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Law and Morality: Perspective from Yoruba Cultural Jurisprudence

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Abstract

Western jurisprudence is replete with several but seasoned debates concerning what the precise relationship is between law and morality. In those discussions, durable notes and deeds of intellectual antagonisms exist between legal naturalism that affirms a relationship of inseparability and legal positivism that affirms a relationship of separation. Given these hordes of controversial conversations, the objective of this paper consists of establishing the contribution that Yoruba cultural jurisprudence, a non-western narrative, presents concerning this substantive but serious and significant subject matter of mainstream, conventional and orthodox jurisprudence. The methodology adopted in this paper consists of textual analysis, hermeneutical reflection and philosophical argumentation. The paper findings show that law-morality relationship represents something controversial in jurisprudence thereby necessitating revisions away from the existing narrative. This necessity is informed by the availability of non-western narratives. The existing narratives in Yoruba jurisprudence, for example, did not assert but only assumed cultural bases concerning law-morality connection. A truly cultural base necessarily affirms a conceptual complementary connection between law and morality. The endorsement of a conceptual complementary connection within Yoruba cultural jurisprudence suggests inseparability although both are not the same concepts. Moreover, Yoruba cultural practice of judicial cross-examination represents an illuminating and enlightened authentication of a conceptual complimentary connection between law and morality. The paper concludes that law and morality are products and properties of culture thereby necessitating the recourse towards a Yoruba cultural jurisprudence perspective.

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Keywords

Law; Morality; Culture; Jurisprudence; Yoruba

1. Introduction

This paper explores the content and character of cultural jurisprudence as a clue to the comprehensive understanding of an important aspect and dimension of western jurisprudence. In the significance sense, western jurisprudence comprises of a litany and plethora of philosophical problems, controversies and contentious debate that have been ongoing for ages without any sense of significant resolution, consensual understanding and conceptual pacification. If interpreted properly and interrogated appropriately, it is within the realm of possibility to contend that the irreconcilable differences over such matters appear to be associated with ideological differences rather than mere intellectual or academic reasons. One of such important controversies, in jurisprudence of philosophy of law is the connection, expressly or expectedly, between law and morality. To this end, it is important to investigate, interpret, and interrogate law and morality from the perspectives of cultural jurisprudence.

Cultural jurisprudence places serious, solid and significant focus on contributions of culture, cultural orientations and cultural world views to thematic and topical issues in jurisprudence. The focus of this paper is on the contributions concerning law and morality from the Yoruba cultural perspective. To achieve this objective, the paper shall adopt the following routine: in the first instance, a general perusal concerning law and morality in the literature shall be identified. In the second instance, the character cultural jurisprudence shall be discussed. In the third sense, the paper shall undertake a careful but conscious examination of Yoruba cultural jurisprudence in light of the paradigms within this kind of cultural jurisprudence and the ambitious agenda, overall implications and the general submission it defends as far as law, morality and their connection is concerned. The paper shall adopt a critical approach tagged as conceptual “complimentarism” as a basis for comprehending the contributions of Yoruba cultural perspective concerning the connection between law and morality. Significantly, Yoruba practice of judicial cross examination shall be consulted to exemplify and amplify the conceptual complementary thesis without excluding and exempting, in the process, the thesis from some critical remarks.

2. Law and Morality in Mainstream Jurisprudence

If it is said that both law and morality enjoy and express an overlapping relationship, the simple truth and fact that is conveyed and connoted is that both normative institutions are clearly and correctly significant and important. It is often granted that in every mature society, there is considerable overlap between legal questions and those of morality. What the law forbids, in almost all instances, are also disdained by instructions, teachings and injunctions of morality. This has been anchored, most presumably, on the ground that both law and morality do their work with the very same item of human behaviour. Hence, a web of inseparation has come to be identified with morality and law

with the question asked: what is the precise character, on a specific form, that the relation between law and morality expresses? In the literature, many intellectual responses have been developed and devoted to an apt analysis of the exact and precise relation that both concepts bear. Significantly, it is believed that what divides one school from the other is an underlying ideological pretension. In the primary sense, it is often pointed out that, going by the structure of language, the language of morality and that of law represent two different fulcrums though both specifically elicit an aspect of human behaviour. For example, Nowell-Smith argues that the language of morals involves the demand for reasons for the performance of the expected duty whereas the language of law both in its advanced and crude forms is silent on the search for reasons but openly canvasses for compliance based on the authority backing it.[1] Interestingly, it is argued that the authority behind law is that of command or force not rational authority. One possible meaning of Nowell-Smith's argument consists in the view that the basis of legal obligation is not external to that of law itself in which case, from this point of view, there seems to be a distinction between law and morals. But, then, it is good to point out that even if this were to be the point raised by Nowell-Smith, then, this position can be faulted because even in some judicial cases, clear reasons are supplied that sometimes reflect morality. Again, in the important sense, the distinction between both concepts has been premised more on the fact that in most cases, there are many legal concepts, rules or questions which are morally indifferent in the sense that they do not appeal to moral or ethical considerations either in their overall nature or significantly, in what they enjoin.[2] In fact, this argument runs side by side with the ageless philosophical prescriptions and postulations of Immanuel Kant who contended that law and morality are to be held as distinguishable because laws prescribe external conduct while morals prescribe internal conduct.[3] The inability on the part of the law to distinguish, again, between what is strictly subjective and that which is objective for the purpose of law has led many jurists to affirm the point of distinction to consist in the fact that one is punishable in form of open external physical sanctions while the other is not, at least in this open physical sense. But, then, the issue of sanctions is still open to different interpretations and meanings. What then determines the proper context of sanctions – the pains, the injury, rejection, regularity or what? The outcome, at times, depends on attitude, which is itself subject to a host of bewildering interpretations. In ancient times, during the middle-ages, with the commencement of modernity, including the post-modern age and, in this contemporary era, law and morality remain indelible trait, features and hallmarks of everyday conducts and conversations, to the end that both cannot be wiped away, watered down and their influence and impact cannot be hidden. Given this factual and realistic assessment and interpretation of law and morality in the cultural evolution, progress and stability of the world, it is no wonder that mainstream jurisprudence, both western and non-western, is inundated with comprehensive debates on how both stand to each other. Some scholarly works, both at the theoretical and practical levels, have been devoted to a

[1] Nowell-Smith PH, *Ethics* (Macmillan Publishers 1954) 198.
[2] Freeman MDA, *Loyd 's Introduction to Jurisprudence* (6th Edition), (Sweet and Maxwell 1996) 57.
[3] Kant I, *Groundwork of the Metaphysics of Morals* (Second Edition), (Hutchinson 1948) 155.

serious and significant understanding of the implications of their relationship in the way society is governed, managed and administered.[4] When fully explored, examined and interpreted, the deduction and inferences are open and obvious that law and morality have been expressed, entertained, engaged and encountered in several senses of impressive connections and reflective relationships leaving sufficient space for careful pontification and comprehensive postulations.

As a matter of fact, both legal positivism and legal naturalism have been obsessively actuated, animated and pulsated by this subject matter of debate and dispute in jurisprudence. Precisely, HLA Hart (1958) and Lon Fuller (1958), both of blessed memory, entertained the world of jurisprudence to a juicy exchange of lively consequence, concerning why and how law and morality are related or not related. The remains of that exchange are the issues that current and contemporary scholars within the field of jurisprudence are inundated with.

