UNIVERSITY OF NIGERIA

Beyond the Rule of Law: Grounded Law and Personal Responsibility as the Catalysts for Effective and Efficient Crime Control in Nigeria

An Inaugural Lecture of the
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By

Prof. Chukwunọnso Okafọ
Professor of Law
University of Nigeria

1. Introduction

The Vice-Chancellor, Professor Benjamin Chukwuma Ozumba, the Chairman of this occasion, Fellow Academics and Members of the Academia, Members of the Learned Profession – the Bar and the Bench, Members of the Fourth Estate of the Realm, the Clergy, Distinguished Ladies and Gentlemen, Lions and Lionesses, a very good afternoon to all of you.

Mister Chairman, sir, it is with the deepest humility that I salute everyone present at this inaugural lecture. Also, I salute my distinguished intellectual predecessors over the years (that is since 1976) who have performed the task I am doing on this day. At the time in 1976, the cultured Professor Ikenna Nzimiro gave the first inaugural lecture of the University of Nigeria (UNN).

For convenience, and in line with the interpretation of statutes in many jurisdictions (including Nigeria), wherever used in this lecture, "he" includes "she" unless otherwise stated. This avoids unnecessary uses of "he or she", "his or her", etc. The use of "he" alone to represent the masculine as well as the feminine genders saves time and space in statutory provisions. In this lecture, unless otherwise stated, I use the masculine gender to represent both the male and the female.

1.1. "Inaugural Lecture"

The quintessence of an inaugural lecture is generally known. This notwithstanding, it is fitting to reiterate this here, even if as a reminder to us all and especially for the benefit of those coming after us.

An inaugural lecture is an intellectual obligation performed by a Professor to his immediate intellectual audience as well as the general public. The lecture – an engagement of some sort – marks a form of beginning for the Professor and the lectured. The "beginning" refers to the notion that the inaugural lecturer is a new or recent Professor and is therefore being inaugurated and using the inaugural lecture to be formally inducted into the distinguished class of intellectuals in various fields of learning. In practice, an inaugural lecture is not required of a Professor – new, recent, or old. Similarly, for those Professors that choose to dabble into this self-imposed venture, the lecture is not required to be given at any particular stage in one's Professorship. Consequently, many Professors go through and complete their tenures without delivering inaugural lectures. Only recently has UNN emphasized and encouraged its Professors to undertake this task, and to do so timeously. This is as it should be.[1]

However, an inaugural lecture is an opportunity for sharing and educating, and it imposes a duty on a Professor to share and educate, his audience and the general public on three core values. These are: first, the Professor's teaching and learned publications resulting from painstaking

[1] Although UNN has recently taken steps to encourage its Professors who have not done so to endeavor to deliver their Inaugural Lectures, more needs to be done on this. There are still too many of my distinguished colleagues who have not performed this *most worthy obligatory-choice* (permit me to call it so) to educate colleagues and the world. As a result of the concerned Professors not performing this duty, UNN lags behind many of its peer – and even junior – institutions on this matter.

research; two, the import of the academic works performed; and three, the direction in which the Professor intends to take his intellectualism after the inaugural lecture.[2]

Regarding the first value of an inaugural lecture, a Professor teaches and *professes* in a defined area of learning. The painstaking research accompanying teaching and resulting in publications targets a chosen sub-field of knowledge. Every Professor has a specific area of specialization – a sort of specialization within a specialization (field of learning). Thus, as an example, a "Professor of Law" actually and typically professes in only one sub-specialty area in Law. The vastness of Law as a field of learning means that it is impossible for one person to acquire and maintain the depth of knowledge required to profess on every subject of Law. So it is for Medicine, Engineering, Pharmacy, etc. Therefore, the Professor of Law is he who has done and showcased significant teaching and research to merit the title of "Professor" albeit with regard to his chosen area of specialization. It is the collection of the myriad of specializations and sub-specializations[3] in a field of learning that help to make sense of the world through Law, or Medicine, or Engineering, etc.

On the second value of an inaugural lecture (namely, the import of the academic works performed), the inaugural lecturer encapsulates his works and educates his audience and the public on the essence of the teaching, research, and publications the Professor has so far done in the chosen path of knowledge. The Professor must go further to (re)state the significance of his works. The questions to be addressed in this regard include the following. What contribution has the Professor's works made to knowledge in the chosen area? Specifically, how does the contribution help to identify and solve relevant societal problems – present as well as the anticipated future problems?

The third value to be addressed by an inaugural lecturer reminds the Professor that his lecture does not mark the termination point of his painstaking teaching and research. Thus, he is expected to identify some credible direction in which he plans to take his body of works. It is widely known and acknowledged that research, even on a specific subject-matter, does not end. Research is continual. It begins, goes on for as long as is necessary, stops for a short or long while for appraisal or reappraisal, and then resumes with new standards, insights, and expectations. The benefit of the continual or recurrent character of research is that the researcher is thereby opportuned to take a step away from the research process, compare and contrast the research with similar works by other intellectuals, and consider closely the utility of the present research to the relevant society.

The utility or promised utility of a Professor's body of works will inform the Professor on the future direction to follow. An inaugural lecturer may discover that his works, although highly

[2] To be clear, research here refers to scientific research – which is based on a known and credible research plan, including a methodology that fits the research. Also, the data must be the foundation for a conclusion in the research, and the researcher must eschew all forms of subjectivity and biases. Else, his work would inspire little, if any, confidence.

[3] A specialization or sub-specialization may seem obscure or nonsensical to an (uninformed) observer. However, what matters is that it adds value to the field of knowledge under consideration. Also, it is important that the Professor pursuing the specialization or sub-specialization possesses the requisite background preparation, is intellectually equipped, and is committed to the specialization or sub-specialization and pursues it consistently to improve society.

rated among his peers, have made minimal impact on solving relevant societal problems due to limited publicity. In such a situation, the Professor should then devote increased time and effort to publicizing his works to relevant other persons, groups, and institutions with a view to gaining their assistance to further expose and use the research.

One of the issues to be decided by researchers in all fields of learning is where to draw the line in advancing research findings, conclusions, and recommendations. There is a school of thought that a researcher who has designed a study, conducted it (accordingly), made findings and conclusions, and further recommended policies and/or policy changes based thereon has discharged his duty as a researcher. Another school of thought holds the view that, to be regarded as having discharged his obligation, the researcher must go further and not only publish the research in the scientific literature but specifically target influential public and private personalities and institutions and share the research with them. This would increase the chances that the research, particularly the recommendations, would be translated to public policies and implemented. There are other variations of what is expected of a researcher.

However, for the inaugural lecturer, it is time to determine whether the impact of the research he has done so far is significant or needs to be expanded such as by increased efforts to ensure implementation. Thus, for a Professor of Law, an inaugural lecture may be the time to consider whether to approach members of the legislature (local, state, or federal, as applicable) and lobby them on the need to reflect specific research recommendations in legislation. Many researchers see this as going an extra mile: it is a step beyond the scientific process that produced the research findings, conclusions, and recommendations; it imposes extra financial and other burdens on the researcher. Even then, the benefit and satisfaction derivable from actively following through with the legislature or otherwise ensuring that the researcher's efforts are used to solve society's problems, and not lost or abandoned, cannot be overstated. So, the inaugural lecturer has to consider these issues regarding the future direction of his body of works.

In his inaugural lecture, the Professor has an opportunity to profess his knowledge. He has the liberty of doing so on any topic he chooses. However, since he is expected to satisfy the three values outlined above (that is, educate colleagues and the public on his teaching and publications; share the import of his academic works; and provide the direction in which he intends to take his intellectualism), it means that his inaugural lecture cannot be on a subject unrelated to the body of teaching and research works that led to his Professorship. Moreover, the fact that an inaugural lecture audience consists of discerning minds, several of whom are also experts on the subject of the lecture, means that the lecturer must be strongly established in the chosen subject for the lecture. Even those members of the audience and the attentive public who are not experts in the subject expect the Professor to thoroughly demonstrate his expertise by clearly and convincingly explaining the relevant issues to co-experts and laypersons alike. Of course, it would be highly improbable for a non-expert Professor to live up to this standard on a topic outside his area of expertise. This is notwithstanding that an inaugural lecture audience (experts and non-experts alike) is traditionally expected to watch, listen to, and encourage the lecturer even by applauding. The audience cannot ask questions of the lecturer nor interfere with the lecture in any manner, even where the audience considers the Professor's discourse to be nonsensical. The audience cannot protest!

Mister Vice-Chancellor, sir, distinguished ladies and gentlemen, as I deliver this lecture, I am thus encouraged by that fact that you are hamstrung, at least temporarily. Nevertheless, at the conclusion, I hope that you would find that, rather than being a waste of your time, this lecture has served you well. It is my earnest expectation that you would gain some knowledge from this afternoon's intellectual engagement.

1.2. Lecture Topic Explained

This Lecture is in the areas of Jurisprudence and Legal Theory, Criminal Justice, and Criminology.

1.2.i. Procedure Followed

As is common in writing scholarly papers, formulating the topic for this lecture took quite some time and involved many drafts and redrafts, modifications of focus areas, and identifications and clarifications of variables and key terms. In going through this typically tedious process, I was guided by the three values identified above as necessary in an inaugural lecture, namely: explaining my teaching and publications; identifying the essence of my academic works; and showing the direction in which I intend to take my knowledge. After a rigorous process, I settled on the following title, *Beyond the Rule of Law: Grounded Law and Personal Responsibility as the Catalysts for Effective and Efficient Crime Control in Nigeria*. Initially, I titled this lecture simply *Law is Life*. That would be catchy, simple, and easy to remember. But, upon further reflection, I concluded that a catchy inaugural lecture title might not be as important as a title that sufficiently informs and guides the audience/readers on what the lecture addresses. Thus, I opted for the current title. I did so while demonstrating that, as the initial title claimed, life is of low quality without law.

As the current title suggests, in this lecture I endeavour to demonstrate the crucial role of law in human social control. Of course, *life* here looks beyond the life of the natural sciences, such as Biology. The focus of this lecture topic is the quality of life as evidenced by the relationships and interactions in a society and the regulation of those relationships and interactions. Without *law* as the standardizer, there is neither society nor life therein, except perhaps one in which Hobbes saw no arts, no letters, no society, and in which there is worst of all continual fear and danger of violent death; there the life of man is solitary, poor, nasty, brutish, and short.[4] However, it is important to point out right away that the *law* that guarantees *life* is not necessarily in the mold of the Hobbesian law. Thus, the law needed for this critical guarantee does not have to be State-based, nor does it have to be State-driven; the law can emanate from a traditional society and be operated by such society's customary institutions.

The indispensible nature of law in the life of a society justifies the claim that *law is life*. Even then, law is by no means the only – perhaps not even the most important – means of human social control in a society.[5] While identifying, clarifying, and illustrating the various methods of

[4] Thomas Hobbes, *Leviathan or The Matter, Forme and Power of a Common Wealth Ecclesiasticall and Civil*, 1651.
[5] Iredell Jenkins, *Social Order and the Limits of Law: A Theoretical Essay*, 1980, Princeton, New Jersey, USA: Princeton University Press; B. Tamanaha, *A General Jurisprudence of Law and Society*, 2001, Oxford, England:

behaviour control in a human society (as did numerous other research works of mine), this lecture stresses the need to *ground* crime control in Nigeria on the country's indigenous philosophies, systems, and practices.

The alternative means of crime control complement and reinforce one another for optimum human behaviour control. However, I use *Grounded Law* to represent the idea that the law of a society would be most effective and efficient if it represents the history, values, and aspirations of the society. Law that is *grounded* on a people is sure to serve them better than law that is grounded on foreign standards.

In spite of the acknowledged importance of law (particularly Grounded Law) in the behaviour control of a people, the Personal Responsibility of each citizen remains of paramount importance. Whatever may be the certainty and strictness of a legal provision, private and public persons are needed to implement the provision. Even before the legal provision becomes applicable, individual citizens play critical roles by deciding whether or not to conduct themselves in line with the society's standard. The extent to which these come together determines the level of the human and other development found in a society.

In addressing this lecture topic, I rely on the numerous academic works I have done on various aspects of this topic. This is in line with the nature of an inaugural lecture established earlier in this lecture. Wherever necessary, I depend on what I did in the past for the benefit of this audience and the public. Inevitably, new relevant issues, insights, and materials are introduced and used to do justice to the lecture topic.

1.2.ii. Lecture Content

To one extent or another, effective and efficient crime control is a challenge facing every modern State. The level of challenge depends largely on the citizens' economic well-being, the currency and efficacy of the applicable criminal laws, and the criminal justice system (CJS). In short, the challenge depends significantly on the criminogenic (crime-causing) characteristics of the society.

Effective and efficient crime control involves two things:
(a) adequate crime prevention; and
(b) adequate response to crimes that have been committed.
Thus, the following two questions arise:
(1) To what extent is the CJS utilizing the enforcement powers available in the population – to prevent crimes and respond to crimes that have been committed?
(2) To what extent are the citizens using their personal responsibility and self-control to avoid crime and assist the official (governmental) CJ authorities in preventing crime and responding to those that have been committed?

Effective and efficient crime control is the reduction of crime in society to the barest minimum at the least expense. Grounded Law and Personal Responsibility play major complementary roles in

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Oxford University Press, p. 224; William Twining, *General Jurisprudence: Understanding Law from a Global Perspective*, 2009, Cambridge, United Kingdom: Cambridge University Press, p. 335.

effective and efficient crime control. This lecture examines the importance of the rule of law in contemporary Nigeria, but goes on to demonstrate and emphasize the unique and critical need for *grounded law* (my creation) in crime control especially for our postcolonial culture. The lecture goes further to show that personal responsibility is needed of the citizens, especially those charged with managing the many agencies of the CJS – Legislature, Police, Courts, Prisons/Corrections, etc. Other than the law, it is personal responsibility that makes it possible for a CJ official, such as a police officer or judge, to apply discretion legally and reasonably even where he is tempted to do differently. Personal responsibility also motivates such an official to decide or act in the best interest of the general public where the law is unclear or does not provide a solution. Where the law fails, personal responsibility is the foundation of society.

Summarily, law – of the grounded archetype – and personal responsibility create and maintain order and justice in society.

1.3. The Lecturer and the Motivations for the Lecture Topic

As is common in many people's lives, a lot of uncertainties had to be experienced and many other things had to come together for a significant achievement to be made. Professorship in any field of learning is typically extremely taxing. It is preceded by preparation, significant work, experiencing some disappointments as well as incremental successes, and the goodwill of so many others over a long career process, for it to happen. My experience was not different. In fact, I am particularly grateful to be giving this Inaugural Lecture. Considering several events at various stages of my life, this lecture is taking place by the Special Grace of God.

After my Elementary/Primary education, there was a suggestion in my family for me to follow the footsteps of an elder brother and proceed to learn a trade (electrical works). It was neither my suggestion nor decision to make: I was too young to do so. Also, the suggestion did not reflect my performance in the Elementary/Primary education. However, luckily, providence intervened through my elder sister who took the position that I would rather go to High School, and so it came to pass. On the verge of concluding the secondary education, I needed to decide on the direction to go. It was generally understood among us (peers) that university education was the next thing to do. But then, what to study? The popularity of and attraction to the "professional courses" (Law, Medicine, Engineering, etc.) were widely known. This mindset weighed heavily on the decision to be made by each of us in the peer group. I was very good at the English Language, Literature in English, Government, and such other subjects. Thus, I chose to study Law at the university level. I soon changed my mind and opted for Mass Communication, still consistent with my preferred subjects in High School. Well, I later returned to my preference for Law.

Next was the challenge of gaining admission to study Law, perhaps the most competitive of all the "professional courses". One did not just have to pass the almighty JAMB (one exam; no Post-UTME!). To be admitted, a candidate like me who had no godfather or influential backer must earn a high enough score to be in the "merit list". Otherwise, he did not get in. When it became clear to me that I had no such support, I had little choice but to tediously and thoroughly study for the JAMB exam. My pains of that exercise were eventually rewarded when I became the fourth highest scorer in the JAMB exam for Law at UNN. Thus, I was admitted on merit!

Nevertheless, to underscore the fact that I had no godfather or influential backer, some of my close relatives felt and expressed the view that considering the family's financial standing, I should not have applied for admission. My highly commendable performance in the JAMB exam meant little, if anything. Well, somehow I managed to begin and get on with the Law studies. The rest is history.

In the course of studying Law, I, like every student, had particular interest in or preference for a certain course. For me, it was Criminal Law and everything associated with it. My flair for Criminal Law culminated in my eventual specialization in Criminal Justice/Criminology.[6] That inclination for Criminal Law and Criminal Justice/Criminology has remained with me through all these years, leading to my bias in teaching, research, and publications. As well, I believe in the need to look inwards first in order to solve a problem. This should not be interpreted as opposition to solutions that emanate from others. Instead, it is that more often than not a local problem has a local solution which, in addition to being effective and efficient, is likely to be the most credible among all the options. That being the case, there is a need to explore that local or homegrown idea before looking elsewhere.

Thus, I am strongly committed to the idea that indigenous customs and traditions – together with relevant, sensible foreign ideas and approaches – are the necessary foundation for a credible, sustainable, and progressive modern Nigeria. That predisposition or preference for first utilizing indigenous solutions is reflected in my research and publications over the years and in this inaugural lecture.

2. Law is Life – Law Equals Life!

The importance of law in the life of a person and in his relationships with others cannot be overemphasized. Law is the one human institution that affects/regulates a person's life before, during, and after his life with consequences for the person and his successors. All the other institutions typically come into being at birth and terminate at death. Law continues beyond death, often with far-reaching consequences. Accordingly, *law is life* asserts that life – that is quality life – in a society is guaranteed by adherence to the law that applies to the society. It is the requirement to obey – and the habit of obeying – the law and behave in a manner consistent with the law that ensures order, stability, predictability, and progress of the society and its citizens. The quality of life in a society cannot be divorced from the presence of *and* adherence to the law. The law needs to be present. The law equally needs to be properly applied and enforced to affect (hopefully, raise) the standard of life in the society. Take note that "law" refers to the *formal* do's and don't's in the society as well as the established and generally applicable expectations and standards of behaviour in that society (*informal* law).

The presence of law means that social life is predictable. With law social life thrives. The law thus is a means to serve all human members of a society, equally. The prevention and regulation of interpersonal and inter-group conflicts is the province of law, rather than individuals. Similarly, the domination of one person or group over another other than in accordance with the law is disallowed. Law is the equalizer in a diverse society. A homogeneous society is less in

[6] A lawyer, Professor, and astute university administrator aptly described Criminology as "the finest aspect of Criminal Law". I completely agree with that characterization.

need of law than its heterogeneous counterpart. The more dissimilar the members of a society are, the greater the need for them to rely on law to regulate and control their affairs. Law does not bring about life, but law gives meaning to life. The meaning stems from the increased quality of the experience available to the human subject of the law. On the other hand, without law life has little meaning. Absent law, life in a society is unpredictable. The life would be regulated, but unequally so. The interests of a few privileged persons and groups, rather than the interests of all, would be served. The domination of one person or group over another would be common, accepted, and really unavoidable. In the absence of law, the objective of the applicable means of behaviour control would be to promote and serve the best interests of a few, not the whole group.

However, the capacity of the law of a society to regulate behaviour therein depends on a multiplicity of variables. Broadly, these include the source of the legal provisions, the extent to which the law reflects the citizens' beliefs and expectations, and the effectiveness and efficiency of the law in identifying and addressing the issues that arise among the citizens. By the source of the legal provisions, I refer to the procedure followed in making the law in question. If the procedure involves the citizens' participation, directly or through their elected representatives, and meets the citizens' expectations, then it is likely to meet with their approval. On the other hand, a law that is made without the citizens' (meaningful) involvement is likely to meet with disapproval. Therefore, in this connection, the distinction between indigenous (homegrown) laws and foreign laws is noteworthy. Also, the extent to which the law of a society reflects the citizens' beliefs and expectations goes a long way in determining the law's capacity to control behaviour in that population. Law that is consistent with the people's history, convictions, and aspirations is more likely to elicit compliance than law that diverges from the standards the citizens hold dear. And, law's capacity as an instrument of human behaviour control is strongly predicated on the law's perceived effectiveness and efficiency. Law must be able to solve conflict problems in its jurisdiction and the citizens need to regard it accordingly. Also, the law must serve the people relatively cheaply (affordably). If not, the citizens would be compelled to look elsewhere for a means to manage their conflicts.

The foregoing, summarily and generally put, is the basis for the bold declaration that Law is Life!

At this juncture, there is a crucial question to be answered: Considering the foregoing, is it accurate to assert that *law* (*only law*) is the basis for the proper regulation of lives and relationships in a society? At the very minimum then *law* can only be meaningful if it is understood broadly to include many, many other instruments of behaviour control, including culture, religion, tradition, etc. These will be examined in detail in subsequent parts of this lecture.

Thus, the assertion that *law is life* warrants more in-depth analysis to determine its application to a given society. The concern of this lecture is Nigeria.

In Nigeria, the public (official) and private (unofficial) conducts of the citizens generally detract from the claim that law is life. The behaviours of the citizens, in private as well as in public, do not support the view that law ought to regulate human lives and relationships. This means that for many – perhaps most – Nigerians, adherence to the standards of the law is not important.

Rather, "law", "rule of law", etc. are convenient labels to be propagated for a certain public image with little reflection of the qualities claimed. That one behaves lawfully or in accordance with the rule of law is often a claim to be made and not substance to be demonstrated in conduct. The result is that there is widespread dissonance between what individuals and groups allege that they do and what is observable on the ground.

It may be that this can be explained by the fact of the deluge of cultures, religions, and traditions across the country with the result that the community sense found in one small geographical entity is unlikely to agree with the reasoning found in the next. Similarly, Nigeria's enormous pre- and post-colonization anomie-inspiring variables complicate matters. Without a doubt, the foreign standards and rules detract from the average African (Nigerian) expectation. However, Nigeria is not the country with the widest diversity of cultures, religions, etc. in the world. As well, Nigeria is only one of many, many countries that experienced colonization. Nonetheless, many of Nigeria's peers have since moved on from the colonial – and even neo-colonial – victimization they suffered in the hands of the British, the French, the Germans, and the others. So, why has Nigeria not done so?

3. Manifestations and Reaches of Law-Is-Not-Life in Nigeria

As stated earlier in this lecture, law-is-life asserts that the quality of life in a society is guaranteed by adherence to the law (supposedly, good law) that applies to the society. It is not an abundance of laws nor is it the strictness of the provisions that matter. The critical issue is whether the citizens conduct themselves in the way the law envisaged, that is in a manner that inspires confidence in the society and its system and ensures order and accountability. I mentioned earlier in this lecture that law alone is not capable of eliciting or even compelling this compliance. Several variables, including law, are needed to achieve this.

In Nigeria, law (official law) is pervasive. As well, unofficial or non-State law thrives in the country. The laws touch every citizen on virtually every matter. It is not the presence or reach of the laws that is the issue; it is the citizens' use of the laws to regulate their behaviours that is problematic. There are overwhelming instances of disregard for or avoidance of the laws in public and private endeavours. The result is that in these matters, the standards of behaviours expected of the citizens fall short – often far short – of the requirement for a progressive modern State.

When Nigeria Police Force (NPF) personnel set up road blocks on public roads and extort money from road users, the police thereby ignore the law that created and requires them to enforce the law and protect the citizens. Rather than do these, they have resorted to victimizing the very people for whom they are supposed to work. And they do this routinely, moving from location to location searching for the best sources of illegal revenue. By their conduct, the police commit crimes against their citizen-employers, and these crimes have far reaching implications for the country and its quest for development. These conducts by the police – the principal law enforcement authority in the country – are criminal. Certainly, the police hierarchy and the country's political leaders authorize, encourage, and/or condone these police crimes. These negatively affect the citizens' confidence in the ability or even willingness of the police to

prevent crime and enforce the law. With this negative impression on the citizens, consider the effect of these police misbehaviours on foreigners, particularly those seeking to invest in Nigeria.

Elected and appointed government officials at all levels of administration in Nigeria (local, state, and federal) that neglect their Constitutional and legal responsibilities thereby fail to meet their obligations to the citizens. Instead, these officials routinely device means to misuse the law to advance their selfish interests and avoid legal liability. In Nigeria, the Legislative, Executive, and Judicial powers of the federal and state units are vested in the respective bodies.[7] The Constitution envisaged and laboured to establish a polity in which the welfare of the citizens is paramount. The Constitutional set-up was to ensure that the best interests of the citizens were projected above individual or small group concerns. The extent to which this fundamental Constitutional and even common sense standard has been observed in managing the public affairs of Nigeria leaves very much to be desired. Largely, legislators, members of the executive, and even judicial officers essentially seek their narrow gains at the expense of the broader public good of the citizens.

Legislators in Nigeria (aptly nicknamed "Legis*looters*[8]) have succeeded in cornering a huge chunk of the country's annual budget for themselves. The estimate is that every year four hundred and sixty-nine (469) members of the bi-cameral Nigerian legislature arrogate about twenty-five percent (25%) of the year's expenses to themselves. The remainder of the estimated one hundred and eighty million (180,000,000) citizens will have to make do with the remaining seventy-five (75%) percent, if even that. Of that seventy-five (75%) percent, the officials of the Executive branch take what they will by means of illegal/irregular contract awards, overbilling, undeserved salaries and allowances, theft, etc., hence the Executive branch officials are popularly called Execu*thieves*.[9] Regarding the Judiciary, bribery, buying and selling rulings and judgments, diversion of capital development funds through contract manipulations, etc. are widely seen as daily occurrences. Ordinarily, the judiciary is called "the last hope of the common man" to emphasize their strategic position and role in safeguarding the law and justice interests of the weak and oppressed citizens. However, the overall actions and inactions of the judiciary tend to cater to the narrow interests of the wealthy, privileged, and influential members of the public. For these reasons, many Nigerians regard the judiciary ignominiously, nicknaming it Judis*haring*.[10]

The structure of the Nigerian public service is such that every agency or official of government fits into one of the three government branches (Legislature, Executive, and Judiciary). Therefore, the widely held view that the branches grossly underperform due to their corrupt tendencies and disregard for the law necessarily extends to virtually all the agencies and public office holders.

The manifestations and reaches of the law-is-not-life in Nigeria are by no means limited to public agencies and their officials. These indicators and their influences are easily observable in private establishments. Even in the most private of locales, the general disregard for quality living and relationships regulated by law to ensure standards is manifest. Oftentimes, these are

[7] Sections 4, 5, and 6, respectively, of the *Constitution of the Federal Republic of Nigeria 1999* (CFRN 1999).
[8] Italics added for emphasis.
[9] Italics added for emphasis.
[10] There are variations of this uncomplimentary label for the Nigerian Judiciary.

seen in even the most private of arrangements, such as the family group. It is not in the public relationships alone that lack of adherence to the law occurs. It is prevalent in private relationships. A private citizen, such as a road user, who initiates the process that enables police officers and men to take money from the citizen thereby derogates from the standard of the law. Initiating the perversion of the law by offering bribe to the police may not lead to "extortion"[11] by the police, but the offering encourages the police to stray from their Constitutional and legal duty to enforce the law uniformly without being induced. Also, individuals employed in public as well as private organisations and businesses who neglect their responsibilities and yet receive payments (obviously for work either not done or not done well) or use their entrusted positions for personal gains thereby shortchange the law and the standard it envisaged.

Thus, unfortunately, the manifestations and reaches of law-is-not-life in Nigeria are wide-ranging and far.

4. Criminogenic Nigeria?

Is Nigeria criminogenic? A consideration of the crime typology in the country and the factors that give rise to them leads to no logical answer but "yes". Property-related crimes dominate the Nigerian CJS owing, ostensibly, to the elevated level of deprivation among the citizens. The high degree of poverty in the country is a strong reason for the property-related crimes. Among the numerous variables that influence behaviour in a society, several factors stand out as those that make Nigeria criminogenic.

By way of definition, a country (place), such as Nigeria, is criminogenic because it has factors that cause, are likely to cause, or lead to criminal behaviour.[12] Put differently, criminogenic factors are public as well as private characteristics that favour the commission of crimes. For our purpose in this lecture, the influences of the factors on deviances are considered as well because in many instances it is impossible or difficult to separate *deviance* from *crime*.[13] In any case, they tend to reinforce each other.

Criminogenic factors are entrenched and widespread in their relevant population, hence they are able to make substantial impact as determinants of criminal behaviour. However, a criminogenic factor does not have to affect all the members of the population nor does it have to affect them equally. In the main, these variables are responsible for the widespread disregard for law and order in the country. Without a doubt, Nigeria is criminogenic. There are several features of the country that make it a fertile ground for criminal behaviour. These criminogenic factors can be broadly categorized into the following: (1) Constitution/Structure; (2) Culture/Tradition; (3) Religion; (4) Ethnic Loyalty; (5) Attitude.

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[11] See s. 404 of the *Criminal Code*, Cap. 42 Laws of the Federation of Nigeria. However, offering bribe to a police officer would not amount to extortion by the police if the person that made the offer did so freely. If, however, the officer created a situation that left the citizen with no realistic option but to offer the inducement as *the* way to extricate himself from the circumstances, taking what is offered would still amount to extortion.

[12] *Merriam-Webster Law Dictionary Online*, available at: https://www.merriam-webster.com/legal/criminogenic, accessed September 23, 2017.

[13] A deviant conduct is one that strays from the standard of behaviour applicable to the issue and the population under reference. Criminal behaviour refers to an act or omission that offends the prescription of a criminal law provision. Thus, it is common for a certain conduct to qualify as both criminal and deviant.

4.1.Constitution/Structure

Appreciating the source and the process that led to the prevailing Nigerian Constitution[14] assures an understanding that the Constitution is not what it professes. The triple issues of *source*, *process*, and *content* undermine or at least seriously question the legitimacy of the Nigerian Constitution. The source of the Constitution is the Nigerian military through a Decree[15] of the then (1998) Provisional Ruling Council. By a fiat of the then ruling military regime, the Nigerian Constitution of 1999 was proclaimed as a Schedule to Decree Number 24 of 1999. Thus, the Constitution was made for and given to all Nigerians by a few privileged military personnel.

Like the source, the process that brought about the Constitution is highly undesirable. There was grossly insufficient, if any, citizen participation in the Constitution-making process. The necessary robust and thorough debate that is an indispensable component of a people's constitution did not feature in that process. These belie the Constitution's claim to be of the people. The Preamble to the Constitution professes thus: "We the people of the Federal Republic of Nigeria: Having firmly and solemnly resolved: … Do hereby *make and give to ourselves*[16] the following Constitution:-". For avoidance of doubt, at no time did Nigerians make or give to themselves the Nigerian Constitution of 1999. It was made and given to Nigerians by the military rulers.

On the issue of contents, the Nigerian Constitution has created a confused form of federalism. On the one hand, the Constitution proclaims that the country is a federation. Chapter 1 of the Constitution emphatically refers to the country as the "Federal Republic of Nigeria". Under Section 2 (1), "Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria." And by Section 2 (2), Nigeria shall be a federation consisting of states and a Federal Capital Territory. The Constitution goes on to arrogate powers and responsibilities to the federal authorities. On the other hand, the Constitution makes provisions that undermine the alleged federal arrangement of the country.

The constitutional history of Nigeria (from the pre-colony to the present) reveals that the 1999 Constitution is probably the country's most pretentious Constitution, especially considering that it was a wholly Nigerians' constitution (as different from the pre-independence constitutions that were made by the British colonists). The extent to which the 1999 Constitution has subjugated and emasculated the constituent parts of the country (that is, the states and the local government areas) is shocking. This militates against meaningful developmental efforts by the states and local governments. Even a cursory look at the Constitution shows that many things that ought not to be the concern or pre-occupation of the federal government are either reserved for it exclusively (Exclusive Legislative List) or it is empowered to claim control thereof over the states (Concurrent Legislative List). For examples, under the Exclusive Legislative List,[17] the following Items include functions that in a true federation should either not be the business of a

[14] *Constitution of the Federal Republic of Nigeria 1999*, Cap. C.23 LFN 2004 (CFRN 1999).
[15] *Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1999*. Decree No. 24.
[16] Italics added for emphasis.
[17] Second Schedule Legislative Powers Part I, CFRN 1999.

federal government or should belong equally to the federation and constituent parts (states and local governments).

Item 11 (construction, alteration, and maintenance of such roads as may be declared by the National Assembly to be Federal trunk roads) together with Item 63 (traffic on Federal trunk roads). Reserving these responsibilities for the federal government is unnecessary, especially when the facts on the ground throughout Nigeria clearly demonstrate that successive federal governments have failed in their duty to build and especially maintain the so-called federal roads. The death traps that the following "federal roads" among others have become are well known. Anyone that has travelled on the Enugu to Onitsha, Enugu to Port Harcourt, and much of the Enugu to Abuja federal roads, will verify the deplorable conditions of these federal roads. If states and local authorities have the desired and necessary control of their resources, the state and local governments should be able to build and maintain the roads in their domains. The respective states and local governments, which are closer to the relevant roads, are in better positions to know what their constituencies need. Moreover, the citizens who use the roads are better placed to hold these lower rungs of government accountable for the roads.

Item 39 (mines and minerals, including oil fields, oil mining, geological surveys and natural gas) is another overreach by the architects of this Nigerian federation. Why is the federal government claiming ownership and control of mineral deposits in every nook and cranny of this vast country? It is terribly inefficient for any country to be run in this manner. Whenever mineral deposit is found in any piece of land in any part of this large country, the federal government takes over. The truth is that the federal government cannot run the exploitation and management of these rich mineral reserves. This means that most of the mineral exploitation opportunities are never pursued. Thus, valuable income is lost by all the levels of government and by the individual land owner, where that is the case. What is wrong with the land owner and the relevant local and state governments arranging for the exploitation of the mineral and each of them paying a reasonable portion of the earnings as tax to the federation? That would facilitate economic activities, opening up many sectors of the economy, creating employment, and generally growing the economy.

Item 45 (police and other government security services established by law) empowers the federation alone to create and run police and government security outfits. The Nigeria Police Force (NPF) represents this overwhelming federal government police presence. Thus, the NPF is the only general official policing organization empowered to perform law enforcement functions in Nigeria. Reserving Nigeria's official policing for the NPF grossly underutilizes the law enforcement options available in the country. At the community, town, local government, and state levels, there are numerous, highly organized, efficient, and credible avenues for law enforcement. Disregarding or emasculating them simply denies the citizens of valuable means of effective and efficient crime control.[18]

Item 48 (prisons) saves prison matters for the Federal Government of Nigeria alone. What would be wrong with sharing the responsibility for incarceration of convicts among the three levels of

[18] The value of incorporating and the need to incorporate credible traditional (homegrown) systems and mechanisms of law enforcement into Nigeria's official policing is discussed more extensively later in this lecture, particularly in the section on Law Enforcement/Policing.

government in the country: federal, state, and local? This makes more sense particularly because there are federal and state crimes, and the local governments – together with their relevant communities – are best positioned to manage relatively minor offenders. Of course, in all cases, the Constitutionally guaranteed rights of the inmates would apply and be enforced.

