

## H. L. A. HART'S THEORY OF LAW: AN IGWEBUIKE READING

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### Abstract

*Williams Idowu has considered the legal and moral implications of the Ogboni group in Yoruba land. Similarly, Kingsley Ufuoma Omoyibo has looked at the law from the perspective of the Etsako community of Edo State. All of these try to build a particular perspective to the universal reality of law. This particularization of the law is germane because, the life of the law is not in logic, but in experience. That is, experience is what determines the actual practice and implementation of laws. While these discourses on the African dimension to law and morality are relevant, there is still the need to further deepen the theoretical basis for such an approach to law. This is what this work is aimed at. It seeks to read a foremost legal theorist from the perspective of an African philosophical framework. This is with the view to showing that, the theoretical core of jurisprudence gives some room to the particularization of the law, especially through the path of indigenization. In what follows, the focus will be on Igwebuike philosophy and Hart's theory of law. The submission of this essay is that the idea of a minimum content between law and morality which Hart insists on is the core of Igwebuike dimension in his jurisprudence. By this very token, Hart is a moderate positivist and also appreciates the basic tenet of natural law jurisprudence. Thus, the law is one thing in itself and the moral element complements its essence, but is not what makes its essence.*

**Keywords:** Igwebuike, Philosophy, H. L. A. Hart, Law, Jurisprudence, Kanu

### Introduction

The idea of bringing indigenous elements into the practice of law has continued to gain curious attention in Legal scholarship. From the African point of view, Williams Idowu has considered the legal and moral implications of the Ogboni group in Yoruba land.<sup>1</sup> Similarly, Kingsley Ufuoma Omoyibo has looked at the law from the perspective of the Etsako community of Edo State.<sup>2</sup> All of these try to build a particular perspective to the universal reality of law. This particularization of the law is germane because, the life of the law is not in logic,

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<sup>1</sup> William Idowu, "Law, Morality and the African Cultural Heritage: The Jurisprudential Significance of the Ogboni Institution," *Nordic Journal of African Studies*, 14(2):2005, 175-192.

<sup>2</sup> Kingsley Ufuoma Omoyibo, "African Jurisprudence: The Law as a Complement to Public Morality," *International Journal of Social Sciences (IJSS)*, Vol.6, No.4, 2016. 13-22.

but in experience.<sup>3</sup> That is, experience is what determines the actual practice and implementation of laws. While these discourses on the African dimension to law and morality are relevant, there is still the need to further deepen the theoretical basis for such an approach to law. This is what this work is aimed at. It seeks to read a foremost legal theorist from the perspective of an African philosophical framework. This is with the view to showing that, the theoretical core of jurisprudence gives some room to the particularization of the law, especially through the path of indigenization. In what follows, the focus will be on *Igwebuiké* philosophy and Hart's theory of law.

### ***Igwebuiké* as an African Philosophical Framework**

*Igwebuiké*, according to Kanu<sup>4</sup> is the study of the modality of being for the realization of the being. It is from the Igbo word *Igwebuiké*: it is a combination of three words. It can be understood as a word and as a sentence: as a word, it is written as *Igwebuiké*, and as a sentence, it is written as *Igwe bu ike*, with the component words enjoying some independence in terms of space. Let us try to understand the three words involved: *Igwe* is a noun which means number or population, usually a huge number or population. *Bu* is a verb, which means is. *Ike* is another verb, which means strength or power. Thus, put together, it means "number is strength" or "number is power". This philosophy has for basic dimensions which include: solidarity, respect for persons, beneficence and non malfeasance.

Solidarity is the first dimension of *Igwebuiké* and a basic principle in African bioethics. It is directly linked to the ontological order of the African worldview. In African communities, there are recognized family roles and relationships that define the obligations, rights, and boundaries of interaction among the members of a self-recognizing group. This creates a network that gives its members a sense of belonging. It is, therefore, not surprising that the Igbo would say: *If a lizard stays off from the foot of a tree, it would be caught by man*. In another proverb: *A tree does not make a forest*. The community plays a fundamental role in the life of the individual. All these constitute the sense of solidarity in the *Igwebuiké* framework.<sup>5</sup>

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<sup>3</sup> Holmes, *The Common Law*. (Harcourt, Brace. 1920), 1.