One obvious deduction is that these examples of lively exchange are representatives of western discourses. Yet to be felt are the great measures of contributions of non-western discourses with a very high sense of optimism and promising positive and plausible profit that non-western scholars can offer. To this end, the present piece is an attempt to showcase some aspect of African concerted studies along this line of thinking in jurisprudence. In precise terms, the paper wishes to draw attention to the Yoruba cultural perspective concerning the connection between law and morality. Once this is done, it makes a contribution not only to mainstream jurisprudence but, also, the nascent, growing and budding consciousness towards broadening, widening and expanding a substance, subject matter, scope, frontier, horizon, template, terrain, and territory of contemporary African jurisprudence. However, within the context of thoroughness, it is important to consider the following perspectives as worthy of cerebral focus. What, then, are these perspectives? What are the innovative and novel insights that can be established concerning these perspectives within the context of non-western approaches to the connection between law and morality?

3. Sixteen Carefully Thought-out Perspectives on Law and Morality

Fortunately, what has come to be the statement of the problem of this paper is given a well-rounded meaning in the analyses of Louis Bloom-Cooper and Gavin Drewry.[5] Nevertheless, the benefits of insight and hindsight reveal that the relationship between law and morality expresses an entangled complexity which engenders the somewhat serious submission that the relationship between law and morality can be broadly deepened and fleshed out further

[4] Drewry G and Bloom-Copper L, *Law and Morality* (Duckworth Publishers 1976)1-35; Okafor UF, 'Legal Positivism and the African Legal Tradition' *International Philosophical Quarterly* (Vol. XXIV, No.2,1984) 157-164; Idowu WOO and Oke M, 'Theories of Law and Morality: Perspectives from Contemporary African Jurisprudence' *In-Spire Journal of Law, Politics and Societies,* (Vol.3, No.2, 2008e) 151-170; Smith JC, *Legal Obligation* (Athlone Press, 1976)*;* Adewoye O, 'Proverbs as Vehicles of Juristic Thought among the Yoruba' *Obafemi Awolowo University Law Journal,* (January and July, 1987) 1-17; Gluckman M, *Judicial Process among the Barotse*, (Manchester University Press 1967).

[5] Drewry and Bloom-Copper *(*n4)1-35.

than the limits and coverage captured in the analyses provided by Louis Bloom-Cooper and Gavin Drewry. So, instead of the four perspectives mentioned by these scholars. In actual fact, and nothing more pretentious, these perspectives can cover as many as sixteen basic senses in which the connection between law and morality can be articulated, analysed and advanced within the expectations of normal, natural, and necessary clarity and the convincing collateral comprehensiveness. The perspectives in question are the historical, logical, necessity, conceptual, criminalisation, enforcement and validity connection, and causal, obligatory, economic/materialistic, class, aesthetic, metaphysical, pragmatic, existential, and cultural perspective

The historical connection raises the following questions: has the law, in its contents and features, been influenced by moral principles? Conversely, has the law influenced moral principles? In the history of philosophical ideas, the concepts of law and morality have not only been found side by side in human society influencing human behaviour and the development of human societies, it is asserted that a reasonable measure of their coincidence is essential and significant for progress and survival of human society. This perspective on the law and morality connection defends, presents and painstakingly paints the assumption that there is a sense of historical reality and a sociological factuality that resonates a solid sense of reliability around the relationship both normative institutions have enjoyed over time. Indeed, law has its own peculiar history and the same sense of uniqueness, historically, can be attributed to morality which informs the conviction that both enjoy a lingering sense of historical connectivity. This is what this perspective attempts at underscoring, foregrounding and endorsing. Historical connection endorses the underlying truth about law and morality being a social and historical fact. In fact, this historical perspective has come to be integrated into the prevailing culture of particular societies, if not all.[6]

The causal perspective on the connection between law and morality commences from the valid assertion that both normative institutions, face, phase, and manifestations emanate from the longstanding idea that where there is a cause, there is always an effect, that there is no cause without effect, that the effect is a convincing template for deducing the existence of a cause before now. However, the most informed and generally critical reasoning consists in the question: which is the cause? Is it law or morality? Which is the effect? Is it law or morality? For some scholars, what is interesting and of dynamic import, as presented under this perspective, is the idea that it is important to see and agree that both law and morality have, at relevant times in the growth, development, and advancement of human societies, influenced the pattern of relationship existing between these normative institutions, from the perspective of the principle of causality. In other words, both have been causative agents and forces in human history and the development of societies. As a matter of fact, both law and morality have had to induce, increase, incite and influence certain, specific, unique and particularly peculiar attitudes, behaviours and approaches to life without tilting

[6] Drewry and Bloom-Copper (n4) 2.

to one angle or dimension alone. In this sense, law has been a major cause of created attitudes to morality and vice-versa.[7]

Under the logical connection, the substance of interesting import is to determine whether, by definition, composition, character, capacity and consequence, law and morality are logically connected. Logic is the science of the formal principles of reasoning.[8] So, logic deals with reason. Thus, if both law and morality are logically connected, what could follow is that both are elemented in and elements of reason. It could mean that both are subjects of reason and reasoning. But then, can one actually say that both law and morality are institutions with the same template, trait and temperament of rationality? Does the rationality of law express the rationality of morality? Is morality always in agreement, in conformity or a corroboration of the rationality evidenced, evinced and exemplified in law? Is there a logical connection or relation between the concept of law and the concept of morality? The durable disagreement in legal philosophy over the connection between law and morality, in actual fact, centres on and revolves around three perspectives identified as the logical, the necessary and the conceptual. In legal philosophical debates, these three perspectives are often and always conflated as if they represent one kind of thinking. In my judgement, however, these three perspectives can be separated and differentiated to the end that what is intricately at stake, can be conceived properly and, as a result, carefully analysed.

According to the necessity connection, the following questions appear pertinent: does the concept of law necessarily refer to the concept of morality? Is law indissolubly fused with morality at every point? Again, it is often asked whether law and morality are necessarily connected in terms of one being the subject and the other the predicate. Indeed, the necessity connection represents the most pronounced face and phase of controversies, in legal philosophy, concerning the connection between law and morality. The controversies over the relation between law and morality seem to start and end here. Positivists, starting with the works of Jeremy Bentham[9], John Austin[10], HLA Hart[11] and, in recent times, Joseph Raz,[12] have all postulated that there is no necessary connection between law and morality. According to Hart[13] 'it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though, in fact, they have often done so'. Their ideological opposers and critics, the natural law thinkers,[14] have posited that the history of law shows a clear necessary link with morality. The divisions experienced between the two schools constitute the extent to which the

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[7] Ibid, 3.
[8] Hurley PJ, *A Concise Introduction to Logic* (13th Edition) (Holly J. Allen 2016) 1.
[9] Bentham J, *An introduction to the Principles of Morals and Legislation* (Doubleday 1935).
[10] Austin J, 'Law as the Sovereign's command' Golding MP (ed.), *The Nature of Law* (Random House 1966) 77-98.
[11] Hart HLA, The *concept of Law* (Clarendon Press 1994).
[12] Raz J, *The Authority of Law, Essays in Law and Morality*, (Clarendon Press 1979).
[13] Hart HLA,*The Concept of Law*, (Clarendon Press 1961)181.
[14] Aquinas T, 'Law as Ordinance of Reason' Golding MP (ed.), *The Nature of Law* (Random House 1966) 9-24; Fuller L, *The Morality of Law,* (Yale University Press 1964); Finnis J, *Natural Law and Natural Rights,* (Clarendon Press 1980); Elegido JM, *Jurisprudence* (Spectrum Books Limited 1994).

controversies have refused to go. Precisely, the famous intellectual exchange between HLA Hart 'Positivism and the Separation of Law and Morals'[15] and Lon Fuller 'Positivism and the Fidelity to Law – A Reply to Prof. Hart' in the *Harvard Law Review,* Vol. 71 (1958)[16] has been hailed as a perfect expression of the meaning of necessity and contingency when it comes to relating law and morals.