Items 13 and 14 (electric power) on the Concurrent Legislative List give rise to one of the loudest calls to restructure Nigeria. More than any infrastructural deprivation, the lack of reliable power supply affects Nigerians and their well-being. Accordingly, this issue has attracted a lot of attention among the citizenry on the best way to solve the quagmire. The *Restructure Nigeria* organization has thoroughly investigated and framed the matter of electricity or lack thereof in Nigeria and the way out, thus:[19]

> How will true federalism resolve the epileptic electricity problem in Nigeria?
> There are over thirty communities in the Niger Delta area of Nigeria with 24/7 power supply! Some of these communities have had it like this for over two decades and in most cases (if not all), the electricity is free! Yes, in this same Nigeria. … Surprisingly, none of these Niger Delta communities are connected to the national grid nor a centralized grid system. In other words, the only reason these communities are able to enjoy 24/7 power supply is simply because they are not connected to the national grid. The federal government is not in charge of their electricity supply! They are connected to … a decentralized electricity system. The same model [that] comes with true federalism ....
>
> … within the past decade, the federal government of Nigeria has spent over $20 billion trying to fix power, yet what we get is more darkness. …What then is exactly wrong with the Nigerian electricity arrangement? First, under the present skewed unitary system, the federal government has absolute control over power generation and distribution (it has recently given up some powers on generation but still holds distribution), this makes it difficult for state governments to have full control over the sector. The present arrangement allows states to generate but forbids them from distributing what has been generated without first supplying to the national grid. In other words, the federal government through its control partners (Discos, Gencos, etc) decides how electricity should be allocated to locations without the states having an input. Wrong system. Second, because the state governments have no control over this process, their states only get what is allocated without them having a say in the arrangement. Wrong system. Why should the federal government be in charge of a critical but basic need like electricity? Why can't my state and city have the right to generate and distribute electricity within and giving[sic] us steady power and without supplying to the national grid? The reason why we do not have regular electricity in Nigeria is not because of corruption but because of the unitary national grid system. The national grid is expensive to build and expensive to maintain, therefore making the entire business of power generation and distribution unprofitable. It is an unnecessary wasteful way to solve our electricity problem. With the present unitary national grid system, we might never have regular electricity even if we pump in $2billion into the sector yearly. …
>
> Today we have a centralized electricity generation and distribution system. We have a national grid. We have a situation where if a gas pipeline is blown up in Bayelsa, electricity goes off in Kano and Lagos states. We have a situation where a court is deciding for investors how much they should charge Nigerians for electricity supply. Because of overcentralization, the electricity generation and distribution business is now so complex that we do not even know who to blame for lack of electricity in our cities. … Electricity generation and distribution licenses and issues should be a state government affair. States should be allowed to explore their natural comparative advantage so to provide power to their people. Federal Government should have no business with electricity anymore. National grid should be discarded. Competition should be introduced. States and cities should be allowed to generate and distribute their own electricity and bear the risks.

[19] *Restructure Nigeria*, "How Will True Federalism Resolve the Epileptic Electricity Problem in Nigeria?" Available at: http://www.restructurenigeria.ng/#sthash.yHFOgfxE.NHWAl5x6.dpbs, accessed September 24, 2017.

The broad but needless imposition of federal might on Nigerians leads to the questions asked about the form of federalism practiced in the country. A truly federal system would empower its constituent parts (states and local government areas), not forbid them from doing the activities that would improve the lives of their citizens and develop the country. Consequently, many Nigerians have expressed strong support for *restructuring* the country. At no time in the history of the country has there been such clamour to reorganize the polity. The reason for this demand is the widely held view among Nigerians that the present "federal" system is not working for the vast majority of the people.

Like on many of our other national problems, too much federal control is clearly the problem. It greatly limits the economic and other opportunities available to the citizens. Thus, they see the acquisition of federal power as a must for survival. Any wonder elections and appointments into government – especially federal – positions are treated as do-or-die matters resulting in all manner of crimes?

4.2.Culture/Tradition

The culture and tradition of a people drive and sustain them in their present and future endeavours. Belief in their customary way of living is the basis for the people's existence, relationships with one another, and outlook on life. However, where the culture or an aspect of it is taken to an extreme, or there is no better alternative for regulating behaviours among the people, crime could result therefrom. In that case, the offender sees himself, not as a criminal or deviant, but as one conforming to the dictates and expectations of his society even if that "conforming" behaviour violates the law.

An example of taking a traditional judicial process to extreme occurred in Ọkịja, Anambra State in 2004.[20] The result was that the traditional process that was intended for proper social control became a basis for some of the worst crimes known to Nigerians.

In August 2004, the NPF in Anambra State received a report of possible illegal activities at the Ogwugwu Isiula shrine in Ọkịja town of the state. The then state Police Commissioner, Felix Ogbaudu, led a police team to the location. At the shrine and in the surrounding area, the police made some gruesome findings. They discovered dozens of headless bodies, skulls, and human corpses, along with a record of names – ostensibly, the names of individuals that patronized the shrine. The police and the Ọkịja residents were alarmed at the extreme nature of the findings, and the fact that the patrons list contained the names of notable Nigerians from within and outside the community.

Ordinarily, as a component of indigenous Igbo law and justice, the Ogwugwu Isiula shrine is an avenue for case management. A person with a dispute has the option of taking the dispute to the shrine, through the shrine's priest and other officials, and asking the shrine to step in and

[20] See Nọnso Okafọ, "A Justice Void Filled: Explaining the Endurance of Extreme Tradition-Based Laws in Nigeria" in *African Journal of Criminology and Justice Studies: AJCJS*, Vol. 6, Nos. 1 & 2 November 2012. See also Nọnso Okafọ, "Foundations of Ọkịja Justice" in *NigeriaWorld*, March 1, 2005, available at: http://nigeriaworld.com/articles/2005/mar/033.html, accessed September 25, 2017.

adjudicate the case between the disputants. The disputant(s) swear on the shrine to the truthfulness of his claim. The guilty party risks punishment, ranging from a minor fine to death, depending on the gravity of the dispute or offense. Thus, there is nothing unusual about the existence of the Ogwugwu Isiula shrine and other similar shrines in Igbo and other parts of Nigeria. Even in modern (postcolonial) Nigeria, the shrines and other indigenous avenues for case management subsist and play major roles in the management of cases.[21]

For avoidance of doubt, shrines such as Ogwugwu Isiula and other similar indigenous case management avenues are used in Igbo as in other parts of Nigeria. Case management before the shrines does not always lead to the sort of gruesome discoveries made at Ogwugwu Isiula. This was precisely why the Nobel laureate, Professor Wole Soyinka, an ardent believer in indigenous Nigerian religions and practices, cautioned the NPF in the wake of the Ọkịja incident to avoid using the incident as an excuse to intimidate, denigrate, or destroy traditional religions in the country. Similarly, Joe Achuzia, then Secretary-General of Ohaneze Ndigbo, accused the NPF of using the Ọkịja incident as an excuse to scorn the Igbo and their culture.[22] Moreover, the list of patrons that the police obtained during their raid of Ogwugwu Isiula shows that the shrine is widely used. The list, containing hundreds of names, included the names of some public figures and high-ranking government officials.[23]

Also, Ọkịja-like incidents have occurred in some other parts of Nigeria. There was a discovery of a replica of the Ọkịja shrine in Ido-Osun in Egbedore Local Government Area of Osun State.[24] However, the NPF's grouse with the Ọkịja shrine is that, according to the police, the richest party in a dispute before the Ogwugwu Isiula is always guilty. The police gave the *modus operandi* of the shrine operators as follows. The representatives of the shrine track down the rich disputant in a case and put poison or charm in his or her motor vehicle to ensure that the wealthy disputant dies. Alternatively, according to the police, a rich party is made to consume a drink or some potion after which he or she dies. The police further state that the Ogwugwu Isiula shrine priests' leader is a named individual who, according to them, owns millions of Naira worth of property in Lagos. The implication is that the shrine is a means of making money, rather than a just case management body.

Thus, the Ọkịja incident is not an isolated occurrence in Nigeria. It has been duplicated in various forms in other parts of the country. For many Nigerians, the continued existence and

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[21] Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: An Analysis of the Contemporary Methods of Dispute Processing Among the Igbos of Nigeria* (Ph.D. Thesis), 1996. UMI Number 9638581. Ann Arbor, Michigan, USA: University Microfilms. Also, Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: Conflicts and Interactions Between Native and Foreign Systems of Social Control in Igbo*, 2002. Westport, Connecticut, USA: Greenwood Press.

[22] See also Jimmie Asoegwu and Obi Anoliefo, "The Ogwugwu Okija Fairy Tale (1)" in *VANGUARD*, September 8, 2004, available at: http://web.archive.org/web/20040908195300/http://vanguardngr.com/articles/2002/columns/c208092004.html, accessed October 13, 2017.

[23] See "Full, Authentic List of Patrons of Okija Shrine" in *BiafraNigeriaWorldNews*, October 11, 2004, available at: http://news.biafranigeriaworld.com/archive/2004/oct/12/246.html, accessed October 12, 2004.

[24] Tunde Oyekola, "S-H-O-C-K-E-R: Strange Shrine Found in Osun" in *Nigerian Tribune*, January 22, 2010, available at: http://www.tribune.com.ng/index.php/frontpage-news/300-s-h-o-ck-e-r-strange-shrine-found-in-osun-leader-saysits-a-church-members-worship-only-at-night-founders-skeleton-manyskulls-found.html, accessed January 23, 2010.

strength of the country's traditional justice and social control systems contradict the country's status as a "modern" State. The Ọkịja incident may be cited as an example of the evils of traditional justice and social control.[25] Also, to many Nigerians and non-Nigerian observers, "outdated, heathen" indigenous-rooted social control is not expected to continue as a means of case management in modern Nigeria. But, there is strong evidence that traditional social control remains very popular among Nigerians. This form of social control is widely used. However, sometimes, the wide use leads to significant abuses, such as those that the Ọkịja incident exemplifies.

At this juncture, it is necessary to comment briefly[26] on "the rule of law" and the criminogenic implications of misusing cultural/traditional processes for justice. The rule of law posits that all persons in a society are subject to, and ruled by, the same legal standard. This concept instructs that no one is to be treated preferentially, without legal justification.[27] This is the way to build and sustain a fair, just, and lastingly progressive society. Building and upholding such a society requires the contributions of good law, custom, tradition, and other forms of social control.[28] Law (that is, official law) alone cannot achieve this condition. However, in the absence of fair, just, and a lastingly progressive condition, a society will be weak, teeter, and likely to fail due to internal failings (ineffective system due mainly to lack of citizens' support) as much as external weaknesses (low regard for the society by other societies that observe the rule of law).[29]

Thus, the rule of law is fundamental to a society. When the rule of law fails, as often happens in more recent postcolonies (less developed countries), such as Nigeria, the official law and justice are challenged through and by alternative social control. A society lacking the proper rule of law standard faces several present and future challenges. The capacity of the society to function optimally in the present is legitimately questionable mainly because of the dissatisfaction with which the citizens are likely to view it. The law and justice system of the society is likely to be both ineffective and inefficient as a result of its lack of proper and legitimate grounding among the citizens. Also, the future of the society will be highly speculative. Its survivability will become an open question. The high level of unpredictability of the future direction and actions of the society will substantially compromise the society's present functioning and future. The present and future challenges will conspire to degrade the quality of the lives of the citizens of such a society. Life, at both the individual and group levels, will likely be bleak.

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[25] Nọnso Okafọ, "Foundations of *Ọkịja* Justice" in *NigeriaWorld*, March 1, 2005, available at: http://nigeriaworld.com/articles/2005/mar/033.html, accessed October 13, 2017.

[26] The Rule of Law will be explored in greater detail in the section of this lecture on Controlling Human Behaviour – The Alternatives.

[27] Albert V. Dicey, *An Introduction to the Study of the Law of the Constitution*, 1885/1985, Hampshire, United Kingdom: Palgrave Macmillan; Brian Z. Tamanaha, *On the Rule of Law*, 2004, Cambridge, United Kingdom: Cambridge University Press.

[28] H. L. A. Hart, *The Concept of Law*, Second Edition, 1961/1997, Oxford, Britain: Oxford University Press.

[29] Nọnso Okafọ, "Rule of Law, Political Leadership, and Nobel Peace Prize: Analysis of the Obasanjo Presidency 1999-2007" in *NigeriaWorld*, January 12, 2007, available at: http://nigeriaworld.com/articles/2007/jan/122.html, accessed September 25, 2017; see also as "Analysis of the OBJ's Presidency" in *SaharaReporters*, available at: http://www.saharareporters.com/da001.php?daid=204, accessed September 25, 2017; "Analysis of the OBJ's Presidency" in *Daily Triumph*, available at: http://www.triumphnewspapers.com/archive/DT19012007/ana19107.html.

Thus, the social control challenges facing a society in which the rule of law is absent or is prominently compromised are of two main kinds: individual (or personal) and institutional. Individual citizens and small groups of citizens in a society without the rule of law readily resort to alternative social control. These citizens challenge the official (governmental) law and justice system through (by means of isolated, individual cases, actions, and omissions within) the available alternatives. Also, larger groups of citizens, such as communities, groups of communities, ethnicities, and regions of the affected country may, in time, use the alternative social control as a means to challenge the official system.

As the challenges to the official law and justice system expand, the alternative system is constituted into a powerful, all-encompassing institutional obstacle or challenge to the ineffective official system. Thus, the now large alternative social control becomes the alternative system that challenges the official system. In many instances, the challenges to an official law and justice system are mild. This means that those challenges are routine; they are not fundamentally threatening ways of expressing dissatisfaction with the prevailing rule of law shortcomings of the official system. Such mild challenges do not undermine the foundations of the official system. These regular challenges do not oppose the essential characteristics of the law and justice system. Rather, the challenges operate in ways that offer alternatives through (within) the existing dominant official system. Examples include situations where citizens opt to manage their grievances, conflicts, and disputes informally according to their indigenous ways of life contrary to the stipulated official standards. Disputants are likely to choose an indigenous process where they derive greater satisfaction compared to an official (likely foreign) system. However, these mild challenges do not significantly oppose (or threaten) the official law and justice system. As such, it is perfectly "normal" that official and unofficial law and justice systems coexist and the citizens routinely opt for one system or the other to manage their cases as the citizens see fit.

Beyond the mild forms of challenges that produce "normal" law and justice processes, there may be extreme challenges to the official law and justice of a society. Extreme challenges seek a system that will replace or operate outside the dominant official system. However, whether a law and justice system experiences mild or extreme challenges may not be evident. In a revolutionary context where, for example, the protagonist declares intent to replace or significantly alter an existing law and justice system, we can see that an extreme challenge has occurred. But, in the majority of situations, such overt statement of change will not be provided. Thus, an observer needs to look for more subtle indicators of a mild challenge or an extreme challenge, as the case may be. This means that the best way to understand a system as pursuing an extreme stance is to recognize that the extreme objective may not be expressed or declared. Therefore, it is to be understood as a subtlety discernible from the extent of the actions within the justice system as well as the circumstances surrounding it.

In a previous work, I have contrasted three levels of interactions within and between societies.[30] Those forms of interactions (Cooperative, Pluralistic, and Substitutive Interactions) are relevant for understanding the forms of challenges that could face a law and justice system. In the first type of interaction, peoples or nations share systems and ideas and essentially cross-fertilize one another to become better. In the second, two or more systems or processes operate side-by-side

[30] Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: …*, *op. cit*. pp. 18-20.

with one another with occasional meeting points among them. In the third kind of interaction, a system or process dominates another or others and replaces or seeks to replace those others. This (Substitutive Interaction) mirrors the relationship between the colonially introduced law and justice system vis-à-vis the indigenous systems in each colonized population.

Even where colonists purport to administer a colonized people through the people's indigenous laws, the colonists always ensure that the indigenous system ultimately answers to the introduced foreign model. The Ogwugwu Isiula, Ọkija incident of 2004 seems to be an extreme challenge to official law and justice in Nigeria. There is substantial evidence that the judicial process applied in the shrine violates the country's official laws. The incident appears to detract from the standards of law and justice expected in a modern State.

The question is: "Why do the Ọkija's (traditional courts, tribunals, and other tradition-based justice and social control organs and processes) exist and flourish in Nigeria?" The fact that Nigeria's official Criminal Code criminalizes the type of traditional crime management that apparently occurred in the Ọkija incident makes this question particularly relevant. The Code defines some of the crimes alleged by the police in the case as having arisen from a "trial by ordeal"[31]. In light of the Criminal Code's criminalization of the traditional process, it seems reasonable to point out that the many Nigerians who persist in managing their civil and criminal cases through the deities must be doing so for compelling reasons. Thus, on close examination of the Ọkija incident, the following explanations have been identified for the continued recourse by the citizens to Ọkija's Ogwugwu Isiula shrine and similar deities in Igbo and other parts of Nigeria.

i. The Relationship Between Nigerians and the English System

It is well documented that imperial Britain, through its colonial regime in Nigeria, imposed the English-based common law system of social control on Nigeria.[32] A consequence of the imposition is that the English law and justice system in Nigeria is widely regarded as groundless because in Nigeria it lacks the foundation that it enjoys in its native England. The English system is alien to Nigeria and its citizens. In varying degrees, most Nigerians (including the so-called well-educated, modern Nigerians) appreciate their indigenous cultures and traditions. These cultures and traditions are strikingly different from the English culture and tradition, from which the English common law evolved. The mere absence of consultation by imperial Britain before importing and imposing the English law and justice system on Nigeria is sufficient for Nigerians to reject the system or, at least, treat it with suspicion and trepidation.

With little, if any, confidence in the English-style, British-imposed law and justice system and its officials (police, judges, prosecutors, prisons and corrections personnel, etc.), the average

[31] Punishable under Sections 207-213 of the Nigerian *Criminal Code*.

[32] Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: …*, *op. cit.*; Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: …*, *op. cit.*; Onyebuchi T. Uwakah, *Due Process in Nigeria's Administrative Law System*, 1997, Lanham, Maryland, USA: University Press of Nigeria; Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, 2009, Surrey, England and Burlington, USA: Ashgate Publishing.

Nigerian has no significant choice but to depend on his or her indigenous system of justice and law. The disparity between indigenous Nigerian cultures and traditions, on the one hand, and the English common law in Nigeria, on the other, is very wide. Many principles and rules of the common law contradict some widely held indigenous beliefs in Nigeria. These contradictions are found on many dispute subjects in the country, including matrimonial causes (marriage, divorce, inheritance, custody, etc.), land (ownership, lease, sale, use, mortgage, etc.), title and other types of inheritance. The use of the English language to write the English common law in Nigeria, as well as to process cases in the official courts, is one of the greatest illustrations of the extent to which Nigerians are alienated by the official system. Most Nigerians neither speak nor write the English language, at least not the correct grammatical version. Nonetheless, the non-English speaking Nigerians continue to be subjected to foreign-based laws couched in English, in Nigeria. In all likelihood, the language difference interferes with these Nigerians' ability to follow the English-based laws. How can a citizen conform to, or challenge, a law that he does not understand? In the prevailing circumstances, the State (through the Legislature) has denied the affected citizen the opportunity to know, understand, appreciate, comply with, and critic, the law.

ii. A Question of Effectiveness and Efficiency of English Law and Justice

English law and justice in Nigeria is widely regarded as ineffective and inefficient for social control in the country. This is based in part on the fact that the English model of law and justice seems unable to satisfactorily manage grievances, conflicts, and disputes among Nigerians. Facts on the ground support this image of the English system. There are numerous cases that had been tried, decided, and it seemed concluded by Nigeria's official, English-style courts. However, the disputes festered long after they were supposedly settled. In many instances, these cases remain major subjects of contention and even violence years or decades after the official courts had decided upon the cases. Land disputes (ownership, use, transfer, etc.) are prime examples of these volatile matters. For many of these cases, there is little doubt that Nigeria's official, English-based common law system has not been able to identify and permanently address the deep-seated issues between the parties. In some cases, the fact that the citizens view the English system as improperly interfering in a customary issue (such as a customary land right or other customary entitlement) fuels the animosity between the parties. Moreover, mere perception that the English-based common law system is ineffective or inefficient suffices for Nigerians to be wary of managing their cases within the system. In social control, perception goes a long way to encouraging or discouraging compliance, as the case may be. After all, social control is about complying or being influenced or made to comply; thus the complier's state of mind towards the guiding rules of conduct is important. The view that the English system in Nigeria is incapable of satisfactorily addressing certain disputed issues encourages the citizens to seek out other systems and methods of case management.[33]

iii. Cultural Pride

Pride in indigenous Nigerian culture, such as an Igbo person's pride in his culture, also helps to explain the continued existence and apparent expansion of Nigeria's traditional social control

[33] Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: …*, *ibid.*; Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: …*, *ibid*.

and justice systems. As noted, the extreme nature of the Ogwugwu Isiula shrine incident in Ọkịja does not accurately represent the vast majority of the traditional systems and processes, which play crucial roles in case management and social control. Cultural pride is a significant variable in understanding and explaining the endurance of the tradition-based laws in Nigeria. Britain's colonial "substitutive interaction"[34] agenda in Nigeria led to the imposition of the English common law system on Nigerians.[35] This, in turn, fuels the rejection or cold reception that Nigerians give to the English system in Nigeria. Culture is mainly bred within a society. It is true that inevitably, in time additional cultural elements are borrowed from other societies to complement the homegrown, fundamental characteristics of a society's culture. However, foreign culture that displaces or threatens to displace a culture is liable to be condemned or rejected. Therefore, a society's culture represents the society's history, experiences, failures, successes, and its other ways of doing things.

In short, a society's culture is its essence.[36] Culture, as a society's heart and soul, ties, or should tie, directly to its substantive and procedural law, justice, and social control statements, interpretations, and practices. Consequently, even with full recognition of globalization and the need for the right kind of interaction (that is, "Cooperative Interaction", or at least "Pluralistic Interaction", rather than "Substitutive Interaction"[37], justice and law, like crime, remain largely culture-specific. This means that justice, law, and crime are defined and understood in the context of each society. Inevitably, there are variations – sometimes fundamental variations – in understanding and interpreting justice, law, crime, etc. between societies. It is therefore quite natural and essential for Nigerians to remain proud of their indigenous law, justice, and social control. This is important and should be expected even in the face of erstwhile colonial British-initiated and postcolonial Nigerian officially-sustained efforts to destroy or emasculate the indigenous systems and processes. There is something to be said for Nigerians' desire and preference to identify with and practice a system that belongs to them naturally, rather than a system owned by the British. The sheer pride in Nigeria's indigenous systems and processes helps to sustain interest in, and increases the uses of, the traditional mechanisms of law and justice.

iv. Knowledge and Understanding of Other Systems and Processes

Another important factor that adds to the sustenance of the Ọkịja's in Nigeria is the absence of, or limited, knowledge or understanding of other systems and methods of law, justice, and social control. The issue here is the lack of exposure to other world cultures and systems of social control and justice. Such exposure often occurs through formal and informal education. An adult Nigerian that has spent all or virtually all of his life in a secluded village, where the Ogwugwu Isiula shrine is accepted as the highest judge, is not likely to contemplate or take steps to deviate from the generally perceived obligations to the shrine. Thus, some of the priests, servants, enforcers, and other agents that participate in, or patronize the deities in Nigeria do so because

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[34] *Law and Justice in Post-British Nigeria: …, ibid.*, pp. 18-20.
[35] See Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: …, ibid*; Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit.*
[36] M. L. Andersen and H. F. Taylor, *Sociology: Understanding a Diverse Society*, 4th edition, 2006, Belmont, California, USA: Thomson Wadsworth, particularly Chapter 3.
[37] Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: …, op. cit.*, pp. 18-20.

these actors are trapped physically and psychologically by the circumstances in which they were born, were brought up, and/or live. These agents know no differently from their environment.

I noted earlier in this lecture that some Nigerians and non-Nigerian observers readily regard the country's indigenous law, justice, and social control as outdated and heathen. They argue that the traditional model is consequently unfit for case management in a modern, developed or developing nation. Also, in other works, I have addressed the suitability of indigenous law and justice for social control in a modern State. In sum, the correct position is that customary law remains highly relevant in official law and justice, even in a modern State.[38] Specifically, customary law is the genesis of many laws of a modern State.[39] Thus, the customary law of a society plays a crucial role in its social control, and should therefore be included in the society's official law and justice arrangement.[40]

However, there is strong evidence that Nigeria lacks the basic characteristics of a developed or even developing nation. A hallmark of a developed or developing, modern nation is that basic State institutions and infrastructure exist and they work. In such a State, there is a reasonable expectation that the institutions and infrastructure work for the benefit of the average citizen, not just a privileged few. Thus, the average citizen should be assured of effective and efficient public institutions, such as the legislature for law making, the police for security maintenance and law enforcement, and the courts for judging cases fairly. Also, infrastructure such as electricity, motorable roads, and clean water should be present and functioning reasonably well. Unfortunately, contrary to these developmental expectations, the institutions and infrastructure of the Nigerian State and its constituent authorities (state and local governments) are poor and degrading. The institutions and infrastructure are below the minimally acceptable level for a modern society. In many parts of the country, the institutions and infrastructure are worse than they were under imperial British rule. The quality of the services expected from these institutions and infrastructure has practically disappeared mainly because of immense corruption and incompetence among government officials at the federal, state, and local levels. The negative images witnessed around the country contradict official claims to development or modernism in contemporary Nigeria.

In many parts of the country, there are no motorable roads. Often, the horrible conditions of the open spaces or narrow paths belie the "road" label placed on them. In the vast majority of circumstances, the deplorable conditions persist after the responsible authority (the federal government, state government, or local government, as the case may be) has budgeted obscene amounts of money through annual budgets to construct or rehabilitate the roads. However, as often happens, the lion share of the budgets is diverted to private accounts. In addition to the horrible road conditions, most parts of Nigeria have no (reliable) electricity supply, clean water,

[38] Even the erstwhile British colonists in Nigeria allowed aspects of our "customary law" to operate side by side with their "common law" except where in the wisdom of English jurisprudence such customary law was considered to be "repugnant to natural justice, equity and good conscience": *Eshugbayi Eleko v. Officer Administering the Government of Nigeria* (1931) AC 662, at p. 673; *Lewis v. Bankole* (1908) 1 NLR 81, at pp. 99-102; *Dawodu v. Danmole* (1958) 3 FSC 46; A. O. Obilade, *The Nigerian Legal System*, 1979 (reprinted 2010), London, England: Sweet and Maxwell, pp. 100-110.

[39] Edward W. Younkins, "The Evolution of Law" in *Le Quebecois Libre*, No. 65, 2000, available at: http://www.quebecoislibre.org/000805-11.htm#youkin1, accessed September 25, 2017.

[40] Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit.*

medical care, educational system at the primary, secondary, or tertiary level, etc. Instead of being provided with developed and modern services, the overwhelming majority of Nigerians are subjected to the adverse consequences of the corrupt and incompetent official governments, their policies, and programs. The government policies and actions in the area of education illustrates the dim view Nigerians hold of the country's governments as facilitators of development and modernism.

On education, teaching, research, and service at the primary, secondary, and tertiary levels are routinely interrupted, sometimes for months at a time, due to incessant industrial actions by teachers, administrators, as well as students. These actions are consequences of continued neglect of the education sector by successive governments in Nigeria. Thus, contemplating the future of the Nigerian youth and the country in the circumstances of the disruptions of teaching and learning is unsettling, to say the least. Faced with the governments' role in creating the massive evidence against development and modernity, it is not surprising that many Nigerians reject official law and justice, or at least regard them with suspicion. These Nigerians retreat to their kinship groups, highlight and follow their indigenous cultures, religions, and traditions, including their traditional processes for law and justice. This is not to say that indigenous law and justice are antithetical to development or modernity. Rather, retreating to the traditional system signifies that, to achieve some certainty in a time of unpredictability, the citizens prefer a familiar system, which the traditional law and justice system represents.

v. Mixed Signals by the Governments and Officials

As mentioned, the NPF found that leaders and officials of Nigeria's governments at the various levels are some of the most prominent clients of the Ogwugwu Isiula shrine. They patronize the shrines for various purposes, including material wealth, influence, political fortunes, and supernatural protection from real and perceived enemies. Apparently, the shrine patrons experience successes in their various pursuits, hence the continued allegiances to the deities. Also, the perception in the general public that the patrons of the deities are successful – especially regarding increased wealth, influence, and protection – lend credence to the claim that the deities are potent. The wide belief in the strength and potency of the deities, in turn, draw more Nigerians to the idols. However, the government leaders and officials that patronize deities in Nigeria thereby contradict the official position of the governments. Officially, the various governments condemn and sometimes criminalize allegiances to deities. See as examples sections 207-213 of the *Criminal Code*, which criminalize trial by ordeal. In the circumstance, doing business with the deities and their agents is illegal. But the individual practices of influential government leaders frequently belie this official position.

Thus, it is common for a public official in Nigeria to publicly condemn illegal trials, rituals, and other activities involving deities, while privately participating in the same activities. It makes no difference to the participant that the condemned behavior contradicts official law and other policies. The list of patrons recovered from the Ogwugwu Isiula shrine showed that prominent, influential public figures in and out of governments were some of the deity's clients.[41] It is observed that in Nigeria government leaders and other public officials typically patronize deities contrary to the leaders' assumed "Christian" or "Muslim" label. Ordinarily, a Christian or

[41] See "Full, Authentic List of Patrons of Okija Shrine", *op. cit.*

Muslim should not be involved in other idolatry practices, including patronizing deities for supernatural advantages. But this practice is common because the patrons regard the deities as sources of assured and quicker wealth, influence, etc. over their competitors. This is quite telling in a country where virtually every leader or public official claims to be either a Christian or a Muslim. Not surprisingly, the chasm between the claim to "Christian" or "Muslim" label and actual conducts has created a situation where corruption and other official criminal behaviors enjoy *norm* status at all levels of government.[42]

However, the fact that government leaders and officials patronize the deities is not bad in itself, and should not be regarded as such. There is nothing inherently wrong with participating in shrine activities. Rather, the emphasis ought to be on the morality and legality of specific shrine activities. Shrines of various forms are commonplace throughout the world. Some of the more famous shrine examples are the Christian churches, the Islamic mosques, and the Jewish synagogues. Mostly by political expediency, the three religions that the named shrines represent (Christianity, Islam, and Judaism, respectively) are offered as "the three great religions". But, there is nothing intrinsically great about any religion. The greatness of a religion lies in its proper use to positively influence or regulate human behavior in a society and between societies. Political, economic, or social dominance does not a great religion make. In particular, a religion whose great political, economic, or social advantage was obtained violently, forcefully, corruptly, or otherwise dishonestly cannot be a great religion. In determining the greatness of a religion, the capacity of the religion to offer individual human beings and groups the moral and ethical tools to relate with one another, with pure hearts, ought to be accorded greater consideration than political, economic, or social dominance. Thus, there is no credible reason that Nigerians should be discouraged from patronizing the country's traditional religious shrines.[43]

vi. Desire for Quick, Inexpensive Justice

Justice in Nigeria's English-style official law and justice system is long, drawn-out, and expensive.[44] Criminal as well as civil justice clientele (plaintiffs, defendants, victims, accused persons, witnesses, interested communities, etc.) incur great costs to achieve some justice in Nigeria's official system. The types of costs vary from money to time and reputation, among others.[45] On time cost, as an example, it is common for a criminal case to drag on for years, while a civil case can go on for decades. Considering the long time needed for a trial, hearings, and multiple appeals, average Nigerians cannot afford the attorney's fees and other expenses for conducting a case in the official court system. The prevailing harsh economic conditions exacerbate this citizens' inability. Those citizens that are able to afford the huge sums of money needed for official case processing are only able to do so after making significant sacrifices. In

[42] Nọnso Okafọ, "Religious Labels and Conduct Norms in Government" in *NigeriaWorld*, March 13, 2003, available at: http://nigeriaworld.com/articles/2003/mar/132.html, accessed September 25, 2017.
[43] The section of this lecture on Religion as a criminogenic factor examines this phenomenon in greater detail.
[44] See as examples, Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: …*, *op. cit.*; Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: …*, *op. cit.*; O. Oko Elechi, *Doing Justice Without the State: The Afikpo (Ehugbo) Model*, 2006, Oxford, United Kingdom: Routledge; Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit*.
[45] Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: …*, *ibid.*; Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: …*, *ibid.*

this condition, it is not surprising that many Nigerians yearn for less expensive, faster avenues for justice. The country's indigenous tribunals and processes of law, justice, and social control, such as Ọkija's Ogwugwu Isiula shrine, respond to this need. Relative to the English common law-based official justice system, the deities are widely regarded as quick and cheap dispensers of justice. This reputation shapes the citizens' preference for the indigenous law and justice processes over the foreign, English-style process.

vii. Financial and Material Gains

This is another strong reason that so many Nigerians persist in, or begin, using the deities and similar traditional justice institutions. There are money and other forms of material gains to be acquired by creating or championing a deity and presenting it (sometimes, falsely) as having supernatural powers. In many instances, Nigerians in difficult situations, who are asked to accept such a deity with promised redemption from their difficulties accept the offer. There is nothing unique about this condition in the Nigerian traditional environment. Cheaters and their victims are found in every institution of every society. Those who use religion to further their selfish interests and enrich themselves are regarded as false prophets. False prophets are common even among Christians, Muslims, and other so-called major religions. Similarly, among traditional Igbo and other Nigerian religious followers, there are bogus prophets. These "prophets" regard their religious endeavor as a business and thus exploit their clients for maximum profits. This is so because great opportunities exist for the false prophets to defraud unsuspecting citizens who, because of their ignorance and naivety, usually accept without question that any person with the "Christian" or "Muslim" label is an honest person. In an environment that accommodates all manner of prophets with little or no questions asked, false prophets of Nigeria's traditional religions find relative ease in appropriating their believers' material and financial belongings.

Since it is this easy to enrich oneself by falsely claiming to be righteous, many dishonest people are encouraged to do so, through the Christian, Islamic, as well as Traditional religious shrines. That is what occurred in the Ọkija shrine incident in which, according to the NPF, the deity's leaders and officials enriched themselves at the expense of their clients.

viii. Confused Attitudes to Deities, Traditional Religions, and Practices

Deities in Nigeria are generally respected and highly regarded, even by those that profess to be Christians, Muslims, or followers of other religions. On many important issues involving shrines, many Nigerians defer to the deities. Thus, it is not just the practitioners of the indigenous religions that hold the deities in high regard. Other Nigerians routinely appeal to the various deities for different degrees of interventions in the appellants' lives. The appellants would probably not petition and defer to the deities if they (the petitioners) did not believe in, or fear, the deities. Because of the widespread use of the deities in Nigeria (by Traditionalists as well as Christians and Muslims), it is safe to state that many, perhaps most, contemporary Nigerians fundamentally believe in, and/or fear, the deities.

