Redefining Law in African Jurisprudence from the Spectacle of Hegelian Dialectics: Reappraisal of Moral and Religious Value Factors

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Obviously, perception of law by conventional jurisprudence as endorsed by the global West is different from the value-laden model of law as endorsed by African jurisprudence. In African traditional religion, one cannot talk of law without morality and religion because, it is generally believed that Africans being so incurably religious, every sphere of African existence is influenced by morality and religion, so that what is forbidden by the moral and religious life of the community is, most of the times forbidden by their laws thus showing African jurisprudence as an altogether different class of philosophy, a value-model class. However, Hegel in his dialectics presented Africans as a people still in the state of nature, lacking in knowledge of any Being, outside themselves; devoid of moral and religious values; that African jurisprudence had little or no system of laws, without respect for individual rights; only positive without negative attributes for correcting breaches and lacking in literary philosophical significance to general jurisprudence. By doctrinal approach, this paper examined these basis of attacks on African jurisprudence and found that as a valued-centered philosophy, it presents a model of law that is peculiar to African values.

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The paper thus recommended that in an era where the world is facing all forms of socio-political challenges, African perception of law, endorsed by natural law values must be given a pride of place in International Community and allowed to survive the fallout of solely positivist philosophy characteristic of the 21st century.

Key Concepts: *Redefining, African Jurisprudence, Hegelian Dialectics, and Value Factors.*

Introduction:

Definition of law remains one of the most controversial issues amongst legal and non-legal scholars, most especially because the concept means different things to various fields of studies, including science, social sciences, law and various philosophical schools. Amongst legal scholars in particular, one factor that has created greater disparity in their understanding and approach to law is where to draw the line of distinction between law, morality and religion. While proponents of natural law accede to some measure of moral and religious contents in law that must compel obedience but core positivists believe that morality and religion, operating in the realm of metaphysics are too scientifically untestable to be employed as basis of validity of any law.[2]They thus confer upon the political order the authority to make law, without the necessity to subject such laws to validity test on indices external to the law-making system itself.[3] As they assert, positive law being distinct from the sphere of morality and religion, conflict between both concepts and law must not be allowed to impugn on the validity of positive law.[4]

This position no doubt, contradicts the tenets of African jurisprudence that holds strongly to moral and religious beliefs as central to African perception of law. Indeed, African traditional religion is inseparable from African concept of morality because it is generally believed that Africans being incurably religious, every sphere of African possibility is influenced by religion.[5] This explains why in African traditional setting, it is likely that what is forbidden by the moral and religious life of the community is, most of the times, forbidden by their laws thus explaining the assertion that in

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2 J.N. Samba, *Fundamental Concepts of Jurisprudence* (Bookmakers Publishing, 2007)45

3 M.T. Ladan, *Introduction to Jurisprudence* (Malthouse Press Limited, 2010)46

4 Samba, *op.cit*at 54

5 T. Elias, *'The Nature of African Customary Law* (Sweet and Maxwel, 1956)7

African traditional sense, law, morality and religion are not differentiated as a means of social and communal control.[6]

Approaching morality from the background of a universal concept however, Hegel in his *Philosophy of History* believed that morality being born from consciousness in the awakening of the "I" as a universal concept, it is an act of the will so that whatever did not fall within his conception of the definition of morality was animalistic. It was for this reason Hegel postulated that:

> In Negro life, the characteristic point is that consciousness has not yet attained the realization of any substantial objective existence, as for example, God or law, in which the interest of man in volition is involved, and in which he realizes his own being…so that the knowledge of an absolute being, and other, and a Higher than his individual self is entirely wanting. The Negro…exhibits the natural man in his completely wild and untamed State.[7]

The question this paper is set to answer is the veracity of Hegelian perception of African law and how law may be defined from the background of morality and religion, comprising two concepts that are central to understanding the definition of law within African Philosophy of law, being a value centred philosophy.

Clarification of Terms

To put some of the concepts used and addressed in this paper in perspective, Jurisprudence, Hegelian Dialectics, Morality and Religion are clarified here while specific clarification on African Jurisprudence is reserved as part of the main body of the paper, as a measure towards solving the riddle of defining law within the framework of African values, as against Hegel's perception of law in Africa.

Jurisprudence

The word "jurisprudence", from the Latin term *jurisprudentia,* that is, "knowledge of, or skill in a matter", is understood in modern jurisprudence

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6 *Ibid.*

7 G.W.F. Hegel, 'The Philosophy of History in J.H. Clarke (ed) *Translator* (Dover Publishing, 1956) accessed on 04-05-2021

as the "study, knowledge, or science of law" broadly associated with the philosophy of law.[8]It is the study of theory or philosophy of law, aimed at obtaining deeper understanding of the nature of law, its reasoning and legal institution;[9]"the philosophy of law, or the science which treats, studies and examines principles of positive law and legal relations".

