

Research Article

This article is published by JAH,
Journal of Arts and Humanities,
Volume 7, N. 1, Feb., 2023

ISSN: 2710-3013 (Print)

ISSN: 2788-6360 (Online)

This article is distributed under a
Creative Common Attribution
(CC-BY NC-SA) 4.0 International
License.

Article detail

Received: Nov., 2022

Accepted: April 23, 2023

Published: June 2023

Conflict of Interest: The author/s
declared no conflict of interest



A Philosophical Inquest into the Notion of Justice in Esan Culture

By

Felix Ayemere Airoboman,

Department of Philosophy,
Faculty of Arts, University of Benin,
P.M.B. 1154, Benin City, Nigeria

GSM NO. +2348073169897

mail: felix.airoboman@uniben.edu,

fe_bom2002@yahoo.com

&

Albert Onobhayedo,

Department of History and
International Studies, University of Benin,
P.M.B. 1154, Benin City, Nigeria.

GSM No.: +2348023559860

E-mail address: bertnos2@yahoo.com

ABSTRACT

This essay is a philosophical exposition and critique of the conception of justice in Esan tradition. The study begins with a brief analysis of the concept of justice to enable its general understanding and exposit how some thinkers have ruminated over Africans traditional justice system. The paper argues that in the Esan world-view, justice has both ontological and cosmological dimensions. The study explains these spheres as mechanisms that ensure social relations and community well-being. It argues that in the Esan traditional view, there is no distinction between justice and morality. Besides, the focus in the dispensation of justice is on truth and not on logical manipulations, hence, the administrators of justice rely on cross-examination procedures and sincere witnesses to ensure

that judgements are based on facts. The study also argues that although there are occasional miscarriages of justice in the traditional Esan mode of adjudication, comparatively, this mode has the advantages of swiftness, minimal miscarriages, and recourse to divine justice, among others, over the modern court system. The paper argues that, since there are no prisons for offenders in Esan traditional judicial system, the people resort to penal measures such as fines, seizures, ostracism, banishment, drumming out, or death penalty as alternative methods of punishment. Furthermore, the study maintains that the frailties in the divine judicial process are the results of human infringements. Consequent upon this, the work questions the veracity of deities in ensuring justice; but concludes that, despite the perceived limitations, the Esan emphasis on truth (and her abhorrence of its distortion in the judicial process) makes it more advantageous than the modern court system. The study adopts the expository, conceptual and critical methods of philosophical inquiry.

Keywords: *Justice, Truth, Divine justice, Punitive measures, Miscarried justice, Perverted Justice, Morality.*

1. INTRODUCTION

Justice is a mechanism for oiling social intercourse; that is, it is a tool for promoting social relations and societal stability. This is why the issue of justice is paramount wherever human beings interact. Although there may be some divergences in the concrete implementations of justice in different communities or cultures, these differences are products of the beliefs and perceived needs of the people in such localities. In the view of Friedrich Karl von Savigny, “the law of a people... attained a fixed character peculiar to that people...” (Sinha, 1993: 205-206). The community grounding of justice is necessary and justifiable from the perspective of *communitarianism*. In this view, “[t]he intelligibility and justification of justice must be connected to tradition and the shared conception of the good. We cannot stand outside the discourse and traditions of particular societies” (Bunnin and Yu, 2004: 1236). The presence of justice is necessary for the establishment, maintenance and

sustenance of a viable society. Hence the notion of justice is central in the daily affairs of the Esan people.

The word *Esan* has varied senses of meaning and use. It refers among others to the language, land, people and culture of Esan people. Predominantly an agrarian society, Esan occupies the Central part of Edo State, Nigeria. In the present Nigeria political description, the entity is called Edo Central, and represents one of the three senatorial districts in the state. Besides, the Esan linguistic group is one of the three major ethnic groups in Edo state (the others being Bini and Etsako), and constitutes one of the minor ethnic groups in Nigeria.

In the Esan world-view, the concept of justice has both ontological and cosmological aspects, especially in relationship with human and the divine characters. In metaphysics, whereas ontology is the philosophical study of the totality of being, the study of being *qua* being and the related concepts of existence, becoming, appearance, and reality; cosmology is the study of the physical universe, including humans. The Esan people engage in ontological activities to enhance or promote cosmological harmony, *vice versa*, in dealing with their perceived need for justice. To meet the objective of this inquiry, the study attempts a brief and general analysis of the concept of justice and some reflection on traditional African notion of justice. Thereafter, the paper analyses the Esan people's idea of justice in detail, as well as the various punitive measures put in place to curb excesses and ensure justice, order and harmony in the society. The work thereafter x-rays the limitations inherent in this system of dispensing justice. The study analyses the Esan emphasis on truth in a judicial hearing, how justice is miscarried and perverted and then attempts a moral evaluation of the Esan practice of justice. We shall now begin with a brief analysis of the concept of justice generally as a prelude to engaging in a detailed analysis of the notion of justice in Esan culture.

2. UNDERSTANDING THE CONCEPT OF JUSTICE

The concept of justice cuts across different disciplines, as well as some branches of philosophy such as political philosophy, philosophy of law and ethics. In a sense, philosophy is concerned with analysing

myriads of concepts among which are “truth, meaning, person..., justice, goodness..., and their logical relations” to enable their understanding and expressions (Bunnin and Yu, 2004: 126). Specifically, some thinkers have been involved in the analysis and application of the concept of justice.⁴⁴ Etymologically (Bunnin and Yu, 2004: 367), justice is the prescribed manner of doing things, which is enforced by an authority. It is concerned with fair dealing and uprightness, as well as the principles and rules that ought to be followed. This is why “a system of law is also called a system of justice”. In the moral and political aspects of philosophy, justice is often associated with fairness or equity. In these subjects, it would be “just to treat people in proportion to their relevant differences”. From this vantage point, justice is a virtue that is concerned with “relationships among individuals and between individuals and societies”. As a principle of social order which ensures “giving individuals their due, justice demands that the rights of individuals are not violated by other members of society or by the state”.