The celebrations of traditional festivals and anniversaries reveal many Nigerians' confused relationship with traditional religions, deities, and indigenous practices. Every year, in communities across Nigeria, celebrations take place to mark many traditional beliefs. These

celebrations are typically joyous occasions. New Yam Festival, New Farming Season, and New Masquerade Season are some of the celebrations that take place annually. Ordinarily, these should be celebrated by community members that hold only traditional beliefs. However, many people professing other beliefs, such as Christianity, Islam, etc., routinely and prominently participate in the celebrations. The non-traditionalists do not merely observe the traditional celebrations. They participate actively and fully in the festivities. This is symptomatic of the confounding attitude that the non-traditionalists have towards the traditional beliefs. On the one hand, the non-traditionalists expressly reject the traditional beliefs and practices; on the other hand, the non-traditionalists accept and participate in the relevant traditional celebrations. So, on this issue, it seems accurate to describe the average Nigerian as a dual-believer (a Traditional-Christian or Traditional-Muslim, etc.).

Also, the Ọkịja shrine incident and similar events around the country show that the neglect of the traditional systems by other citizens can lead to significant abuses by the traditionalists. Whereas reasonable pressure from Christians and Muslims could have caused the traditionalists to recognize and perhaps observe human rights standards in their activities, ignoring the deities and the practices at these shrines is likely to lead to substantial violations. In the midst of the enumerated confused attitudes towards deities, traditional religions, and practices among Nigerians, the traditional shrines thrive. And sometimes their protagonists misuse the deities in law and justice processing, as the Ọkịja case evidences.

The theoretical relevance of the 2004 Ọkịja incident seems important to the issues in this lecture. The question is whether it is sensible and accurate to regard the form of religious-based indigenous justice exemplified by the incident as that based on Max Weber's idea of irrational administration of justice (as opposed to his ideal bureaucracy)? To be "irrational" is to be "unreasonable; not based on, or not using, clear logical thought".[46] By implication, then, justice administration based on ideal bureaucracy is rational (that is, reasonable; based on, or using, clear logical thought), while administration of justice without such bureaucracy is irrational. Since Weber's bureaucratic model is native to the West, it is safe to conclude that the Igbo (or other non-Western) justice system or process would not qualify as "rational". The question remains whether it is reasonable or acceptable to label all non-Western justice systems and processes as irrational. It seems presumptuous and self-serving to sweepingly label them as unreasonable means of justice, especially without credible inquiry into every system or process.

A more prudent approach seems to be that the enquirer should as a primary consideration evaluate the substantive as well as procedural elements of each justice system to determine its workability, effectiveness, efficiency, and overall acceptability to the citizens whose lives the system regulates. Further, as a secondary issue, the standing or credibility of each justice system in the comity of other societies' systems is of some importance. In the contemporary globalized village, the assessments and opinions of other societies are important. Often, the systems, practices, and events in a society are viewed and interpreted relative to those in neighboring as well as far-flung societies. Thus, comparative analysis of law and justice systems and processes is a fact of modern life. However, having acknowledged the role of alternative societies in appreciating and using a justice system, we reiterate the question: is it reasonable or acceptable to label every non-Western justice system or process as irrational? While accepting that different

[46] *Oxford Advanced Learner's Dictionary*, Online edition.

cultures breed different rationalities, some writers regard all odd and illogical practices (that is, all practices that differ from those with which an evaluator or commentator is familiar) as absolutely inconsistent with modem rationality.[47] On the other hand, other analysts are of the view that the ability to recognize, tackle, and manage specific challenges practically and with common sense demonstrates the universality of the human culture.[48] It seems that while it is useful to appreciate the general human nature, the culture-specific components of each justice system should be understood and utilized as well.

Thus, the correct answer to the question (Is it reasonable or acceptable to label all non-Western justice systems or processes as irrational?) has to be "no". Several legal sociologists and analysts agree with this position. Writing about fact-finding practices in culturally distant cultures, Damaska[49] points out that a cursory look at the practices used to determine facts in a justice system other than the observer's own typically produces strange results. This means that an observer is faced with unfamiliar findings regarding the practices in a foreign system. As such, the observer is tempted to conclude – and often concludes – that the observed practices are irrational. However, Damaska continues, a thorough examination of the practices shows that they are not nearly as irrational as first thought. Rather, the observed practices, like those of other societies, are culture-based and should be regarded as such. Further, the observed practices may provide other perspectives for better understanding the observer's own practices and familiar environment.

A major criticism of the trial process in the Ọkịja case and similar indigenous processes is the absence of a clear and verifiable method for submitting, receiving, questioning, and evaluating evidence before making a determination on guilt or responsibility. Although this practice is not unique to Ọkịja, Igbo, or Nigerian traditional justice,[50] the criticism is valid, especially in view of the overarching Nigerian constitutional provisions guaranteeing various rights,[51] including the right to fair and open trial.[52] On this account, by way of reform, the trial process in the Ọkịja case needs to be modified if it is to be acceptable in the modern Nigerian State. However, the value of the present process cannot be denied. Even with its flaws – especially when viewed from the perspective of a foreign (outside) system – the indigenous religious process serves a useful purpose for social control. Thus, it would be mistaken to reject the process outright. Like an oath helper or magical test in Damaska,[53] the Ọkịja and similar processes should not be impulsively discarded as unable to yield results we would regard as correct. Rather, what is needed is reform of the existing processes. When applied properly without the manifest abuses the NPF identified

[47] Marshall D. Sahlins, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom*, 1981, Ann Arbor, Michigan, USA: University of Michigan Press.
[48] Gananath Obeyesekere, *The Work of Culture: Symbolic Transformation in Psychoanalysis and Anthropology*, 1990, Chicago, Illinois, USA: University of Chicago Press.
[49] Mirjan R. Damaska, "Rational and Irrational Proof Revisited", Faculty Scholarship Series, *Yale Law School Faculty Scholarship Paper 1577*, 1997, available at: http://digitalcommons.law.yale.edu/fss_papers/1577, accessed September 25, 2017.
[50] Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, 2000, New York, New York, USA: Basic Books.
[51] Chapter IV, CFRN 1999.
[52] Section 36, CFRN 1999.
[53] Mirjan R. Damaska, "Rational and Irrational Proof Revisited", *op. cit.*

in the Ọkịja case, such indigenous processes are capable of effective, efficient, and fair social control.

Therefore, resorting to oracles for crime and other social control can be as rational as resorting to expensive lawyers and judges under the English-style justice system. The highly specialized, exclusive, and formalized English-style justice system that relies overwhelmingly on lawyers to do justice can reasonably be viewed as irrational because the system thus denies and alienates the vast majority of its non-lawyer citizens who cannot personally present their cases and may not be able to afford the hefty legal fees that lawyers charge. On the other hand, resorting to oracles such as the Ogwugwu Isiula shrine may negate some of the citizens' confidence in the justice system because they are unfamiliar with or reject the practices before the oracles. Thus, such citizens may view the practices as irrational. In the final analysis, the determination whether a justice system or practice is rational or irrational depends on the specific elements of the system or practice. There is nothing inherently rational or otherwise about a justice system or practice.

As demonstrated by Ọkịja's Ogwugwu Isiula shrine incident, as well as other incidents involving shrines in other parts of Nigeria, the use of deities as traditional courts in the country continues. Beyond the shrines, indigenous-based justice institutions are widely available. In the great majority of cases, the traditional institutions serve very useful social control needs. They successfully manage grievances, conflicts, and disputes among the citizens, even on issues that the official English-style courts and processes have no remedies. The uses of the traditional law and justice avenues are likely to continue and expand as long as there are reasons for them. The traditional practices will not abate any time soon, nor should they fade away.

4.3.Religion

Religion is one of the strongest criminogenic factors in Nigeria. Religion provides a strong foundation, avenue, and excuse for many crimes in the country, including some of the most devastating. Since religion or specifically religious affiliation or label is something that many Nigerians readily claim and brandish to others, it easily becomes a shield – it provides an excuse for their shortcomings, even crimes. At other times, religion is quickly used as a sword – against those who dare to question or are suspected of questioning the righteousness of the religionists. Unquestioningly, these are misuses of religion. The impact of these private and public displays of religion is significant. In particular, government and other public officials who misuse religion in Nigeria add to the country's social control difficulties by pretending to be righteous while committing crimes and deviances behind the image they offer the public.[54]

Nigerian politicians and other public office holders cleverly parade themselves as either Christians or Muslims. In Nigeria, arrogating either label to oneself frequently leads to rich, material rewards. The fictitious claim to piety and the material rewards derived therefrom are, invariably, at the expense of the Nigerian State and the average citizens. In Nigeria, representing oneself as a "Christian" or a "Muslim" is erroneously perceived as proof of the righteousness of the person so labeled. Such display is spurious because, more often than not, there is little or no resemblance between a Nigerian public official's behavior and the religious label he or she displays to the world.

[54] Nọnso Okafọ, "Religious Labels and Conduct Norms in Government", *op. cit.*

The public leadership positions in colonial and postcolonial Nigeria have been overwhelmingly dominated by individuals and groups that profess to be either Christians or Muslims, even if in name only. However, a huge portion of Nigerians practice faiths other than Christianity and Islam. Further, many well-meaning Nigerians prefer not to be associated with any of the organized religions, especially Christianity and Islam. Even after British colonization of Nigeria, most members of the Christian and Islamic religions, particularly the public officials in their midst, while wearing masks of piety, have subjected most Nigerians to numerous criminalities and deprivations, hence, the following question: Are Christians and Muslims more honest or competent public office holders than other Nigerians? Certainly not, evidence abound that the reverse is in fact the case.

Is he a God-fearing or even decent person who professes allegiance to Christianity or Islam? Every Nigerian Head of State or President before and since independence from Britain has been a Christian or a Muslim. Witness the decay, rot, and waste of human lives in our country. The stupendous riches of most of Nigeria's past and present rulers, as well as the disgraceful anomie and the sudden, dirty riches of many previously respected professionals who found themselves in governments testify to the baseness of most Nigerian public officials. These characters have carved out comfort for themselves, families, and friends while holding a death wish for most Nigerians. In all this, these officials continue to play on many citizens' intelligence by equating the officials' religious labels to purity of souls. The officials live up to the saying that *people will fight, kill, do anything for religion, except live it*.

With the misplaced emphasis on a Nigerian public official's religious label, whatever happened to Nigeria's Constitutional separation of State and religion and the recognition of the private nature of religion? The Constitution states: "The Government of the Federation or of a State shall not adopt any religion as State Religion."[55] The Constitution further provides that: "Every person shall be entitled to freedom of thought, conscience and religion …."[56] Therefore, the elevation of a public official's religious affiliation from a private to a public matter undermines the professed secular character of Nigeria. What happens to the honest, honourable, caring, dedicated, patriotic, highly skilled Nigerians who refuse to parade any religious label? They are thus, like Payne,[57] branded "irreligious" by the holier-than-thou in our midst. Honest Nigerians should form the bedrock of any endeavor to build a nation out of Nigeria for the simple reason that, even without preaching good or Godly behavior, they practice it. To be sure, honest Nigerians do not deserve the "irreligious" label. Some of these people just do not believe in the Western idea of God, which excludes other faiths of the world.

Any religious label a man may claim for himself is of no import as far as the quality of his soul is concerned. Thus, Nigerian leaders and public office holders must be judged on the basis of what they do and fail to do toward improving the lives of Nigerians, particularly the criminalized, neglected poor. We must judge these office holders based on their actions, omissions, as well as words. It is for the Supreme Being to decide the fate of each person's soul? But, permit me to

[55] Section 10 CFRN 1999.
[56] Section 38 (1) CFRN 1999.
[57] Thomas Payne, *The Age of Reason; Being an Investigation of True and Fabulous Theology*, 1794, Paris, France: Barrois.

speculate a little here: I am convinced that the Supreme Being's final decision will put more emphasis on each person's conduct than the religious label displayed to mortals.

4.4.Ethnic Loyalty

The great diversity of Nigeria is yet to be enhanced to build a formidable nation with a common goal. Until then, the more than two hundred and fifty ethnic nationalities in the country remain essentially separated from one another. The members of these nationalities view themselves as different from the others so much so that virtually every supposed "national" matter is considered from the lense of one's ethnic group. The national loyalty is yet to be built for all Nigerians, even fifty-seven years after political independence from Britain.

From nearly every part of the country, there are expressions of dissatisfaction with the country as designed and managed. Several of these expressions are violent, while others are loud. Therefore, these are not the isolated disagreements that are found in every country. In a country that is properly built with the citizens' best interests in mind and which receives their support, there are not many, if any, calls to break up the country. In such places, calls for secession, where they occur at all, are few and far between. In Nigeria, however, there are strong pushes for either *restructuring* of the country or its *break-up*.

A call to restructure or break up is typically along ethnic lines. This is because in the absence of a common nationality (*Nigerianness*) among the citizens, the fall-back position for the people is their respective ethnic groups. Thus, the obvious commonalities within each ethnic group are emphasized over and above the common Nigerian national interests. The *obvious commonalities* in each ethnic group include language, culture, tradition, and religion. Operating from their respective ethnic enclaves, it is easy for the citizens to perceive those of different ethnicities as responsible for the dislocations and problems in the country. In efforts to solve those problems, it may not matter to the Igbo, for instance, that he commits crimes against the Hausa and other Nigerians.

Thus, ethnic grouping has become a factor that produces crime in Nigeria mainly as a result of agitations against the Nigerian federation. The activities – which are sometimes violent – of the Indigenous People of Biafra, Movement for the Emancipation of the Niger Delta, Odu'a People's Congress, Arewa Youth Wing, and others have highlighted this ethnic inclination at the expense of the Nigerian State.

4.5.Attitude

The attitude a person shows towards properties can be as significant as that demonstrated to other human beings. A positive attitude to property means that the person demonstrating the attitude consolidates, builds, maintains, and properly uses the property. On the other hand, a negative attitude works to encourage neglect, destruction, and return to a condition of want. In much of the private as well as public lives in Nigeria, there is an endemic lack of care for properties. The absence of attention to the welfare of the things that we need undermines our development. This negative attitude ensures that the country continues to run around in circles – not making meaningful gains in development. This condition is by no means limited to the public

sector. However, it is expectedly most noticeable with public properties, and their impact on the citizens is greater than that from the neglect of private properties. When a private person neglects his property or misuses it, the immediate impact thereof is limited to that person, his relatives, neighbours, and others who come around the property. When public property is neglected or misused, the effect is felt throughout the society.

Abandonment or neglect of a structure or physical space is a well-known source of crimes and deviances. Such condition gives rise to the unintended consequence that citizens behave with little or no care towards the abandoned property. The Broken Window theory[58] posits that if a window in an abandoned building is broken, and the broken window is not repaired (because the building is abandoned), in time the other windows will be broken. Tolerating the breaking of the first window meant that no one cared. According to Wilson and Kelling,[59]

> A piece of property is abandoned, weeds grow up, and a window is smashed. Adults stop scolding rowdy children; the children, emboldened, become more rowdy. Families move out, unmarried adults move in. Teenagers gather in front of the corner store. The merchant asks them to move, they refuse. Fights occur. Litter accumulates. People start drinking in front of the grocery, in time, an inebriate slumps to the sidewalk and is allowed to sleep it off. Pedestrians are approached by panhandlers.

The sequence of events just described applies to all properties – abandoned or not. A further expose on the Broken Window theory summarizes the theory thus:[60]

1. Disorder breeds fear among neighborhood residents.
2. If misbehavior is ignored, it signals that no one cares about the community and leads to more serious crime.
3. If the police are to deal with disorder to reduce both crime and fear, they must rely on citizens for assistance.

Therefore, the absence of order in a society leads to deterioration of the society and further to various crimes. If minor offenders who dislocate the quality of life are not removed from the neighbourhoods, citizens would be scared, more destructive criminals would be attracted, and crimes would increase. In the circumstances, crime prevention or control becomes particularly difficult.

Typically in Nigeria, there is gross neglect of public properties. These include roads and houses (residential and office). Somehow, the impression one gets is that such properties are to be used by one set of people but maintained by another set. But, the user of any public or private property has a duty to ensure that the property is preserved, perhaps improved upon, for the present and the future. Maintenance of any property is supposed to be a routine activity. It is to be done continually (periodically), if not continuously. A newly constructed public road ought to be maintained, not used until it becomes a death trap so that a new road construction contract will be awarded at an exorbitant cost. A government office building, once constructed to meet the

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[58] James Q. Wilson and George L. Kelling, "Broken Windows: Police and Neighborhood Safety" in *Atlantic Monthly* 249 (March 1982), pp. 29-38.

[59] *Ibid*., p. 32. See also Sue Titus Reid, *Crime and Criminology*, 12th edition, 2009, New York, Oxford: Oxford University Press, p. 399.

[60] Gennaro F. Vito, Jeffrey R. Maahs, and Ronald M. Holmes, *Criminology: Theory, Research, and Policy*, 2nd edition, 2007, Boston, USA: Jones and Bartlett Publishers, p. 359.

required strength level, can easily be maintained by repainting it every few years. Why is this not done? Why do we accept not doing this simple responsibility? One of the most upsetting scenes in this national failure to maintain public properties concerns schools (primary, secondary, and tertiary). It is not uncommon to see buildings in schools remaining without even fresh paints decades after they were built. I shudder to think that my undergraduate hostel at UNEC (Manuwa Hall) wears the same paint that it did in 1988 when I graduated from here – 29 years ago! Such condition is offensive to the sense – even harmful to the users – and strongly suggests lack of care by those charged with the responsibility to maintain such structures.

Private houses do not fair better. The same neglect is generally extended to them. It is not unusual for a house built decades ago to remain untouched. This is especially so with the commercial buildings whose owners are interested in the rents that accumulate to the owners from those buildings rather than what to do to preserve their strength and aesthetics. An important aspect of the lack of maintenance of public and private properties is the negative effect thereof on the aesthetic value of the properties, and the untidy picture thereby presented to the larger society. The Igbos say that, "Anya rie, ọnụ ewere rie": *It is after the eye has eaten (that is, accepted something) that the mouth will eat it (accept it)*.

For the neglected properties, particularly those in universities and other institutions, the cost of a few gallons of paint plus a little extra money for labour should be sufficient to paint each of these buildings. I have actually considered that a roster could conveniently be created to paint a few of these buildings per year. That way, every structure on Campus can be retouched every few years. This can be done. It is a very common, routine duty in every oversea institution that I know about.

However, here is the bottom line of our environment as a crime-causing or influencing factor. The layout of our communities, the outlook of our living and working places, and the general perception of the level of care or otherwise by those who have the responsibility of preserving and improving the properties are important in determining whether or not crime occurs in society. Evidence of lack of care towards these properties encourages crimes and deviances. In the final analysis, by the Broken Window theory, crime and deviance prevention begins by making repairs to minor breakdowns in society because if these repairs are not made, and promptly so, potential criminals and deviants will regard the omission as a signal that the society does not care what happens next. If he fails to timeously make the necessary repairs and maintenance, the person(s) in charge thereof would have shown irresponsibility towards the specific property as well as to the immediate neighborhood and the larger public.

5. Controlling Human Behaviour – The Alternatives

Nigeria's criminogenic label subsists notwithstanding the fact that the country is filled with varying methods of human behaviour control. Human Behaviour Control or Social Control is used to capture the various means of regulating human conducts in society. These range from the lowest informal (unofficial) type to the highest formal (official) brand. Whether a social control method is informal or formal depends on the question whether or not any of the levels of government (local, state, and federal in Nigeria) established and controls the relevant method. A behaviour control method owned by the government is thereby official, whereas a non-

governmental system, such as that belonging to an extended family group or town union, is unofficial. Thus, behaviour control is not the exclusive preserve of law. Methods of behaviour control other than law have important contributions to make in this regard. While recognizing the indispensable social control functions of law, especially in a modern State, the critical roles of the many other control methods are laid out as follows to clarify "law" in a society.[61]

The definitions of "law" are diverse, all backed by various paradigms. Each meaning encapsulates an important but different aspect of law, thus emphasizing a thrust of law as a means of social control. The following instances demonstrate the diversity and conflicts of opinions on this matter. John Austin believes that law is the command of an uncommanded commander, the sovereign, which command is backed by the threat of a sanction, and the commander is habitually obeyed.[62] Whereas Austin's top-down theory of law may suit the largely concentrated governments of many countries,[63] the alternative theories grew out of the need to address law's other forms, functions, and paradigms. Consequently, H. L. A. Hart sees law as a system of rules.[64] For Joseph Raz, law embodies authority; law is an authority to resolve people's interests; in fact law is the ultimate source of authority.[65] In his contribution to the discourse, Ronald M. Dworkin argues that law is an interpretive concept for achieving justice.[66]

However, differences in the definitions and interpretations of law[67] and its sources[68] notwithstanding, the purposes of law may be less contentious. The objects of law in a society include standardizing behavior by (re)stating the society's expected behavior and the consequences of non-compliance with the law (substantive law); also law identifies the processes for determining relationships, disagreements, and consequences (procedural law).

Like law, "the rule of law" is a universally touted ideal. Almost all countries, organizations, and groups claim this standard as the appropriate regulator of their actions and omissions. The primary focus of the rule of law is on formal legality,[69] although other considerations are important. The rule of law argument is that objective law alone governs the rights and obligations of the members. Many jurists accept this view. Even the Marxian historian, Edward Thompson, described the rule of law as "a cultural achievement of universal significance" and "an unqualified human good".[70] Even if Thompson exaggerated the importance of the rule of

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[61] See Chukwunọnso Okafọ, "The Rule of Law in a Developing Nation: Limitations, Alternative Models, and the Challenges of Application in Nigeria" in *Contemporary Justice Review*, Volume 17, Number 1, March 2014, pp. 23-46.

[62] J. Austin, *The Province of Jurisprudence Determined*, 1832/1998, Sudbury, Massachusetts, USA: Dartmouth Publishing.

[63] R. Cotterrell, *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy*, 2nd ed., 2003, London, England: LexisNexis.

[64] H. L. A. Hart, *The Concept of Law*, *op. cit*.

[65] J. Raz, *The Authority of Law: Essays on Law and Morality*, Second Edition, 1979/2009, Oxford, England: Oxford University Press.

[66] R. M. Dworkin, *Law's Empire*, 1986, Cambridge, Massachusetts, USA: Harvard University Press.

[67] H. L. A. Hart, *The Concept of Law*, *op. cit*.

[68] D. J. Bederman, *Custom as a Source of Law*, 2010, New York, NY, USA: Cambridge University Press.

[69] B. Twining, *General Jurisprudence: Understanding Law from a Global Perspective*, 2009, Cambridge, UK: Cambridge University Press, pp. 333-334.

[70] E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act*, 1975, London, England: Allen Lane, pp. 265-266.

law, its value in social control is undeniable. However, the rule of law also elicits inexact definition. According to Dworkin,[71] "we agree that the rule of law is desirable, but disagree about what, at least precisely, is the best statement of the ideal." What we know about the concept is based on contributions from innumerable sources with many legal scholars, jurists, and philosophers adding to our current understanding. By addressing various aspects of the concept, the numerous thoughts have added to a checklist of the characteristics that would qualify a law and justice system as one based on the rule of law.

It seems that an appropriate interpretation of the rule of law requires accommodations to be made for societal differences. Seemingly in line with this, Rawls[72] recognizes the presence of irreconcilable and incompatible moral, philosophical, and religious doctrines in a modern democratic society. The plural doctrines co-exist within the framework of democratic institutions, which shape justice. Rawls' modified view differs from his previous argument that the Western culturally-specific theory of the "good life" was universal. Sullivan[73] accepts the importance of needs-based justice that takes into consideration the requirements of all people in society. Rawls and Sullivan, respectively, seem to support the position that the rule of law is based on more than formal law. Further, a rule of law discussion includes the official and unofficial responses to the various environmental factors found in society.

Although reasonable people often agree on some of the elements of the rule of law, the same reasonable people also disagree on some other elements. Even where an element of the rule of law is generally understood and accepted, the methods of applying and enforcing the element to specific groups, persons, and circumstances are sometimes subjects of disagreement. Therefore, there is need to re-interpret "the rule of law". This is consistent with Sternlight's[74] argument. In considering the campaign to include alternative dispute resolution (ADR) in projects designed to foster the rule of law in other countries, Sternlight proposes that examining the links among ADR, the rule of law, and justice requires a rethink of the meaning of each of the terms.

In line with the foregoing, the rule of law idea has long been a contentious subject among countries, such that one country's idea of furthering the rule of law is another country's evidence of imposition of a foreign or external idea. These disagreements breed suspicion and resistance. Nowhere are these disagreements more evident than in the relationship between Africa and the Western World. There is a view that the peculiar developmental challenges facing Africa, example Nigeria, should form the basis for understanding and applying the rule of law in each country.

Despite the absence of a universally accepted definition, the rule of law idea seems to be a respectable human invention. Interpersonal and inter-group relationships and interactions are fraught with grievances, conflicts, and disputes.[75] These relationships and interactions are

[71] R. M. Dworkin, *Justice in Robes*, 2006, Cambridge, Massachusetts, USA: Harvard Belknap Press, p. 5.
[72] J. Rawls, *Political Liberalism: Expanded Edition*, 2005, New York, NY, USA: Columbia University Press.
[73] D. Sullivan, "Rambling Through the Fields of Justice in Search of Well-Being for All" in *Contemporary Justice Review, 15, 2*, 2012, pp. 139-161.
[74] J. R. Sternlight, "Is Alternative Dispute Resolution Consistent with the Rule of Law?" in *DePaul Law Review, 56*, 2006, p. 569.
[75] L. Nader, and H. F. Todd, eds., *The Disputing Process–Law in Ten Societies*, 1978, New York, NY, USA: Columbia University Press.

common elements of a modern State. For this modern political entity especially, the idea that objective, widely accepted law, not a person's or few people's preferences, should regulate a society is one of the most important theses ever formulated. A society that lacks good law – and the stability and peace that the law produces[76] – is unlikely to make significant progress. Once it became necessary for one human being to co-exist and routinely interact with another human being, an objective mechanism for managing disagreements became critically important. It is an inevitable truth that wherever two or three are gathered, there are bound to be disagreements. And, neither of the parties to a grievance, conflict, or dispute can reasonably be expected to satisfactorily play two opposing roles at the same time: interested party and impartial arbiter. No human being, however pure his (or her) heart, can always or routinely judge fairly an issue in which he has interest. Even if it were possible for an interested party to judge his own case fairly, he should not because of the perception of unfairness – justice needs to be done and needs to be seen to have been done.

Thus, the utility of the rule of law became clear as human relationships began, developed, and diversified. Of all human inventions, the rule of law may rank as one of the more important assurances against systemic unfairness and eventual society's failure. The rule of law, if properly practiced, gives the citizens confidence in their society. This justice and social control model appropriately grounds and stabilizes a society. In turn, this fosters cohesion, faith, and support for the society and its leadership.

However, in addition to the Rule of Law, other alternative *rules* or models contribute to justice and social control. These include: Custom, Tradition, Religion, and Personality. The influences of these social control models are invaluable. In particular, their positive contributions to social control in Nigeria are especially important. Accordingly, there is a need to re-interpret the rule of law.

5.1.The Rule of Law – It's Features and Applicability

Some or all of the elements of the rule of law can be found in most modern as well as pre-modern societies. Apparently, in recognition of the seeming universality and importance of the doctrine, most modern States claim to follow this ideal. Although there are often differences, many of the systems, methods, and procedures for defining, identifying, applying, and enforcing the relationships, rights, and obligations of citizens are common among countries. This suggests the widespread appeal of the rule of law. Despite disagreements on its definition, the rule of law has three essential purposes, thus: "First the ROL [rule of law] should protect against anarchy and the Hobbesian war of all against all. Second, the ROL should allow people to plan their affairs with reasonable confidence that they can know in advance the legal consequences of various actions. Third, the ROL should guarantee against at least some types of official arbitrariness."[77] The appeal of the rule of law derives from the fact that its principles are sensible, reasonable, and fair for justice and social control. These principles and their statements can be found in varied expressions in many societies.

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[76] Nọnso Okafọ, "Rule of Law, Political Leadership, and Nobel Peace Prize: Analysis of the Obasanjo Presidency 1999-2007" in *NigeriaWorld*, January 12, 2007, available at: http://nigeriaworld.com/articles/2007/jan/122.html, accessed October 14, 2017 (also available in *SaharaReporters* and *Daily Triumph*).

[77] R. H. Fallon, "The Rule of Law as a Concept in International Discourse" in *97 Colum. L. Rev. 1*, 1997, pp. 7-8.

The following piece of advice by the Igbos (Nigeria) is instructive: "Adịghị eke ikpe n'ọnụ otu onye" (English language translation: "A case is not decided based on one person's story").[78] This principle of justice stipulates that a judge or other arbiter should not render a verdict or conclude a case unless and until both (or all) sides to the issue have been heard. "Both (or all) sides" encompasses the parties directly involved in a case as well as the other stakeholders. Every reasonable effort should be made to accommodate the parties and stakeholders in the decision process. Thus, besides the Plaintiff and Defendant in a civil case (or Prosecutor and Accused in a criminal case), factual and expert witnesses ought to be counted as some of the "sides" to a case. Also, close relatives of a victim are included, such as when they are needed to give impact statements to the court before the latter determines the sentence to be imposed on a convict. In receiving relevant information from the sides to a case, the hearing opportunity granted to each side should be reasonable and fair relative to the chances allowed the other sides.

In the "Adịghị eke ikpe n'ọnụ otu onye" principle, the Igbos believe that hearing only one side to a case and deciding it (on that basis) inevitably prejudices and disadvantages the sides that are left unheard. Similarly, granting unequal hearing opportunities to interested parties is unjust because that weakens some parties. Equal hearing chances for all the sides to a case before deciding it is not just an ideal; it should always be ensured. Such hearing establishes the proper foundation for a just decision. Thus, the process serves the following two main purposes. One, the inclusive procedure allows the judge to consider all the tales, claims, and counter-claims in the case. The procedure enriches the quality of justice by ensuring that the judge is acquainted with all the relevant facts and circumstances of the case before adjudicating. Two, involving all the parties bolsters them and gives them a sense of belonging in the process.

In this circumstance, the *procedure* for justice can be a valuable tool for quality social control, even as much as the *substantive* judgment. A process that gives room to all the sides to a case augments the value of the substantive judgment. Because they have been involved in the procedure that led to the decision, the parties are likely to accept and comply with the court's judgment even if they disagree with its substance. Therefore, the procedural and substantive aspects of justice reflect on and reinforce each other. The Igbo principle significantly furthers justice and social control. As a principle aimed at promoting fairness in case management, it is a component of the rule of law. It is well founded and applicable in other societies as well.

Just as the rule of law (such as the "Adịghị eke ikpe n'ọnụ otu onye" principle illustrates) is valuable to justice and social control in Igbo, most modern States regard it as an indispensable component of a properly grounded and working society. To underscore the universal importance of the rule of law, the United Nations Organization (UN) Preamble to *The Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations* acknowledges the essential connection between the UN and international rule of law. Accordingly, the Preamble emphasizes "the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations." Further, the UN provides a guide for applying and using the rule of law. The

[78] The Latin maxim *Audi alteram partem* (*Let the other party be heard*) is an equivalent expression.

UN guide deals with the rule of law on the following four levels: General Rule of Law; International Rule of Law; National Level; and Human Rights:[79]

(a) *General rule of law*

The UN's *General rule of law* contains information on such matters as: the Organization's Development Program's reports on global partnership for development; empowering people and institutions; reports on strengthening and coordinating UN rule of law activities; enhancing global rule of law assistance; various dialogues with Member States on the role of the rule of law in the achievement of national and international goals; etc.

(b) *International rule of law*

The issues covered here include: multilateral treaties and related materials; international standards and principles; UN Charter related issues; and Security Council resolutions and statements.

(c) *National level*

According to the UN, the rule of law at the national level dwells on the following: constitution-making; transitional justice; access to justice; corruption and transnational organized crime; criminal justice; security institutions; justice for children; gender justice; and legal pluralism (restorative justice approaches, alternative dispute resolution, informal justice, and security mechanisms).

(d) *Human rights*

Finally, the UN's rule of law as it applies to human rights comprises: fact-finding and commissions of inquiry; legal system monitoring; national human rights institutions; and internally displaced persons.

For the UN, the named wide-ranging topics mean that if a country's justice system is to be accepted as based on the rule of law the system is required to address the various subjects. Besides the UN's identified levels, the Organization provides a comprehensive definition of the rule of law.[80] In presenting the UN definition, I highlight the key elements of the doctrine by identifying them with italics and numbers in brackets [ ]. In all, there are fifteen important elements of the rule of law in the UN definition:

> For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are *accountable to laws*[1] that are *publicly promulgated*[2], *equally enforced*[3] and *independently adjudicated*[4], and which are *consistent with international human rights norms and standards*[5]. It requires, as well, *measures to ensure adherence to the principles of supremacy of law*[6], *equality before the law*[7], *accountability to the law*[8], *fairness in the application of the law*[9], *separation of powers*[10], *participation in decision-making*[11], *legal certainty*[12], *avoidance of arbitrariness*[13] and *procedural and legal transparency*[14, 15].[81]

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[79] See "UN Rule of Law Guidance and Policy Material", *United Nations Organization*, 2010, available at: http://www.unrol.org/document_browse.aspx, accessed January 15, 2014.

[80] "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General", *United Nations Organization*, August 23, 2004, available at: http://www.unrol.org/files/2004%20report.pdf; see also http://www.un.org/en/ruleoflaw/index.shtml; http://ods-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement; accessed January 14, 2014.

[81] *Ibid.*, italics, brackets, and numbers added for emphasis.

Although the UN definition is aimed at "transitional justice in conflict and post-conflict societies," it applies to other societies as well, even if the peculiar characteristics of each society are to be considered.

Addressing the proper role of the rule of law in international development, the World Bank explains the rule of law thus: "While defined in various ways, the rule of law prevails where (i) the government itself is bound by the law, (ii) every person in society is treated equally under the law, (iii) the human dignity of each individual is recognized and protected by law, and (iv) justice is accessible to all".[82] Apart from the UN and the World Bank definitions, many international organizations have stipulated rule of law standards that apply to their member-States. These standards are used to measure the quality of each country's legal/justice system relative to those of comparative societies. Thus, international law and justice standards as stipulated by various organizations for their member-States, such as those of the Economic Community of West African States, African Union, European Union, Organization of American States, Association of Southeast Asian Nations, etc., are relevant. In the present era of interdependency, every State depends on the cooperation of others to succeed in international and various national engagements. A negative label on a State (that it does not follow the rule of law) will likely harm its chances to prosecute many local and foreign economic, political, cultural, and other interests. Therefore, it is expected that, to avoid being perceived negatively and isolated from the international community, member-States of various international organizations, such as the UN, will make efforts to comply with the rule of law standards to which the members have subscribed.

Nonetheless, a constant definition of the rule of law remains elusive. According to the Rule of Law Handbook by the United States Military,[83] "There is no widespread agreement on what exactly constitutes the ROL, just as there is no widespread agreement on what exactly it means to have a 'just society'. But there is common ground regarding some of the basic features of the ROL …."[84] Thus, based on the UN and World Bank definitions as well as other relevant contributions to the rule of law discussion, it is apposite at this juncture to enumerate and explain the essential elements (or checklist) of the doctrine. For the rule of law model to prevail in a society, the following elements should be underscored, applied, and enforced.

