journey; Safe journey; upright way, the good way
Chinagorom	God is my solicitor
Nkemfulueweum	That which I see or get by right I shall take
Okpikpe	A Judge, the just Judge.
Okwuoma	A Fair, impartial or good speech.
Rapuluchukwu	Leave everything in God's hands
Rapunjo	Abstain from evil and injustice
Odinke m mere	What evil or offence have I done?

Nebechi	Look upon God for your own fortune (Do not envy progressive ones)
Maduabuchi	Man is not God
Agwa bu mma	Good and just behavior surpasses all
Oboadimna	Forgive others for revenge is not good

IGBO SAYINGS AND PROVERBS

Achom nkem	*Self reliance. I want my own; a person who strives to be self-supporting and does not envy or exploit others.*
Owurum	*If it was me! We must consider humanity not as means but as ends, and that we do to others as we would want them to do to us.*
Ome Mgbe Oji	*One who helps and gives and does things when in the position to do so.*
Onye achula uwa nii	*Take life easy. Do not pursue things with force. Fortune comes when it will.*
Onye emegbula ndu y	*Let no one offend against life.*
Ofo di ire, Ogu wu ike	*Uprightness is effective: Good Will is strength "Ofo", a staff, is the symbol of justice and uprightness.*
Ogunaedu	*My good will leads me. My life has not been cut short because of my uprightness. The Igbos believe that premature death is a curse which normally comes upon people who are unjust.*

Chi awughi otu	*Destiny and fate is not the same for everybody. Everyone has his/her own destiny.*

IGBO PRAYER AND JUSTICE

"My God and Ancestors
I wish no man evil
But if anyone says I have lived too long
Let him go before me to see
What it is like in the land of the dead
The man who holds on to righteousness
cannot get lost in his journey." [15]

With a piece of chalk in the hands and Kola nut in a vessel (both traditional symbols used during prayer and in other social occasions), an old chief from Aku in old Nsukka division of Igbo land examines his conscience in honest prayer to God thus:

Ezechioke - God of creation
O buru na m gburu madu - If I killed a fellow human being
O buru na m tuturu ihe onye ozo - If I stole what belongs to someone
O buru na m gbara ama - If I betrayed another
O buru na m boro ji onye ozo - If I uprooted another's yams
O buru na m puru madu onye be ya - If I took another's wife
Were ndu m tata - Take my life today. [16]

15 *Egudu R. and Nwoga, D., (Ed), Poetic Heritage", N. Ifejiaku Publ. Co., Enugu, 1971, p.55*

16 *Obiefuna, A. K., Some aspects of Traditional Moral Heritage with particular reference to the Igbo of Nigeria, publ. In "Lucerna" July - Dec. 1978, No. 1, Vol. 1. B.M.S. Enugu, Chuka Printing Co., p.21*

CHAPTER THREE

'ALA' or 'ANI'- 'THE EARTH': FOUNDATION FOR ETHICS RELIGION AND JUSTICE

Obviously central to the entire existence of the Igbo is the soil - *Ala*. The concept of *Ala* is believed to have originated in *Chukwu* (Supreme God) himself, even though she is the wife of *Igwe* (the sky), a son of *Chukwu*. Just as a husband fertilizes his wife, so Igwe, in the form of rain, fertilizes *Ala*. Anthropogists D. Forde and G. I. Jones, whilst documenting their research findings in Igbo land, noted on the *Ala* thus: *"Ala, earth spirit, is the most prominent deity and is regarded as the queen of the underworld and the owner of man whether dead or alive. She is the source and judge of human morality and accordingly exercises the main ritual sanctions in disputes and offences. The priests of Ala are guardians of public morality ."*

Some anthropologists have sounded sentimental in regarding man's relationship to *Ala* as that between mother and child. This might be an over exaggeration. In a figurative sense, however, it is correct. After *Chukwu*, all other minor deities and the ancestors buried in her bowels under the earth are subject to her. Yet *Ala* remains the nearest and dearest, maintained to be a merciful mother, who increases the fertility of the soil and makes the fruit of the earth available to man's livelihood. No wonder, M. N. Okoro writes, *"Ala* is a great spirit, and man, having got his *"Chi"* from God, is in the custody of *Ala"*.[17]

"It is Chukwu and Ani that we invoke: Every people in their town call upon Chukwu and Ani. When the Akpu plant matures it falls and rots on the ground. No one can see it again. When the Iroko tree matures, it falls on the ground. When man matures, he falls on the ground." - R C Arazu

17 *Meek, C. K., Ibid.*

'ALA', THE DEITY & THE LAND

Obviously, central to the entire existence of the Igbo is the soil, the land or the earth. It is in land that the ancestors are buried and wherein their souls and bodies rest. Life springs from the soil. On the soil grows yam and cocoyam (Ji na Ede), vegetables and fruits. We speak of the soil as *"Mother Earth"* for it is sacred to the Igbo. To commit a crime forbidden was an *'Nso ani'*, that is, an abomination, for it pollutes the spirit of the Earth (*Ala, Ani*), and threatens the entire community. This summarizes the background of Igbo belief in one of their most important deities - the *"Earth-deity"* or *"Earth - goddess"* called *'Ala or 'Ani'* .

Land is not sold in original Igbo society as it belongs to the community and not to the individual. It has been suggested by scholars of Igbo culture that the main reason why land remained unsaleable was because, it portrayed disrespect to the earth goddess. And where land was sold in later years, especially after the foreign influence in Igbo culture, the earth goddess had to be ritually purified if the transaction was to be accepted as consummated.

Says Uchendu:

"The Igbo feel ashamed and guilty to have to sell land". [18]

The Igbos, being an agrarian and settled people, preserved the earth and performed many rituals through the priests of *Ala*. These rituals are prevalent during the various planting seasons: harvest period, first fruits, and other major annual celebrations. *Ala* was respected, acknowledged and requested to guide and care for her children, being steadily pacified by incessant prayers and gifts through the ancestors.

18 *Uchendu, V. C., The Igbo of South Eastern Nigeria, Holt, Rinehart, and Whinstone, New York, London, 1965, p. 96*

"Ala, our Mother,
on behalf of my dear people I make this sacrifice to you as thanks for the good harvest. You have brought us rain and have given us a good harvest. Let your children eat the grain of this harvest calmly and peacefully. Do not bring us any depression or surprises. Guard against the illness of people herd and flock, so that we may enjoy this season's harvest with peace of mind. Remove death and anything that will bring misfortune to your children. Give us good health to enjoy the fruit of our labour which we received from you" [19]

The Earth Spirit, *'Ala'* , as the mother of the Igbo people, is characterized by sacredness and peacefulness. Therefore, man being made from the clay of the earth, also carries the sacredness of the Earth-spirit. Plants, animals and humans go back into the womb of the earth, and the dead ancestors play their peculiar role in the world of the living from yonder - in *'Ala'*.

> *Ala "is the most powerful and important deity after the Supreme Being 'Chukuu'. She is the Earth goddess, who exercises very great influence on Igbo morality; as is the divine female principle who guards the 'Omenala' (customs of the land), believed to have been handed down to the ancestors from time immemorial".* [20]

Generally in Igbo land, the *"Cult of Ala"* is very common, as each of the hamlets or villages composing a village group has a shrine and a priest of *Ala*, but there is always a communal shrine, namely, that of the particular hamlet or village which originally occupied the locality.[21]

19 *Ibid., p.12*

20 *Meek, C. K., Law and Authority in A Nigerian Tribe, Oxford University Press, London, 1937, p. 25*

21 *Okoro, N.M., The Igbo belief in man's continued existence after death - Its influence on the society, Unpublished Thesis, Rome, 1971, p.39*

People worship her as the sustainer of life, champion of justice and defender of the weak or innocent. Respect and fear of the laws of *Ala* make people fair in their dealings with others, for *Ala* as the custodian of morality and the giver of *'Omenala'* demands good deeds and prohibits evil, which is termed *'Nso -Ala'. The Igbo word for crime -'Alu' or 'Nso Ala' simply means 'offence against the land' or 'desecration of the earth'.*

The *cult of Ala* is one of the most powerful integrating forces in Igbo society since *Ala* has all these noble attributes especially of being the source of human morality. *Ala* is the main legal sanction. Ala, the Earth goddess is believed to share in the justice of the Supreme God *(Chukwu)* in great measure, being nearest to Him. Laws are made in her name, and oaths are sworn through her. The Igbos believe that *Ala* cares and loves her children, and the laws issued by her are for their well-being and happiness. People see in her punishment for offenders, a warning to the innocent and a sign of corrective measure. Nonetheless, *Ala* does not punish so easily, but waits till the offender has proved incorrigible.

In this case,

> *"Ala deprives evil men of their lives and her priests are the guardians of public morality.. Ala is in fact the unseen president of the community, and no group is complete without a shrine of Ala. The common possession of a shrine of Ala, is indeed one of the strongest integrating forces in Igbo society".* [22]

In the absence of Ala, in modern society and her apparent replacement with modern legal proceedings, one is in a better position to explain the inability of the center to hold and why things seem to fall apart.

22 *Forde, D. and Jones, I. G., The Igbo and Ibibio Speaking peoples of South-Eastern Nigeria, International African Institute, London, 1950, p.25*

As a result of the Igbo's reverence for *'Ala"* , law and order was guaranteed in traditional Igbo society, and legal sanctions were imposed on the people from the world of the sacred. Heinous social crimes were forbidden and major offences against native law and custom were punishable under the sanction of *Ala*. Some of these crimes included "homicide, kidnaping, poisoning (and) stealing."[23]

Death or banishment was not considered enough punishment for some of the above crimes, and in certain cases, an offender was denied ground for burial and thrown into the evil forest, one of the greatest social humiliations and condemnations a native of Igboland could ever suffer. Such a soul found no rest among the ancestors. This concept might be compared to the Christians idea of hell.

In Igbo society, the action of an individual could bring punishment on the whole community. In this case, the whole community was bound to make propitiatory and expiatory sacrifices through the priests of *Ala*, to avoid reprisal on the entire community for wrong-doing. In this manner, social responsibility for the evil actions of an individual was enacted and peer pressure became an instrument to uphold accepted codes of conduct; a similar concept was portrayed by Protagoras in Greek philosophy.

The communitarian spirit of the Igbos made people swear their honesty by *Ala*, but they could also, as was often the case, gather together in the village as an extended family to impose a curse or blessing through the *Ala* on offenders or peacemakers correspondingly. Even in the present day, in Igbo villages, elders advise younger one to avoid deeds, considered as *'Nso Ala'*, as these may bring the wrath of *Ala* on the community.

The community took upon itself responsibility for actions undertaken by the individual. In modern terms, this could be likened to the practice of social responsibility, codified in law. Nzomiwu has noted in his thesis:

23 *Meek, C.K. Ibid. p. 25,*

"One very readily sees how Igbo religion sustains and enriches the Igbo sense of justice. Igbo belief in the Earth goddess enhances and enforces social justice. Whether one acts out of fear or love of the Ala, who is a 'merciful mother', the result is the same, namely the effecting of social justice within the community" .[24]

Although other minor deities can be rash in their judgement and punishment, the earth goddess was the opposite as she was slow to punish:

"She is supposed to see the thoughts of all and thus can measure the depth of the malice of each action. In this way, her judgements and punishments are considered as proper... The Earth goddess can thus give life or destroy it, she loves immensely, but it is true also that nobody can hurt more than she. Her justice is believed to be next to that of Chukwu, because she, like Chukwu, weighs all the circumstances surrounding an action". [25]

'Ala' - the patient mother

"Minor deities may not take action against an Igbo without asking Ala to warn her children, but no spirit can intercede or intervene when Ala herself has decided to punish. But she does not punish in haste, she gives many signals of her displeasure".[26]

In attempting to explain some of the Igbo religious practices, it does help to remember that rituals assist the spirit-seeking mortal in the aspiration towards a cosmic infinity.

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24 *Meek, C. K. Ibid.*

25 *Meek, C.K., Ibid.*

26 *Uchendu, V.C. The Igbo of South Eastern Nigeria, New York, 1965. (C. K. Meek, Ibid., p. 25)*

As Wole Soyinka has said:

It is "through the drama of ritual, African Societies search for harmony in their universe, and for the formation of social standards and moral verities". [27]

CHUKWU (GOD)

Chukwu is all-powerful and surpasses all, whether organic, inorganic or transcendental. In his creative aspects, *Chukwu* is described as *'Chineke'* - the God who creates; *'Chukwuoke'* or *'Chi okikie'* meaning creator, *'Osebuluwa'* - the God who fashions the world. He is the author of all life including man. He sends rain, makes the crops grow, and is the source from which humanity derives its individual *'Chi'* (Soul). As a merciful and just God, He grants favours to mankind (*Chidiebere, Chinenye, Chukwuka, Chinwe*). Wrong-doers are adequately punished by the gods and spirits on behalf of *Chukwu*..

CHUKWU (GOD)

"is thus the creator of, and father of other revered spirits, such as 'Igwe' - the sky; 'Amadi Oha' - lightening; the 'Ala' - the Earth - Deity. Sacrifices are not usually offered to Chukwu, but he is regarded as the ultimate recipient of all sacrifice". [28]

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27 *Iloanusi, A. O., Myths of the Creation of Man and the Origin of Death In Africa, European University Studies, Peter Lang, Frankfurt/M, 1984, p. 95*

28 *Meek, C. K., Ibo Law, (From Essays presented to C. G. Seligman, London, Kegan Paul and Co., 1934, p. 209 - 226*

It is still under debate among scholars of Igbo religion, if man has anything to do with God directly. It is Chukwu who ordered and created the universe as we know it, but after creation, He withdrew into solitude so that man hardly has anything to do with Him directly.

This explains perhaps why, besides the existence of God as a supreme, absolute and just being, the Igbos believe in the existence of a series of deities and spirits, living on the supernatural plane and relating to man and his environment on the natural plane.

ALUSI - VILLAGE SPIRITUAL FORCES AND SHRINES

The Alusi are strong spiritual forces in the village, often residing in a shrine, and the power of blessing or destroying according to circumstances. Unlike Chukwu whose attribute was goodness and benevolence, the Alusi was responsible for externaliz ing Chukwu's powerful qualities, and for punishing social offenders. Hence, the Alusi was worshipped in Igbo land. Sacrifice were made to placate it, and the Diviners - (Dibia), Ogba-afa and priests - (Eze-udo' or 'Eze-ani) were involved in interpreting the wishes of the Alusi and placating it for the general good of the community. [29]

EKWENSU - FORCES OF EVIL

Belief in 'Ekwensu' - the architect of all evil and perpetrator of wickedness among man exists. Ekwensu is always opposed to Chukwu, and although subordinate to Him (like all other spirits) tries continuously to free man from God's ways, to deceive him into mischievous and disharmonious activities. The Igbos regard all mischief as work of the devil (Olu Ekwensu) and Ekwensu is blamed for most of man's worst ills and pestilence. No sacrifice is made to Ekwensu, nor do the Igbo worship him. But they try to free themselves from his control by going to the Alusi and making their sacrifices as demanded by the ("Dibia") - (native doctor or diviner,) or by going to the (priests or priestesses of the deity) - ('Ezeani') for placative sacrifices to drive out the evil forces of Ekwensu. The cause for individual wrongful action were thus attributed to the devil.

29 *Isichei, E., op.cit., p.25*

LAW:

The fact that humanity in a given time and place holds particular ideas and values including ideas of justice, is a fact worthy of study, particularly in relation to the evolution of legal reasoning. Law in the proper sense is a "rule and measure of acts directing them to their proper ends". [30] It may be of two kinds: physical law, directing non-free beings or moral law directing free beings. In the context of this chapter we are dealing with moral law which governs human behaviour.

St. Thomas Aquinas, in his classical definition of states that law is:

> *"nothing else than an ordinance of reason for the common good, promulgated by him who as the care of the community".* [31]

As an ordinance, law is distinguished from a mere counsel, advice or suggestion which have no binding force in reality. It is an order, a mandate, imposing obligation or moral necessity. As an ordinance of reason, law is formulated by the intellect and is a dictate of right reason, not arbitrary, both with itself and with other laws. It should be just, respecting existing rights guaranteed by higher laws and distributing burdens equitably. It should be observable, for no one can do the impossible or be reasonably expecting to do what is too harsh and difficult. It should be enforceable, otherwise only the good will keep the law, whereas others who need restraint, will go free. It should be useful, for law is a means to an end thus, needless restriction of liberty serves no purpose.

30 *Fagothey, Austin, S. J., Right or Reason, C. V. Mosby Company, St. Louis, 1959, (2nd ed,), p. 162*

31 *Aquinas, T., Summa Theologica, I - II, q. 90, a4*

As an ordinance for the common good, law seeks the benefit of the community as a whole and lastly, as an ordinance promulgated by the competent authority it should be made known to those whom it binds. Certainly, a law is useless if those expected to obey it do not know of its existence. In each case, the manner of promulgation will depend on the nature of the law, the customs of the people, and on circumstances generally.

It is with this background that we intend to consider that aspect of Igbo law and custom which is entrenched in what the Igbo call *"Omenala"* or *"Omenana"* or *"Omenani"* meaning the law of the land; literally, as it is done in the land.

LINGUISTIC ANALYSIS OF OME-NA-ALA

Ome-na-ala comes from "Ome" which means "as it is done". It is the third person, impersonal form of the word "Ime" which means "to do", "to obtain".

"Na" is a preposition which means "in" or "and" "Ala" otherwise called "ana" or "ani" is a noun, which means land, earth, ground. [32]

Omenala as a word therefore means in the Igbo language "that which obtains in the land", "as it is done in the land", "the law and custom of the people of the land".

32 *Obiego C. C., Igbo Idea of God, In "Lucerna", Vol. No. 1 (July - December 1978), Published by Bigard Memorial Seminary, Enugu, Nigeria. Printers - Chuka Company Ltd., Enugu, p. 28*

THE ORIGIN OF OMENALA:

It is not easy to trace the origin of Omenala especially among a people who had no written tradition. It has however been generally shown that the body of Omenala is often, if not always, linked with the ancestral cult or worship by the Igbos.[33] This cult is surrounded with the earth-spirit known as *"Ala, Ani, Ana"*. It is believed that the ancestors in times out of mind, after settling in an area, received laws from Chukwu (the great God) through *"Ala"* (the Earth-Spirit) which they passed onto their descendants as the tradition and custom of the land to be observed.

Ala helped the ancestors establish their stand on earth and directed them to erect the first shrine to the earth spirit *(Ala)* here on earth. This is why the term, *Omenala*, is used to express Igbo laws and customs.[34]

OMENALA AS UNWRITTEN TRADITIONAL LAW & CUSTOM:

Unlike cultures with a literary tradition, the ancient Igbo left no written records of their remote past to their descendants. Instead of a written tradition, oral tradition prevailed and is only today being gradually replaced with Western and Islamic literalism. The ancestors handed over by word of mouth from generation to generation after them the contents of their experiences, laws, customs, world view, moral, history and philosophy.

The content and substance of this oral tradition is expressed through myths, songs, stories, liturgical celebrations, proverbs and religious practices, all of which the Igbo generally refer to as *"Omenala"*. It is therein that the law, the reason for the law and the promulgation of the law is embedded.

Igbo Jurisprudence is based on the influence of the "Omenala", that no

33 *Ibid.*

34 *Ibid.*

aspect of traditional life escapes it.[35]

In this connection, an author remarks that: *"As soon as a child is born into the community of "Umunna" (brethren), his life is affected by the intricate network of these restrictions and all that they represent. Immediately a child is able to speak and understand issues, he is exposed daily to the do's and don't's of the society and his parents drum it into his ears, through fables, told in the night and around the fireside and through exposure to various forms of rituals and other observances, the gravity of committing abominable acts".*[36]

Dr. T. Anunobi adds to this his observation that: *"all the traditional Ibo people may be summed up as people observing the "Omenala". Whosoever observes the Omenala faithfully, that is, according to the practice of the proper "Umunna" will arrive at the territory of, and win reunion with the proper ancestral dead".* [37]

The supreme goal of existence means conformity with the *"Omenala"* , as it is known and practised in one's own community of *"Umunna"* . Omenala expresses the legitimate authority which guides the culture and behaviour of the people, and this is found to be true amongst many African cultures:

> *"It includes all the provisions, prohibitions, traditional beliefs and practices which are contained in the unwritten code of law and customs, conventions and are brought down from ancestor to posterity".* [38]

In its functional context, one cay say that whereas the Jews have their Torah, the Catholic Church their Code of Canon Law, the British their Constitution and the Germans their *"Grundgesetz"* , so also have the Igbos their *"Omenala"* .

Like any other law guiding human beings, the Omenala is at the same time static and dynamic. It is static as an accepted practice and constant point of reference (authority) in cases involving the culture of the land and law of the area. No wonder, the Igbos often began their fireside stories with the expression *"N'oge"* or *"Mgbe gbo"* meaning *"in the olden times", "in time immemorial", "at the time of the ancestors"*

"Omenala in general is a generic term for the body of Ibo socio-religious laws, customs and traditions passing from generation to generation and having its origin as far back as the time of the ancestors".[39] This static aspect of Omenala is also seen when the Igbo give as their sole reason for an action or decision *"Nna anyi kwulu si..."* (Our fathers said...); or *"Nnanna anyi fa kwulu si"* (Our forefathers said...). But Omenala is also dynamic in so far as it is handed down from generation to generation. As a tradition, it is liable to change depending on the changing conditions of the new generation.[40]

Since Omenala is an oral tradition, it does not maintain all the flair and emphasis it had when it is retold, or it shifts this emphasis to another area.

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35 *Osuji, C. C., The concept of salvation in Igbo traditional religion, Unpublished Doctoral Thesis, Rome, 1977, Pontifical Urban University, Theology Faculty, p. 22*

36 *Olisa, M N. S. O., Taboos in Igbo Religion and Society, In "West African Religion", published by the Department of Religion, University of Nigeria, Nsukka. N. 11, January 1972, p. 11*

37 *Anunobi,T., Unpubl.Thesis, : The spirituality of death,Rome,1975,p.39, (Gregorian Univ) .cf.also Osuji, C. C., op. Cit, p.25*

38 *Anunobi, T.U., The spirituality of death, Unpublished Doctoral Thesis, Pont. University, Gregarina, Roma, 1975, p.391*

39 *Obiego, C. O., Ibid.*

40 *Shelton, A.J., The Conch, Vol. I, March 1969, p.31*

Thus, ultimate questions of life concerning the origin of human existence, the purpose of human existence, death, the why and how of things, moral laws, land, market and many other laws, change their emphasis when retold much later. This does not however mean that the old static truth of Omenala is changed. No! It is the same old truth manifesting itself to people of another generation in adaptable and understandable language, symbol and signs of the times.

In its dynamic aspect also, the Omenala differs in accident from one Igbo village to another in matters such as marriage, burial rites, breaking of Kola nuts, title taking such as Ozo and masquerades rites.

OMENALA: ORDER & JUSTICE IN THE COMMUNITY

It has been claimed by legal theorists [41] that the goal and substance of every law and legal institutions is to protect life and property, promote communal harmony, social justice and ethical decorum among the citizens. This is also the claim of the Omenala in Igbo land.

In various parts of Igbo Land, a breach of the Omenala was a very serious matter because it affects three dimensions which mean much to the Igbo. A breach means an assault on the *"Ala"* -the earth deity-, a disrespect for the dead ancestors of the clan as well as an offence against living members of the community. Depending on the gravity of the offence, various sanctions are attached to the breaking of the *"Ome nala"*. The punishment ranges from death in various forms to the loss of one's possessions in an attempt to pacify the earth goddess (spirit), the ancestors and the living.

