WILLIAM IDOWU

African Philosophy of Law: Transcending the

One aspect of African life that has become subject to the harassment of Eurocentrism and thus a horrendous torrent of dismal interpretations is the African conception of law (jurisprudence) and the legal systems arising therefrom. Sourced in this age-long predicament is the persistent question: is African philosophy of law (jurisprudence) a myth or reality?

The mythic representation of African realities in general and the African conception of law in particular can be seen in several dimensions. These dimensions can be reduced, essentially, to two fundamental propositions. The first represents the myth of the claim to an African past before contact with the European world. The second mythic

their contact with Europe, no significant system of law and rules can be ascribed to them. And what is more, it shows that talk about the unity of African law is at best mute since in the first instance, a deliberative and recognised system of law is rooted in one's familiar history.

But then, while each of these mythic representations of this aspect of African reality are open to serious questioning and critical examination, this paper is concerned with a critical examination of the basis of the claim that the existence of a distinct sense of theorisation and conceptualisation of jurisprudence that is African and not western is a myth. The several ways in which these myths have been represented and projected constitutes the basis of the present work. In methodological forms, the paper will adopt both the expository and critical methods in advancing its position. In the light of this, the paper seeks to consider the following. In the first place, attention will be drawn to the diverse mythification of the African jurisprudence project. In the second place, the paper will also seek to consider why the African philosophy of law is considered a myth and the factors that account for this perennial perception. Thirdly, the last section is concerned with the future of the African philosophy of law (jurisprudence).

The Mythic Representation of African Jurisprudence

The question whether there is an African jurisprudence or philosophy of law is not fresh. What is original however is the contemporary response to the age-old question. In addition, what is equally unique is the interrogation of the essence and role of the African jurisprudence project in understanding some of the aching realities in mainstream jurisprudence or legal philosophy. Interestingly, it has a counterpart. Its counterpart in this quest for significance and relevance is the controversy over whether there exists an

African philosophy. For over three decades now, scintillating debates over the existence of African philosophy have engaged the attention of scholarship all over Africa, Europe and the Americas.

Drawing from the success of the debate over the possibility of African philosophy, African jurisprudence, which centres primarily on the reflections of scholars over the idea and theory of the realities of law in traditional and modern African societies, seems to be engrossed in the quest for pertinence in what can be called a search for the significance of its hidden history. At its heart is the view that to perceive the significance of the history of any subject or culture requires openness of mind. In fact, the significance of that history also lies very tellingly only in the memory of the storyteller.

Even though the memory of the story teller, Africans writing and telling their own history, may be a worrisome burden, it is believed that this burden only has its

secondarily, whatever history or past Africans have, can be fruitfully considered as part of the history of Europeans in Africa. The Oxford historian Professor Hugh Trevor-Roper asserted a notorious variant of this feeling in the West about Africa in 1962 when he said:

> Perhaps, in the future, there will be some African history to teach. But at present there is none: there is only the history of Europeans in Africa. The rest is darkness…and darkness is not a subject of history….[2]

Earlier, in an address of 1854 to the American Colonisation Society of which he was vice-president, Commander Andrew H. Foote of the United States Navy contended that:

> If all that Negroes of all generations have ever done were to be obliterated from recollection for ever the world would lose no great truth, no profitable art, no exemplary form of life. The loss of all that is African would offer no memorable deduction from anything but earth's black catalogue of crimes[3]

Such prejudicial assertions about the African past are not only mythical but also empirically false. This, however, is one of the most fundamental of all the myths and is so strong because African slaves, as dishonour

two, it shows that African history is as valid as any other history in the world; three, it proves the point that African history (and philosophy) has always had a strong connection, not dependence, with other continents, chiefly with Europe, since the Greco-Roman world.[4]

Furthermore, the history of Christianity, the Greco-Roman era and the African thinkers it produced, such as Origen,[5] Tertullian and Augustine, to mention just a few, proves not just the validity of an African past and history but the fact that these thinkers were Africans in the actual sense.[6] The importance of this consists in the view that during the Greco-Roman era, interest in Africa was not just a possibility but an actuality. As argued by Masolo, "the history of Christianity in its nascent stages…reveals to us the African input in the making of Christianity…. These great Africans helped def 0 1(fric)-7.2(a)TJ conssistiani

dimension will be treated later in the work. In his philosophical history of the world, Hegel wrote that