In another related but different sense, law and morality, over time, have been viewed from the conceptual angle. This perspective is important in my argument concerning law and morality viewed from the dimensions afforded, approved and advocated as acceptable within the context of Yoruba cultural jurisprudence. My argument in this direction is from the conceptual complementarity thesis. But then, the substance of this perspective relates to whether law and morality are endorsed or can be underscored in conceptual sameness. Legal positivists argue that law and morality do not enjoy conceptual sameness and, as a result, are to be separated. Legal naturalists are of the view that both law and morality are conceptually the same and, as such, cannot be separated. My position on this disagreement shall be reflected later on in this work coming from the perspective of Yoruba cultural jurisprudence.

The criminalisation connection is an expression concerning the disagreement whether certain and specified immoral acts can be regarded as criminal acts,[17] while the enforcement connection asks: should legal means be employed in enforcing morality? On what basis should law be employed to enforce morality?[18] On the other hand, the validity connection concerns whether a rule of law, properly derived (in terms of passing through valid constitutional process) can be held to conflict with some moral principle, thus leaving obedience, some say obligation, in doubt? It asks: can an unjust law, be law indeed? According to Hart, 'it could not follow from the mere fact that a rule violated standard of morality that it was not a rule of law, and conversely, it could not follow from the mere fact that a rule was morally desirable that it was a rule of law.'[19]

Based on the obligatory perspective, is legal obligation meaningful, sensible and possible without diligent reverence and due respect to morality and ethical principles? Is the entire gamut of our obligation to obey the law not necessarily centred on morality alone? Is there any sense in claiming that we have obligation to obey the law just because it is the law without pointing

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[15] Hart HLA, 'Positivism and the Separation of Law and Morals' in Hart HLA, *Essays in Jurisprudence and Philosophy* (Oxford University Press 1983) 49-87.

[16] Fuller L, 'Positivism and the Fidelity to Law – A Reply to Prof. Hart', *Harvard Law Review* (Vol. 71, 1958) 630–672.

[17] *Report of the Wolfenden Committee on Homosexual Offences and Prostitution* (Her Majesty's Stationery Office 1957) 247; Devlin P, 'Morals and the Criminal Law', Dworkin R, (ed.) *Philosophy of Law,* (Oxford University Press 1977); Hart HLA, *Law, Liberty and Morality,* (Random House Inc. 1963).

[18] Stephen JF, *Liberty, Equality and Fraternity,* (2nd Edition), (H. Elder & CO. 1874.); Mill JS, 'Of Society and the Individual' in Spitz D, (ed.) *Individual and Freedom: Mill's Liberty in Retrospect,* (W. W. Norton and Co. 1971).

[19] Hart (n15) 599.

towards the necessity conferred by moral considerations?[20] Is the institution of law not necessarily supervenient on that of morality in actual fact and nothing more pretentious?[21] Can legal obligation survive, be sustained and retained without any logical appeal to morality?[22] The economic/materialistic perspective takes off from the popular statement credited to Karl Marx when he posited that 'philosophers have only interpreted the world; the point, however, is to change it'. To buttress the change factor, Marx gave a materialistic interpretation of history, thus, parading an economic deterministic parameter in the interpretation of history. To this end, Marx sees law and morality as proper reflections of the same materialist conditions characteristic of history and societies. Thus, law and morality are class creations and consciousness. On the other hand, the class perspective argues that class consciousness, status and sentiment attract a broader definition than that offered in Marxist philosophy. Class, in this sense, can be political, religious, intellectual rather than economic or material. Law and morality, apart from being materialist determinants of relationships in society, can equally carry vestiges, sentiments, and semblances of the class configurations that exist in human societies, whether in the sense of specificity or those constructed along the lines of generality.

Aesthetics is that branch of philosophy that deals with the nature of beauty, art, and taste.[23] The aesthetic perspective views the relationship between law and morality as concerned with investigating whether law adds beauty to morality or whether morality adds beauty to law. The essence of this perspective is to examine in what ways both, as normative institutions, have beautified each other within the context of cultural growth, human historical evolution and the advancements of man's cognitive apparatus and cogitative appurtenance, within the sphere of the cerebral facility and faculty that man has conjured, conceived, conveyed within collateral commitment to culture over time.

The metaphysical perspective is concerned with the questions: what metaphysical connection exists between law and morality? Are both law and morality metaphysical constructs? If, indeed, they are, does this suggest and presuppose that both law and morality are metaphysical realities within the context of general reality? Again, if both law and morality are metaphysical ideas, ontologically speaking, which is prior – law or morality? Is their ontological status co-existential? If both are metaphysical realities, in what ways have both impacted on each other? Given the truism about impacting each other, can it be said that the impact in question has been negligible, negative, positive, greatly influential or what? As metaphysical realities, what kind of social respect, swift recognition and serious reverence do humans in society have to pay towards and concerning these two metaphysical realities? What this perspective seems to endorse, expressly, is the undeniable fact that law and morality are metaphysical realities with grave influence and contributions towards the growth of human societies in terms of the cultural

[20] Honore T, 'Must We Obey? Necessity as a Ground of Obligation' *Virginia Law Review* (Vol. 67 1981) 39-61.
[21] Simmon J, *Moral principle and Political Obligation* (Princeton University Press 1979) 11.
[22] Woozley AZ, *Law and Obedience* (Clarendon Press 1979).
[23] Harrison-Barbet A, *Mastering Philosophy* (2nd Edition) (Palgrave 2001).

and traditional practices man has developed over time. Indeed, the substance of my argument, later in the work, that Yoruba cultural jurisprudence endorses a conceptual complementary connection between law and morality draws heavily from metaphysics and the metaphysical worldview on which Yoruba culture rests fundamentally and foundationally.[24]

The pragmatic perspective asks in what sense is law and morality pragmatically connected? If pragmatism emphasises the workability or practicability of an act, a policy or belief, what, then, is the workable connection between law and morality in human civilisations and societies?[25] On the other hand, the existential perspective desires to ask and demand an answer concerning how both law and morality can be regarded as existential issues and, more importantly, how they are connected as impactful normative institutions having a bearing on the existential realities that man experiences in the universe. In a nutshell, in what ways and how is it possible to see and conceive law and morality as expressing an existential connection in the light of what existentialists refer to as man's existential conditions?

The import of cultural perspective is singularly depicted in the intention that law and morality are not separable regardless of the view that they do not enjoy conceptual sameness. This is the basic substance and interest of this paper. In actual fact, the paper hopes to argue that in certain cultural contexts, conditions and circumstances, law and morality cannot be separated in as much as they are complementary concepts, not necessarily endorsed and embedded in conceptual sameness.[26] To do this, careful attention and concentrated focus will be placed on and drawn from theoretical evidences and cultural examples and instances available within the Yoruba people of western Nigeria.