41 *See for example - Julius Stone, "Legal System and Lawyers Reasoning", (1964); "Human Law and Human Justice", (1965). (Stevens and Sons Ltd., London), Aquinas, T., "Summa Theological", 1-11, Jeremy Bentham, "Introduction to the Principles of Morals and Legislation" (1980).*

Sanctions are carried out by the ministers of *"Ala"* whose duty it is to inflict appropriate punishment. The Omenala prohibitions also called *"Nso ala"* (Sacred laws of the land) guide four main areas of human behaviour as follows:

1. **Life**
   Human life especially that of a clansman is regarded as sacred, so that homicide, murder, suicide which are referred to as *"Ochu"* are regarded as breach of these sacred laws and prohibitions

   In Achebe's *"Things Fall Apart"*, Okonkwo committed inadvertent murder: *"Okonkwo's gun had exploded and a piece of iron had pierced the boy's heart... (Ezeudu's son). The only course of action open to Okonkwo was to flee from the town. It was an "Ochu" (homicide), a crime against the earth goddess to kill a clansman, and a man who commits it must flee the land... He could return to the clan after seven years".* [42]

2. **Economy**
   Included in the *Nso Ala* (Sacred laws of the land), a breach of which is *"Aru"* or Taboo, are such laws which touch on the economic life of the people. Stealing any of the staple foods, especially yam; destroying the earth, especially in the cutting of old trees; surreptitiously altering the boundary of a piece of land; claiming a title which one has not merited; and offending the *"Ala"* by quarrelling during the sacred week, are all punishable offences against the Omenala.[43]

3. **Harmony In the Community**
   Interpersonal relationships are regulated and include such areas as: title-taking, marriage ceremonies, naming ceremonies, initiation rites, burial and death rituals, economic and social activities of various sorts.

42 *Achebe, C., Things Fall Apart, (c 1958),ed. 1981, Heinemann, London, P. 86 - 87*

43 *Osuji, C. C. , The Concept of Salvation in Igbo Traditional Religion, Op.cit., p.26, See also the case in Achebe, C., Things Fall Apart, op. Cit., chapter 4*

It was important for community members to be physically present at occasions even if their enemies celebrated. The reason was to ensure that reciprocity would be accorded them during their own events. Loneliness or isolation was not known.

4. **Respect For The Ancestors**

It is a taboo and a great crime to speak against the ancestors -the living dead- or show irreverence or distespect for them. A breach of the Omenala in these areas is taken very seriously. In observing the laws and customs of Omenala, one is said to be *"in union with the socio-spiritual head of the visible community, hence one is undoubtedly linked to its invisible segment -the dead "Ndichie" (Ancestors)"* [44]

Names related to the Earth Deity - 'Ala', 'Ani'.

Anichebe - May the earth protect
Aniagolu - The earth we worship
Anigbo - May the earth adjudicate
Anigbogu - May the earth stop the fight
Anijielo - The earth possesses wisdom
Anikwenwa - The earth allows children
Anikwe - May the earth permit
Aniagbaoso - The earth does not run away
Aniebonam - May the earth not accuse me. [45]

44 *Osuji, C. C., op.cit., p.22*

Ike, O; Lectures on African culture; Tilburg University, 1993; The Netherlands

PART II

PHILOSOPHY JUSTICE & LAW

CHAPTER FOUR

PHILOSOPHY, JUSTICE AND LAW

The concept of justice is often misunderstood and in practice much neglected. Human societies have become increasingly alienated and divided, whilst ideologies - religious and otherwise - have multiplied. Philosophical schools have differently construed the concept of justice in terms of utility, equality, rules, need, classlessness and so on. In our times, the differences have not narrowed, rather we notice through the various modern means of communication that injustice has increased in a world where people are becoming more conscious of their 'rights' and are prepared to die for them.

The great African scholar, St. Augustine of Hippo, some sixteen hundred years ago asked the question concerning justice, thus;

> *"Remota justitia quid sunt regna nisi magna latrocinia?* [46]
> *(Without justice are states not but a band of robbers enlarged?")*

The British philosopher, David Hume equally emphasized that *'justice is the bond of society and no association of human individuals could subsist without it.* [47] Throughout the centuries, philosophers before Plato and Aristotle considered the concept of justice and attempted definitions of it. This exercise has continued and in our day we still wonder why the concept of justice should display such a diversity of meaning.

46 *St. Augustine, City of God, IV. Iv. (Without Justice are States not but a band of robbers enlarged?")*

47 *Hume, D., An Enquiry Concerning the Principles of Morals; L. A. Selby-Biggge (Ed.), Oxford, 1902, paragraph 165, p. 206)*

The answer is that each version of a particular concept finds its natural home in a different way of looking at society; and because there are several such perspectives of society, it is understandable that our philosophical concepts should display such diversity.[48]

We attempt in this chapter to examine the concept of justice in the history of philosophy. In tracing the history and meaning of the idea of justice in the philosophic tradition, we have tried to articulate the thoughts which unite various schools without belabouring those which separate them. In writing this book, we pose the following key questions, the answers to which constitute the central thread of our thinking:

- Why should there be diversity and multiplicity of meaning with regard to the way societies look at the concept of justice?
- Can any one of these diverse meanings of justice be shown to be correct above all the others?

Religion has always been a powerful factor in human life and history. In establishing ethics and morals, religion has also played a particularly significant role, for it was primarily through religion that moral codes were formulated and enforced in most ancient societies: African, Eastern & Western alike.

In ancient Greek thought and mythology, justice was conceived in two ways:

- as a supra-mundane, eternal idea independent of man; although man seeks to know its nature and draw inspiration from it in his actions;
- as a man-made social ideal, completely dependent on man in its inception and practice.[49]

Historically, views on justice appeared in a primordial conception of the

48 *Miller, D., Social Justice, Clarendon Press, Oxford, 1976, p. 7*

49 *Forkosch, D.M., Justice, Dictionary of the History of Ideas, (Studies of Selected Pivotal Ideas), Philip P. Weiner (Ed.) Vol. 11, Charles Screibner's Sons, New York, 1973, p. 652*

relation of man to his environment. This primitive concept grew out of a naturalistic religion rooted in fear and need, and involved blind submission to the elements conceived as gods. In all of the primitive ideas of divine justice, one discerns the supernatural envisaged as an eternal power with man as the buffeted recipient of favours or punishment.[50]

We will now seek to identify a common thread in the perception of justice, from a religious and ethical point of view, and draw parallels between the theory of justice in ancient Greek and Western philosophy and the practice of justice in traditional Igbo society.

RELIGION & JUSTICE IN ANCIENT GREECE

Writing around 504 - 501 B.C, the Greek philosopher Heraclitus described the process of change as a *unity of diversity*. The chief idea in his thought was *"Omnia fluunt" which means that all things are flowing (changing).*

Heraclitus writes: "All things are in a state of perpetual flux or change, and you cannot step into the same river twice".

Much of what he had to say found an important place in later philosophies of Plato and the Stoics, and he was deeply admired by Hegel and Nietzsche.[51] For him, the process of change:*" is not a haphazard movement but the product of God's universal reason".*

This idea of reason came from Heraclitus' religious conviction that the most real thing of all is the soul and the soul's most distinctive and important attribute is wisdom or thought.

50 *Ibid.*

51 *Stumpf, E. S., Philosophy, History and Problems, McGraw Hill Book Company, New York, 1971, p. 13*

Because God is reason and since God is the one permeating all things, Heraclitus believes that God is the Universal which holds all things in unity and orders all things to move and change in accordance with thought or principle. And thought constitutes the essence of law.

> *"God, as reason, is therefore, the universal law in so far as they possess God or fire in their own natures and thereby possess the capacity for thought".* [52]

According to Samuel Enoch Stumpf,

"it was this concept which provided the basis for the Stoic's idea of cosmopolitanism, the idea that all men are equally citizens of the world and precisely because they all share in the one God's reason. It was this concept, too, which formed the foundation for the classic theory of natural law, which, with some variations, has had a continuous impact upon western thought and political practices. It was preached by the Stoics and adapted by early and medieval Christian theologians, became a dynamic force in the American revolution, and is even in modern times a vital theory of the nature of law".[53]

THE SOPHISTS

The Sophists emerged a century later comparing different customs and civilizations and questioning whether the gods were really sacred and inviolable. They concluded that these were the creatures of man and his conventions and therefore capable of change. Consequently, they oriented Greek thought and ideas to a form of humanism and challenged the thinking of their time by positing such questions as:

> *"Is the distinction between Greeks and barbarians, between slaves and masters based upon evidence or simply upon prejudice"?*

52 *Ibid.*

53 *Stumpf, E.S., op. Cit., p. 13 - 14*

Protagoras of Abdera was the oldest and, in many ways, the most influential of the Sophists who taught in Athens. He brought the idea of justice into a humanistic framework by saying that *"man is the measure of all things, of the things that are, that they are, and of the things that are not, that they are not".* [54]

Knowledge, said Protagoras *" is limited to our various perceptions and these perceptions differ with each person".*

He contended that change was an illusion and not a fact (illustrated by the paradoxes of Parmenides and Zeno of Elas). This resulted in the ultimate reduction and absurdum by Zeno's pupil Gorgias that if the being is infinite and eternal, it cannot be located in a particular space or time and therefore cannot exist i.e. being and nothing would then be the same. This argument, of course, made the point that justice could vary in different places and times.

In the firm belief that moral judgement is relative, Protagoras and his school denied that there was any uniform law of nature pertaining to human behaviour which people everywhere could discover, and maintained that law and morality is based not upon nature but upon convention. For this school of thought, the idea of justice was relative and permanently changing, and this point of view led them to the following conclusions:

1. *That the rules for moral conduct are fashioned deliberately by each community and have relevance and authority only for the people in that community;*
2. *That 'moral conduct' is unnatural and that humanity abides by such rules only because of "peer pressure" and "public opinion". Thus if all actions could be kept private, even the "good" would not act morally.*
3. *That the essence of justice is power, or that "might is right". Thus the Sophist's response to the question 'what is the good life?' would have to be 'the life of pleasure'.*[55]

54 *Protagoras in "Theaetetus\, 152 a (Refer to Plato's dialogues)*

55 *Stumpf. E.S., op.cit., p.66*

PRE-LITERARY GREECE & THE ORAL TRADITION:

Homer:

The Greek poets *Homer* and *Hesoid* played an important cultural role in pre-literary Greek history. Their compositions prior to Plato had constituted an exclusively oral education in a Greek world, which had placed minimum reliance upon the written word. Homer had much to say about justice but since that idea is not directly stated or expressed anywhere in the epics, it must be deduced from the actions and speech of the characters. The justice of the Homer or the Hesoids may be considered a purely Greek issue but once place in the context of a major transition from the oral to the word, it confirms our belief that the oral tradition was an effective conveyor of traditional values and customs from one generation to the next.

In the early Homeric anthropomorphism (ca. Eight century B.C.), most probably following Mycenanean patterns which existed eight hundred years earlier, a pantheon of deities loosely ruled by Zeus was created and man was in comparison only a plaything depicted in Greek tragedies as helplessly confronting destiny. In Homer's poems, the idea that the rulers on earth pronounce justice on the basis of religion and customs is implicit, although it may be argued that if these traditions are the basis for justice, then man by adopting them also participates in the substance of justice.

Greek scholar, H.D.F. Kitto holds that:

> *" Behind the gods, is a shadowy power that Homer calls Ananke, "necessity", an order of things even the gods cannot infringe"* [56]

Although such hierarchical polytheism guarantees a justice by which man

56 *Havelock, E. A., The Greek Concept of Justice - From its Shadow in Homer to its Substance in Plato, Harvard University Press, 1978. (See also: Krafft, Fritz, Vergleichende Untersuchungen zu Homer und Hesoid. Hypomnemata 6 Gottingen, 1963.*

submits to destiny, the gods themselves were not subjected to such constraints in their own relations with man.

Around the fifth century B.C., Herodotus in his history and Aeschylus in his plays, depicted man as a puppet but with some minor degree of choice while Zeus was presented as the punisher of overwhelming ambition, so that justice might now acquire a pattern of man's free will.

Here again, man was subordinated, even though apparently elevated to a higher moral level.[57]

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57 *Ibid. (Note: word translated as "doing right" is dikaiosune, commonly translated as 'justice', which is the main theme of Plato's Republic, whose subtitle is about dikauosune', R.C. Crose and A.D. Woozley, however maintain in their book "Plato's Republic" (Macmillian 1964) that justice is a thoroughly unsuitable word to use as a translation of the Greek word'. Dikaiosune has a less legal and more moral meaning than justice; it is in fact the most general Greek word for 'morality', both as a personal quality and as issuing in right action. The corresponding epithet diakios is translated by Liddell and Scott as "observant of duty to God and man, righteous". Normally in this translation the two words are rendered by 'justice', 'right action', and 'just', 'right',. But the Greek meaning is uncomfortably wide and occasional variants are used. Similar remarks apply to words of opposite meaning - adikia which is 'injustice', 'wrong-doing', adikos 'unjust', 'wrong',. But here there is further complication of a verb adikein 'to do wrong' or 'injustice' (intransitive) or to 'wrong' or 'injure' (transitive).*

One may therefore measure the distance between the justice of Hesoid and that of Plato by recognising that in the substitution of dikaiosune for dike lay an enlargement of the field of meaning of "justice". It became richer and more complex by including the double reference to the polis and to the individual. Justice remains the symbol of a relationship within society - as it always had been - but now it also describes one within the human personality; (Ref. Havelock, A.E., The Greek Concept of Justice, 1978, Havard, p. 312)

The Greek terms for justice included *Themis* (a consort of Zeus) and *Dike* (a daughter), both permitting many varied interpretations. *Themis* might be defined as the personification of rational thought, or as self-inherent righteousness (as in Kant and Hegel), analogous to the idea of justice. *Dike* on the other hand, without any moral content and referring to a way of behaviour, was the personification of punishment, or the decision of a judge, and was applied to relations among persons analogous to an ideal of justice (Aristotle's subsequent distinctions of retributive and distributive justice may be referred to the various connotations of Dike).

PYTHAGOREANS:

The ancient Pythagoreans, accepted that justice was to be found in equality, a notion which has remained a very important component of the ideal of justice.

Equality here designates the ability to share or to distribute properly. Where there are burdens to be borne, they should be laid on everyone, or on everyone capable of bearing them, or at least on the relatively many shoulders of those best able to bear them. The problem, however, was to determine which ought to be actually adopted in a given circumstance. Where could one draw the equality line? Quantitatively or qualitatively?

In the attempt to solve this all too common application, the notion of reciprocity, interpreted to mean "an eye for an eye", standard of retaliation evolved.

The later *Eleatic School* included Parmenides whose poem "On Justice" spoke of the "All", somewhat analogous to Anaximander's indeterminant (apeiron), and mentioned justice as:

> *"... the mighty avenger, that keepeth the keys of requital...*
> *neither production neither destruction doth Justice permit..."*[58]

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58 *Ibid*

It might be interesting to observe that traditional Igbo society had resolved this dilemma through its communal reverence to *Ala* and concept of social responsibility referred to in Chapter 3.

The Fulani Creation Myth

At the beginning there was a huge drop of milk,
Then Doondari came and created the stone.
Then the stone created iron; and iron created fire;
and fire created water; and water created air
Then Doondari descended a second time.
And he took the five element , and he shaped them into man.
But man was proud.
Then Doondari created blindness, and blindness defeated man;
But when blindness became too proud, oondari created sleep and sleep defeated blindness; But when sleep became too proud, Doondari created worry and worry defeated sleep;
But when worry became to proud, Doondari created death, and death defeated worry;
But when death became too proud, Doondari descended for he third time
And he came as Gueno, the eternal one,
And Gueno defeated death.

-Translation by Ulli Beier, in African Poetry, 1966-

PLATO

Plato, as later editors of antiquity recognized, composed several dialogues each of which is committed to the topic of a single virtue. Justice is the only one of these which receives the honour of a treatise of ten books. In the Republic, the first book constitutes a dialogue which starts with a moral and political question: What is justice? Can it be defined?

No clear answers were given but the argument ends in the manner of the other ethical dialogues. But the dilemma this time must be solved. Justice, the supreme virtue, must be defined in and for itself. By the middle of Book Four, preparations have been made to place justice within the city,[59] and the soul[60] respectively, this virtue in each case being balanced against a definition of the corresponding vice.

The Greek word *diskaiosune* is a wide one and covers both individual and social morality. Therefore, from the start, the inquiry is concerned with both the individual and community, both ethics and politics. In his writings, Plato marks a profound difference in his attempt to systematically organize the meaning of justice, in distinction to Hesoid and other ancient poets in pre-literary Greek history who exploited the symbol of the word for dramatic purposes. In his treatment of the matter, it soon becomes clear that the question being asked in relation to justice is: *What is the basis of social and moral obligation? Why should one be law-abiding or moral if one does not feel like it? More simply put, why should one be good?*

There are paradoxes in Plato's justice; perhaps no philosophical attempt to formulate such a conception can ever escape them. They illuminate the intermediary nature of his role in Greek cultural history and the mediating quality of his genius, poised between an oral past fast disappearing and a literate consciousness now coming to its own. This is especially true of his political justice which asserts: *"To do one's own thing"*. But what is that "one's own thing"? No operative answer seems possible and the formula does not seem explicable except in its own terms. It merely insists that the citizen do properly what in fact he is doing, accepting, we might say, his assigned role. Who or what could have assigned it, unless it be the existing life-style of the social nexus, within which he is living?

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[59] *Plato, The Republic, Bk.4, 432b ff (Penguin Classics, 1974, p. 202-203)*

[60] *Plato, The Republic, Bk. 4, 442d ff (op. cit., p. 219-220)*

And what is this, if not a description of behaviour which responds to that traditional rule or propriety which has conserved and protected the existing nomos and ethos of Greek society? And there are many more questions to Plato's dikaiosune. We might notice however that what Plato does not want to retain is the purely procedural aspect of Dike. Havelock maintains that Plato would prefer a society where the need for adjustments required to preserve or restore propriety does not exist. His justice becomes the symbol of unchanging stability.[61]

When he proceeds to implant justice in the human soul, he leaves tradition behind him. Personal justice, reserved to the last, receives a definition which is clinched in the following paragraph:

> *"In reality, justice pertains not to the outward action (performed) upon one (concerns), but to the inner, that which really pertains to oneself and to the self's concerns; the individual avoids allowing the elements (gene) in the soul to mind each other's business and get involved with each other; he actually makes a proper disposition of what is personal to him (oikeia): he personally assumes command of and organizes himself (auton hautou) and becomes friends to himself... becoming in all respects one out of many..."* [62]

There is a difference between acting on deliberate choice, acting from a generous impulse, and acting on animal appetite. Plato's answer to the question "What is justice?" is that in the individual it consists in keeping a proper balance between three elements namely, intellect, ambition and physical desire. These must all have their due and proper fulfilment, and find their proper place in the good life. That is Plato's solution to the problem of individual morality. True morality consists, in fact, in giving due satisfaction to the different elements in us and preventing any of them from dominating at the expense of the others.

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[61] *Havelock, A.E. The Greek Concept of Justice, op.cit., p. 320*

[62] *Plato, Republic, Bk.4, 443c9 ff*

If justice does not apply to outward action, it becomes an inner and private condition and a morality of the self but not of society. In a way, the conception of justice as the symbol of a purely personal morality gives room for varied interpretations. Havelock maintains that Plato's moral philosophy cannot shake off paradox.

Whereas Plato's description of political justice was conservative and in many respects avoided a sharp break with traditional notions. His psychology or rather, his views about personal justice are as radical as the conceptual language he wishes to employ. In pre-Platonic authors, it is difficult to identify idioms which will describe a purely personal morality of the inner consciousness, but with Plato, it becomes much easier to do so.[63]

We shall now consider in a cursory form, Plato's views about justice. For Plato, the idea of justice is a transcendental and permanent harmonious unity which, while separate from man, preserves some connection or link. As an eternal object of prior thought, it has universal meaning and is thereby knowable, even though it may not yet have been completely embodied in man or his institutions. Man therefore aspires to apply this eternal, perfect and absolute idea to his moral conduct in an all-embracing system of applied justice.

The Platonic ideal of justice was the concrete harmony of the city-state. Plato's just state was that in which every man does the job to which he was best fitted under the direction of the wisest. The just man was he who performed the task or function proper to him in accordance to his place in the society.[64]

Following a hierarchical order, Plato understands the meaning of justice through its application to the three classes of people in early Greek society (philosopher-rulers, soldiers, and workers), each minding its "own

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[63] *Havelock, A.E., op.cit., p.322*

[64] *Plato, Republic, Bk.4, 10, 433a*

business", ultimately in order to find out how each person could order his own life, by respecting the functions and needs of each component part of his nature (reason, will and emotion),

> *"... And further we have often heard it said and often said ourselves that justice consists in minding your own business and not interfering with other people".* [65]

A proper and due harmony within the individual and within the state, regardless of any economic and political inequality which resulted, thus conformed to his idea of justice. In such an ordered and ideal political body, every part of it performs its proper task (as needed to maintain such a state) in a perfect harmony (each individual in each class receives his due proportion). Since there was a class society in the Greece of his time, Plato's concept of justice was also a class justice.

Forkosch attests that Plato's theory and definition of justice is found in his conception of the division of the ideal state into three classes consisting of a small body of rulers in whom wisdom is found, and who have attained a knowledge of absolute justice; the guardians (military or auxiliary) in whom courage flows; and lastly, the artisans or governed (slaves are excluded). He states: *"Justice is the unifying and harmonizing principle which keeps all three in equilibrium, and it occurs when each individual functions properly and in harmony with the others, in compliance with his proper function according to his class and without interfering with the other two classes, whereas injustice consists of inter-meddling and a refusal to give another his due".*[66]

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[65] *Plato, Republic, 4, 433a, b (p.204, Penguin Classics, 1974) The Greek phrase here used in the conventional translation `mind your own business', is almost exactly translated as `doing your own thing'. It has a positive content - `getting on with and doing your own job' - as well as the more negative meaning so often attached to the English phrase `not interfering with other people'. A strictly literal translation would be `doing the things that belong to (possessive genitive oneself'.*

[66] *Forkosch, D.M., Justice, In "Dictionary of the History of Ideas', op.cit., p. 654*

From the aforesaid, justice appears as the only way to achieve the ideal state on earth, "for the gods have a care of anyone whose desire is to become just and to be like God", so that Plato's

> *"counsel is that we hold fast ever to the heavenly way and follow after justice and virtue always...".* [67]

This conception may not be so far away from our general notion of a just man, that is, one who possesses integrity and honour, who lives according to consistent principles and is not to be diverted from them by consideration of gain, pleasure, desire or passion.

In the dialogue of the Republic, Polemarchus takes over the role of interlocutor and the following definitions of the term "justice" are attempted:

1) *It means telling true things and giving back what one has taken;* [68]
2) *It is that technique which gives back benefits and injuries to friends and enemies;* [69]
3) *It is useful for contacts;* [70]
4) *It is useful in the particular case where money is to be placed on deposit and kept safe;*
5) *And finally (this one was contributed by Socrates in the dialogue) it means forbidding injury to anyone, including enemies, which means repudiating the maxim previously sited* .[71]

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[67] *Plato, Republic, Book V,p. 320, 329*

[68] *Plato, Republic,Bk. 4, 331s2 (Note: the same formula is described at 331 e 4 as "dikaion")*

[69] *Plato, Republic, 332d5; Refer also 334b8*

[70] *Ibid., 333c7*

[71] *Ibid, 335d11 - 336a8*

These five formulations of "justice" place it within its traditional procedural context. It is a directive which prescribes rules regulating actions performed by persons or groups in their relations with each other, with the strong suggestion that these rules are reciprocal. The fifth is non-reciprocal in its effects, and in traditional terms, is a paradox; but expresses itself as a rule of behaviour which is social.