<sup>4</sup> Kanu, I. A. (2014). *Igwebuiké as an Igbo-African Philosophy for Interreligious Dialogue*. A Paper presented at the Nigerian Philosophical Association National Conference, held at the University of Lagos, Lagos State, October 15-17.

<sup>5</sup> Anthony Ikechukwu KANU, "Igwebuiké as the Consummate Foundation of African Bioethical Principles," 4th International Conference on Law, Education and Humanities (ICLEH'15) Nov. 25-26, 2015 Paris, France. 96-97.

Another fundamental dimension of *Igwebuike* philosophy is respect for persons. This is because *Igwebuike* maintains that the other person is a part of the whole ontological order. To harm the other is to harm oneself, and to preserve the other is to preserve oneself. Moreover, the human person is also understood as a gift from God. The nexus between God and human beings, makes the human person a theomorphic being, and explains why the Igbo-African says: *ndu sin a chi* (life is from God). It is also on this basis that the human person is respected right from conception. The life of children is not attributed to mere biological fact of conception; this is because every child has existed in an antecedent world of a divine master. Thus, the Igbo would name their child, *Chi-nyere ndu*: God gave life, *Nke-chi-yere*: the one God has given, *Chi-n'eye ndu*: God gives life, *Chi-di-ogo*: God is generous, *Chi-nwe-ndu*: God owns life, *Chi-ekwe*: God has agreed, *Chi-ji-ndu*: God owns life. Since life is a gift from God, it must be treated with the respect it deserves.<sup>6</sup>

There is also the beneficence principle which refers to an active goodness, kindness or charity towards the other. Below are African proverbs that promote the principle of doing good to the other:

Roast something for the children that they may eat; The hen with chicks doesn't swallow the worm; When there is a feast everyone is welcome; My house is like a spongy coconut, anyone who likes goes into it; Sharing is a way of life; Sharing is living; What one contributes for another, is what is contributed for him; A good act never dies away, the memory lives on all time. The other is treated with love and kindness because he/she is part of the whole.<sup>7</sup>

Lastly, there is the non-maleficence principle which is the opposite of beneficence. The words put together as non-maleficence would mean keeping away from harming or hurting the other. Beyond directly causing harm to someone else, the duty of non-maleficence also includes avoiding exposing people to harm. A person might not have caused another harm directly, but a person can act in such a way that would expose others to harm.<sup>8</sup> All these taken together constitute the core of *Igwebuike* philosophy. Before considering how these relate to Hart's jurisprudence, let consider Hart's theory in some detail.

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<sup>6</sup> Anthony Ikechukwu KANU, "*Igwebuike* as the Consummate Foundation of African Bioethical Principles," 97.

<sup>7</sup> Anthony Ikechukwu KANU, "*Igwebuike* as the Consummate Foundation of African Bioethical Principles," 97-98.

<sup>8</sup> Anthony Ikechukwu KANU, "*Igwebuike* as the Consummate Foundation of African Bioethical Principles," 98.

### **H. L. A. Hart's Jurisprudential Purview**

Hart's most famous work is *The Concept of Law*, first published in 1961, and with a second edition (including a new postscript) published posthumously in 1994. The book emerged from a set of lectures that Hart began to deliver in 1952, and it is presaged by his Holmes lecture, *Positivism and the Separation of Law and Morals* delivered at Harvard Law School. *The Concept of Law* developed a sophisticated view of legal positivism. Among the many ideas developed in this book are: A critique of John Austin's theory that law is the command of the sovereign backed by the threat of punishment. A distinction between primary and secondary legal rules, where a primary rule governs conduct and a secondary rule allows of the creation, alteration, or extinction of primary rules. A distinction between the internal and external points of view of law and rules, close to (and influenced by) Max Weber's distinction between the sociological and the legal perspectives of law.<sup>9</sup>

### **Hart's Methodological Approaches: A point of Departure**

Hart in the preface to his work *The Concept of Law* presents the case that the work is "an essay in analytic jurisprudence. For it is concerned with the clarification of the general frame work of legal thought, rather than with the criticism of law and legal policy"<sup>1</sup>. Going further in this, he also notes that the work could be described "as an essay in descriptive sociology"<sup>10</sup>. In summarizing both methods, George Letsas describes both methods as conceptual and descriptive respectively. Further, Letsas notes that the subject matter of these are three related but distinct legal aspects, namely, language, thought and action, which he describes technically as the linguistic, hermeneutic and naturalistic approaches respectively.

