Scientific Research

A Theoretical Foundation for Understanding Law Subjects and Rights in Igbo Philosophy of Law

F. O. C. Njoku

Department of Philosophy, University of Nigeria, Nsukka, Nigeria
Email: ocnjokufrank@yahoo.com

This paper attempts to respond to a call to find an ontological basis for establishing African legal theory. The African world of my choice is the Igbo world of South-east Nigeria. It is a world I want to examine to see how its material and theoretical structures help articulate a philosophy of law in terms of projecting a consistent understanding of law subjects and the foundations of their rights. The article builds on the contributions of F. U. Okafor and his many African critics.

Keywords: Foundation; Law; Rights; Igbo Philosophy

Introduction

F. U. Okafor's contribution in his two works (1984: pp. 157-164; 1992) is not so much in articulating a philosophy of African legal tradition as chronicling materials that can be used in building a theoretical foundation for African philosophy of law. In other words, Taiwo is correct to point out that "philosophy is not chronicles," (1985: p. 200). Something must be said, from the start, of P. C. Nwakeze's criticism of Taiwo's critique of Okafor's "Legal Positivism and the African Tradition." Nwakeze asserts that Taiwo, in criticising Okafor's claim that we retrieve authentic African tradition from the rubbles of colonisation, argues that we cannot talk about "African cultures," or "African legal traditions" in a generalised sense (1987: p. 101). Certainly, we can talk of "African culture" or "African cultures," as Nwakeze rightly points out, "depending, of course, on whether one is concerned with cultural peculiarities or cultural uniformities," (Ibid., 102). Taiwo's point, however, is that Okafor does not make this conceptual distinction, and not a denial that such a consensus on certain elements is possible, as William Idowu reads him, (2006: p. 8). A generalised treatment of African cultures, institutions and legal systems would have to show some comparative analysis; the closest Okafor comes in mentioning other African legal traditions, apart from his Igbo cultural background, can be read from these lines: "Traditional Africans, in their native social milieux, recognised certain 'rules' or 'norms' as laws (which are either prescriptive in the 'positive' sense or restrictive in the negative) as opposed to mere customs. Laws as such, as opposed to mere customary 'rules,' are called 'Iwu' and 'Ofin' by the Igbo and the Yoruba tribes of Nigeria and 'Se' by the Ewe tribe of Ghana," (1984: p. 159).

These two tribes, outside of the Igbo circle, are not enough to assume the level of pre-eminence, assigned to them by Okafor, as speaking for the rest of Africa. A careful reading of Okafor's *Igbo Philosophy of Law* shows that he generalises from his particular Igbo background without sufficient comparative analysis and study to make claims on behalf of other African legal systems. The lack of broad comparative base indicates then that his proto-type African legal system is the Igbo legal tradition. One agrees with Jare Oladosu that the Igbo case cannot speak for the whole of African continent, (2004: p. 59).

Unlike what Nwakeze thinks, Taiwo's criticism of Okafor's generalisation is correct. No one denies possible common elements in African tradition, but Okafor does not show how he arrived at those common elements or what Nwakeze, in support of Okafor's studies, claims in his critique of Taiwo (1987: pp. 2-3). Okafor, in *Igbo Philosophy of Law*, appears to offer a few indications towards a philosophical articulation of Igbo philosophy of law; but the book is essentially sociology of Igbo legal institutions. One is grateful to Okafor for his knack in documenting some of the needed materials for theorising. However, it seems to me that both Taiwo and Nwakeze would accept Okafor's prejudice against legal positivism, which means they accept largely his reductive presentation of it; otherwise, why would Nwakeze conclude:

> Finally, I will not end this rejoinder without touching on Taiwo's substantive problem. In his pursuit of the futile arguments that the Africans would not share a tradition in anything and that the "monetized" "Cola Cola" peasants may no longer be really Africans; he grossly neglected the central, and very important, issue raised by Okafor in his article: the issue of reforming and making our contemporary legal system philosophically and sociologically authentic and more relevant to Africa, (Ibid., 105).

Okafor's attempt is to insulate African legal systems from the incursions of legal positivism, and align them with what he presents as the natural law tradition, which, Okafor asserts, merges law and morality.

In any case, both Taiwo and Nwakeze fail to dictate Okafor's defective treatment of the relationship between law and morality in philosophy in general, and in the positivist tradition in particular. I shall not, at present, be detained by Okafor's mishandling of the place of morality in his reductive treatment of both legal positivism and natural law tenets. I intend to take it up in a later article.