Commenting in another context on Plato's idea of justice, John Lewis suggests that :

> "*it will appear that justice is not anything that we should recognize by the word, but appertains to city, to society. It is the right ordering of the state, with every man keeping his appointed place. Men are of different kinds. Their innate qualities vary. Some are inferior and are fit only for manual work. Some are superior and should rule. A just state requires the willing submission of the lower orders to those ordained to rule over them*".

This explains further Plato's class society and consequently class justice. In summary, the idea of justice according to Platonic tradition is generally to be considered as being an:

> "*immutable, eternally valid, and universal idea, the highest or supreme one, which is now sought to be understood and applied by man as natural justice obtained through pure reason* ".

The idea thereby offers a formula or standard to determine the acceptance or rejection of positive rules set by legislation to govern man's conduct and actions. This is also the basis for the natural rights theory, so that in this sense, justice includes such rights.

We are thus brought to understand, according to Plato's thought, that there is a law behind the laws, that is, a standard of justice to which

positive law itself must conform. This just law is immutable and transcendental and all positive law is simply a formal way of codifying this pre-existing juridical relationship. The formal, positive law does not create justice, rather it recognizes and attaches sanctions to what already exists and it can be rationally established independent of the positive law.

Philosophers and legal theorists after Plato did not agree to all or even some of Plato's views on justice. They criticized especially his view that justice is a transcendental and permanent harmonious unity separate from man and represented the view that justice is also conventional, man-made and changeable. One of these philosophers was Aristotle whom we shall now consider.

ARISTOTLE

Aristotle's theory of morality centres around his belief that man, as everything in nature, had a distinctive "end" to achieve or a function to fulfill. He begins his Nichomachean Ethics by asserting that:

> "*every art and every investigation, and similarly every action and pursuit is considered to aim at some good. Hence, the Good has been rightly defined as that at which all things aim*". [72]

With such a postulation, we are led to ask the question: "What is the good at which human behaviour aims?" Plato answered this question in his "Doctrine of Ideas", where he maintained that this supreme principle of good was separated from the world of experience and from individual man and was to be arrived at by the mind's ascent from the visible world to the intelligible world.

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[72] *Aristotle, Nichomachean Ethics, Penguin Classics, 1976, (Ed., J.A.K. Thomson); Book I, i, 1094ai*

Aristotle, on the other hand, maintains that the principle of good and right was embedded within each man. Moreover this principle could be discovered by studying the essential nature of man and could be attained through his actual behaviour in daily life.[73] He thus distinguishes himself in the realm of ethics by bringing it down to practical life.

> *"There cannot be a universal good such as Plato held to be the culmination of his Theory of Forms".* [74]

It is exactly on this point too, that Aristotle's theory on justice differs from that of Plato which has to be seen and understood. In his Metaphysics, he severely criticized Plato's "Doctrine of Ideas".[75] Even though he does not give much time or space to the idea of justice as Plato does, Aristotle makes it known in several places in his writings that *"all men cling to justice of some kind"*, and states clearly in the ethics that *"there is more than one kind of justice"*[76], for example, that involving *"the rightly framed law"* which is *"complete virtue, but not absolutely, but in relation to our neighbour "*.

In rhetoric, he gives it some content by saying that justice:

> *"Is the virtue which assigns to each man his due in conformity with the law, while injustice is a vice whereby "man claims what belongs to others in opposition to the law".* [77]

[73] *Aristotle, Nichomachean Ethics, Book I, 1094a1 - 22 (Ibid)*

[74] *Aristotle, op.cit., Bk., I, vi*

[75] *Aristotle op.cit., Bk., Vbii, 110b*

[76] *Aristotle, Rhetoric, 1366b*

[77] *Aristotle, Nichomechean Ethics, Bk. V, ii, (1130a18 - b8)*

Aristotle believes that man is a political and social animal, who *"alone has any sense ... of just and unjust"*, and he sought to reconcile justice with the conflicts he observed about him. Differently from Plato, he makes justice a human concern. In Book Four of the Nichomachean Ethics which, so far as we are aware constituted the first analytic study of the idea, Aristotle was already drawing attention to the ambiguity of the concept and to the multiplicity of its aspects.[78] He, however, concedes that a common element runs through all these, which he characterizes "as a proper proportion or relationship between individuals".[79] Elsewhere, he considers it as "treating equals equally and unequals unequally but in proportion to their relevant differences".

Aristotle's view is that distributive justice employs geometrical proportion. A just act necessarily involves at least four terms namely, two persons for whom it is in fact just, and two shares in which its justice is exhibited. And there will be the same equality between the shares as between the persons, because the shares will be in the same ratio to one another as the persons; for if the persons are not equal, they will not have equal shares; and it is when equals have or are assigned unequal shares, or people who are not equal, equal shares, that quarrels and complaints break out.

So justice is a sort of proportion, and injustice the opposite. The man who acts unjustly gets too much and the victim of injustice too little of what is good. It is then the duty of the law to: *"consider the difference caused by the injury of injustice; and it treats the parties as equals, only asking whether one has committed and the other suffered an injustice, or whether one has inflicted and the other suffered a hurt. Accordingly, the judge tries to equalize the inequality of this injustice".* [80]
This is why in cases of dispute, people have recourse to a judge (dikastes)

[78] *Ibid., Bk. V. iii, 1130b32 - 1131a22*

[79] *Ibid., Bk. V, iv., 1132a2*

[80] *Aristotle, Ethics, Bk. V, ii, 1130b*

who acts as a divider (dichastes) or an intermediary between the two parties to secure a mean. As such, the just must be a mean, equal and relative. In 'Ethics', Aristotle initially divides "the just into the lawful and the equal or fair.[81] These are, respectively, his universal or general (legislative), and particular (judge-made decisions in individual cases).

The legislative type of justice requires obedience to the law, and therefore comprehends a civic virtue. Judicial decisions are distinguished from morality and are now divided into distributive and corrective, that is *"the distribution of honour, wealth, and the other divisible assets of the community .. and that which supplies a corrective principle in private transactions* ".

This corrective principle is still further subdivided into:

> *"those acts and relations which are voluntary and those which are involuntary"* [82],

examples of which he gives by referring respectively to commercial dealings, and then to personal crimes or torts upon one, involuntarily made a participant.

Aristotle's main concern is with the particular and corrective or remedial type of justice in which the judge's task is to redress and not to punish. He further regards justice (dike) as embracing many if not all the other virtues, including a relation to persons as well as to things, involving a just distribution of the latter, and a fair meting out of punishment. Further in the Ethics, he rejects the `simple' Pythagorean formula for justice as equal reciprocity since this does not apply to either distributive or retributive justice. The Pythagoreans had held justice "simply as having done to one what one has done to another".

For Aristotle:

[81] *Ibid., 11 31 a*

[82] Ibid., Bk. V., 132b28 - 1133a13

> *"if an official strikes someone, it is wrong for him to be struck in return; and if someone strikes an official it is right for him not only to be struck in return but to be punished as well. Again, it makes a difference whether the act was voluntary or involuntary (from the standpo int of the injured party)... It is proportional requital that holds the state together".* [83]

Equals, maintains Aristotle in his Politics, should be treated alike but unequals proportionally to their relevant differences and all with impartiality whereby justice would be understood and served. In this connection, H.J. Miller suggests that from the aforesaid,

> *"Plato and Aristotle would a millennium later state the logic of Hammurabi's code by arguing that justice consists not in giving equal rights to men naturally unequal, but in giving every man his due".* [84]

To everyone, the idea of justice inevitably suggests the notion of a certain quality. From Plato and Aristotle, through St. Thomas Aquinas down to the jurists, moralists and philosophers of our own day runs a thread of universal agreement on this point. The whole problem is to define this application in such fashion that, while constituting the element common to the various conceptions of justice, it leaves scope for their divergencies. Aristotle pointed out this problem by stating that *"what constitutes unequals cannot be solved easily"* as those who are superior in wealth feel they are superior in everything.

[83] *Muller, H.J., Trilogy of Freedom in the Ancient World, 1961, p.59*

[84] *Bodenheimer, E., Jurisprudence, New York, 1940, p. 47*

Slaves and women were offered an inferior role in the society of Aristotle's idea. They were assumed to be weaker both intellectually and otherwise and could not therefore be placed on the same footing as free citizen with all the attendant rights and benefits. As for slaves, their rights were not to be measured with those of free citizens but instead only within their own slave group.

It is the view of Bodenheimer that Aristotle's tying of justice to diverse human situations may be termed the most distinguishing feature of his disagreement with Plato's central idea of justice as harmony. [85] Thereby, Aristotle links justice to the human condition by saying that "equality is justice that goes beyond the written law"[86] and legislators are allowed a margin of discretion to soften the rigours of the statutes and permit a margin of fairness. This may be Aristotle's greatest practical contribution to "justice", for: *"the preliminary title of the Code Napoleon of 1804 restates this doctrine, the Austrian and Italian civil codes mandate it in the absence of express rules, and the English and American common law division into law and equity follow it."* [87]

Sir Frederick Pollock's statement that "positive law, whether enacted or customary, must come to our aid", [88] seems to be the cornerstone of an era of criticisms against the conception of Plato's natural justice. Many legal positivists of our time object to any extra-legal criteria in determining justice. Hans Kelsen, for example, rejects any effect to include a non-positivist conception of justice into the field of law.[89]

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[85] *Aristotle, Rhetoric, 1374a*

[86] *Forkosch, D.M., op. cit., p. 656*

[87] *Pollock, F., Expansion of the Common Law, London, 1904, p. 128*

[88] *Kelsen, H., What is Justice? (Original title: Was 1st Gerechtigkeit?), Berkeley, 1957*

[89] *Forkosch, M.D., op. cit., p. 655-655*

Their arguments are based on the human factor, whereby they argue that all men differ in various significant aspects such as time, place., and therefore have different mentalities. Thus, whatever is defined as natural law and applied to a given situation is really no reflection of the universal idea but is only man's personal and distorted effort.

In this regard, there was a historical controversy among the justices of the United States towards the end of the last century over the definition and application of the constitutional term *"due process of law"*. In the disagreement, whereas some judges in 1989 subscribed to the view that:

> *"there are certain immutable principles of justice which inhere in the very idea of free government and imply a conformity with natural and inherent principles of justice...", other judges opposed this construction as it left the application of the concept "to the court, with no guide but the courts own discretion".* [90]

These are some of the problems which arise as one attempts to offer a philosophical exposition of the idea of justice. We shall not dwell at large on this issue here, but will go straight to other currents of thought after the Greeks which attempted to understand and explain justice.

THE IDEA OF JUSTICE IN JEWISH TRADITION

The bulk of Jewish ideas on justice are contained in the Decalogue found in the Torah (laws) promulgated around 1250 B.C. Here, the principles of giving each person one's due and not removing what belongs to another is maintained. Also in Judaism, the doctrine of man's free will and free action merit respectable notice. In his freedom, man chose God and decided to follow his laws and the moral life.

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[90] *In the documents of the political history and the history of ideas*

The justice found in the covenant between God and the Jewish patriarchs (Noah, Abraham, Moses, David)[91] obligates God who acts voluntarily to honour the contract as long as man does. The function of religious laws is to impose on man the accomplishment of good actions and to prohibit bad ones. The highest act of justice is the law obligating one to pay homage to the Creator as a mark of gratitude for God's benefits to his creatures. Thereby, a consenting partnership of presumed equals is built-up in which duties and rights are stressed on the basis of divine commandment.

The idea of justice here corresponds somewhat with Plato's view on the immutability of justice which cannot be altered by man. There is also a certain parallelism with Aristotle, whereby the idea arises out of man, immutable, yet dependent on man. This relationship led to the emergence of the concept of moral contract between the Jewish nation and God. In the Old Testament, the prophets were unpopular for reminding the Jews that they had neglected this contract between them and God.

Three important concepts express the Jewish understanding of justice in three important historical moments of their existence, namely deliverance, benevolence and observance.[92] Deliverance took place in Egypt - the deliverance from slavery imposed by the Pharaohs; by disobeying God in the *'Promised Land'*, God punished the Jews by allowing the 'Babylonian Captivity'. During this exile, the Jews conceived justice as benevolence; later on, as the Romans conquered them and brought them under their rule towards the close of the millennium, justice entered the era of strict observance. In all of these three moments, it was God whose justice was reflected but it was man who was required to act as the covenant decreed. And man had the freedom to choose to be just or unjust.

[91] *Genesis, chapter 9: 1-17ff; Exodus Chap. 23:2; Samuel Chapter 7 f (Cf. Also Forkosch, D. M., op.* cit., p. 656)

[92] *Burke, J.V., Thomas Aquinas, Article in "Encyclopedia of Philosophy, Vol. 8, Macmillan, London, (Ed. 1972), p. 105*

The just would be rewarded by God and the wicked punished. It was a sort of quid pro quo, a give-and-take idea, comparable to the "reciprocity" teaching of the Greek Pythagoreans. However, Jewish quid pro quo must be distinguished from the pre-literary Greek world view which presented justice as a matter, not of right, but of favouritism by the gods on man who was a plaything for their capricious endeavours.

The eye-for-an-eye or *"Lex-Talionis"* law of exact retaliation in Hebrew justice was very strict, carried out to the letter and it is only with Christianity that the story of a merciful and forgiving Father assumes spectacular significance.

It remains to be said that the Hebrew concept of justice contained the idea of individual moral responsibility, later articulated by Christianity in the doctrines of the inviolability of the dignity and rights of the human person. In Stoic philosophy and in Roman jurisprudence which succeeded, justice became a universal law of nature, removed from the area of the gods, and accessible to all men through reason.

St. Thomas Aquinas christianized this theory by treating human laws as the *"local application of natural law, which was itself an expression of God's rational will guiding the universe".*

ST THOMAS SCHOLASTIC PHILOSOPHY

St. Thomas Aquinas epitomizes scholasticism and we shall single him out as philosopher and theologian to consider his view on the issue at hand. It can be generally asserted that Aquinas' philosophy is a rethinking of Aristotelianism, which does not however deny the originality of his thoughts. One broad characteristic of his works in philosophy is a tendency to seek the "middle way" on questions that have been given a wide range of answers.

Today this philosophical method is labelled "moderate realism".[93] It is in

[93] *Aquinas, T., Summa Theologiae, I - II, q. 93 a 1*

this context that we shall survey his ethical teachings, specifically his views on justice, not forgetting however that his religious commitments led him to look beyond philosophy for final answers.

Aquinas dealt with the theoretical analysis of ethical activities in a long series of works among which are: the Scriptum in IV Libros Sententiarum, Book III; Summa Contra Gentiles III, 114-138; In X Libros Ethicarum; Quaestiones Disputatae de Malo; and Summa Theologies, Part II.

In all of these works the teachings of Aquinas are basically the same. He takes the approach of moral theology which defines what is morally good or evil in terms of its accord with the divine law, revealed through the sacred scriptures and interpreted in the Christian tradition. But Aquinas did not consider moral theology to be a part of philosophy for he based his ethical teachings on the theory of natural law or eternal law defined as "the divine wisdom directing all actions and movements:.[94] His formulation of the idea of justice is based much on the writings of Aristotle found in Book Five of the Nichomachean Ethics. In this Tradition which stated that *"all things have a specific nature which do not change"*, Aquinas called justice a moral virtue defined as: *"the constant and perpetual will to render to everyone what is due to him"*. [95]

But what is due to each man? How can we know it? Aquinas believed that the natural law, which is *"the rational creature's participation of the eternal law"*, made it possible for all men to have sufficient knowledge of what is morally right or wrong in order to regulate their own actions.[96]

Uncompromisingly, Aquinas makes divine reason the touchstone of his reflections and "right reason" (recta ratio) the justification of ethical

[94] *Aquinas, T., Summa Theologiae, Pars IIa IIae, q. 58 (Marietti publ.)*

[95] *Aquinas, T., Summa Theologiae, I - II, q. 91 a 2*

[96] *Aquinas,. T., Summa Theol., I - II, 21, 1 c*

thought. Whereas the supreme standard is the eternal law, in volitional activities, the proximate standard is human reason (regula proxima est ratio humana). Conclusively, we can say that for Aquinas, whenever man's action proceeds to its end in accord with the order of reason and eternal law the act is right and justifiable; but when it is twisted away from this rightness, it is an unjust act, a sin.[97] His basic proposition, technically called "the judgement of Synderesis", which is an intellectual quality enabling any man to intuit the first principles of practical reasoning states that:

> *"good should be done and sought after; evil is to be avoided".* [98]

Critics of Thomas and legal positivists of our time posit a lot of questions on this Thomistic ethical view which emphasizes the role of natural law. They ask: *"How can a law be made known to man through his nature?"; What proof have we that God has imposed a natural law on man?"; "Do all or most men recognize this law and, if so, how do we account for such a diversity of moral opinions?"; "Is this law always and everywhere the same for all men, or does it admit to exceptions?".*

Surely it is not within our scope to offer explanations to the above questions, even though we point out their relevance here. Suffice it to mention that Aquinas formulated the natural law theory from his view that man participates "of a certain share in the divine reason", but this share could thus be limited to such law itself and therefore not partake of justice. Human reason distinguishes man from other higher brutes which lack rationality. It is part of being reasonable, maintains Aquinas, to respect the goods of others, even if an all powerful legislator has not ordered so. *"Theft is unjust, no matter whether laws legalize it or not".*

Like Plato, he thus gives in to a certain immutability of the rule of justice.

[97] *Aquinas, T., Summa Theol., I - II, 94, 2*

[98] *Summa Contra Gentiles, III, 121 - 122*

But at the same time he concedes that there are other secondary rules of justice concerning taxation, buying and selling which are not immutable.

"Divine justice (ius divinum) which stems from grace does not cancel human justice which comes from natural reason".

John Locke took this position and regarded natural law as the universal test of the justice of positive law. Aquinas believed that injustice was harm on the unjust person, just like it was an offence against God.

> *"For we do not offend God except by doing something contrary to our own good and rational reflection."* [99]

In his political philosophy (De Regno; In Libros Politicorum; and Summa Theologiae I - II), Aquinas agreed with Aristotle that man is a social and political being with free will and free choice. He thus stressed the idea of the limited monarchy or that kind of state which Aristotle has called the Politeia. The purpose of the State is to provide temporal peace and welfare to its citizens, whereby the State could independently so dispense of justice even though there was a divine idea. He admitted three basic kinds of justice known as ***"justitia distributive"***, ***"justitia commutativa"***, and ***"justitia legalis"***.

Christianity had stressed the love of God for man manifested through the incarnation and crucifixion of Jesus Christ and man was challenged to show love for his neighbour as reciprocity for God's love in order to achieve justice. Baptism redeemed the believer from sin, the most fundamental injustice, and as Jesus once said: *"For thus it is fitting for us to fulfill all justice (righteousness)".* [100]

GROTIUS NATURAL LAW

[99] *Holy Bible, RSV, Matthew 3:15 (Collins London, 1971)*

[100] *Grotius, "De Jure Belli ac Pacis", (translated by F.W. Kelsey and others under the same title into English from the 1646 edition), Oxford, 2 vols., 1925, II, 40.*

It is by Grotius (1583 - 1645) or Huig de Groot, a Dutch jurist and statesmen, that the postulates of natural law as derived from principles of reason rather than of divine order were sharply articulated. He was much closer to the Stoics than to the Scholastics in his belief that human reason was not founded on divine reason but simply and only on human intellect. He thus severed the ideological conflict existing in the view of justice as dependent upon man or independent of him. He was so convinced in his belief in the human intellect independent of God that he asserts that:

> *"natural law is so immutable that it cannot be changed by God himself... He cannot cause that which is intrinsically evil not to be evil, or tamper with the intrinsic idea of justice".* [101]

Grotius' greatest contribution was in the area of international law where he sought theoretical foundations to bind all nations to a common standard of behaviour. This he found in the "pacta sunt servanda (pacts are servants), respect for promises given. Hans Kelsen reaffirmed this principle.

TRANSCENDENTAL PHILOSOPHY: RUDOLF STAMMLER (1856 - 1938)

Neo - Kantian German and legal philosopher, Stammler sought to:

> *"find merely a universally valid formal method to determine whether the necessarily changing material or empirically conditioned legal rules ...have the quality of objective justice".* [102]

Stammler sought to apply Kant's distinctions between pure and practical

[101] *Stammler, R., Die Lehre vom richtigen Recht, Halle, 1902; (Translated into the English by I.Husik as 'The theory of justice', New York, 1925, p.89ff*

[102] *Ibid.,*

reason to the law. But whereas for Kant practical reason was not, like pure reason, a matter of intellectual perception but of morality, Stammler attempted to formulate a theoretically valid idea of justice. His theory was based on the community of purposes and the fact that man is a reasonable being, an end in himself.

> *"A person subjected to legal norms must be respected as a person, that is, as an end in himself, and treated as a participant in the community".* [103]

Stammler posited two 'principles of respect' and two 'maxims of participation' as a basis for justice among individuals and peoples. The first principle maintains that *"no one's volition must be subject to the arbitrary desire of another, and that any legal demand must be of such a nature that the addressee could be his neighbour"*. The second maxim stressed that *"no member of legal community must be arbitrarily excluded from the community, and that a legal power may be exclusive, only in so far as the excluded person can still be his own neighbour"*. [104]

Max Weber in his work on Rudolf Stammler[105] tried to show that Stammler's alleged formal categories are in fact:

"categories of progressive generalizations, the more general being relatively more formal than the less general... Stammler's main error was his attempt to make the idea of justice a matter of theoretical knowledge; it was therefore inevitable that he should confuse principles generally acceptable to a moderate liberal with universally valid principles of justice. His idea is therefore a cross between a formal position and a definite social ideal, kept abstract and rather vague by the desire to remain formal".

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103 *Ibid, (refer also to Friedman Wolfgang's article on Stammler: In "Encyclopedia of Philosophy", Vol. 8, op. cit., p. 6)*

104 *Weber, Max, "Rudolf Stammler's Uberwindung der materialistischen Gesselschaftsordnung", (Gesammelte Aufsatze zur Wiss. Lehre, Tubingen, 1922. p. 191-359)*

105 *Hume, D., A Treatise of Human Nature, Bk. I, Part IV and VII, London, 1739 (1748)*

Here, of course, the objections made elsewhere in this work against the personalization of the idea of justice from natural law and rights are likewise available, but this does not mean that they do not represent the collective feelings and aspirations of men, whether politically, theologically or otherwise.

It is worthwhile mentioning at this juncture that the basic documents of the United States of America, France, and the United Nations as well as England's Magna Carta specifically and literally set forth and emphasized their yearnings for justice as an end as well as a means.

Having traced the history of the idea of justice so far, we shall now turn to the English philosophical tradition to consider David Hume's views on the subject. He has been called a philosopher of the greatest genius" by contemporary thinkers, and because his thoughts correspond to those of the "radical Utilitarians" of the nineteenth century, turning to him at this stage would be a worthwhile venture.

UTILITARIANISM AND BRITISH EMPIRICISM: DAVID HUME (1711 - 1776)

He gave British empiricism its clearest and most rigorous formulation. His lifelong aim was to build a science of man and of human nature based on the methods of physical science.

His basic question ever was: *"How can we know the true nature of things?"* With time, this question remained unanswered and Hume gradually came to the conclusion that using scientific methods to analyse the mechanics of human thought could not be justified. His early faith in reason led in the end to skepticism. "Since all our ideas come from experience and sense, we must accept the limits to knowledge that this explanation of ideas forces upon us, no matter what our customary beliefs may be.