From the linguistic point of view, Hart tries to establish the fact that the use of different words in law related discourse details the existence of different kinds of rules which in turn signals the existence of different social functions that each rule performs. With regards to the relationship between rules and words Hart observes:

Many important distinctions which are not immediately obvious, between types of social situations or relationships may best be brought to light by the

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<sup>9</sup> Online, H.L.A. Hart, retrieved on 16.07.10 at <http://www2.law.ox.ac.uk/jurisprudence/hart.shtml>

<sup>10</sup> H.L.A. Hart, *The Concept of Law*, (Oxford: The Clarendon Press, 1961) p. v.

examination of the standard use of the relevant expression and of the way in which these depend on a social context.<sup>11</sup>

What Hart says here is that linguistic differentiation is not the only way to find out the complexity of law as a social phenomenon, but it is a useful guide one can turn to, to start with. In this we see the influence of J. L. Austin ordinary language philosophy<sup>12</sup> on Hart. In line with this, Hart seeks to establish this linguistic slant at the start of his philosophy, that we can learn something about law as a social institution by looking at the way law related vocabulary is used in a given circumstances.

Also, Hart tries to develop his methodology from the hermeneutic and naturalist point of view. To this I add a historical point. Thus, though Hart offered his projections as an analytic claim, his argument may be usefully read as an astute historically grounded assessment of the institutional capacity of law to fame power in modern world. We can locate this better in the context of the debate between Hart and Fuller and this debate is located within the particular context of the post-war struggle with the horrific Nazi episode, and in particular, the effort of this struggle in legal terms did not reproduce some of the abuses of legality which marked the Nazi Regime.<sup>13</sup> Thus, the historical specification of the Nazi regime also forms part of what paints Hart's distinction in legal philosophy. We now look at the specifics on how Hart uses these methods.

### **What law is not: Hart's Critique of Austin**

In Hart's opinion, what is law is the most controversial question attended to in the history of legal theory. And these various shades of the responses given to this question are what make it more complex. As such so many simplistic answers have been given to the above question. Some in his opinion say the law is "what officials do about disputes and prophesies of what the count will do"<sup>14</sup>etc. But all these cannot be referred to as law Hart says. What really

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<sup>11</sup> H.L.A. Hart, "Analytical Jurisprudence in Mid-twentieth cent.: A Reply to Prof. Bodenheimer", *University of Pennsylvania Law Review*, 105 (1957) pp 961 – 962.

<sup>12</sup> Austin held that we can approach Philosophical problems through an examination of the resources of ordinary language, for the meaning of words is tied to language as an evolutionary by product of its language and various applications.

<sup>13</sup> Nicola Lacey, "H.L.A Hart's Rule of Law: The limits of Philosophy in Historical Perspective", on line retrieved 03. 04. 09 at ( <http://eprints.se.ac.us/3520/>)

<sup>14</sup> H.L.A. Hart, *The Concept of Law*, pp 1-2.

produces these paradoxical and puzzling answers is the fact that law is common knowledge based on simple education. Yet there are certain recurrent issues about law that makes it a dicey subject. Thus Hart opines that,

Plainly the best course is to defer giving any answer to query “what is law?” until we have found out what it is about law that has in fact puzzled those who have asked or attempted to answer it, even their ability to recognize examples are beyond question.<sup>15</sup>

With this, Hart proposes to go ahead and look at the recurrent issues that have made the question “what is law?” a paradoxical and puzzling issue.