> Africa proper, as far as History goes back, has remained—for all purposes of connection with the rest of the World-shut up; it is the Gold-land compressed within itself—the land of childhood, which lying beyond the day of history, is enveloped in the dark mantle of Night. Its isolated character originates, not merely in its tropical nature, but essentially in its geographical condition.[8]

In another light, Hegel concluded about the Africa-Egypt question that

> Africa must be divided into three parts: one is that which lies south of the desert of Sahara—Africa proper—the Upland almost entirely unknown to us, with narrow coast-tracts along the sea; the second is that to the north of the desert—European Africa (if we may so call it)—a coastland; the third is the river region of the Nile, the only valley-land of Africa, and which is in connection with Asia…. Egypt…does not belong to the African Spirit."[9]

The question, at this stage, is how logical and true to facts are the claims and submissions of Hegel about African history including the Africa-Egypt question? Our observation is that much of what is loaded in Hegel's claim is tastelessly deliberate and a premeditated prejudice. The racial engineering and separabilism between Egypt and the rest of Africa conjured here in Hegel's philosophy only lends credence to the common saying that when you cannot find the world you want, you can always create it. It is pertinent to contend that Hegel's separability thesis on Africa and Egypt does not correspond to facts and details. A critical reflection on facts will bring out the absurdity of the claim. Indeed the falsity of Hegel's claim can be seen in the unanimous agreement of over twenty of the best Egyptologists during an international symposium organised by United Nations Educational, Scientific and Cultural Organisation (UNESCO) held in Cairo in 1974.

The following submissions of the symposium doused the almost one hundred and fifty years' racial commentary of Hegel about Africa. Evidently, it is not how long a view has been peddled that makes it true. A clue to its understanding may be the source, the mindset and the socio-political context in which it was shared, received and propagated. After all, Copernicus unravelled the falsehood inherent in the Aristotelian science that held sway for over one thousand years.

In the first place, Black Africa and Egypt share a similar linguistic community. In other words, Egyptian language as revealed in hieroglyphic, hieratic and demotic writings and modern African languages as spoken nowadays share some affinity when seen and closely observed in their several parts. And it is yet to be proved, scientifically, that the Semitic, Egyptian and Berber languages have not descended from a common ancestor.[10] The foundation of this opinion lies not in its truth but in the fact that it is appealed to by many, which is, speaking in terms of critical thinking, argument and evidence, one of the incredible instances of *argumentum ad populum*, i.e. appeal to popular opinion.

Secondly, according to the submission of that symposium in 1974, ancient Egypt was not located in Asia Minor nor in the Near East but was essentially an African civilisation going by the manifestation of its spirit, character, behaviour, culture, thought, and deep feeling.[11] In essence, it is an agreed historical fact that Egyptian civilisation of the Pharaonic period, i.e. 3400-343 BC, was an essentially African civilisation. This cannot be removed from the rest of African history. It is a different argument to contend that African history and past is full of darkness. Even if it were true, for the sake of argument, that "darkness" remains the larger percentage of the African past, it is still a

> Primitive law is in truth the totality of the customs of the tribe. Scarcely anything eludes its grasp. The savage lives more in public than we do; any deviation from the ordinary mode of conduct is noted, and is visited with the reprobation of one's fellows.[19]

The prejudicial nature of these assertions cannot be overemphasised. Regardless of the predilections, the mythical character of these assertions is obvious. In short, all these contentions miss the point. "Except for the differences in social environment," argues Dlamini, "law knows no differences or race or tribe as it exists primarily for the settlement of disputes, and the maintenance of peace and order in all societies."[20] The same point was evinced by Elias. According to Elias,

> The two functions of law in any human society are the preservation of personal freedom and the protection of private property. African law, just as much as for instance English law, does aim at achieving both these desirable ends[21]

But then, analysis must go beyond this point. The contention that Africans have little or no system of laws before encounter with Europe is gravely prejudicial.