5.1.1. Lawmaking is the responsibility of the legislature

In a society where the rule of law prevails, the elected representatives of the citizens (the legislature) make laws. Credible lawmaking demands full consultation and deliberation before legislation. Lawmakers are required to carefully weigh a proposed law, considering all its components and consequences. It is important for the legislators to identify and explain the effects of the emerging law on the general population. They should also take note of the relationship between the future and existing laws. Wherever appropriate, the lawmakers ought to

[82] World Bank, "Legal and Judicial Reform: Observations, Experiences, and Approach of the Legal Vice Presidency", July 2002, Washington, D.C., USA: World Bank, p. 1; see also S. Golub, "Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative" in *Rule of Law Series, Democracy and Rule of Law Project* Number 41, October 2003.
[83] United States Military, "Rule of Law Handbook: A Practitioner's Guide for Judge Advocates", 2011, United States Center for Law and Military Operations, Charlottesville, Virginia, USA.
[84] *Ibid.*, p. 2.

invite and evaluate inputs from the other citizens to ensure that the law subsequently enacted represents the best the society can offer. Like the authority to make law, the power to change or amend existing law should be vested in the legislature or in such other body as the legislature delegates.

Along with the legislature, there are various sources of laws in a society. Besides laws made by the legislature, laws emanate from customs and traditions.[85] Also, in military dictatorships, such as Nigeria and some other countries have experienced, the dictator makes laws through Decrees and Edicts with little, if any, regard for the rule of law. In a military regime, the rule of law is subjugated to the whims and caprices of the dictator.[86] Thankfully, military administrations are an aberration, not the norm. However, even in a society governed by the rule of law, the executive arm of government makes laws in limited situations, usually consistent with the guidelines given by the legislature. In addition, at least according to the legal realist theory,[87] the judiciary often makes laws through judicial interpretations. This is especially so in those "hard cases" where the law does not (sufficiently) regulate the issues that a court is asked to decide.[88] However, see Hart[89] for the contrary view that the judiciary should limit its functions to interpretation and application of the law, not lawmaking. In the final analysis, where the executive or the judiciary makes any law at all, this should be limited and closely monitored. The legislature should be the highest lawmaking authority in a modern State governed by the rule of law.

5.1.2. Legislation is future-oriented, not backward- looking

The principle of legality, which requires all laws to be clear, ascertainable, and non-retrospective, like legal formalism, shares the rule of law expectation of prospective instead of retrospective law. In making laws, a legislature is to be guided by the experiences as well as the current and future needs of its citizens. Laws should aim at regulating and correcting behaviors *going forward*. This means that although inevitably and deservedly a legislature makes laws based on its conclusion that existing and past events show that a law is necessary to address a social problem or issue, a law cannot be made to *go back* to regulate activities that were unregulated when they took place. The proper procedure is to make a law and inform the citizens that the law is in place and will become effective on a future date certain to control a specified behavior. Subsequently, all contraventions of the law from the specified date will make the violator liable under the law.

Additionally, enacting a law to *go back* and regulate previously unregulated behavior would amount to specifically targeting particular individuals or group. A law that goes back and targets

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[85] Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit*.; D. J. Bederman, *Custom as a Source of Law*, *op. cit*.

[86] G. C. Ibekwe, *The Rule of Law: The Nigerian Experience – A Theoretical and Functional Analysis*. A Ph.D. Thesis Submitted to the Faculty of Law, University of Nigeria, 1993, available at: http://www.repository.unn.edu.ng/index.php/Law/View-category.html, accessed January 12, 2014.

[87] See O. W. Holmes, *The Common Law*, 1881/1963, Boston, Massachusetts, USA: Little, Brown and Co.; O. W. Holmes, "The Path of the Law" in *10 Harvard Law Review*, 1887, p. 457. Contrast R. Pound, *Justice According to Law*, 1958, New Haven, Connecticut, USA: Yale University Press.

[88] H. L. A. Hart, *The Concept of Law*, *op. cit*., p. 272.

[89] *Ibid.*, pp. 272-276.

specific persons or group would be retroactive as well as discriminatory. The legislation would be oppressive and a witch-hunt by the State. On a related issue, a law that targets a person or small group in society may be focused on a *personal* (or *private*) *problem*. On the contrary, a law should be enacted to address a *social problem*, rather than a personal problem.[90] Thus, a good law deals with a general or broad-based issue in society. Finally, a just law in a society based on the rule of law adequately informs the citizens of the expectations of the law well in advance before law violators are required to account for their disobedience.

5.1.3. The statement of the law controls relationships, rights, and duties

Where the rule of law prevails, the statement of the law determines the procedural and substantive decisions on grievances, conflicts, and disputes. Written law increases verifiability and minimizes ambiguity. As a public standard, law clearly stated is reasonably certain and ascertainable. Such law is a catalyst for democracy and guardian of individual rights.[91] Vague and/or undiscoverable law compromises the citizens' rights. When a citizen is unable to reasonably identify and verify in advance the legal standards by which his or her behaviour will be judged, the person's rights have been violated or at least compromised. In the circumstance, the State is the violator or compromiser because it is the State's responsibility to ensure that its citizens are reasonably well informed about what the law expects from them. In the situations where laws are unwritten, such as in cases of customary laws, they are verified through decided cases and evidence. However, the provisions of the law, not the preferences of a ruler or other influential interested party, determine a party's entitlements and obligations. The stated law is above everyone and everything in a society where the rule of law applies. In short, the law is supreme.

Writing is an effective way of stating laws. But the specific language in which a law is written is relevant only in so far as the citizens understand the language. Otherwise, any language would suffice. The proper test is whether a law is written in the citizens' language – the language that most, if not all, the citizens understand, speak, and/or write fluently. Where a society's law is written in a language that most citizens do not understand, speak, etc., it would be very difficult to convince a prudent observer that the law is verifiable by the citizens. Similarly, a sensible observer would regard the law as ambiguous to the people, thus leading to the conclusion that the citizens do not sufficiently understand their law. Unfortunately, many postcolonies, especially those of Africa (example, Nigeria) have retained with little or no modification the colonial languages imposed upon the former colonies. Consequently, their laws are typically written in foreign (usually European) languages even though most of the African countries' citizens understand, speak, and/or write minimal, if any, of the applicable foreign languages.[92]

However, while recognizing the certainty and verifiability essentials of law, a system predicated on the rule of law should make allowance for changing aspects of the law that are at variance with the common expectations of the people. The process for making the law of a society, as well as that for changing it, should include free and open participation by average citizens, directly or through elected representatives. If the citizens are not meaningfully involved in the

[90] J. Crone, *How Can We Solve Our Social Problems?* 2007, Thousand Oaks, California, USA: Pine Forge Press.
[91] See *Inspector-General of Police v. All Nigerian Peoples Party and Ors.* (2008) 12 W. R. N. 65.
[92] Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit.*, pp. 57, 135-136, 186-188.

making or changing process, the resulting law will lack credibility. That, in turn, will negatively affect the law's efficacy.

5.1.4. The application of stated law greatly shapes the rule of law

Law as applied qualifies law as stated (5.1.3.). Law as applied underscores the difference between the *statement* of a law and its *application* to specific matters. Whereas the definition makes it easier to identify and access the law for understanding and interpretation, the application focuses on using the law to appropriately address the subject matter and parties in a case. In line with the rule of law, the main concern of law application is the actual use to which the law is put to determine relationships, rights, and duties. The focus is on the appropriate use of law for justice and social control. In each situation, the conditions and circumstances of persons subject to the law are to be considered.

Consequently, appropriate application of a law may require a judge to be creative, within legally allowed boundaries, to ensure that justice is done. This would be acceptable even if the *statement* of the law would produce a contrary result. In this sense, the application of law within the standards of the rule of law incorporates judicial discretion. Judicial discretion allows – even encourages – a judge to exercise reasonable flexibility in judging. To ensure that justice is achieved, if the circumstances of a case permit, a judge may individualize the case and the decision thereon. Such *individualization* can be evidence of relative informality in a judicial proceeding.[93] However, as mentioned earlier, see Hart[94] for the view against judicial discretion. By this opposing idea, the judiciary should limit its functions to the interpretation and application of the law, not lawmaking. Nonetheless, law as applied to specific cases goes a long way in determining whether the rule of law subsists in a given society.

In the final analysis, the *rule of law* (along with the *principle of legality* and *legal formalism*) requires law to be ascertainable and non-retrospective. Even in spite of allowing for justified adjustments in the stated law during the administration of justice, the basic requirement of certain and non-retrospective law remains critical to the three related concepts.

5.1.5. Law constricts discretion

Although discretion by an officer of the law is an indispensable component of justice, the rule of law delineates the substance and form of the discretion. For example, the rule of law allows and encourages judges to individualize cases and judicial decisions (5.1.4.). However, the doctrine limits the judges' discretions and how those discretions may be exercised. This means that the rule of law excludes unchecked discretion. Instead, restraints are necessary to control the substance as well as the form of the discretion. Controlled discretion is necessary to avoid or respond to judicial abuses. Law should not be adjusted to serve an illegal or otherwise

[93] See Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: …*, *op. cit*.; *Law and Justice in Post-British Nigeria: …*, *op. cit*., particularly pp. 31, 38, and 203.
[94] H. L. A. Hart, *The Concept of Law*, *op. cit*., pp. 272-276.

illegitimate purpose. Uncontrolled discretion would allow illegal and illegitimate exercises of discretion.[95]

5.1.6. All persons are equal before the law

Equality of citizens before the law is another fundamental characteristic of the rule of law. This means that: (i) there is one law for all; (ii) the law is to be applied to all; and (iii) the law is to be applied equally. Equal application means that the law sees and treats every person subject to it similarly regardless of varying conditions, such as prestige, title, office, influence, or other difference. Failure to apply the law equally to all in a society leads to the conclusion that the rule of law is absent or at least compromised. However, as noted in 5.1.4., discretionary exercise of judicial authority allows reasonable and justifiable accommodations to be made in the application of the law to individual cases. This is to ensure that justice is done in unique circumstances. According to the equality-of-citizens-before-the-law principle, unless there is a justified and legal basis to adjust the law for justice, the law ought to be applied equally to all citizens.

Equality before the law is fairly easy to ascertain and it provides an important basis for measuring the rule of law in a society. In Nigeria, for example, lack of equality before the law is patent. The country notoriously declares in official documents (CFRN 1999, federal and state laws, etc.) that the citizens are equal before the law. However, the realities of law interpretation, application, and enforcement in the country are that there are at least two sets of laws for the citizens: one set of laws is for the privileged, rich, and influential citizens, while the other group of laws is for the rest of the citizens. The citizens in the first category are significantly fewer in number than the rest of the population. The remaining citizens are in the overwhelming majority but possess minimal, if any, authority or power in the society. However, the few advantaged Nigerians often use their authority and power to promote narrow interests at the expense of the majority of the citizens. The actions and omissions of the privileged Nigerians subvert the rule of law because those activities violate the declarations of citizen equality.

Anele[96] aptly and succinctly describes the form and depth of this rule of law problem in Nigeria, thus:

> ... irrespective of constitutional provisions that guarantee equality of all [Nigerian] citizens, and the facile pronouncements of judges and law teachers to that effect, in reality there are two sets of laws operating side-by-side in the country. The first set applies to the anonymous "common man," the down trodden, the ordinary Nigerian distant from the centres of power as Pluto is distant from the sun. Under this very law, a man who stole a goat will have one of his arms amputated; if he sole(sic) a million he will be in prison for up to ten years. The other set applies to "sacred cows," the oppressors, the big men and thick madams who run things in Nigeria. This group includes top politicians, former heads of state and governors, high ranking members of the business elite, well-heeled clergymen and women etc. Under this law former military dictators, kleptomaniac bank executives and failed politicians who misappropriated billions of naira are not only free to "enjoy" their stinking wealth, they even have the audacity to contest elections! A big man or thick madam who stole billions can return a small part of what he or she had stolen, enter into plea bargain

[95] Discretion in justice delivery will be further explored in the section of this lecture on Experiences and Limitations of the Western Doctrine of Rule of Law.

[96] D. Anele, "The Vicissitudes of Justice in Nigeria (1)" in *Vanguard*, October 24, 2010, available at: http://www.vanguardngr.com/2010/10/the-vicissitudes-of-justice-in-nigeria-1/, accessed October 2, 2017.

> with the relevant authorities and go home to mock the stupid system. At any rate, going by what have been happening since the EFCC [Economic and Financial Crimes Commission] was created, Nigerians know that when a prominent and well-connected person commits an offence no matter how serious, the worst punishment he or she might receive is two years imprisonment. This is the reality of inverted justice in our nation: it is the major reason why the ogre of corruption is spreading its tentacles to all aspects of our national life.

In sum, the rule of law problem in Nigeria is not for want of legal provisions proclaiming citizen equality. The problem is the lack of proper and equal interpretations, applications, and enforcements of the laws among all the citizens.[97]

5.1.7. Judicial proceedings are predicated on pre-existing standards and procedures

Predictability is critical for law as a credible means of social control. If law is to be the basis for adjudging cases and allocating rights and responsibilities to the parties, the provision of a law, its interpretation, and application to cases ought to be clear and as consistent as possible over time. This means that two identical (or similar) cases, governed by identical (or similar) laws, within the same geographical jurisdiction, should be adjudged similarly even where they are separated by time. That is, judicial precedent is to be observed. To be sure, no two cases have the same facts. Therefore, similarity of facts will suffice in this consideration. If identical or similar cases are treated similarly, we can speak of consistency of the law. Also, predictability requires a judicial decision to be reached by following the relevant *civil procedure* or *criminal procedure*, as the case may be. In general, unjustified departure from the applicable procedure vitiates the judgment.

Scrounging the Latin *stare decisis* (the binding force of precedent), the rule of law requirement that similar cases should be treated similarly means that a party to a case (or his lawyer-representative) can legally rely on a decision in a similar previously decided case to persuade the court to decide the present case similarly. Also, in line with the precedent rule, the court will be expected to accept the binding precedent and decide the present case as persuaded, unless a distinction can be made between the present and previous cases. Factual difference is an important basis for distinguishing a present case from a previous matter. On an invocation of the doctrine of precedent, a judge or opposing party may distinguish between a present case and a previous case by showing that there is no factual basis to decide both cases similarly, thus that the previous case would not apply to the present. A decision based on an established precedent may be overruled by the same or a higher court. This can take place where, for example, the overruling tribunal finds that the previous decision, even if it was itself based on precedent, had been reached erroneously. In short, where a party to a case seeks to rely on *stare decisis*, the court may *accept* the plea, *reverse* the previous decision, *overrule* it, *refuse to follow* it, *distinguish* the previous decision from the present case, or *explain* the previous decision. The importance of precedent cannot be overstated. If the rule of law is to prevail in a society, the citizens deserve reasonable certainty as to the position of the law based on the courts' decisions in previous cases.

5.1.8. An autonomous and accessible judiciary is central to the rule of law

[97] Negotiated justice (plea bargain) as an example of legal deviations from the equality-before-the-law principle is an important subject in contemporary Nigerian jurisprudence.

An open, free, self-reliant, and self-governing judiciary is a vital component of a justice system based on the rule of law. If, on the other hand, the judiciary of a society were controlled by, or dependent on, another person or institution, the rule of law would be compromised. The requirement of an independent and open judiciary recognizes the importance of earning and retaining the citizens' confidence in their justice system. If the citizens lose confidence in their judiciary, the law loses its capacity to rule in that society. That would be the end of the society's rule of law. The importance of an independent and open judiciary is predicated on the following essentials. One, officials of the judiciary need to be free to consider and decide law and justice issues that are brought before them without being beholden to a person or group. Two, parties to a case in the judiciary, as well as the general citizenry, ought to be confident that judicial officers are detached from the other organs and powers of the State, and are capable of independently hearing and deciding the issues brought to the judiciary without external control. And, three, an effective way to demonstrate that a society's judiciary is independent and open is to ensure that the judicial process is readily accessible to the citizens. In addition, the proceedings of the judiciary are to be conducted in the public domain, rather than in secrecy. But it is reasonable to make exceptions to the public-trial standard in those rare cases of credible threats to the survival or security of the State or its citizens.

However, for the most part, an *independent judiciary* is an illusion. At best, it is a goal to be pursued, but it may never be achieved. In essence, no society has an independent judiciary. As far as is foreseeable, considering the multiplicity of interests and the competition for authority, power, and limited resources in a society, no population can have a truly independent judiciary. This is because *independence* portends complete separation from all other persons and groups in society or even within the constituent arms of government. In practice, it is impossible for a country's judiciary to divest itself of *all* controls and influences by the other arms and agencies of the society's government. In fact, it is undesirable for such a complete separation to occur. Instead, the judiciary, as well as the other departments and organs of a State, should be subjected to oversight to prevent or correct illegal conducts and abusive exercises of authority and power. Absent such oversight, the society runs the risk of a dictatorial judiciary, which will feel empowered to issue orders to all other organs, departments, and citizens, without being obligated to explain its actions and omissions.

Accordingly, the rule of law expects *qualified* independence for the judiciary. That is, a judiciary existing and functioning as an organ of the State, in some ways subject and answerable to appropriate organs and authorities in the State. Similarly, other State organs and authorities answer to the judiciary. The mutual obligations provide for checks and balances. That is precisely why in Nigeria (despite its dubious rule of law credentials), the President, who is the leader of the Executive arm of government, appoints the Chief Justice and Justices of the Supreme Court of Nigeria (the highest court in the Judicial arm). The President makes the appointments on the recommendation of the National Judicial Council and subject to the Senate's confirmation.[98] Also, two-thirds majority of the Legislature at the federal level have to address the President before a Chief Justice can be removed from office (for a Justice to be removed, the National Judicial Council would have to recommend to the President).[99] As further

[98] Section 231 CFRN 1999.
[99] *Ibid.*, s. 292.

illustration of the checks and balances, the Judicial arm hears and decides the constitutionality of Legislative and Executive acts and omissions as well as the rights and obligations arising therefrom. The United States of America is similarly structured.[100]

Thus, to function effectively, the rule of law needs an environment in which the arms, departments, and organs of the State are balanced and interdependent, rather than an environment of complete judicial separation from the other segments of the State. In the final analysis, an *independent judiciary* for the rule of law means that the constitution and other laws creating and empowering the judiciary allow it (along with its officials and agents) ample authority, power, and protections to carry out judicial duties without fear of harm or liability.

Knowledge of the law is fundamental in the activities of lawyers, judges, and other justice operators. Even then, there is no expectation that a lawyer or judge knows all the law. The *independence* of the judiciary enables courts to try and decide cases (trial courts) as well as hear and determine appeals arising therefrom (appellate courts). Thus, the rule of law empowers Justices of the Supreme Court of Nigeria (the highest court in the country) and the other appellate judges to review their decisions as well the decisions of others, which might have been decided wrongly because of the inability to know all the law.[101] Similarly, courts have inherent powers to review their decisions reached *per incuriam* (erroneously; through want of care).[102]

5.1.9. Law is central in society

Law is the ultimate authority in a rule of law-based society. Law is the basis for establishing, organizing, and managing all organs, institutions, agencies, and programs of the society. The Constitution and the other laws of such a society provide the legal foundations for the organs, institutions, etc. Thus, no organ, institution, or other entity can be created, financed, or maintained by the State unless the Constitution or law authorizes the body's creation and sustenance. The policies and programs of the society's government are predicated on the rule of law, rather than the personality of the prevailing ruler or other consideration. This increases the likelihood that a program or policy predicated on the rule of law will survive the leader that authored it. Also, the role of law in a society based on the rule of law is to delineate the authorities and powers of the different departments, organs, agencies, and officials of the State. Based on the legal demarcations, conflicts in official businesses are minimized. Where a conflict arises, the law is the objective basis for resolving the disagreement. By the law-is-fundamental principle, the rule of law helps to stabilize society by ensuring a predictable environment for the citizens.

5.1.10. Validity of law depends partly on its morality

The tenth element of the rule of law doctrine addresses the issue of a moral component of law. This means that a law's positive statement and a strict application of the statement do not necessarily amount to the rule of law. Positive law is the passed, promulgated, or adopted

[100] See the *Constitution of the United States of America*.
[101] *Oshoboja v. Amida* (2010) 2NSCR 71; *Veepee Ltd. V. Coca Cola Ind. Ltd.* (2008) 13 NWLR (Pt. 1105) 486; *Bucknor Maclean v. Inlaks* (1980) II SC 1.
[102] *Ibid.*; see *Buhari v. INEC* (2008) 19NWLR (Pt. 1120) 246, at p. 372 S.C.

("posited") law in a society. It is made up of the written rules and regulations laid down by the government or its authorized organ, which rule or regulation is an expressed written command of the government: see Austin's "command theory".[103] The character, content, or quality of the positive law is irrelevant. Thus, by positivism, law's goodness or morality is immaterial so long as the law came into being through the prescribed lawmaking process.[104]

However, it seems that in general but especially for the purposes of the rule of law, the character, content, quality, goodness, and morality of a law are worthy of consideration. Even if it is clear and easy to understand, a positive law may lack sufficient credibility to be a component of the rule of law if the law's provisions are morally unjustifiable. A law issuing from a dictator that disregards or does not account for the welfare, interests, preferences, or aspirations of the generality of the citizens detracts from the rule of law. The *law* that the rule of law model envisages is that law which accords with the proper moral standard that the relevant society and reasonable persons expect. The *law* in the rule of law must not offend a reasonable person's sense of goodness, fairness, and justice. In this connection then the statement of the law alone, or its strict interpretation and application, is not enough to qualify a law as a credible component of the rule of law. More is expected of a law sought to be characterized as such. Such law should be consistent with and further the best interests of the general citizenry to which it applies.

To be useful, law must be able to guarantee basic human needs, including survival. In order to ensure the achievement of this purpose of law, a law must include the minimum content of natural law. It follows that law which oppresses a majority of its citizen-subjects while serving the narrow interests of the influential elite members is not good enough as a constituent of the rule of law. Indeed, if the law of a society is at variance with the society's general morals, and oppresses the majority of the citizens, it is expected that the law will soon lose its authority and capacity for justice and social control. To be sustained over time, the law of a society must reflect enough of the population's moral standard that the citizens would consent to and follow the law. However, since a society's morals change over time, it is unreasonable to expect the society's law to reflect all such changes. Rather, to become stable and continue as a credible justice and social control instrument, the law of a society must be reasonably in line with the general citizenry's moral standard.

It is noteworthy that sometimes the moral standard of the majority in a society may not be beyond reproach. Just because the majority of the members of a society uphold a particular moral standard does not mean that the standard is good enough to regulate all persons in the population. To be applied to all the members of a society, the moral standard of the majority has to satisfy an important condition: the moral standard must extend "minimal protections and benefits to all within [its] scope".[105] If not, then although it is a standard held by the majority, it is not a proper moral standard. Such was the situation in the Slavery and Racial Discrimination eras in the USA. In both times, the official laws of the majority European (White) population approved of the immoral behaviors (that is, enslavement and racial subjugation, respectively) towards Africans.

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[103] J. Austin, *The Province of Jurisprudence Determined*, *op. cit*.

[104] *Ibid*.; H. Kelsen, *General Theory of Law and State*, 1945, Cambridge, Massachusetts, USA: Harvard University Press; L. Fuller, "Positivism and Fidelity to Law" in 71 *Harvard Law Review*, 1958, p. 630; H. L. A. Hart, "Legal Positivism and the Separation of Law and Morals" in 71 *Harvard Law Review*, 1958, p. 598.

[105] H. L. A. Hart, *The Concept of Law*, 1961/1997, *op. cit*., p. 200.

Law's aim ought to be more than citizen control by all means. A good law aims to advance the legitimate interests of the citizens while regulating their behaviors. In this connection, Nonet and Selznick's[106] analysis of law as potentially a "progressive" instrument is relevant. According to Nonet and Selznick,[107] the least progressive type of law is *repressive law*, followed by *autonomous law*, and finally the most progressive *responsive law*. Accordingly, of the three options, *responsive law* seems to be the most justifiable type of law on grounds of morality. Therefore, *responsive law* most accords with the aspirations of the rule of law.

In line with the UN definition of the rule of law[108] as well as the ten criteria of the rule of law discussed above, the doctrine applies to the form (process) as well as the substance (contents) of a system. Thus, Craig[109] distinguishes between "formal and substantive conceptions of the rule of law." *Formal conceptions* deal with the following questions: Was the lawmaker authorized to make the law? By what procedure was it made? Is the law sufficiently clear? etc. *Substantive conceptions* dwell on this main question: Are the contents of the law good (comply with fundamental rights based on the rule of law) or are the contents bad (do not comply with those rights)? There is also Tamanaha's[110] "alternative rule of law formulations," which reflect the formal/substantive divide. Understanding the rule of law and its application begins with a consideration of the source(s) of a law sought to be applied. In considering the rule of law, it is tempting to overlook the lawmaking process and concentrate instead on the law's interpretation and application. Laws that regulate human relationships in a society are either made contemporaneously with those relationships or discovered (from the past or another society). However a law comes into being, it is essential to consider the genuineness of the law's source and process, as well as its substance, to establish or deny the law's credibility as a legitimate social control instrument.

A law's source and process are reflected in its lawmaking. As the UN definition and other interpretations show, *source* and *process* are crucial ingredients of the doctrine. The lawmaking component requires a credible role for the citizens in fashioning the laws that apply to them. As in the implementation of their laws, the citizens should have a credible part in the formulation of the laws that regulate them. Where this does not happen, the citizens may ignore or reject the law. Direct citizen participation (by every citizen) in lawmaking is the purest form of citizen involvement in lawmaking. However, that would be impossible or too difficult to achieve in a modern State. Therefore, indirect participation (which allows the citizens to participate in lawmaking through their elected representatives) is the best alternative. Indirect participation can be valuable if the process for choosing the representatives is credible.

Various government systems allow the citizens of different countries to participate indirectly in making the laws that govern them. Examples include the British and Japanese parliamentary cum

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[106] P. Nonet, and P. Selznick, *Law & Society in Transition: Toward Responsive Law*, 2001, New Brunswick, USA: Transaction Publishers.

[107] *Ibid.*; see also Nọnso Okafọ, *Law & Society in Transition: Toward Responsive Law* (book review) in *International Criminal Justice Review, 16, 3*, December 2006, pp. 202-204.

[108] "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General" *United Nations Organization, op. cit.*

[109] P. Craig, "Formal and Substantive Conceptions of the Rule of Law" in *Public Law 467*, 1997.

[110] Brian Z. Tamanaha, *On the Rule of Law, op. cit.*, p. 91.

monarchical systems, the representative democracies of the United States presidential system, and the Indian parliamentary system. In each instance, the adult law-abiding citizens are constitutionally entitled to contribute in choosing their representatives in the lawmaking process, or even to become those representatives. However, the form of lawmaking that complies with the rule of law should not be a matter of the designation assigned to a government. Rather, it is to be determined by the behaviours of the government towards the needs of its people, and with reference to internationally accepted standards, such as the UN rule of law guidelines. Thus, where a State claims to be democratic, the genuineness of the citizens' participation in their lawmaking process is important. As already mentioned, due to the difficulty or impossibility of direct participation by all the citizens, indirect participation is the realistic option. However, the following issue must always be determined: what is the quality or genuineness of the citizen participation?

For the citizens to be said to have truly participated in their lawmaking, the process for electing the representatives must be widely accepted as legitimate and unassailable, and the results must reflect the people's choices. A compromised electoral process cannot produce genuine representatives of the people. "Representatives" who assume lawmaking positions on the basis of a flawed election have thus seized their positions illegally. They become an illegitimate legislature. Many elections into local, state, and federal offices in Nigeria have been overturned by the courts since the return to civilian rule in 1999. These judicial decisions strongly suggest that the legislatures, for instance, do not truly represent the people.[111]

Laws that result from an illegitimate legislature can neither credibly found nor advance the rule of law. Consequently, such laws do not qualify as laws of a rule of law society. The laws of a

[111] See I. Ezekwere, "Sixth Nigerian State Election Overturned for Fraud", *REUTERS*, January 18, 2008, available at: http://uk.reuters.com/article/idUKL1871187020080118, accessed October 8, 2010; "Nigeria Court Annuls 11th State Governor Election", July 25, 2008, accessed October 8, 2010; *South African News*, http://www.polity.org.za/article/nigeria-court-annuls-11th-state-governor-election-2008-07-25, accessed October 8, 2010; "Nigerian Court Annuls Southwest State Governor Vote", *REUTERS*, February 17, 2009, http://www.reuters.com/article/idUSLH17859; "Nigerian State Election Overturned for Fraud", March 20, 2008, accessed October 8, 2010, http://dalje.com/en-world/nigerian-state-election-overturned-for-fraud/133760; M. Adeyemi, et al. "Fayemi Takes Charge in Ekiti Today" in *The Guardian*, October 16, 2010, http://www.guardiannewsngr.com/index.php?option=com_content&view=article&id=26147:fayemi-takes-charge-in-ekiti-today&catid=1:national&Itemid=559; A. Aliu, S. Olumide, and K. Obiagwu, "Court Sacks Uduaghan, Orders Fresh Poll in Delta" in *The Guardian*, November 9, 2010, http://www.guardiannewsngr.com/index.php?option=com_content&view=article&id=28757:court-sacks-uduaghan-orders-fresh-poll-in-delta&catid=1:national&Itemid=559; T. Amokeodo, et al., "Appeal Court Sacks Uduaghan" in *PUNCH*, November 10, 2010, http://www.punchng.com/Articl.aspx?theartic=Art20101110461410; E. Aziken, et al., "Court Nullifies Uduaghan's Election" in *Vanguard*, November 9, 2010, http://www.vanguardngr.com/2010/11/court-nullifies-uduaghans-election/; "Maurice Iwu, Ayoka Adebayo Slammed as Court Declares Fayemi Ekiti Governor" in *Sahara Reporters*, October 15, 2010, http://www.saharareporters.com/news-page/maurice-iwu-ayoka-adebayo-slammed-court-declares-fayemi-ekiti-governor; C. Ndujihe, and D. Akinyemi, "Ekiti: How Fayemi Became Governor" in *Vanguard*, October 16, 2010, http://www.vanguardngr.com/2010/10/ekiti-how-fayemi-became-governor/; N. Odebode, and A. Oni, "Kayode Fayemi: Tortuous Trek to Justice" in *PUNCH*, in October 16, 2010, http://www.punchng.com/Articl.aspx?theartic=Art20101016435793; L. Olanrewaju, "Appeal Court Sacks Oni, Declares Fayemi Duly Elected Governor" in *Daily Sun*, October 16, 2010, http://www.sunnewsonline.com/webpages/news/national/2010/oct/16/national-16-10-2010-001.htm

rule of law-based legislature should, among other things, protect the citizens' rights to participate in their lawmaking.

5.2. Experiences and Limitations of the Western Doctrine of Rule of Law

The several exceptions to the rule of law identified in the last section show some of the doctrine's limitations as a justice and social control model. As an example, discretion is a major limitation on the rule of law.

What is discretion in law and justice? What are the proper parameters for applying discretion within the strictures of *certainty* in the rule of law? Discretion in a justice system is "a situation in which an official has latitude to make authoritative choices not necessarily specified within the source of authority which governs his decision making".[112] In the specific area of criminal justice, the agents and the discretions exercised by them are identifiable, thus:

> In criminal justice organizations staff have broad discretionary powers to invoke the criminal process or to send a suspect or offender on to the next stage. For police, the power is to arrest or not to arrest. Prosecutors exercise broad discretion in the charging decision, and judges have wide latitude in managing the judicial process and in sentencing. In corrections, probation officers, prison staff, and parole officials exercise discretion over program placement, penalties for rule infractions, and release.[113]

To illustrate the pervasiveness of judicial discretion, civil as well as criminal court judges have and exercise significant latitude in interpreting and applying laws even in spite of *stare decisis*. Often, the exercise of discretion goes beyond adjusting the law to do justice in a case (*individualization*). According to legal realists, the higher level of judicial discretion involves *judicial lawmaking*.[114] Judicial lawmaking includes a situation in which a judge devises or formulates a legal principle to address an aspect of a case before the court because the legislature has not provided a law for the issue. To the extent that no legal system is capable of anticipating and creating specific legislative provisions to address all possible issues in a society, *judicial lawmaking* seems inevitable and necessary, provided that it is done prudently. However, judicial lawmaking has been challenged as *ultra vires* judicial authority and dangerous for a free society where lawmaking is the province of the elected representatives of the people.[115]

In addition to the police, prosecutors, judges, and corrections personnel, many other officials exercise various forms of discretion in their day-to-day functions in the course of justice. It is necessary to bear in mind that besides government justice officials, there are numerous private sector organizations and individuals that contribute to the justice process. Often, their roles are invaluable to the police, prosecutor, defense attorney, judge, corrections personnel, etc. As an example, a private security organization that protects its employer's life and property or a community watch group that secures the community because the official police cannot be in

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[112] B. Atkins, and M. Pogrebin, *The Invisible Justice System: Discretion and the Law*, 1981, Cincinnati, Ohio, USA: Anderson, p. 1.
[113] S. Stojkovic, et al., *Criminal Justice Organizations: Administration and Management*, 2003, Belmont, California, USA: Thomson Wadsworth, p. 309.
[114] See examples O. W. Holmes, *The Common Law*, *op. cit.*; O. W. Holmes, "The Path of the Law", *op. cit.*; R. Pound, "The Call for a Realist Jurisprudence" in *44 Harvard Law Review*, 1931, p. 697.
[115] See H. L. A. Hart, *The Concept of Law*, *op. cit*., pp. 272-276.

every location to prevent or stop a crime, is contributing immensely to the course of law and justice. And, in doing so, each of the private contributors must exercise discretion.

As important as discretion is in a justice system, there is an important argument against it. Some critics view the exercise of discretion as evidence of lack of control. They take the position that discretion amounts to "decision making unfettered by constraints of law or policy".[116] To the extent that discretion extinguishes or dilutes law's capacity to control a justice official's decisions and conducts at all times, discretion raises concern. For example, discretion allows a police officer to decide whether or not to arrest a crime suspect. This important decision – which "controls the gate to the entire criminal justice system"[117] – depends on the (reasonable) assumptions of the police officer. Moreover, discretion can lead to illegitimate and corrupt behaviour by a justice official due to the lack of specificity in the relevant laws. Consequently, supervising authorities in the justice system have taken steps to counter possible abuses of discretion. For example, there is a major requirement in the courts that every exercise of discretion must be *reasonable*. This means that the decision must be such that a prudent person similarly situated as the decision maker would make. There must be verifiable facts and other circumstances that support the decision. A decision maker's preference is not necessarily reasonable. For a preferred decision to be reasonable, the facts leading to the decision and its other circumstances must support the decision.[118] In our hierarchical court structure, for example, a superior court is authorized to assess and pronounce on the reasonableness of an inferior court's exercise of discretion.