Admittedly, a very large percentage of debate in Western philosophy has been pre-occupied with some of these perspectives on the relation between law and morality. With the exception of the first and second perspective, which scholars in philosophical circles have branded as significantly important in academic fields such as Sociology, Anthropology, History, Law and, in recent times, African Study Centres, the other three perspectives have attracted a whole train of debates amongst Philosophers. Precisely, the field of legal philosophy and jurisprudence have been pre-occupied with each of these seven perspectives with several opinions formed on each. In very sincere terms, the perspectives covered and captured in Western texts have been limited. Nevertheless, given the years of research concerning this important subject matter of jurisprudence, legal theory and philosophy of law, the need to expand the perspectives through which these connections have been expressed or could be found expressible, becomes obvious, which is what has been attempted in this specific respect. In specific terms, the aesthetics, materialistic, class, metaphysical, existential, pragmatic and, most important of all, the cultural perspectives are innovative and creative additions of mine. In what follows, I shall attempt to highlight the African cultural

[24] Sodipo JO, 'Philosophy and Culture' *Inaugural Lecture* (Ife University Press 1973).
[25] James W, 'On Pragmatc Grounds' in, Gould JA (ed.) *Classic Philosophical Questions* (Bell & Howell Company 1982) 299-307.
[26] Riddall J. G. *Jurisprudence* (Butterworths 1991) 295.

perspective. This cultural perspective takes a close observation of the way in which the relation between law and morality is taken amongst the Yoruba people. The basic conviction underlying this approach can be deciphered in the contention of Bewaji that

> ..when we make a critical examination of the diversity of human beliefs in various parts of the world, it seems clear that even the simplest-looking belief system must be acknowledged to have developed from some form of critical examination of events, things, beliefs, etc. Without such philosophical presuppositions and, indeed, expostulations, on the part of members of these societies, it is difficult to see how such cultures and societies could have survived.[27]

The next questions are what is culture? What is cultural jurisprudence?

4. Culture and Cultural Jurisprudence

The cultural perspective to be ferreted on the relation between law and morality can be regarded as an aspect of what scholars such as Austin Sarat, David Howes and Alison Renteln have variously tagged as cultural or cross-cultural jurisprudence. Cultural, or cross-cultural jurisprudence or cultural justice system can be simply defined as one that recognises, honours and protects the right of cultural contribution in the creation, development, growth and maintenance of an equitable, workable and systematic justice system in order to fulfil the mutual self-supporting of such cultural groups.

The common concepts in cultural jurisprudence are judicialisation of culture, legalisation of cultures and cultural rights. The overwhelming awareness of cultural rights makes cultural jurisprudence a part of general jurisprudence. Its Utility makes it a compelling and growing force in recent conversations in jurisprudence. As excellently captured in a recent study on the boundaries between law and culture:

> Cultural-reflexive legal reasoning is increasingly necessary to the meaningful adjudication of disputes in today's increasingly multicultural society. It involves recognizing the interdependence of culture and law (i.e., law is not above culture but part of it). Judges ought to acknowledge and give effect to cultural difference, rather than override it. Deciding cases solely on the basis of some abstract conceptions of individuals as interchangeable rights-bearing units would have the effects of undermining our humanity. It is our cultural differences from each other that actually makes us human. However, in extending judicial recognition to such differences, judges must be careful to take cognizance of their personal culture, and not that of "the other." Reflexivity, not mere sensitivity, is the essence of cross-cultural jurisprudence.[28]

Furthermore, Howes contends that 'cross-cultural jurisprudence is essentially an exercise in hybridisation- in crossing cultures- and there is nothing "transcendent" about either its methods or its results. It involves seeing (and hearing) the law of any given jurisdiction from both sides, from within and without, from the standpoint of majority and that of minority, and seeking

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[27] Bewaji JAI, 'Language, Culture, Science, Technology and Philosophy', *Journal of African Philosophy* (Vol. 1, No.1,2002).

[28] The issues accommodated, admitted and acknowledged, in the analyses, all along, are reflections of study engagingly expressed and eloquently expounded by the Canadian Journal of Law and Society Special Issue – Call for Papers on the theme 'Cross-Cultural Jurisprudence: Culture in the Domain of Law', May 2005, published by the Canadian Law and Society Association.

solutions that resonate across the divide'.[29] In the words of Nicholas Kasirer, cross cultural jurisprudence 'involves stepping out of "law's empire" (if only temporarily) and attempting to find some footing in law's cosmos.'[30]

According to Austin Sarat and Thomas Kearns, 'law and legal studies are relative latecomers to cultural studies. To examine law in the domain of culture has been, until recently, a kind of scholarly transgression.'[31] In furtherance of this, the authors continue, '[i]n the last fifteen years, (…) first with the development of critical legal studies, and then with the growth of the law and literature movement, and, finally, with the growing attention to legal consciousness and legal ideology in sociological studies, legal scholars have come regularly to attend to the cultural lives and the ways law lives in the domain of culture.'[32] According to David Howes, 'the same could be in reverse: cultural studies (including anthropology) are a relative latecomer to law and legal studies, but in the last few decades, there has been a striking irruption of cultural discourse in the domain of law.'[33]

The nature of this transgression is comprehensive in the opinion of Raymond Williams who affirms that the word "culture" was one of the two or three most complicated in the English language and which in British, North America and European anthropologies, has had complex, contested and very different histories.[34] The fundamental concern of the cultural perspective consists in asking what the nature of the relation between law and morality is from a cultural standpoint. In the basic sense, worthy of note is the view that law and morality are not separate from culture. Moreover, both normative categories of human existence are not above culture; rather, they are part of culture. It is in this sense that this perspective seeks to interrogate the relationship between both law and morality in the light of culture. What, then, is the meaning of culture within which this paper aims at interrogating, investigating and interpreting the relationship between law and morality?

Etymologically, culture comes from cultivation. The idea of tending crops was applied to the education of people.[35] Then, in the 19th century, people spoke of a society's culture, meaning (at first) the level of mental achievement the society had achieved and, then, the way of life, language, ideas, religion, arts and sciences of a society or group.[36] In an intellectual sense, culture is said to be the 'act of developing by education, discipline, social experience; the training or refining of the moral and intellectual faculties.'[37] In an anthropological sense, culture refers to 'the total pattern of human behaviour

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[29] Howes D, 'Culture in the Domains of Law: Introduction to Cross-Cultural Jurisprudence' *Canadian Journal of Law and Society* (Vol. 20 No.1, 2005) 9-29.
[30] Kasirer N, 'Bijuralisms in Law's Empire and in Law's Cosmos' *Journal of Legal Education* (Vol.52, 2002) 29-41.
[31] Sarat A and Kearns T, *Law in the Domains of Culture,* (University of Michigan Press, 1998) 5.
[32] Sarat and Kearns, (n 19) 5.
[33] Howes (n 17) 29.
[34] Williams R, *Keywords,* (Fontana 1976).