Towards the end of his *Igbo Philosophy of Law*, Okafor expresses a desire that law-makers make a critical study of Igbo

indigenous institutions with a view to articulating the values therein to be weaved in modern scheme of things; hence he insists that "our 'modern' law makers and judges should resist the urge to design laws divorced from our philosophy, from the nature of beings, as we understand them, and *from our view of the world*," (1992: p. 92). A reviewer (1995: pp. 214-219) of F. U. Okafor's *Igbo Philosophy of Law* praised the work; but further called for a better and deeper presentation or explanation of Igbo philosophy of law built on a more comprehensible metaphysics and philosophy accessible to philosophy and law audiences, (Ibid., 215-216).

In an article (See 2006: pp. 37-48) that followed his "Legal Positivism and the African Legal Tradition" and *Igbo Philosophy of Law*, Okafor continues to make general affirmations about African legal traditions from limited comparative background; his call, however, to African scholars to reflect on African legal tradition rooted in African ontology must be taken seriously. Law is as territorial as philosophy is not presuppositionless. Jurisprudence or philosophy of law is a reflective engagement on, and employment, of law as an organising social instrument among other social phenomena. Understanding the specific African ontology and social tradition will make one realise how it is not counter-intuitive for a woman, for example, to marry another woman to raise issues for her dead husband or counterbalance her barrenness (See Ibid., 38-42); this is a sense of natural justice that is better appreciated from the specific vantage point of African ontology and social order. The point, Okafor insists, is that African law is conceived along a different ontology. Until this is noted, African and Western philosophers/jurists will continue to talk pass one another on African social or legal realities, (See Ibid., 39).

Okafor's desire for a theory rooted in our world view is reminiscent of other previous calls that insist that the key to grasping the present Igbo life and world is buried in better "understanding of the operative conditions," (Anya, 1982: p. 13) in the Igbo world, says Anya (1982: p. 13). We must take on board the integrative and interactive dimensions that give meaning and substance to it. Since the Igbo-African world or individual has a unique environment of occurrence, attention must be paid to the perception of life patterns and belief systems. The persistent reference to the operative conditions in Igbo world or Igbo institution is a pointer to the fact that a political, social or metaphysical theory that ignores Igbo cosmology is bound to distort such a world. In other words, there is a conviction that philosophy can be drawn from non-philosophy given that Igbo society, like most African societies, still has much anchor on their traditional roots. Therefore, a philosophical attitude towards the Igbo world should at once be descriptive and interpretative: descriptive to present them the way they are grasped and interpretative because the task is to make explicit the meaning/philosophy implicit in it. As T. Okere rightly claims, we need to do a hermeneutics on African cultural symbols. African cultural symbols offer us data for philosophical tinkering; in fact, "for any reflection to take place at all, some data have to be taken initially for granted, without proof, and as it were by decree. They have to be believed or, as is rather more often the case, subconsciously presumed, at any rate, unquestioned," (1983: p. 88). Thus, in studying and interpreting our cultural symbols we shall make explicit the philosophy implicit in them, (See Ibid., 114-115).

This paper intends to articulate the ontological foundations for understanding law subjects, and Igbo philosophy of right; this project shall be conducted under the following four broad headings: Inspirations from Igbo cosmology and folklores; a hermeneutical attempt at understanding Igbo world; Towards an Igbo philosophy of law and right; and Covenant-based theory of law/right. This project concentrates on the Igbo African world, with a conviction that with similar researches on other groups we can build a basis for comparative studies that can yield a systematic formulation of a comprehensive African legal theory.