There is thus no certainty of knowledge".[106]

David Hume's writings on the topic of justice are found in his book: "A Treatise of Human Nature: An Attempt to Introduce the Experimental Method of Reasoning into Moral Subjects, Book Two Part Two". Likewise he refers to the subject in certain parts of another book "An Enquiry Concerning the Principles of Morals". Hume's views can be generally summarized in the statement that "justice is entirely a matter of obeying usefully human conventions".

He rejects with all absolute negativity that justice is something "natural", and part of the nature of things, or that its edicts are eternal and immutable and discernable by reason. On the contrary, like Hobbes and Mandeville, Hume maintains that justice "is an artificial virtue"[107], a matter of observing rules or conventions which are of human invention. Consequently, our acquiring a knowledge of justice is an entirely empirical affair whereby we ascertain what the rules and conventions are.

According to Hume, there would be no point in talking about justice but for the "*limitations of human benevolence*" and the "*competition of scarce goods* ".

It is where conflicts of interest arise among men that questions of justice arise. The regulation of such conflicts can only be effectively and objectively settled by appealing to rules and conventions necessary to society. Areas where such conventions exist include among others, the regulation of property, the nature of law and legal reasoning, and the areas of government. He gives an account for the differences between duties toward individuals and duties between nations, making reference also to the treatment of women and family life.

106 *Hume, D., A Treatise of Human Nature, Bk. III, Part II, nr 477*

107 *Bentham, J., Introduction to the Principles of Morals and Legislation, Chapters I to IV*

For Hume, rules of justice were invented to remedy by contrivance a defect in human nature, which is that nature has not implanted in man any motive for a number of different kinds of actions, the performance of which is necessary in order that man may live in that society, without which he cannot survive. Hence, man must introduce rules prohibiting anti social actions and redirect other already existing motives in such a manner as to sanction these rules. These rules which are binding by customs and conventions are justified by their public utility.

From this point, Hume's views can be likened to that of the British Utilitarians. His position is that rules of justice serve the public interest only if decisions are regularly made in accordance with the public interest. He however concedes that in some particular cases the public interest might be better served by not following the rules strictly: *"Although one might have one's views of what the rules ought to be, the just man would not act on them since the public interest is best served by supporting the social order, whatever its faults".*

Simply stated, the public interest is the main criteria for a just act according to Hume. This utilitarian position of Hume's has been challenged by many authors such as Jonathan Harrison in his book, "Hume's Theory of Justice". Likewise Samuel Butler challenged the position on the grounds that many acts promoting public utility might yet be acts of evident injustice. It would be unjust, for instance, *"to rob Peter in order to pay Paul even though Paul gained more in happiness than Peter lost".*

In spite of all criticism, other utilitarians like Bentham and John Stuart Mill took up the principle arguing that *"the moral goodness of an act is to be judged by its utility in promoting the common welfare of all as well as the personal advantage of each".*[108] This theory is further explained in the principle of "the greatest happiness of the greatest number", a sort of hedonistic calculus which tries to maximize pleasure and minimize pain. It has its merits and demerits which is beyond the scope of the present

108 *Lucas, R.J., On Justice, Clarendon Press, oxford, 1979, p. 19*

work.

GENERAL TRENDS IN THEORIES OF JUSTICE : CRITERIA FOR APPLICATION

Among the various criteria for applying the idea of justice to various human situations three basic criteria have been singled out, namely, **rights, desserts and needs.** These three criteria are conceptually distinct from one another, giving rise to conflicting prescriptions for action, so that often, there is no logical or conceptual way of choosing between them. All of them are of utmost importance because they concern distribution which is the basis of all talks about justice. It was mentioned earlier that *"justice is another regarding virtue"*. According to the Greeks, 'justice is the other chap's good'.

As Lucas has said:

> *"certainly questions of justice do not arise except where other people are involved and except where some sorts of good, positive or negative are the issue. Robinson Crusoe had no opportunity of practising justice until Man Friday came on the scene. Only when two or more are gathered together, can either exercise justice towards the other, and only then can their agreements and transactions be acknowledged as just or stigmatized as unjust".* [109]

Rights, desserts and needs fall into the realm of distribution and concern "the other chap's good". David Miller stressed this point, thus: *"as a first step towards an analysis, the subject matter of justice deals with the manner in which benefits and burdens are distributed among men whose qualities and relationships can be investigated".* [110]

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[109] *Miller, D. Social Justice, Clarendon Press, Oxford, 1979 p.19*

[110] *Sidgwick, H., The Methods of Ethics, London, 1907, Book III, Chap. 5 (D.D. Raphael in a later discussion elaborated on this idea of Sidgwick in his work "Conservative and Prosthetic Justice", published in political studies, Nr. xii, 1964)*

Indeed, the most valuable definition of justice is that which brings out its distributive character most plainly. Justice is "Suum Cuique" - *"to each his due"*, and just state of affairs is that in which each individual has exactly those benefits and burdens which are due to him by virtue of his personal characteristics and circumstances. It remains open what these might be. What then does the statement "to each his due" mean? Many philosophers as we have seen and shall see, maintain that it may mean in varying circumstances, to each his rights, desserts or needs.

RIGHTS

When we talk in this context about "rights" we refer to the multi-dimensional usage of the word and to the various types of rights, for the word is used in more than one sense. There are legal rights, social and institutional rights, natural rights and moral rights. We speak of an individual's right to do something or to abstain from doing something. Thus when we use the word 'right' a certain ambiguity arises and this is not very easy to clear. *"I may have a legal right to do something that I have no moral right to do, or I may claim a natural right to something that I concede I have at present, no legal right to"*

This problem, however, certifies the assertion that "what is logically possible and a right, may be physically impossible and unjust". Slavery, which denied people their individuality and which was considered a legal right of the slave-owner, was nevertheless as immoral and unjust to the slaves. In his book, "The Method of Ethics", H. Sidgwick depicts two types of justice prevalent in man's societies associated with rights: *"that which seeks to preserve and conserve the existing order of rights and possessions known as conservative justice, and that which aims at modifying the status quo known as prothetic justice"*

According to him,

> *"we are disposed to think that the customary distribution of rights, goods and privileges, as well as burdens and pains, is natural and just, and that this ought to be maintained by*

law, as it usually is; while, from another point of view, we seem to recognize an ideal system of rules and distribution which ought to exist, but perhaps have never existed, and we consider laws to be just in proportion as they conform to this ideal". [111]

From the above, rights are subjected to two broad views, namely, those which are concerned with the continuity of a social order over time, be it customary or otherwise and would restore it when any breaches have been made, known as conservative justice, and those which, in spite of a given static order aim at something ideal and therefore termed prosthetic. Conservative justice confers the notion from which the general formula of what a man's due is may be derived, namely, that a man's due is that to which he has a right or is entitled.

No wonder Miller, following these footsteps, says that :

"rights generally derive from publicly acknowledged rules, or established practices, or past transactions; they do not depend upon a person's current behaviours or individual qualities. It is concerned with the continuity of social order over time, and with ensuring that men's expectations of one another are not disappointed". [112]

This type of justice according to person's rights, which certainly does not usurp the content or criteria for justice among persons, may be expressed thus: "to each according to his rights".

[111] *Miller, D., op. cit., p. 26*

[112] *Hospers, J., Human Conduct, p. 433*

DESSERTS

Another way of expressing the formula "to each his due" is conveyed by the idea of desserts. This is an interpretation of justice termed by H. Sidgwick as "ideal justice" and by D.D. Raphael as *"prosthetic justice"* as mentioned above. The principles of ideal justice state that *"men ought to be treated and rewarded according to their desserts"*. J. Hospers has called it "*what one deserves*".[113] Dessert in turn may be interpreted in a number of ways although it depends upon the actions and personal qualities of the person said to be deserving. Dessert, says J.R. Lucas is:

"a matter of fitting forms of treatment to the specific qualities and actions of individuals. There must be a reason for deserving". [114]

Thus, a man's desserts may be measured by his moral virtue, his productive efforts, his capabilities, and so on. Surely, there are many problems in this criteria for justice and how we can measure morality in order to reward it? Lucas observes in an attempt to answer this question that dessert is not always the right basis of distribution and even when it is, it may not be in accord with the true moral worth of individuals".[115] Yet, he goes on to mention that dessert, although not the only, nor an unsurpassable ideal is nevertheless a pre-eminent one.

People ought to be treated according to what they deserve, and this in turn depends on what they have done, which in turn presupposes responsibility and freedom. Doing constitutes deserving and deserving determines how justice should be done, and thus justice depends on freedom.

[113] *Lucas, R. J., op. cit., p. 210 ff*

[114] *Ibid.*

[115] *Ibid*

The basic principle behind desserts is that "an agent should enjoy the fruit of his labours" or in the words of Jesus Christ, *"the labourer deserves his wages"*.[116] If we deny people their desserts, says Lucas, we are not really treating them as persons because we are taking them for granted. They are then not in our eyes autonomous agents who have it in their power to act or not to act, but merely natural phenomena which we have been manipulating at our will.[117] Surely this would be injustice.

When we argue about whether a particular worker deserves a higher wage than his present salary, we mention certain facts which necessitate this new promotion, namely his skill, his responsibilities and the effort he puts into his work. In each case of justice according to dessert, the basis of apportionment will be due to relevant facts about the individual concerned. Benefits or burdens are distributed according to dessert, merit and production. Contributions are likewise called for on the basis of ability, entitlement or status. Lucas maintains that dessert has a two-dimensional face, namely, an individual and a collective one.

> *"The concept of desserts stems from two different views of man's deeds. Each contribution is seen from our collective view as contributing to the success of the joint enterprise and from the contributor's point of view as his own action which he was free to withhold but did, in fact, contribute. Because it served our purposes, it is a dessert, and because it was his doing, it is his dessert".* [118]

In a way, the correlative of dessert is reward which is a tangible token of gratitude, as punishments are of disapproval. The second principle or criteria for injustice once again is, *"to each according to his desserts "*.

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[116] *Lucas, R.J., op. cit., p. 202; Gospel of Mathew and Luke*

[117] *Ibid., p. 203*

[118] *Miller, D., op. cit., p. 126 ff* "to each according to his needs"

NEEDS

"To each according to his needs" is probably the most difficult and most disputed criteria in the measurement of justice. This is so because the needs of different people vary and are at the same time unstable. How can we grant the satisfaction of each person's needs? Has the state enough possibilities, financial and otherwise, to fulfil the needs of all of its citizens? Secondly, needs are not all material nature, but also of spiritual nature. We talk about the need to love and to care for others How can these needs be met? What of false needs? Thirdly, does the principle *"to each according to his needs"* imply a quantitative or qualitative satisfaction of the needy people in a society? Isn't it the same with the ideological preaching of the communists who chant equality in the basic needs of man, namely food, housing, clothing and a basic but general standard of living above which luxury sets in? These questions are legitimate and the answers to them are varied such that an attempt to go into these here will be outside the scope of this work.

The principle of need with which we are concerned, has the aim of apportioning advantages to the particular characteristics of each person:

> *"Every man should be given advantages according to the extent and nature of his needs".* [119]

Miller distinguishes three different kinds of needs, namely:

a) *Instrumental needs (He needs a key; She needs a driving license);*
b) *Functional needs (Lecturers need textbooks; surgeons need manual dexterity);*
c) *Intrinsic needs (People need food; he needs someone to understand him).*

Needs have remained fundamental in human societies, and satisfying all needs have proved virtually impossible. Gradually, philosophers now articulate the concept of "basic needs" which must be satisfied as fundamental human needs to distinguish them from luxurious needs.

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[119] Ibid., P. 127

They include food, housing, health, clothing, shelter, gainful employment, access to basic utilities, inter alia. The debate on justice according to needs continues. Each society thus identifies criteria for the fulfilment of these needs.

Igboland had such criteria, which brings us to the theme of property, ownership, rights and duties.

PART III

JURISPRUDENCE

CHAPTER FIVE

PROPERTY OWNERSHIP, RIGHTS AND DUTIES

One of the most fundamental cultural, social and cultural realities in many African societies is the basic understanding of property as a natural right, and therefore, a human right for the satisfaction and protection of the needs of the individual, the family and the clan as a whole. Property is seen as the basis of wealth and communal ownership makes everybody a stakeholder and not just strangers in their own community.

Although an individual has the right to own private property and in fact does own some property, it was the family and the entire community which ultimately owned the individual because he or she was tied to this community in an intrinsic manner. Whatever the individual acquired as private property (farm products, animals, skills and products, etc) was based on the right of *"access"* and of *"use"* in a proximate but not ultimate sense.

Property as a Social Mortgage

Since private property was conducive to the security, life and survival of the family, it was understood as a "SOCIAL MORTGAGE". This meant that in traditional society, property had an intrinsically "Social function", as it still even till date does have. The destiny of the individual and the community was interlinked.

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In African Thought, ownership of property is summarized thus: "It belongs to me but I belong to the community".

The rights to property, existent as they were, seem to have been limited by the overall social concerns and communal purposes which profiled every member of the community. It is this original African thought on the property which incidentally we find replicated in a Christian vision found in the teaching of the *"universal destination of created goods"*. This principle enunciated by Pope John XXIII and the Second Vatican Council states that:

> *"God intended the earth with everything in it for the use of all human beings and peoples. Thus under the guidance of justice together with charity, created goods should be in abundance for all in an equitable manner. Whatever the forms of property may be, as adapted to the legitimate institutions of peoples, according to diverse and changeable circumstances, attention must always be paid to this universal good of earthly goods"* [120]

THE PRINCIPLES OF SOLIDARITY AND SUBSIDIARITY :

One could therefore apply the principle of ***SOLIDARITY***, or communal ownership to property relations in ancient Igboland and the principle of ***SUBSIDIARITY*** to the indigenous understanding of ownership.

According to the principle of solidarity as defined, each person as a member of a family and the society is indissolubly linked to the destiny of the community/society itself. Therefore, since the family is the primary unit in the society, the family in its extended form was the final proprietor of specific goods in the community and was therefore worked above the individual in the pecking order. It meant that all members of the family could participate actively on different levels in the management of the activities of economic, political, social and cultural life in their community. A purely individualistic cosmology was absent and one could not easily refuse to participate in communal matters.
The "We" consciousness in Igboland is prominent. Whether in matters

120 *(Vatican II, Gaudium et Spes, no.* 69.

of marriage, birth or the upbringing of the children; name giving celebrations; education, human work, marriage; in the art of war and peace making, government and political organization, age grade activities; environmental affairs, sanitation trade relations, commerce, enterprise, communal agriculture, harvesting products of the land; the rituals of prayer and ancestral worship, oral literature, wisdom and proverbs; expresses this solidarity as we reflect and study, man's relationship to the divine and the entire meaning of human existence. Especially in matters of tragedy, sickness and death is man confronted with this phenomenon. In all these affairs, there was a dimension of solidarity and group participation at all levels.

Ownership of Property

In traditional Igbo society, people believed strongly in and practiced the right of private ownership of property. Basically, man from his natural instinct needs things for existence, uses these things, consumes them, acquires and possesses them, depending on the circumstances.

We speak, therefore, of individual and communal ownership of property. Fagothey has defined ownership thus: *"A thing is said to be one's own when it is reserved to a certain person and all others are excluded from it... An owner is a proprietor, ownership is proprietorship, and belongings are property... Ownership may therefore be defined as 'the right of exclusive control and disposal over a thing at will'"* [121]

The operative words in this definition are 'right', 'exclusive', 'control and disposal', 'over a thing', 'at will'. To own a good, the owner must have the exclusive right of possessing the good. A thief who has stolen a good cannot be called an owner, even though he is a mere holder of the good at his possession, but he cannot acquire a right to them. The owner, who has the exclusive right over the good has the right to keep others off from the use of the thing owned.

121 *Fagothey, A., Right and Reason - Ethics in Theory and Practice., CVM, Company, St. Louis, 1959, pp. 445 ff.*

We can also talk of ownership by a group or corporation, or community joint ownership, which excludes people from outside the group to the rightful proprietorship over it. As Fagothey says:

"Exclusiveness is probably the most prominent element of ownership, and only by destroying it exclusiveness can the right of ownership be breached". [122]

Thus property over which everybody claims equal rights cannot be owned at all, such as air, sun, water and heat. Property, normally defined as *"that which is owned and over which one has the exclusive right of control and disposal at will"* [123], can be kept by the owner, changed, disposed by selling, using, consuming or destroying. An absolute owner of a property acts at will by deciding on the property owned, and does not need to consult anyone before disposal. Thus, property which can be a material object, or action, credit, service, talent or good-will, is solely under the authority of the owner. A trustee can have a right to control or dispose, but not to own the good.

Legalists talk of public and private ownership of property, likewise perfect and imperfect, direct and indirect ownership. Our interest here is to consider whether the right of private ownership, as already defined, existed in Igboland.

In traditional Igbo society, the interplay between the individual and the relationship to the community of birth and kinsmen determined the scope, extent and possibilities of ownership. This is so because, even though ownership itself can be considered to be unlimited; limitations came from other sources, such as from *Chukwu* and *Ala*, the demands of kinship solidarity, of sharing, and in more modern times, through the civil laws.

122 *Ibid.*

123 *Ibid.*

The Igbo have a wise saying:

'Onye na nke ya Onye na nke ya' - To each person be given his/her dues.
'Nke m diri m' - May what is mine be left to me alone
'Nke m bu nke m mana nke anyi bu nke anyi' - Mine is mine and ours is ours.
'Nke onye diri ya" - May each be accorded his/her rights/ duties!

The philosophy of the Igbo guaranteed a valid acceptance of the rights and duties associated with ownership. One had a right to acquire any object of value and dispose of it at will. People could own houses, farms, crops, livestock, jewelry, market stalls, private utensils and equipments, economic trees and their personal *'Ikenga' (staff of personal integrity).* To prevent abuse however, a series of legal and sacred sanctions accompanied the ownership of private property. Our research showed that property existed on different levels: at the village or community level, family level -either nuclear or extended-, and individual level.

Writes Shapera while observing the practices of the Khoisan peoples of Southern Africa, who may be likened to the Igbo: *"The only thing owned in common is the land... All portable property is generally owned by individuals, and theft is severity punished. People acquire the water they draw, the vegetable food they collect, and the game they kill, and though a man who shoots a buck or bird will cut it up, and share with the other people present... the dividing is done by him, and the skin, sinews, etc. belong to him to be done with as he pleases"*[124]

Traditional Igbo society in its unwritten law emphasised appropriation of produce and manufactured goods, and the dominant right which this gives a man or woman over these.

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124 Shapera, I., The Khoisan Peoples of Southern Africa, London Routledge and Kegan Paul, 1930, p.127 (See also: Gluckman, M, P.58)

So serious was this idea of private ownership of goods, that:

'to steal yam seeds, death penalty or slavery could be imposed on the thief".[125]

YAM (II) - THE KING CROP

Yam is for the Igbos, a most precious food, it is the "king crop", and with it is related - wealth, status, power and influence for the rich farmer.

As Killam says: "The yam is King: a man's wealth, status and reputation depend upon his possession of yams".[126]

Relationship Between Status and Property Ownership:

Having stated that ownership of private property was guaranteed in traditional Igbo society, we shall now consider the relationship between property and the status of the individual owner within his own kindred. Gluckman as well as Mead and Evans Pritchard have shown in their studies of the African, that: *"the law of property is intricately interwined with the laws of status. To understand the system of property, we must investigate the system of status relationship... Ownership cannot be absolute, for the critical thing about property is the role that it plays in a nexus of specific relationships. Hence in Africa, there is no clear definition of ownership: when an African court makes a decision on a dispute over property, it states that X stands in a masterful position in relation to that specific object, priviledge or person, as against some other person who is counterclaiming the decision made between persons related in specific ways".*[127]

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125 Basden, T.G., Among the Ibos of Nigeria., op.cit., p. 148

126 Killam, G.D. The Novels of Chinua Achebe; African Publ. N.Y. 1969. P. 20

127 Gluckman, M., op.cit., p. 45 ff

With all recognition of the noble achievements of the authors in this area, we must however state that Igboland has a clear understanding and practice of private ownership. The assertion that there is no clear definition of ownership can only be relatively seen by the foreigner who comes from another culture and concludes that there was no clear cut understanding of private property. People knew what belonged to them as a result of the fruit of their hard work, through inheritance.

What the authors fail to understand is the relationship between the direct owner of a good and other members of the family or kindred group. But this is exactly the area where African 'communal spirit' crosses with 'western individualistic systems' of property. The truth however can be seen in another perspective. Ownership of property did not mean neglect of the kit and kin. It really meant that whoever had, helped those who had not from ones wealth. Property rights therefore became associated with obligation to persons, not necessarily to things.

As Gluckman rightly observes: *"Property law in tribal societies defines not so much rights of persons over things, as obligations owed between persons in respect of things... if we relationships are being established, this is done through transfers of property, which create and define new relationships... gifts are given at all changes of relationships, and these gifts are believed to recognise and validate the new relationship of giver and recipient."* [128]

This is best illustrated in relationships of marriage. As a symbolic way of expressing relationships, the intending husband or his family pays a dowry, cattle or other goods for a bride. The man by this gesture is not purchasing the woman to be his concubine or slave as some uninformed observers say. Given the determinants of modern economic demands and the globalization of goods and services, modern Igboland is experiencing increasing abuse of the bride price as a source of capital for impoverished households; a practice being contained by improvised cultural regulations.

In traditional society, the bridegroom validates his claim over the bride

128 Gluckman, M., op. cit., p. 46

and establishes membership with the bride's family by bestowing gifts upon the parents and relations of the bride. The marriage gifts signify that he accepts the obligations of his status as a husband, and that his own kin, who contributed to the dowry, accept obligations to their new daughter or sister-in-law and the rest of her family. Such marriages bind the two families, and the love of the wife and husband is shared by the entire extended family, and often beyond to include the clans of the bride and groom.

This practice is not limited only to the Igbo of Nigeria, it is also widely practiced in many African cultures. *"When a Lozi girl marries as an ostensible virgin"*, says Gluckman, *"her bridegroom presents two beasts to her kin. He pays the first beast to make the girl his wife, the second is for her untouched fertility. Should he divorce her and she has not conceived, he is entitled to recover the second beast handed over with its progeny".* [129]

Attitude to Wealth:

The Igbo attitude to wealth in traditional society was not that of accumulation, but that of using basic wealth to keep one's family together and feed them, and using the same wealth to help the less fortunate members of the community. Greatness was merited through sharing and giving out what one has to others.

It has emerged that if there is any "communism" in tribal society, it is to be found in consumption, rather than in production. The rich have an obligation towards the poorer members of the village. Selfish ownership of property was discouraged, as this would betray the communitarian spirit of traditional society, which as St. Paul would say, expresses a sense that no one lives for himself.

129 Ibid., p. 44

To obtain social recognition in Igbo society, a wealthy individual would dispose such wealth to the less privileged, by lending monies out or sharing with them food crops, and other goods.

The primary function of property for the traditional Igbo was that of serving the needs of the community as well as the individual.

> *The attitude of sharing with others in the community that which one possessed, without relinquishing ownership, control and rights over ones property, determined the spirit behind all ownership.*

Perhaps it can be asserted that accumulation was neither very possible nor considered desirable. Food accumulation was not an end in itself, but rather the means to build up a large following of dependants, as Gluckman has said: "Reputation is accordingly enhanced not by accumulating possessions in order to use them oneself, but by giving them away".[130]

There is virtue in giving aid and in dispensing hospitality and men in these societies are moved by virtue as well as self-interest. But virtuous performance does build up one's reputation, not only as an upright person, but also as one who cares for others.[131]

Children are trained early in life to share their goods, including food and presents, with others. Besides, the child is taught that there are certain relatives who have a right to expect goods from them and an obligation to give to them. The Igbo attitude lays emphasis on sharing.