[35] Durrant W, *Our Oriental Heritage,* (Simon & Schuster 1954)1.
[36]Idowu WOO 'A Critique of The Separability Thesis Within the Context of An African Jurisprudence' (PhD Thesis Obafemi Awolowo University 2006)71.
[37] Durrant, (n 35) 72.

and its product embodied in thought, speech, action, and artefacts, and dependent upon man's capacity for learning and transmitting knowledge to succeeding generations through the use of tools, language and systems of abstract thought'.[38] From these definitions, it is clear that a people's culture embraces a lot of things, abstract and real, actual and potential, sometimes perceivable or coded in sets of principles for living.

Edward Burnett Tylor states that 'culture is that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of a society'.[39] The highest social value of a given culture is its unity, a holistic construct through which their belief and hope about life and experiences of life can be interpreted and understood. A people's culture, therefore, concerns the formation, development and manifestation of the creative essence of man as pictured in the given society. This is often achieved through the regulation of mutual relations of man with nature, society and other peoples.

The beginning of morality, for instance, its imperatives and taboos at the dawn of human history reflects an understanding that people do not live as isolated individuals but as social groups for which reason they must have some rules for orderly social life. In the same discreet sense, the evolution of law represents man's unique development of the understanding of his society and represents efforts at ensuring the cohesiveness of the society in which he has found himself. To posit a cultural perspective in which the connection between law and morality can be viewed, is to claim that the law and morality are culturally patterned in a complimentary way. In other words, law and morality, culturally, are complimentary since they form the several components of the organic unity and the whole for that society.

However, law and morality, functionally, they are distinct. Law and morality stand to culture as trees stand to a garden. The reasoning is that a people's culture forms a holism. Law and morality, as part of that holism, are, thus, complimentary and incorporate, a kind of symbolic relation. An important characteristic of a people's culture, therefore, is that of the alignment of national and common values, with priority given to common values in consciousness, action, communications and practices. These common values are found expressible in the laws and morals that are ingrained in such cultures.

One consequence of this analysis is that it engenders some elements of relativism. If law and morality are complimentary aspects of a people's culture, and it is true that cultures are different, then, the cultural perspective in the construction of the relation between law and morality can be questioned in light of the relativism it elicits. This observation is a very important one. In spite of this, one way of addressing this objection is that, truly, cultures are different, and, as such, law and morality, in several cultures, will be different. This, however, does not deny the fact that morality and law are complimentary aspects of people's culture.

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[38] Webster's Third New International Dictionary, 1982.
[39] Taylor E B, *Primitive Culture* (Harper Torch Books 1958) 1.

The argument is that in such other cultures, although what may count as the law and morality will be different from another society, these aspects of that culture will be found complimentary in as much as it is in alignment with the national and common values expressible in that culture. Contradictory or different cultural systems do not disprove the complementary connection of law and morality in such cultures; all it proves is that morality and law can be different from one culture to another. A people's culture reflects their way of life. Law and morality, in such a culture, stands as some of the indices for understanding that pattern of life successfully.

Thus, culturally, if it is the case that law and morality are aspects of a people's culture, just as religion, etiquettes, and some other realities are likewise aspects of a people's culture, it can be argued that the idea of a conceptual autonomy between these manifestations of a given culture is likely to be lacking. In other words, one could be found making an almost correct guess that once we are able to study what the totality of a people's culture is, without much ado, the nature of morality, suggests itself effortlessly to our understanding. A kind of conceptual prediction, from the point of view of what holds in the culture, can give a conceptual clue to what the various manifestations are likely to be. Law and morality, being aspects of a people's culture, entails a kind of complementary association, distinguishable though, but, not separable.

This does not rule out differences from one culture to another. But the argument is that once we are aware of what obtains in culture X, this understanding grants a kind of liberty in predicting and classifying the nature of the laws and morals that pertain to that culture X. The same can apply to culture Y whose laws and morals also reflect indiscriminately the total way of life of the people in culture Y. Thus, what is acceptable in a culture, may not be acceptable in some others. According to Riddall,

> so closely may law and morality be intertwined that in some societies the two may be regarded as not forming separate notions. In the societies of the western world, however, the two spheres have generally been seen, notwithstanding the numerous interrelationships, as concepts that are distinct.[40]

Thus, a cultural jurisprudence is bound to breed relativism as it reports the idea of law and its connection to other normative aspects of a people's culture in different ways in the way each culture stands to another culture. What the cultural perspective aspires to achieve, in the first instance, is corroborative to the idea of a cultural jurisprudence. In another sense, its modest contribution to the nature of jurisprudential problems consists in the argument that the understanding of law and morality and their connection cannot be understood outside what that culture projects and portrays. In the end, it is incumbent to emphasise the reality that what has been painted and portrayed all along are theoretical premises with fantastic pedigree and fascinating profile in the search for specific empirical details and data drawn from particular cultural groups whose cultural metaphysics and worldview can serve as bases and palpable grounds on which the theoretical premises can be foregrounded, instantiated and exemplified. When this is done, it is possible to say that a sense of empirical justification has been found in defending the thesis that law

[40] Riddall JG, Jurisprudence (Butterworths 1991) 295.

and morality are not only a part of culture, but that, within this context, can be argued to enjoy a kind of conceptual complementary relationship, a relationship that endorses the view that though law and morality are not the same concepts but, that, within the context of both specific and general understanding of culture, are conceptually inseparable just because they are complementary concepts. What is left, therefore, is to understand the specific substance of Yoruba jurisprudence and how that jurisprudence defends the thesis that law and morality are conceptually complementary in the character of the connection they reflect. How, then, does Yoruba jurisprudence look like? What are the specific details and data it presents for critical engagements?

5. Yoruba Cultural Jurisprudence

The Yoruba people inhabit the South Western part of Nigeria. There are many pronounced ideas about the Yoruba people.[41] According to Barry Hallen, the Yoruba culture is oral in nature, character, capacity and consequence. In this culture, attention is placed on language and linguistic exchanges. This attribute is evidently portrayed in their use of witty sayings and idiomatic expressions (*Asayan oro*), proverbs and parables (*owe*), adages (*oro ogbon*), myth (*alo*), Ifa verses (*ese Ifa*).[42] In another perspective, Akanmu Adebayo considers these vehicles of linguistic and cultural heritage in Yoruba land as 'prevalent paradigms' of law. They are, also, sources of 'deep philosophical and cognitive ideals.[43] The oral forms of Yoruba culture, so described, are enshrined as Yoruba text.[44] According to Akanmu Adebayo, these texts 'are employed in settling minor and major disputes within or between families, and are the sources of Yoruba legal institutions, which constituted the basis of the colonial customary court system'.[45] From this reading, it is obvious that the Yoruba people have prepared means, methods, modes, manners and memorable monuments that are packaged and compiled as utilities in solving, resolving, managing disputes, conflict situations, criminal tendencies, temperaments and traits in their society.

In addition, Sobande states that three points of wisdom are the constituents of both the traditional and even modern Yoruba society.[46] The first wisdom is law or commands, that is, *Ase*; the second wisdom is culture as reflected in social practices, that is, *Asa*; and the last wisdom is taboo, that is, *Eewo*. *Ase* is the reflection of the king's command or the directives of the government which are believed to be unbreakable. These points of wisdom are either formally or

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[41] Adediran B, 'Yorubaland up to the Emergence of the States' in Ogunremi D and Adediran B (Eds.), *Culture and Society in Yorubaland*, (Rex Charles Publications 1998) 1-13.