Whereas for Plato, “justice is the harmonious order between different elements of the soul, or between different classes of society”, for Aristotle, justice consists of giving a person exactly what he or she is due. Aristotle distinguishes between distributive justice and rectificatory justice. While distributive justice is the correct allocation of scarce resources, rectificatory justice is the restoration of justice by punishing offences (Bunnin and Yu, 2004: 367). He also distinguishes between general and particular notions of justice. While the general notion of justice is concerned with obedience to laws and regulations, the particular notion of justice is concerned with the fair distribution of honours and money. The “particular notion of justice connects justice

⁴⁴ For detailed philosophical analyses of the concept of justice, see D.D. Raphael, *Problems of Political Philosophy*, 2ed., (London: Macmillan, 1990), pp. 113-152; William Frankena and John Granrose, Eds. *Introductory Readings in Ethics*, (New Jersey: Englewood Cliffs, 1974), pp. 172-200; Helen Buss Mitchell, *Roots of Wisdom* 4ed., (Belmont: Wadsworth Thompson Learning, 2005), pp. 382-429. For blatant denial and scathing criticism of the existence of justice in both human and divine affairs, see Michael Dorris, “The Myth of Justice”, Deborah H. Holdstein, Ed. *Challenging Perspectives: Reading Critically about Ethics and Values*. (Boston: Houghton Mifflin Company, 2005), pp. 292-297.

with fairness, a bond that is fully exploited by John Rawls, who claims that the most basic and important idea in the conception of justice is fairness" (Bunnin and Yu, 2004: 247). Brad Hooker commented that "[a]t least since Aristotle, justice has commonly been identified both with obeying law and with treating everyone with fairness" (Hooker, 1999: 456). In Lawrence Kohlberg's view of moral development, morality is framed as an ethic of justice in terms of rights, fairness, and an impartial application of universally applicable principles (Gardner, 2006: 101). From the preceding, it is evident that the concept of impartiality is prominent in the discussion of justice. According to D.D. Raphael "[i]mpartiality is undoubtedly a requirement of justice, and... it is a form of equality as contrasted with the discrimination of equity (Raphael, 1990: 121; Bunnin and Yu, 2004: 186). Bunnin and Yu put it this way: "[i]mpartiality is associated with equality, justice, and fairness". This means that justice is objective and impersonal. "Since it is an essential requirement of moral behaviour to consider each individual equally, impartiality is a basic feature of morality" (Bunnin and Yu, 2004: 333). Regarding what it means to be impartial, R.B. Brandt submits that "[i]t is to take an attitude that would not be changed if positions of individuals involved were reversed, or if the individuals were different from whom they are" (Brandt, 1959; Bunnin and Yu, 2004: 333).

Nicholas Bunnin and Jiyuan Yu argue that "[s]ince seeking justice involves seeking social order and stability, justice has been a central topic in moral and political philosophy. When the established pattern of social norms is basically fair, justice serves as a principle to protect this order. When the existing order is not fair, justice becomes a principle of reform calling for social revision" (Bunnin and Yu, 2004: 367). Before Rawls's theory of justice which holds that the essence of justice is fairness, a situation ethicist, Joseph Fletcher, submits that justice is love distributed to others. As we shall see later, the Esan notion of justice intersects with some of the positions of the various philosophers just mentioned.

3. SOME GENERAL REFLECTIONS ON AFRICAN TRADITIONAL NOTION OF JUSTICE

Several scholars have made some attempts to explore the conceptions of justice in traditional African society. Anke Graness argues that, although the debates on concept of justice has been among the basic philosophical concepts since Greek antiquity in the European philosophical tradition, such debates are absent in African tradition. According to Graness, despite this lacuna, there is evidence for concepts of justice and related discourses across the various ages and regions in Africa, which do not currently play a vital role in the philosophy debate (Graness, 2017: 305). Regarding the reason for the absence of such debates, Jacob Arowosegbe opines that “[t]he absence of writing in pre-colonial Africa has often befuddled indigenous African jurisprudential thoughts about law and related concepts.” He argues that although it may be necessary to “compare the indigenous African conceptions of justice with similar postulations in western jurisprudence, the true value of the former lies in their proper understanding and appreciation within the indigenous African setting” (Arowosegbe, 2017: 155). Accordingly, Allot affirms that “it is no longer tenable to argue that the idea and practice of law was alien to the indigenous African peoples prior to colonization”. (Allot, 1960: 13; Ramose, 2001: nos.1). M’Baye argues that there is “abundant evidence supporting the view that indigenous African systems were organized around their conception of law” (M’Baye, 1974: 137; Ramose, 2001: nos.1). Mogobe Ramose demonstrates this with the ubuntu conception of law, where justice, for the indigenous conquered peoples of South Africa, “demands the restoration of their humanity through the reversal of the dehumanizing consequences of colonization” (Ramose, 2001: nos. 1, 4-10).

Regarding the source of African traditional justice, J.H. Driberg is of the opinion that “African communal life revolves around the principle that all life is protected by the supernatural forces” (Driberg, 1934: 231). Thus, “[j]ustice is determined by the supernatural forces. Their determination seeks to restore harmony and promote the maintenance of peace” (Ramose, 2001: no.4). As we shall see later, although justice as



determined by supernatural forces can be efficacious, it can sometimes be manipulated by human agents.

The publication, *Human Rights and Traditional Justice Systems in Africa* by United Nations examines traditional justice systems in sub-Saharan Africa from a human rights perspective. It explains that the traditional justice systems have historically functioned as alternatives or as complements to the formal State court system. It adds that “[t]hey are typically based on customary practices, traditions and rules of communities that have, over time, been deemed to be customary law” (United Nations, 2016: 1). The publication argues that

“[i]n traditional justice systems decisions are made by members of the community—whether by the chief or subchiefs, headman or headwoman, a group of elders who provide leadership for the community, or by direct decision of the community itself in the form of a general assembly. In some communities, traditional leaders are chosen for the explicit purpose of performing a judicial or quasi-judicial role. In others, a person’s position as a traditional political leader of the community includes the responsibility to hear and resolve disputes (United Nations, 2016: 24).