As argued by Sobande, three points of wisdom were the constituents of both traditional and even modern Yoruba society. The first wisdom is law or commands, i.e.

kind of laws enjoined in that locality or even in the town at large. Those laws and taboos are pronounced in songs and chanting. The essence of the chanting is to acquaint the people with laws that are operative within the social institution called marriage.

The same can be said of cultural festivals. In most cases, these laws are not written down but are believed to be registered and written in the collective memory and consciousness of all and sundry in the relevant society. That is why an average African society is said to be heavily communal. The absence of written forms of law furthers the communal feelings and belongingness such that anyone trying to break the law is often helped and warned by fellow citizens of that political or social group.

The idea of *Oowe,* i.e. collective or communal help, is on the one hand a social concept, but on the other it is essentially an agricultural engagement. *Oowe* also speaks of the existence of laws among the Yoruba people. These laws are defined into existence when citizens of a township engage themselves in the practice of *Oowe*. As a social practice, though, the laws that define the relationship are not meant to be broken or set aside. They are necessary for the uplifting of social equilibrium among members of that same community. These outlined cases of social practices speak of the idea of law as exemplified in Yoruba communal life

The pertinent question is what is law? Even in Western jurisprudence, the question remains unanswered. On our part, it is our conviction that the prejudicial nature of this train of thought (that Africans do not have a system of law) for African studies and scholarship may appear obvious, but then the freshness of this racial bias is brought to light by the fact that among legal philosophers and in the field of the sociology of law, the nature and definition of law is about the most thorny and troublesome aspect. Indeed

the whole of legal philosophy seems to be clustered around this perennial difficulty. A century[23] of ideological and listless debates and arguments on the very nature of law[24] in mainstream jurisprudence amongst jurists and legal philosophers has left jurisprudence spent such that issues of utmost relevance to societal continuity and progress should undeniably take over. Such debates and controversies, in our view, have only succeeded in projecting our ideological predilections and inclinations. Apart from this, the unsettled nature of this dilemma in general jurisprudence reveals the Eurocentric bias against Africa, Africans and African realities. If the nature of law is unsettled even in Western legal theory, it is preposterous to conclude that a part of the world is lacking in the understanding, conception and reflection on that same item of human knowledge. Citing living examples from the Barotse, Max Gluckman argues that Africans had held a theory of law and government similar to that of Albert Venn Dicey. The fact that these thoughts were not written is another inquiry altogether. In his words,

> Though the setting of African law might be exotic, its problems were those which are common to all systems of jurisprudence…. Barotse courts are dominated by ideas of justice and equity. These ideas influence their total evaluation of evidence… the Barotse believe that justice in this sense is self-evident to all men, and they call their principles within this justice, laws of God, or laws of human kind. That is the Barotse have a clear idea of natural justice, which they constantly apply. They apply natural justice, of course, within particular economic and social conditions…but it is natural justice. And natural justice involves for them, as for us, certain ultimate principles of law, as that a man who injures another shall make recompense; no man should be a judge in his own suit….[25]

Myth 3: African Jurisprudence has No Respect for Individual Rights

The third myth with respect to African jurisprudence is the view that African philosophy of law and society has no respect for individual rights. In other words, it contends that the

status of the individual is precarious. There have been various dimensions to this mythical relegation of African law. For example, some are of the view that the basis of operation in African law is communalism not individualism. There may be a modicum of truth in this assertion but then it is not the whole truth. Even though a communal bond exists, it does not in the essential sense vitiate the status of the individual. There is a wide and general recognition of the rights of the individual as well as the rights of the collective. The relationship therefore is a symbiotic one. This is echoed in the pertinent observation of Max Gluckman, who notes that the failure of one tribesman to perform his legal obligations may "lead to severe disruptions of general relationships, and even ultimately to the break-up of the group."[26]

stressed at the expense of their individual private interests or loyalties"[33]among this tribe. At best this opinion is a myth; less euphemistically, an exaggeration. In Yoruba philosophy of law, for instance, social cohesion and communal obligation do not make

dissociation" should be banished from our legal concepts and principles. Therefore, the relevance lies in its moderation of the understanding of individualism in our modern world. In effect, the beauty of that moderation consists in the fact that the individual should be seen in the light of the whole, and that meaning, significance and value "depend on the art of integration."[38] The problem of integration in the world today is critically located in the kind of scalpel used in defining integration. Integration as often been seen as consisting only in the actions of dissociated individuals. Necessarily, therefore, the principles inherent here are bound to be flawed.