Although general or conventional jurisprudence is categorized by the type of questions that scholars seek to answer and the school of thought by which such questions are to be answered, all the same, there are basically five main schools of thought by which these internal or locational questions of law are usually tackled.[10] These are the natural law school, positivist law school, the historical school, the sociological school and the realist critical legal studies.[11]

To the natural law school, there exists rational objective that limits the power of the legislators to make laws because the foundations of law are accessible through reason or law of nature by which man-created laws must gain their force of legitimacy.[12]

The positivists on the other hand insist that there is no connection between law and morality and that indices external to law are ordinary metaphysics, not scientifically testable to form the basis for validity of man-made laws; which they argue are self-sustaining once they pass through due legislative process.[13]

To the historical school drawn from the Hegelian philosophy on the organic growth of the State, nurtured by historical force, "law is an outgrowth from the history of the society rather than an artificial contrivance".[14] To this school, law must develop organically from the spirit of the people (*the*

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8 C.C. Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers, 2011)77; I.K.E. Oraegbunam, 'A Critique of Certain Aspects of Islamic Personal Law in Nigeria: Reexamining the Jurisprudence of Women's Rights' *African Journal of Law and Criminology* (2013) vol. 3 No1, 1 at12.

9 Modern Jurisprudence began in the C18th, focusing on the principles of natural law; P. Gant, *Wikipedia* at <*aynrandlexicon.com/lexicon/morality.html*> accessed on 04-05-2021.

10 *Ibid*.

11 *Ibid*. Some Scholars do not believe that some of the jurisprudential schools should be so-called, strictly.

12 Samba, *op.cit*

13 Ladan, *op.cit*

14 J.O.Asien, *Introduction of Nigerian Legal System*, (2ndedn) (Ababa Press Ltd, 2005) 116

Volkgeist) just like language and culture, reflective of the nature of customary law, from the instinctive sense of rightness of the native communities.[15] Similar to historical philosophy, sociological school approaches law as a means of ordering society by regulating conflicting interests.[16] To this school, scholars should not be contented with law as a set of abstract norms without the sociological basis and implication of such law, to check the inherent conflict of claims.[17] This they say is the best way to draw attention to the underlying social factors that defeat effective administration of several laws.[18]To the realist school however, the law in practice, through the input of legislators, lawyers and judges is what really determines what the law is.[19] This is why Holmes said, "Law is the prophecies of what the Court will do in fact".[20]

Apart from these five primary schools of thought, there are other contemporary philosophers touting more recent approaches to jurisprudence in form of critical legal study of policy goals and determinant social class, by which they seek to create some hybrid school of thought that may be traceable to the five we have already discussed. This is where we have contemporary philosophers like Dwarkin attempting to create a mid-course between the positivist and natural law theories; and then those of the therapeutic school concerned with impact of legal process on mental health.[21]

From the foregoing, it is obvious that jurisprudence is the philosophical basis upon which the structures of various subjects of law are built. Infact, Jegede calls it the science of law that amounts to "a lawyer's thought about the law" which he said "presupposes that every lawyer has his own jurisprudence".[22] No wonder, Haris describes jurisprudence as:

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15 *Ibid* at 12
16 *Ibid*
17 Ladan*op.cit*. at 43.
18 *Ibid*
19 *Ibid*
20 O.W.Holmes, 'What is Law?' <*sixthformlaw.info/…/law…/0-what-is-law/holmes*> accessed on 04-05-2021; J.M. Elegido, *Jurisprudence* (Ibadan: Spectrum Books Limited, 2002)97
21 R. Dworkin, *Taking Rights Seriously* (Essays in Jurisprudence, 1972) 20; Elegido, *op.cit.* at 210 - 116
22 M.I. Jegede, *What's Wrong With The Law?* (Nigerian Institute of Advanced Legal Studies Press, 2009) 2

> A rag bag; into it are cast all kinds of general speculations about law and its functions. It asks questions about the value of law, how is it to be improved; is it dispensable; who makes it and where do we find it? What is the relation of law to morality, justice and social practice?[23]

Therefore, in this paper, the term jurisprudence is used in its simplest form, to mean the theory or philosophy of law in the context of moral, religious and social values of each people. A more complex riddle in the definition of the concept of jurisprudence is the peculiarity of Islamic jurisprudence perceived in Islamic circle as laws emanating from God, thus claiming superiority over conventional jurisprudence. Therefore, wherever the term Islamic jurisprudence is used in this work, it connotes religious laws or precepts arising from the Qur'an or rationalization of the teachings of the Prophet of Islam, by Islamic scholars. Beyond this, is African jurisprudence with its peculiar line of thoughts arising from indigenous values which will be discussed later in this paper.