Inspirations from Igbo Cosmology and Folklores

Some Aspects of Igbo Cosmology

Okafor's *Igbo Philosophy of Law* founds Igbo law and right within an understanding that Igbo traditional universe was ordered, a coherent socio-legal cohesion that traces an ordered and moral society to God-Chukwu; hence the sacralisation of the profane is inherent in Igbo conceptual and theoretical schemes. George Ekwuru, in his *The Pangs of an African Culture in Travail*: *Uwa Ndi Igbo Yaghara Ayagha* (*The Igbo World in Disarray*), laments over a socio-political and religious chaos or confusion which he blames on the Igbo's contact with Western values, which quest has brought out the worst in the Igbo. Ekwuru writes: "In the Igbo language, the phrase, *Uwa yaghara ayagha*, which, for want of an appropriate term, has been interpreted here to designate a 'disorganised situation,' which gives the picture of something that is highly 'decentred,' 'dismembered' and 'scattered,' a situation of utter confusion," (1999: p. 83). If the Igbo world is presently in disarray, it means that Ekwuru is lamenting over a situation that was not part of the original set-up of the Igbo society/cosmos. In other words, the chaos element is foreign, Ekwuru implies. But a study of some Igbo cosmogony or cosmology contradicts this image. Here we can appeal to an Igbo myth of origin. A myth is a story of a time when time began, proclaiming, according to Mircea Eliade, "the appearance of a new cosmic situation or of a primordial event; hence it is always the recital of a creation; it tells how something was accomplished, began to be. It is for this reason that myth is bound up with ontology; it speaks only of realities, of what *really* happened, of what was fully manifested," (1959: p. 95). Paul Ricoeur believes that "behind speculation and beneath gnosis and anti-gnostic construction, we find myths," (1969: p. 5). In trying to bring about the truth it proclaims, Nwoga insists that a myth transcends reasoning, (1984b: p. 41), as it demonstrates the truth of life of a people.

Anya argues that Igbos do not have one myth of origin like the Yorubas, (1982: p. 26) Agu Justin asserts that the least that could be said on this issue is that "what local traditions the Igbos have do not provide clues to their origin," (1985: p. 111). He remarks that in spite of the fact that Igbos speak a common language, they are not a single people; they are separated groups, H. Chukwuma insists, (see 1994: p. 1).

Igbo origin has been variously traced from without and within Nigeria: the outside origin hypothesis claims that the Igbos are not a single people; it is sustained on the basis of cultural similarities between the Igbo and the Semitic cultures-precisely the Jews, given the many migrations of many Igbo groups in history before they finally settled at their present location, (See Ibid., 3). Some disagree with the outside origin thesis; hence E. M. P. Ede insists that "there is a stronger prob-

ability for tradition that the Igbo did not migrate from outside but rather they developed independently like other indigenous African peoples," (1985: p. 12). Archaeological finds by some scholars concerning some parts of Igbo land trace Igbo settlement back to 205 AD, probably through different migrating routes from within. This is a view widely held by many Igbos as against the outside origin hypothesis. In his Ahajioku lecture titled *A Matter of Identity*, Michael J. C. Echeruo attempts the difficult task of tracing Igbo history from within Nigeria and only succeeded in unearthing claims and counter claims regarding Igbo origin and the contribution of slaves of Igbo stock in the Western world whose impacts were felt in the 18th century. Almost in desperation, Echeruo states: "it all seemed as if there was really no coherence to the world from which these men came, that they had no identity. The explanation-or part of the explanation for this may lie in our own refusal to acknowledge a common ancestor, in our centripetal search for origins," (1979: p. 13). Given the possibility that Igbos are not a homogenous group, with various migrating routes and experiences (though with apparently one language), depending on each community's experience, there will be many ways of mythicizing the story of Igbo origin. Whichever myth abounds in any area of Igbo land, it will, in whole or part, narrate the Igbo story. I have, here, adopted the Nri myth for my purpose.

Nri Akwa myth is an Igbo myth of origin, dominating the Anambra section of Igboland. Chukwu (God) sent *Eri*—the first man-and he landed at *Nri*, according to *Odinani* (tradition). His great task was to come and put order in the people of Anambra. When he landed, because the earth was waterlogged, he complained to Chukwu who sent him to a blacksmith from Awka to use bellows to dry the flooded land. When in need of food, Eri complained again to Chukwu who demanded him to sacrifice his first son and first daughter. This he did, and from the spot where he buried his son, yam and palm tree sprouted up; and from the spot he buried his daughter, vegetables and cocoyam grew up. It is because of these events that the earth is regarded as the greatest supernatural deity (*alusi*) that produces man's food. It is sacred. One day, four great supernatural beings visited *Eri* who, by trick, got their names as *Eke*, *Afor*, *Nkwo* and *Oye* (*Orie*), whose names bear the Igbo market days, (Isichie, 1977: pp. 22-23).