[42] Hallen B, 'Moral Epistemology – When Propositions Come out of Mouth' *International Philosophical Quarterly,* (Vol. 38, No.2, 1998) 187-204.

[43] Adebayo AG, 'Kose-e-mani: Idealism and Contradiction in the Yoruba View of Money' in Endre Stiansen and Jane Guyer (eds.), *Credit, Currencies and Culture in African Financial Institutions in Historical Perspective* (Nordiska Afrika Instituent 1999) 146-174.

[44] Ibid.

[45] Ibid,155.

[46] Sobande A, 'Eewo' in Olajubu O (Ed.) *Iwe Asa Ibile Yoruba* (Longman Nigeria Limited 1978) 15-20.

informally portrayed in practices and actions that are commonplace in the society.[47]

6. Law, Morality and Yoruba Cultural Jurisprudence: The Argument from Conceptual Complementarism

In terms of substance, the subject matter of Yoruba cultural jurisprudence reflects what can be tagged and termed as the convincing presence and concrete evidence of the conceptual complementary relationship between law and morality. Decisively, it could follow that the cultural boundary around which law and morality resonate among the Yoruba people is one in which law and morality are made to relate together as if they are the same even if it is realised among the people that they are not the same. The basic reason why this cultural permission and premise is so strong and significantly serious is because, over time, both law and morality have helped each other strongly and seriously in regulating the affairs of this society. As a matter of fact, it is generally conceived that the function of law and morality in Yoruba culture is a sensibly and sensitively supervenient one. This sense of supervenience accounts for why both normative institutions appear to be defined as conceptually the same. While this is the perception of the commonality, yet, seasoned Yoruba scholars have been smart enough to realise that the conflation of law and morality in light of this existing perception may not be defensible. To this end, such scholars have relentlessly argued that though the cultural milieu under which law is sanctioned as sacred among the Yoruba people is a moral one;[48] morality confers sanctity and sacredness on the institution of law from which it inherently, integrally and intestinally derives and draws inspiration for the kind of social and public life that the people ought to exercise, experience, entertain and express naturally, necessarily and normally, all within the context of cultural concreteness, creativity and comprehensiveness. It is within this condition of cultural concreteness, creativity and comprehensiveness that the argument from and concerning conceptual complementary connection arose in the first instance. What do Yoruba legal scholars mean by these arguments? What does it mean to say that law and morality are conceptually complementary within the context of Yoruba jurisprudence? This argument commences from the point of view that an adequate picture of a legal system, in empirically observable terms, reflects more of a conceptual complementary nature between law and morality rather than one of conceptual separability.[49] Riddall seems correct when he posited that ‘so closely may law and morality be intertwined that in some societies, the two may be regarded as not forming separate notions’.[50] Given this submission, one could easily guess that it is either that Riddall belongs to the Yoruba community, soul, spirit and body, or that he must have worked or conducted specific but substantial researches within the context of the legal

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[47] Ibid.

[48] Adewoye O, 'Proverbs as Vehicles of Juristic Thought among the Yoruba' *Obafemi Awolowo University Law Journal,* (January and July 1987) 1-17.

[49] Idowu W, ‘Yoruba Jurisprudence and the Normativity Controversy: Beyond the Boundary between Fiction and Orature’ Falola T and Oyebade A (Eds.), *Yoruba Fiction, Orature, and Culture: Oyekan Owomoyela and African Literature & the Yoruba Experience* (Africa World Press 2011) 393-410.

[50] Riddall JG, *Jurisprudence* (Butterworths 1991) 295.

tradition that epitomises the culture of Yoruba people. The latter guess could be right and plausible, on its face value, although one will still need to conduct a factual confirmation and corroboration of this supposition and submission. Nothing is wrong or incorrect if the submission is sincerely made. What may be out of order could be the claim that Riddall could be considered as belonging to the Yoruba community. Indeed, this is far from the truth. However, what is of compelling significance is the substance of Riddall's observation about non-Western societies of which the Yoruba society is a practical example. The Yoruba community presents, represents and reliably reflects what Riddall arguably defends. Law and morality are almost seen as conceptually inseparable even though that argument is bound to raise controversial reactions and responses.[51] But, then, what is defensible in Yoruba jurisprudence is the argument from conceptual complementary connection. If this argument is accepted and the postulates therein granted, legal positivists' defence of the separability thesis comes to nothing, is otiose, non-functional and completely unrealistic as far as the Yoruba community and the jurisprudence it celebrates are concerned.

In light of the above, while the separability thesis by legal positivists may not be an entirely false position, it is not always the case with every legal system. With respect to the canons of Yoruba jurisprudence, the relation between law and morality is a conceptual complementary relation.[52] The complementary relationship is dialectical in the sense that the view that both may not be logically dependent on each other is made stale and redundant by the fact that both are incomplete without each other, despite the claim of conceptual dissimilarity. Even if it is agreed, that, in ostensible terms, law is different from morality, and morality is different from law, it still does not follow that to be different, suggests being separable. To accept the thesis of separation on this ground, is to deny the complementarity of both concepts.

According to Idowu William, conceptual complementarism does not deny that both law and morality, conceptually, are different; what is denied is the view that since they are different, then, it is also the case that they are separate or separable. Two or more concepts may be found different or dissimilar. But the fact of dissimilarity between these concepts does not necessarily connote separation, especially when both are complementary. The complementarity does not remove the dissimilarity but may entail inseparability.[53]

In the same vein, Idowu and Oke argue that the definition of difference, as conceptual complementarism sees it, is only an opportunity for an extensive definition of morality in terms of law and vice versa. This extensive definition of both concepts in terms of each other in the framework of conceptual complementary connection consists in the fact that both concepts are necessary accompaniment of each other in a legal system. In other words, one is incomplete in a legal system without the other. It is in this sense it is

[51] Oladipupo SL, 'The Idea of Law in Yoruba Conceptual Scheme: An Interrogatory Discourse' *Nigerian Journal of Philosophical Studies* (Vol. 2, No.1, 2023) 1-21.
[52] Idowu W, 'Law, Morality and the African Cultural Heritage: The Jurisprudential Significance of the Ogboni Institution' *Nordic Journal of African studies* (Vol.14, No.2, 2005) 49-66.
[53] Idowu WOO, 'A Critique of the Separability Thesis within the Context of an African Jurisprudence' (PhD Dissertation, Obafemi Awolowo University 2006) 365-380.

suggested that law taken separately makes a legal system or system of philosophy of law incomplete and, as such, that a system of laws or legal system is necessarily built on moral standards and also essentially revolves around moral standards. This necessity, in terms of complementarism, is what is implied when it is said that one is an extension of meaning and intelligibility of the other.[54] A conceptually complementary relationship cannot be defined in terms of the notion of separability. This kind of conceptual complementarism deflects from possible existing positions in African jurisprudence as earlier stated and argued.

Yoruba legal philosophy defends and accommodates the view that law is the enforcement of morality *in fact* and morality is the enforcement of law *in conscience*. Yoruba metaphysical worldview suggests that law and morality are conceptually complementary, in as much as, within that metaphysics, they are complementary realities. Indeed, the metaphysical perspective advanced earlier seems to corroborate the kind of metaphysical structure that Yoruba people engagingly find attractive, appealing and substantially acceptable amongst them. This metaphysics not only establishes the basis of intelligibility for them, it also helps us in understanding their theory of meaning, the framework of meaning and the whole structure of thought on which certain basic elements of their life are explainable in general.