These various attempts are geared toward the regulations of the actions of members of community to ensure reconciliation and maintain social order. Another publication, *Pursuing Justice in Africa: Competing Imaginaries and Contested Practices* (Clarke, 2018: 290) conceptually discusses justice in Africa as being bound up with socio-political affects. The essays in this publication demonstrate that various stakeholders such as survivors, defendants, witnesses, civil-society organizations, governments, and everyday citizens are engaged in the explicit aspirational pursuit of justice. These agencies contribute to the ways in which justice is imagined and dispensed in daily life.⁴⁵ Having analysed

⁴⁵ There are some scholarly publications on the general conception of justice in Africa, which exposit sociolegal justice and ways African societies resolve issues. For details, see for example, Jessica Johnson and George Hamandishe Karekwaivanane, Eds. *Pursuing Justice in Africa: Competing Imaginaries and Contested Practices*. (Athens: Ohio University Press, 2018) and John de Coninck, Julian Culp, Vivienne Taylor, *African Perspectives on Social Justice*. Sarah Tangen. Ed. Acacia: Friedrich-Ebert-Stiftung Publisher, 2013). www.fes-uganda.org



the general notion of justice in African tradition, we are now set to examine specifically the notion of justice in Esan tradition.

4. THE NOTION OF JUSTICE IN ESAN CULTURE

Although some of the concepts to be employed here may not have equivalent terms in Esan language, they have some glaring characters in the Esan conception of justice. Hence, they will be discussed only to the extent they reflect the Esan dispensation of justice or help in understanding it. Conversely, some Esan concepts may not have an exact translation in English. To begin with, there is no dichotomy between morality and justice or legality in Esan tradition. Unlike the Western attitude, which leaves man to his moral independence, the Esan is concerned with the concrete moral actions of the members of her society. Parts of the reasons for this are obvious. Different realities are ontologically conjoined, and the actions and behaviour of a member of her society have a way of reflecting in the community and its members positively or negatively. In addition, there is no independent sphere of justice different from morality. An act is just or right or good or correct or virtuous or moral when it is done according to the principles of justice. So even when such legal concepts as right, just, obligation, duty, innocence, guilty, punishment, reward, and so on are used, they carry inseparably with them moral insignia. Peter Alli (2011: 46) quoted Dopamu writing that "[i]t is African belief that man cannot flout the moral order and go free, for the moral order contains within it an imminent principle of justice, which ensures that the good is rewarded and the wicked punished" (Dopamu,1998:18). Although this submission is not particular about the Esan legal system, however, it copiously reflects the Esan cultural belief about justice generally, and particularly, of the inseparability between morality and justice.

Generally, in the daily life of the Esan people, the relevance of justice cannot be overestimated. The machinery of justice as an institution to foster social relations is crucial in the quest for a just society.

Just as it could be anywhere, the absence of justice or of the implementation of its principles in Esan settlements would precipitate social disorder, which characterizes the Hobbesian *state of nature* (Hobbes, 1946: 32). In the Hobbesian state of nature, men circumvent justice. However, in Esan communities, there is a conscious attempt to prevent the human tendency to circumvent order and its aftermath; and it is this that necessitated the triumph of justice in the society with its principles, implementation and punitive measures to ensure compliance. Additionally, humans "explore and tap from divine source of justice... to compensate for limitations.... While justice dispensed by man is fallible, divine justice is infallible. Man is not all-knowing, all-seeing and eternal while justice executed by the divinities is believed not to be subject to these encumbrances" (Ehianu, 2005: 320; Alli, 2011: 53-54). It is evident here that the search for justice from divinities is the result of human realization of the incapacitation, limitation and fallibility in his knowledge and arrangement. Divinities, therefore, are constitutive parts of the dispensers of justice and morality in Esan society. We shall now devote some attentions to the discussion on divine justice within a manageable scope, but without compromising its clarity and understanding.

From time immemorial, oath-taking before justice deities (especially in shrines) has been an integral part of the Esan judicial system. Hence, "whenever someone was suspected of telling a lie or there was a stalemate in the settlement, recourse was made to oath-taking" (Ehianu, 2005: 320; Alli, 2011: 54) at various shrines such as *idigun*, *via*, *edion*, *ukhuekhie*, *omoruare*, *osun*, *obiemen*, among others, depending on the community and the divinities existing therein to ensure justice. When a party in the dispute senses human perversion, he or she can also take recourse to divine justice. Before men infiltrated, corrupted and stage-managed the justices of deities as was prevalent at the Arochuku oracle in Igboland, (Webster and Boahen with Idowu, 1967: 185-186; Lucas, 1970: 88-89; Osae and Odunsi, 1973: 98) deities were sincere, truthful, and impartial in their dealings. In their uncontaminated dispensations, deities are unlike some human beings, who may be influenced or corrupted to pervert justice. The justice of the divinities makes people dread vices



such as stealing, lying, cheating, poisoning, using charms on or bewitching others (Ehianu, 2005: 320). The justices of the deities thus serve as the instrument of social control and consequent social order. Regarding the acts committed without the notice of anybody (such as adultery or peeping to see the nakedness of a woman who is bathing or dressing), the justices of the gods were also inevitable. If such acts are not immediately atoned for, they generate ontological effects that result in sickness, insanity and death, or a combination of these, as cosmic rectification. Thus, as instruments of justice, deities have the power to enforce compliance to righteousness.

In concrete terms, the deities can enforce the highest degree of morality and truth demanded by their time. This is partly because such principles and ideas of justice were enshrined in the people's consciousness and belief system and also because many who were entrusted with their dispensation did not manipulate them. The deities uncontaminated never neglect the poor, weak, oppressed and any other person in dire need of justice. This is probably why despite the contemporary mode of the dispensation of justice; many people still revert to the traditional mode, which they earlier rejected in favour of non-indigenous ones. Other probable reasons for this reversion are accessibility, affordability, and promptness in the traditional mode on the one hand, and delay, inaccessibility, cost and perversion in the modern mode of dispensation on the other. Modern courts are very few, and so many cannot access them. Where they are accessible, they are not affordable because the majority of the people are poor. Where they are affordable, there is an inordinate delay in the process. And where one is patient enough, there are glaring cases of perversions, either due to miscarriage of justice or manipulation of judicial procedure. There is another inherent lacuna in the modern method of dispensation of justice. It so much alludes to coherency in neglect of truth; but what the Esan person needs is nothing but the truth, and her traditional mode of dispensation of justice offers that, and this makes it appealing. Besides, this justice system has the advantage of seeking redress in the extra-human domain should there be human frailty for whatever reason. These are partly the reasons the Esan people still have faith in and take recourse

in the traditional way of seeking justice despite the limitations and feared vices, which also rear their ugly heads in the organized form of modern courts.