130 *Gluckman, M., op. cit., p. 51*

131 *Ibid., p. 58 (From this we can say hat tribal society aimed not only at subsistence, but also to prestige and power. The imperative to extravagance seems to be a social one, as social obligations are allowed to override economic prudence)*

For the Igbo child, the pride *"..is in having to share and in being prepared to share one's goods with others... and this situation continues into adult life and even beyond it... Ancestral spirits expect to share in the goods of their descendants which must constantly be offered to them".* [132]

Modern capitalist intrusion into Africa, and pervasion into its cultures, threatens the continuity of the fundamental values promoting social responsibility and harmony within its communities.

No one owns foods or a chattel absolutely, because his kinsfolk and even outsiders may have claims upon it which he has difficulty in denying. Among the Igbos, certain fruits and crops growing in the farmyard of another could be plucked by any member of the kindred and eaten without being charged of stealing.

During the harvesting period, the less priviledged and lazy ones are allowed to go to another's farm in search of 'left-over' yams, cassava, and other crops, which they could take away with them. They are not, if seen, charged with stealing for the original harvesting has already been done by the owner of the farm. In this way, a poor man was not reduced to a beggar status, as this role was very shameful in tribal society. But the poor man had to do a little work for himself, by going into another's farm after the owner has done the original harvesting, and taking to himself crops and other eatables left over.

Human work was therefore highly recognised, as the Igbo strongly believe like St. Paul does, that "he who does not work should not eat". Thus, the lazy man, even if he did not produce enough food crops to keep himself and his family, still had to work for a living. He thus became industrious in gathering left-overs and had the right to dispose of the goods gathered, the way he wanted, either by selling the excess for money, or by privately consuming them.

132 *Richards, I.A. Land, Labour and Diet in Northern Rhodesia, 1939. London, Oxford University Press for the International African Inst.*

This attitude to wealth cannot however be divorced from the real economic situation of the Igbo. Women were conditioned to reciprocal sharing of food, crops, and other goods with their fellow women. A woman after cooking, would send some of it through her child to another woman to enhance sharing, and this was correspondingly reciprocated. Rather than accumulate, she extended her individual responsibility outside her own household.

The externally imposed limitation to wealth and accumulation strengthened the search for inter-human and inter-clan networking.

Symbolic Functions of Property

Property ownership and material exchange carried with it many symbolic aspects. In traditional society, material objects have high symbolic value. Evans-Pritchard, writing about the Nuer of Sudan recognises this fact:

"People not only create their material culture and attach themselves to it, but also build up their relationships through it and see it in terms that... the poorer a society is in material goods, the more symbolic functions these goods have to serve... a very simple material culture narrows such ties ... material culture may be regarded as part of social relations, for material objects are chains along which social relationships run, and the more simple the material culture, the more numerous are the relationships repressed in it..." [133]

In Igboland, mutual sharing of the Kola-nut was a mark of friendship. Enemies would not share the Kola-nut, for the act of so doing symbolised friendship, unity and good-will; similarly, the *"Ofo"* (staff of authority) which passes from father to his son, marked the transfer of authority from father to son and the maturity of the son required him to speak the truth whenever he had his *"Ofo"*; in the same manner, the palm-frond over a log of wood expressed ownership!

133 *Evans-Pritchard, The Nuer, 1940, p. 89 (Refer to Gluckman for a through analysis of these assertions by Pritchard, op. cit., p 46)*

Material property, whenever exchanged, had a high symbolic value and there are many reason for this:[134]

i) Material property stands for the range of relationships which form the very fabric of society;

ii) The ceremonial goods which circulate in them may take on this symbolic value as expressed in ritual practices.

iii) They represent that wider spread of peace which extends around borders of each tribal group, and which makes it possible for that group to enjoy some possibility of pursuing its internal objectives. Hereby is meant that exchange of certain goods between two societies helped to tighten their neighbourly relations and to reduce the chances of inter-village wars.

iv) Lastly, material property served direct utilitarian ends, as one uses its distribution to gather for himself some prestige and influence over a large following.

"The more sumptuous the presents give away to others, the greater the prestige of the person involved, and a competitor who saw his rival give out presents lavishly, would, to recover his face and regain prestige, give out also presents in return to the rival, and prepare a greater feast whereby he boasted of his family's prestige, rights over property and greatness". [135]

The Laws Governing Inheritance of Property:

The phenomenon of private property as an accepted mode of economic enterprise in Igboland is further articulated by the laws of inheritance. One inherits a good in order to own it, or as the case may be, in order to place the inherited good at the disposal of the family members who are still living, dead or yet to be born.

134 *Gluckman, M., op.cit., p. 57*

135 *Gluckman, M., op.cit., p. 60*

Meek recounts that the rules governing inheritance are consistent with the general character of the social organisation, and at the same time, are so elastic and based on such equitable principles that they can be easily modified to meet changing conditions, such as the tendency towards individualisation. Property held by virtue of an office passes to the successor. Thus, lands or palms held in trust by the head of a family for the family's benefit, cannot be alienated without the consent of the family, and this must be handed on intact, together with the official *Ofo* and other insignia of office, to the next senior elder or other person chosen as the successor of the previous office holder.[136]

Generally, the governing principle with regard to inheritance is that of primogeniture, whereby the eldest son in a family inherits from a father - whether deceased or very old, the right over the property of the father. Says Basden,

"a man's personal property is inherited by his eldest son, or if he has none, by his eldest brother or male relative" [137]

In other words, the eldest son succeeds absolutely as a general rule (although exceptions abound), to all the property of his father.

The first son takes over all the household. It has to be made clear however, that, although the eldest son inherits the major share of all property, he is duty-bound to look after the interests of his mother, sisters, younger brothers, half-brothers and the widow(s) of whom he becomes the social father[138]. The new heir takes over all the property and could keep them to himself if he wanted; but the normal practice was that he distributed the money that they may be able to pay their dowry, and gave

136 *Meek, K.C. Law and Authorty in a Nigerian Tribe, op. cit., pp. 319 ff*

137 *Basden, T. G., Among the Ibos of Nigeria, Frank Cass, London, 1966, p. 32*

138 *Meek, K. C., Ibid.,*

the widows to other men, while receiving the dowry from these. Old widows remained in the compound and were not disturbed by the new heir, for he could not eject them.

The new heir not only becomes the successor of his father's property; with it, he inherits also his father's liabilities and debts, or even debts which his dead father inherited from the ancestors. Says Basden, the

"settling of ancient debts, perhaps three generations old, is very intricate business, and the new heir may find himself in a big dilemma, and possibly critical position owing to his being suddenly confronted with a debt contracted by his dead grandfathers".[139]

There are cases where the eldest son of a deceased man is too young to inherit, cater for, and administer the property to which he has traditional customary rights. In such cases, the brother of the deceased man, or the elder in the compound takes charge of all property, whether cash or kind, and these he keeps in trust until the rightful heir is matured.

The heir *"is bound to provide for the up-keep and marriage of his deceased brothers sons. In due course, when the children have grown up, they take possession of their father's lands and economic trees and any balance of property that their uncle may have in hand. If the uncle has squandered the property, or filed to act equitably towards his nephews, he is liable to an action for damages"* [140], otherwise fighting and serious disputes might arise.

There are cases where a man makes his will before death to avoid cases of disputes over the property he left over to his heirs. This happens especially in families where there are many wives and children. When death draws near, a man may call on all his children and responsible relatives and divide among them, his property. He does this particularly, if his eldest son is seen to be irresponsible and careless and incapable of managing the household after his death, or where he notices that the heir

139 *Basden, T.G. Niger Ibos, op. cit., pp. 267 - 268*

140 *Meek, K.C. Ibid. p. 322*

apparent is very greedy. In this case, the man may make gifts to all his daughters, sons, and relations, whilst he is still alive.

Should the eldest son however be trustworthy and strong enough for the great household he is inheriting after his father's death, the old dying man may bequeath on his son the *"Ofo"*.

The *Ofo* is the symbol of authority and leadership. With it a prayer whose formula may run thus, is said:

> *"To you my eldest son,*
> *I bequeath my Ofo.*
> *You are today appointed to be my successor as head of the family.*
> *To this, your uncles and brothers have agreed.*
> *They are to respect you in all things,*
> *and this Ofo must remain with you and your descendants".*[141]

When the aged father has finished his prayer, he would strike the *Ofo* on the ground and breathe onto it with the intention of conveying his words to the ancestors immanent therein. This ceremony is very significant as the dead father is sure that he will thereupon get a respectable burial from his son.

Indeed, one of the main reasons why the father bequeathed the greater proportion of his property to his eldest son was to enable him carry out the burial rites, considered a primary and mandatory duty.

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141 *Meek, K.C., Ibid., p. 323. (The law of inheritance is clear. A man may express his wish while he is alive... His property real or movable belong to his sons and they take shares according to their seniority in age, Refer to Ogbalu, C.F., Igbo Institutions and Customs, University Publ. Company, Onitsha, 1973, p. 18).*

In Igbo tradition, as is the case in most African cultures, *'a man's foremost duty in life is to see that his father or brother is buried with as much ceremony as his means permit'.* Such a successful burial merits respect for the young heir from the villagers and the immediate family relations who confer him with social status and respect.

LAND MATTERS

Land is the most valuable asset and the source of continued existence for the Igbo people, both in pre-colonial times and in modern Nigeria. All land was believed to belong to *Ala, Ani* or *Ana*, the Earth - deity who owns all cattle, wild products, human beings and ultimately all land.

Traditional Igbos thus looked up to *Ala* for a portion of good, arable land for grazing their cattle, erecting their houses, fishing and farming their crops. *Ala* is obliged by its children to give everyone land to live on and land to cultivate, and She must allow every subject to fish in public waters (except on days prohibited), to hunt game and birds, to gather wild fruits and to use the clay, iron ore, grasses, reeds and trees with which the Igbo mould their pots, utensils, mats, baskets, weapons, implements, nets and traps, furniture and huts and needed medicaments.

The Earth-Goddess was believed to be so benevolent that She could not dispossess anybody of land, as these for the Igbo belonged to that area which today will be called "basic needs" or "fundamental human rights". The Igbos on their own worshiped and sacrificed to Ala, the Spirit-Force and Earth-deity who owned all land, regarded to be sacred.

> *The Four Categories of Land Ownership:*
>
> *Land which is Sacred or Taboo;*
> *Communal Land;*
> *Family Land;*
> *Individual Land;*

LAND AND OWNERSHIP RIGHTS:

Many early anthropolgists have considered the very complex theme of land ownership in Igboland.[142]

Land which is Sacred or Taboo:
This includes sacred groves surrounding the shrines of public cults (Ihu Ani), and land regarded as 'Ajo Ofia' (*evil forest)* which are taboo places. No one had permission to use such lands for private or family affairs as these lands were regarded as property of the deity or village spirits. A bold farmer who dared however to clear portions of the evil forest for farming purposes would be forwarned of the dangers involved in meddling with land owned by the spirits. If he however did not give heed (as many modern Igbo Christians who no longer regard the gods of their forefathers), but went on cultivating the land, the elders and community would allow him a certain period leading up to two years during which the spirit owners were supposed to harm the intruder failing which, the new intruder became the owner of the taboo forest.

Sacred forests used for worship hardly tampered with by anyone[143]. The new owner would often use such areas for farming and it eventually became his permanent land to be taken after his death by his descendants.

142 *Meek. C., Land Law and Custom in the Colonies, London, Oxford University Press, 1968; Green, M. M., Land Tenure in an Ibo Village in South-Eastern Nigeria., London, Humphries, 1941; Liversage, V., Land Tenure in the Colonies, Cambridge University Press, 1945., Elias, O. T., Nigeria Land Law and Custom, London, Routledge and Kegan Paul, 1961; Elias, O.T., The Nature of African Customary Law, Manchester, University Press, 1956, Chapter IX; Eastern Nigeria Region: Policy for Lands, Paper No. 3 of 1955, Enugu Government Printers; Chubb, T.L., Igbo Land Tenure, Ibadan University Press, 1961.*

143 *Meek, K.C., Law and Authority in a Nigerian Tribe., op. cit., p. 101 See also: Nwabara N.S., Iboland - A century of contact with Britain 1860., Hodder and Stoughton, London, 1977, p. 35.*

Virgin Forests:

For some reason or the other, a village might migrate to an entirely new site, occupying a large tract of land. In the proximate occupied area, they built their houses and shared out the land to the various family groups. But there stillremained somewhere at the outskirts of the village, land for farming because nobody has required it, or because the village has forbidden farming there for the purposes which it serves (such as defence against village enemies, or as a shade, or as a source of supplies of fibre and wood or for other ecological reasons). Such land constituted what is called virgin forest.

This virgin forest may also be given the name for the mere reason that nobody has ever cleared the grounds there - and they remained public land for whoever could clear the ground and cultivate it. If the village is not particularly meticulous about this virgin forest, any member of the village was at liberty to clear it and cultivate his crops therein, thereby converting such cleared virgin forest to one's property. This practice is, similar to what the Manu law of India allowed: "He who clears a piece of land is the owner of it".

If such forest land was however strictly out of bounds for any private use, then they remained community property. In other cases, such land might still be declared out of bounds, but a villager might in the face of scarcity of land, demand from the elders who are trustees of such land to allow him plant on it. With such a permission, he became full owner of whatever area he cleared[144]

Communal Land
The basic principle, where many scholars maintain a united stand, is in the observation that among the Igbos, the land is conceived as belonging to the community which includes the ancestors as well as the present and future generation. This involves: *'a vast family of which many are dead, or living and countless members are yet unborn'*[145].

144 *Meek, K.C., Ibid., Nwabara, N. S., Ibid.*

145 *Elias, O. T., The Nature of African Customary Law, Manchester, Manchester University Press, 1956, p. 162.*

F.C. Ogbalu has said *that "land is thus a communal property, just as certain trees such as the Iroko and Oil-bean are owned in common "*[146].

Communal land is thus land owned by the entire community, whether fertile or infertile, and is held in reserve for the benefit of the whole group, being formally apportioned out when necessary, to deserving farmers, or in other instances, freely at the disposal of each farmer to farm. In some parts of Igboland like in Owerri regions, there are no communal places for the entire village or clan community[147].

M.M. Green in her studies among the Igbo of Nigeria came up with the conclusion that the village does not communally own any land, except a few small pieces of bush sacred to the village deities[148]. This view cannot hold water in pre-colonial Igbo society, except if we understand her description of "communal", not as the entire village generally, but the various groups or families, therefore communal groups on smaller scale inhabiting the village. And this seems really to be the sense in which she describes communal ownership.

"Ownership of land is divided up among small groups of nearly related kinsmen, branches of the various kindred with the exception, here and there, of a residue of land which may still be the property of the whole kindred" [149].

146 *Ogbalu, C.F., Igbo Institutions and customs, Universit Publ. Onitsha, 1973, p. 73*

147 *Meek, K.C., op. cit., p. 102 (Law and Authority in a Nigeria Tribe)*

148 *Green, M.M., Igbo village Affairs., op.cit., p. 33 - 34*

149 *Green, M.M., Ibid*

The idea of communal or public land might have originated in a method of land acquisition which someone has described as the "Right of First Occupation."[150] It is thinkable that in more primitive times, land was owned by the community in general, but with the increased population over the area, the community divided up the land to the various families or groups within it to avoid conflicts and the problems of scarcity. The families thus divided up further the land due to them to the various individual heads of families within it, so that it eventually became their permanent possession for cultivation, herding and habitation. We shall hence consider family lands as an aspect of communal lands within the community.

Family Land

Dr. S. N. Nwabara has very nicely shown how family ownership of lands might have begun in original Igbo society. According to him, for some reason not always specified, a village might migrate to an entirely new site, occupying a large tract of virgin land which soon took on the name of the ancestral father. The area so occupied would be communally owned. This village might comprise various *Umu Nna (kindred)*, each of which had received a designated area of land upon occupation.

Members of each group re-divided their own share of the land - which was again subdivided according to the number of mature adult members, ensuring that each adult received a portion of land, which became inalienable[151].

150 *Menkiti, A.G. The Chief Land Officer of East Central State Government, Land Tenure, Enugu", Unpublished Document, 11.2. 1970.*

151 *Nwabara, N. S., Igboland - A century of Contact with Britian - 1860 - 1960, op.* cit., p. 34

On this land, the families built their compounds as it was often situated in the village enclosure. This land belongs to the household occupying it, and the recipient held it in perpetuity. It was however disposable to other Umu Nna members for purposes of agriculture and pasture, but could not be given to strangers for practical purposes, the system of land tenure made every free born (Amadi) to own a piece of land over which he enjoyed usufructuary rights. However, each family had right over the land collectively, and divided it out to the children individually for use. In this sense, one would agree with certain authors who maintain that no piece of land, not even that which stood on "bad bush" was without an owner. Says Green, *"The pressure of population on the land is so great that every square yard of it belongs to a small land-owning group which may consist of only three or four males"* [152].

Family ownership of land thus expressed in a very profound way, the communal ownership of same, as Floyd suggests:

"In most Eastern Nigerian communities, the land belonged, as its still does in the last analysis, to a group of kin, a family or a clan, the membership of which included not only the persons alive at any particular time, but persons dead, or not yet born. Land was therefore more than tangible property; it expresses the social and spiritual identity of a group of kinsmen in contradiction to other groups in other communities" [153].

The elder of the family was considered trustee of the land. This trustee regulated conflicts, and delineated boundaries of family group. In cases of land-conflict this trustee (elder) represented the family, and was called upon by the community to witness to transfers and land settlements; a practice which still exists in the present day. Age conferred authority on the elder, who was nearer to the ancestors, the primary custodians of community land.

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152 *Green, M.M., op. cit., p. 34*

153 *Floyd, B. Eastern Nigeria-A geographical Review, London, 1969, MacMillan Press pp.* 199 - 200

From all that has been said, it is clear that communal as well as family ownership of land existed in Igboland. What is highly debatable is whether individuals could also own land absolutely? A very difficult topic, Dr. Taslim Elias, Nigeria's former Chief Justice maintained that individual ownership of land is not peculiar to pre-colonial African societies, but is modern phenomenon since the intrusion of the Europeans.

"In Nigeria, as in practically many African societies, ownership of land in the accepted English sense is unknown. Land is held under community ownership, and not as a rule, by the individual as such... It is true that the impact of English ideas of property law upon indigenous conceptions has had great influence and produced tendencies towards a partial breakup in the existing system, and many individuals now own land in their own right, ... but the indigenous customary law of land tenure remains essentially communal" [154]

It is good to note that in the original work of Justice Elias, the word "communal" was not used. Rather he employs the term "corporate" instead of "communal", by which he argues that the 'rights of the individual members often co-exist with those of the group in the same parcel of land'. In other words, the individual is part-owner of land belonging to the family[155].

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154 *Elias, O.T. Nigerian Land Law, 4th Edition, London, Sweet and Mazwell, 1971, p.7 (Originally published under the title: Nigerian Land Law and Custom, Routledge and Kegan Paul, London, 1966, p.6)*

155 *Ref. Elias, O.T., Nature of African Customary Law, 1956, chapter ix, Manchester*

In modern society, the following reasons have led to the outright ownership of land by individuals:

a) The efforts of practising African lawyers trained in English Law;

b) The change from the subsistence economy of the autonomous household or village to the market economies of cash crops like cocoa and palm-oil in peri-urban areas;

c) The increased pressure of population upon the land consequent upon this change, which has produced tendencies toward a partial-break-up in the existing systems; as a result, many individuals now own lands in their own right[156].

Communal Ownership:
the Example of Aguagbaja Umana Ndi Agu Village Constitution

The constitution of Aguagbaja Village Union, of Ezeagu Local Government Area of Enugu State of Nigeria defines the communal-individual usage of land in a rural community clearly:

"The Aguagbaja Village Union is a Union of all Aguagbaja citizens bound together in blood for mutual understanding, harmonious living and peaceful development of their area. The citizens agreed to guide themselves with the following guiding principles or bye-laws.

All citizen of Aguagbaja Village are members, therefore, all males and females both young and old, married and unmarried are members.

Any child of Aguagbaja is permitted to build on Aguagbaja soil where there is available space of land. That is to say that ownership of land must not prevent one from building. Also no amount of economic plants should prevent one from building provided that such a citizen is a legal Aguagbaja citizen.

156 Elias, O. Nigeriam Land Law, op.cit., p.7

Any Aguagbaja citizen, man or woman, is permitted to farm on any available space of land belonging to the community. In farming, no economic plants must deliberately be destroyed and no compensation such as money, wine or yams must be demanded... An offender pays to the community a fine of sixty naira and eighty naira correspondingly" [157].

In another document of the same village community, concerning the ownership of community of land and the social relationship supposed to exist in the community, the villagers bound themselves under oath and declared:

"The entire Aguagbaja citizens gathered together today 10th June, 1984 and agreed to take an oath on the following items listed for their mutual understanding and togetherness. This oath taken today is bound on every Aguagbaja person both male and female, young old and also those to be born in future.

Aguagbaja Community has a communal land stretching from Ekpe Eze to Ajali and from the old tract road to Akpata.

That in this communal land, any good citizen of Aguagbaja can farm or build without any hindrance from other Aguagbaja citizens.

That if anybody from Aguagbaja lease or sells out any piece or portion of the said land to either a company or the government for his personal gains should be killed by the idol". [158]

157 *Aguagbaja Village Union - Umana Ndi Agu Constitution, signed 1st September 1984, pp 1-2; Printers: Liberty Press, Nsukka, 22 University Road.*

158 *Refer: "The Items of Agreement on Oath Taking by Aguagbaja Community on their communal Land", Oath sworn on 10.6.1984, and signed in paper for documentation by ten signatories on behalf of their various families on 1st September 1984.*

A Synthesis of Individualism and Communalism:

Some observers, especially Western writers conclude that traditional Igbo society, like many other tribal societies could be termed "communistic"; and that individual rights in land or other goods did not exist. This judgement is faulty because implicit in it is a false antithesis between "communistic" and "individualistic", arising from the way in which we say that a person or a group "owns" a piece of land or some item of property.

"We are speaking loosely when we use this sort of phrasing"[159], for a strict adoption of the principle of "communism" would have stifled individual initiative. One must understand that in Igboland, there was a peculiar combination of individualism and communitarianism to develop a system which accommodated both the interests of the individual and those of the community at large.

Like in the example shown above with Umana Ndi Agu, communal ownership of land guaranteed the free use of the land by any "legal Aguagbaja citizen". Land did not belong to individuals absolutely yet, the individuals used the land for their various needs. In short, if we are to understand the use of land as a unit of production, we have to appreciate that it is too simple to talk of such tribal societies as marked by either communism or individualism.

Clearly, land as it is ultimately cultivated,

"is worked by individuals with secure and protected rights, but representatives of their families, their village, and of the clan have claims on the land. No superior or elder can arbitrarily oust a junior from his holding, and the heir of each junior enters on succession into this holding" [160]

159 *Gluckman, M., Politics, Law and Ritual in Tribal Society, op. cit., p. 36*

160 *Ibid., p. 41*

Hence, when we say that a particular group of kinsmen or family owns land, it is also implicit in such a statement that all the members of that group have claims to exercise certain rights over that land - may be equally with one another, may be varying with their status.[161]

Individual Land

It should be clear by now that individual ownership of land existed within the traditional communal ownership structures. As Meek has pointed out, land was handed on by father to son, or acquired by clearing virgin forest or in return for a loan. In many village groups says he, *"there is scarcely any land at all within the recognised boundary of the group which is not held by the individual"* [162].