However, notwithstanding the drawbacks of discretion, it is an inevitable and useful tool in a justice system. In reality, it is impossible to manage many similar cases similarly. Even similar cases are likely to be different in important respects. The differences may be within the facts of the cases or due to relevant events in the larger society. If justice is to be done, and scrupulously seen to have been done, the applicable differences ought to be recognized and addressed to the extent possible and reasonable. Moreover, overall, a justice system is dynamic. Thus, the system often makes changes to the substance of the laws and justice as well as the relevant procedures. As such, a justice system makes various adjustments in the course of making, interpreting, applying, and enforcing laws to cases. Many of the changes are minor – these adjustments are made merely to accommodate specific details arising from the circumstances that the law or lawgiver did not foresee. Sometimes, however, significant changes are called for to ensure that justice is achieved. As indicated earlier in this lecture, it is important to note that a call for *flexibility* (minor or major) in a justice process is not an excuse for malicious or capricious conduct or other kind of abuse by a justice official.

Discretion should be employed and used only to the extent reasonably necessary and clearly discernible to the average citizen. The test is whether a reasonable person similarly situated as the official that exercised the discretion and armed with the facts of the case at issue and its circumstances would manage the case in the same or similar manner as the official has managed it. If "yes," the exercise of discretion is consistent with the rule of law. If, on the other hand, the

[116] M. R. Gottfredson and D. M. Gottfredson, *Decisionmaking in Criminal Justice: Toward a Rational Exercise of Discretion*, 1980, Cambridge, Massachusetts, USA: Ballinger, p. 350.
[117] S. Stojkovic, et al., *Criminal Justice Organizations: Administration and Management*, *op. cit.*, p. 310.
[118] G. O. S. Amadi, *Police Powers in Nigeria*, 2010, Nsukka, Nigeria: Afro-Orbis Publications.

answer is "no," then the show of flexibility amounts to an abuse of the process and/or substance of the rule of law. Jurists agree that a person exercising discretion must be able to "discern by the right line of law, and not by the crooked cord of private opinion which to the vulgar is discretion".[119] Where a decision-maker employs extraneous matters in the exercise of discretion, he would be said to have acted based on "a crooked cord of private opinion", thus not taking relevant facts into consideration in the exercise of discretion.[120] No court or public official can act in any manner he deems fit in the name of exercising discretion. If that happens, the courts will interfere with the alleged exercise of discretion. For this reason, the Supreme Court has held: "where the trial court based its exercise of the discretion on matters extraneous to the issues before him, or failed to take relevant facts into consideration, the exercise of the discretion will not be bona fide and this court will be entitled to interfere."[121]

Moreover, an acceptable form of flexibility would show that the justice official exercises discretion consistently, that is, handles similar cases similarly, rather than making inconsistent changes to a law that is precise. Finally on discretion as limiting the rule of law, a justice official's handling of a case is expected to be consistent with the official actions and omissions of peer justice officials as well as the directives by superior courts.

Aside from the limitations imposed by discretion, the experiences of diverse countries seeking to follow the rule of law help to expose other constraints on the doctrine. These constrictions are more glaring in less developed countries, which are yet to reconcile and stabilize their diverse citizenry around a common national purpose and rule of law after decades of foreign colonization, suppression, and exploitation. Nigeria is an example of these countries. With a population of approximately one hundred and eighty million citizens, over two hundred and fifty ethnic nations, varied cultures and religions, Nigeria struggles with the challenges of building a rule of law society to replace primordial allegiances that predated the British colonization that ended on October 1, 1960. After independence in 1960, Nigeria made several failed attempts to establish a rule of law-based society. The latest and ongoing effort (since 1999) has so far produced mixed results, at best. Average Nigerians feel alienated from the State, especially because the rulers have been able to manipulate their ways to power regardless of the people's votes at elections (see the long list of decided cases referred to in the previous section). Also, the rulers appear unconcerned about the welfare of the citizens, which means that the leaders typically operate with impunity. In these circumstances, the contemporary Nigerian State is neither organized nor run on the basis of the rule of law.

Several fundamental issues militate against achieving or observing the rule of law in Nigeria. Lack of discipline in official government business, low level of self-control by public officials (as well as many other citizens), widespread poverty in the midst of substantial State wealth, degraded or absent infrastructure, corruption and the culture of expectation (even a public official hired and paid with public revenue to perform public services expects each citizen that

[119] Coke on Littleton, 2276, quoted in G. O. S. Amadi, *Police Powers in Nigeria*, *ibid.*, p. 19.
[120] *Milton O. Ohwovoriole v. Federal Republic of Nigeria and Ors.* (2003) 1 F.R. 171, per U. A. Kalgo, JSC, at p. 183.
[121] Ibid.; *Bank of Baroda v. Mercantile Bank (Nig.) Ltd.* (1987) 3 NWLR (Pt. 60) 233; *Bakare v. A. C. B. Ltd.* (1986) 3 NWLR (Pt. 26) 47; *Gadi v. Male* (2010) 7 NWLR (Pt. 1193) 225; *Mohammed v. COP* (1999) 12 NWLR (Pt. 630) 331; *Re Alase* (2002) 10 NWLR (Pt. 776) 553; *U. B. N. Plc. V. Adjarho* (1997) 6 NWLR (Pt. 507) 112.

requires the services to pay separately for each assistance rendered), and public claim to religiosity are readily identifiable in this regard. The identified issues ensure a Nigerian society in which the rule of law is substantially absent notwithstanding that the country's Constitution and laws profess adherence to the doctrine.[122]

Also, in Nigeria kinship, ethnic, regional, and other familial ties remain strong, but sometimes they threaten the rule of law in the country. Certainly, these ancestral bonds often lend themselves to positive uses. The concern is that they divide the people as well. This works against a common rule of law. In those situations where these links are misused to impede national cohesion and the creation and maintenance of a universal rule of law standard for the country, they should be identified and addressed as obstacles to the enthronement of a just modern society. So far, Nigeria has not done this. Further, nepotism as a form of corruption takes away from the ideal rule of law in Nigeria. However, where, as is the case in Nigeria, the State requires preferential treatment for some citizens, this creates State-sanctioned mediocrity. This occurs when an official law or other policy requires, mandates, or encourages discrimination or favouritism on factors such as ethnic, regional, or similar considerations. Inevitably, such a law or policy puts excellence at a disadvantage. Even if it was unintended, the Nigerian Constitutional "federal character" requirement in appointments to all manner of offices has the effect of favouring some Nigerians on such grounds as ethnicity, over others. This is especially so because typically, to succeed in any of those offices, a person occupying it has to possess significant expertise or knowledge of the tasks to be performed by the officeholder. It is difficult to understand how a citizen's ethnic grouping adds to Nigeria's development. Instead, the Constitutional requirement seems to create an unequal environment for the citizens, which will lead to the country's regression. Thus, the absence of equality among the citizens in the various pursuits compromises the rule of law.

Law enforcement is another area in which rule of law violations are rife in Nigeria. Specifically, selective enforcement of the law threatens the rule of law in the country. Selective enforcement is the action or omission of a leader or justice official who unlawfully picks and chooses which law (including statutes, judicial decisions, other court orders, etc.) or aspect thereof to prosecute, apply, or enforce, against whom, to what extent, when, where, etc. A leader or justice official that indulges in selective enforcement is faithful to some provisions of the law but not to others. But, a leader or justice official should not take advantage of the aspects of a law that he or she likes nor suppress those portions of the law that are not so appealing. A leader or official who selectively complies with preferred aspects of a law is fundamentally dishonest and untrustworthy. No excuse can be made that such a person is merely complying with those aspects of the law that are good. An honest leader or official should follow the laid down legal procedures and work to change a bad law instead of taking selfish advantage of the same.

There are many instances of selective adherence to the rule of law in the post-military civilian governments of Nigeria (1999-present). During the Goodluck Jonathan presidency, there was the case of the President of the Court of Appeal (PCA). The then PCA, Justice Ayo Salami, had an open disagreement with the Chief Justice of Nigeria (CJN), who heads the Supreme Court, at the time Justice Katsina Alu. The PCA accused the CJN of attempting to influence the PCA to empanel a governorship elections tribunal favorable to the CJN's interests. The National Judicial

[122] D. Anele, "The Vicissitudes of Justice in Nigeria (1)", *op. cit*.

Council (NJC), which is constitutionally empowered to regulate the Judiciary, claimed to have investigated the allegation. The NJC concluded that the PCA falsely accused the CJN. The NJC further directed the PCA to apologize to the CJN. When the PCA failed to apologize, the NJC recommended to President Jonathan that the PCA should be suspended. The President promptly accepted the recommendation and suspended the PCA indefinitely. After several months and further inquiries into the matter by various committees, the NJC reversed itself and resolved to reinstate the suspended PCA. However, for months, President Jonathan has refused to reinstate the PCA on the ground that the case is *sub judice*. What is selective about President Jonathan's enforcement decision is that although he refuses to reinstate the PCA on *sub judice* ground, he had promptly[123] suspended the PCA in spite of the fact that the same *sub judice* condition existed at the time. Viewed against his refusal for months to reinstate the PCA, the speed with which the President accepted the recommendation and issued the suspension order suggested that he had unlawful interest in the matter.

Despite the advantages of the rule of law, the experiences of applying the doctrine in developing societies reveal its shortcomings and challenges, hence the need to take seriously the contributions of other means for improved social control.

5.3. Contributions and Limitations of the Alternative Models

As demonstrated so far in this lecture, the rule of law offers an opportunity to create a just, stable, and progressive modern State. The doctrine can be used to establish and run a predictable environment to accommodate and respond to the competing needs of the diverse citizenry of the State. To appreciate the importance and suitability of the rule of law for a just and progressive society, one should consider the alternative justice models. Among the decipherable alternatives, the rule of law may be the fairest and most sustainable, especially if the goal is to build and maintain a credible society for the present time and long into the future, in which the citizens and outsiders will be free within the parameters of broad based law. However, the challenge lies in the proper implementation of the rule of law in specific populations. In a developing country, such as Nigeria, the shortcomings of the rule of law are particularly apparent because of the long-established indigenous processes and structures and the significant alternative they offer to the Western-style rule of law.

Notwithstanding its advantages and possibilities, the rule of law is not the only model for justice and social control. Several alternative models can contribute greatly to building and sustaining a just, stable, and progressive society. Law lacks the capacity for justice and full social control of a society without contributions from the other models. As Twining[124] points out, "law is not the only institution that contributes to social ordering." In some societies, several or all of the alternative models, particularly custom and tradition, contribute greatly to justice and social control. The alternative models include the rule of personality, the rule of community, the rule of custom/tradition, the rule of experts, the rule of religion, etc.

[123] In fact, ostensibly to avoid any delay in removing the PCA from office, the President had issued the suspension order on a weekend, soon after the NJC recommended it.
[124] B. Twining, *General Jurisprudence: …, op. cit.*, p. 335.

The *rule of personality* refers to a control system in which relationships and cases are managed on the basis of an individual's ideas and preferences. The person – typically the leader of the society concerned – determines the substantive and procedural rules that govern the group members. The leader may delegate relevant duties to group members, however, he or she holds the ultimate authority in the society. In reality, the rule of personality equals dictatorship. A dangerous aspect of the rule of personality, such as the Nigerian examples under various military rulers in the mid-1960s to the late 1990s,[125] is that the rule of personality is too unpredictable to guarantee justice, meaningful social control, or stability. Rule of personality standards are subjective and vary with a change in the mood of the person in charge. In particular, the expiration of the ruler highlights the subjectivity and idiosyncrasies inherent in this form of social control. Often, when a different personality takes over a society at the end of its previous ruler, fundamental changes are needed to suit the new persona.

The *rule of community* relies on the collective members of a community to manage and determine issues. Ideally, wide consultation and consensus would be necessary in the circumstance; all the community members would be expected to participate in managing each case. However, this is highly unlikely. Therefore, the rule of community is almost always unrealizable.

The *rule of custom/tradition* is a control system predicated on a society's customs and traditions. Considering that customs and traditions are typically unwritten, the society routinely relies on its elderly and knowledgeable members to provide guidance in cases; in doing so all the members of the society are educated on the customs and traditions.

In a *rule of experts* society, specially trained and/or experienced persons govern the people. The rulers control the society by drawing on their unique knowledge to determine the people's rights and obligations.

For the *rule of religion*, the precepts of a particular religion(s) govern the affairs and relationships among the members of the society concerned. In this circumstance, the chosen religious doctrine is supreme to all other rules. Similarly, the doctrines of the excluded religions are subject to the chosen doctrine.

Each of the alternative models to the rule of law promotes the justice viewpoint of the controlling person or group. In *rule of community*, *rule of custom/tradition*, *rule of experts*, or *rule of religion*, the relevant group's perspective dominates. If the elements of the group's view are credible, effective, and efficient, they would serve the people well and promote the best interests of the general citizenry, not just those of the controlling group. In such a situation, the citizens would identify with and support the group's control. This is a basis for differentiating between credible customs and traditions, which enjoy the people's support, and those that the citizens ignore. However, since each alternative to the rule of law is structured to achieve justice by means of a set standard, defined, sustained, and applied by a specific person or group in society, its idiosyncratic nature risks uncertain, inconsistent, and narrowly defined principles and applications in the justice process. On the other hand, the rule of law – if correctly applied with

[125] In the thirty-two-year period, Nigeria experienced eight military rulers, one elected civilian leader, and one appointed civilian head of state. For Nigerians, military dictatorship became *normal* rather than aberrant.

full accommodation for the society's ideas, beliefs, and expectations, rather than just the ideas, beliefs, and standards of the dominant Western thoughts – should ensure justice and proper social control even in a developing nation.

Thus, in spite of its useful contribution to justice and overall social control, each of the alternative models suffers from a crucial limitation: it may work well in a homogenous society, but lacks the capacity to govern a heterogeneous modern State. In a homogenous society, the people's beliefs, norms, and expectations are so similar that it is easy to agree on a common procedure and content of laws as well as interpretation and enforcement schemes for the population. A mixed society requires extensive consultations and negotiations for a chance at an agreement among the diverse citizenry. The characteristic diversity of a modern State means that the alternative models may not succeed in the State. Nonetheless, the alternative models can contribute substantially to social control in a modern State. In the State – with its numerous diverse characteristics – the rule of law appears to best insure the interests of the people because of this model's potential to reach across parochial lines. However, while I am aware of the limitations of the rule of law, legal supremacy, rather than the supremacy of any of the alternatives, should guide justice and social control in a modern State.

6. The Pre-Eminence of Grounded Law

The preceding examination of the behaviour control methods in Nigeria reveals the importance of building the country's criminal justice system and crime control in particular on the citizens' values. This should mean that above other (foreign) systems and models, the homegrown systems and ideals should prevail. Thus, grounded law is shown to be relevant and in fact pre-eminent among the alternative behaviour control models:

> … the body of the indigenous laws, customs, and traditions of a society is relevant. However, hitherto, *customary law*, *native law*, *aboriginal law*, or *indigenous law* (also called *custom*, *tradition*, etc.) has been used pejoratively to imply that the original law of a colonized society is inherently inferior to the law of the colonizer. For avoidance of doubt, Western societies (Europe and America) are the colonizers, while the other parts of the world, especially Africa, are the colonized. The negativity conjured up in the uses of the derogatory terms is widely known, but unjustified. There is no credible or rational foundation for the view that the original law of a society, which law probably dates back millennia, is inferior to the law of a colonizing power. Therefore, to correct the misconception and properly reflect the value of the homegrown legal philosophies, systems, processes, and practices of former colonies, such as those in Africa, … the name *Grounded Law* [is offered] to replace *Customary Law*, *Native Law*, *Indigenous Law*, and similar labels. *Grounded Law* reflects the homegrown quality of the original law of a society as distinct from the foreign law applied to the society, such as that imposed on Africa through colonization.[126]

Thus, *grounded law* is the proper foundation for an effective, efficient, and credible criminal justice system in a society. In particular, crime control in the population will meet with limited effectiveness and efficiency if it is not *grounded* on the people's customs, traditions, and history.

It should be pointed out that the rule of law and the alternative rules are not mutually exclusive. They may be present in a society at the same time. For instance, many of the provisions of the

[126] Chukwunọnso Okafọ, *Grounded Law: Comparative Research on State and Non-State Justice in Multiple Societies*, 2012, Nigeria and United Kingdom: Wildfire Publishing House, p. xix; see also Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit*., pp. 7-8.

rule of religion may co-exist with the provisions of the rule of law. Moreover, in some respects, the different *rules* overlap. Consequently, differentiating between religious rules and customary rules may be difficult, if not impossible. Further, a rule of religion will become a rule of law provision once the law incorporates the former such as through formal legislative action. Similarly, notwithstanding questions about its "law" quality,[127] a custom or tradition will become a component of the rule of law once a legislature formally enacts the custom or tradition or it is adopted through an official judicial decision.

Having recognized that law is a limited justice and social control model, it is also important to acknowledge that the specific attributes of the law of a society are critical for measuring the law's capacity to regulate the people. A society's law should be designed to extract behaviours that accord with the people's standard of conduct. Law is only as good as its capacity to obtain compliance. Regardless of its length and breath, or its claim of superiority, every law – and legal system – contains many lacunas. The gaps mean that law does not address all the issues that may arise even within the specific subject covered by a statute or other legal authority. Thus, many related issues need to be regulated outside the law. Also, despite the fact that laws generally stipulate punishments and penalties (criminal law) and denial of legal approval, such as in the case of a contract entered into contrary to law (civil law),[128] these legal consequences are not sufficient to compel full compliance. These examples mean that no law is capable of compelling full compliance by all the citizens.

However, full compliance with the law will be achieved when legal control merges with community, customary/traditional, experts, and religious controls, as well as individual self-control. Maximum social control will be present in a society where the citizens conduct themselves in ways that are consistent with the statements of the law even if they do so for other reasons (such as custom, tradition, religion, etc.). And this position is strengthened if the official system is incapable of detecting and punishing law violators, as the Nigerian system often is. In many modern States, including Nigeria, where postcolonial State laws are often at variance with the people's cultures, customs, traditions, etc., the citizens frequently conduct themselves in line with their indigenous standards and beliefs in spite of State law.[129] It is trite that law alone (without other social control means) is inadequate for effective and efficient social control in a society; indeed, law depends on the other means: "The traditionally assumed relationship [between law and social order] gets things precisely upside down. It is state law that is dependent on these other sources of social order if it is to have a chance of exerting an influence".[130]

To "have a chance of exerting an influence" on a society's social control, law has to be widely accepted by the citizens. However, law may lack the extensive acceptance enjoyed by culture, tradition, custom, etc. In such a situation, law alone lacks the capability to provide the effective and efficient levels of social control desired for an ordered society. Thus, law needs inputs from

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[127] H. L. A. Hart, *The Concept of Law, op. cit.*; D. J. Bederman, *Custom as a Source of Law, op. cit.*

[128] H. L. A. Hart, *The Concept of Law, ibid*.

[129] E. E. Uwazie, "Indigenous Disputing and Legal Interactions Among the Ibos of Eastern Nigeria" in *Journal of Legal Pluralism and Unofficial Law, 34*, 1994, pp. 87-103; Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: …, op. cit.*; *Law and Justice in Post-British Nigeria: ..., op. cit.*; *Reconstructing Law and Justice in a Postcolony, op.cit.*

[130] B. Tamanaha, *A General Jurisprudence of Law and Society, op. cit.*, p. 224; see also William Twining, *General Jurisprudence: …, op. cit.*, p. 335.

the other justice and social control models. To one degree or the other, each of the alternative social control forms has unique ingredients and strengths to help in building and sustaining a law and order-based society. The contributions from these models will complement law. As an example, each of the various religions in Nigeria – as in other countries – goes a long way in checking the behaviors of its adherents. These checks are independent of the country's laws. This means that religious followers adhere to the rules of their respective religions whether or not State laws have the capacity to coerce obedience. Thus, a religious adherent may tailor his behaviour in accordance with his religion even if he believes or suspects that the formal criminal justice authorities are incapable of identifying and/or punishing him for a criminal violation. Similarly, a tradition-minded Nigerian is likely to model his behavior in line with the relevant traditional standard, even if he is unlikely to be identified and sanctioned by the formal State criminal justice system.

Having conceded that sometimes the norms of religion, tradition, and other alternative justice and social control models are restricted and derogate from the standard of a modern, heterogeneous, law and order-based society, it is worth emphasizing that these alternative justice models contribute positively in other ways. Their contributions are predicated mainly on the fact that they enjoy the confidence of many citizens who would otherwise disobey or avoid the formal law, perhaps for lack of trust for State institutions and personnel. Moreover, since different beliefs about justice are bound to produce different methods for achieving justice,[131] it comes to this: Considering that custom, tradition, religion, etc. are indispensable for effective and efficient justice and social control of a modern State, particularly a developing nation, these alternative models are parts of the country's rule of law. Thus, the rule of law of a modern State is grounded on the country's formal State law as well as the relevant, verified (or verifiable), legitimate, and broadly accepted and used informal laws (custom, tradition, religion, etc.) that legitimately regulate relationships among the people. In such a situation, the society's rule of law, properly called, is *grounded* on the society.

The correct position then is that while accommodating the universal characteristics of the rule of law, the doctrine should be grounded on the society to which it is applied. It is expected that in a society based on the rule of law, the legal/justice system encompasses the various role-playing institutions and their principles. Considering the indispensable roles of the various models of justice in society, it is imperative to view, interpret, and apply the rule of law broadly. For this purpose, the *rule of law* should be regarded as a convenient expression that includes aspects of the *rule of custom*, the *rule of tradition*, the *rule of religion*, etc. This means that the rule of law can neither sensibly nor logically be regarded as an idea based merely on Kelsenian[132] pure legal principles. Similarly, the rule of law transcends the Austinian[133] command theory. The same goes for the other jurisprudential explanations of law. Well beyond the dictates of (formal) law, the rule of law embodies the relevant, verified (or verifiable), legitimate, and broadly accepted and used forms of social control in a society. Legitimate social control is much broader than that provided by narrowly defined formal or government-sanctioned "'law". Thus, customary law qualifies as a component of the rule of law, even if it does not issue from a sovereign authority or

[131] C. Hand, J. Hankes, and T. House, "Restorative Justice: The Indigenous Justice System" in *Contemporary Justice Review, 15, 4*, 2012, pp. 449-467.
[132] See H. Kelsen, *General Theory of Law and State*, *op. cit*.
[133] J. Austin, *The Province of Jurisprudence Determined*, *op. cit*.

is unwritten. Similarly, the customary law remains a legitimate component of the rule of law even if the customary law's validity depends on the morality of its principles.

Therefore, the complementary roles of law, custom, tradition, religion, and other methods of social control in society are undeniable. The *rule of law* should not be understood as rule by law alone. Rather, it is rule by law and other relevant justice models. For comprehensive, effective, and efficient justice, as much of the alternative rules as necessary should be included in a modern State's social control arrangement. These would produce a control system based on *grounded law*.

7. Toward Grounded Law as the Basis for Nigerian Criminal Law and Criminal Justice Administration

This section of the lecture examines the many aspects of the Nigerian criminal justice system (CJS)[134] where grounded law is applicable, the various ways in which it applies to the CJS, and the values/benefits of the applications. The following analysis shows that grounded law is applicable to all the stages of the CJS and that there is great benefit to be derived from such applications. The Nigerian CJS is made up of three broad agencies, namely: Judiciary, Law Enforcement/Police, and Prisons/Corrections. Accordingly, the discussion here on the case for and the impact of grounded law on the Nigerian CJS is done under the three identified agency headings.

7.1. Judiciary

7.1.1. The Philosophical Foundation of Nigerian Criminal Law and Criminal Justice Administration Should be African Jurisprudence and Restorative Justice

The African philosophy of law and justice differs significantly from the Euro-Western perspective. In numerous respects, the African legal and justice values and actions are unique and diverge from those of the West as well as those of other peoples of the world. Key features of African jurisprudence are couched and identifiable in the *restorative justice* subspecialty with its many elements. This distinct and unique African paradigm notwithstanding, colonial adventurers forced or misled various African societies into accepting, adopting, and following the Euro-Western legal theory as packaged and delivered to Africa.

In the colonial era, the colonists and their local agents maintained the acceptance, adoption, and following through a combination of brute force, trickery, and other forms of manipulation of the indigenous population. In the modern, postcolonial African State, such as Nigeria, the rulers have devotedly maintained the colonial Euro-Western philosophy of law and justice. On the other hand, the rulers have largely ignored or worked against the indigenous models. The

[134] The so-called "criminal justice system" of a country is actually a sub- sub-system. The State (country) is the System. Then there is a part of the System called the Legal/Justice Sub-System. Within the Sub-System, there is found the Criminal Justice Sub- Sub-System (which differs from the Civil Justice Sub- Sub-System). Armed with this understanding, a citizen is able to function better in society. However, for easier reference and identification, criminal justice officials as well as non-professionals readily identify the Criminal Justice Sub- Sub-System as the Criminal Justice System.

actions, omissions, and other idiosyncrasies of the postcolonial African rulers portray many of them more as locally bred colonizers than fellow citizens working to improve the African essence. For the most part, these modern-day colonists rely on the previously imposed foreign criminal jurisprudence to control the citizens. The officiousness of the foreign model, which eminently excludes or grossly limits indigenous participation by the citizens in their criminal law and its administration, manifestly aids the postcolonial governments in Nigeria and other African countries. However, as should be obvious to a discerning mind, Euro-Western legal theory is neither designed for nor capable of proper social control in Africa.

A brief examination of the elements and shortcomings of the Euro-Western criminal justice system reveals its handicaps. These limitations apply in the West, but they are more glaring when the system is applied outside its original environment, such as Africa. In recognition of the shortcomings of the Euro-Western criminal justice system, Zehr[135] observes as follows:

> The Western legal, or criminal justice, system's approach to justice has some important strengths. Yet there is also a growing acknowledgment of this system's limits and failures. Victims, offenders, and community members often feel that justice does not adequately meet their needs. Justice professionals – judges, lawyers, prosecutors, probation and parole officers, prison staff – frequently express a sense of frustration as well. Many feel that the process of justice deepens societal wounds and conflicts rather than contributing to healing or peace. Restorative justice is an attempt to address some of these needs and limitations.[136]

Although he was writing from his North American perspective, Zehr captured many of the broader sentiments towards Euro-American criminal justice.

In Nigeria, the general ineffectiveness of the CJS is well known and acknowledged. The official law enforcement and security agencies (especially the NPF), courts, and other criminal justice agencies are notorious for their inability or failure to identify offenders, process and sanction them appropriately, and generally reduce crime to the barest minimum. The country's official system pays little heed to relevant and credible crime prevention approaches except those touted in the West. All these attest to the devastating limitations suffered by the Euro-Western notions and interpretations of law and justice for the Nigerian society. Yet, many of the criminal laws and criminal justice practices applied in postcolonial Nigeria are rooted in Euro-Western understandings and interpretations. In particular, the styles employed to organize and administer the criminal laws bear little relevance to the indigenous Nigerian philosophy, hence the need to *re-think the philosophical foundation of the Nigerian criminal law and criminal justice administration*[137] and to *decolonize*[138] the country's criminal law. It is illogical to expect these foreign-based criminal laws, crime control, and administrative models to properly serve Nigerians.

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[135] Howard Zehr, *The Little Book of Restorative Justice*, 2002, Good Books, Intercourse, Pennsylvania, USA.
[136] *Ibid.*, p. 3.
[137] C. Okafọ, "African Jurisprudence and Restorative Justice: The Need to Re-Think the Philosophical Foundation of Nigerian Criminal Law and Criminal Justice Administration" in C. G. Nnona (ed.), *Law, Security and Development: Commemorative Essays of the University of Nigeria Law Faculty*, 2013, Snaap Press, Nigeria, pp. 247-286.
[138] N. Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit*.; C. G. Nnona, "Toward the Decolonization of African Law" in C. G. Nnona (ed.), *ibid*, pp. 115-206.

Regarding law enforcement in particular, this lecture makes the case that a prudent approach for criminal justice administration in contemporary Nigeria has to include a rediscovery, adoption, and proper use of the homegrown philosophical principles of crime control. In Nigeria – as in other parts of Africa – these principles draw heavily from the theories and practices of restorative justice. An effective, efficient, and sensible criminal law and justice system in Nigeria should, to the extent possible, rely on and properly utilize the ingrained and verified restorative criminal justice ideals.

7.1.2. African Jurisprudence

African jurisprudence refers to the various indigenous thoughts, models, mechanisms, practices, and procedures for law, justice, and social control among the African peoples. Having thus originated from the various African societies, the thoughts, models, etc. match the life patterns in each society. Although necessary changes have taken place on many of the African ideas, principles, and applications due to the passage of time and other phenomena, the fundamental character of the African jurisprudence is unmistakable. The essential nature of African jurisprudence includes various elements found throughout the justice process in the continent. These elements derive from the African conceptions and applications of *law*, *justice*, and *social control*, and their roles in society. As an example, by the African understanding and interpretation, justice entails doing right on a consideration of all the relevant pieces of information to ensure that the best interests of the community are protected. In general, an individual or narrow interest is subsumed to the interest of the group.

Accordingly, in a study of the Barotse people of Northern Rhodesia (now Zambia), Gluckman[139] found peacemaking to be at the core of the African judicial process. The African justice system is constructed to redress wrongs, fine-tune claims, preserve norms, and prevent the break-up of interpersonal and group relationships.[140] In addition, other research works further authenticate several elements of African jurisprudence, including the following. Law and justice in Africa typically consist in taking steps to achieve justice often after necessary adjustments have been made to the process to ensure a fair and reasonable solution that would advance the best interests of the society, as illustrated in the following:

> The pull and push of Barotse [Zambia] jurisprudence consists in the task of achieving justice while maintaining the general principles of law. This is clearly demonstrated in the fact that while at some time, the judges are compelled to go against their view of the moral merits of cases in order to meet the demand for certainty of law, on the other hand they try to vary the law to meet those moral merits.[141]

Numerous other aspects of African jurisprudence are highlighted here to demonstrate the core differences between African jurisprudence and the latter-day Western ideas in the continent. Consider the following examples. By their republican view and governance style, the Igbos of Nigeria view with suspicion, and even reject, the Western idea of legal positivism. "The legal phenomena in the Igbo country are opposed to the spirit and tenet of legal positivism… They have no standing constituted legislative authority as such either. The people themselves, the

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[139] M. Gluckman, *Judicial Process Among the Barotse*, 1967, Manchester University Press, Manchester, England.
[140] Ikenna Nzimiro, *Studies in Ibo Political Systems: Chieftaincy and Politics in Four Niger States*, 1972, University of California Press, Berkeley, California, USA; also C. Okafọ, *Grounded Law: …*, *op. cit.*
[141] M. Gluckman, *Order and Rebellion in Tribal Africa*, 1963, Cohen and West, London, England, p. 198.

'*Oha*' are the sovereign authority and the legislative authority rests on them."[142] In their jurisprudential outlook, the Yorubas (Nigeria) regard law and morality as inseparable. "Law, in this case, is founded on and intricately connected to morality."[143] And, in Sierra Leone, as in other African countries, the vast majority of the citizens who reside in the rural areas "regard themselves, and actually live their daily lives, as subjects of customary law."[144] Thus, these citizens may adhere more to the tenets of their respective customary laws than the dictates of the official State laws.

Consensus is another important factor in understanding African jurisprudence. The consent of the people, their contributions to the judicial process, and participation in reaching a decision on the issue at hand are useful elements of law, justice, and control in an African society. Consensual decision making and implementation of a decision give credibility to the verdict as well as the process leading to it. In the circumstance, consensual decision making tends to provide a higher level of social control than an imposed order of an official court.

Thus, a major advantage of the indigenous justice process is that, apart from being prompt, relatively cheap, etc., the process provides an avenue for the parties, relatives, and community members to get together, discuss, agree/disagree, and resolve the criminal (or civil) matter at issue. African jurisprudence endears popular participation by the average citizens of a community in their justice system. The activities of the justice system are not reserved for *experts* such as lawyers and judges. Instead, average citizens – either individually or in groups – participate in the justice process.

In Igbo, for example, the avenues for participation include the Age Grade, *Ụmụ Ada* (Daughters of the Community), and a group of titleholders such as the *Ọzọ*. The different segments of society play crucial roles in rule (law) making, administration, application, and enforcement. The wide citizen participation in the justice process increases the credibility of the relevant institutions and the actions emanating from them. And, in recognition of its responsibility for mending fractured relationships and ensuring that no permanent harm is done, African jurisprudence de-emphasizes proof in the judicial process. African jurisprudence also places less prominence on guilt in criminal cases, just as it minimizes labeling conducts in civil cases as either right or wrong. Similarly, the justice system does not consider the allocation of individual rights as paramount. The personal rights of parties are recognized, but those rights generally receive secondary consideration behind the rights and best interests of the community. The system considers the best interests of the parties as well as the other stakeholders and the community, to decide the issues concerned in a case.

Further, African jurisprudence conceives, interprets, applies, and enforces *law* and *justice* broadly. This means that the understanding and uses of the principles and practices of African

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[142] F. U. Okafor, *Igbo Philosophy of Law*, 1992, Fourth Dimension Publishers, Enugu, Nigeria, pp. 90-91.

[143] Idowu William, "Eurocentrism and the Separability-Inseparability Debate: Challenges From African Cultural Jurisprudence" in *The Journal of Pan African Studies*, Volume 2, No. 9, March, 2009, p. 140.

[144] R. B. Thompson, "Due Process and Legal Pluralism in Sierra Leone: The Challenge of Reconciling Contradictions in the Laws and Cultures of a Developing Nation" in C. B. Fields and R. H. Moore, Jr. (eds.), *Comparative Criminal Justice: Traditional and Nontraditional Systems of Law and Control*, 1996, Waveland Press, Prospect Hills, Illinois, USA, p. 347.

jurisprudence are so broad that they include issues that Western jurisprudence, such as the English common law in Nigeria, considers non-justiciable. The Western jurisprudence sense that a non-justiciable matter is not a proper subject for the legal system to address stems chiefly from the conclusion that a judgment obtained on such an issue would be extremely difficult if not impossible to enforce; moreover, in many situations the complainant may have suffered no real injury. As an example, a person who is ostracized from a group (that is, avoided by the other members of the group) is unlikely to succeed against those members in a suit in a formal English-style court because of the difficulty of enforcing a judgment *requiring the other members to not avoid the ostracized*. Unless the ostracized can demonstrably show that the other members have a duty to associate with him, he is likely to fail in an attempt to obtain an official court judgment against them. This is because the court does not recognize ostracism *per se* as litigable. Thus, the official court is likely to decline jurisdiction over such a matter.

However, notwithstanding the apparent futility of a mandatory injunction against the other group members in the scenario above, an indigenous African justice system such as the Igbo system recognizes the ostracism issue as actionable.[145] The indigenous system hears and determines a case stemming from ostracism in part because the system appreciates the need to identify and address minor *grievances* before they grow into (the more serious) *conflicts*, and perhaps further into (the most serious) *disputes*. By responding to ostracism as a grievance, the system arrests a potential social dislocation and source of disharmony in society.