But the conscious derails from, and more importantly, the successful manipulations of the justices of the gods by their priests and accomplices, without incurring the wrath which threatens from these violations raise doubt about the efficacy of these gods. If they were as potent as the people believed, they would have dealt with the manipulators ruthlessly with their divine power. Besides, one would wonder if they are potent, and possess all the qualities ascribed to them, why they cannot undermine the manipulations of their priests and deal with the offender even more seriously for the manipulation attempts. However, their strength lies in the fact that they have served as instruments of moral probity, social control and social order.

In addition to divinities, elders and various assemblies were "beacon of justice on earth. These persons denounce all forms of injustices wherever they are found, and insist that every member of the society must hate evil, love good, and maintain justice (Ehianu, 2005: 324; Alli, 2011:61). They recognize that the principles of righteousness, honesty and commitment are very important in the administration of justice and the establishment of social order. According to Christopher Okojie, the administration of justice began at the village level with the Elders' Council. The *edion* (same as *enedion*) or elders form the village council. They deal with crimes involving native laws and customs such as adultery, bad medicines, and disobedience likely to disrupt peace and order in the community. "In this ancient judiciary system, the Edion had the power to try and award appropriate punishments in practically all disputes and crimes except for capital offences like murder, evils of witchcraft and land disputes" which were referred "to the onojie (king) in Eguare (palace) for decision" (Okojie, 1994: 95). Okojie (1994: 95) describes this process below: Usually, the edion hold their meetings at the *okoughele*, at the centre of the village. Here crimes are investigated and all those concerned are given fair hearings. This judicial system hinged mainly on evidence rather than proof and it is the plaintiff and the defendant who themselves present their cases without requiring the

services of any smart alec or modern-day lawyer who would fabricate all sorts of gimmicks to exonerate his clients. The Edion then moved away to confer (*yiuma*), and on their return, their spokesman gives their decision. Sometimes instead of the edion getting up to confer, they could delegate few of their members to go and *fe ole ghe* (that is, look into the matter); these men would return and submit a recommendation. Alternatively, the parties involved may be asked to temporarily leave the assembly to enable conferment without the *edion* getting up or delegating members to look into the matter. The final decision might be followed by a fine (*Oko*) or a seizure of a goat. If the supposed guilty person denies committing the offence or being guilty, he or she might be ordered to swear on a given juju to convince the elders of his innocence. Special crimes had special ways of dealing with them; prescribed punishments also differ.

5. PUNITIVE MEASURES IN ESAN JUDICIAL SYSTEM

Whether in Esan or elsewhere, punishments serve different functions and are thus employed for different reasons. According to Jay Albanese, "[w]hen an offender violates the law, society attempts to accomplish some combination of retribution, incapacitation, deterrence, or rehabilitation" (Albanese, 2008: 130). According to him, "[i]n moral terms, the ethics of punishment lie primarily in whether justice is done" (Albanese, 2008: 131). The society's infliction of punishments is moral, just and legal because, without penalties, there would be no viable means to address injustice and restore sanity in society. Some theories morally justify society's infliction of punishment. Cyndi Banks identifies the three perspectives on the issues of punishment: the philosophical, the sociological and the criminological. Bank's view implies that the concept of punishment has been a subject of theorising by moral philosophers, social theorists and criminologists. But in this engagement, attention is limited to the discussion of the philosophical perspective. "For moral philosophers, the "ought" of punishment is of great importance." It is concerned with what the goal and purpose of punishment should be, as well as the value contained in and promoted by the criminal law (Banks, 2009: 137). Cyndi Banks asserts that "[i]n the philosophical debate about



punishment, two main types of theories of punishment dominate: utilitarian theory and retributive theory.... These philosophical theories have in turn generated further theoretical discussions about punishment concerned with deterrence, retribution, incapacitation, rehabilitation, and more recently, restorative justice" (Banks, 2009:137). While analysing the theoretical approaches to punishment, Banks (2009:136) offers the following as possible responses to why offenders should be punished:

- They deserved to be punished.
- Punishment will stop them from committing further crimes.
- Punishment tells victims that society disapproves of the harm that they have suffered.
- Punishment discourages others from doing the same thing.
- Punishment protects society from dangerous or dishonest people.
- Punishment allows offenders to make amends for the harm that they have caused.
- Punishment ensures that people understand that laws are there to be obeyed.

From the above highlighted points, one could infer that the general purpose of punishments is to ensure that people do good and shun evil or vices. This is because it seems evident that punishments⁴⁶ are employed to prevent crimes, punish offenders, redress injustice, restore justice, and so on.

Among others, punitive measures are adopted in Esan to achieve rectificatory (or retributive) justice, commutative (or restorative) justice and distributive justice.⁴⁷ In their various capacities, they are used either for reformation, deterrence, incapacitation or purification. Punitive measures in whatever form have ontological dimensions in Esan

⁴⁶ For details about the philosophical aspects of punishment, See Jay S. Albanese, *Professional Ethics in Criminal Justice: Being Ethical when no one is Looking*, 2ed., (Boston: Pearson Education, Inc., 2008), pp. 130-146; Cyndi Banks, *Criminal Justice Ethics: Theory and Practice*, 2ed., (London: Sage Publications Ltd., 2009), pp. 135-155; John Hoffman and Paul Graham, *Introduction to Political Theory*, 2ed., (England: Person Education Limited, 2009), pp. 144-164; William Frankena and John Granrose, eds., *Introductory Readings in Ethics*, (New Jersey: Englewood Cliffs, 1974), pp. 172-187.