Morality

The word "morality" has been variously defined as "principles of right and wrong standard of behavior", "pertaining to character, conduct, intention, social relation, etc";[24] a body of standard or principles derived from a code of conduct from a particular philosophy, religion and culture from a standard that a person believes to be universal;[25] a code of value regarded in a community or society as a guide to choices and actions that determine the comic of life;[26] set of norms dealing "basically with humans and how they relate to other beings, both human and non-human … with how humans treat other beings so as to promote natural welfare, growth, creativity and meaning as they strive for what is bad and what is right over what is wrong".[27]

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[23] J.W. Haris, *Legal Philosophies* (Butherworths and Company, 1980) 78

[24] A.S. Hornby, *Oxford Advanced Learner's Dictionary*, 5thedn (Oxford University Press, 1998)755

[25] G.A.Bryan, *Jurisprudence: Theory and Context*, 4thedn (London: Sweet and Maxwell, 2006)157

[26] P.Gant,Wikipedia at <*aynrandlexicon.com/lexicon/morality.html*> accessed on 04-05-2021

[27] Pearson, H., 'The Nature of Morality'<*www.pearsonhighered.com*>accessed on 04-05-2021

To Rustin: "morality is the internal fire of quality inside us that leads us to make the right decision".[28] For Kant, moral theory is deontological in the sense that "actions are morally right in virtue of their motives" driven by duty and not just inclination to act in a particular manner.[29] As he reasoned therefore, the ultimate principle of morality must be a moral law conceived so abstractly, in a manner that is capable of guiding people to the right action in application, to every possible set of circumstances, so that the only relevant feature of the moral law is its generality by which it can be applied at all times to every moral agent.[30] Such moral obligation he said, arises even when other people are not involved, like in the case of moral duty not to take one's life, to waste one's talent.[31]

By this, morality is presented as advocating on a generalized note that it is always wrong to act contrary to the acceptable standards that we expect of others, reminiscent of the Christian expression of the golden rule, to do unto others as you would expect others to do unto you, which is a generalized concern for all human beings. What this means in Khan's estimation is that men should "act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means".[32] This is what Edgar refers to as internal morality that gives its subject an inner drive to act well, even without any outward pressure.[33]

Looking at morals from similar perspective, Adaramola described morality as "a persuasive system" whose rules "in the last resort, are enforced by internal force".[34] As he put it:

> One of the peculiarities of morality is that its rules apply to conscience only, and require to be complied with, in any

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28 N. Rustin and N.T. Gilford 'Morality and Religion' <*http://www.teenink.com/openion/spirituality religion/article/40825/morality-and-Religion/*> accessed on 04-05-2021

29 I. Kant 'Law and Morality: A Kantian Perspective' <*www.jstor.org/stable/1122670/*> accessed on 04-05-2021; H. Khan 'Law and Morality'<*trello.com/c/.../512-law-and-morality/*> accessed on 04-05-2021

30 Rustin, *op.cit*

31 *Ibid*

32 *Ibid*

33 R.Edgar, *Jurisprudence: The Philosophy and the Method of the Law* (Universal Law Publishing Co, 1962) 290-292

34 F.Adaramola, *Jurisprudence*, 4thedn (Lexis NexisButherworths, 2008) 73

> event, by the internal self-will of the addressee. Their eventual enforcement lies in social pressures and in overt and convert psychological pressures of the community.[35]

Viewing morality from the perspective of internal force, required for effectiveness of the law, Elegido said "morality can teach us that every man should contribute to the general need of the community" which is the normative force or obligation that the law requires to create effect.[36] It is for this reason the learned author talks about morality as a complimentary part and parcel of the law.[37]

Looking closely at these various definitions, it is obvious that all the scholars are agreed that the realm of morality dwells only in the internal to humanity although most of the authors fail to relate their definitions to the reality of morality as forerunner of a sociologically acceptable law to each society because of their consciousness on the need to distinguish between the two. Therefore, in this paper, morality would rather be defined as human tendency dictating that we do what is right and avoid what we believe to be wrong, thus creating inner compulsion which the law necessarily requires as a normative force, guided by the values of each society, to create effect for her legal norms. It is from this background of Hegelian assertion, that Africans lack morality, that this paper will make an assessment.

Religion

Like morality, religion is also susceptible to varied interpretations and definitions. However, despite disagreement on the etymology and *philological* derivation of the word religion, scholars seem to agree that its *philological* source connotes the relationship and communion between the creature and its creator; man's natural and innate consciousness of his dependence on a transcendental super-being to which man yearns to express his loyalty through worship.[38]

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35 *Ibid*

36 J.M. Elegido, *Jurisprudence op.cit.*359

37 *Ibid*

38 N.S.S. Iwe'The Inseparable Social Trinity: Religion, Morality and Law': being a Paper presented at the First Inaugural Lecture of the Department of Religious Studies and Philosophy, University of Calabar on 14th August, 2003. <*www.nuc.edu.ng/nucsite..//ILS110.pdf*> accessed on, 26-07-2021.