Hart presents his case on the issue when he states that, there are three recurrent questions in this regard. These are: How does law differ from and how is it related to orders backed by threats? How does legal obligation differ from and how is it related to moral obligation? What are rules and to what extent is law an affair of rules? <sup>16</sup> But having made further complex analysis of the recurrent issues, Hart concludes that,

It seems clear, when we recall the character of the main issues which we have identified on underling the recurrent question “what is law”, that there is nothing concise enough to be recognized as a definition could provide a satisfactory answer to it.<sup>17</sup>

This is because in his opinion, the underlying issues are too different from each other and too fundamental to be capable of this sort of resolution. He further notes that why these elements take the place they do, his philosophy will best come to the fore, when it considers the deficiencies of the most prevalent legal tradition in English jurisprudence since it was propounded by J. L. Austin. This is the drain that the key to understanding law is to be found in the simple notion of an order backed by threats which Austin himself termed a “command”. And this too always calls for constant obedience in the sense of what Austin calls a “habit of obedience”.

In developing a critique of this model of understanding of the law, Hart categorized his objection into three. Some concern the content of laws; others their mode of origin; and others again their range of application. Also on the fourth note, is that the idea supreme sovereign who should be habitually obeyed,

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<sup>15</sup> H.L.A. Hart, *The Concept of Law*, p. 5.

<sup>16</sup> H.L.A. Hart, *The Concept of Law*, p. 13.

<sup>17</sup> H.L.A. Hart, *The Concept of Law*, p. 16.

on which this model rests, is misleading too. In the first place, as regards the content, criminal law may sound like this model of law. For in criminal law, there is always punishment when the laws are breached. But in a situation of legal rules defining the ways in which valid contracts or wills or marriages are made, such laws do not impose duties or obligations instead they provide individuals with facilities for realizing their wishes by conferring legal powers upon them to create by certain specified procedures and subject to certain conditions, structures of rights and duties within the coercer frame work of the law.<sup>18</sup> A breach of these conditions does not result in outright punishment, but in nullity and this is not the same as sanction in any way. Besides, a court order from a higher to a lower court act cannot be conceived in this term of a command backed by threat. And if a lower court acts in excess of function or does not follow the procedures allotted to it, the verdict is either quashed or reversed, and this is not the same as sanction. The point here is that, as regards the content of law, those who exercise powers to make authoritarian enactments or order, use this rule in a form of purposive activity utterly different from performance of duty or submission to coercive control.<sup>19</sup>

As regards the range of application, Hart makes a distinction between the legislator in his official capacity as one person and his private capacity as another. As regards the origin of status, they are not similar to order backed by threat because some laws originate in customs and do not owe their legal status to any such conscious law creating act. Thus, we see the case Hart presents against Austin. Now we turn to what law is for Hart.

### **Hart's Conception of Law**

Having in the above section seen what the law is not, Hart goes ahead to try and say what it is. First, the law is an affair of rules and so we can say what the law is, by saying what rules are. In this regard Njoku writes that, 'Hart asserts that investigation about law via rules is, the most portable way of three starting points',<sup>20</sup> but then Hart isolates rules from social habits to which they could be mistaken. For although both social habits and rules regulate behaviour, Hart states in his essay "The Ascription of Rights and Responsibilities", "that legal concepts are not reducible to extra-legal concept. That they need contextual understanding".<sup>21</sup> Rules are better understood from the point of view from which they emerge, apart from the external aspect which rules share with social

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<sup>18</sup> H.L.A. Hart, *The Concept of Law*, p. 27.

<sup>19</sup> H.L.A. Hart, *The Concept of Law*, p. 41.

<sup>20</sup> F.O.C Njoku, *Philosophy in Politic, Law and Democracy*, (Owerri: Claretian institute of Philosophy, 2007) p. 87.

<sup>21</sup> H. L. A Hart, "The Ascription of Responsibility and Rights", *Proceedings of the Aristotelian Society, New Series*, Vol. 49, (1948-1949) pp 171-194.

habits there is also the internal aspect of rules. This aspect may be illustrated with the rules of a game;<sup>22</sup> the rules of the point of view of these who are playing game, as against those who are watching the playing of the game.

Thus, a closer look discloses that the basic element of rules is the fact that they are normative, general, standard of behaviour, justificatory, are present in Hart's evaluations on rules. So when Hart talks about the internal aspect of which characterizes a rule as against the external aspect which it shares with social habit, the normative of the rule comes to the fore. When we consider his argument on legislation, the continuity of the authority to make laws possessed by a succession of different legislators, and the persistence of law long after their maker and those who rendered him habitual obedience have perished, the idea of the generality of the rule comes to the fore. His emphasis on the context dependent nature of the rule brings to the fore the fact that the rule guides behaviour. And when he places the argument that action can be evaluated with regard to rules, we see the justificatory quality of rules.