There were also other ways in which an individual could acquire land and this was pointed out by S.N. Nwabara, namely land acquired through inheritance, marriage, dowry, homicide, compensation, conquest, Kola tenancy and land given as a present.[163]

An individual could also acquire land under terms of seasonal or temporary transfer. Within the clan, it is common practice to pledge land in order to cancel a debt, pay a bride price, or even to raise the means of paying tax. Land which has been pledged is normally redeemable at any time and at the same rate at which it had been pledged, as the proverb: ***"Ihe Ibe efughi efu", ("a thing that is pledged is never lost")*** depicts.[164]

161 *Ibid., p. 36. (See also: Hoebel, the Law of Primitive Man, 1954.*

162 *Meek, K.C., Law and Authority in a Nigeria Tribe, op.cit., p. 103*

163 *Nwabara, N.S., op.cit., p. 36*

164 *Meek, K.C., Ibid.*

Despite the individualism of the Igbo, and any express rights to the ownership and cultivation of a land, what is really owned by the individual is claim to have power to use land or property; to possess immunities against the encroachment of others; and to exercise certain privileges in respect of these. However, in the communal or family concept of ownership,

"other persons within the family may have certain rights, claims, powers, privileges, immunities in respect of the same land" [165]

We can now say with Nzomiwu that it is a peculiarity of the Igbo land tenure system that the right of the individual members often co-exist with that of the community in the same parcel of land.

"There is both communal and individual ownership of land in Igbo society. Some plots of land owned by the family, are generally made available to individual members as house, garden or grazing land. These individuals exercise some type of ownership over the land" [166]

The former Chief Justice of Nigeria put it so well by looking at ownership of land from the perspective of right to use of land, but not right to absolute ownership of same land, with regard to title:

"It is in a sense that of part-owner of the land belonging to his family. He is not a leasee, he is not a licensee, he is not a usufructuary. He pays tribute to nobody, is accountable to none but himself, and his interests and powers transcend those of usufructury under Roman law" [167]

In the Oxford English Dictionary, the word "Usufruct" is defined as *"a right of enjoying the use and advantage of another's property short of destruction or waste of substance"*. However, this dictionary definition does not cover the extent of the rights of African holders. Moreover, in Roman law, a grant of 'usufruct' was for the use of fruits during the holders lifetime, not transmissible to heirs, as African holding is. We are thus forced to accept that in the context of pre-colonial Igboland, three sources interplayed as far as ownership of land was concerned, namely, the community, the family and the individual.

Under feudalism, a vassal entered into a special contract with his immediate lord in which he offerred services to a demarcated king in return for control over land and those attached to it. No one in those days however could go to the king directly and demand land, as in Africa[168].

An individual owning land would call the elders to witness the division of land among heirs according to the laws of inheritance. Again, the general community limits the absolute rights of the small land-owing groups over their land. But there is no one individual who is looked on as holding the land in trust for the community. The situation in feudal Europe did not occur in Igboland as there were no lords and no feuds to lord it over others.

There was no institutionalised chieftainship. Rights to control the land rested not on the individual alone, but on the entire family together. Land was communally owned but individually utilised. Under this condition, was it possible to sell land in Igboland? What right had foreigners over the land on which they lived? Could one buy land or have it transferred it to one's care? Was such a transfer permanent or was it temporary? These and other questions will now be considered in the following discussion.

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165 *Gluckman, M., op. cit., p. 36*

166 Nzomiwu, J.P.C., The Moral Concept of Justice among the Igbos, op. cit., p. 219.

167 *Elias, O.T., The Nature of African Customary Law, Manchester, 1956, p. 165*

168 *Gluckman. M., op. cit., p. 40*

The Inalienability of Land

We have already seen that in traditional Igbo culture, the land stands as a basic right for every indigene, just like air and water. Could land therefore be sold by an individual to a foreigner who was not a member of the group?

M.M. Green attempted an answer to this question when she wrote: *"Without generalisation, one can say that in the majority of cases, 'Rights of Ownership' over the land are qualified by the fact that though it can be, and frequently is, leased and pledge, land cannot, according to native law and custom be sold. 'Can land be lost? people ask. And this prohibition is widespread in the Igbo country.* [169]

She gives an account of how she interviewed her interpreter, who originated from another part of Igboland, yet was able to confirm this view as general among the Igbos:

"This was stoutly asserted not only for Umueke Agbaja but by my Mbieri interpreter about his own village group, and he insisted that the law was universal among the Ibo. Land cannot be lost, he said. Any assumption therefore by Europeans that land can be sold would cut right across the most fundamental basis of native society. The only title to permanent ownership of land is inheritance. [170]

That land cannot be lost was also attested to by Nwabara in the work sufficiently quoted already. He confirms that this statement of losing land, depended on the party to whom it was lost. Property was not considered lost when it was transferred by pledge or sale to a brother or blood relations.

169 *Green M. M. op. cit., p. 34 (See also in her work written in 1941: (Land Tenure in an Ibo village in South-Eastern Nigeria, London, p,.7)*

170 *Ibid*

As long as the property circulated within the *Umu Nna (kindred)*, no sense of loss was entertained. It would be regrettable and a loss if it was transferred permanently to a "non-indegene", that is, to a person from another village who must not necessarily be an unknown person.[171]

For the Igbos, there is a strong belief that land cannot be alienated since it does not merely belong to the current generation who are only caretakers thereof. Many anthropologists and historians have this to say, like D. Smock reports: *"When a possibility of land consolidation was discussed with Eastern Nigerian villages, misgivings also arose from the fact that the land is thought to belong not just to the current generation, but also, to those members of the family who have died and those yet to be born. Thus they argue that the current generation has no right to make adjustments in land owning patterns."* [172]

As a general rule, land, whether community, family or individual is inalienable and this practice is widespread among the Igbos[173].

G.T. Basden who somehow represented the view that purchase and sale of land was exceptionally practiced added to the views already stated: *"It can be generally accepted that, under native law and custom, it is generally repugnant to alienate land from the family, and the head acts as trustee of the property. There are exceptions to this statement".*

Elsewhere he says on the same topic: *"It was and still is generally speaking repugnant to the Ibo mind 'to make trade', that is, to regard the land as a source of profit"* [174]

171 *Nwabara, N.S., op. cit., p. 35*

172 *Smock, R.D. and Smock, C.A., Cultural and Political Aspects of Rural Transformation - A case Study f Eastern Nigeria; Praefer Publishing Company, Ne York, 1972, p. 161*

173 *Green, M. M., op.cit., p. 33*

174 *Basden, T. G., Niger Ibos, op. cit., pp. 264, 266.*

Why was Land Inalienable?

Out of respect for the ancestors buried in the ground, people did not sell land to foreigners on a permanent basis. The ancestors handed over the land to their successors without sale. What would the present generation hand over to the future generation? For fear of the ancestors therefore, land was considered inalienable.

There is general respect for the land as a fundamental right inherited by every person within his kindred and clan community. A sentimental attachment thus followed the inalienability of land.

The exploitative tendency by greedy members within the society or outside of it was curtailed, as the sale of land was forbidden. These greedy fellows might have bought off all the land, later to sell it at exorbitant prices to others, or rather, create a class of land owners and non-land owners, who would be permanently subdued to slavery by working for those who have land in other to exist.

Land was not sold in Igbo land because land remained within the control of the community, and not under the control of a single individual. The community might however, depending on definite circumstances chose to alienate land on a corporate basis, and the individual who had his personally acquired land, could only engage in the sale of land, after due consultations with the family members, and a corresponding performance of required rituals.

It was generally believed that all land and its products belong to the Earth deity - Ala, who in turn apportioned land to Her children. It would have been absurd if the Igbo engaged in marketing the land for the purposes of amassing wealth. Only in extra-ordinary situations could land be considered alienable.

Lastly, the Igbo preserved some land for posterity, as a heritage, and to guarantee the future of their children.

Smock maintains that people outside the community are denied the right of ownership of land since they are strangers, although they could be allowed to use the land. In no case would a community that has a virgin land allow someone from another community to assume control of it, except on the basis of pledge and lease agreements.[175]

Foreigners and the Land

The fact that strangers were not sold land on a permanent basis does not mean that they had no right to use the land, or even to rent the land on a temporary basis - which could in the long run extend to several generations, and sometimes involve permanent usage. It has already been said that land could be pledged or leased to foreigners. There were other forms of transferring right of use of land to people outside the village, such as, seasonal transfer, temporary transfer, kola tenancy, payment of debt, dowry, etc.

One frequently finds people who are not resident in the village but are working its land. This is allowed under the condition that there is more than sufficient land for the members resident in the villages.[176] Similarly, Basden argues that *'permission is often freely given to tenants to cultivate land or to build upon it, but the "Head" can always lay proprietary rights claims. The occupier is seldom disturbed so long as he is prepared to acknowledge the ground's landlord. Rent is not usually demanded, the tenancy being confirmed by the offering and acceptance of 'Oji' (Kola) at the time permission to occupy the land is granted, and on more or regular occasions subsequently."* [177]

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175 *Smock, R.D., and Smock, C. A., op. cit., p.152*

176 *Gluckman, M., op. cit., p. 39*

177 *Basden, T.G., op. cit., p.264*

- Pledged Land - As a point of fact, pledged land is often pledged for a sum of money in excess of that given. There is evidence that such land remains unredeemable for generations; for several reasons, one of which might be that all evidence of the original transactions has been lost. In this way, certain rich men have acquired land in perpetuity.[178] This is so because pledged land could be transferred or inherited by the pledgee, and after three generations, the pledger's descendants lost the title permanently to the descendants of the pledgee.[179]

  It has been accounted as common in Owerri area of Igboland, where the head of a family may have to pledge a piece of family land to pay off a debt by the previous head, and he may insist on doing so against the wishes of the family, especially if these have offered no assistance towards ameliorating the paying off of the debt.[180]

- Land Lease - Temporary transfer, otherwise known as land lease practice is age-old among the Igbo. The lease was for an unlimited period, but recoverable by the rentor or his successor within three generations. A man may thus lease a piece of land to a friend free of charge, expecting merely to receive a pot of wine - palm and a feast after the harvest.[181]

178 *Meek, K.C., Law and Authority in a Nigerian Tribe, op. cit., p.103*

179 *Jone. I.G., report of the position, Status and Influence of Chiefs and natural rulers in the Eastern Region of Nigeria, Enugu, 1957*

180 *Meek, K.C., op. cit., p. 103*

181 *Ibid.*

- Seasonal Transfer- Seasonal transfer limited the tenant to one farming season. An important condition attached to this was that the foreigner plants no permanent economic trees or crops on the land so transferred, nor should the lender harvest already standing palm-trees, take wine or oil from them. Such a transfer involved a nominal fee as rent, and the transaction did not involve other members of the family.

- Kola Tenancy- Otherwise called in certain areas 'Izi Ani', or 'land showing', in this case, a man gives a plot of land to his friend or even to a slave. Title was often permanent, provided the occupant performed the required rituals and brought the required Kola nuts, chickens and other demands for such a transfer. Nwabara suggests that in such cases of 'Kola tenancy', the title of transfer is permanent, and this accounts for the ownership of land by slaves in certain parts of Igboland.[182]

- Showing a Land (*Izi ohia; Izi Ani; Izi Ana*)-This was another form of land transfer in Igboland. Monetary or rental transactions were not involved. Someone in search of land could approach an acquaintance with his wish. If the discussion was positive, the land owner would demand the normal customs of 5 Kola nuts and a pot of palm wine. The family members were duly informed and their permission solicited, for this would be impossible without their consent. On the appointed day, rites are performed, the blood sprinkled upon the site with prayers to the ancestors for protection, peace and prosperity. Such a system if transfer is neither pledge or lease or sale, but is termed 'Izi Ani' or showing of land.

182 *Nwabara, N.S., Iboland-A century of contact with Britain, op. cit., p.3*

The land normally reverts to the original owner or his descendants when the tenant departs the land. In fact, as Nwabara has noted "the title of land its not transferred to the tenant, but he and his descendants could live on the land as long as they wished. Should the owner, unilaterally, force the tenant to quit the land, he was required to pay a compensation, in cash or in kind, for all the buildings and economic trees"[183], erected on the site. This could involve such high costs that the original owner would withdraw his forced quit notice.

- Untransferable Land - Having talked about land that was transferable, we shall now discuss briefly land that was considered by the family to be untransferable. Nwabara calls such land "Ama Ochie", which means "the original home" where the forefathers of the villages lived. Title to the "Ama Ochie", was rarely transferred to anybody outside the immediate family. Such land was part and parcel of the family and carried some religious sanction with it, because the incumbent had to account not only to posterity but also to the ancestors for the use of the land. Liversage refers to the individual as: "only a link in an unbroken chain". Hence, to transfer such land either seasonally, temporarily or permanently to a non-member of the family was an abomination and a disgrace to the ancestors buried there, since the souls of the ancestors are inextricably bound up with the land where they are buried. For these and other reasons, the sale of land is therefore unthinkable.[184]

183 *Nwabara, N.s., op. cit., p.36*

184 *Basden, T. G. op. cit., p. 266*

"No Ibo man would, under any circumstances, suffer the graves of his dead relatives to be desecrated. In some cases, the land was vested in the head of the family, but in others, it was shared among the male adults and in time the land became extremely fragmented and smaller in size" [185]

Thus, the living, the dead and the unborn played an important role in the system of land tenure, even in their physical absence. Concerning land therefore, one could conclude by saying that much like material property, land, whenever exchanged, had a high symbolic value.[186] The fundamental point at the beginning of this chapter is thus seen in the fact that ownership of property was not simply for accumulation, but for sharing, distribution and consumption within the community. Like in the New Testament Acts of the Apostles, the early Christians lived co-operatively, for those who had, shared their goods with those who had not. Property rights existed, but these were seen as not just individual accumulation.

Kinship involved a general obligation to help and sustain one another. The kinship system is widely extended and many distant relatives are classed with close relatives. As the individual grows up in one of these groups, there is no enterprise to draw one away from one's cultural roots. It is a mutual relationship because the beneficiary also keeps his/her belongings at their disposal. This is the principle of communitarianism which stresses the individual as "relevant" and "Existenzfahig" (sustainable) only within the kindred. What could one do elsewhere? What more rewarding labour is there outside? And why should one even go outside the clan, where the soul and mind are, except to search for novelties that would be useful for the original community? Elsewhere, one would be alone and if injured or dying, who would provide care or vengeance on one's behalf? People therefore remained in the land of their ancestors, working with them and supporting them. Western influence disrupted this.

185 *Liveersage, V., Land Tenure in the Colonies, Cambridge, Cambridge University Press, 1945 p.7 and p.66. (Refer also Nwabara, op. cit. p. 37)*

186 *Gluckman, M., op. cit., p. 57*

The uninvited British colonial intrusion into the historical development of Nigeria in the 19th century, brought with it incalculable confusion and damage to Igboland's property and ownership structures.

It disrupted traditional authority over land and removed the spiritual linkage between the land and the people in exchange for simple material consideration (money). The colonial authorities imposed local chiefs and native authorities over the people who legislated over land matters. Thus divested of their community leadership (the elders) structures, the new authorities introduced the idea of alienation and sale of land through binding agreements. This practice allowed for the expropriation of communally owned land from the natives by the British Crown. A clear case in point is the land containing coal in Enugu which was signed off by imposed local chiefs at the beginning of the 20th century.This policy has continued ever since withthe introduction of the Land Use Actof 1976 in Nigeria.

Under the circumstances, it may be necessary to study further the translation of adaptable culturally rooted practices which are sustainable in a modern era to guarantee balance and protect the rights of people, individuals as well as the community at large in matters of ownwership and property.

CHAPTER SIX

THE INDIVIDUAL AND COMMUNITY

This chapter discusses the relationship between the individual and community in traditional society. It throws light upon the apparently contradictory, yet harmonious, inter-relationship between the community consciousness, individualism and communitarian spirit of the Igbo.

This cosmology provides the context within which the concept of justice makes sense. It is through this 'Weltanschauung' (world view), that the values underlying the role of the individual in community is understood; in the context of rights and duties, and the spirit of "live and let live" which is the foundation for justice and peace.

THE CONCEPT: "INDIVIDUAL"

The word, "**Individual**", comes from the Latin, **Individuus** (in + dividus, dividere) meaning:

- *Not divisible; of one essence or nature; not to be parted;*
- *Marked by a distinctness and a complexity within a unity that characterises organized things, concepts, organic beings and persons;*
- *Existing as a separate and distinctentity; being peculiar; striking or uncommon enough in character to be easily identified or distinguished* [187].

187 *Websters Third New International Dictionary, Vol, II, H-R; AND C Meriam Co. (c1768), London, 1981, p. 1152*

The Individual in Western Philosophical Tradition

Greek texts make reference to the individual as a particular being or as things to be distinguished from a class, species, or group. The individual stands constantly in contrast to society. As an ethical doctrine, individualism is the principle which holds that the interests of the individual are, or ought to be, paramount in the determination of conduct. In such thinking, all values, rights and duties originate in individuals while the community or social whole has no value or ethical significance unless derived from its constituent individuals. Thus, the aim of society is the promotion of individual welfare and the objective of moral law is the development of individual character. As a political and social philosophy, individualism stresses self-reliance, privacy and respect for other individuals.

The ancient Greek philosophers quickly discovered that to attain full maturity in human life, active participation of the individuals in the state was needed. Greeks were conscious of the intimate connection between ethical duties and one's citizenship which led to the philosophy of the state.[188] For Aristole, as for Plato, the subject of political philosophy embraces the whole of human behaviour in the group. Ethics was therefore a part of politics.[189] Commenting on this in his introduction to Aristotle's politics, Sinclair writes, "*alongside the strong ethical bias in political philosophy was a sense of the need for fixing standards.*

An ethical code had to be embodied in a code of law, and this code of law in turn describes the whole framework of the social and political system and the moral standards under which the citizens live, and for which the Greek word was 'politeia', usually translated as *"constitution"*.

188 *English - Greek Dictionary, Papademetrious Alex and E. publishers, Athens, 1965, p. 246*

189 *Aristotle, The Politics, Book V, translated by T. A. Sinclair, © 1962), Penguin books, 1976, Middlesex, England.*

Inevitably, therefore, young citizens had to learn these laws and only thus could they learn to live either the life of a citizen or the life of an individual following accepted standards of right and wrong.[190]

In ancient Africa, however, such as Igboland, an intimate connection existed between the ethical duties of the individual and one's membership of society. It is this connection that we seek to examine, comparatively, in this chapter.

Individualism in English Society

Full-fledged individualism seems to have emerged first in England. In the middle of the 17th Century, Thomas Hobbes developed a radically individualistic but authoritarian philosophy[191] (Hobbes, T., "De Corpore: Body, Man and Citizen" (1995), Collier books, New York, 1962).

John Locke, later in the century, developed widely influential doctrines concerning the natural rights and political equality of individuals.[192] (Locke, J., Two Treatises of Government (1990), Appleton-Century-Crofts, New York, 1959.)

Individualism advanced to new heights in England in the 19th Century, when the rise of industrial capitalism and the new class of businessmen popularized the ideas of Adam Smith and Jeremy Bentham and their followers in economic, social and political theory.

Smith's doctrine of laissez-faire (refer: "The Theory of Moral Sentiments", 1959, The Wealth of Nations", 1776) was based upon a profound belief

190 *Aristotle, The Ethics, translated by J. A. K. Thomson, Allen and Unwin, c 1953, Penguin Classics, 1957, Book 1, chapter 3.*

191 *Websters Third New International Dictionary, Vol.II, H. - R; and C Meriam Co. © 1768), London, 1981, P.1152*

192 *Hobbes, T., "Leviathan", (1951), The Liberal Arts Press, Inc., New York, 1958*

in the natural harmony of individual wills and Bentham's hedonistic utilitarianism, with its basic rule of "each to count for one and not for more than one"(refer: Bentham, Introduction To The Principles and Morals Of Legislation",1989). Bentham provided the intellectual underpinning of Victorian Liberalism. John Stuart Mill also lived in England during this period. The essay, "On Liberty", is no doubt Mill's most famous political writing. In the opening passages of the essay Mill poses a question:

"What are the limits of the collective authority of society over the individual? He sets as his task to explain a "very simple principle" for determining the proper limits for individual and collective action. The interference "by the collective opinion of society" in private affairs is justified, he contends, only by the need for "self-protection": to prevent harm to others. In discussing "individuality" as one of the elements of well being", Mill suggests that an individual should be encouraged to decide for oneself. Diversity of individual tastes should be encouraged, as it is the exceptional individual who directs mankind.[193]

The Individual And Community in African Thought

"I am because we are; and since we are, therefore I am".

J. S. Mbiti in his book, African Religions and Philosophy (Heinemann, 1969), maintains that in African Traditional Life, the individual does not and cannot exist alone except corporately.

"He owes his existence to other people, including those of past generations and his contemporaries. He is simply part of the whole. The community must therefore make, create or produce the individual"[194].

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7 *Mill, J. S, On Liberty (1854), The Liberal Arts Press, 1956, Chap. 3*

194 *Mbiti, J. S. African Religions and Philosophy, Heinemann, Lond, © 1969), reprinted 1977, p.34.*

This communal spirit of the African, specifically the Igbo, was aptly described by an Igbo author thus:

> *"Community spirit is very strong among the Igbo. Almost from the first, the individual is aware of his dependence on his kin, group and community. He realized the necessity of making his contribution to the group to which he owes so much. He seldom, if ever becomes really detached from the group wherever he may live."* [195]

And this interdependence existing between the individual and the society was shown by Professor Mbiti to be philosophically embedded in the world view of the Igbo.