Although African jurisprudence far predates Western law and justice in Africa, Western legal theory has significantly affected – even changed – the African idea. Therefore, in the postcolonial era, *African jurisprudence* necessarily recognizes and accommodates, to the extent warranted, the Western factor. Throughout Africa, the teachings and especially the practice of African jurisprudence takes into consideration the fact of the Western influences, even domination in some legal contexts, on law and justice. With the reality of the Western influences on Africa, in contemporary times *African jurisprudence* should be understood, interpreted, applied, and enforced with the prevailing postcolonial facts in each African society. Nonetheless, contemporary African countries offer many instances of African jurisprudence, based on the specific interpretations, needs, and general circumstances in each country. The examples, many of which are provided later in this paper, offer invaluable avenues and means of regulating the lives of and relationships among the citizens.

7.1.3. Restorative Justice

The meaning of *justice* varies somewhat from one culture to another. Every culture depends on a unique history, religion, experiences, and aspirations to guide the people's idea of justice. Although some principles of justice are common among divergent cultures, the differences are sometimes wide such that a single understanding, interpretation, or application of justice to a given case is not realistic. Thus, justice responses to criminal violations vary among countries and societies or even between geographic jurisdictions in the same country. The reactions are the different ways in which a society addresses a criminal act or omission after the event. In spite of this basic essence, the societal responses present alternative methods, procedures, and foci.

[145] See *Case Number 5* in Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: …*, *op. cit.*, pp. 81-83.

Societal reactions to criminal behavior produce variants of justice including the following. There is *Retributive justice*, which emphasizes balanced response to crime based on lawful and proved evidence. By this approach, penalty is meted out to an offender because it is deserved. Retaliation is a cardinal element of retributive justice. Another variant of justice is *Utilitarianism*. Utilitarian justice is consequential in character. The focus is on the outcome. This means that it looks to the future to determine whether or not a course of action is just. The value of punishment or other societal reaction to crime is gauged by its capacity to accomplish future public advantages to lessen crime. Further, there is *Distributive justice*, which is concerned primarily with the appropriate distribution of material and non-material things among the people and groups in a society. The material and non-material things include positions (such as those in government and public agencies), titles, honours, incomes, participation in economic activities, and wealth.

Then, there is *Restorative justice* – also known as *Reparative justice*. It is a modern-era name for a judicial philosophy, set of principles, and practices for managing an offence by considering a wide range of interests aimed at repairing the harm brought about by the violation. The following three main thoughts reinforce restorative justice. One, the offence has affected the victim as well as the community and restoration is needed to address the situation. Two, the wrongdoer is obligated to amend the fractured relationship among the offender, victim, and community. And three, the situation calls for *restoration* or *healing* among the stakeholders. Four central principles typify restorative justice, namely: *encounter* between or among the parties; *amends* by which the offender works to restore the injury done; *reintegration* of wrongdoer, victim, and others involved in the crime; and *inclusion* by which the parties contribute to resolve the issues. Throughout the reparative justice process, the consent, commitment, and full participation of the offender, victim, and other stakeholders are crucial. Instances of restorative justice are Healing Circles, Conferencing, Victim-Offender Mediation, Victim Assistance, Restitution, Community Service, and Ex-Offender Assistance. With a different approach, each example seeks to restore or heal a damaged relationship.

Thus, by reparative justice, a truly just management of a violation requires all the persons and groups with strong interests to participate in processing the violation, reaching a consensual resolution, and ensuring that the resolution is implemented for the benefit of the parties and the community. The resolution is implemented in a way that strengthens or furthers the community. Accordingly, community harmony features prominently in restorative justice. Its aim is to ensure that an otherwise localized *grievance*, *conflict*, or *dispute*,[146] such as that between two or a few individuals, does not escalate to undermine the community or the harmony among its members.

In line with its healing essence, restorative justice is distinguished from other judicial forms on many grounds, including de-emphasis of punitiveness as well as avoidance of focus on the offender.[147] Thus, offender management models can be separated on the basis of punitiveness.

[146] Note that if left unaddressed, a *grievance* could develop into a *conflict* and further into a *dispute* – see L. Nader and H. F. Todd (eds.), *The Disputing Process–Law in Ten Societies*, *op. cit.*

[147] See E. G. M. Weitekamp and Hans-Jurgen Kerner (eds.), *Restorative Justice: Theoretical Foundations*, 2002, Willan Publishing, Cullompton, Devon, UK; see also D. W. Van Ness and K. H. Strong, *Restoring Justice: An Introduction to Restorative Justice*, 4th edn., 2010, LexisNexis, New Providence, New Jersey, USA; see further Chukwunọnso Okafọ, "On Crime and Punishment: Here is a Credible Alternative to the Death Penalty" (Chapter 12) in *Grounded Law: …*, 2012, *op. cit.*

For restorative justice, there is reduced emphasis on punishment; there is little or no weight placed on penalizing the *guilty* party. Rather, a primary goal of reparative justice is to restore the parties (victim and offender especially, but also their close relatives and community members) to their previous positions, to the extent possible.

Also, restorative justice seeks to *heal* rather than *punish* an offender. The *treatment process* often involves the offender accepting responsibility for the act or omission that resulted in an injury, demonstrating understanding of the injury suffered by the victim and the community, expressing and showing in practical terms a willingness to correct the wrong done as needed in each case (for example, a person that stole would return the stolen property, or pay the monetary value of the same, or perform manual labour for the victim in lieu of the stolen property).

As should be expected, the extent to which the restorative justice model is able to restore the parties and the other stakeholders to their former positions depends on the degree of the harm and the dislocation brought about by each offence. Therefore, in practical terms, restorative justice aims to restore the interested parties to the extent possible. However, important features of the restoration are negotiation and consent. The parties and stakeholders must be involved in the discussions and the give and take necessary for a consensual resolution of the issues in a case. Negotiation and consent constitute key distinctions of restorative justice from retributive and other forms of justice.[148] Restorative justice, by whatever name called and wherever found, exhibits the aforementioned elements.

The following section will clarify the characters and roles of stakeholders in traditional versus State justice systems.

7.1.4. Stakeholders in Traditional versus State Justice

A stakeholder in a criminal case is a person, group, or other entity with a *strong* interest in the outcome of the matter. The word *strong* should convey to the reader that whereas a lot of individuals, groups, and organisations have *some* interests in the outcome of a case, only a few have *strong* interests therein. The strength of an interest in a criminal matter depends on what a person, group, or organisation stands to gain or lose at the conclusion of the case. The greater a (potential) gain or loss is, the stronger the interest would be. Any discernible advantage or disadvantage, as the case may be, that befalls or may befall an interested person, group, or organisation is a source of interest. The relevant gain or loss may be material or otherwise in character. However, in each case, the victim and the offender are the obvious stakeholders, although other interested persons (including close relatives) may be regarded as stakeholders. A proper identification of the stakeholders in a case also has to take into account the form of the criminal justice system being considered. In this connection, the issue is whether the relevant justice system is State-based or tradition-based.

In some respects, stakeholders in the modern Nigerian State criminal justice system differ from their traditional (indigenous) justice system counterparts. The differences touch on the qualifications for becoming a stakeholder as well as the roles played by the persons, groups, and

[148] See Elmar G. M. Weitekamp and Hans-Jurgen Kerner (eds), *Restorative Justice: …*, 2002, *op. cit.*; see also Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice: …*, 2010, *op. cit.*

other entities recognized as such. Stakeholders in the State justice system include the victim, offender, close relatives of the victim and offender, witnesses, and the State. For the traditional justice system, the major stakeholders are the same as those of the State system, except that in the traditional system the community displaces the State in its strategic role. Overall, whereas the community is central to the traditional justice system, the State (local, state, or federal administrative entity in Nigeria) is the focal point in the modern State justice system. For the traditional justice system, there is the need to preserve community harmony among the citizens. The relevant community institutions identify and, to the extent possible, cater to the competing needs of the members. However, in doing so, the institutions emphasize and defer to the larger corporate interest of the community over the interests of individuals or small groups.

The different elements of *community* in the traditional justice system explain the centrality of the concept for justice in this system. Community encompasses diverse groups to capture broad interests in society. Thus, according to restorative justice, when a criminal violation takes place in a society, the harm affects the victim and the offender as well as other stakeholders. These include the parents, siblings, and other immediate and extended family members of the victim and the offender, their neighbors, other close associates, the community through its leadership and organs, and even the State. However, although the traditional system endeavours to cater to the various persons, groups, and organisations, the respective interests are, to the extent necessary, subjected to the overriding collective community interest, so as to ensure the preservation of the society and its ideals.

For more effective and efficient criminal law and justice in modern Nigeria, there is the need for the State and traditional criminal justice systems to concur on the meaning and makeup of criminal justice stakeholders. As already mentioned in this section, the two systems already share most of the same stakeholders, however a major distinction remains in the State's role, control, and domination of criminal justice. Currently, the State emphasizes and imposes its interests over those of the community. However, the undue emphasis on the State neglects or disparages the many indigenous systems, processes, and strategies that would produce more effective and efficient crime control in the country. It seems that community interests deserve greater consideration in the overall scheme of Nigerian criminal justice.

Harmony between the State and traditional criminal justice on stakeholders and the best methods and procedures to achieve effective and efficient crime control would help to coordinate and enhance the country's government and community resources for improved law and justice administration in Nigeria. To achieve the necessary accord, the Nigerian State, in asserting its authority and power to regulate, administer, and enforce criminal laws among Nigerians, should recognize and allow as much participation and control as practicable by the traditional system. Fundamentally, this will bring criminal justice and its administration in line with the citizens' beliefs and expectations, and thus will likely improve crime control and overall social control in the country.

7.1.5. Restorative Justice as Re-Packaged Law

Despite claims to the contrary, the idea and practice of restorative justice are not modern creations. The assertion or suggestion by some modern-day Western scholars that the West

invented restorative justice is inaccurate and misleading. For instance, in an effort to designate a modern date as the starting point of restorative justice, Zehr erroneously claims that "restorative justice began as an effort to deal with burglary and other property crimes …".[149] This attempt to stamp a contemporary commencement date on an age-old phenomenon cannot be justified, especially when Zehr engages in the following rather curious self-promotion: "I am often considered one of the *founding* developers and advocates of this [restorative justice] field".[150] Zehr may be a known writer on restorative justice, however it is inaccurate to describe him as a founding developer of the field. Moreover, there are many ancient and subsisting paradigms, principles, and practices of restorative justice in many societies with which Zehr is not familiar. In short, the evidence on the origins and practices of restorative justice contradict Zehr's and similar claims.

Abundant evidence demonstrates that restorative justice is an ancient human invention found in many indigenous cultures. The origins of restorative justice are located in numerous primordial societies and systems of law and justice. Often, these systems date back to thousands of years. Thus, the idea and practice of restorative justice span many world societies, through millennia, as the following examples demonstrate: restitution for violent offences in Sumer, Mesopotamia (Code of Ur-Nammu, c. 2060 BC); restitution for property crimes in Babylon (Code of Hammurabi, c. 1700 BC); social control in the indigenous nations of North America provide numerous instances of restorative justice each with ancient origins; Roman requirement that convicted thieves pay double the worth of goods stolen (Twelve Tables, 449 BC); Germany's King Clovis I's promulgated tribal laws (496 AD) mandated restitution for both violent and non-violent crimes; the English laws of Ethelbert of Kent (c. 600 AD) contained a comprehensive restitution list; the early Irish (Brehon) laws providing for compensation as the justice approach for a majority of offences; the pre-European Maori (New Zealand) justice system that safeguarded personal rights as well as the stability and integrity of the society; restitution for property offences in the Pentateuch (Israel); and innumerable African restorative justice principles and practices that effectively and efficiently regulated criminal as well as civil relationships among the people. The vast majority of the African principles and practices predated European intervention in Africa.

Considering the many examples of restorative justice in multiple societies across the world, it is fitting to put modern-day "restorative justice" in its proper context: the concept and its contemporary practices are offshoots of immemorial ideas and traditions around the world. I have had occasion elsewhere[151] to contextualize this properly, thus:

> … McCold (2000)[152] is right to describe the evolution of restorative justice as a process of discovery rather than invention. Similarly, Younkins (2002, p. 1)[153] describes law as follows: 'The law is essentially discovered, not made. Law is a systematic discovery process involving the historical experiences of successive generations. Law reflects and embodies the experiences of all [humans] who have ever lived.'

[149] Howard Zehr, *The Little Book of Restorative Justice*, *op. cit.*, p. 4.
[150] *Ibid.*, p. 7. Italics added for emphasis.
[151] Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit.*, p. 22.
[152] P. McCold, "Toward a Mid-range Theory of Restorative Justice: A Reply to the Maximalist Model" in *Contemporary Justice Review*, 3(4), 2000, pp. 357-414.
[153] Edward W. Younkins "Customary Law as an Evolved Good Shortcut" in *Le Quebecois Libre*, No. 112, October 26, 2002, available at: http://www.quebecoislibre.org/021026-11.htm, accessed October 5, 2017.

> This is especially so for customary law and its restorative justice theories and principles. Unfortunately, many Western justice policy makers and critics seem to have only recently discovered these theories and principles even though they have existed for a very long time in traditional societies (Mackay, 2002)[154]. Thus, the recent applications of restorative justice theories and principles to the West should not be interpreted as inventions of those theories and principles. Instead, the applications are latter-day attempts by the receiving populations to know, understand, and use what traditional societies across the world invented a long time ago.

In particular, African contributions to modern restorative justice are immense. African societies have contributed strongly to the foundational principles, processes, and practices of restorative justice. These African elements justify a claim that Africa has greater ownership of restorative justice than the West. In recognition of the invaluable African contributions, even some Western scholars appreciate and express the African foundation of restorative justice as well as the need for modern criminal law and justice to be reoriented towards the African ideal. Accordingly, Professor G. O. S. Amadi, referencing a conversation with a European Professor while Amadi was a postgraduate student in England, states:

> Interestingly, indigenous laws have survived up to this day, notwithstanding centuries of the 'acceptance' and application of the laws of colonization. But it is more interesting from the African perspective that the African concept of criminal law, unlike its European counterpart, is restitutional, compensatory, and reconciliatory. Today this African jurisprudence is packaged as original research work in the name of 'restorative justice' by modern Western legal thinkers. I remember Professor Reid of the School of Oriental and African Studies, University of London, who was my informal academic adviser while I was a research student at London School of Economics, telling me in 1982 that common law criminal jurisprudence has failed to solve the crime problem. He stated further that the African concept of reconciliatory criminal justice might well be developed towards finding a solution to criminal behavior. I believe that Professor Reid's assessment is correct, especially for those societies on which the common law criminal jurisprudence was imposed.[155]

The re-packaged *restorative justice* is in the same category as *alternative dispute resolution* (ADR). Like restorative justice, alternative dispute resolution is a latter-day, Western label for an age-old human invention, which had served various peoples for millennia prior to the contemporary tag. Being a Western label, ADR implies that non-Western dispute resolution models, principles, and practices are merely *alternatives* to those of the West; thus, that the Western ideas constitute the correct standards against which those of the other peoples are to be measured.[156] To the extent that restorative justice and alternative dispute resolution claim or convey the Western ethnocentric meanings, they are wrong.

Thus, it is accurate to describe restorative justice (as touted by Western institutions and scholars) as a re-packaged idea. This means that the initiative was in wide use in Africa (and many other parts of the world) long before the modern Western label. Similarly, ADR models, principles, and techniques, especially those that originated outside the West, should not be understood as less-than their Western counterparts. Accordingly, contemporary Nigerian and other African

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[154] Robert E. Mackay, "Punishment, Guilt, and Spirit in Restorative Justice: An Essay in Legal and Religious Anthropology" in Weitekamp and Kerner (eds.), *Restorative Justice: …*, *op. cit.*, pp. 247-266.
[155] Professor G. O. S. Amadi, Foreward to Chukwunọnso Okafọ, *Grounded Law: …*, *op. cit.*, p. xviii.
[156] See R. B. G. Choudree, "Traditions of Conflict Resolution in South Africa" in *African Journal on Conflict Resolution*, No. 1, 1999.

justice systems will do well to re-discover, to the extent appropriate, the relevant indigenous criminal law and justice models for improved social control in the respective societies.

7.1.6. Indigenous Criminal Jurisprudence in Contemporary Nigeria

There are varied illustrations of present-day uses of African criminal jurisprudence across the continent. These demonstrate the invaluable role of the African model in modern Nigeria. The African criminal justice model involves judicial processing as well as law enforcement and corrections or post-trial actions. Indigenous African techniques for crime prevention and general law and order maintenance feature prominently across the continent. Thus, the African philosophy, systems, and processes for security maintenance, crime prevention, and judgment and other law enforcement remain strikingly relevant in contemporary Nigeria. This law enforcement model is widely practiced in Nigeria and other African societies, particularly in unofficial (non-governmental) avenues.

Instances of indigenous-based security and law enforcement systems and organizations abound throughout Africa. These mostly unofficial organizations and groups remain important to their respective societies mainly because of the widely held stance that the official systems and organizations are incapable of providing the needed security and law enforcement. Another reason for the continued prominence of the unofficial security and law enforcement organizations is that many Africans interpret the official organizations as imposed, irrelevant, and different in both forms and procedures from the people's indigenous outlooks, convictions, beliefs, and practices.

Many of the traditional security and law enforcement organizations in Nigeria, some of which operate with official government support, are founded on the customs and traditions of the relevant communities. Some of the organizations are predicated on religion. The *Bakasi Boys* of southeast Nigeria and the *Odu'a People's Congress* (*OPC*) of the country's southwest are examples of such organizations based on customs and traditions. On the other hand, the *Hisha* of Nigeria's north (Hausa/Fulani), is a law enforcement organization based on Islam. By way of contrast, the *Bakasi Boys* and the *OPC* are not as religious-based as the *Hisha*.

Overall, tradition-based efforts at security and law enforcement in Nigeria and other African societies demonstrate the ineffectiveness and inefficiency of the official police. The unofficial alternatives to government law enforcement are established or maintained mainly because the people view the indigenous alternatives as more effective and efficient, and thus preferred over the official, Western-style models. The eclectic acceptance and continued use of the indigenous African models give credence to the outlook that indigenous African law enforcement and other aspects of justice remain relevant in the modern era. Moreover, lately some African governments have begun to refocus even if measuredly on the African ideal. However, it is noteworthy that in several instances, the extra-governmental, community efforts lead to mob actions, some of which produce far-reaching negative consequences.[157] Thus, the challenge for the Nigerian State is to properly incorporate the traditional law enforcement ideas, principles, and practices into the country's modern-day criminal justice.

[157] Nọnso Okafọ, "Foundations of Ọkija Justice", *op. cit.*; "A Justice Void Filled: …", *op. cit.*

Apart from the traditional African law enforcement and security maintenance organizations in the modern States, many research works have examined and published a litany of contemporary uses of indigenous-based courts and judicial processes throughout Africa. Each report details how one or more African States have, to varying degrees, incorporated traditional criminal jurisprudence into the CJS of the postcolonial State. To be sure, the contemporary uses demonstrate that Africa's rich indigenous justice traditions are focused on repairing the harm caused by crime. Thus, as Elechi[158] finds and concludes, the goal of African indigenous justice is to restore the dignity, interests, rights, and wellbeing of crime victims, offenders, as well as those of the whole community.[159]

Relatedly, in line with the recognized goal of alternative case management, such as that of the African indigenous justice systems, Choudree[160] recognizes that in law *alternative dispute resolution* (ADR) can be used in either of two ways (one, to recognize that there are other methods than litigation, and that these may sometimes be more appropriate; or two, the term may be used condescendingly to describe methods thought to be popular but substandard. Choudree goes on to argue that the foundations, deep roots, and valid reasoning behind the traditional conflict resolution methods should be taken seriously. This is because the methods are a part of immemorial and well tested social systems, which objective typically goes beyond just settling a case. Rather, the methods also aim at and work towards reconciliation of disputing parties and other interested persons and groups as well as the maintenance or even improvement of relationships.

In the modern era, the indigenous systems have been revived to complement – in some situations displace – the relevant Western-based criminal justice systems. However, this should not be read as attempts to completely remove Western criminal jurisprudence from those African societies. Rather, as Professor Susan Smith-Cunnien[161] points out, a complete return to pre-colonial African justice system, in modern Africa is unrealistic because the pre-colonial laws and processes no longer exist in their pure forms; also those laws and processes are not necessarily suitable for social control in the modern African State. Therefore, contemporary uses of indigenous criminal jurisprudence, especially as a part of the official State criminal justice, should recognize that necessary changes have to be made to accommodate the needs of a diverse modern State.[162]

As Schärf[163] demonstrates, there are different forms of non-State justice and these are widely practiced in contemporary African countries.[164] Schärf deliberates on the vocabulary used in the

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[158] O. Oko Elechi, "Human Rights and the African Indigenous Justice System", Paper presented at the 18th conference of the International Society for the Reform of Criminal Law, Montreal, Quebec, Canada, August 8-12, 2004.
[159] See also I. Nzimiro, *Studies in Ibo Political Systems: …*, *op. cit*.
[160] R. B. G. Choudree, "Traditions of Conflict Resolution in South Africa", *op. cit.*
[161] "Thinking About a Postcolonial Return to Indigenous Justice in Africa" (Chapter 3) in *Grounded Law:…*, *op. cit.*
[162] Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit*.
[163] Wilfred Schärf, "Non-State Justice Systems in Southern Africa: How Should Governments Respond?", Paper delivered at workshop on *Working with Non-State Justice Systems*, held at the Overseas Development Institute, Institute of Development Studies, March 6-7, 2003.
[164] See also O. Oko Elechi, *Doing Justice Without the State: …*, *op. cit.*

last fifty years or so in reference to non-State justice as well as the ideological influences on the lexis, and the responses by the different States to non-State justice. Also, he considers non-State justice in the following six countries: Botswana; Lesotho; Malawi; Mozambique; South Africa; and Zambia. Similarly, in a report based on a review of the experiences of three East African countries (Kenya, Tanzania, and Uganda), Nyamu-Musembi[165] seeks to help the United Kingdom's Department for International Development (DfID) understand the variety of non-formal (non-State) justice systems in East Africa, and to apply this knowledge to develop procedures on how to work with non-State justice systems to achieve DfID's goal of making justice more accessible to the poor.

The following summary of the other contemporary uses of traditional African jurisprudence in modern African States is also relevant.

In a study of the Ugandan justice system involving conferences with community representatives and local and national government officials in Karamoja and Teso regions of northeast Uganda, Chapman and Kagaha[166] have drawn several important conclusions some of which are relevant hereto, thus. One, the formal State justice systems in the two regions find it difficult to cope with the existing conflict level because the systems are not sufficiently established in the regions. Two, in some situations, local populations distrust the State system because of involvement in past abuses. Three, traditional, community-based methods for controlling conflicts and providing justice have been used in these communities for centuries, if not millennia. Four, despite some feelings that in some cases the traditional justice mechanisms entrench elitism and paternalism, the research subjects are virtually unanimous in their opinion that the traditional mechanisms are an indispensable part of conflict and justice management in these communities, because they are accessible whereas the State is often absent; and because the traditional mechanisms are based on traditional principles of spirituality and peaceful coexistence, the community members typically respect the outcomes. Five, the traditional justice methods focus on the restoration of community members and the reconstruction of fragmented relationships in the community. Chapman and Kagaha conclude by stating that the traditional justice systems can work together with their State counterpart, and as such the State should back them and find ways to further this complementary relationship.

Anderson[167] further provides evidence of the traditional foundation of restorative justice. The author examines the emerging methods of diversion in South Africa and discusses restorative justice principles and the country's Ubuntu. The paper considers the relevance of restorative justice and Ubuntu to juvenile and adult offender diversion. The author compares Ubuntu principles to those of restorative justice and contends that restorative justice would be able to play an important role in South Africa's emerging diversion process. And, the paper delineates how the principles of Ubuntu mirror the restorative justice principles – they both encourage

[165] Celestine Nyamu-Musembi, "Review of Experience in Engaging with 'Non-State' Justice Systems in East Africa", Paper commissioned by the Governance Division, DfID, United Kingdom, and delivered at a workshop on *Working with Non-State Justice Systems*, held at the Overseas Development Institute, Institute of Development Studies, March 6-7, 2003.

[166] C. Chapman and A. Kagaha, "Resolving Conflicts Using Traditional Mechanisms in the Karamoja and Teso Regions of Uganda", Briefing Prepared for Minority Rights Group International, October 7, 2009.

[167] A. M. Anderson, *Restorative Justice, the African Philosophy of Ubuntu and the Diversion of Criminal Prosecution*, 2003, University of South Africa School of Law, Pretoria, South Africa.

agreement, consensus, and reconciliation. Also, while reporting on research on traditional courts or "chief's courts" in South Africa, Peters[168] observes that these courts play a significant role in the administration of justice in Africa, and as such since the inception of the new South African constitution the country's traditional leaders have advocated for these courts to be strengthened in the justice system. However, the report shows that some people regard the traditional courts as exemplars of an appropriate case management system, while other observers view the courts as old-fashioned in a modern political, social, and economic context.

To further demonstrate the relevance and potency of indigenous African law and justice in the social control of a modern State, Okafọ[169] uses the Igbo experience to illustrate the need for African societies to advocate, promote, and expand the uses of their indigenous justice and social control philosophies and systems notwithstanding their respective colonial experiences. He goes on to observe that the governments of modern African States, as well as private individuals and groups, have important contributions to make towards these objectives. Based on the author's years of studying the Igbo systems of justice, social control, and law, he presents illustrative scientific evidence to demonstrate that the indigenous Igbo justice system, like many other indigenous African justice systems, remains potent for social control.

And, Nindorera[170] presents and illustrates the role of non-State justice systems in Burundi. The author explores traditional conflict resolution for ethnic groups in the country. The form of conflict resolution highlights the continued significant role played by the council of elders. In the pre-colonial era, the council was regarded as truth-loving, of high moral standards, and unprejudiced. The council was in charge of family reconciliation, case resolution, the preservation of justice, etc. As a result of colonization and State control, the council lost power. However, it remains an important means of solving the main complications leading to ethnic and political conflicts in the postcolonial State.

The various examples presented in this section strongly demonstrate the vast contemporary uses of traditional African jurisprudence in modern African States. Despite the denials or neglects by the various official governments, indigenous African jurisprudence eminently participates in the continent's contemporary criminal law and justice. The indigenous African idea remains very useful in justice administration; and the evidence strongly suggests that its use will likely remain, if not expand. Moreover, it should continue to be in such use considering that the idea is original, relevant, and popular among the people. In view of the wide use and the potentials of African jurisprudence for more effective and efficient criminal justice and general social control, numerous problems result from the continued insistence on grounding Nigerian criminal justice on the English idea. Several of these problems are presented in the next section.

7.1.7. Drawbacks of Continuing to Ground Nigerian Criminal Law and Criminal Justice Administration on Foreign Jurisprudence

[168] Melanie Peters, "Traditional Justice on Trial", *Centre for Socio-Legal Studies*, University of Natal, South Africa, 2004.

[169] Nọnso Okafọ, "Relevance of African Traditional Jurisprudence on Control, Justice, and Law: A Critique of the Igbo Experience" in *African Journal of Criminology and Justice Studies*, 2(1), 2006, pp. 37-62.

[170] Louis-Marie Nindorera, "Keepers of the Peace: Reviving the Tradition of Bashingantahe in Burundi" in *Track Two* 7(1), 1998, Reprinted in *Voices From Africa, No. 8 Conflict, Peace, and Reconstruction*, published by the UN Non-Governmental Liaison Service.

The policy that positioned English jurisprudence as the *grundnorm* of the Nigerian criminal justice system is highly questionable, at best. Since its introduction in the 19th Century, the policy has opposed the pre-existing indigenous law and justice ideas in Nigeria. In every material aspect, it sought – and largely seeks – to obliterate the indigenous criminal jurisprudence. In doing so, the English jurisprudence appears to be blind to its substantive and procedural shortcomings. However, these defects of English criminal law and justice in Nigeria militate against it in the eyes and minds of ordinary Nigerians. Procedurally, the British colonists put the policy in place without the consent or approval of Nigerians. Consequently, it is a product of a dictatorship; it is illegitimate.

On substance, many of the specific statutory provisions resulting from the colonial policy[171] vary or even oppose the clear, long-established and practiced lifestyles and expectations of Nigerians. In the circumstances, whereas the Code and similar provisions require the citizens to comply with essentially foreign expectations, the indigenous Nigerian principles and practices mandate – even command – the citizens to live according to their customs and traditions. Often, these disagreements lead to confusion among the citizens such that the proper behaviour standard is unclear. As Emile Durkheim and Robert Merton, respectively, explained, the uncertain or weakened behavior standard often breeds anomie (normlessness). This normless condition is a ripe environment for crime.[172] Postcolonial Nigeria continues to experience such a situation.

The often fundamental disagreements between indigenous Nigerian criminal justice and the imported English system make the English system less believable as an effective and efficient control mechanism in Nigeria. The English jurisprudence in Nigeria generally lacks credibility because of its historical circumstances and contemporary limitations. Being essentially limited to English law and justice ideas, the English criminal law and crime control in Nigeria is unable to mobilize and carry along average Nigerians and the grassroots of the Nigerian society. In particular, the official (English) Nigerian criminal justice is yet to harness and utilize the rich crime control and criminal justice administrative principles and practices in the indigenous jurisprudence. Consequently, many indigenous contributions that would enrich, develop, and vastly improve the Nigerian CJS are left untapped or grossly underutilized.

The present exclusion or limited role of the indigenous Nigerian jurisprudence in the Nigerian criminal justice system breeds many problems, such as the following. The official CJS in Nigeria (which is heavily weighted in favour of the English system) does not have the capacity to cope with the large and expanding criminal justice demands on it. The English system in Nigeria is too specialized. It operates with limited involvement of the average Nigerian. The system does not carry the citizens along. Essentially, only those few Nigerians who are specially trained in law, policing (law enforcement), and prisons (offender management) are assigned roles in the system. The vast majority of the citizens are awed by the *sacred* functions of the criminal justice officials. Involving the average citizens or expanding their roles in the official CJS is likely to give the citizens a greater sense of belonging and afford them the opportunity to cooperate with

[171] See the Nigerian *Criminal Code*, Cap. 42 Laws of the Federation of Nigeria.

[172] S. E. Brown, Finn-Aage Esbensen, and G. Geis, *Criminology: Explaining Crime and Its Context*, 1991, Anderson Publishing, Cincinnati, Ohio, USA; M. Lanier and S. Henry, *Essential Criminology*, 1998, Westview Press, Boulder, Colorado, USA; G. Vito, J. Maahs, and R. Holmes, *Criminology: …*, *op. cit*.

criminal justice officials (law enforcement personnel, prosecutor, defense lawyer, judge, and other court officials, prisons officials, etc.).

Also, the present situation is such that the official English system in Nigeria services a relatively small percentage of Nigerians and criminal issues, while many perhaps a majority of the people seeks out other means and avenues for managing their concerns. Often, the traditional systems provide the alternative means and avenues even if they are not officially recognized. This means that a vast portion of the Nigerian population uses the country's traditional institutions and processes for managing criminal cases. For these Nigerians, then, the official English-style criminal justice is isolated and of limited use. At the very minimum, these citizens regard English criminal jurisprudence in their communities as intruding in the citizens' life patterns. Thus, I have demonstrated elsewhere the need to reform Nigeria's marriage laws because conflicting laws and standards govern the marriage institution in the country; the disagreements between indigenous law and the English law in Nigeria are wide and breed unnecessary anomie:

> … the contrasts between the official English law in Nigeria and the country's indigenous customs and traditions have created a confused or anomic condition in which Nigerians either do not know or do not accept the official rules governing the citizens. Often, the official English law imposes a behavior standard that contradicts the citizens' history, experiences, and preferences expressed through indigenous customs and traditions. A famous example can be found in the marriage institution. Indigenous traditions, customs, and laws permit a man to marry more than one wife. English law in Nigeria forbids it, and punishes it as a crime. No doubt, the anomie engendered by this disagreement negates effective social control.[173]

In appreciation of this, the Lagos State House of Assembly in 2011 amended the state's criminal code by decriminalising bigamy.[174] The old Criminal Code of Lagos state stated: "Any person who having a husband or a wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife is guilty of a felony and is liable to imprisonment for seven years."[175] Note that bigamy only applies to persons married under the Marriage Act. Persons who opt for marriage under customary and religious laws are excluded from the law. However, according to the Lagos state Attorney-General and Commissioner for Justice, the old law was no longer useful. He said that it became necessary to remove bigamy because the state government found out that there was no need to criminalise the offence. He took the position that bigamy would thenceforth be treated as a civil wrong and such a marriage would simply be dissolved and no criminal proceedings would be instituted against the bigamist. It is yet unclear under what law such a marriage would be dissolved considering that by the decriminalisation, bigamy does not exist anymore in Lagos state, and no prescription for remedy has been provided.

Reacting to the decriminalisation by the Lagos state assembly, Konyinsola Ajayi, SAN, said that the state's initiative had become necessary because in the preceding forty years, nobody had been charged with bigamy in the state. Another SAN observed that beginning in 1914 when the law came into force, no one had been convicted thereunder. This should not surprise anyone

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[173] Nọnso Okafọ, "Understanding the Historical Challenges of Reconciling Nigerian and English Laws for Modern Nigeria" in *Africa & Beyond*, January-March, 2008, pp. 59-61 at 60.

[174] Ferdinand Olufemi, "Decriminalisation of Bigamy in Lagos State and It's Legal Implications" in Tope Adebayo LLP, available at: https://topeadebayollp.wordpress.com/2012/02/15/decriminalisation-of-bigamy-in-lagos-state-and-its-legal-implications/, accessed October 5, 2017.

[175] Cap. C17, s. 370.

because Britain introduced bigamy into the Nigerian law books during colonization contrary to the Nigerian culture. It is not part of the Nigerian culture; as such Nigerians are not disposed to its ideal. Further, due to the high cost and long time expended in litigating divorce cases, couples often opt to quietly go their separate ways and remarry. This has diminished the law against bigamy and rendered it ineffective and unenforceable.

In short, in view of the fact that the law is inconsistent with the country's values, the best thing to do is to discard it. Lagos state is correct. However, it must be observed that although bigamy is no longer an offence in Lagos, it remains a crime under the federal Marriage Act. Thus, in theory at least, a bigamist may still be prosecuted by federal authorities even if Lagos state declines to prosecute.

Where, as currently obtains on many issues in Nigeria, English law criminalises a normal or accepted behavior among Nigerians, the citizens do not readily, if at all, accept the proscription. Excluding the indigenous criminal jurisprudence from the official CJS does not remove the indigenous system, process, and practice from circulation, even in the modern era. Instead, such marginalisation encourages and ensures that tradition-minded Nigerians resort to their respective homegrown systems, processes, and practices, even if surreptitiously. Sometimes, the resulting furtive justice is extreme involving gross violations and abuses of some basic human rights and decency in criminal processing, as shown in the *Ogwugwu Isiula* shrine incident referenced earlier in this lecture.