In adopting the Nri myth, I want to insist that a careful reading of Igbo world shows that the world or cosmos is fundamentally chaotic. Chidi Osuagwu concurs with the view that Igbo world is chaotic; hence it needs an ordering force-Chukwu: "Only an 'ordering-force,' God, can infuse organization into chaos. Life inheres in organization," (2003a: p. 17). In a later book, Osuagwu further attributes the chaos element (social chaos-dishonesty in dealing with other in contemporary world) to an infiltration into the Igbo world: the contact of Igbo's with their neighbours-a nation of liars (Osuagwu, 2003b: p. 13), and this sounds contradictory given his earlier claim that Igbo world is in disarray but it is ordered by truth and justice.

However, Osuagwu believes that the concept of truth in Igbo is dynamic; hence truth (ezi) is analogous to "thermodynamic order and predictability," (2003a: p. 1). It is conceived and defined operationally and externalised with the physical symbol of the *uzi* tree. *Uzi* is the most erect tree in Igbo cosmology or world. Truth (*ezi*) means "correct, ordered, positive, proper, array, rectitude, genuine, upright or valid" (Ibid., 3); that which corresponds to what is said of it becomes *eziokwu*-truth. The root word of *ezi* is *zi*, from which other words, like "izi, to

show; to direct, *onyeozi*, directed-one, messenger; *Ikuzi*, to straighten, to beat into shape; *Imezi*, to rectify, to do right," (Ibid.) come. What is true is as straight or unbending as the *uzi* tree, which is naturally straight or *ziziriri*.

Truth (eziokwu) is contrasted with that which is bent or in disarray, rascality-*agharigha*, that is, falsehood or falsity. The Igbo root word for falsehood is "*Igha*, to scatter, links up all chaotic processes as the Igbo see it," (Ibid., 5). Thus, *igha* is to turn something that is *ziziriri* (straight) into disorder; that is, put in a way that it is not. The physical symbol of falsehood then is *ayaghara* or *avaghara*, that is, disorder, or something turned inside out, represented by the symbol of a kind of fowl whose feathers are turned inside out-*avaghara*. Falsehood, according to Osuagwu, perpetrates unpredictability (Ibid., 13).

The Igbo links everything to God or Chukwu; hence Osuagwu is correct to say that Chukwu is an ordering force in Igbo world. In fact, the Igbo person is not always interested in secondary causes. Hence in Igbo construction of reality, although Chukwu is not part of the construction, he holds together the chain of causes. We can buttress this idea with a story in traditional folklore. A commotion arose in the animal world about the death of a sickly bird (*nwankelu*) that would otherwise have been ignored. But justice and the fact of importance of every being demanded an investigation; thus, an answer was needed as to the cause of death of the sickly bird called *nwankelu*. The interrogation was stated thus:

Who killed *nwankelu*?
-The breadfruit killed it.
What happened to the breadfruit?
-A digger pierced the breadfruit.
What happened to the digger?
-The digger was infested by a termite.
What happened to the termite?
-A cock was eating the termite.
What happened to the cock?
-A hyena was pursuing the cock.
What happened to the hyena?
-A man-hunter was pursuing the hyena.
What made the man-hunter?
-Man was created God.
What made God?
-We do not know what made God, who made man; man was in pursuit of hyena, the hyena that was going after a cock, a cock that was eating a termite, a termite that infested a digger, a digger that pierced the bread fruit, the bread fruit that eventually fell and killed *nwankelu*.

The point of this story is that a single act of Chukwu initiated a chain of events or secondary causes that is ultimately traced to God (Chukwu), the source and origin of all things.

A Hermeneutical Attempt at Understanding Igbo World

Chukwu brought a change by sending *Eri* to the earth-an environment of seeming confusion. Through Chukwu's advice, *Eri* was empowered to humanize the earth. The chain of causes in human and animal world is traced to Chukwu-the actor in history who released man to the earth. Humans are then in a seemingly chaotic world which they must humanize in order to survive. The point, therefore, is not to create a world where chaos is absent but to achieve survival in a seemingly chaotic

universe. If we do not accept this fact of the world of individuals, we might be confused as to what kind of laws should guide or be operative in their environment.

The Ontology of the Individual

Every individual person has received *chi* from Chukwu, a part of divine nature which each has received at birth. E. Ilogu writes: "Whatever abilities, good or bad fortunes, successes, failure or weaknesses possessed by the man are often attributed to his *chi*. Children of the same parents are, therefore, variously endowed by different kinds of *chi*. Through this *chi*, God (*Chineke*) connects himself with all created human beings and the closer such men are to one ancestor the nearer they are to each other," (1985: p. 36). The particularity of the individual is rooted in the *chi* God or Chukwu has imparted to him or her.