⁴⁷ For the analyses and applications of these conventional concepts or forms of Justice in Esan tradition, see Felix Aioboman, "A Discursive Critique on Justice in Esan Tradition", *International Journal of Juridical Studies & Research*, Vol. 2, Issue 1, 2020, pp. 51-53.

tradition. The essence of this ontological component is to appease the ancestors or deities for breaking the law of the land and for re-sanctification of the land. Besides, penal measures also serve as official means of liberating the offender and the community from the grip of ancestors, spirits and divinities, who are believed to be the ultimate dispensers of justice. Some items, which the people believe are appeasing and acceptable to ancestors and divinities in expiating crimes, such as fines in specific animals like goats, cocks and a specific amount of money and or cowries are charged, depending on the crime committed. Usually, a cock is the charge for a woman who violates her husband's requirement or reneges on her responsibility to her husband. The charge (fine) of goats is not administered because the edion want to eat meat but for sanctification. If the reason for the fine is the payment of meat for the sake of eating meat, there would also have been charges in other domesticated animals like pigs, sheep and cows in communities where they are reared, which are either probably sweeter or bigger than the goat. The people believe that "nothing could more easily attract the spirits of our ancestors than fresh blood. They found goat blood irresistible! Whatever charges a man wanted to effect in his family, he sought the sanction of his ancestors: once he split goat blood they were bound to listen" (Okojie, 1994: 216). This is why to purify and forgive a sinner, the slaughtering of a goat is a necessity for the people in some cases. Violators face capital or near punishment for crimes that are regarded unpardonable and thus inexpiable by supernatural beings such as ostracism, banishment, death or death in lieu, among others, to avert the calamities which threaten from them. Punitive measures take different forms ranging from fines, seizures, and banishments to death.

Fine in Money: Some charges are always made in the course of settlements. There is a monetary fine, among others,

1. for buying and replacing the cloth for a woman attempted to be seduced,
2. for buying items for ontological cleansing (such as alligator pepper, kola nut, tortoise, dog, cowries, and so on),
3. to be shared by human dispensers of justice, and
4. to be given to the aggrieved, offended person to wash herself from the dirt of defamation.

Seizure Fine: The seizure of a fowl (chicken) is the common punishment for a member of the *egbonughele* age group, that is, the village sweepers, who fail to participate in street sweeping, cleaning intra-village and inter-village paths or any villager who fails to turn up for communal labours and attends general assembly. This seizure of a fowl is the limit of the authority of the *egbonughele*. Grievous infringements among this group are usually referred to the *edion*. Okojie writes that the seizure of a goat in lieu of an offender is the common punishment for the more serious of the lesser crimes. It is only the *edion* who have the prerogative of goat seizures. Adultery, serious fight, beating an elder and other gross insubordinations are punished by making the guilty man pay a fine of a goat, which is slaughtered by the *egbele* (relatives) at the ancestral shrine. "Still more serious crimes like beating of one's parents, setting fire to one's family house in anger, attempted suicide, stealing of planted seed yams amongst members of the same family... were punished with seizure and killing of a goat against the offender even without a formal trial.... Since there was no trial, there was no appeal in such cases" (Okojie, 1994: 102). In nearly all these cases, the slaughtering of a big she-goat (*odewe*) is accompanied with a fine. The amount to be charged depends on the community and the prevailing monetary value of the time. In Udowo-Irrua, with the introduction of new currency in naira, it was *ikpan ea* (₦6.00) *bi* (and) *odewe* (a big she-goat), and later, *ikpan isen* (₦10.00) *bi* (and) *odewe* (a big she-goat) in the 1970s and 1980s. The gravity of the wrongdoing may also vary the amount to be charged. In some cases, depending on the kind of the offence committed and the demeanour of the offender, goats are not seized in his lieu. Rather the offenders present them either immediately if they are capable or at a later date when they would be able to do so.

For more grievous offences (like wilful murder, reckless or malicious witchcraft or wizardry, diabolism, and persistent recalcitrance), any of the following punitive measures can be implemented as prescribed.

Ostracism: This is called *isuote* among the Esan people. *Isuote* is a stiffer punishment meant for offences that require sanctions more severe than goat seizure and/or fine. This punitive measure is reserved for



crimes, which tend to mar peaceful village life. From the moment this measure is taken nobody greets or answers the greetings of the man in question; no one enters his house for anything nor is he to enter another person's house for anything. He cannot rejoice or sympathize with anybody nor be rejoiced and sympathized with; "he was thus given the most dreaded punishment" (Okojie, 1994:103). In *résumé*, he is shunned and excommunicated. Although he is excommunicated from the rest of the community and members of his own family with such a verdict, he still has the choice to curtail his pride, beg instantly and pay heavy fines. When not instantaneously resolved, begging is infinitely difficult because he cannot talk to anyone nor enter anyone's house to seek intercession; if he wants to, nobody would admit him, or else he would incur the wrath of the community. Thus he may have to quit the village volitionally if he cannot cope.

Banishment: This is called *isunfia* in Esan culture. *Isunfia* means absolute banishment. The offender is anathemized: he is rejected and sent out of the community never to return. In essence, the offender is erased from the community. "For this punishment to be inflicted, the crime must be grave, second only to crime for which the punishment is death. Such crimes as persistent practices of witchcraft, having hands in the causation of diseases, possession of bad medicine, *isusu* man (troublesome man)..., all merited this punitive measure" (Okojie, 1994:103). After trial and judgement at the general assembly, a sentence of *isunfia* is passed on the accused when found guilty of evil-mindedness. Okojie (1994: 104) describes the process thus: After the sentence, *ojomen* (palm fronds) is tied around his waist; the head of a dog, a whole rabbit (the two signifying *isusu*- trouble or unrest), a chicken and a tortoise are tied to the fronds with all dragging along the ground. The *igene* and *egbonughele* drum and jeer after him. As he is drummed out of the village in utter disgrace, his footprints are swept-off by the *ojomen* and junks that are tied around his waist, which raises dust after him. Sometimes innocent people are drummed away unknowingly due to indictment and recommendation of native doctors whose words are taken as sacred by the people. Thus we can say that native doctors may sometimes cause great mayhem of innocent accusations and the aftermath capital or near

capital punishment suffered by such victims in Esan land. We shall see more of this in the section on *perverted justice*.