As Iwe put it, religion is the repository and custodian of human and social values; an indispensable agent of social control and defender of established norms and values; "the prophet and conscience of the society…the dynamic conscience of the society" which manifested in its contribution to the abolition of slave trade, acceptance of twin babies and their mother in Africa; fight against racism, anti-Semitism, Apartheid in South Africa and such other morally depraved practices of the society at various times.[39]

Beyond this, Islamic religion is perceived by adherents as the dogma by which every aspect of believers is regulated, molded? and organized thus presenting religion as the totality of the value for which a Muslim is rated.[40] This is why Iwe considered religion as an instrument for equipping man in his moral life by which Christians and Muslims are guided by ethics, based on and inspired by the Bible and the Koran respectively. He said religion helps define the relationship between the creator and his creature, through its core belief system, dogma and doctrines, providing man with spiritual and adequate philosophical and spiritual outlook of life; geared towards equipping man with adequate and practical guide in his moral life.[41]

From the foregoing discussion, it may be sufficient to define religion as a forum or avenue of organized instruction on how the innate quest of man to commune with the deity in whom he believes may be met. By the use of the phrase "forum or avenue of organized instruction" here, it is intended that in this paper, "religion" denotes "organized or institutional religion with recognized role in the society" as in the case of Christianity and Islam (including traditional religion, where applicable) that are religious groups that have influenced the social, moral, ethical and political lives of the Nigerian people over the years. This is the perspective from which religion will be approached in this paper; as a guide and moulder of thoughts and conscience, towards ensuring social harmony, which is also the ultimate aim of morality and the law. This also is the understanding upon which Hegel's assertion that Africa lacked religion is tested in this paper.

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39 Iwe*op.cit*.

40 *Ibid*; T. Okereke, *Religion in Public Life* (Assumpta Press, 1974) 1-4.

41 Iwe, *op.cit;* F.H. Ruxton, *Maliki Law* (Luzax& Co, 1918) 1; A.D. Ajijola, *Introduction to Islamic Law* (Pakistan International Islamic Publishers, 1981)95

Hegelian Dialectics

Hegelian dialectics deal with varying subject matters, including philosophy, history and the abstracts like contract, law, social values, politics, property, evolution, State and civilization.[42] From the perspective of the philosophical and the abstract, Hegel pontificated absolute spirit as the beginning and end of all things, insisting that every phase in the development of the world must necessarily follow each other, with each concept consisting of self-made hidden contradictions.[43] He insisted that an evolution from *being* to *nothing* are two inevitable states which normally result in *becoming*, on the reasoning that every evolution process contains a tripartite cycle of thesis, antithesis and synthesis, where *becoming* represents the synthesis of *being* and *nothing*, while each synthesis forms the beginning of a new trend of thesis, antithesis and synthesis.[44]

It is from such philosophical thesis Hegel asserted that life process of human brain is summed up in the process of thinking, in form of "the idea" that transforms into an independent subject of the real world, dwelling in the external phenomenon of "the idea".[45] He presented the civil society as the clash of social forces to be transcended by the universality of the State, insisting that a person's political status in the State build up was determined by his private position. To him, the State is the divine idea upon the earth, insisting that an individual participation in the State affairs determines his worth, status and station in life.[46]

As a follow up to this, Hegel frowned at property being shared equally because, as he reasoned, although men are equal but since each possess different capacities and abilities, property should be shared on such index.[47]

On Africa and African laws, Hegel said Africa is unhistorical, with undeveloped spirit, still operating at the level of mere nature; devoid of morality, religion and political constitution thus justifying Europe's

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42 J.M. Elegido, *Jurisprudence* (Spectrum Books Limited, 2002)

43 G.W.F. Hegel, *Philosophy of Right in T.M. Knox (ed)* Translator (Oxford University Press, 1957)37

44 G.W.F. Hegel; 'The Philosophy of History' *op.cit*

45 *Ibid.*

46 A. Omotade, <*https://www.ajol.info>view*> accessed on 04-05-2021

47 B. Camera, 'The Falsity of Hegel's Thesis on Africa'<*https://www.jstor.org/stable/4027323*> accessed on 04-05-2021.

enslavement and colonization of Africa.[48] While conceding that the Atlantic Slave Trade was unjust, however, he insisted that it was superior to Native African Slavery which he said should only be abolished gradually.[49] By this, Hegel presented slave trade as an emancipatory project, aimed at rescuing the Negros from their impenetrability to the civilized world, towards the long dialectical march into world history.[50]

Segregating Africa into three parts of, *Africa proper*, lying south of Sahara; *European Africa*, lying North of the Sahara; and *Egypt*, consisting of the territory connected to Asia, Hegel referred to *Africa proper* as "the land of childhood, which lying beyond the day of self-consciousness in history, is enveloped in the dark mantel of Night".[51] As he asserted, in the "Negro life, the characteristic point is the fact that consciousness has not yet attained to the realization of any substantial objective existence" meaning that Africa has not yet reached the level of realizing her own image because, an average African is a "natural man in his completely wild and untamed state".[52]

Hegel segregated his anthropological setting of the soul or consciousness of Africa into the lowest conceiving phase of mind, still trapped in nature, bounded to the body and barely above the level of animality; that level where the soul is only within itself, fully engrossed with the environment. He identified a third developed phase of the soul where it transcends the natural world as an objective and alien to itself, which Hegel regarded as a process. To Hegel, Africa was still under influence of nature, not reaching the level of actual soul and therefore, under influence of nature; hence, it had no role in the third world of history and unable to find placement within Hegel's philosophical computation.[53]

This, in a nutshell is Hegelian dialectics whose definition of African perception of law, morality and religion forms the subject matter of interrogation in this paper.