The Igbo individual is linked to Chukwu who commissioned him to harmonise the world. The Igbo notion of identity claims that one is the same, and has his actions attributed to him because one has a personal link to Chukwu, and unique mission to accomplish in the singularity of his being. The particularity of uniqueness is the basis for identity in the Igbo. And it is the particularity of the existing individual that restores him as the subject. It is the manifestation of personal ontology that is at the root of social construction and constitution of reality. Thus, "personal ontology is an assertion of the metaphysics of particularity. It is the endeavour to raise the particular to the primacy and ultimacy which transcends the changing world of coming and going particularities; not to attach fixity to the 'many' as if they were the 'one,' i.e. absolute, unique and irreplaceable," (Zizioulas, 1991: p. 35).

The essence of each entity is its *chi*, that is, what it is that makes an entity what it is and links it to Chukwu; hence "Chi is God's manifestation in all things. It is held by the Igbo that *chi* is the divine force directly involved with the affairs of men," (Okafor, 1992: p. 20). *Chi* is that which is responsible for apportioning lots. While *Chi* or Chukwu embraces all, *chi* individuates. One thinks that B. Abanuka is right when he writes: "as a determination of reality (chi), eke/oke (individual destiny) contains the full and complete details of the characteristics of the real allotted to each particular person and to him alone (akara aka)," (2004: p. 72). For the Igbo African, things have *chi*; hence T. Okere argues that what the West understands as category of being can, without a loss of meaning, be rendered in the category of *chi* in Igbo conceptual schemes (1983: p. 124).

The Social Dynamics of the Chi-Ontology

Through *chi*, Chukwu (God) manifests himself. Humans in their actions leave imprints of their destiny. Their actions are judged within the public arena, that is, in the world shared by others. And human events are instantiations of divine course of action, which explains the complex intermingling, and embodiment in the Igbo African, between the sacred and the profane. Every entity is different with a different mission.

Chi-Individual on Mission to Order/Organise (Imposition of Law in the Cosmos)

Osuagwu makes an important point when he considers the individual Igbo as a "randomly moving thought particle," (Osuagwu, 2003a: p. 9). However, since there is an ordering force behind entities, it is possible that notwithstanding their nature as moving particles, entities can live in a symbiotic relationship in order to make the most of their environment, for an encounter with another increases one's enrichment and minimizes the horizon of conflict, given attendant relationships that emerge from symbiotic encounters. The Igbo individual, according to this arrangement, is a thought moving particle within the system Osuagwu describes as "thermodynamic." The individual is part of the thought motion released by Chukwu, and linked to Chukwu. Osuagwu insists that Igbos have one God called Chi-Ukwu, who is distinguished from all little-*chi* or other spirits:

> The interesting thing, though, is that "chi" is the root from which "ICHI," the verb for to hold together, to rule, to arrange, to order, to organize comes. In this sense, CHI-UKWU is THE SPRING OF COSMIC ORGANISA-TION. God is SOURCE OF COSMIC ORDERING AND ORDER. God as creator flows, logically, out of this definition. Creation is an organizational act of chaos. Hence comes the Igbo appellation ISIYI NKE NDU … SPRING OF LIFE for God. Life springs from God's ordering capacity, (Ibid., 17).

Since "all particles in nature are in perpetual state of random," man, as part of this system of moving particles, needs Chukwu to be ordered not to be disordered. To be ordered, according to Osuagwu, is to be in truth, and disorder is falsehood, (See Ibid., 8). In other words, the truth of random moving thought particles is to remain in motion! Disorder or falsehood would imply a denial of possibility to continue in motion-presenting a world that is not the real one for the thought moving particle. However, since the individual has *chi*, which allows him to make claims in the world, he is capable of rule and to bring about order-*ichi* and *ichizi*, that is, to rule/govern/order and to organise/order well. Like Chukwu, the individual has an ordering force over the cosmos; after all, he has some part of Chukwu-an ordering force (chi).

Order and Disorder Co-Exist in Igbo World

The application of the law of thermodynamics to Igbo world is interesting. One needs to take the implication further. What actually is the law of thermodynamics?