This metaphysics cuts across and explains their basic thoughts and beliefs with respect to human nature, human action, human hope and beliefs etc. In this respect, a very strong statement can be asserted, affirmed and allowed as a truism which is that culture and metaphysics are, actually, coterminous but not contradictory nor conflicting. The significance of this submission is that a metaphysical arrangement and outlook appears as an all-encompassing framework so expansive and elastic as to admit and allow very important elements that are indicative of a people's culture. Yoruba jurisprudence exhibits this kind of metaphysical outlook and the stake and sensitive implications it has on how Yoruba people see law and morality, cannot be overemphasised or underestimated. It serves as a way of understanding their philosophy. In this kind of outlook, it is not a misnomer to state that what is philosophical for them is also methodological. That is why John Olubisodipo, one of the foremost philosophers to have emerged from the Yoruba world, submitted that within this kind of metaphysical outlook, 'philosophy is reflective and critical thinking about the concepts and principles we use to organise our experience in law, in morals, in religion, in social and political life, in history, in psychology and in the natural sciences'.[55] The metaphysical argument implicit in Yoruba Jurisprudence concerning the connection between law and morality explains why a metaphysical perspective was coined and created earlier in this paper. Indeed, it will not be incorrect to submit that what Sodipo seems to be defending is his acute knowledge of how philosophy is practised, conceived and enshrined within the cognitive ambience that permeates Yoruba collective and cultural consciousness. The view that Yoruba jurisprudence subscribes to the idea of conceptual complementary connection

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[54] Idowu WOO and Oke M, 'Theories of Law and Morality: Perspectives from Contemporary African Jurisprudence' *In-Spire Journal of Law, Politics and Societies* (Vol.3, No.2, 2008) 151-170.

[55] Sodipo JO, 'Philosophy and Culture' *Inaugural Lectur*e (Ife University Press 1973) 3.

between law and morality is a reflection of this collective and cultural consciousness.

7. Validating Conceptual Complimentarism: Yoruba Practice of Judicial Cross - Examination

Historically, judicial cross-examination represents a practice that law inherited or borrowed from philosophy going by Socrates cunning but colourful conception of philosophy as the art and act of cross-examination of ideas.[56] The premise of this definition derives from Socrates' conviction that the unexamined life is not worth living as much as an unexamined idea is not worth having. Simply stated, the Yoruba practice of judicial cross-examination represents an empirical exemplification of the theoretical principle credited to Socrates. This practice can be stated as Yoruba Cultural conviction in the resident and permanent truth that law and its practice cannot be carried out in the absence of morality, religion, spirituality and metaphysics, all within the enclave of a cultural world view. Given this apt description, Yoruba cultural jurisprudence cannot but subscribe to an endorsement of the conceptual complimentarism thesis argued earlier and alluded to all along.

What does it mean to cross examine? Cross examination is a philosophical practice within which ideas are subjected to critical examination and evaluation with the intention consisting in the search for and discovery of the truth basic and fundamental to the issue at hand. As a judicial practice, it is resorted to when there is a dispute over an existing matter that requires resolution or that is in need of settlement. Among the Yoruba people, judicial cross-examination represents an admirable and adorable way of settling disputes in Yoruba land. While it is generally claimed that colonialism took away the face of traditional settings in Africa, yet, it could not be true that Africa lost everything to colonialism. Africa still retains features of traditional existence, life and reality. According to Moses Oke,

> Although almost all the countries of Africa have adopted Western models of judicial administration as the official paradigm, it is noteworthy that alongside these Western models, the traditional pre-colonial models of judicial administration have remained vibrant and highly regarded in many parts of Africa till now[57].

If a cultural perspective validly attests to swift, smooth and simple intersection between law and morality in Yoruba jurisprudence, I could think that the practice of cross-examination in Yoruba jurisprudence ought to be enough to validate this claim. Indeed, I shall be compelled to draw useful instances enormously typified in Moses Oke's analysis of judicial cross-examination in Yoruba culture. Some useful notes can be pointed at in discussing the necessity and practice of judicial cross-examination in Yoruba court cases. These are:

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[56] Stumpf SE and Fieser JE, *Socrates to Sartre and Beyond: A History of Philosophy* (McGraw-Hill 2003) 42.

[57] Oke M,'Judicial Cross-examination in Yoruba Culture: A Philosophical Critique' in Falola T and Oyebade A (Eds.) *Yoruba Fiction, Orature, and Culture: Oyekan Owomoyela and African Literature & the Yoruba Experience* (Africa World Press 2011) 411-424.

1. Cross-examination is usefully resorted to when it is the case that the audience at court cases are not witnesses to the case and disputes of which cross-examination is required.
2. While cross-examination is often a requirement of the law, yet, the essence of cross-examination is the need to enhance, elevate and, more importantly, elaborate and express the necessity of justice.
3. Cross-examination has the utility which is the discovery of truths in any legal exchange or judicial practice. The truth of law is the morality of law.
4. Cross-examination is a way of demonstrating the truth that no one shares or tells the story of another better than the self; if a case falls, it falls because the owner makes it so. If it stands, it stands because the owner makes it stand.
5. The idea of cross-examination among the Yoruba people is the emphatic insistence of equality before the law. With equality comes equity. The absence of partial consideration and predilections (discrimination) in judicial practice and decision making. Again, this is a moral dimension of Law.[58]

According to Oke,

> In the juristic thought of the Yoruba, therefore, it is acknowledged that only Olodumare, the Supreme Deity, who sees all and knows all, is the perfect and ultimate judge. Olodumare is regarded as the only one who can discern the truth of a matter that is not patently obvious to human beings. This is the import of the Yoruba proverbs that say *Olorun nikan lo le dajo afeyinpiran*, that is 'Only God can judge in the case of someone who uses his/her teeth to share a piece of meat with another person,' and *Ohun to pamo loju eniyan, kedere ni oju olohun* that is, 'What is hidden to human beings is clearly visible to God.' Nevertheless, the Yoruba still acknowledge that cases have to be resolved here on earth. Hence, they say *Ka taye yanju e* (let us settle it here on earth).[59]

From all indications, it is an actual truism that the administration of justice in Yoruba culture is functionally tied to the Yoruba Cosmos. Indeed, there is a common agreement in Yoruba cultural thoughts endorsing the view that there are Cosmological forces and factors in judicial administration of cross-examination in the Yoruba culture. According to Moses Oke, these forces are: (i) Orunmila, (ii) Olodumare, (ii) Orisa and Ajogun and (iv)Ara Orun.[60]

It is evident that judicial administration of cases in Yoruba land represents a mixture and constant and continuous interaction between religion and spirituality, religion and morality, religion morality and law. No law exists in Yoruba land without a foundation in religion and morality. Religion and morality are considered as standard resources of law, rules and regulations. Oke's view is that,

> …in Yoruba society, traditional and contemporary, the indigenous administration of justice is still carried on in a hierarchical order, both of judicial officers and of courts. The pertinent point to note here is that the practice of cross-examination is the same in all the different types of courts, which include the family, ward/quarters, market/business and palace courts.[61]

In Yoruba jurisprudence, traditional courts resonate the nature of customary courts in contemporary times. Under the dispensation of both court systems, the sole objective is the emphasis on ideals of reconciliation, consensus, conciliation and general attitude and attributes of social friendships.