In spite of the lack of official recognition for such traditional criminal proceedings, they persist. And, as the *Ogwugwu Isiula* shrine case has demonstrated, such proceedings could violate basic constitutional and legal rights and lead to deadly consequences. Rather than ignore traditional criminal law or pretend that it does not exist, what is needed is a mechanism to expand the official system to recognize and include those aspects of traditional criminal jurisprudence that would enrich and improve criminal law and justice in Nigeria. For example, the philosophical divide between the English-style criminal justice and its indigenous Nigerian counterpart is stark. The former emphasizes criminal responsibility, guilt, punishment, and formalism. These differ fundamentally from the traditional African view of law and justice, which emphasizes communalism, consensus, informality, bridge-building, and correction of damaged relationships, among others.[176]

A major consequence of Nigeria's failure to adhere to the traditional African sense of community in dealing with criminal violations is that the country's prisons and jails overflow with convicts and detainees. English-style criminal justice is designed to punish and insists on punishing the vast majority of convicted criminals. Mostly, the punishment is by incarceration in the already vastly overstretched prison and jail facilities. The undue emphasis on incarceration goes beyond *convicts* and extends to *criminal suspects* (*awaiting-trial persons*). The incarceration or detention of criminal suspects in Nigeria is so vast that nearly three-quarters of the country's inmates are

[176] Ikenna Nzimiro, *Studies in Ibo Political Systems: …, op. cit.*; Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: … op. cit.*; see also *Law and Justice in Post-British Nigeria: …, op. cit.*; see further O. Oko Elechi, *Doing Justice Without the State: … op. cit*.

pretrial detainees.[177] This alarming figure evidences the undue punitiveness of Nigeria's criminal justice. A de-emphasis of punitiveness and increased use of the traditional African healing (restorative) principles and practices would stem the unmanageable and growing inmate population in Nigerian prisons and jails.

As another example, the continued sidelining of time-tested, effective, and efficient traditional criminal law ideals from Nigeria's official criminal justice system denies the system of invaluable contributions for improved law and justice. In communities throughout Nigeria, traditional criminal law ideals feature prominently in the forms of community police organizations, courts, and various correctional programs. For centuries, if not millennia, these community institutions have served the citizens well and played critical roles in stabilizing the respective communities. The advent of the modern State does not mean that the established institutions should be discarded or ignored. Instead, the prudent response is to identify the relevant and useful aspects of the traditional criminal law and justice (highlighted by community participation through community policing, community court, and community correctional programs) along with their administrative institutions and methods, and incorporate them into the modern State CJS.[178]

While discussing the relevance of customary criminal law ideals in Nigerian criminal justice administration, Akakwam[179] highlights the shortcomings of the inherited CJS (including its complex procedure, alien standards, the fact that it alienates the population and undermines their confidence in the system and its institutions, and that it ignores the restorative sentiments in the people's expectation from the legal system, etc.). Akakwam further argues that solutions can be found in customary law. He contends that some of the substantive and procedural ideals of customary criminal law should be incorporated into the general framework of the CJS.

Therefore, in view of the close proximity of customary law and traditional criminal justice to the average Nigerian, the traditional system's grassroots organization and administration, the relative ease of monitoring the system's agents and verifying their activities, as well as the citizens' general sense of ownership of customary law, it is imperative that these aspects of traditional criminal jurisprudence be incorporated into contemporary State criminal justice. Nigeria is yet to do this, nor even recognize it as a policy priority towards (re)building the country's postcolonial justice system.[180]

The need to reposition the Nigerian customary law as the basis of the country's criminal jurisprudence seems to enjoy wider acceptance and advocacy by laypersons and professionals alike. In particular, legal scholars[181] as well as policy makers and administrators[182] share this

[177] "Dambazau: 70 Per Cent of Prison Inmates Awaiting Trial" in *Sunday Tribune*, December 4, 2011, available at: https://www.thecable.ng/dambazau-70-percent-prison-inmates-awaiting-trial, accessed October 5, 2017.
[178] Philip A. Akakwam, *The Relevance of Customary Criminal Justice System in the Criminal Justice Administration of Nigeria* (LL.M. Dissertation), 1993, Kingston, Canada, Queen's University at Kingston.
[179] *Ibid.*
[180] Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit.*
[181] *Ibid.*; Chukwunọnso Okafọ, *Grounded Law: …*, 2012, *op. cit.*; P. A. Akakwam, *The Relevance of Customary Criminal Justice System in the Criminal Justice Administration of Nigeria*, *op. cit.*

point of view. In *Reconstructing Law and Justice in a Postcolony*,[183] I presented analyses and illustrations of the procedural and substantive changes necessary for rebuilding Nigerian law and justice. The structure of the reconstructed system is to fundamentally capture and reflect the relevant indigenous law and justice principles and processes. The system is to accept and treat indigenous law and justice as the basic law of the land. As explained in the book, I expect that a Nigerian justice system reconstructed accordingly will provide the citizens with more effective and efficient justice.[184]

Similarly, in August 2011, the then Director-General of the Nigerian Institute of Advanced Legal Studies (NIALS), Epiphany Azinge, called for Nigeria's customary law to be accorded its superior place in the country's jurisprudence by being repositioned as the fundamental law. According to Azinge, NIALS was developing some modules that would help reposition the nation's legal system. One of such plans was to advance a homegrown legal system by reinstating the country's customary law. He stated:

> My position is that we are working seriously on the reinstatement of customary law. I have this view that you cannot be in Nigeria, in Africa and you do not have anything that is indigenous to you in terms of scholarship. I feel that it is escapist, defeatist and borders on inferiority complex for us to embrace all the English and received laws without necessarily having an alternative. The only thing we can offer in alternative is our homegrown law: the Customary law, Sharia law and the rest of them.[185]

If scrupulously pursued and implemented, Azinge's and others' aspiration will strengthen Nigerian criminal justice and improve social control among the citizens.

However, while it is important to recognize, incorporate, and use Nigeria's indigenous criminal jurisprudence in the country's mainstream criminal justice, we must also appreciate and insist on the rule of law in the diverse Nigerian society. As such, a criminal justice reform to expand the role of traditional criminal jurisprudence in contemporary Nigeria ought to be grounded on the rule of law, that is the idea and practice that only objective, verifiable, fair, credible, and broadly accepted criminal laws and processes regulate relationships among Nigerians, and between Nigerians and the State. This highlights the essence of the rule of law, which distinguishes it from the other rule forms.

The other rule forms constitute the alternatives to the rule of law. "The alternative models for justice and social control include 'the rule of personality', 'the rule of community', 'the rule of custom/tradition', 'the rule of experts', 'the rule of religion', etc."[186] Unlike the rule of law, each of the alternative rule forms is narrow and thus serves the interests of a section of the population to which it applies. On the other hand, the rule of law offers the best opportunities to safeguard and protect the interests of the citizens of a diverse society. Thus, more than the alternatives, the rule of law appeals to the citizens broadly.

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[182] Ibe Uwaleke, "Customary Law Should Be Accorded Its Superior Place" in *The Guardian*, August 30, 2011, available at: http://ngrguardiannews.com/index.php?option=com_content&view=article&id=59439:customary-law-should-be-accorded-its-superior-place&catid=42:law&Itemid=600, accessed April 10, 2012.

[183] Nọnso Okafọ, *Reconstructing Law and Justice in a Postcolony*, *op. cit*.

[184] See also Chukwunọnso Okafọ, "Reevaluating Critical Elements of Nigerian Criminal Jurisprudence", Presentation at the American Society of Criminology Conference, Washington, DC, USA, November 16-19, 2011.

[185] Ibe Uwaleke, "Customary Law Should Be Accorded Its Superior Place", *op. cit.*

[186] Chukwunọnso Okafọ, *Grounded Law: …*, *op. cit.*, p. 31.

Consequently, even while adhering to the relevant principles and practices of traditional criminal jurisprudence, the rule of law presents modern Nigeria with the best opportunity to protect and secure its diverse citizenry. This means that indigenous criminal laws and processes that fall short of the tests of objectivity, verifiability, fairness, credibility, and broad acceptance ought to be discarded. At best, such indigenous criminal laws and processes should be left for unofficial (non-governmental) settings, to be used in informal relationships.

In the final analysis, the continued grounding of Nigerian criminal law and criminal justice administration in foreign jurisprudence is sure to maintain the several shortcomings mentioned in this lecture, as well as others. On the other hand, discontinuing the present dependency on foreign jurisprudence and relying more on Nigeria's indigenous criminal jurisprudence will surely yield several important benefits for crime control in the country.

7.2. Law Enforcement/Police

7.2.1. Tapping into the African Jurisprudence and Restorative Justice Values for Law Enforcement

i. Introduction

It is undeniable that a major area in which law enforcement in Nigeria can benefit from the advantages of the indigenous justice systems and processes is community-police partnership. This is particularly so now that the country is undergoing significant economic challenges resulting in drastic reduction in public funds for running the NPF. Thus, it is imperative that the police earn and retain the confidence and cooperation of private persons and groups to more effectively and efficiently secure the citizens and their properties, particularly in the midst of the prevailing economic challenges that limit the capabilities of the government to guarantee security.[187]

Many scholars have attempted to establish a link between economic downturn and an increase in the level of crime in society. Their argument is based on the belief that desperation in the midst of economic uncertainty creates the environment for increased criminal activity. Rational Choice theorists support this view. They argue that during times of high unemployment, individuals are more likely to determine that engaging in illegitimate opportunities to get wealth is in their own rational self-interest.[188] Despite a lack of consensus on this approach to understanding the

[187] Chukwunọnso Okafọ, "Community-Police Partnership as a Solution to Nigeria's Internal Security Challenges in a Recessed Economy" Paper presented at the Annual General Conference on Police-Community Relations, Nigeria Police Force, Enugu State Command, held at the University of Nigeria, Enugu Campus, on December 9, 2016. I thank Dr. Chidebe Matthew Nwankwo, Lecturer, Faculty of Law, University of Nigeria, Enugu Campus immensely for his assistance in preparing the section of this paper on community-police partnership for security in a recessed economy.

[188] M. C. Scheider, D. L. Spence, and J. Mansourian, "The Relationship between Economic Conditions, Policing, and Crime Trends", Office of Community Oriented Policing Services: U.S Department of Justice, 2012, available at https://ric-zai-inc.com/Publications/cops-p248-pub.pdf, accessed December 4, 2016.

etiology of crime,[189] it is not far-fetched for a layman without a background in criminology and without the tools for appropriate scientific inquiry into the subject matter to see that a man without employment opportunities can become increasingly frustrated with his life condition and may go out of his way to commit crimes to survive.

In Nigeria, a country already plagued with numerous internal security challenges stemming from a host of socio-economic problems, an economic recession arguably stands to exacerbate the myriad of security problems bedeviling her. From the insurgency in the North-East region, to the Niger-Delta militancy in the South-South, to the rampaging herdsmen clashes all over the country, the Nigerian State is one which has all the elements of an "insecure State".[190] With thinning national revenue, occasioned by the decline in the global price of crude oil, the financial strain on Nigeria's national institutions has become pronounced. In addition to this, there is a youth unemployment rate that continues to skyrocket and a population that is largely impoverished.[191] The result of these factors is a society of largely disgruntled citizens, which creates a dangerous atmosphere for insecurity.

The NPF, which is the primary constituted authority for maintaining and securing public safety and public order,[192] has become a much maligned institution in recent years. The NPF has suffered due to factors such as insufficiency of the resources committed to the force to enable it function effectively,[193] the increased agitation and militarization of the citizenry, as well as the nation's increased dependency on the Army. In the face of the internal security challenges in Nigeria, the NPF must be equipped to play its role in maintaining public order. Effective and efficient policing must have at its core, partnership with the community. In this era of globalization, police forces all over the world are becoming increasingly dependent on cooperation and partnership with the communities they serve and protect.

ii. The Role of the NPF in Internal Security

The word "security" may connote a host of things to people from different disciplines. An international lawyer is most likely to view security strictly from the universal ideal of human

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[189] Some criminologists have written off this approach as a function of poor measurement and model misspecification. They argue that crime must be understood from a broad range of spectrums and that economic downturn alone may not be responsible for an increase in criminal activities. See D. Greenberg, "On Theory, Models, Model-Testing and Estimation" in 17 *Journal of Quantitative Criminology*, 2001, pp. 409-423; S. Raphael, R. Winter-Ebmer, "Identifying the Effect of Unemployment on Crime" in 44 *Journal of Law and Economics*, 2001, pp. 259-83.

[190] This term is borrowed from an article that refers to Pakistan as an insecure State. Pakistan and Nigeria are similar in several respects. Both are developing countries, multi-ethnic in nature with huge economic potentials but very little realization of their potentials due to years of bad leadership. Both States also suffer common internal security problems such as proliferation of militancy, Islamism, and corruption that undermine effective policing and orderliness. See C. Christine Fair, et al, "Pakistan: Can the United States Secure an Insecure State?", RAND Project Air Force, 2010, available at http://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG910.pdf, accessed December 4, 2016.

[191] As at the time of writing this paper, the level of youth unemployment in Nigeria stood at 24%. See http://www.tradingeconomics.com/nigeria/youth-unemployment-rate, accessed December 4, 2016.

[192] Section 214 of the CFRN 1999, Cap. C.23 LFN 2004.

[193] "Nigeria Police: A Force Surviving on Donations" in *The Punch*, February 16, 2015, available at http://punchng.com/nigeria-police-a-force-surviving-on-donations/, accessed December 4, 2016.

rights which seeks to preserve the dignity and freedom of the individual. From this ethical perspective, security juxtaposed with the universal connotation of human rights is a moral standard flowing from a natural right. As such, "security" and "the universal connotation of human rights" seek the highest possible good for the highest number of people. The universal quality that these two concepts share is encapsulated in the "universality thesis" of Professor John Tasioulas who posits:

> For present purposes, it is enough to highlight two key dimensions of this idea. First, human rights are moral rights, possessed by all human beings, simply in virtue of their humanity. In other words, human rights, like natural rights, are universal moral rights. Call this the universality thesis. Second, human rights are to be identified by the use of natural reason, principally, ordinary truth-oriented moral reasoning, as opposed to the artificial reason of some institution, such as law, the conventionally accepted reasons upheld by some culture or tradition, or the deliverances of divine revelation.[194]

While security (human or internal) may not be right-based as enshrined in international legal instruments or constitutions, it remains a determinant for the preservation of a State and is a globally accepted yardstick for measuring the development and progress of a State. Ultimately, both concepts flow from the same deontological source – the need to protect the individual. While human rights is a concept that focuses on guaranteeing the happiness of the individual anywhere on earth, security is a practical concept that concerns the sovereignty of the State (national security) as well as the well-being of the individual in the State (internal security). Security is the exclusive preserve and responsibility of the State, while human rights is a shared moral standard of the international community.

A security studies practitioner is bound to view security from a practical and more complex perspective than human rights. According to Booth, security is conceived as freedom from threats, acts of violence, and loss of property. It means protection from threats to life and means of livelihood, safety from bodily harm, freedom from fear of diseases, unemployment, violent conflicts and human rights violation.[195] Booth's definition presents a general approach to security underlining the human aspect of security. National security, on the other hand, "may be taken to mean freedom from risk or danger or fear; safety, confidence and the ability of a nation to protect and defend itself, promote its cherished values and legitimate interest and enhance the well-being of its people".[196] Furthermore, internal security may be defined as the absence of those tendencies which could undermine the internal cohesion and the corporate existence of a nation and its capacity to maintain its vital institutions for the promotion of its core values and socio-political and economic objectives, as well as meet the legitimate aspiration of its peoples.[197] It is the national security policy of a State that drives the internal security of the State through its institutions and laws.

In Nigeria, there are several internal security problems that raise questions on the readiness of the governments to guarantee adequate protection of lives and property of the citizenry. These

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[194] J. Tasioulas, "Human Rights, Legitimacy, and International Law" in 58 *American Journal of Jurisprudence*, 2013, p. 2.
[195] K. Booth, "Security and Emancipation" in 7 *Review of International Studies*, 1991, pp. 323-326 at p. 324.
[196] B. A. Amujiri and S. U. Agu, "Threats to Internal Security in Nigeria: An Examination of Security Challenges in Nigeria and the Implications" in 4 *International Journal of Research in Arts and Social Sciences*, 2012, p. 285.
[197] *Ibid*.

problems include armed robbery, kidnapping, militancy, terrorism, rape, murder, ritual killings, ethno-religious conflicts, communal clashes, HIV/AIDS, refugee crisis, among others. A critical look at the above security threats reveals that Nigeria faces more violent security threats than non-violent risks. These security problems affect Nigeria's sovereignty as well as her economy.[198] Past leaders have suggested ways to better contain and eradicate some of these challenges in the long term. Former Military Head of State, General Absusalami Abubakar, argues that the ideal approach in eradicating these problems must be to manage internal tendencies, especially security issues that have adverse effects on economic development. He stresses that:

> In addressing the challenge to the survival of democracy in Nigeria, it is pertinent to consider security issues and problems that have affected or are capable of affecting the attitude, confidence and cooperation of all groups and segments that make up the Nigerian federation…Beyond the effects of security concerns on the economic fortunes of the country, the nature of security challenges facing the country also have implications for the country's political system…there is the challenge to rethink and improve on policy and institutional means of dealing with security concerns arising in the country…[199]

The prognosis of the ex-Head of State is certainly a timely contribution on how to address the elephant in the room that is national security. However, it reveals two things about national security in Nigeria. First is the impact of national security on our democracy and the volatile economy. It also shows the inadequacy of our current national security policy. Some contributors to the debate even argue that there is no such thing as a national security policy. With particular reference to the doctrine of internal security, Nigeria is said to lack a clearly defined national policy. In place of a comprehensive doctrine of internal security, Nigeria operates on the basis of principles meant for handling particular emergencies. The reason for this piecemeal approach has been attributed to the fact that theories of internal security are generally subsumed in the ones governing the wide issues of national defence. The effect of this is that internal security management in Nigeria is reactionary "simply responding to the same conservative and coercive power politics doctrines that apply to the wider issues of national and global defence".[200]

The general tendency in Nigeria is for governments to strengthen the coercive apparatus of national security anytime the nation is faced with internal security challenges as evidenced by the recent Boko Haram insurgency which exposed the under-equipment of the Nigerian Armed Forces.[201] The NPF is even in a worse situation than the Nigerian Military because the Military have been the darling of Nigerian governments in the advent of Niger-Delta militancy and the Boko Haram menace. However, the NPF is indispensable as the first line of defence in internal security management because it is mandated to protect the lives and property of the citizens. The NPF performs conventional police functions and is responsible for internal security generally. The NPF functions alongside the Nigerian Prisons, the Nigerian Immigration Service, and the

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[198] C. I. Nwangboso, "The Nature of Internal Security Problems in African States: The Nigerian Experience" in 6 *International Journal of Academic Research in Business and Social Sciences*, 2016, p. 39.

[199] A. Abubakar, "The Challenges of Security in Nigeria", Paper presented at public lecture organized by National Institute for Policy and Strategic Studies (NIPSS), February 21, 2005, cited in C. I. Nwangboso, 2016, *op. cit.*, p. 41.

[200] B. A. Amujiri and S. U. Agu, "Threats to Internal Security in Nigeria: …", *op. cit.*, p. 286.

[201] The administration of President Goodluck Jonathan (2010-2015) has been accused of not equipping the Nigerian Military to fight insecurity in the country despite budgeting billions of Naira for the Ministry of Defence.

Nigerian Customs. The NPF also performs military duties within and outside Nigeria as directed.[202]

Available evidence shows that the NPF has been incapacitated in fighting the increasing internal security problems in Nigeria. According to the Public Relations Department of the NPF, the Force experiences endemic problems with recruitment, training, inefficiency and indiscipline. The NPF also lacks expertise in specialized fields of police operations; it experiences significant corruption and dishonesty among its rank and file.[203] These challenges engender low public confidence in the NPF. Thus, crime prevention, investigation, and detection are compounded by failure of the Force to report crimes accurately.[204]

In addition to these challenges, poor institutional capacity of the NPF in terms of manpower and logistics exacerbates its inability to effectively manage internal security in Nigeria. The NPF is greatly understaffed as statistics show. As of 2016, the staff strength of the NPF is estimated at 370,000. This figure is inadequate for a national population of over 170,000,000 during the same period. These statistics imply that one police officer is expected to cater to approximately 459 Nigerians in view of the ratio 1:459.[205] As an example, the staff strength of the NPF pales in comparison to the South African Police Service (SAPS). With a national population of 49,320,500 as of 2009, the staff strength of the SAPS stood at 189,546. This gives a ratio of 1 police officer to 260 residents.[206]

The inadequacies of the NPF to tackle nascent internal security problems such as Boko Haram crisis, kidnapping/militancy, caused by neglect over the years, has led to an over-reliance on the Nigerian Armed Forces in internal security management. The Nigerian Armed Forces is made up of the Army, Navy, Air Force, and the Mobile Police Force (MOPOL). But the NPF still appears to be a weak link in internal security governance in the country.

iii. Community-Police Partnerships and Internal Security

The idea of community-police partnership as an approach to effective and efficient policing is anchored on a symbiotic relationship between the police and the entire citizenry. It seeks to focus on constructive engagement with people who are the end users of the police service and re-negotiate the contract between the people and the police thereby making the community co-producers of justice and a quality police service.[207] An intrinsic quality of an effective and efficient police force is the relationship it builds with the community it serves. The world over, the practice of community policing through community-police partnership has become a veritable tool for tackling crime by preventing it or investigating and solving it. Police forces are

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[202] "The Nigeria Police Force is the National Police of Nigeria", NPF Public Relations Department, Abuja, 2011, available at: http:www.npf.gov.ng, accessed December 6, 2016.
[203] *Ibid*.
[204] C. I. Nwangboso, 2016, *op. cit.*, p. 43.
[205] M. U. Ndagi, "Nigeria's under staffed Police Force" in *Daily Trust*, March 26, 2016, available at: http://www.dailytrust.com.ng/news/philosofaith/nigeria-s-under-staffed-police-force/139543.html, accessed December 6, 2016.
[206] C. I. Nwangboso, 2016, *op. cit*.
[207] F. O. Okeshola and P. E. Mudiare, "Community Policing in Nigeria: Challenges and Prospects" in 3 *American Journal of Contemporary Research*, 2013, p. 134.

increasingly reliant on information from members of the public and information shared between the two often enables the police to act in real time to stop impending crime. This is an important aspect of policing in this era of terrorism and cyber-crime.

Nigerian laws envisage cooperation between the police and the community. For instance, section 20 of the *Administration of Criminal Justice Act* (ACJA 2015)[208] authorizes a private person to arrest a suspect who in his presence commits an offence for which the police are entitled to arrest without warrant. Section 22 also permits a private person to arrest any suspect found damaging public property. These provisions demonstrate the fact that the drafters of the law were mindful of the fact that effective and efficient policing depends on cooperation with citizens. During consultations that led to the new law, it must have been revealed by police officers and men that they could do with some help from the community even in apprehending criminals. It is expected that this Act would go a long way in stabilizing our CJS and also give some currency and practicability to our formerly archaic criminal laws.

As a pragmatic strategy for police reforms, the Nigeria Police in 2004 embraced community policing.[209] This initiative of the NPF was intended as a departure from traditional policing (that was reactive and incident-based) to a problem-solving oriented policing which is proactive with the community as the cornerstone of policy objectives.[210] The NPF embraced community policing on the principle that in a democracy, the police ought to be focused on protecting the public's fundamental rights to liberty, equality, and justice under the law. In fulfilling this role, the NPF must be a part of, not apart from, the communities they serve.[211] Other initiatives of the Nigerian police to better partner with the community include the Police Community Relations Committee as well as several community-partnership programmes of various state police commands.[212]

It is apposite to observe that numerous indigenous communities in Nigeria have long relied on active citizen participation in their respective law enforcements. Thus, the modern "community policing" has its roots in these traditional societies, predating the British colonization of Nigeria and the formation of the NPF. Therefore, the NPF's rather late recognition of the critical role of community-police partnerships in effective and efficient law enforcement derives from the force's colonial character. It is about time that the NPF appreciated the importance of this citizen-based law enforcement philosophy and emphasized it in the NPF activities.

However, despite the initiatives of the NPF aimed at involving the communities in policing, several internal deficiencies in the institution continue to frustrate the relationship between the force and the citizenry. Thousands of lives and properties worth millions of naira are

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[208] Cap. 41 LFN 2015.

[209] On April 27, 2004, community policing was launched as a new policing strategy nationwide: see F. O. Okeshola and P. E. Mudiare, "Community Policing in Nigeria: …", *op. cit*.

[210] Y. Abulrahaman, *Nigeria Police Force Operational Handbook*, 2007, Abuja: Nigeria Police Force, Preface.

[211] F. O. Okeshola and P. E. Mudiare, "Community Policing in Nigeria: …", *op. cit*.

[212] The Nigerian Police recently came up with a strategy to organize nationwide town hall meetings as a means of sensitizing the communities as well as exchange ideas with the citizens. See "Police Consider Community Policing to Tackle Insecurity", Channels Television news, May 9, 2016, available at: https://www.channelstv.com/2016/05/09/police-consider-community-policing-to-tackle-insecurity/, accessed December 7, 2016.

increasingly being lost due to the internal security problem in Nigeria which effective community policing can go a long way to ameliorate. Corruption is one of such problems plaguing any genuine attempt at bringing the NPF and the community together. Corruption is a national cankerworm that threatens the existence of the Nigerian State. Corruption has been aptly referred to as the "real enemy of the people".[213] In view of the NPF's strategic role in safeguarding and stabilizing the Nigerian State, corruption in the force is particularly devastating to the country and its citizens. A 2010 study by Human Rights Watch reports that countless Nigerians are accosted by armed police officers who demand bribes and commit human rights abuses against them as a means of extorting money. These abuses include arrest and unlawful detention, threats and acts of violence, including sexual assault, torture, and even extra judicial killings.[214] This remains a very common sight in contemporary Nigerian society. Nigerian roads, particularly in the Southeast, are replete with police road blocks, some one or two kilometers apart from one another. At each stop, the officers manning these road blocks demand (sometimes, they "request") that motorists pay some amount of money before they would be allowed to proceed on the road. The biggest loser in these unprofessional activities is law enforcement itself! A policeman that is after money from a road user certainly cannot enforce the law appropriately against the roader user that pays up. Moreover, these activities tend to lower the standing of police officers in the eyes of the citizens. In the circumstance, the citizens will be less willing to cooperate with an NPF that they hold in low esteem. Urgent steps are required to correct this practice by the NPF.

Other problems facing the NPF include personnel-induced institutional constraints such as arbitrariness in exercising its power, perversion of justice, and delays in the administration of justice. These constraints constitute stumbling blocks to the effective administration of justice and efficient maintenance of law and order in Nigeria.[215] The NPF also must rid itself of the military orientation of its officers who regard the NPF as a dominating force rather than an agency for service to the citizens. The abuse some officers of the NPF mete out to the Nigerian public is a function of poor training that de-emphasizes the fact that officers are to serve and protect the community. Godfatherism is also another negative feature that taints the image of the NPF. These factors erode the legitimacy of the NPF. Public trust and confidence in a police force are prerequisites for community-police partnerships. A lot can be done to engender public trust in the Nigerian police. The often touted slogan that "Police are your friends" describes what Nigerians expect their police to become.

iv. The Way Forward

The following are some possible solutions[216] to community-police partnership problems.

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[213] O. Nnoli, *National Security in Africa: A Radical New Perspective*, 2006, Enugu: Pacrep, p. 16.

[214] "Everyone's in on the Game: Corruption and Human Rights Abuses by the Nigeria Police Force", Human Rights Watch report, August 17, 2010, available at: https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force, accessed December 6, 2016.

[215] *Ibid*.

[216] See Chukwunọnso Okafọ, "Restorative Justice and African Jurisprudence as Necessary Foundations for Credible and Effective Crime Control in Nigeria: Strategies for Implementation" in C. Okafọ, S. U. Ortuanya, and C. A. Ogbuabor, *Fighting on the Side of Law and Justice: Legal Essays in Honour of Professor G. O. S. Amadi*, 2016, Enugu, Nigeria: Snaap Press, 2016, pp. 75-112.

1. Community policing represents a divergence from the traditional method of policing. Police must be willing to share some powers with the community, and also take key decisions at the neighborhood level. A robust community policing strategy must successfully implement three essential and complementary qualities, namely community partnership, problem solving, and change management.[217]
    a) Community Partnership: As the first strategy, this involves establishing trust as the main goal of the NPF. In this guise, the NPF must encourage community members to come forward with information. This has been an old trick of police forces all over the world but healthy incentives must be dangled before members of the public can come forward with vital information. Sufficient measures must be put in place to protect members of the public that risk their safety to provide clues to the police.
    b) Problem Solving: Police must be demonstrably committed to solving problems. The NPF must show a sincerity of purpose by committing more thought, energy, and action than traditional incident-based police responses to crime and disorder. Innovation is the watchword in this regard. In Australia for example, the police have identified funding intervention projects in indigenous communities as a strategy to penetrate the communities and establish a presence.[218] The idea of holding town hall meetings around the nation is a welcome idea. In this era of insurgency and militancy it is important that the police are seen as part of the community through constant feedbacks.
    c) Change Management: Community policing emphasizes the value of police presence in the communities. Along this line, effective community-police partnership must involve shifting responsibility downward towards patrol officers who are mostly involved at the grassroots level. The junior police officers are the heart of the police force and must be properly trained to be able to effectively manage community-police relations and deliver police services to the community.

2. NPF must invest heavily in understanding the local communities through research and development. This would enable the police understand the culture, behaviour, and social patterns of local communities. Other than communicating with the indigenes of the communities, it is equally important to understand the peoples that make up the communities.

3. In a globalized world, information is everything. Therefore, a fundamental part of community-police partnership is the Online presence of the NPF. The NPF must liaise with citizens using information and communications technology (ICT) as a tool for fighting crime. Social media comes to mind in this regard as a healthy percentage of the Nigerian youth population are active participants in the cyber space. The NPF is moving forward in this regard as its public relations department is evidently present on various social media platforms, especially Twitter and Facebook. Also important in this regard are Online platforms that sensitize Nigerians on issues that challenge the NPF to be more

[217] F. O. Okeshola and P. E. Mudiare, "Community Policing in Nigeria: …", *op. cit*., p.135.
[218] A. Morgan, "Police and Crime Prevention: Partnering with the Community" in J. Putt, *Community Policing in Australia*, 2010, Canberra, Australia: Australian Institute of Criminology, pp. 56-58.

effective. For example, Nigeria Police Watch is a website dedicated to informing Nigerians on ways to get the best out of the police in their community.[219]

4. It is important for the NPF to involve civil society in its policies and programmes. The civil society consists of the conveyors of the plight of the citizenry. They are legitimizers of regimes and institutions all over the world, and a committed NPF will certainly liaise with members of the civil society to feel the pulse of the communities they are sworn to protect and serve.[220]

5. Apart from the above mentioned measures for effective community-police partnerships, the Nigerian government must adopt a modern, practical and cohesive national security policy. The words of Abdulsalami Abubakar above[221] are instructive on the path which a national security policy must anchor for increased safety in Nigeria. As part of the national security policy, our Armed Forces, the NPF, and all other paramilitary bodies must be well catered for. Injection of sufficient funds into the security apparatus, adequate and modern training by the best hands, and recruitment of qualified personnel to strengthen the forces are imperatives. Logistics and training are indispensable variables in national security all over the world. Developed countries that have advanced security forces continue to make improvements; Nigeria should not be different. However, the responsibility does not stop at just providing funds. Leakages present in the institutions must be plugged to avoid corrupt politicians at the top from diverting funds meant for national security. As a whole, the endemic corruption halting the national progress must be sincerely and vigorously fought for overall improvement in Nigeria's fortunes as a nation.

Apart from the solutions outlined here for the community-police partnership problems, a crucial area that needs attention if Nigeria is to have effective and efficient law enforcement is incorporating relevant elements of African jurisprudence and restorative justice into the country's policing. This would draw from the traditional law enforcement ideas, principles, and practices for crime control. For the NPF, several reforms are needed in line with the new focus. The changes should be aimed mainly at integrating and utilizing the verified and valid components of indigenous jurisprudence to improve social control.

Further, as part of the recommendations for effective and efficient crime control in Nigeria, the following issues need to be addressed as well:

6. State Police Question

In Nigeria, there is the important question of whether or not to create "state police". This issue is widely debated among the citizens, privately as well as publicly through the mass media and the

[219] http://www.nigeriapolicewatch.com

[220] A coalition of 49 civil society organizations in Nigeria has launched an Online platform to monitor and report human rights abuses by police. It is important that the NPF work with this coalition to fish out errant police officers and take necessary action. See "CSO Launch Portal to Track Police Abuse" in *Daily Trust*, July 2, 2016, available at: http://www.dailytrust.com.ng/news/general/csos-launch-portal-to-track-police-abuse/153550.html, accessed December 6, 2016.

[221] A. Abubakar, "The Challenges of Security in Nigeria", *op. cit*.

various fora for debates on amending the 1999 Constitution. A decision for or against "state police" is sure to have far-reaching implications for social control in Nigeria. A vote against the idea would essentially maintain the law enforcement *status quo* in the country, with the chronically mediocre level of law enforcement and the general citizen dissatisfaction with the NPF. On the other hand, instituting state policing in Nigeria would radicalize the mode of law enforcement in the country, however without a guarantee that the new system would equally protect and serve all citizens in all states of the federation.

Simply put, the "state police" idea, if implemented, would empower each of the country's thirty-six states to set up and run its police force. Based on some negative experiences especially in the First Republic (1960-1966), many Nigerians fear that state police would strengthen the hands of ethnic jingoists in state government positions to violate the fundamental rights of Nigerians, especially the citizens residing in states other than those in which they are indigenes. The fear is that such violations could lead to dismemberment of Nigeria. Thus, the argument is that the country is not ripe (mature) for state police.[222] On the other hand, the argument for state police is predicated on the recognition that Nigeria is too vast to be policed by the NPF alone,[223] which necessitates the decentralisation of police administration.[224] Decentralisation would help to address the grossly insufficient police manpower in the country. Merely expanding the numerical strength of the NPF cannot correct the deficiences of the force. In any case, continued enlargement of the force would further strengthen the argument against the current centralized system: Nigeria is too big to be policed centrally, and a massive NPF would be too large to manage centrally; therefore state policing is necessary for the country.

In many ways, the state police debate in Nigeria is a re-engagement with the Nigeria question about the postcolonial structure, administration, and future of the country. The question consists of three main sub-questions, thus: To whom does power belong in Nigeria – the citizens or the rulers? What role do and should average citizens play in running the country? What is the proper function of indigenous institutions and processes in running the country, particularly concerning law and justice? For an effective, efficient, and sustainable legal/justice system to be achieved, the Nigerian power should reside with the average citizens, who should play a central role in the country's affairs. Also, because of their originality, credibility, and proximity to the people, Nigeria's indigenous institutions and processes should form the basic structure for law enforcement and other aspects of the country's justice system.