### **Types of Rules: Towards Founding a legal System**

To further express what he has to say of rules, Hart presents the case for the type of rules. First, Hart casts our minds back to primitive societies without legislature, courts or officials of any kind. This, we will describe as a legal state of nature. But there in this situation, human actions still have to be regulated and the only means of social regulation or control is a general attitude of the group. A social structure of this kind he describes as one of customs, but prefers to technically refer to it as a society built on the "primary rules of obligation". But for a society to live in this kind of situation, there are some deficiencies that have to be rectified before this kind of system will work quiet effectively.

The first defect to be catered for here is that of uncertainty. This is obvious because it is only a small community closely knit by ties of kinship; common sentiment, belief and placed in a stable environment, that could live successfully by such a regime of unofficial rules.<sup>23</sup> Thus, in any situation apart from the above mentioned, doubts must arise as to what the rules are or as to precise scope of some given rule. There will be no procedure for setting this doubt, either by reference to any authoritative text or to an official whose declaration on this point are authoritative. Thus, Hart states,

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<sup>22</sup> H.L.A. Hart, *The Concept of Law*, p. 55.

<sup>23</sup> H.L.A. Hart, *The Concept of Law*, pp. 89-90.



For plainly, such a procedure and the acknowledgment of either authoritative texts or persons involve the existence of rules of a type different from the rules of obligation or duty which ex hypothesis are all that the group has.<sup>24</sup>

This defect in the simple social structure of primary rules we may call its uncertainty.

A second defect is the static character of these rules. In this regard, Hart opines that the only mode of change in rules known to such a society will be the slow process of growth, whereby courses of conduct once thought optimal became first habitual or usual, and then obligatory. The converse process of decay will be such that when deviations once severely dealt with, they are first tolerated and then passed unnoticed. There will be no means, in such a society, of deliberately adapting the rules to changing circumstances; either by eliminating old ones and introducing new ones. For again, the possibility of doing this presupposes the existence of rules of a different type from the primary rules of obligation by which alone the society lives. Thus, we see here that these primary rules suffer from the defect of being static.

Thirdly, there is also the defect of inefficiency of this system of rule. This system is characterized by the problem of the lack of final and authoritative determination of violations. This must be distinguished from another sickness associated with this system. The fact that punishment for violation of rules and other forms of social pressure involving physical effort or the use of force are not administered by a special agency but are left to the individuals affected or to the group at large. Hart further contends that the waste of time involved in this inarticulate quest and the smouldering vendetta which may result from self help in this situation will be quite serious.<sup>25</sup>

Additionally, Hart further argues that “the remedy for each of these three main defects in its simplistic form of social structure consists in supplementing the primary rules of obligation with secondary rules which are rules of a different kind”.<sup>26</sup> The step for remedying each of these defects may be considered a step from the pre-legal into the legal world. This is because each remedy brings with it many elements that permeate law; and all remedies together are enough to convert the regime of primary rules into what is indisputably a legal system.

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<sup>24</sup> H.L.A. Hart, *The Concept of Law*, p. 90.

<sup>25</sup> H.L.A. Hart, *The Concept of Law*, p. 91.

<sup>26</sup> H.L.A. Hart, *The Concept of Law*, p. 91.

These rules Hart refers to as secondary rules and they specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated and if violated can be conclusively determined. With this general remark, Hart now goes ahead to enumerate in more detail the remedies for these deficiencies.