Myth 4: African Jurisprudence is Positive not Negative

The fourth myth concerns the claim that African philosophy of law is positive and not negative. The meaning of this assertion consists in the view that at the heart of African law is the pursuit of sociaold tonTJ/TT4 gilib12..0012 Twsm,s-5.6(y)18sTd tonT/pr4no89(-)2.4(o8(Txph)-1(

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negative aspects. In the positive sense, law promotes the guarantee and safeguard of rights, liberties and freedom. It ensures the promotion of a healthy and safe environment for the cultivation of hope and peace with respect to the common good. This constitutes the positive aspect of law. On the other hand, law also performs a negative function which is the punishing of offenders against the societal ethos and rules. This much is

innocent person is unjustly punished for a crime that was committed by another, the consequences for the society can be deadly and grave. In an important sense, therefore, Yoruba jurisprudence recognises and incorporates the salience of punishment in any criminal matter.

The basis for this practice consists in what Daramola and Jeje describe as a conflict between the sovereign's personal pride, as exhibited in his actions, laws and reign, and communal expectation and tradition. In the traditional sense, law and morality are not especially differentiated as a means of social and communal control. This is not only because they (the laws and moral injunctions) reflect and embody the traditions of the people, but also because they have over the years come to represent a vital, moving force or aspect of traditional culture. In this traditional culture, it is unlikely that what is forbidden by the moral life of the community will be found enjoined expressly in their laws. The impossibility of the converse also stands. In this kind of traditional society, laws and morals bear the essential character of taboos and therefore have the same source: the gods of the land. In fact, conformity to established tradition[42] best describes the basis for which the practice of opening the white calabash is performed.

Myth 5: The Basis of Obligation in African Jurisprudence is Belief in or Fear of Supernatural Powers

Bertrand Russell was credited with the saying that fear is the basis of religion.[43] This insalubrious comment on religion in general has become associated with the practice of religion in Africa. This forms the foundation of the next myth with respect to the basis and structure of African law. It is commonly held that the basis of obligation in African law, unlike in the West, is the belief or fear of supernatural beings.

It is generally believed that Africans are incurably religious. To this end, it is equally believed that every sphere of the African possibility is influenced by religion. This is said to hold for the African idea of law. Hence, as contended by Whitfield,

specific cultures, traditions, etc. Interestingly, this idea about the nature and substance of African law has some of its adherents on African soil. In particular, Olufemi Taiwo considers this aspect of African law and jurisprudence as nothing but a myth. Arguing against the central thesis advanced by F. U. Okafor[48] against legal positivism in Africa, Taiwo criticised Okafor for peddling one of the myths of the African worldview. In essence, Taiwo's disenchantment with Okafor's paper consists in the fact that it elicits some of the troublesome aspects of African philosophy today, namely that of reducing the African experience in ethics and particularly law to one single tradition. This reduction, for Taiwo, is a myth. In his words,

> The "African legal tradition," the "African," etc., are all myths invented by their purveyors to camouflage the fact that they are shaping diverse African practices to fit their theories. On another level, these myths offer somewhat effective stratagems to evade taking responsibility for the often philosophically unsound melange their authors serve up as "African philosophy."[49]

Even though we are not unconscious of the appeal of Taiwo's analysis in pointing out the fact that Africa may not have a single tradition or dominant tradition that can be peculiarly branded as African this or African that, or that we should not mistake the common occupation of a geographical continuum for social consensus,[50] it remains possible that Taiwo's problem over, or denial of, what may be labelled African legal philosophy, ethics or religion, may bother on mere assumption, but not facts. Indeed, facts emerging from anthropological researches and studies contradict his assumption. Ironically what Taiwo has succeeded in doing is actually to legitimise and justify our view that African legal tradition is simply non-antagonistic to Western jurisprudential tradition and as such not remarkably different. But nothing can be farther from his intention than this. What, after all, would Taiwo mean by African philosophy, if talk of

African legal tradition, African culture, African identity or African traditional values is self-defeating? Is our muted objection to the existence of African culture, or what have you, not given sociological and anthropological significance when the West describes the

the chiefs and rulers. This despotic will, it is claimed, does not represent or reflect the true character of law but is a perversion of law.

modern times is evidence of the triumph of the African past. African jurisprudence, no doubt, shared and still shares part of that triumph.