> *"Only in terms of other people does the individual become conscious of his own being, his own duties, his privileges and responsibilities towards himself and towards other people. When he suffers, he does not suffer alone but with the corporate group. When he rejoices, he rejoices not alone but with his kinsmen, his neighbours and his relatives whether dead or living. When he gets married, he is not alone, neither does the wife belong to him alone. So also the children belong to the corporate body of kinsmen even if they bear only the father's name. Whatever happens to the individual, the individual can only say, "I am because we are, and since we are, therefore I am"* [196]

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195 *Uchendu, V. C., The Igbo of Southeast Nigeria, Holt, Rinehart and Winston, New York, London, 1965, P.34 (p. 2)*

196 *Mbiti, J. S., Op. Cit, P. 108*

This collectivistic spirit of the Igbo seems from the aforesaid to contradict or negate the autonomy and individuality of the person. There is, however, a constant interplay of both, unlike extreme individualism found in specific western schools of thought.[197] *(Sartre, P. J., Das Sein und das Nichts - Versuch Einer Phaenomenologischen Ontologie, Hamburg, Rowohlt Verlag, 1952, P.696 ff).*

The individualistic theories propounded by some thinkers in relation to human nature hold that *"the interests of the individual are best served by allowing for maximum freedom and responsibility to choose and achieve his objectives"*. Such thinking opposes community thinking because:

> *"It embodies opposition to tradition, to authority and to all controls over the individual especially when exercised by the state. Society is only a collection of individuals, each a self-contained and, ideally self-sufficient entity"*[198]

Normally, the Igbo would say that communalism is their way of life: *"Igwe bu ike"* meaning *"the large community is powerful"*, or as Professor Ilogu suggests, *"the cultural pattern that emerges through looking at the traditional social structures of Igbo land as well as the institutions of family, religion and economic pursuit could be termed communalistic. Emphasis is laid on the group or community rather than the individual. Yet, the individual's responsibility to the community is clear and never shirked because social expectation as well as shared values are commonly observed and the social ethos of the village is jealously guarded"*[199]

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197 *Brodbeck, M., Methodological Individualism: Definitions and Reduction; Philosophy of Science; Vol. 25, No.1, (1958), 1 - 22.*

198 *Popper, K., The Poverty of Historicism; London, 1957*

199 *Ilogu, E., Christianity and Ibo Culture, E. J. Brill, Leiden (Holland), 1974, p.22*

Our English philosopher, John Stuart Mill, no doubt the most widely known nineteenth century British political writer and a prolific author of influential political tracts maintains that,

"the individual is not accountable to society for his actions in so far as these concern the interests of no person but himself"[200]

He adds that: *"neither one person, nor any number of persons is warranted in saying to another human creature of ripe years that he shall not do with his life for his own benefit what he chooses to do with it... He is the person most interested in his own well-being, the interest which any other person can have in it is trifling compared with that which he himself has"*.[201]

Mill, however, concedes that as soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the individual may be subjected either to social or legal punishment if society is of the opinion that one or the other is requisite for its protection.[202] Furthering his demand for non-interference of society in the individual's private affairs, Mill articulates his views thus:

> *"but there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself... In all such cases there should be perfect freedom, legal and social, to do the action and stand the consequences".*[203]

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200 *Mill, S. L., On Liberty, © 1859), Edited by V. C. Shields, The Liberal Arts Press Co., New York, 1956; "Individualism", Article published in Micropaedia, Book V. See Encyclopedia Brittanica © 1968) by William Benthon London, 1982, P.339*

201 *Ibid.*

202 *Mill. S. J. On liberty, (1859), edited by C. V. Shields. The Liberal Arts Press 1956, New York, p. xviii, p.91-113*

203 *Ibid., p.92, p. xviii*

Reflecting on the above views of the relation of the individual to society, an Igbo man would ask, *"how can any part of the conduct of a member of society be a matter of indifference to the other members? Is there any person who is entirely an isolated being?"*

And to these questions, Mill has no satisfactory reply.

IGBO COMMUNAL CONSCIOUSNESS

Membership of Igbo society is not by free choice of the person concerned. One is born into a society with a common ancestor and a common religious belief. One is formed, educated and protected in this society according to the *"Omenala"* (laws and customs). And it is within the community of Umunna (brethren, kindred, kinsmen), that the individual in Igbo society attains full maturity.

No one could easily withdraw membership from this society, although, for misbehaviour and extreme malpractices, an individual could be ostracized and expelled from the clan. For the Igbo, therefore, being in union with the Umunna (kindred) means being personally, socially, materially and spiritually blessed. Joys and sorrows are communally shared and loneliness is non-existent.

An English evangelist during the colonial era in Nigeria noted in his book. *"Niger Ibos"*, thus:
"Under the old system, every person knew the 'head' to whom he or she was attached, and they realised their mutual allegiance and responsibility. Hence, there were, in past days, no homeless vagrants in Igboland, the family being responsible for the less fortunate relatives." [204]

204 *G. T., Niger Ibos, Frank Cass, London, © 1938), 1966, p.121*

An Igbo saying which illustrates this fact clearly is:

"Otu mkpisi aka ruta mmanu o zue ndi ozo", meaning "If one finger is smeared in oil, it spreads to all other fingers."

It is this communal sense and attitude to life which one Nigerian Archbishop described thus: *"For the Ibo, as for many Africans, to exist is to live in the group, to see things with the group, to do things with the group. Life is not an individual venture, each one for himself"* [205]

In summary, we use the words of Dr Nzomiwu to describe the Igbo philosophy on the individual, thus: *"Man becomes who he is only through his relationship with others. His individuality can be understood in and through his social relations. Being in a community is a constitutive element of the human make-up."* [206]

This attitude accounts for the strong sense of subsidiarity and solidarity, evident in traditional custom. Does this communitarian spirit mean that the Igbo has no sense of individualism? Is Igbo society a totalitarian community in which the individual is stripped of his individuality only to become a depersonalised cog in the ever-turning wheel of the community? Does the notion of the individual in Igbo society negate the concept of individualism portrayed in the early sections of this chapter? Answers to these questions emerge through reflections on Igbo philosophy in African literature.

205 *Arinze, A. F., Sacrifice in Ibo Religion, Ibadan University Press, Ibadan, Nigeria, 1970, p.*

206 *Nzomiwu J. P. C., The Moral Concept of Justice Among the Igbos: Unpublished Doctoral Thesis, Pont. Universita Laterana, 1977, P. 39*

Never To Give Up

I will never give up
the struggle for peace
to reign in our land

I don't mind their scheming,
I don't mind their taunting

The pen will never cease to write

I'll hit them hard
the pall bearer, the slave masters
with my innocuous verses

I see several missiles after my soul
but I'll keep to my goal

To re-write Africa
To re-create mankind

I'll never give up
The struggle is my Life
To sing for Justice
To die for Peace

Okwudili Njelita;
in OKIKE: African Journal of New Writing, 1999, p. 60

Okonkwo: The Central Character In Things Fall Apart:

"Things Fall Apart" is a novel of twenty-five short chapters, written by Dr. A.C. Achebe in which he describes the Euro-African cultural contact and the disintegration which consequently followed. The title of the book is taken from a poem called, "The Second Coming", by the Irish poet W. B. Yeats (1865 - 1939), in which he laments the passing of order and innocence from the world and fears that the changes that are taking place may not be for the best. In the poem, Yeats writes:

"Things fall apart; the centre cannot hold; the blood-dimmed tide is loosed, and everywhere, the ceremony of innocence is drowned".

It can be seen how appropriate this title is for a novel which describes the changes that ensue in an old and firmly established social structure under the impact of new and different ideas from sources external to the community.[207] Okonkwo is one of the prominent citizens of Umofia and, in a series of episodic chapters, his individuality in a communitarian society is characterised.

Okonkwo is a man who altogether is highly respected and regarded in his community, lived as an individual, willed what he personally wanted even though the community might be against it, and put into action that which he willed.

His individuality is typical in Igbo land as Dr. Dunn remarks:

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207 *T. A., Notes on Things Fall Apart, Chinua Achebe, York Press, Longman, Essex, 1981, P.13*

"a man was esteemed for himself, his achievements and his value to the community and not for what his father was. They settled everything politically by argument and discussion...and thus were regarded as highly argumentative and individualistic" [208]

Okonkwo violated the rites of the Week of Peace, an annual festival during which violent action is forbidden, by beating up his junior wife for neglecting her duty, and although he is fined by the priest, his arrogance and strong will does not allow him to see the social aspect of his actions.[209]

As an individual, he is a great contrast to his lazy and weak father, Unoka, and does everything to establish his identity as a stronger personality. When the 'white man' arrives in Igboland in the latter part of the 19th century bringing a new law and image of society, Okonkwo opposes this novelty and murders a messenger sent by the 'white man'to stop a traditional village meeting from taking place. When the men arrive to arrest Okonkwo, they find he has hanged himself, preferring the shameful course of taking his own life to submitting to the white man's authority and justice.[210]

Okonkwo's personality is a paradigm for the typical Igbo man in traditional society who had the opportunity of self-development within the context of the community. This did not however make him forget that what concerns the community also concerns him.

208 *Ibid, p. 10*

209 *Achebe C., Things Fall Apart, Heinemann, London, 1958, Chapter 4*

210 *Achebe, C., op. Cit., Chapter 25*

"Europeans often imagine that all African peoples form large tribes which are ruled by powerful chiefs. But the Igbo, as a whole have never organised themselves in this way. They prefer to share power rather than concentrate it in the hands of a few people.

Igbo Republicanism:

The Igbo social structure consists of many small local communities. Within the village itself, power is held by various groups, and social balance is maintained by a system of checks and balances. Igbo society was such that even though there existed a strong community consciousness, the individual's rights and existence as an entity were not neglected. Free speech, free movement and free action in Igbo society were guaranteed.

The individual has considerable freedom of action",[211] a reality summarized by an English writer thus:

"The Igbos were organised along democratic and republican lines" [212]

The Igbos themselves have a saying which expresses their mistrust of concentrated authority: *"Igbo enweghi eze, "the Igbo have no King"*. But they had leaders in all fields of endeavour who were trustworthy and accountable. A leader would lose respectability if community affairs were not his priority. The intermingled individualism and communitarian consciousness, personality, ambition and openness to new ideas did not make the Igbo anti-community.

211 *Carrol David, York Notes on Arrow of God (Chinua Achebe), Longman York Press, London, 1980, P.6 - 7*

212 *Dunn, T. A., op. Cit., p.10*

Rather, African individualism allows room for collectivism and vice-versa. Dr. T. O. Elias confirms this thus:

"The individual member of the group is, in the final analysis, the prime actor, although he is not as independent of his fellows as is his opposite number in a non-collectivist society" [213]

Individual Rights And Duties:

From the concept of the person as a being with definite rights and duties, the Igbos build their world view. Here, the community accords regard and respect for the individuals in the society, whereby, the individuals pay homage and loyalty to their community.

Professor E. N. Obiechina, himself an Igbo, commenting on this interrelationship asserts:

> *"of necessity, the hold which the community has over the individual cannot be so constrictive that the expression of his individuality is completely frustrated; the individual cannot be so individualistic in his outlook that he regards his interests as entirely independent of those of the community within which he lives. Either case would have led to the complete impoverishment of both. In the traditional society, a happy means exists which imparts strength and unity. Its essential humanism, as exemplified in the folktale narratives, arises from the awareness of individual destiny within a large, more inclusive communal destiny".* [214]

213 *Elias, O. T., The Nature of African Customary Law, Manchester University Press, 1956, 2nd Impression, 1962, p.92*

214 *Obiechina, E. N., Amos Tutuola and Oral Tradition, in "Presens African", New Bilingual Edition, 1956, No. 65, P. 95*

Connections To Social Justice And Igbo Legal Reasoning:

Justice is a fundamental ethical concept. In all societies, the concept of justice underlies the values and inter-human relationships existing among the peoples of these societies. Being a social notion, justice is so necessary for peace among men, that its absence would mean disorder, and a pathetic agglomeration of villains and reprobates would emerge. Justice is based on the values of a people and for the Igbos of Nigeria, the relationship between the individual and the society was the basis of all notions of social justice.

This is so, because a series of rights and duties were attached to the individual and the society, where rights and duties are the object of justice. In other words, rights and duties were aimed at attaining the common good for all.

The Igbo philosophy eschews extreme individualism which could harm society, and recommends individual freedom and maturity within the society. Social justice, thus, appeals directly to the sense of social responsibility and social consciousness of citizens'[215]

In its connections to social justice, every individual aspires to curb his personal egoism especially when it stands against the common good. This egocentrism would then be tempered with a certain altruism which makes all behave in such a manner as to ensure an equitable distribution of the resources of society, the establishment of social security, and a solidarity to ensure all members of the society feel valued and cared for.

An average European will have difficulties trying to understand this strong community consciousness among the Igbo.

215 *Iwe, S.S. N., Christianity, culture and Colonialism in Africa, R.S.N.C., Port Harcourt, Nigeria, P. 241*

In Europe, the idea of nationhood, of the European Union or the United Nations represents the Western political understanding of commonality. For the Igbo, whether at the clan, village or family level, the community always pointed to a common origin of its members, either in an ancestor or in a general mythology of creation, thus creating a feeling of affinity, blood relationship and common sense of destiny - geographically, socially, religiously, and culturally.

Several authors, especially of European descent, have been able to distinguish the European sense of belonging to a community from that of the African.

Aylward Shorter, having spent the greater proportion of his life in Africa, though himself a European, was able to observe that:

"Having a sense of community with others and being a community with them do not necessarily coincide, but there is normally a more intense experience of community when they do. This is because in the corporate life of a concrete community there is a greater convergence of shared meaning."[216] *"The type of community life and cohesion which exists among Africans is a source of puzzlement for non-Africans and almost all European scholars of African society note the existence of a corporate life which contrasts sharply with the individualism of the Westerner"* [217]

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216 *Elias, O. T., The Nature of African Customary Law, Manchester University Press, 1956, 2nd Impression, 1962, p.92*

217 *Shorter A., African Culture and Christian Church - An Introduction to Social and Pastoral Anthropology, Geoffrey Chapman 1973, P.197.*

218 *J. A., African Culture and African Personality - What Makes an African?, African Resources Publi. Co., Ibadan, Nigeria*

219 *Wieschoff, W. H. A., Social Significance of Names Among the Ibos of Nigeria, (Publ. In American Anthropologist', Number 2,*

Names as expressions of Individual and Communal Identity.

For the Igbo, the deep significance of names is worthy of mention, especially because names are records and living personal memories of persons and events. Expressed in the words of anthropologists:

"There is more in names, more joy, sorrow, pathos and passion, more tragedy and more comedy, more humanity and inhumanity than is possible for some civilized people to realise"[218] *A person's name in Igbo tradition has a peculiar and existential meaning.* [219]

Igbo Names expressing Communal Consciousness

Name	*Meaning*
Igwebuike	*Community is strength;*
Ibejiako	*Wisdom lies in the community;*
Ifeadikora	*There is nothing as good as the community*
Ubadimma	*Population might is good.*
Azubuike	*Strength comes from supporters and well wishers behind;*
Obiora	*Our hearts desire*
Nwanneamaka	*Kinship is beautiful*

Col.43, 1941, p.212 - 213.

Igbo Names Expressing Individual Consciousness

Name	*Meaning*
Nkemdirim	*Let what is mine be left to me*
Nkemakonam	*May that which belongs to me by right not be lacking or missing:*
Onyeachonam	*Let no one offend me or trouble me.*
Maduabuchi	*No one is another's God*
Chiawughi otu	*Destiny or fate is not the same for all. Each person has his own destiny.*
Chinagorom	*God is my solicitor*
Ekwutosi	*Do not speak evil against others*
Odinkemere	*What evil or offence have I committed?*
Owurum	*If it were me!*
Nebechi	*Look upon God for your own fortune.*
progressive	*Do not envy others who are*
Ome mgbe oji	*One who acts and helps when he has the means and is in the position*
Mkemfuluewelum	*What I see or obtain by right I take*
Achom Nkem	*I am looking for my oum (one who strives to be self-supporting and independent)*
Ogunedu	*Uprightness and justice has led me through life's dangers*
Chukwugekpelum	*God will be my judge and advocate*
Ndidiamaka	*Patience is the best*

Individual Rights and Duties in Proverbs and Wise Sayings:

Nke konye diri ya!	*May each one's dues be accorded*
Onye iro m diri ma m diri!	*Let my enemy live, and may I liv too*
Ya bara onye bara onye!	*Let each and everyone progress i wealth*
Onye anwuna ma ibe ya efula!	*Co-existence - may no one die, an may no other get lost*
Ogburu onye n-onye ga ala!	*He who kills another must also di*
Ome njo na njo zukwara!	*May the just man be rewarded with good;*
Ome njo na njo zukwara!	*May the evil-doer be punished with evil.*
Egbe bere ugo bere!	*Let the kite perch, and let the eagl perch as well.*
Nkẹsi ibe ya ebela nku kwaa ya!	*If anyone refuses the other the rig to perch let its wings break.*

"For the Igbo, as for many Africans, to exist is to live in the group, to see things with the group. Life is not an individual venture where each one cares only for himself. [220]

220 *Ezeanya, N. S. A Handbook of Igbo Christian Names, Port Harcourt, Nigeria 1967.*

CHAPTER SEVEN

TRADITIONAL LAW PRACTICES AND ALTERNATIVE DISPUTE RESOLUTION

One of the most famous writers and novelists of black Africa, Dr. Chinua Achebe[221], wrote four main novels[222] which present the life and history of the Igbo people of Southern Nigeria. These novels describe characters and events before, during and after the British colonized the area. He portrays how the cultural clash arising from the encounter with the Igbo and European tore apart the customs, values and traditions of the people. The same happened all across the African continent with the colonial incursion.

His first novel, "Things Fall Apart", vividly recreates the traditional way of life of the Igbo just before the arrival of the British at the end of the nineteenth century. It is a classic work full of historical, philosophical and biographical data. We have chosen this piece of literature as a source to present some aspects of alternative dispute resolution, and the Igbo sense of justice in four key areas:

- legal justice
- social, distributive and community justice
- retributive justice
- personal justice

221 *Isichie, E., op. Cit., p. 25*

222 *David Carrol, Notes on Arrow of God by Chinua Achebe, Longman York Press, London, 1980, p.5*

ODUKWE AND UZOWULU: A CASE OF LEGAL JUSTICE

In the social life of man in organised society, certain standards of action are required from the members of society to make the society stable and progressive. This standard of behaviour enables one to find out whether one's conduct is moral or not, but it does not oblige one to make one's conduct moral.

"This is then the problem of law, for law is the name given to that which imposes an obligation".

St. Thomas Aquinas gave the classic definition of law as

"as ordinance of reason for the common good, promulgated by him who has the care of the community".

Legal justice is a special type of justice, which obliges the legislature and those with legislative powers to ensure justice and the attainment of the common good in society through the enactment of laws which are fair and honest, just and morally possible to observe.

Justice is the foundation of law and order, as well as the justification of laws. In Igbo land, legal justice existed although it remained largely undocumented. There was no promulgation in the name of positive law, except as cultural and customary tradition which the people call "Omenala".

It was with this "Omenala" that a marriage case was settled in Umuofia between the families of Odukwe and Uzowulu as portrayed in "Things Fall Apart".

A MARITAL DISPUTE & SETTLEMENT BY CONSENSUS

The case was between a woman called Mgabafo and her husband, Uzowulu. Due to frequent family quarrels and fighting which had almost lasted for nine years, the brothers of the woman took their sister away from her husband until he promised them that he would not beat her again. Uzowulu, on the other hand, demanded his wife back or a refund of the bride price which he paid for her.

JUSTICE IN SEARCH OF HARMONY & CONSENSUS

The case, presented by Uzowulu was laid before the highest tribunal in the land, made up of the "Egwugwu", a masked figure who represents or impersonates a spirit in Igbo rituals. The masked dancers representing the ancestral spirits of each of the nine villages formed the highest Court of Appeal in the land. Using magical as well as legal authority, they lent force to their judgement, which is intended to purposely promote reconciliation between disputing parties. Those present notice that one of the Egwugwu is Okonkwo, but while he is masked he is not his original self but a 'living dead' (the ancestors of the clan).

In the accepted legal procedure of the land, the defendant's presentation was also acknowledged by the chief judge before all the "Egwugwu" retired into seclusion to consider the case. Here, in the underworld where they retired, it was presumed by the people that they had gone to consult with the spirit world which is the highest and last judge in existence. The supremacy and justness of their verdicts was supposed to be just and impartial. After their deliberation, the nine Egwugwu reappeared to give their judgement which was final and the parties concerned had to abide by it.

Complainant:

Uzowulu, the complainant paid respect to the legal and spiritual authority (Egwugwu) considering the case and said:

"that woman standing there is my wife, Mgbafo. I married her with my money and my yams. I do not owe my in-laws any thing. I owe them no yams and no cocoyams. One morning three of them came to my house, beat me up and took my wife and my children away. I have waited in vain for my wife to return. At last I went to my in-laws and said to them, "You have taken back your sister. I did not send her away. You yourselves took her. The law of the clan is that you should return her bride price". But my wife's brothers said they have nothing to tell me. So I have brought the matter to the fathers of the clan. My case is finished. I salute you".

After presenting his case, Uzowulu's complaint was acknowledged by the presiding judiciary and Odukwe, the brother of his wife, acting as the defendant, was called upon to present his defence.

Defendant:

Without mincing words, Odukwe admitted that Uzowulu's story was true in all dimensions. But he added quite typically in the manner of speech in Umuofia:

"My in-law Uzowulu is a beast. My sister lived with him for nine years. During those years no single day passed in the sky without his beating the woman. We have tried to settle their quarrels time without number and on each occasion Uzowulu was guilty".

Then, Odukwe applied one of those tactical measures one uses to win a case by quoting the law of the land thus:

"The law of Umuofia is that if a woman runs away from her husband her bride price is returned. But in this case she ran away to save her life... If Uzowulu should recover from his madness and come in the proper way to beg his wife to return she will do so" but on the understanding that he will never beat her again.

THE VERDICT

"We have heard both sides of the case", said the eldest "Egwugwu". "Our duty is not to blame this man or to praise that, but to settle the dispute". He then addressed Uzowulu the complainant: Go to your in-laws with a pot of wine and beg your wife to return to you. It is not bravery when a man fights a woman." then he turned to the defendant, Odukwe, and delivered his judgement thus: "If your in-law brings wine to you, let your sister go with him".

In this incident, a case of legal justice in pre-literate Igbo society has been presented. It is under dispute whether unwritten law can be considered as law in the sense of modern legal positivism. Whatever position one takes, the reason for the law and the role of the law in society seems to be the main element and in short the dominating factor, namely,

"to ensure the reign of justice, of rights and of order both in the public and private sectors of social life".

The judgement of consensus and harmony is an indication that traditional society had sustainable means of managing matters pertaining to civil offences, criminal cases and issues of morality in the private and public spheres. Of primary importance was harmony, communal peace, and the resolution of disputes on a win-win basis.

OKONKWO AND NWAKIBIE: A CASE OF SOCIAL, DISTRIBUTIVE AND COMMUNITY JUSTICE

In the novel, "Things Fall Apart", Okonwko, the lead character, inherited nothing from his father, Unoka. The whole community considered his father a failure and in order not to be regarded as a failure himself, Okonkwo engaged in hard work and had gone to one of the wealthiest farmers in Umuofia to plead for some seed yams to plant.[223]

"There was a wealthy man in Okonkwo's village who had three huge barns, nine wives and thirty children.... It was for this man that Okonkwo worked to earn his first seed yams." [224]

It was to this man that Okonkwo appealed for four hundred yam seedlings with which to begin his first planting. Nwakibie had told him, *"It pleases me to see a young man like you these days when our youth have gone so soft. Many young men have come to me to ask for yams but I have refused because I knew they would just dump them in the earth and leave them to be choked by weeds. When I say no to them they think that I am hard hearted. But it is not so... I shall give you twice four hundred yams. Go ahead and prepare your farm."*

223 *"Things Fall Apart" (1958); "No Longer at Ease" (1960); "Arrow of God" (1964) and "A Man of the People" (1966)*

224 *Achebe, c., Things Fall Apart, Heinemann, London, reprint 1981, p.13*

This is a description showing how distributive, community and social justice prevailed - *"Each for the other."* Okonkwo was not a blood relation of Nwakibie. They were only clansmen.

Because of the existing type of social justice in Umuofia which recognized the principle of interdependence or the idea that

"each member and each sector should contribute its own quota for the attainment of the common good, it was possible for one to go to another and appeal and receive aid ".

This principle also created opportunity in the Igbo society for industrious persons to be supported and non-industrious ones to be challenged and criticized as lazy fellows.

Social and distributive justice recognized the principle regarding *"the social purpose of all material goods"* proclaimed by philosophers as already entrenched in modern international constitutions and declarations of new nation states.

A Vatican statement proclaims that:

"God intended the earth and all that it contains for the use of all men and peoples, so created goods should flow fairly to all, regulated by justice and accompanied by charity. All other rights whatsoever, including those of property and free commerce are to be subordinated to this principle."

This brings us to the prevalent notions concerning **distributive justice and community sense of justice.** Unnecessary or selfish accumulation of wealth is not typical in Igboland. Wealthy people share their wealth with their society. One who was rich did not share his wealth with others was disregarded and not accorded due respect by the community.