In Hart's opinion, the simplest form of remedy for the uncertainty of the regime of primary rules is the introduction of what he (Hart) calls "rule of recognition". This rule will specify the feature or feature possession of which by a suggested rule is taken as a conclusive affirmative indication that it is a rule of the group to be supported by the social pressure it exerts. The existence of this rule in different groups might take different forms. In many early societies, it might just take the form of a list or text of the rules documented and to which reference can be constantly made, as authoritative text for code of conduct in such a society. It is not just the reduction to writing that really matters here, what is crucial is the acknowledgement of reference to the writing or inscription as authoritative as the proper way of disposing of doubts as to the existence of the rule. Thus where there is this kind of rule, there is a very simple form of secondary rule for the conclusive identification of the primary rules of obligation. The mode for the articulation and reference to this rule in more advanced societies can be more complex than those in the less advanced ones. This is most times done not by reference to a text or list, they do so by reference to some general characteristic possessed by primary rules. This may be the fact of their having been enacted by a specific body, or their long customary practice or their relation to judicial decisions. Moreover, where more than one such general characteristic are treated as identifying criteria, provision may be made for their possible conflict by their arrangement in an order of superiority. By providing this authoritative mark, it introduces, although in an embryonic form, the idea of a legal system. For the rules are now not just a discrete unconnected set but are in a simple way unified.

As regards the static quality of the regime of primary rules is an introduction of what Hart refers to as the "rule of change". The simplistic form of such a rule is that which empowers an individual or body of persons to introduce new primary rules for the conduct of the life of the group or some class within it, and to eliminate old rules. Such rules of change may be very simple or complex; the powers conferred may be unrestricted or limited in various ways; and the rules may, besides specifying the persons who are to legislate, define in more or less rigid terms its procedure to be followed in legislation. And there will always be a connection between the rules of recognition and that of change, "for where the former exists the latter will necessarily incorporate a reference to legislation as an identifying feature of rules, though it need not refer to all the details of

procedure involved in legislation.”<sup>27</sup> These rules that make for change in the legal system create rooms for chief amenities in the system. For some of these are: making of wills, contracts, transfer of property and money, and other voluntarily created structures of rights and duties which typify life under law. This makes the system much more dynamic and is akin to giving credence to freedom of individual subjects.

As a remedy to the third deficiency of inefficiency is the secondary rules empowering individuals to make authoritative determinations of the question whether, on a particular occasion a primary rule has been broken. This rule Hart refers to as “secondary rules of adjudication”. Besides identifying the individuals who are to adjudicate, such rules will also define the procedure to be followed. From the above, we come to discover that the primary rules are deficient in that they are uncertain, static and inefficient and to these remedies are provided in the form of secondary rules of recognition, change and adjudication. And it is Hart’s opinion that this combination of primary rules of obligation with the secondary rules of recognition, change and adjudication, brings us not only to the knowledge of the legal system. But it is also a most powerful tool for the analysis of laws that has puzzled both the jurist and political theorist.<sup>28</sup>

### **The Place of Morals in Founding Rules: An Igwebuike Dimension in Hart’s Jurisprudence**

In traditional African communities, Radbruch’s claim that “The fundamental principles of humanitarian morality were part of the very concept of legality and that no positive enactment or statute, however clearly it expressed and however clearly it conformed with the formal criteria of validity of a given legal system, could be valid if it contravened the basic principles of morality”<sup>29</sup> applies. And the above principles are what African cultures embrace in emphasizing morality more than the laws. Moral formation in traditional Africa is given to children at a very tender age in order to acquire the habits, attitudes, beliefs, skills and motives that enable a human being to fit into a community. Thus each and every aspect of life contributed to the moral formation of an individual. An individual lived in and was part of the community and it was every one’s duty to uphold the community’s values. Thus morality was and still is part and parcel of the community. Despite the above, people still bore allegiance to kings, emperors, emirs, obas, obis, elders, etc, which also counted as being moral. But how, one may ask, did those authorities emerge? So, today, how do we account for the

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<sup>27</sup> H.L.A. Hart, *The Concept of Law*, p. 93.

<sup>28</sup> H.L.A. Hart, *The Concept of Law*, p. 95.

<sup>29</sup> Kingsley Ufuoma Omoyibo, “African Jurisprudence: The Law as a Complement to Public Morality,” 15.

diminishing value accorded traditional institutions in Africa other than the interface of modernity and rational law? The Etsako experience was the basis for this analysis.