Thermodynamics deals with the law of conservation of energy-that energy could be transformed without loss. The idea is that "all natural events involve a transformation of energy from one form to another. But the total quantity of energy does not change during the transformation," (Rutherford, 1981: p. 305). There is a constant called energy in certain measurable quantities, determinable in a system of interacting bodies, given that the system remains isolated, (See Ibid., 313). Quantitative statements about the transformation of energy could be made through work. And the concept of work or "duty" is used to measure the amount of energy transformed from one form to another.

There is an irreversible principle that accounts for disorder or chaos in a system of interaction of bodies. In other words, the energy contained in two interacting but isolated bodies has measurable quantities that remains constant, but communicating within the operation of a chaotic principle (entropy); hence the theory of disordered states. The point is that besides equilibriums, thermodynamic systems are also interested in systems out of equilibrium, and "in these systems, certain fluctuations

instead of contracting, expand and diffuse throughout the whole system," (Lonchamp, 1999: p. 115). There are times when the tendency to equilibrium passes to disorder through some kind of *dissipatory* structure or an open system. What is happening, for example, at the point when changes in temperature bring about fluctuations is that "such a system is receiving energy from external environment, energy which engenders and maintains within itself a certain ordered structure; at the same time it gives off heat to the outside," (Ibid., 115-116). In other words, "order and disorder are encountered together," (Ibid., 116), a point Osuagwu seems to ignore. The law of conservation of energy also involves the science of disorder which one notices in situations of determinist chaos. Evidently, what is ordered or chaotic might be relative to the subject and his perceptive capacities to make appropriate judgments and calculations.

In applying the law of thermodynamics to the Igbo world, one asks. How does one account for the truth of a world where entities are enclosed in a system as randomly moving thought particles that are subsistent, still require an outside corroboration? Or, how is meaning (harmonisation) to be found in a world of seeming chaos? How do energy-packed entities open and expand or interact in a chaotic universe? How does a closed system of circular encasement retain its individuality and at the same time collaborate with others, and adhering to rules? As Okafor rightly points out, the end of Igbo rules (both human and divine) are to help maintain social or spiritual harmony, (1992: p. 64). This paper certainly does not pretend to address these questions, but it can cast some light on some.

Towards an Igbo Philosophy of Law and Right

Okafor talked about divine and human laws (See 1992: pp. 43-66). We can say that people discover divine laws and follow them. Human laws are products of people's judgements articulated by the help of human language. Given the fact of linguistic employment in the expression and ritualisation of laws, it is important to note how reality (whether legal or otherwise) is expressed or linguistically constituted by the Igbos.

How Reality Is Expressed in Igbo Language

D. I. Nwoga has pointed out that Igbos structure reality at three levels: the physical, the spiritual and the abstract, (See Nwoga, 1984a: pp. 17-18). Given the fact that concepts and the things they designate are operative, these three forms of being are capable of being transformed into one another. It is not that at one point a physical object changes into abstract and at another point it becomes spiritual; it is that the reality of an entity is definable from the point of view of its function. The function of a thing gives its existential stand or validity. Thus, there may not be permanent functional roles or dominant functional stances. In other words, Igbos conceive being as action, (See Ibid., 19). Action involves change of position, (that is, *anaghi ano ofu ebe ekeri nmawu*). Because contextual application is what gives entities their identity, their identity is predicated performatively and not always descriptively. Description is reducible to truth functions, but performatives are speech acts (See Austin, 1962, 1979) that are effected through the doing of things with words in conventionally designated contexts. Igbo traditional deities were honoured so far as they were effective and they can become that which they are called in those contexts generated by their believers. This shows that some of the

realities included at the level of the divine in the Igbo world are mental creations, for humans cannot be unseating divine realities at will. Thus, in Nwoga's thinking, "the ontological status of things in Igbo thought is determined and recognized not by any static characteristics that the objects might have but by the action that the object performs," (Nwoga, 1984b: p. 19).

The *Ofo*, Okafor talks about, is an authoritative emblem, symbolising justice, righteous and truth. The symbolism of *Ofo* lies not in the piece of wood as it is used in the context of ritual ratification of accepted norms of behaviours passed into law, (See Okafor, 1992: pp. 59-62). In fact, *Ofo* does what it does and it is respected accordingly because of its contextual ritualisation or application; hence it plays a performative role. The conducts over which *Ofo* is invoked do not become otherwise in the absence of *Ofo*'s ratification; hence it is not the *Ofo* that makes such behaviours moral or legal. The content of laws should be distinguished from the ritual language invoked in promulgating or administering them.