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48 Omotade, *op.cit*
49 *Ibid.*
50 G.W.F.Hegel, The *Philosophy* of History, *op.cit*at 91
51 *Ibid*
52 Omotade, *op.cit*
53 W.T. Stance, *'The Philosophy of Hegel: A Systematic Explosion'* (Dover Publisher, 1955)438

Drawing a Line of Distinction between Law, Morality and Religion in Conventional Jurisprudence

The question of relationship between law, morality and religion often presented as a question of the nexus between law and morality alone, may be summed up as the contest between the positivists and the natural law philosophers.[54]Ladan sets the tempo when he asserted that:

> Laws do not …exist in a vacuum, but are found side by side with moral codes of greater or less complexity or definiteness. The relationship of law to moral rules and standard is obviously one of great and abiding importance in every human society.[55]

Ndubuisi and Nathaniel seem to adopt a more forthright view on the place of morality as an external scale for determining the validity of any law, which they said must not be down-played for any reason because since law could be adopted to some injustice, arbitrariness and absolutism arising from the tenets of positivism, it is imperative that law be "moralized".[56] This, no doubt, is a reflection of Del-Vecchio's view when he said:

> Neither the customs of the society nor the command of the rulers could be accepted as the ultimate justification or reason for law to merit obedience; rather, there should be an extra-legal element to which law must conform if it will be accepted as just and good.[57]

In the view of Omoreghe,

> Laws are not always right, or is it always right to obey law. Laws based on racial discrimination for example are wrong; any oppressive law or unjust law is morally wrong. Law can therefore not be taken as a moral standard, since some law do conflict with morality.[58]

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[54] J.O. Ihonvbere 'Under-development and Human Rights Violations in Africa' In: G.W. Jr. Shepherd, (ed) *Emerging Human Rights: The African Political Economy Context* (Greenwood Press, 1990) 56

[55] M T.Ladan, *op.cit*. 28, 29

[56] F.N. Ndubuisi, and O.C. Nathaniel, *Issues in Jurisprudence and Principles of Human Rights* (Dmodus Publishers, 2002) 243; J.I. Omoreghe, *Introduction to Philosophical Jurisprudence* (Joja Educational Research and Publishers Limited, 1994) 126

[57] G. Del-Vecchio, 'Idea of Natural Law'. In: Augustus M.K (ed) *The Formal Basis of Law, Modern Legal Series* (M.K. Publishers, 1969) 15; G. Del-Vecchio, 'Philosophy of Law' <*scholarship.law.edu/.../viewcontent.cig?*> accessed on 04-05-2021.

[58] Omoregheop.cit at 126

In *Queen v Dudley and Stephens*[59]the Court held that though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence. This explains why Pearson concluded that the interconnectivity of law and morality is determined by the fact that as a human institution designed to protect individuals and relationships, it is not possible to deny the relationship between law and morality and that although remedy for unjust law does not lie in morality yet, "without morality or moral input, law and legal codes are empty".[60]

In the end, no matter the verbal war on this subject between various scholars, it may be illogical to absolutely divorce law from moral.[61] For instance, it is agreeable by both schools that law is a coercive order while morality is a persuasive system. It is also obvious that while rules of law are enforced by force that are external to the subject of obedience, moral rules are usually enforced by some internal power to the subject himself, in form of conscience or internal self-will of the subject.[62] All the same, these differences do not extinguish their indispensability to one another, most especially that the main difference between both concepts is the mode of their enforcement; in the sense that the power of enforcement of law is external to the system while that of moral rules is internal, propelled by conscience.[63] Their inter-dependence forms the basis of Boyd's conclusion that "no State, let alone Society or culture can sustain itself and serve its own humanity without the grounding in morality, and morality… grounded in the sacred".[64]

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59 (1884)14 KB 273

60 H. Pearson, 'The Nature of Morality'. <*www.pearsonhighered.com*> accessed on 04-05-2021. This also is why Constitutional Rights like those guaranteeing life, liberty and property are presented in negative terms; D.N. Ogbu, *op.cit*. at 2; Gasioku, *op.cit*. at 4-5. Yerima prefers to refer to the rights in chapters 2&4 as human rights but distinguishing those in cap.2 as fundamental rights.

61 Ndubuisi, *op.cit*. at 243

62 I.I. Fuller, 'Positivism and Fidelity of Law: A Reply to Professor Hart' (1992) vol. no.4 *Harvard Law Review* , 632

63 *Ibid*

64 Boyd, T W., 'Secularism in America and Turkey and FethullahGulen's Response': A University of Oklahoma Study<*www.fehullahgulenceconference.org*> accessed on 04-05-2021; G. Gilmore, *The Ages of American Law* (Yale University Press, 1977) 109-111; Samba, J.N. *op.cit.*,13; Adaramola, *op.cit*., at 76

No wonder, Rommen said "in the human soul lies the ineradicable demand that law must live in morality[65] and Ladan concluded that "one would concede that there is a distinction between law and morals, but not a separation".[66] Such reasoning informed Hart's stern description of Bentham and Austin's denial of the need of morality in law as a baffling multitude of different sins, insisting that "experience of the operators of each system determines the quantum of morality allowed in a system".[67] It is for such reasoning this paper seeks to establish that whatever Hegel understood law to mean, he needed to look at it from the background of whatever deity Africans expressed loyalty to if he must arrive at a balanced understanding of an assertion that law, morality and religion were lacking in Africa.