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[222] See T. Amodu, "Why I Am Against State Police – Gov. Suswam" in *The Sun*, September 11, 2012, available at: http://sunnewsonline.com/new/politics/why-i-am-against-state-police-gov-suswam/, accessed December 15, 2012; A. A. Bagudu, "State Police Good, But Timing Wrong", *Osun Defender*, October 4, 2012, available at: http://www.osundefender.com/state-police-good-but-timing-wrong-atiku/, accessed October 6, 2017; "Nigeria Not Ripe for State Police – Maku" in *Vanguard*, October 23, 2012, available at: http://www.vanguardngr.com/2012/10/nigeria-not-ripe-for-state-police-maku/, accessed October 6, 2017.

[223] A. Oshodi, "Canada-based Lawyer Supports State Police" in *Nigerian Tribune*, September 25, 2012, available at: http://www.tribune.com.ng/index.php/news/48135-canada-based-lawyer-supports-state-police, accessed November 12, 2012.

[224] "Lagos CP Seeks Decentralisation of Police Administration" in *Vanguard*, October 1, 2012, available at: https://www.vanguardngr.com/2012/10/lagos-cp-seeks-decentralisation-of-police-administration/, accessed October 6, 2017.

In the end, a bold and revolutionary effort is required to fundamentally change law enforcement in Nigeria. Such change is necessary to cleanse and sanitize the predatory policing that currently blankets the country. Regarding the state police question, a courageous and progressive effort may include the setting up of state police organisations. However, that is hardly the complete answer to Nigeria's law enforcement problems. The important thing is a grassroots (fundamental) step to reform policing in the country. The fundamental change also requires an honest and credible re-engagement with and re-inclusion of the essential *Nigerianness* for effective and efficient law enforcement in the country. This means that the Nigerian State must utilize effective, efficient, and credible indigenous institutions and processes, which are based on and reflect the citizens' culture. Such utilization would improve policing in the country.[225]

Thus, as important as finance, equipment, and increased manpower are for improving policing in Nigeria, grassroots law enforcement efforts may be more crucial for effective and efficient policing in the country. The grassroots strategy – whether through the prevailing NPF, by means of a state police, or some combination thereof – has the best chance to awaken the patriotic senses and sentiments of the citizens and engage them in securing their communities. The fear that *localizing* policing would lead to inter-ethnic discrimination, rights violations, and oppression appears to be exaggerated, especially in the face of the Constitutionally guaranteed rights and protections,[226] which the federal courts and other authorities should be able to uphold through their oversight roles.

7. Measuring Police Performance

This is another area where change is needed. Besides educating police officers and personnel and assessing them on the rule of law, it is imperative to routinely measure, document, preserve, and use the job performance of each police employee, not only for promotion, but also for other forms of public recognition. This would allow police employees that meet or exceed the established law enforcement criteria to be recognized and rewarded accordingly, such as through citations, commendations, and other awards. Recognitions and rewards for employee performance, even if monetary gift is not included, go a long way in encouraging the recipients to maintain a high performance level. Thus, a certificate issued to a police employee for excelling in his duty may be all that is needed to spur the employee to do more. Regarding the contents of a police job performance measure, these should include both objective and subjective materials since the police have to respond to all manner of issues in doing their duties. However, employees who fail to meet the minimum job performance criteria should be removed from the NPF for non-performance.

8. Monitoring Police Ethics

The ethical standard of a profession goes beyond the law. Ethics capture situations that, although not prohibited by law, give rise to concerns – sometimes gave concerns – on the part of reasonable members of the profession as well as other reasonable citizens. Thus, for every line of work, ethics are determined *internally* by the applicable standard within the profession (among

[225] P. A. Akakwam, *The Relevance of Customary Criminal Justice System in the Criminal Justice Administration of Nigeria*, *op. cit.*

[226] Particularly Part IV – Fundamental Rights – of the CFRN 1999.

the professionals) as well as *externally* by the reasonable view the generality of the citizens hold regarding the profession and its activities. The internal and external perspectives of ethics are especially important regarding police work because law enforcement routinely involves life and death issues or matters of individual liberty, property rights, etc. As such, it is imperative that the police perform their duties in ways that are above suspicion. Police ethics require that police employees perform their functions legally and scrupulously and are seen by the public as doing so, again because the citizens' perception is critical in the interpretation of police work. In view of the foregoing and in appreciation of the need to establish and maintain proper police ethics in Nigeria, the NPF should mandate a trusted law enforcement monitoring group to emphasize this aspect of the police responsibilities. In recognition of the importance of police ethics in law enforcement, the NPF should use the data derived from the monitoring group's work to judge its employees.

9. Continuous Training

In addition to the required trainings and follow-up trainings in policing, the NPF should provide police officers and personnel with varied opportunities and encouragement to participate in relevant continuous trainings on their own. Such continuous trainings should include workshops, seminars, supervised independent studies, education toward university degree or other certificate, etc. The police should reward employees that verifiably participate in such activities. Reward options may include tuition grant, conference grant or stipend, positive citation, consideration in promotion evaluation, etc. It is reasonable to expect the continuous training opportunity to drive police officers and personnel to continue to search for and take advantage of avenues to improve their preparation and performance for improved crime control.

10. Partnering With the Private Sector for Up-to-Date Law Enforcement Equipment

To ensure that sufficient funds and equipment are available for law enforcement, the NPF should convince and co-opt private businesses, organizations, groups, and individuals to join in the efforts to properly equip, train, and otherwise support the police for more effective and efficient law enforcement. Security of lives and properties are two of the most important issues for a citizen. Therefore, it is logical that private entities will join with the government to prevent and control crime because of the promise of increased and better security of lives and properties. It makes business as well as personal sense to spend a little more to protect oneself and property.

However, while asking private parties to assist with equipping the police, the police must use the funds realized in the process with utmost transparency and judiciousness. Many contributors to the Police Equipment Fund (PEF) had bad experiences, including diversion and misuse of funds. Steps must be taken to avoid a repeat of those experiences. It is only then that private parties would invest willingly and confidently. It should be emphasized that where private citizens and groups contribute to public law enforcement, the government through the public police nonetheless remains primarily responsible for securing the citizens and their properties. One of the basic duties of a government is the safety of its citizens and their properties. Therefore, the Nigerian government and the NPF remain accountable on the issue of the security of the citizens' lives and properties even where private parties assist in the task.

The ten issues/suggestions enumerated here for improving law enforcement in Nigeria are rooted in African jurisprudence and restorative justice. The recommendations tap into and reinforce relevant aspects of Nigerian community systems and processes for law enforcement and crime control. In many ways, Nigeria is at cross-roads in its nation-building efforts. For the country to become a truly federal nation, several aspects of its national life have to be released from the stranglehold of the federal government. At the expense of the federating units, the federal authorities currently hold too much control over the affairs of Nigerians. Law and justice – particularly law enforcement – strongly illustrates this national suffocation of the federating states. It seems appropriate and necessary for the constituent parts of the country to be legally empowered to exercise the wishes and aspirations of average Nigerians, albeit within the confines and oversight of the Constitution and credible federal authorities.

7.3. Prisons, Corrections, and Other Post-Conviction Actions

In this section of the lecture, I examine the forms and methods of reactions to convicts in Nigeria that would take the values of African jurisprudence and restorative justice into consideration. It is necessary to appreciate that many indigenous Nigerian societies, like other Africans, often differentiate between the criminal and the crime. This means that the society understands that, even though a person's conduct is bad, the person may be recoverable or capable of rehabilitation and not necessarily bad. The adage, "Do not throw away the baby with the bathtub" is instructive here. Therefore, indigenous Nigerian communities have a variety of corrective measures to crimes, such as offender correction and rehabilitation, compensation and indemnification of the victim, remorse and forgiveness, and punishments and other sanctions. A measure is applied as response to a crime depending on the best fit for the circumstances. The largely homogenous indigenous community has a strong interest in carrying along all or at least most of its members. Everyone's contribution is needed to build and sustain a strong, secure, and progressive community.

The changes to the Nigerian community as a result of colonization and migration have made the society heterogeneous, such that even the pre-colonial societal norms that were settled and generally accepted are subject to increased challenge from within and outside each community. However, despite the marked differences between the pre-colonial and postcolonial Nigerian societies, there are many aspects of the indigenous modes of offender correction and management that can be used for great benefit in modern social control in the country, and thus should be retained. On the other hand, there are many aspects of convict disposal and management under English law in Nigeria that should be discarded for ineffectiveness and/or inefficiency. The objective in this connection should be to build a credible CJS capable of proper offender management for the greatest good of Nigeria.

Specifically, the following issues concerning offender corrections and other post-trial actions, along with recommended solutions, need to be tackled for more effective and efficient crime control.

7.3.1. Prison Conditions: There is a need to ensure humane and proper prison conditions for rehabilitation. The deplorable state of the Nigerian prisons and jails must be corrected as part of any reform effort. Many reports have been published on the unacceptable living conditions in

prisons.[227] The desperate conditions to which inmates are subjected in Nigeria include gross overcrowding, lack of hygienic conditions, absence of reform opportunities such as through skills training, insufficient food, and excessive and illegal pretrial detention. In some instances, inmates are detained pending trial (awaiting trial detainees or ATDs) for upwards of ten years without being charged to court. Many do not know the crimes for which they are detained. Others are detained for much longer than they would have served in prison had they been tried, convicted, and sentenced to a maximum prison term. Yet others have been jailed for so long that their accusers have forgotten about them! Pretrial detention appears to be most responsible for the congestion in Nigerian prisons. This is unconscionable, say nothing of illegal.

However, the congestion resulting from the overload of ATDs combines with other factors to create the prevailing subhuman conditions in Nigerian prisons. Any wonder that inmates frequently riot to protest their conditions? Between 2002 and 2007, there were riots in many prisons, including Okene, Kogi State (2002), Makurdi, Benue State (2002), and Ibadan, Oyo State (2007).

The truth is that congestion, together with inadequate funds for prisons service and other human failings, violates the original concept of the prison as a reformatory centre. The Nigerian prison system dehumanizes whoever passes through it; its managers are often sadistic; the facilities are antiquated. This development has put a question mark on the country's justice administration besides worsening the human rights image in the international community. To resolve this, whatever efforts that may be made to improve the prison system must be complemented by similar reforms in the Police, the courts, and government. The police for instance can eschew the habit of arbitrary arrest and detention, often on flimsy and untenable excuses. The courts must find a way to accelerate criminal trials, while government should build more prisons and rehabilitation centres. The option of parole and suspended sentence should be considered as is the case in other countries.

7.3.2. Standing Committee on Prison Monitoring: The poor prison conditions in Nigeria create the need to routinely oversee these jails and prisons. Accordingly, I recommend the formation of Prison Monitoring Committees (PMCs) at the federal and state levels. The committee will consist of, among other members, representatives of the Nigerian Bar Association (NBA) at each level. Other members of the PMCs will be representatives of the federal or state Ministry of Justice, as applicable, representatives of registered civil rights organizations, and representatives of the federal and state governments to be nominated by the relevant legislature. The diverse membership of the PMCs will ensure input from many public and private stakeholders. It will also reduce the likelihood that an agency or group will dominate the process.

The monitoring committee will be charged with the responsibility to routinely and with minimum publicity visit the jails and prisons within its jurisdiction. The committee will review

[227] See examples: O. Ajayi, "13 Killed in Ibadan Jail Break" in *Vanguard*, September 12, 2007, available at: http://allafrica.com/stories/200709120090.html, accessed October 7, 2017; T. Sanni, "Failed Jailbreak: Panel of Inquiry Instituted" in *ThisDay*, September 13, 2007, available at: http://allafrica.com/stories/200709130588.html, accessed October 7, 2017; "Our Prisons are National Scandal – Buhari" in *Vanguard*, October 7, 2017, available at: https://www.vanguardngr.com/2017/10/prisons-national-scandal-buhari/, accessed October 7, 2017.

inmates' records and report to the judge with jurisdiction over each area on what the committee found. Where it finds illegal, unjust, or unfair detention and/or living conditions for inmates, the committee may recommend to a judge with jurisdiction to order the release, with or without condition, of a deserving inmate. Unless strong and clear evidence contradicting the committee's recommendation is presented to a judge with jurisdiction within a reasonable time, a deserving inmate will be released, with or without condition. Although some chief judges from time to time visit prisons and release some unlawfully incarcerated persons, the PMC recommended here (a standing, rather than *ad hoc*, endeavour) will formalize the policy and require the committee members to account for their activities, which presently is lacking. Already, the Plateau State's Criminal Justice Committee pays periodic visits to prisons to assess conditions.[228] This should be encouraged and extended to all the other states, with the modifications recommended in this lecture.

In the PMC model, a detainee who disagrees with a PMC's decision not to recommend release may appeal to a judge with jurisdiction over the matter. Therefore, the PMC recommended here does not take away from, but adds to, the existing constitutional guarantees to challenge unlawful detention. The unique advantage of the PMC is its capacity to speed up the remediation of illegal, unfair, and unjustified detentions. This is because the committee is specifically charged with the responsibility to routinely identify, report, and help to correct such errors.

7.3.3. Emphasize Corrections in Offender Management: Nigeria's official CJS is overly punitive. The system typically views convicts as deserving of punishment. This official attitude is at variance with the general customary expectations and preferences of the citizens. Often, the punishment imposed by the official CJS does not fit the crime because the punishment goes beyond what is needed to redress the offence. On the other hand, indigenous forms of offender management are more reflective of the citizens' views of proper societal reactions to crimes. However, every crime is a transgression of a general societal norm. The focus of societal reaction thereto should be on encouraging and extracting compliance with the norms, rather than on inflicting pain and suffering on transgressors and alienating them from the rest of society. Consistent with the British colonial criminal justice policy in Nigeria, contemporary criminal laws in Nigeria remain primarily tailored to punish. Harsh sentences are commonly imposed because the applicable criminal laws were enacted either by colonial Britain or in line with the British colonial philosophy of punitive sanctions.[229]

In view of the fact that the British colonial crime control model has not sufficiently managed the crime problem in Nigeria, a new direction is necessary.[230] The new version will contain a mixture of indigenous and foreign approaches, depending on the effectiveness and efficiency of each measure. Long before colonization, indigenous courts in Nigerian communities have managed a range of offenses – minor, major, and all others between them. Erstwhile colonial and present postcolonial official policies drastically limit the powers and authority of these

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[228] "Magistrates to Write Exams Before Promotion – CJ", *NigerianBestForum*, April 10, 2009, available at: http://www.nigerianbestforum.com/generaltopics/magistrates-to-write-exams-before-promotion-%E2%80%93-cj/, accessed October 18, 2017.

[229] See Nọnso Okereafọezeke, *The Relationship Between Informal and Formal Strategies of Social Control: … , op. cit*.; also Nọnso Okereafọezeke, *Law and Justice in Post-British Nigeria: …, op. cit*.

[230] H. Zehr, *The Little Book of Restorative Justice, op. cit.*, p. 3.

indigenous courts. As such, the various indigenous strategies for managing offenders have been more or less emasculated by the official laws. But, for effective and efficient crime control, the offender management options provided by the Nigerian traditions, customs, indigenous laws, and practices as well as the options emanating from the English system have to be considered for solutions to the crime problem. With this, various forms of reactions to crimes will become available to the courts, including reprimand, fine, probation, suspended sentence, parole, work release, community service, responsible adult supervision, and restitution. No longer will the system rely on purely punitive sanctions, such as jail and imprisonment, and the death penalty. Note that these offender management tools will need to be further expanded for juvenile convicts because of their greater chance of being reformed over adult offenders.

Reprimand, fine, suspended sentence, probation, parole, work release, community service, restitution, and responsible adult supervision, or some combination of the options seems to be a viable way to reduce the current overindulgence in punishment in the CJS. All the options appear reasonably well understood except for "community service" and "responsible adult supervision". These two options are therefore explained as follows. The proposed *community service* will place a convict (typically a simple offender, misdemeanant, or nonviolent felon, as well as a violent felon deemed capable of community reform) in the charge of an official (governmental) or unofficial (nongovernmental) community institution, agency, organization, or other authority. The aim will be to mold the convict's behavior by supervising him through specified tasks stipulated in the sentence. The supervising authority will, periodically and especially at the end of the prescribed term, report the convict's progress to the court or to the Corrections office with jurisdiction, as the court may direct.

Responsible adult supervision – a more privatized form of community service – merits some explanation. By this, a convict will be handed over to a responsible adult family member or other responsible community member with the will and capacity to correct the offender. The responsible person will be charged with the task of helping the offender to change his behaviour. The judge will give the responsible person a reasonable period of time to guide, supervise, monitor, and periodically account to the court or the Corrections office with jurisdiction, as the court may direct, on the offender's progress. Either community service or responsible adult supervision may be used where appropriate, depending on the seriousness of each offense. For instance, less serious crimes may be subjected to responsible adult supervision, while the community service option is used to manage more serious crimes. To different degrees, both forms of offender management will involve average citizens in the corrections efforts, thus allowing the citizens to own the efforts and the outcome.

Considering the differences in their life experiences and years of behavior formation, a juvenile offender is presumed to be more likely to be reformed than an adult offender. Notwithstanding, both categories of offenders should always be *considered* for reform rather than have punishment imposed on them without other consideration. Therefore, the community service and responsible adult supervision ideas should definitely be implemented for juvenile offenders and such other adult offenders as are deserving of these management methods. In the proposed model, if at the end of the imposed supervision term or at an earlier time (depending on the offender's progress) the court or the Corrections, as the case may be, determines that the offender is sufficiently

reformed, he will be discharged from the system. Otherwise, the sanction may be revised upward, that is made more punitive.

The citizen-centered corrections options (such as community service and responsible adult supervision) will return primary responsibility for offender management to the community, rather than the official government. Major criminals tend to begin their criminal enterprises with minor crimes. In time, the minor criminal learns the ropes and ventures into major crimes. Thus, if the community successfully intervenes after a minor or even first major crime is committed and helps to change an offender's behavior for the better, the larger society will be saved the problems of more serious crimes in the future. Whatever the mode of society's response to a crime, the objective should always be to create a more ordered, just, and peaceful society. Often, punishment does not advance this objective. In such circumstances, less exclusionary, more dignifying, but firm societal reactions are needed. Indigenous responses to crimes are better suited for these situations. Judges in state and federal courts ought to freely apply and utilize these options to achieve effective and efficient crime control.

As demonstrated, community (non-governmental) offender management methods have the capacity to continue to contribute to effective and efficient crime control in Nigeria. Shaming of offenders at the community level is an effective and efficient way to reduce crime and shape individual behaviour. Shaming is a process in which an offender or deviant is isolated from the group and his conduct is condemned by the other members of the group. The acts of the isolation and condemnation show that he falls short of the society's expectations. However, it is not every type of shaming that reduces crime; rather than reduce crime a form of shaming may in fact increase it. As observed by Braithwaite, "the key to crime control is cultural commitments to shaming in ways that [are] reintegrative. Societies with low crime rates are those that shame potently and judiciously; individuals who resort to crime are those insulated from shame over their wrongdoing."[231] In many ways, crimes – particularly those of the high profile white-collar kind – flourish in Nigeria due to the absence of shame. However, to be effective, shaming has to be applied at both the national and the grassroots levels. The grassroots level has the capacity to be particularly effective because people know one another more closely.

For effective and efficient crime control, these methods that do not violate the Constitution, including shaming, should be maintained and expanded with local and state government encouragement. The methods should not become part of the official CJS. They should remain unofficial, but the relevant local and state governments should encourage and support communities and their agencies to use these forms of shaming, for example, to respond to crimes. Appropriate government encouragement and support in this connection involves government agencies explaining to community groups that they are free to use these forms of offender management provided that the procedures do not violate the Constitution or other law. Also, the government can contribute financially to a community programme or other effort to use these offender management options. The emphasis ought to be on the community-based options and their capacity to *correct* offenders, rather than on the harshness of the punishment imposed on a convict.

[231] John Braithwaite, *Crime, shame and reintegration*, 2005, Cambridge, United Kingdom: Cambridge University Press, p. 1.

8. Rule of Law (Grounded Law) and Personal Responsibility as the Anchors of Effective and Efficient Crime Control in Nigeria

8.1.Personal Responsibility and Self-Control

Earlier in this lecture, I examined the rule of law. In the discourse, I demonstrated that *the rule of law ought not to be understood as rule by law alone*. Instead, the many variables that play significant roles in the social control of a society (culture, tradition, religion, etc.) give rise to *grounded law* as the best means of crime control. However, aside from the rule of law (grounded law), individual or personal responsibility goes a long way in determining the extent to which the crime control institutions and processes in a society are effective and efficient. Personal Responsibility refers to the view that human beings opt for, initiate, or otherwise cause their own conducts. Consequently, the individual persons can be held morally and legally accountable for their conducts. It is recognized that the *personal responsibility* and *self-control* views on criminal behaviour detract from the other view of *determinism*. Determinism is the philosophical standpoint that every occurrence or condition, including every human decision and action, is the predetermined and necessary consequence of forerunner set of circumstances. Criminologically reasoning, it is undeniable that a person's circumstances may determine whether or not that person commits certain crimes, not all crimes though. Thus, in such a situation, *personal responsibility*, *self-control*, and *choice* will have little, if any, influence on whether the person commits the predetermined crimes.

However, what is also undeniable is that *personal responsibility*, *self-control*, and *choice* are implicated in many – if not most – crimes. Personal responsibility is rooted in self-control. This means that no person can show personal responsibility if he lacks self-control. The reverse is also correct: personal responsibility is also necessary for self-control. Personal responsibility and self-control reinforce each other. Therefore, it should be borne in mind that the elements of one are closely tied to those of the other. Having acknowledged the fact that *determinism* controls the commission of some crimes, the primary concern of this lecture are those situations where the citizen *chooses* to commit crimes.

While identifying twelve reflections on personal responsibility, Brunkhorst[232] writes in part:

> 1. Personal responsibility begins from the inside and moves outward, we must begin by taking responsibility for our thoughts, choices, and reactions. Then we can be responsible for the circumstances we create in our world.
> 3. Every choice can benefit humanity or harm it. Even avoiding choices is a choice and each choice has consequences.
> 4. When you think something or someone else is responsible for your problems and their solutions, that exact thought is the first problem to solve.
> 6. A great philosophy of responsibility: When things are working, I am responsible … and when they need fixing, I am responsible.
> 9. When you follow the rules, life works. If you think you ever really get by with breaking the rules, you are only fooling yourself.

[232] Steve Brunkhorst, "12 Reflections on Personal Responsibility", available at: http://www.boxingscene.com/motivation/29761.php, accessed October 8, 2017.

Personal responsibility and self-control implicate that crucial aspect of the CJS: discretion and the exercise thereof. As discussed earlier in this lecture, discretion allows – even requires – a CJ official to exercise reasonable flexibility in performing his duties as a CJ official. However, whether discretion is exercised in a given case and how so depends to a great extent on the personal responsibility and self-control of the official granted the discretion. For a private citizen, the discretion[233] concerns whether or not to assist the CJ officials in crime control by, for example, providing information to the police to prevent a crime or investigate a crime already committed. The personal responsibility and self-control of the CJ official involves, for example, whether to demand or receive bribe to compromise justice in a case. For the private citizen, personal responsibility and self-control touch on whether the person chooses to commit a crime.

Thus, whether or not and the manner in which a citizen conducts himself (as a CJ official – police officer, judicial officer, prisons/corrections officer, etc. – or a private citizen) significantly affect the quality of justice and crime control in society.

In contemporary Nigeria, the lack of sufficient *personal responsibility*, *self-control*, and *rational choice* seems to be at the root of many crimes. Accordingly, in so far as a citizen concludes that the weak CJS is not capable of detecting his crime and punishing him therefor, he is likely to commit the crime, the *personal decision* not to do so having been abandoned. In his consideration of many Nigerians' penchant for wanting positive change in the society but avoiding personal responsibility therefor, Alabi[234] observes as follows:

> … for any meaningful change to happen, the individual psyche must be "retuned". Unfortunately, what we want as Nigerians is a change of government and not a change of individuals. We ask who are the people who make up the government! These are individuals and they are Nigerians. If we change the government and bring in new set of Nigerians, we shall still be shouting change in a few months down the line. It is the psyche of the ordinary Nigerians that need change, and not the political grandstanding our leaders are engaged in now. An ordinary Nigerian believes the government is a gateway to wealth, so getting into government is a means of having a comfortable life for himself and his family. Without a change of this mentality, there is no "change" coming to Nigeria. Change does not come in a vacuum, it has to be effected. And no society can be changed without changing the individual. The Nigerian has to change himself before the society can change. And this is the mistake these agents of change are making. Change cannot be achieved overnight. It has to be a steady process.

Although law's threat of violence or other consequence cannot insure full compliance, its compelling influence, together with the compelling influences of custom, tradition, religion, culture, etc., as well as individual self-control, will produce full compliance. To a significant degree, effective and efficient social control of a society is based on the citizens' conviction, belief in, and exercise of free-will in favour of (individual) self-control. The exercise of self-control is important for all citizens, but particularly so for those citizens in positions of authority. Thus, the characters of the leaders, officials, and agents of law and justice are highly relevant to the quality of justice they deliver to the people. The character of each leader, official, or agent goes a long way in determining the way he performs his duties. As an idea to be applied to facts, in real world circumstances, by powerful authority figures, exercising all manner of discretion,

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[233] This is more accurately "choice" in a social sense rather than "discretion" in the legal sense.

[234] Babajide Alabi, "Nigeria Will Change, When There is Individual Rebirth" in *Vanguard*, January 04, 2015, available at: http://www.vanguardngr.com/2015/01/nigeria-will-change-individual-rebirth/#sthash.3G8RpkrY.dpuf, accessed October 8, 2017.

the rule of law in a society will achieve justice only to the extent allowed by the authority figures. The training, knowledge, competency, philosophy, etc. of the leaders, officials, and agents, as well as the availability of resources, are important to the quality of justice emanating from a justice system. However, where law/justice leaders, officials, and agents of questionable character dominate a justice system, their actions and omissions are capable of nullifying the advantages offered by an abundance of resources and the other relevant criteria.

The foregoing means that the character of a law/justice leader, official, or agent is essential to the rule of law. Nigerian examples of the leaders, officials, and agents are the legislator, Governor, President, Attorney-General, policeman, prosecutor, judge, prison staff, etc. The character of such an authority figure is reflected in the level of self-control exercised by the person. For the rule of law in a society to properly regulate relationships and serve the citizenry, each law/justice leader, official, or agent must recognize and adhere to the proper level of self-control, that is, that level which innately instructs, cautions, or guides the authority figure on the proper behavior in each situation, regardless of whether or not the law is capable of detecting and/or sanctioning an offender. For emphasis, no legal system is capable of anticipating every issue that may arise. Similarly, no system can provide complete and unassailable physical presence to monitor, prevent, or react to every illegality. Consequently, the rule of law depends significantly on each State law/justice leader, official, or agent to regulate his conducts by utilizing the self-control mechanism, with which every rational human being is equipped.

Thus, to a great extent, a rule of law-based society depends on law/justice leaders, officials, and agents to *do the right thing*, consistent with the spirit as well as the statement of the law. Merely complying with the words of the law (where the authority figures do), while betraying its good intention, negates the rule of law. As an example, too often authority figures in Nigeria thwart the rule of law by taking advantage of the weak enforcement mechanism, thus facilitating the routine, short-sighted, and senseless repudiation of the rule of law. In this connection, the endless constitutional amendments in post-1999 Nigeria significantly irritate a discerning mind because the rule of law does not depend on the quantity of laws, rather it depends primarily on the willingness of the leaders and law and justice actors to comply with existing laws and generally conduct themselves fairly in the overall best interests of the society. The relevance of self-control in this lecture is to be appreciated by considering that in many developing nations, including Nigeria, government and corporate leaders spend a lot of their resources and time avoiding the laws and community norms (through bribery and other influences) rather than adhering to them. Even if the law and morals do not regulate a public matter, one would have expected a leader to exercise proper judgment and self-control and do only those things that would promote a decent Nigeria and the best interests of the citizenry. Sadly, this is not the case due substantially to the absence of self-control.

8.2. From Rule of Law to Crime Control and Everything In-Between

The rule of law exemplifies a critical human ideal. In Professor G. O. S. Amadi's Inaugural Lecture,[235] he wrote pointedly: "The rule of law abhors the rule of men." Even then, legal theorists and society watchers have debated the role of law in the founding and growth of a

[235] G. O. S. Amadi, *Political Jaywalking and Legal Jiggery-Pokery in the Governance of Nigeria: Wherein Lies the Rule of Law?*, the 57th Inaugural Lecture of the University of Nigeria, 2011, University of Nigeria Press, at p. 23.

society. The more diverse a society, the more heated the debate is due to the numerous interests and increased complexity to be addressed. Thus, I have had occasion to advance the criticality of the rule of law, particularly in a modern State or its organ, as follows:[236]

> … the idea that objective, widely accepted law, not a person's or few people's preferences, should regulate a society is one of the most important theses ever formulated. A society that lacks good law – and the stability and peace that the law produces … – is unlikely to make significant progress. Once it became necessary for one human being to co-exist and routinely interact with another human being, an objective mechanism for managing disagreements became critically important. It is an inevitable truth that wherever two or three are gathered, there are bound to be disagreements. And, neither of the parties to a grievance, conflict, or dispute can reasonably be expected to satisfactorily play two opposing roles at the same time: interested party and impartial arbiter. No human being, however pure of heart, can always or routinely judge fairly an issue in which he has interest. Thus, the utility of the rule of law became clear as human relationships began, developed, and diversified. Of all human inventions, the rule of law may rank as one of the more important assurances against systemic unfairness and eventual society's failure. The rule of law, if properly practiced, gives the citizens confidence in their society. This justice and social control model appropriately grounds and stabilizes a society. In turn, this fosters cohesion, faith, and support for the society and its leadership.

The rule of law remains vital for constructing and sustaining every human society. It became inevitable and desirable with the emergence of human societies *everywhere*. Western European claim to its invention is as nonsensical as it is illogical. The truth is that no society, however "primitive", could avoid self-destruction if there was no objective or credible mechanism for managing grievances, conflicts, and disputes among the inhabitants. Thus, the fact that a society survived long enough and even prospered is sufficient evidence that the rule of law or some elements of it have been observed in the society, however imperfectly.

Nonetheless, while recognizing the universality of the rule of law concept, its application to different societies unavoidably requires considerations of varying factors. The relevant dynamics arise from the differences in understanding and interpreting "law". If *rule of law* is, simply put, the state of affairs in which the law of a society or group (nothing else) is the standard for regulating the members of the society, judging their conducts, and deciding issues among them, then, what is *law*? The wide disagreements among legal theorists and commentators on what law means has been discussed in this lecture. However, what is undeniable is that the social control of the members of a society requires the controlling authority to engage with and make use of law as well as other control means (including *custom*, *tradition*, *culture*, *religion*, *experts*, and *community*) to achieve effective and efficient control of the population. In spite of their limitations, a social control system that discounts the other means of social control in society is liable to fail or meet with minimal success.

Society's quest for the rule of law to standardize behaviours in the population must include the everyday rules of relationships among the people. These *primary rules of obligation*,[237] even if not yet termed "law", form the foundations of a stable, ordered, and predictable society. Thus, the Nigerian villager who finds and follows his community's traditional marriage rules to celebrate his daughter's marriage thereby conforms to the community norm. He avoids the "deviant" label and, as importantly, he helps to strengthen the group's expectations regarding

[236] Chukwunọnso Okafọ, "The Rule of Law in a Developing Nation: …", *op. cit.*, pp. 23-46 at 24-25.
[237] H. L. A. Hart, *The Concept of Law*, *op. cit.*, p. 91.

marriage so that another member that fails to comply could be sanctioned as the rules prescribe. In line with the foregoing example, aside from the *provisions of the law*, the *behaviours* (*implementation of the law*) exhibited by Nigerians toward one another contribute to the presence or absence of the rule of law in the country. When a motorist double-parks his vehicle on a busy road, he thereby obstructs the smooth running of the traffic, which could result in accident. The office cleaner who ignores his cleaning duties and idles away work hours when the office is dirty denies the office of a conducive working environment. And, by collecting salaries for work not done, the cleaner violates the institutional and community standard of how a good worker ought to carry out his duty. So, it is not only major violations of legal provisions that undermine the rule of law.

The rule of law is about appropriate norm in society; it is about creating and following the proper standard for doing things to ensure credibility and continuity; it is about holding all citizens accountable for their actions and omissions. Legal rules are a part of the standardizing; however, semi-legal or non-legal rules and expectations contribute greatly to society's standard. It is one thing to have a clear legal or other normative provision on the proper way to behave, but it is another thing to have the self-control and responsibility to the other members of the society to avoid doing something that, although the law has not proscribed, will harm the society or set a negative example for others. The absence of this *moral* compass, in private as well as public affairs, is arguably the greatest obstacle to building a fair, just, and progressive Nigeria.

9. Conclusion

I make bold to state, again, that Law is Life. Law is life because, above being effective and efficient, it is the most credible means of human behaviour control. Law's credibility lies in the fact that it is the instrument of social control that commands the widest regard, following, and acceptance, particularly in a heterogeneous society, such as Nigeria. Other methods of social control – including culture, religion, and tradition – are ethnicity-specific. They soon fail or compromise when confronted with disputations and other issues involving mixed cultures, religions, traditions, etc.

In the final analysis, with acknowledgment that law is life, that it is indispensable in organizing a valuable, credible, effective, and efficient modern State, that law is the ultimate organizer for meaningful development; the specific form of law required for the assignment is that which best represents the collective understanding, belief, aspiration, and system of the citizens. This is where *grounded law* comes in because it captures those values for which the citizens stand. The immensely controlling influence of personal responsibility and self-control is beyond dispute. It is that x-factor needed for any social control system to function optimally. If all that the citizens of a society do is seek ways to avoid detection and punishment by the agents of the formal CJS, the system will not do much for crime control therein. But if the citizens recognize that law alone is insufficient for effective and efficient crime control, willingly exercise their self-control and avoid those things which they ought not to do and do only those things which they ought to do, in the best interest of the society, law will have great impact in regulating the citizens and their relationships.

Now, what is left is for you and I to more actively and persistently advocate for increasing the combined roles of the rule of law (specifically, grounded law) and personal responsibility in creating and maintaining a high level of crime control so as to ensure a more just, ordered, and progressive Nigeria.

Thank you all very much!

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As should be expected, there is a long list of persons to each of whom I owe one degree of gratitude or the other for the roles they played in seeing me to today. I make no pretense to claim that I built my Professorial career by myself. The bulk of the credit for today and my career belongs to persons too numerous to mention. Over the years – nay decades – I have had opportunities to thank various of my benefactors. Again, on this special occasion, I thank each and every one of them immensely for the many ways in which they assisted me over the years. Permit me to use this medium to especially appreciate the contributions of the late scholar, colleague, mentor, friend, teacher of Law and life, and astute believer in the rule of law, Professor G. O. S. Amadi, for all that he did for me to be here today. His examples are indeed worthy of emulation.

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