Death: Among other things, death penalty is reserved for murderers as capital punishment. The Esan category for murder is *ugbele*. Cases of murder are always referred to the onojie who occupies the highest echelon in the area. He is regarded as an embodiment of moral, political and legal authority and as a custodian of culture and tradition. If a murderer has a slave, a child or a younger brother, he (the murderer) gives one of such persons as a substitute to replace the one lost to the family of the victim, while himself remained at Eguare at the onojie's pleasure. The onojie "might allow him to live as his slave, he might be sold or he might be killed. His farm and house were seized by the onojie. This was the law in districts like Irrua, Uromi and Ewohimi which had the more atrocious Enijie.... The treatment of murderers was not uniform or even definite anywhere. The causes of these apparent irregularities were the enijie" (Okojie, 1994: 106-107), who were the ultimate arbiter in their domain of influences.

6. THE RELEVANCE OF TRUTH IN ESAN TRADITIONAL JUDICIAL SYSTEM

The Esan people do not rely primarily on logical constructs or tactics of the disputants but on witnesses or testimonies in the dispensation of justice. This is because, *ab initio*, they are conscious of the limit of logic - consistency and coherency - in matters of fact in general and in the dispensation of justice in particular. This is to avoid a miscarriage of justice (Hospers, 1990: 183-186; Rawls, 1971: 85-86). In the task of dispensing justice, the people lay a premium on truth-telling (that is, of reality) not only from the disputants but also from eye-witnesses. While it is required that the disputants narrate truly and the witnesses testify truly, it is also required that the arbitrators judge truly to avoid sabotage or distortion of justice. They ask questions to find out more truths in unclear areas. Detected false testifiers are ridiculed and regarded as untruthful individuals and social-communal misfits. Sometimes, these persons are punished depending on the severity of the



false testimony. These are all attempts to ensure people always testify truly, and always get justice.

The necessity for truth-telling in the Esan traditional dispensation of justice explains why people can testify truly against their relatives, even siblings, parents and friends. It justifies the 'saying' that *nare so oseri ohogholi non omooria, akidebale zo oko*, (which could be translated thus: 'it is better to assist a friend in paying a fine than to testify falsely in his or her favour'). The unmitigated and blatant truths told by the testifier usually gladden the heart of the *edion* who are usually the arbitrators. It attracts their blessings and imbues social esteem since this truth maximally makes it easy for them to pass judgement. This sincerity may mitigate the punishment of the offender. The witness can testify against a person truly and then beg for leniency on his behalf. This truth reflects the golden rule at play both in its positive and negative forms – "do to others what you would want them to do unto you" and "do not do unto others what you would not want them to do unto you". In reverence for age, the arbitrators can discretionally resolve cases involving people with wide age disparity (such as those involving a child and his parents or a person and people who are far senior in age). This does not mean they sanction oppression and injustice (since these are out-rightly condemned), rather it is a way of instilling obedience, respect, discipline and other socio-communal etiquettes in children. The adult, if he offends, can be cautioned in the absence of the child.

In the adjudicative process, sometimes, the offender *ab initio* admits their fault(s) and pleads for leniency or assistance in pacifying the offeree. The offender's demeanour and honesty can mitigate the attendant penalty to his offence. At other times, the offender may employ measures to appeal to the offeree for private settlement before he takes the matter to the *edion* or to withdraw it for private resolution if the case has been reported to them already. But this cannot yield positive results in serious matters. Even when the offeree yields to the appeal for private settlement outside communal domain, the *edion* may still decide to hear the case not because it is already in the public domain or because they must hear all cases, but because such a case is not to be resolved privately due to its magnitude or nature. This is to ensure the



preservation of communal sanctity. This seems to suggest that, in this context, the community takes precedence over the individual.

However, this Esan judicial mechanism does not guarantee pure procedural justice in Rawlsian (Rawls, 1971: 85-86) term all the time; that is, it does not rule out completely the possibility of miscarriage of justice, especially when false testimony is not detected. Unlike the contemporary means, there are no prisons to remand people; but as explained already, there are other kinds of penalties depending on the gravity of the offence. After trial, there is acquittal for innocence and penalty for guilt. In the modern court pattern of dispensation of justice, there is the popular dictum that 'ignorance of the law is not an excuse'. But in the Esan traditional dispensation, real ignorance is an excuse. This is reflected in their language as *aigbo oria bhe ebobhalen*; that is, "they do not beat or punish someone over what he does not know". Another thought system, which captures this idea is *ebo oria bhalen igbole*. This translates into "what a person does not know does not kill him".

Among the litany of others, the spheres of dispensation of justice include marriage issues (between husband and wife, wives in marriage, in-laws), fights and quarrels (between or among siblings, family, extended family members, different families), indictment, defamation, assault, molestation, blackmail, theft, disputes (over seniority, suitor, land, domestic animals, cash crops), murder, recalcitrance, renegeing in family or community commitment, saying a forbidden thing, sarcasm, threat (physical or diabolic), and so on.

7. PERVERTED JUSTICE IN ESAN

Although the mechanism described above appears sane and alluring, it does not make Esan land an *el dorado* of justice. There are occasional instances of perverted justice especially with the extraordinary means of arbitration and vindication, where ordinary human knowledge is defective such as in cases of indictment of witchcraft (or wizardry), diabolism, blatant denial in the ordinary judicial system, and so on. Such cases (with the approval of onojie in some quarters) are referred to and tried by priests of sasswood, *osunene*, *alamonka*, *itan*, shrines, native doctors and so on, some of which can be manipulated, and when not

manipulated, do not guarantee true reflection of justice. So, the guilty may be acquitted, and the innocent is penalized, even with capital, or near capital punishment. Some of these measures and their effects are discussed below.

Itan: This is essentially a trial of endurance, and sometimes the result depends on the vagaries of the *itan* priest. "If he... suspected the accused or if he knew public opinion was heavily against the man, or if the onojie was interested in the man's guilt, the result was definite – guilty, would be the verdict!" (Okojie, 1994: 100). Another method is to choose blindly between two alternative symbols of acquittal and guilt. Whichever he chooses is his portion. For ordinary people, this method is definitive of reality; but in reality, it is sheer luck.

Sasswood: Among others, perversion of justice can still be illustrated with the sasswood trial (Okojie, 1994: 101). This trial depends again more or less upon public thought and feeling toward the accused. In some unfortunate cases, where the feeling of antipathy was so strong for the victim and the public desired immediate death, the trial is carried out in over-enthusiastic and queer manner. From the sasswood centre, the quantity of decoction from the bark of the sasswood, given to the suspect to drink, varies depending on the perception they have of the suspect to reflect their anticipated result. Here an innocent person can be declared guilty and thus punished even with death while a guilty person can be vindicated.