Through convention *Ofo* becomes a performative symbol, which prescriptive function is not explained by its materiality. Whatever is said in the *Oha* (people's assembly) (Ibid., 53), which form of government is termed "Ohacracy" (a system where the people rule or what can be called "initiative democracy" (See Njoku, 2004: pp. 178-188), following the normal procedure, has a tone of finality; one however insists that finality is not co-extensive with infallibility or morality as Okafor presents in his *Igbo Philosophy of Law*.

In other words, the statements made about reality are not how things necessarily are, that is statements of facts, but our perception of reality. In this sense, Igbo metaphysics or form of government (Ohacracy) is metaphysics of the relation of man and of his experience of God, the other and his environment.

Since order and disorder are encountered together, the promulgations of *Ohacracy* are approximations; thus, it is likely then that the judgements of *Ohacracy* do not have the ethical or epistemological infallibility Okafor assigns them, or the degree of fairness which Bonachristus Umeogu, in support of Okafor, would ascribe to Oha's legislative ability, (Umeogu, 2012: pp. 116-122). The inability to appreciate the Igbo pragmatic attitude that largely permeates Igbo life underestimates the possibility of injustice and oppression that may frequently be found in Igbo traditional and legal set-up. It is true through the palaver method issues are discussed before judgements are passed; there have been cases where whole communities have passed laws for their self-interests. If this is the case, the line between some principles of legal positivism and the natural law tenets ascribed to Igbo legal realities by Okafor is thin. *Oha* cannot always pretend that its rulings or judgements are also in the nature of things; thus, it can arrive at some standard of judgements that betrays the natural disposition ascribed to it in the following lines:

My contention here is that in the typical Igbo social set-up the people's affairs whether executive, judicial or legislative, revolve round the Oha-the people themselves. This is what I mean by "Ohacentrism"-Oha-centred. And the logical consequence of this social atmosphere is that tyrannical laws are not enactible because of the rigid checks and balances; favouritism or sectionalism, twin social diseases which pervert justice are not thrivable in the political climate; and Ohacentrism promises the greatest happiness for the greatest number, (Okafor, 1992: p. 60).

Most Igbo would accept the authority of *Oha*; however, unjust laws can still be unjust whether or not there are elements of favouritism and sectionalism; thus *Oha* might have a note of finality but not infallibility regarding morals or truth. If *Oha*'s rules aspire to realize "the greatest happiness for the greatest number," then Okafor agrees with the legal positivism of Jeremy Bentham and John Austin that founds good law on the utility principle. Natural law morality does not aspire to make the greatest number happy.

Sources of Rules in a System of Thermodynamic Encasement

In an environment of the Igbo type where order and disorder co-exist, there are two ways one might, in the Igbo universe of meaning, arrive at rules: first, to discern through practical reasonableness the rules/laws inherent in the nature of things because *onye ma akwa okwa na-achi ya* (he who knows the partridge's eggs handles them better-divine laws discovered in the nature of things); second, rules that arose in the context of inter-subjective interaction (positive laws). In the later, pragmatic and utilitarian principles can abound, after all, although all may not be posited fact, there is always a social element to their coming into being and execution. Therefore, *Oha* is a kind of clearing room or sorting room for the community's understanding and knowledge; it cannot claim more certainty in knowledge and judgement than things themselves present. *Oha* discerns and makes approximations about reality based on some kind of precedence and experience.

Two Basic Natural Rights

From the study of Igbo world and its hermeneutical application, natural rights can be noted. Natural rights are founded on the inherent and ontological nature of beings-to be recognised as such. Two fundamental natural rights can broadly be underlined: the right of identity/life and right of property. Okafor calls them rights of life and property, although he does not say how they arise or are discovered, (See 1992: pp. 77-78).

Right of Identity: To remain in existence as a randomly thought moving particle or subject and cognised as such is to remain as one is, and have space and activity. This is justice. To injure a being is to fail to recognise or cognise it as remaining in being as a randomly thought moving particle. Attacks on life are injuries that hit at the heart of one's being. Justice is here ontological, that is, to continue as Chukwu has thus constituted and set the entity in being; no being sets itself in motion, but put in existential motion along side others by Chukwu; hence *egbe bere ugo bere* or *onye awula ibeya efula* (let the kite perch and the eagle perch, or let no one die or get lost). Justice is not just a social status confirmed by individuals in terms of returning what belongs to people and their persons. The justice implied in *egbe bere ugo bere* (let the kite perch, and eagle perch) is cognition of ontological act of life-line of each entity, given and confirmed by Chukwu. In this respect, the right of identity is co-extensive with the ontological understanding of justice; it is a matter of right or identity that that which is, has the right to be as such.