Myth 8: African Jurisprudence has no Literary or Philosophical Significance for General Jurisprudence

This myth has a long history. It is equally untrue in the light of the history of the world. Unfortunately, this myth has its foundation in the works of many great Western philosophers whose philosophical temperament have been coloured by racial prejudice. Of central interest is the racist thought of David Hume in the eighteenth century. Hume had contended very strongly in one of his classical works the denial of any item of great significance among the Negroes. In his words,

> I am apt to suspect the Negroes and in general all the other species of men (for there are four or five different kinds) to be naturally inferior to the whites. There never was a civilized nation of any other complexion than white, nor even any individual eminent either in action or speculation. No ingenious manufactures amongst them, no arts, no sciences….there are Negroe slaves dispersed all over EUROPE, of which none ever discovered any symptoms of ingenuity; tho' low people, without education, will start up amongst us, and distinguish themselves in every profession. In JAMAICA indeed they talk of one negroe as a man of parts and learning; but 'tis likely he is admired for very slender accomplishments, like a parrot, who speaks a few words plainly.[58]

However, the obvious inconsistency in the thoughts of David Hume concerning human nature in general can be demonstrated by the fact that five years before he made the assertion above, Hume had written that human nature with respect to mental attitudes, cognitive abilities and dispositions knew no bounds or distinctions. In his words,

> It is universally acknowledged that there is a great uniformity among the actions of men, in all nations and ages, and that human nature remains still the same, in its principles and operations. The same motives always produce the same actions: the same events follow the same causes.

> Ambition, avarice, self-love, vanity, friendship, generosity, public spirit: these passions, mixed in various degrees, and distributed through society, have been, from the beginning of the world, and still are, the source of all the actions and enterprises, which have ever been observed among mankind. Would you know the sentiments, inclinations, and course of life of the Greeks and Romans? Study well the temper and actions of the French and English.[59]

It is to be noted that Hume became an infamous proponent of philosophical racism when the slave trade was going in England and his racial outbursts at that time were used by racists to justify the slave trade. What is of interest and curious to us is that Hume's philosophical racism and the very basis on which it stands are at variance to his avowed principles of empiricism which are experience and observation. In fact as argued by Eric Morton, Hume's views about Africans and Asians had no empirical foundation. In Morton's words,

> Hume's notions about Africa and Africans, Indians and Asians were not based on factual, empirical information which he had gained by "experience and observation." No, his empirical methodology did not fail him nor did he fail it. The issue is that he never had an empirical methodology to explain racial and cultural differences in human nature. He only pretended that he had. I argue that the purpose of his racial law was not one of knowledge, but one of justification for power and domination by some over others.[60]

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Zera Yacob (1599-1692) and his disciple, Walda Heywat. According to Claude Sumner, when at long last, after three centuries of quasi-oblivion, it became aware of the great light that was Zera Yacob the philosopher, it left in the dark his disciple Walda Heywat. And when the continent of Africa, nay the world at large, discovered in Zera Yacob a rationalist free-thinker, the glow of enlightenment in the shadows of the African past, it opened its arms to the original master, and left the disciple amidst the embers of the night.[61]