Ikpotoa: Perversion and the limit of justice can also be observed in *ikpotoa*. When it is believed that the land has been desecrated with terrible machinations, then such land needs to be purified. Christopher Okojie puts it this way:

First *ikpotoa* means purification of the earth. It might be because of frequent deaths or alleged impending epidemics that an oracle was consulted at the village square by the whole community. At this **ikhuebo**, the native doctor decreed that the ground had been fouled and must be purified. In serious cases, particularly at Eguare, the purification needed anything from an animal to human head. A man chosen for this, actually a slave had a chicken and palm fronds tied to his waist, and a stout



rope tied round his neck. Starting from one end of the village he was dragged by... the rope along the ground, and fully alive, with much excitement and recitation of prayers all urging the departed spirits and any interested members of the world beyond to accept the sacrificed victims and remove their evils eyes from their village. By the time they got to the usual dumping grounds for sacrificed victims (*izobo*), the unfortunate man was dead, if he was lucky in certain places such victim becomes the property of known bodies (Okojie, 1994: 104).

In some places, all proceeds of *ikpotoa* become the property of the onojie. The question here is: why should the system punish another man and not the desecrator(s)?

Drumming Out: In some cases, and as noted earlier, innocent people can be drummed out of the village ignorantly as undesirable elements, due to the indictment and recommendation of diviners. We can illustrate this further with a concrete example. Okojie (1994:104-105) writes that long after the white man came into Esan land, there were more severe punitive measures that were still practised all over Esan. For example, around 1906, a woman called Ojolo was strongly suspected of witchcraft at Ihunmidumun Ileh. Ikhalo the renowned native doctor of the village, who was looking after the sick son of Eigbe, convinced the community that Ojolo was the cause of the child's illness. Although the child recovered, the unfortunate woman was publicly disgraced and drummed out of the village. It is important to note that these forms of injustice enumerated and discussed here are almost extinct in Esan culture today.

8. CONCLUSION

Having gone thus far, we will now conclude this work by looking briefly at some moral implications and issues involved in the Esan system of justice and then make some remarks. To begin with, some moral problems are inherent in the Esan penal system of seizures and fines. For instance, where a domesticated livestock like a goat or people's goods are seized against an offender, the offender sometimes is incapacitated in paying or stubbornly refuses to pay the owner of the item seized in his lieu. In some cases, the actual owner of such property

is at a loss. Unfortunately, the community does not have any established mechanism to ensure payback. Generally, seizure can strain harmonious relationships and generate friction (and personal animosity) between the offender and the owner of the seized property. Sometimes, seizure constitutes another ground for instituting another case against the offender. Besides, in the current age where people are discussing, dissipating energies towards, and agitating for animal rights and moral obligations to the biocentric or ecocentric community, the seizures and killings of animals in place of offenders would be unacceptable. Why should people slaughter an innocent animal to compensate for human misdeeds? Sometimes these animals are tied and as such suffer restriction and hunger as they are not fed or allowed to roam freely while in custody. In contemporary reckoning, these practices are perceived as immoral, species injustice, and violations of animal rights.

Moreover, capital punishment is part of the Esan justice system. But some philosophers see the death penalty as unjust and thus oppose its implementation by arguing that although "punishment is necessary in order to reduce crime rates, but... it is not necessary to take a person's life to achieve this end". To forfeit one's right to life is not identical with forfeiting one's life. They also oppose it for another reason. "They point to many cases in which innocent people have been executed in miscarriages of justice that cannot be corrected". (Bunnin and Yu, 2004: 98). Although Ernest van den Haag argues in defence of death penalty, he, however, submits that "[t]he execution of innocents believed guilty is a miscarriage of justice that must be opposed whenever detected. But such miscarriages of justice do not warrant abolition of the death penalty" (Haag, 2009:351). For Haag, (2009:358-359) death penalty is the appropriate mean for a society to affirm, enforce and proclaim its moral and social values in some circumstances.

Most disturbing in the Esan expiating judicio-ontological system is the use of innocent human beings in place of another or others. All the observed injustices in the section on perverted justice are moral issues. They are immoral and illegal acts; they are manifest cases of injustice. However, these injustices are mostly the results of pronouncements from native doctors or diviners who are believed to have privileged access to



divine knowledge beyond the terrestrial domain, and have the duty to communicate same to humans and their community for their well-being. It is these pieces of misinformation that engineered the Esan people to ignorant beliefs and such action predicated on them, particularly on issues concerning capital and near capital punishments.

Despite these limitations, there is much to be desired in the Esan system of justice. For instance, the Esan culture's emphasis on truth and all the mechanisms required to ensure avoidance of miscarriage of justice is commendable. Despite the human frailties involved, it is commendable since it is difficult to achieve a system of perfect justice anywhere and since most of the injustices contained herein were not really with the common judicial system of arbitration. If the ordinary Esan people know what exactly obtains with the extra-judicial procedure left at the hand of the few, wrongly believed to have superior knowledge and power, they would unreservedly detest and contest their deeds of injustice. Acts of detestation in this regard are usually expressed in question such as *oria luo oria ona?* – interpreted as “is it a person that did this to a person?” Given these premisses, though these perceived injustices may be evil on the part of the victims, they may not be considered evil on the part of the innocent perpetrators, but error. If we insist that they are evil, then they are evil - not from bad intentions but due to ignorance.

FUNDING

This research paper received no internal or external funding.

ORCID

REFERENCES

- Airoboman, Felix.** (2020). A Discursive Critique on Justice in *Esan* Tradition. *International Journal of Juridical Studies & Research (IJJSR)*, Vol. 2, Issue 1. 47-59.
- Albanese, Jay S.** (2008). *Professional Ethics in Criminal Justice: Being Ethical when no one is Looking*. 2ed, Boston: Pearson Education, Inc.