The position of this paper is that influence of religious values and law cannot be denied in any society at all, especially in a religious society like Nigeria. Indeed, in Islam, there is no distinction between morality, religion and law because adherents of Islam do not have any other life or style of life or opinion that can be formed outside the framework of the Quran and the teachings of the Prophet.[68]Obviously, when we limit perception of religious influence to laws made by the legislature, it may be easier to contain but not when we talk about laws modelled? Out of judicial precedent where the religious and moral disposition of the Judge speaks volumes on the construction often placed on the Statute in issue.[69] That explains why perception of white Judges with western extraction and Christian background on repugnancy test seemed to challenge every tradition or custom that was not in line with Western leaning, which tide changed once indigenous Judges with different traditional and religious values assumed judicial control.[70] Therefore, since the ultimate aim of religion is the harmony and collective development of the people, the position of this paper is that religion, being an agent of social harmony, fashioned for the same purpose as the law in its sociological ideals, its strategic position in

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65 H.A. Rommen, 'The Nature of Law: *A Study in Legal and Social History and Philosophy'*(B. Herder Books Co. 1959)262

66 Ladan, *op.cit*

67 Hart, H.L.A., Law, Liberty and Morality<*books.google.com/.../law_ liberty_and_morality*> accessed on 26-07-2021

68 Ladan, *op.cit.* at 208-209

69 Wigwe, *op.cit*

70 *EshugbayeEleko v The Officer Administering the Govt. of Nigeria* (1940) A.C 170; *Laoye v Yetunde* (1940) A.C. p.170; *Dawoda v Danmole* (1958)3 FSC. 46; A.D. Obilade*The Nigerian Legal System* (Spectrum Books, 2009) 101.

the relationship between law and morality cannot be denied. This is because the issue of law, morality and religion being a reflection of the three dimensions of human experience in the society, they remain inseparable concepts since man is essentially a religious and social being, naturally endowed with moral sense and the capacity for ethical reflections and orderly behavior, in the society where he lives.[71]

In Boyd's view, "no secularist, positivist approach to common life can hope to provide the universal values necessary for people to live together in a fulfilling way" adding that even in America, it is often said that "Science and strict rationality cannot provide meaning to guide living". He said, this is why America remains ambiguously secular to the extent that everything from prayers before legislative sessions to, "In God We Trust" on the currency, to "Under God" in the Pledge of Allegiance, point to nothing but recognition of total inseparability of the State from sacredness.[72] Reflecting on what he referred to as "secular – sacred tensions" in America, Boyd said;

> America is currently an entangled mass of competing and cooperating secular-sacred tensions. This is reflected explicitly in the political dynamics of the day. At one pole is a strident secularism suffering from its minority status. At the opposite pole is a brash movement of Christian extremists vying to take over the government and to "return" America to its supposed status as "a Christian Nation". The majority of citizens find themselves somewhere between these extremes, leaning towards one or the other.[73]

As strictly secular as Turkey claims to be, yet the interface of the State and Islamic religion has been so obvious because having grown and thrived on Islamic principles in its Ottman Empire era, an irreversible Islamic influence had been created upon the State to the extent that some researchers prefer to "suggest that Turkey is more Islamic in some respects than America is Christian".[74] This inference is drawn from the fact that although Turkey frowns at interference of State affairs by Islamic religion but the Republic

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71 Iwe, *op.cit*
72 Boyd, *op.cit*
73 *Ibid*
74 *Ibid*

has never wasted time to use Islam to strengthen the survival of the secular, whenever the need arose.[75]

This is why Dias said, "there can be little doubt that moral considerations do influence rules of law but this aspect must be distinguished from the question of how far laws should give effect to moral attitudes" because in his reasoning, morality had hitherto been largely bound up with religion, arguing that once a State leaves religion to private judgment, it should do likewise with morality.[76]To the learned author therefore, since the State is very much concerned with the behavior of its citizens, it may rightly continue to concern itself with moral attitudes while renouncing interest in beliefs, except when these are thought to be conducive to undesirable behavior.[77]

In the end, while the view of Rustin and Gilford that "morality is a hard thing to measure" and that it cannot be quantified except as an "internal fire of quality inside us that leads us to make the right decision"[78] but it behoves us to also draw the same conclusion as with Hanser and Singer that we need religion to curb nature's vices because "religion allows us to rise above that wicked old mother-nature, handing us a moral compass".[79]

It is therefore obvious that morality is a personal inward guide but religion may be regarded as the teacher and guide that nurture morality beyond the stark disposition of nature.[80]It is for this reason this paper takes the position that if Hegel had approached morality and religion as intrinsic part of African culture and perception of law, his understanding of perception of law would have been different.