With regard to the complementary role of law and morality in the conception of the law, Hart's philosophy is very central and this is the basis for *Igwebuike* reading of his work. In talking about the place of morals in founding rules in Hart, F.O.C. Njoku writes that there is a relationship between them, but that "the bone of contention between law and morality is how their relationship is to be conceived".<sup>30</sup> This is the fact because for Hart both law and morals are social phenomena used for the social control of behavior. Hart in this regard follows the tradition of a necessary separation of law and morality. But he does not deny the minimal content which they both share as normative systems. He also accepts the fact of the role of morality in founding of the law in hard or borderline cases, where law runs out in the face of application and interpretation. And at this point the judge might let his moral conviction come to bear. But Hart also tries to warn that this relationship must not be over exaggerated, for the fact that they are both used as instruments of social control suggests "that law is best understood as a branch of morality or justice and that its congruence with the principles of morality or justice rather than its incorporation of order and threats as its essence".<sup>31</sup> But this assimilation often ends in confusing one kind of obligatory conduct with another and to leave insufficient room for difference in kind between legal and moral rules and for divergences in their requirements. This kind of assimilation is what results in statements like, "an unjust law is not law". And these are products of exaggerated situation between extremes.

Furthermore, Hart argues that there are different types of relation between law and morals. As such what is important is to distinguish some of the ways different things may be meant by the assertion or denial that law and morals are related. But he clearly emphasizes the basic that law, to some extent, has its roots in morals. Thus Hart opines, "it cannot seriously be disputed that the development of law, at all times and places has in fact been profoundly influenced both by the conventional morality and ideals of a particular social group and also by forms of enlightened moral criticism urged by individuals whose moral horizon has transcended the morality currently accepted".<sup>32</sup> But for

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<sup>30</sup> F.O.C. Njoku, *Philosophy in Politics, Law and Democracy*, pg 23.

<sup>31</sup> H.L.A. Hart, *The Concept of Law*, p. 7.

<sup>32</sup> H.L.A. Hart, *The Concept of Law*, p. 181.

the case that there must be some conformity between law and morals, Hart argues that this must not be the case.

In line with the above, Hart goes ahead to emphasize the minimum content which both law and morals share. In his opinion,

In the absence of this content, men, as they are, would have no reason for obeying voluntarily any rules; and without a minimum of co-operation given voluntarily by those who find that it is in their interest to submit to and maintain the rules, coercion of others who would not voluntarily conform would be impossible.<sup>33</sup>

As such the connection here between natural facts and content as well as legal and moral rules is based on a kind of purposive causality, i.e. a kind of causality deliberately directed to a purpose or end. And these can be represented in the following areas: Human vulnerability, approximate equality; limited altruism; limited resources; limited understanding and strength of will,<sup>34</sup> at these points morals and laws share a minimum content. But Hart's conclusion in this regard is that morals have a place in founding of rules, but then rules should not be reduced to morals. By this, Hart advises that we take a wider perspective of the law. Thus he asserts, "a concept of law which allows the invalidity of law to be distinguished from its immorality, enables us to see the complexity and variety of these separate issues, whereas a narrow concept of law which denies legal validity to iniquitous rules may blind us to them".<sup>34</sup> This is because, as Hart will argue that an iniquitous law is law and must be valid. For wicked men will enact weak laws which others will enforce. What surely is needed in order to make men clear sighted in confronting the official abuse of power, is that they should preserve the sense that the certification of something as legally valid is not conclusive of the question of obedience and that, however, great the area of majesty or authority which the official system may have, its demands must in the end be submitted to moral scrutiny.<sup>35</sup> This is one of Hart's major reasons for keeping both the law and morals apart, for by so doing the law can be judged by morals. But when they are together they become same and you cannot sufficiently judge the other.

## Conclusion

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<sup>33</sup> H.L.A. Hart, *The Concept of Law*, p. 189.

<sup>34</sup> H.L.A. Hart, *The Concept of Law*, p. 207.

<sup>35</sup> H.L.A. Hart, *The Concept of Law*, p. 206.

In conclusion, the submission of this essay is that the idea of a minimum content between law and morality which Hart insists on is the core of Igwebuiké dimension in his jurisprudence. By this very token, Hart is a moderate positivist and also appreciates the basic tenet of natural law jurisprudence. Thus, the law is one thing in itself and the moral element complements its essence, but is not what makes its essence. So too, the force of morality will also require the law to drive it home. Without moral rule becoming active codes for guiding behaviour, they are most likely to lose their potency as behavioral variables.

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