- Alli**, Peter. (2011). *Esan Cosmology and its effects on the Social Behaviour of the People: Bringing all things under Christ*. Lagos: Deocraft Communications.
- Allot**, A. (1960): *Essays in African Law*. London: Butterworth. Cited in Magobe Ramose. (2001). *An African Perspective on Justice and Race*. Polylog: 3.
- Arowosegbe**, Jacob O. (2017). Indigenous African Jurisprudential Thoughts on the Concept of Justice: A Reconstruction through Yoruba Proverbs. *Journal of African Law*. Vol. 61. Issue 2. 155–170. <https://www.cambridge.org/core/journals/journal-of-african-law/article/abs/indigenous-african-jurisprudential-thoughts-on-the-concept-of-justice-a-reconstruction-through-yoruba-proverbs/A6EB0852E166FA1B377F7B66DDB9B8D8>
- Banks**, Cyndi. (2009). *Criminal Justice Ethics: Theory and Practice*. 2ed. London: Sage Publications Ltd.
- Baden**, G.T. *Niger Ibos*. Cited in Olumide Lucas. (1970). *Religions in West Africa and Ancient Egypt*. Printed by the Nigerian National Press, Apapa Lagos.
- Brandt**, R. B. (1959). *Ethical Theory: The Problems of Normative and Critical Ethics*. Englewood Cliffs, NJ: Prentice-Hall.
- Bunnin**, Nicholas and Yu, Jiyuan. (2004). *The Blackwell Dictionary of Western Philosophy*. Oxford: Blackwell Publishing, Ltd.
- Clarke**, Kamari Maxine. (2018). Afterward. In Jessica Johnson and George Hamandishe Karekwaivanane. Eds. *Pursuing Justice in Africa: Competing Imaginaries and Contested Practices*. Athens: Ohio University Press. 289-291. https://www.ohioswallow.com/extras/9780821446485_OhioUniversityPress_OpenAccess.pdf
- Coninck**, J, Culp, J and Taylor, V. (2013). *African Perspectives on Social Justice*. Sarah Tangen. Ed. Acacia: Friedrich-Ebert-Stiftung Publisher. <https://library.fes.de/pdf-files/bueros/uganda/10724.pdf>
- Dopamu**, T.A. (2006). Traditional Values: A Means to Self Reliance. *Orita: Ibadan Journal of Religious studies*. Vol. XXV. 1-2 June.



- Dorris**, Michael. (2005). The Myth of Justice. In Deborah H. Holdstein. Ed. *Challenging Perspectives: Reading Critically about Ethics and Values*. Boston: Houghton Mifflin Company. 292-297.
- Driberg**, J.H. (1934). The African conception of law. *Journal of Comparative Legislation and International Law*. Vol. 16.
- Ehianu**, Wilson. (2005). The Resurgence of Aiyelala Deity in Benin: An Indictment on the Church and Judiciary. *EPHA: Ekpoma Journal of Religious Studies*. Vol. 6. No. 1 and 2 June.
- Frankena**, William and Granrose, John. Eds. (1974). *Introductory Readings in Ethics*. New Jersey: Englewood Cliffs. 172-187.
- Gardner**, Catherine Villanueva. (2006). *Historical Dictionary of Feminist Philosophy*. Lanham, Maryland: The Scarecrow Press, Inc.
- Graness**, Anke. (2017). Concepts of Justice in Africa: Past and Present. In Isaac E. Ukpokolo Ed. *Themes, Issues and Problems in African Philosophy*. Palgrave Macmillan, https://www.researchgate.net/publication/313251549_Concepts_of_Justice_in_Africa_Past_and_Present. 305–331. DOI:10.1007/978-3-319-40796-8_21.
- Haag**, Ernest van den. (2009). In Defense of the Death Penalty. In Steve Cahn. Ed. *Exploring Ethics: An Introductory Anthology*. New York: Oxford University Press. 350-360.
- Hobbes**, Thomas. (1946). *Leviathan*. Oxford: Oxford University Press.
- Hoffman**, John and Graham, Paul. (2009). *Introduction to Political Theory*. 2ed. England: Person Education Limited.
- Hooker**, Brad W. (1999). Justice. In Robert Audi. Ed. *The Cambridge Dictionary of Philosophy*. 2ed. Cambridge: Cambridge University Press. 456-457.
- Hospers**, John. (1990). *An Introduction to Philosophical Analysis*. 3ed. London: Routledge.
- Lucas**, Olumide. (1970). *Religions in West Africa and Ancient Egypt*. Printed by the Nigerian National Press, Apapa Lagos.
- M'Baye**, K. (1974). The African Conception of Law. In *International Encyclopedia of Comparative Law*. Vol. 2. Cited in Magobe Ramose. (2001). *An African Perspective on Justice and Race*. Polylog: 3.



-
- Mitchell**, Helen Buss. (2005). *Roots of Wisdom*. 4Ed. Belmont: Wadsworth Thompson Learning.
- Okojie**, Christopher. (1994). *Esan Laws and Custom with Ethnographic Studies of the Esan People*. 2ed. Benin City: Ilupeji Press Ltd.
- Osae**, T.A. and Odunsi, A.T.O. (1973). *A Short History of West Africa: A. D. 1800 to the Present Day*. London: University of London Press Ltd.
- Ramose**, Magobe B. (2001). An African Perspective on Justice and Race. Polylog: Forum for Intercultural Philosophy 3. <http://them.polylog.org/3/frm-en.htm>
- Raphael**, D. D. (1990). *Problems of Political Philosophy*, 2ed. London: Macmillan.
- Rawls**, John. (1971). *A Theory of Justice*. London: Oxford University Press.
- Surya** Prakash Sinha. (1993). *Jurisprudence: Legal Philosophy in a Nutshell*. West Publishing Co.
- United Nations**, (2016). *Human Rights and Traditional Justice Systems in Africa*, Geneva: United Nations Human Rights. HR/PUB/16/2 United Nations Publication Sales No. E.16.XIV.1 https://www.ohchr.org/sites/default/files/Documents/Publications/HR_PUB_16_2_HR_and_Traditional_Justice_Systems_in_Africa.pdf
- Webster**, J.B. and Boahen, A.A. with Idowu, H.O. (1967). *The Growth of African Civilization: The Revolutionary Years: West Africa since 1800*. London: Longman Groups Ltd.