In the area of jurisprudence and philosophy of law, African ideas about law effectively combined with Islamic jurisprudence to produce not just an excellent body of juristic thoughts but refined, reformulated, home-grown, indigenous thoughts on law. According to Appiah, "Muslims have a long history of philosophical writing, much of it written in Africa…."[62] In a further search for the light in the African past, Souleymane Bachir has provided scintillating examples of African scholars, beyond the prejudice of the ethnological paradigm,[63] eminent in action and speculation, contrary to the racial thoughts of Hume, in the areas of logic, jurisprudence and political philosophy.[64] One outstanding example is that of Ahmed Baba, who belonged to the *ulama* (school of learned scholars) and who hailed from the *Bilad as-Sudan,* i.e. "the Black people's land." Ahmed Baba was reputed to have had 1600 volumes which constituted his personal library, and to have given an uncountable number of public lectures and innumerable commentaries on jurisprudence, politics and religious rights.[65]

But then, Hume is not alone in this long tradition of philosophical racism. The same can be said of the German philosopher, G. W. F. Hegel, as stated above. Hegel's philosophical racism was notorious. The pertinent question is why is there so little, if any,

interpretations of history. Significantly, the hi

For Allot, these expressions of ignorance about African law have been partial for two reasons: in the first instance, such accounts only tell part of the story and secondly, their expression concerning these sets of laws apparently have been coloured by one form of prejudice or bias or the other, whether consciously or unconsciously.[72]

On his part, Elias attributes the ignorance, and hence, the mythical colouring of African legal theory to three factors: the predominance of missionaries in the field of education in Africa; the aping of western mentors by educated African elites concerning their own societies and their place in it; and the absence of political consciousness, pride of ancestry and cultural heritage on the part of the African.[73] But then, to be ignorant of an entity does not preclude the existence of that thing nor does it deny it vitality or the substance that it has.

More precise, however, is the view that the recourse to ignorance as a factor responsible for the myths of African legal theory does not capture the force of its absence. As a matter of fact, the display of ignorance about African realities projects more than the absence of knowledge about Africans and their world view. Our feeling is that ignorance is not alone in this task. It has a connection and counterpart in the projection of ideological and cultural superiority that, for us, is aptly traceable to the kind of historiography to which Western jurisprudence subscribes.

But then, analysis must go beyond this. Clearly related to the above is the issue of the absence of written records about African legal realities. Elias sums it up in the following observation. According to him, "the absence of writing has therefore deprived the Africans of the opportunities for recording their thoughts and actions in the same systematic and continuous way as have men of other continents."[74] Interestingly, this

factor has commonly been appealed to in the denigration of not only African legal worldview but also philosophical reasoning. The question is, must a body of thoughts about law or any other field of human endeavour be written before a jurisprudential or philosophical nature can be ascribed to it?

However, the peculiarity and absurdity of this argument can be located in the terse but profound statement that to be able to theorise, conceptualise and philosophise on problems of life is one thing and to have written down such reflective thinking and postulations is another matter entirely. The absence of the former does not preclude the latter and conversely, the absence of the latter equally does not preclude the presence of the former. Each stands as an atomic and independent truth and fact on its own.

of scholars in not only interrogating what is considered as anomalous but also in unearthing the facts about the African past. In most cases, the wrong perception of African jurisprudence, for instance, stems from a deliberate neglect and misunderstanding of the symbolic and practical logic of a community viewed from the normative perspective of the community concerned.

Finally, the question is what is the future of African jurisprudence or philosophy of law? This is important in the sense that one of the myths, apart from those treated above, on African law consists in its future or salience in the present world. One common feature of anthropological reports from the West on the nature of African law is that those who have been found opposing the very tenets of African law often come to discover the untenability or outrageousness of their views, and end up qualifying what they said or simply negating it. It is in this sense we must understand the importance of the future of African jurisprudence.

In a very significant sense, many aspects of African jurisprudence have been subject to modifications and changes in the light of modernism, urbanism and industrialisation. Again, the dynamic growth of the modern nation-state formula has also contributed to the series of changes that African jurisprudence is undergoing. More than this, the fact that nation-states themselves are getting hooked up in the phenomena of globalisation as a result of the fact that there is change of locus of authority and claims