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75 *Ibid*
76 R.W.M. Dias, *Jurisprudence*, 5thedn (Butherworths 1985) at 112.
77 *Ibid*
78 N. Rustin, *op.cit*
79 M. Hanser and P. Singer, 'Law and Religion in Africa' <*www.m.hanser/psinger/html*>accessed on 04-05-2021; M. Hanser and P. Singer, '*The Relationship Between Religion and Ethics'.* <*www.reflectingonjujudaism.com/content*...> accessed on 04-05-2021.
80 Iwe, *op.cit.*

Law in African Jurisprudence

The word "African" that qualifies the concept of conventional jurisprudence implies that certain features are peculiar to African jurisprudence.[81] As diverse as African communities are, so are their customs and customary laws, characteristically flexible enough to reflect acceptable usage of each community at each given time.[82] Although evolutionary changes in law in line with societal phenomenon is not peculiar to African indigenous laws, the customary law, its peculiar feature that is relevant to the present paper is its adaptability to each community and its flexibility to reflect different dispensations.[83]

Needless to say that the impression that African jurisprudence is otiose is borne out of misconceptions including the myth that Africans do not have defined history of organized administration;[84] that Africans had little or no system of laws before the arrival of the Europeans;[85] that African jurisprudence has no respect for individual rights;[86] that African jurisprudence is only positive without negative attributes for correcting breaches;[87] that the basis of obligation in African jurisprudence is belief in or fear of supernatural powers;[88] that there is no such thing as unity of African laws;[89] that political basis of African jurisprudence is non-democratic;[90]that African jurisprudence lacks literary philosophical significance for general jurisprudence;[91] and that it does not accord with modern jurisprudential thinking.[92] This run-down of prejudice has no doubt relegated the growth of African jurisprudence over the years but recent thought on the need to connect the people's conception of law to their

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81 Pearson, *op.cit.* at 22

82 E. Bodenheimer, '*Jurisprudence-The Philosophy and Method of the Law* (Universal Law Publishing Co. 2004)168

83 E.E. Moore, 'Race and Racism in the Works of David Hume', *Journal on African Philosophy.* [2002]. Vol.1 at 1.

84 W. Idowu, *op.cit*

85 *Ibid*, at 56, 82

86 *Ibid*, at 82

87 Moore, *op.cit;* A.J. Aguda, *Nigeria in Search of Social Justice Through the Law* (Nigerian Institute of Advanced Studies Publication) 1-5,7

88 W.Idowu, *op.cit*. at 74

89 M. Gluckman, *The Ideas in Barotse Jurisprudence* (Yale University Press, 1965)20

90 Moore, *op.cit*; T.Elias, *The Nature of African Customary Law* (Sweet and Maxwell, 1956) 18

91 *Ibid.*

92 *Ibid.*

history and values, point to the need to re-awake the promotion of African jurisprudence for a more meaningful rule of law.[93]

An examination of traditional and religious values of various African societies and anthropological findings of various scholars would reveal that criticism of African jurisprudence arises from prejudice against the black world, resulting in scuttling the growth of African jurisprudence and consequent foisting of Eurocentric principles on Africans, in the name of general jurisprudence.[94] The assertion that African jurisprudence lacks historical past or literary antecedents upon which any helpful jurisprudential developments could be built, can be easily debunked by the pride of place the history of Egyptian civilization occupies in anthropological findings, similar to anthropological findings on Ethiopia's early connection to outside world and literary representations in that behalf.[95] This is why Moore described Hume and Hegel's representations of African literary contribution to philosophical developments as racial and lacking in "empirical methodology to explain racial and cultural differences in human nature".[96]

In African traditional religion, one cannot talk of law without religion because "it is generally believed that Africans are incurably religious" and that "every sphere of African possibility is influenced by religion" including African idea of law".[97] This is why the Barotse of Zambia would rather define law in terms of general ideas about justice, equity and fairness, equality and truth represented in the "laws of human-kind or laws of God".[98] Amongst the Yorubas, where traditional religion of the Ogboni fraternity oversees administrative and legal set up of the community, a form of democratic checks and balances by which a white traditional calabash was opened by the Ogboni religious body to herald end of a despotic monarchy was the vogue.[99] It is in such traditional values the Yorubas have an adage such as *ika ti o ba se ni oba nge*, meaning that only "the finger that offends is that which the king cuts" and *nitori be ni a se ni a fi loruko* meaning that "we bear names for purpose of identification in case we commit

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93 *Ibid.*
94 W. Idowu, *African Philosophy of Law<philosophy.oauife.edu.ng/index.php/...>* accessed on 26-07-2021
95 M. Gluckman, *op.cit.*
96 Moore, *op.cit;* T. Elias, *The Nature of African Customary Law* (Sweet and Maxwell, 1956)18
97 Elias, *op.cit*at 7
98 *Ibid.*
99 Idowu, *op.cit*at 14

offences".[100] The Igala people of Kogi State of Nigeria like their Yoruba kins hang up to traditional jurisprudential values that *magbomuenekateadalen* meaning that both sides to a conflict must be heard because that is the standard of the gods.