Okonkwo had made a request for four hundred seed yams only. But Nwakibie had granted him instead eight hundred seed yams. This is because Nwakibie knew of the distributive justice system in Igboland. This is why he had considered it normal that Okonkwo should come to him for seed yams. After all, he was rich but his wealth did not simply mean accumulation but also the re-distribution of that wealth. In this spirit, Nwakibie offered Okonkwo eight hundred seed yams.

He knew the young man was capable of cultivating a farm for such an amount of seed yams. In other cases, he had denied or refused others the same privilege without violating the principle of distributive justice:

"Many young men have come to me to ask for yams but I have refused because I knew they would just dump them in the earth and leave them to be choked by weeds".

Distributive justice as a branch of social justice requires all those in positions of authority to dispense and distribute with fair mindedness and a sense of proportion the distributable resources and burdens of the society in a manner commensurate with the dignity, merits and rank of the members of the society.

Distributive justice *"does not argue from the fundamental and essential equality of all men"*. This it accepts already. But *"as a non egalitarian but proportionate justice"*, it takes due account of the inequalities among men. To treat the unequal equally would be a clear violation of distributive justice which already allows for differences among men and deals with them justly from the perspective of their merits and abilities.

The distributive or community sense of justice was summarised by an Igbo author thus:

"No selfish ownership was allowed. An individual must be ready to let other members of the community share in and benefit from his riches. He must be willing to lend to the poor members of the community... It is for this reason that they feel bound to share that property with those in need. This is the basic Igbo attitude to property as portrayed by Achebe in "Things Fall Apart". (cf Iwe, N. S. S.; Christianity, Culture and Colonialism in Africa; Port Harcourt; p. 239)

OKONWKO AND IKEMEFUNA: A CASE OF RETRIBUTIVE JUSTICE

A woman from the tribe of Umuofia in Igboland was murdered for no reason by people from the neighbouring village of Mbano. The woman who was the wife of Ogbuefi Udo had gone to Mbano market to transact some business and was murdered in cold blood. On account of this, a general meeting of all the men of the tribe was summoned during which one of their most powerful orators, Ogbuefi Ezudo, addressed them on the incident:

" 'Those sons of wild animals', said he 'have dared to murder a daughter of Umuofia'. The crowd, now full of anger and thirst for justice, had to deliberate on the best means to realise justice. At the end of their deliberations, 'an ultimatum was immediately dispatched to Mbano asking them to choose between war or offer a young man and a virgin as compensation' ".

Okonkwo was delegated by his townsmen to carry across this message to Mbano. Achebe records that Okonkwo *"returned from his mission two days later with a young lad of fifteen and a young virgin"* . The lad's name was Ikemefuna.

In the execution of retributive justice, the young virgin (probably the daughter of one of the accomplices in the murder) was given to Ogbuefi Ezeudo as compensation for his

murdered wife, while the young boy, Ikemefuna was murdered on the community's wish by a group of men including Okonkwo after three years sojourn in the land. The boy himself had done nothing evil. A severe and dreadful incident of retributive justice, this case demonstrates circumstances wherein the innocent might die for the sake of maintaining peace and harmony for the larger community. This story intimates that the Igbo could go to any length and dare every consequence, including war, to establish justice, if aggressed.

Igbo retributive justice can be likened to the Hebraic law of:

"eye for eye and tooth for tooth" *(Lex Talionis)* .

Blood is very sacred in Igbo land, especially innocent blood, so that anyone who kills another person was himself killed or an equivalent alternative sacrificed. This is also evident in the Igbo proverb quoted earlier in this work:

"Ogburu onye n'onye ga ala" meaning that *"he who kills another will himself be killed "*.

This case of retributive justice, in Igbo culture, portrays the community as synonymous with the individual. Thus, if anything happened to any member of the clan, it happened to all members of the clan. To distinguish between the individual and the society was therefore almost impossible. One would be surprised to read Jeremy Bentham entrenching these views in another context that applies here:

"if one member of the community suffered, then it was a reduction of the happiness shared by the entire society".

In the address of Ogbuefi Ezeugo to the assembled Umuofia community, the titled man told them that "those sons of wild animals", pointing in the direction of Mbano, had killed a

daughter of Umuofia. He did not say that Mr. X or Y or Z had committed the act. And the injustice was not done to the woman who was killed alone or to her husband, Ogbuefi Udo, but to the entire clan of Umuofia. Consequently, all able-bodied men of Umuofia were called upon to prepare for war against Mbano if their demand for retribution was not met urgently.

Also important in this context is the fact that the people carry out this type of justice in the name of Ala, the deity or as a command of their oracle, which abhorred injustice and the spill of innocent blood. Achebe commenting on this, mentions that: *"in fairness of Umuofia it should be recorded that it never went to war unless its case was clear and just and was accepted as such by the oracle (the oracle of the hills and caves)".*

OKONKWO AND OSUGO: A CASE OF FORMAL JUSTICE "Treat Equals Equally":

The Greek philosopher, Aristotle, elucidated the idea of justice by maintaining the principle that *"like persons be treated alike"*. Such a principle suggests that true justice regards all as equal since they belong to the human family gifted with rationality. All members of a community were regarded as equal, and not simply because of their wealth, race, rank or achievement. This is the area where the material element (changeable forms) of justice, and not just the formal element (constant forms), is considered.

In the novel, "Things Fall Apart", the main character, Okonkwo, was depicted as bold and adventurous. He had risen from poverty to the highest ranks in the society through hard work. His father, Unoka *"was lazy, never saved any money, unable to feed his wife and children, a great debtor who liked only playing his flute and merry making".*

These bad qualities of Unoka were not cherished in Igboland and Okonkwo's entire life was controlled by his fear of being labelled a failure. As a consequence he was harsh to his family, arrogant, cared little about other's feelings and regarded any softness as weakness. It is in the above light that he violated the justice demanded by his culture in regarding the equality of all.

"Only a week ago, a man had contradicted him at a kindred meeting which they held to discuss the next ancestral feast. Without looking at the man Okonkwo had said, "this meeting is for men". The man who had contradicted him had no titles. That was why he had called him a woman. Okonkwo knew how to kill a man's spirit".

The incident which follows portrays how Okonkwo, the proud man and skillful wrestler in his area was disciplined and forced to apologize (the only incident where he accepted to apologize in the whole book) and shows how the Igbo esteem equality and regard for the other. Surely, Okonkwo could not be compared in status to Osugo. Whereas Okonkwo had three wives and many children (a symbol of wealth), Osugo was a very poor man without titles and with no significant achievements. Nonetheless he had the fundamental right to be respected and treated as equal to others. In the village assembly of the Igbo:

"every man has a right to speak, the people applauding popular proposals and shouting down unpopular ones... Decisions had to be unanimous... The village assembly was considered the Igbo man's birthright, the guarantee of his rights and shield against oppression".

Okonkwo neglected this principle and insulted Osugo by regarding him as feminine, calling him a "woman", a compliment not acceptable to men in traditional society. Okonkwo was trying to tell Osugo that as a poor man, he

should keep quiet and not challenge a celebrated and titled man of the clan when he speaks. The reaction of the entire kindred was unfavourable.

There was unanimous condemnation of Okonkwo's disregard for his fellow countryman. The meeting stopped and the case had to be settled. The oldest man present warned him sternly, saying;

> *"Those whose palm kernels were cracked for them by a benevolent spirit should not forget to be humble"*

The arrogant Okonkwo had to apologise to Osugo before the entire kindred for his unjust words and attitude towards a clansman.

This particular incident portrays how the personal worth of the individual is regarded in Igbo land and how the people take seriously the formal element contained in the notion of justice: "treat equals equally".

More generally, as portrayed in the four cases presented above, the formal sense of justice tends to remain the same (like persons be treated alike); while the material element in justice differed, in tandem with the fact that cultures and values often differ.

CHAPTER EIGHT

CONSENSUS BUILDING, VILLAGE AFFAIRS AND SOCIAL LIFE.

Indigenous African societies have been classified as operating mainly two broad political governmental patterns, following the work of authority on Africa by Meyer-Fortes and Evans E. Pritchard.[225] The first group consists of those societies organised under a strong administrative machinery with judicial institutions. Largely in the majority in ancient Africa, these societies are culturally heterogeneous and consist of units bound together by common interests and loyalty to a political superior, who might have a council of advisers.

Among these societies are the vast empires and fallen kingdoms of Ghana, Songhai, Mali and Walata, the Kingdom of Congo, the Zulu Empire and those of Kanem and Bornu in today's Nigeria, and the Kingdoms of Oyo and Benin. Further examples include the Jukun State, the kingdom if Monomotapa in Central Africa which still exists tot his day[226], the Buganda kingdom in Eastern Africa and the Bunyoro, Bemba, Ngwato, Bayankole and Kede Empires. Foreign influence, especially from Europe in latter times subdued these nations finally, and the central authority fell to the colonial governments of France, Britain, Germany, Belgium, Spain and Portugal in the 19th and 20th century.

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225 *Fortes, M., and E. E Pritchard, African Political System, London, Oxford University Press, 1940.* p. 5ff

226 *Elias, T.Os., The Nature of African Customary law, Manchester University Press, 1956, p.9, p.12*

The second type of political pattern of governance in traditional African society refers to those without any centralized authority and lacking they concentration of political power in the hands of a small elite, be it political, military, religious or judicial. These societies were not controlled by direct decrees from any central structure; except in instances were these were voted to represent them. And even then, the authority so constituted was controlled by the people and served primarily as a figurehead. Examples of such kingless societies are the Igbo of Nigeria, the Tallensi of Northern Ghana, the Nuer and the Logoli, who share common peculiarities of ethnic homogeneity, so that government as something being 'externally there' was absent.

Of course, there was some political and social arrangement which gave the various heads of families, elders of the clan, priests and medicine men among others, some special say in the affairs of the society. As T.O.S Elias has said:

"the main step in the direction of an organised judicial system lay in the recognition of certain elders as traditionally qualified and entitled to participate in the adjudication of disputes, such recognition being based on their seniority (gerontacracy) as members of the social unit." [227]

In these societies or tribes, of which the Igbos are a prominent example, the lineage system plays an important role for it regulates the relations between territorial segments (local communities) based on lineage ties and linked to one another by overlapping kinship and ritual ties. A father, his children and grandchildren often formed the village or clan; and the area was occupied by an enlarged blood relationship.

227 *Fortes, M., The Dynamics of Clanship Among the Tallens, London. Oxford University Press for the International African Institute (1945)*

In some cases, legends and myths bound them together through an original ancestor, or great warrior held to be the founder of the clan.

With the imposition of foreign rule by Europe at the dawn of the Twentieth century, a method of indirect rule was imposed on the colonized people, warrant chiefs' appointed and native authorities commissioned. The political blunder caused by this colonial imposition has been sufficiently referred to[228], since authority was conferred on persons who had not the slightest shadow of a right to such prerogatives and were *'never do wells' (efulefu*) in traditional society.

Political Institutions in Igboland

In the political structure of traditional Igbo society, the clan is the highest organ to which everybody belongs. A clan comprised many villages, and the villages in turn were made up of sections or wards (ogbe) where the various families lived. The political set-up subsists in the order: clans - villages - wards - families - individuals. The idea of town or city is modern in Igbo political structure.

228 *Much has been written by African Historians and British Colonial Authors and Anthropologists about the system of indirect rule imposed by the British colonial government on Igboland as against the system practised in Northern Nigeria where a ready-made political system was willing to work together with the British for the purposes of easy administration. Re. Omoniyi Adewoye, The Judicial System on Southern Nigeria 1854 -1954 (Law and Justice in Dependency), Longman, London, 1972; Meek, C.K., law and Authority in a Nigerian Tribe, Frank Cass, London, 1937, Oxford University Press.*

The clan is not very important for the people on the village level. It's necessity became emphasized when the Igbos found themselves in an inter-clan situation in a foreign country (Nigeria). Otherwise, the village was the seat of all political decision-making in internal affairs, while the clan represented the platform for inter-tribal or inter clan relations. The Igbos have no king (Igbo enwe Eze).

Generally in Igbo land, two types of traditional village government existed: the Council of Elders (Ndichie) now termed gerontocracy, and the Village Assembly (Obodo). There are isolated cases (in Onitsha and Oguta) where a qualified type of monarchy existed, due to the large influence on the western axis of Igbo land through the encounter with the Edo and Bini kingdom.

Here, the title of Obi assumed by the 'ruler' conferred the right on an individual to be regarded as 'First among equals' (primus inter pares). The 'Obi' stool is regarded as sacred, and the titleholder usually lived in ritual seclusion. Nonetheless, the title did not confer absolute authority. Decisions could be taken only in conjunction with the titled men and representatives of other groups in the area. These decisions could be challenged and this could bring about deposition of the Obi.[229]

229 *Isiche, E, op.cit, p. 23 (Ref. Also Journal of the African Society, Number X, 1910 - 1911, p. 130). C.K. Meek records that in 1861, it was reported that the power of the King of Onitsha was small, the people being 'very independent and lawless. In 'Law and Authority in A Nigerian Tribe, Oxford University Press, 1937, p. 13)*

The Council of Elders (Ndichie)

This council is the predominant political structure among the Igbo. The elders include the heads of the various families in the villages who hold the symbol of authority *'Ofo'* [230], representing the collective will of their people in truth, justice and faith. The elder advanced in years, is supposed to possess wisdom and experience, having spent long years on earth and existing on the brink of joining the ancestors. He is expected to behave with integrity and to command respect.

On this council rests the onus of organization, jurisdiction and planning in tribal society. The elder, might at the same time be, the lineage head, who governed his family and spoke on their behalf in public. This elder controlled recalcitrants, issued warnings, punished incorrigible members and had therefore to be objective and impartial in family quarrels. The staff of authority and justice, the 'Ofo,' which he holds demands this.

One could therefore say that the Council was neither autocratic nor totalitarian, as such a disposition would merit it enough resistance from the community who might challenge infringement in some areas of their personal freedom.

The Council of Elders met privately in their various homes. General meetings at the village level was an exceptional occurrence, held only when it was necessary to take common action against an external enemy; offer community sacrifices to the supernatural in order to rid the village of some disaster, pest or abomination; or settle internal disputes of land, marriage; or generally handle affairs which could threaten the peace of the community.

230 *It also symbolised the sanction of the dead ancestors and is inherited and preserved by the head of each family*

In the community, one had the right to free speech or disagreement on issues raised, but once a decision was taken, the dissident had to withdraw his private opinion, and not only conform to the decision, but also allow his entire family and kin to do likewise. Decisions were often taken on a broad majority basis.

The Council send emissaries or delegates to certain groups or to neighbouring villages to settle matters or convey a village opinion when the situation called for it. An elder can not be withdrawn from the council, except through death, illness or if he commits a heinous crime which merits the wrath of the community. There is no vote on whether an elder should be a member of the village council or not, since his status, age and membership of a family automatically qualify him.

The Village Assembly (Obodo):
The Village Assembly is a meeting of adults in the entire village. Public meetings are held in the market place (Afia), or in the village square (Ilo), or at the village shrine (Ihu Ani). The Assembly is not the same as 'Parliament' or 'Senate' in modern parlance, yet enjoyed democratic procedure in the modern sense of the word.

Basden stated in his observations that the ***"Igbos are highly republican and democratic,"***[231] and Onwubiko maintains, like many other historians and social anthropologists, that:
"the Igbos have intense love for personal freedom and very strong resentment for autocratic government over them. As a result, they prefer living in small village republics where every grown-up ..is regarded as important as everyone else in the village". [232]

231 *Basden, G. T., op. Cip.,*

232 *Onwudike, K. B. C., A History of West Africa, Book 2, 1800 - present day, Modern experience in the century showed that the did a very hard time over the Igbos, and so these came in thei;-*

Each mature adult has an inalienable right of speech at the Assembly, since consensus was necessary to effectively carry out the community decisions peacefully. In some instances, women did not participate in the Assembly meetings with men, but rather held independent "women-only" assemblies to address specific areas of concern. Cases also existed where all adults, regardless of gender, gathered at the assembly to deliberate on issues affecting the entire well-being of the village.

Role of Women

In pre-colonial Igbo society, women were powerful and exercised their influence in different families, through the Umu Ada (daughters forum). They also influenced their sons or husbands to think in a particular way and vote accordingly on relevant issues. They therefore participated, both directly and indirectly in decision-making. Besides, women had their own special meetings in which men were not allowed to participate. Matters concerning domestic affairs, market affairs, internal order and sanitation were discussed"[233] *The womens' clubs in Igbo society were not to be ignored or taken lightly.*

The Village Assembly met when the town-crier (announcer) summons them. The town-crier himself gets the mandate to summon the village from either the Council or from the oldest man in the village. Sometimes, a group of people or an age-grade can call a meeting. Extra-ordinary events were called to address serious events, such as impending war, threats, natural calamities, or abominations.

bad books

233 *Basden, G. T.., op. Cit., p.209 ff (Ref., also chapter on role of women)*

Within the community, the murder of a fellow villager necessitated an immediate 'ad-hoc' meeting. Decision-making was democratic, for the majority carried the vote, but had to convince the minority in private, or in public by consensus-building.

At the Village Assembly, custom and tradition, ritual and religion, war and social or legal sanctions are deliberated upon. Disagreements occur, fights ensue and order is generally restored through the imposition of levies on offending parties. People's natural talents qualified them to play certain roles in the Village Assembly. For instance, an orator would be asked to open up discussions on an issue, whilst a wrestler, warrior, diplomat or man of wisdom could be delegated, depending on prevailing circumstances, to represent the village externally.

The basic spirit behind the Assembly and the Council is to ensure that the 'Omenala' (customs and tradition) is observed; that law and order is kept; that the villagers adhere to the wishes of the ancestors and village deities (Ala, Ani); and that general harmony is preserved within the community. In this way, a 'stateless' society enjoyed the benefits of law and order. As a result, uniformity of culture existed in spite of unavoidable differences, and a dynamic, adaptable and valuable society was passed on to posterity.

CONSENSUS BUILDING

Political decisions and public decision were discussed within the context of 'Omenala' and the demands of the situation. The people make laws for themselves directly and bind themselves to it. They also dictate punishments for breaches of the law and get young people and age grades to carry out the demands of the law on offenders. Certain influential people play essential roles in deliberations towards a consensus at meetings. These include men with titles or wealth, men of honour and wisdom, priests of the deity and great warriors. General consensus prevails and dissidents are privately approached by their colleagues to change their views and join the general opinion in the spirit of communitarian harmony.

IGBO SOCIAL LIFESTYLE:

With the family as the smallest unit in the Igbo village, the people developed a system wherein they lived in groups comprising extended families of varying sizes. The extended family is made up of a man and his wife or wives, their children and close relations such as uncles, nieces, aunts, cousins and other relations.

Such a group of close relations constitutes the kindred. The kindred (Umunna) may live in a compound or in adjoining compounds separated by walls, and they are all united through the descent of a common ancestor. They could form a local group (Ogbe) and become the subdivision of a village.

"The typical Igbo village group usually thought of itself as a lineage, and commonly supports this with a genealogical charter which traces its origin to a single male ancestor whose son founded the component villages and whose grandsons founded its village sections or kindred. The segmentary lineage system of the Igbos is so fluid that analysis is sometimes very difficult" [234]

Their social relationship is expressed indigenously by the extension of attitudes and names appropriate to the basic 'extended family' unit and beyond, to other wider groups of people. ***"There is a sense of identity and common interests"***[235] Thus, the two kinship terms Úmunne'(children of a mother), and 'Umunna'(children of a common father) meet with the needs of a whole lineage system. The reformed terms are used by relations in a wide context, and in a patriarchal system like

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234 *Basden, G. T., op. Cip., p. 209 ff (Ref., also chapter on role of women)*
Traditional. social and Political Structures of East Central Sate. Government Publishers, Enugu, No. WT 189/373/200,p.

235 *Green, M. M. op. cit., p.15*

Igbo society, 'Umunne' is understood as being part of a wider and more embracing Úmunna'. Inheritance in Igboland, has been adequately addressed in an earlier chapter. Property is inherited patrilineally in many villages. But there are exceptions, such as Ohafia, where matrilineal succession prevails.

Life in an Igbo village is unsophisticated and simple. In his narratives, Olaudah Equiano, born around 1745, himself an Igbo and ex-slave writes in his memoirs written later in England that: *"Igbo land was a society which lacked extremes of wealth and poverty. We have all habituated to labour from our wariest years. Everyone contributes something to the common stock, and as we are unacquainted with idleness, we have no beggars".* [236]

Rights exist to land, air, water and to erect dwelling.[237] In traditional society, there was no overpopulation, and death or other natural phenomena controlled the people's growing population. There was thus no fear of scarcity of land for the people. In times of scarcity, migration took place and new lands were acquired. In cases of famine, dried up streams, or pestilence and other natural catastrophes, the people fell back upon the communal principle of self-help, and communal assistance to the needy.

Acts of communal responsibility were looked upon as a mark of greatness, and those who came to the aid of the needy were often held to be great men and women in history. They received honorable burials and were included in the list of the great ancestors invoked during prayers to take care of the needy.

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236 *Olaudah Equiano, The interesting narrative of the life of Claudah Equiano - abridged and edited by Paul Edwards, London.*

237 *Basden, G. T., op. cit., p.121*

CONCLUSION

This book comes to an end with a belief that the period of man's life from birth in traditional society until death, and even after death, carries with it challenges and opportunities which allow for meaningful existence.

Africa is rich in culture, philosophy, art and practical activity. The time has come to retrieve its history, re-evaluate it and place valuable information at the disposal of African youth, friends of the continent, and researchers, in their search for authentic and sustainable values, which are culturally rooted and able to promote the eroded African integrity.

This search for universal values corresponds to the call for a dialogue of cultures and civilizations, towards the promotion of justice, development, peace, equity and human dignity in our multi-cultural and interdependent world.

Chukwu Gozie Afrika!

Obiora F. Ike is a Catholic Priest and Director, Catholic Institute for Development Justice and Peace (CIDJAP), Enugu. Widely travelled and author of over 60 books and research titles, Professor Dr. Ike is actively involved in studies that address the inculturation of the Gospel in Africa in its pastoral and social dimensions. He has interest in culturally rooted, community development projects and received in 1996, the International Peace Prize (Shalom) Award for human rights activities. For the past two decades, he has lectured severally in universities worldwide; teaching Catholic Social Thought, History and African Studies. Obiora Ike has held positions with the Johann Wolfgang Goethe University in Frankfurt/Main Germany; the Theologische Faculteit, Tilburg, Netherlands, and the Catholic Institute (CIDJAP) which has academic linkages with the Enugu State University of Science and Technology (ESUT), Enugu, and the University of Nigeria, Nsukka (UNN).

Ndidi Nnoli Edozien is the Executive Director of the Growing Businesses Foundation (GBF), Nigeria; a non governmental organisation championing the cause of sustainable economic development led by socially responsible businesses. A graduate of the London School of Economics & Political Science (LSE), she has held senior positions in several of Nigeria's leading financial institutions. With a deep passion for African self determination and culturally rooted development, Ndidi has written extensively on micro-finance and corporate social responsibility towards promoting people-centred, participatory development. To this end, she has promoted partnerships between governments, private sector organizations, (formal and informal), development agencies and communities in Nigeria. Married with two children, Nnoli Edozien is currently pursuing a post-graduate fellowship in the areas of culture, economy and ethics.

CIDJAP and GBF work in partnership towards the promotion of positive models of culturally rooted integral development in Nigeria.

Printed by Snaap Press Ltd.,
1 Snaap Drive, Independence Layout,
P.O. Box 11204, Enugu. Phone: 042 - 459902