[40] Essentially, the *Ogboni* institution is a secret group. No one, except members, can really know the depth of its practices. But then, its influence in Yoruba societal life is not a secret. In fact, the *Ogbonis* are more or less, the law makers in the respective Yoruba community they have found themselves. This is because, in traditional Yoruba society, the *Ogboni* is the body of all the elders in the community. According to Daramola and Jeje, in the traditional Yoruba community, there is no observed difference between the members of *Ogboni* and the council of elders. In the more factually relevant sense, it is the members of *Ogboni* that becomes members of the council of chiefs or elders in the land.[40] (Olu Daramola and A. Jeje *Asa ati Awon Orisa Ile Yoruba*, Ibadan: Onibonoje Press, 1970, 160.) From this it is decipherable that they wield utmost constitutional powers both in the religious sense and then in the judicial/political senses. To this end, they can be described as a group with integrated social, political and legal influences. The over-all dominance and prominence of the *Ogboni* institution seem to have been derived from two closely interconnected sources: in the first instance, they control the political life of their community and secondly, they possess the power of the sanctions of the gods. The fusion of both sources of power has elevated them to the status of the most dreaded institution in Yorubaland. This is captured in the observation of Robert Smith that the *Ogboni* group is devoted to the worship of the earth, which wielded both religious and political sanctions. They alone, according to Smith, control the "Byzantine Quality" characteristic of traditional Yoruba system of government, which effectively means, in the language of Smith, the "fusion of political, judicial, and religious concepts and the division of responsibilities."[40] (Robert Smith, quoted in Roland Hallgren, *The Good Things of Life*, Loberod: Plus Ultra, 1988, 64.)

[41] Daramola and Jeje, 160. The present writer's translation from Yoruba to English.

[42] Tradition, as used here, describes the rules and regulations of that society. These regulations, though largely unwritten, are not mere human pronouncements as the living dead (ancestors) are the ultimate executors of the regulations. See Anthony Echekwube, "Traditional Social Institutions and Human Rights Promotion in Nigeria" (*Enwisdomization Journal* 2.1, 2002-2003), 29.

[43] Bertrand Russell, *Why I am not a Christian* (New York: George Allen and Unwin, 1957), 22.

[44] G. M. B. Whitfield, *South African Native Law*, 1948.

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[60] Eric Morton, Eric, "Race and Racism in the Works of David Hume" (*Journal on African Philosophy* 1, 2002) 1.

[61] Claude Sumner, "The Light and the Shadow: Zera Yacob and Walda Heywat, Two Ethiopian Philosophers of the Seventeenth Century" in Wiredu, 172.
[62] Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Culture* (London: Methuen, 1992), 144.
[63] What is the ethnological paradigm in relation to Africa? According to Souleymane, it consists in the view that what is authentically African is simply assumed to be what remains once you have removed all the deposits that history has left on the continent. See Souleymane Bachir Diagne, "Precolonial African Philosophy in Arabic" in Wiredu, 66.
[64] Souleymane Bachir Diagne, "Precolonial African Philosophy in Arabic" in Wiredu, 68
[65] Souleymane Bachir Diagne, 68-69.
[66] Olufemi Taiwo, "Exorcising Hegel's Ghost: Africa's Challenge to Philosophy" (*African Studies Quarterly* 1.4, 1998, http://www.clas.ufl.edu/africa/asq/legal.htm)
[67] Ibid.
[68] Hegel, 98.
[69] Morton, 1.
[70] A. A. Allot, *Essays in African Law* (London: Butterworth, 1960), 55.
[71] Ibid.
[72] Ibid.
[73] T. O. Elias, *Government and Politics in Africa* (Manchester: Manchester University Press, 1963).
[74] Ibid., 21.
[75] W. E. B. DuBois, "The Conservation of Races" in Albert Mosley, ed., *African Philosophy: Selected Readings* (Englewood Cliffs, NJ: Prentice Hall, 1995).
[76] This is one of the features, and perhaps flaws, of legal positivism as formulated by H. L. A. Hart. According to Hart, Legal Positivism can be defined as the contention that "the analysis (or study of the meaning) of legal concepts is (a) worth pursuing and (b) to be distinguished from historical inquiries into the causes or origins of laws, from sociological inquiries into the relation of law and other social phenomena, and from the criticism or appraisal of law whether in terms of morals, social aims, 'functions,' or otherwise." Furthermore, Hart contended that positivism in jurisprudence is the contention that a "legal