It is for such inter-relationship between African traditional values and African jurisprudence that Idowu maintained that "in the traditional sense, law and morality are not especially differentiated as a means of social and communal control" because, in "traditional culture, it is unlikely that what is forbidden by the moral life of the community will be found enjoined expressly in their laws" as "laws and morals bear the essential character of taboos and therefore have the same source; the gods of the land".[101] This is what Hartland describes as "primitive law" which Idowu attacks as misguided on the basis that justice must not be achieved by similar legal make up, insisting that the essence of law is for settlement of disputes and maintenance of law and order.[102] Explaining these functions between African and Western laws, Elias said:

> The two functions of law in any human society are the preservations of personal freedom and the protection of private property. African law, just as much as for instance English law, does aim at achieving both of these desirable ends.[103]

It is for this reason it is contended that European conception of law and justices have to be down- played in scoring African jurisprudence because they have very little in common with African culture and should therefore not be wholly used to explain the basis of a recognized code of African law, founded on the peculiarities of African principles of justice, especially in criminal matters, inheritance, paternity of children or mortgage.[104]

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[100] M.A. Dlamini, 'African Legal Philosophy: A Southern African View' *Journal for African Science*. [1997] Vol.22. The Jurisprudence of Igbo people of Nigeria toes the same line; I. Oraegbunam, 'The Principles and Practice of Justice in Traditional Igbo Jurisprudence' <*scholarship.lawcornell.edu*> accessed on 04-05-2021

[101] Idowu, *op.cit*at 12

[102] E.S. Hartland, 'Primitive Law' <*books.google.com/.../primitive-law*> accessed on 04-05-2021.

[103] Elias, *op.cit*

[104] *Ibid* at 12; Gluckman, *op.cit.*

Indeed, a closer examination of the values of various African ethnic groups would show that the basis of African jurisprudence transcends religious values to several other traditional values that should contribute to a better justice system for all Continents of the world. For instance, amongst the Barotse, the basis of obedience to law is what Gluckman calls "ideal of justice inherent of right and obligations in the right of the responsible man" involving application of laws of rights and obligations in the light of the reasonable man.[105]

On punishment, African concept transcends the offender alone to his family and community as opposed to the individualistic system of the West.[106] Indeed, African Penal system emphasizes reconciliation in line with African value system which emphasizes sanction such as ostracization, public ridicule and withdrawal of economic cooperation with stern caution to the operators, to avoid punishing the innocent because of grave consequence to the entire society; a pointer to a system geared towards communal morality.[107]

It is from the foregoing, that law is perceived and defined within African jurisprudence in the complexion of natural law, as a body of rules reflecting moral and social background of a particular community that has attained such level of notoriety from long usage, which such community endorse as rules or regulations adapted to their social and communal control. While this definition does not claim exclusivity to all African values because some of the values may be antithetical to contemporary values in a globalized world but it is obvious that it presents African law as a reflection of their moral and religious values in its characteristic flexibility that Hegel and his source did not seem to understand or appreciate. In any case, from the discussion thus far, it is obvious that even if African perception of law does not fall in line with the perception of Western jurisprudence, it couldn't be denied as Hegel did. Additionally, it is the considered view of this paper that to deny Africa of morality must have been informed by data harnessed from explorers, missionaries and traders from Western extraction who judged African perception of law from the background of Western cultures and values.

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[105] Idowu, *op.cit.* at 14

[106] *Ibid.*

[107] M. Gluckman, 'Order and Rebellion in Tribal Africa'. <*www.jstor.org/stable/2147208*>accessed on 04-05-2021.

What this sums up to, is that African philosophical model, like natural law, appears to be the moderation required to curtail the unwieldy province of individualism that seeks to exclude the individual from the integrated whole of the larger society of the West, a situation that is alien to African values. On such note, it is obvious that Africa has an excellent jurisprudential thought with refined, home-grown, indigenous thoughts on law, principally built on its traditional and religious values, contrary to the views adopted by Hegel.

Summary and Recommendations

This paper on the redefinition of law in African Jurisprudence by Hegelian dialectics interrogated Hegel's position from the background of African values and found that if Hegel had understood the scope of inseparability between law, morality and religion in African jurisprudence, his conclusions would have been different. It is for this reason the paper recommends, the following:

a. That philosophical assertions and conclusions arising from facts gathered by individuals from alien social extraction of a particular people as Hegel did could damage philosophical integrity as a racial enterprise.

b. That morality and religion being the internal force required to compel obedience to any law, their strategic place in African perception of law is indispensable.

c. That African philosophical model as a value-centered philosophy like natural law, being the moderation required to curtail the unwieldy province of individualism of the laws of the West, it would better contribute to justice systems of all Continents of the world; and should therefore be adopted.