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[58] Ibid.
[59] Oke (n 39) 415.
[60] Ibid 416.
[61] Ibid 416.

> The atmosphere on the customary court is often as relaxed as in the traditional court, as the aim is often more reconciliatory than punitive; it is like the traditional court in which the aim is to restore the bond of the community harmony that has been broken or that is being threatened by the action of certain members of the community, without increasing the sorrow of the community and without tolerating injustice or encouraging lawlessness among the people.[62]

In view of this, that is why Idowu Willam conceives that the heartbeat of Yoruba jurisprudence which includes its idea of law, judicial administration and the general moral atmosphere is that of reconciliation.[63] The practice of judicial cross-examination in Yoruba jurisprudence is sourced in Ifa literary corpus. Certain features of this corpus are germane:

i. Humans in a dispute do not have absolute rights; rights are moderated and mitigated ones.
ii. Elders, Chiefs, Sages and Custodians of *Ifa* literary corpus do not have absolute epistemological capacities.
iii. Under this practice, the *Ifa* corpus acts not only as the source of law but also the guide to the right path and the repository of knowledge that can be consulted.
iv. In disputes, cross-examination is a necessity. It is not optional but a compulsory one. The compulsion is informed, influenced, and dictated by the *Ifa* literary corpus which every traditional person adheres to or abides by.
v. Under cross-examination, truth telling is emphasised; lies are detested; there are traditional ways of controlling and curbing the incidence of lies.
vi. Evidentially, the Yoruba mindset is a legally conscious as well as morally conforming one. Legal consciousness does not exist outside moral consciousness. Legality and morality are complementary realities. Under Yoruba culture, it is not enough to be legally sound; legal soundness is premised on and entailed in moral soundness. Moral probity parades a justified sense of legal excuse. To be legally strong implies one must first have been morally strong. If one is morally strong, legal strength is presupposed along the line. Morality and religion remain the watchdog for a legal standing and status that is considered impeccable. Every law is conceived to come from the perspective of morality. There is a moral aura, air and atmosphere that permeate the nature, necessity and nitty-gritty of law. Where law collapses, morality is never compromised which is why morality is always consulted and resorted to in building the institutions of law. In Yoruba culture, law is not the be-hall and end-hall of society which means that law does not stand alone under the content and character of Yoruba cultural jurisprudence.
vii. The administration of justice in traditional Yoruba societies continue to reflect in and replicate itself in the pervasiveness of alternative dispute resolution mechanisms constantly viewed, supported, sponsored and sustained in modern media facilities with insightful names and catchy nomenclatures such as *gboro miro* (examine my case), *a gboro dun* (He that fights my case), *gbeto mi fun mi* (Fight for my rights), *majeyagbe* (Do not suffer in vain), etc.[64]

Oke sums up his assessment of judicial cross-examination among the Yoruba people in this manner: this reality restrains the Yoruba from wilful falsehood, unnecessary disputes and frivolous accusations.[65]

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[62] Ibid, 417.
[63] Idowu W, 'African Jurisprudence and the Reconciliation Theory of Law' *Cambrian Law Review* (Vol. 37 2006) 1-16.
[64] Oke (n39) 416-420.
[65] Ibid, 422.

8. Critiquing Conceptual Complimentarism within Yoruba Cultural Jurisprudence

The thesis of conceptual complementarism represents a strong theoretical foundation on which the connection between law and morality rests as far as Yoruba cultural jurisprudence is concerned. The Yoruba practice of cross examination in judicial matters and decisions, insightfully establishes a corroboration of this thesis in Yoruba cultural jurisprudence. Nevertheless, some imaginable objections can be raised against the thesis as well as its affirmation in Yoruba cultural jurisprudence, especially in the practice of judicial decisions, engineered and engendered through cross-examination in the resolution of dispute.

About the most notorious objection to this thesis is that the same may not hold true to western jurisprudence. If it does not, what then will be its contribution to general jurisprudence? Nothing is impaired for general jurisprudence if it is held that the path and status of Yoruba jurisprudence necessarily intersects with the paths of jurisprudence in other cultures and other traditions. Even if the thesis adumbrated here were to hold for western jurisprudence, it is nevertheless a truism that the premises may not be the same since there is always an assumption of distinctness in every cultural report about aspects of human existence and human social activities. Besides, granted also that this thesis could hold in western jurisprudence, it still does not follow that this status of Yoruba cultural jurisprudence is or can be denied relevance in general jurisprudence. There will always be nuances that make for distinction.

Another open and obvious objection is that the emphasis of a thesis of conceptual complementarism only reflects a cultural paradigm that is expressly pre-legal. It does not reflect a substantive session in serious legalism with all the paraphernalia of modernity. A careful look at this objection could show that history of societies exists and evolves in phases. One phase comes and goes. When the phase in question is, then, it is. To judge a society by a phase it has not experienced, is to be presumptive and prejudiced. In addition, the definition of legality is a relative and subjective one. Again, not all modern societies in the Western world are convinced and concede to the idea that law and morality ought to be separated. If Yoruba cultural jurisprudence emphatically expresses an endorsement or conceptual complimentarism, no incorrectness is intended, no wrong is willed, nothing injurious is instantiated.

The least but not the last of objections against this thesis is that it blurs the separability thesis championed, campaigned and crusaded by legal positivism. What the latter emphasises is different from what conceptual complimentarism expresses. Seemingly, there is that sense of difference between what separabilism affirms and what conceptual complementarism is actually saying. To this end, there is misinterpretation on the part of conceptual complementary thesis. Interestingly, this objection seems to be oblivious of the relativity and subjectivity interred in philosophy, generally, and, in jurisprudential exercises, particularly. Indeed, the legal and jurisprudential realities around which the thesis of conceptual complementarism actuates and animates its emphatic seriousness and eloquent significance, are informed by the enthymemes and gaps that are obvious and observable in the extant

thesis of separabilism astutely defended with deeds of dexterity by legal positivist. No thesis and theory in law, legal philosophy and jurisprudence is immune from limits and defect. Nevertheless, that conceptual complementarism finds affirmation and applicable adventure, articulation and acceptability in Yoruba cultural jurisprudence with amplified exemplification in the practice of judicial cross-examination in dispute matter is not pre-supposition that its kernel of limits is a lost reality.

9. Conclusion

The arguments of this paper consist of the proposition that Yoruba jurisprudence subscribes to an inseparable relation between law and morality in the sense that law and morality are viewed in a conceptually complementary relation. This conceptual complementary relationship derives, first, in the conceptual metaphysical worldview existent within the relevant system and, secondly, is validated through the Yoruba practice of judicial cross-examination and decisions during dispute resolution cases.

A complementary relationship establishes that both concepts are necessary to each other. This necessity is defined not in terms of similarity but in terms of complementarity. Two concepts need not be similar before we can establish inseparability. Thus, what is argued is a case of conceptual complementary connection between law and morality, and not conceptual separability, given the Yoruba cultural perspective.

A more probing analysis of the separability thesis in the light of the features of African jurisprudence can be undertaken. It is contended that underlying every attempt at separating law from morality by prominent legal positivists is the deliberate exchange and replacement of legitimate reality for what is speculate. Beneath this exchange, however, is a denial of the complementary connection of law and morality in every legal system.

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