Right of Property: Everything moves and occupies space at the same time. Matter is highly competitive, for the space each entity occupies it wants to retain while continuing in motion. This existential fact is consistent with the operations of the law of thermodynamics-that energy is transformed, not lost.

The natural rights of identity and property are ontological predicates tied to the nature of entities, and cannot be thought without them for they are transcendental attributes of being. The denial or negation of these rights will remain major sources of intractable conflict between persons and communities. How does one then make law for a being that is at once perpetually in motion and retains the space covered?

It must be noted that in the world of randomly moving particles, every being has right to his identity and space gained – that is, the rights to life/identity and property respectively. The need to create an atmosphere of organising function incumbent on the nature of *chi*-individual is part of an inter-subjective exercise of rationality by *chi*-individuals for an organised fulfilment of their mission. An awareness or recognition of other chi-individuals in the existential space is a move to search for the other. Igbo cosmology counsels that the task of humanising the world is one that involves the other, no wonder Chukwu sent *Eri* to his neighbours to help him bring order to the water-logged earth. Mission is an exercise in the spirit of confraternity and symbiotic relationship.

Covenant-Based Theory of Igbo Philosophy of Law and Right: An Exercise in Legal *Coherentism*

Social and Political Rights

Okafor has noted natural rights at the ontological level, which I have reduced to two as rights of identity and property. And we have conceived such rights in terms of transcendental attributes of randomly thought moving particles. Since the mission of the individual is to humanise the earth, there must be ways of regulating movements that all randomly thought moving entity will invariably remain in motion per excellence. There is much enough space for *chi*-individuals with their integral package of missions to ply their trade. To bump on one another in the existential space is not consequent on being released into the existential space. However, the inter-subjective world is one inhabited by the individual and others; as a world of immediacy, it can only be negotiated through communication, through the understanding of carriers of meaning placed in the public world.

Fairness in dealing with others is expressed in such phrases as: *ya bara onye bara ibe ya* or *eme nwata ka emere ibeya*, *obi adi ya nma* (when like children are treated alike, they are happy).In paying heed to justice at the ontological and social levels, one is affirming rectitude in the order of being and relationship. Since identity (matter of right or fairness) is not constituted by individuals, but discovered by them; therefore, to do right or justice is to affirm or avow to the order of being-the truth of things. Chidi Osuagwu is thus correct when he defines truth in terms of ziriziri, derived from uzi-the most straight of all trees in Igboland cosmology, (2003a: p. 3). Since truth is correspondence to what is out there like *uzi* tree, right and justice are virtues that are independent of the individual even in the world of seeming chaos.

How Individual Worlds Are Bridged through Communication

John C. Kelly writes that communication is a sharing of meaning, and meaning is found, not in the world out there, but "lodges in the mind and in the heart," (1981: p. 57). Meaning is

an intelligent grasp of an intelligent pattern of reality or relationship within the world of immediacy, (See Ibid., 61). Each person's apprehension and interpretation of the world is his or her meaning of the world. So, meaning is apprehended and interpreted in a socially constructed and approved typifications or ways transmitted within a network of social interaction or communication.

Carriers of meaning are material perceptible objects that help us to share meaning between two separate conscious selves. In communication, the communicator places something in the world of immediacy, the interpreter makes a response to the communicator; in turn the interpreter places a material object or event in the world of immediacy, which can be recognised or perceived or understood by the original communicator as a response. When the original communicator discovers the meaning of the response, he can then assess how effective or ineffective was the original communicative action, whether the meaning discovered is identical with the meaning intended by the original action of the communicator. Carriers of meaning include: marks, indications, signs and symbols. They indicate to us how each other's interiority is negotiated, showing when individuals can yield to others to compensate for those times they have benefited from others' co-operation. There is true meaning then "if the knower has been carefully attentive to all the available data and if, in addition, by means of his intelligence, he (or she) has grasped an intelligible pattern of relationships that explains no less and no more than all the available data of consciousness to which he directed his attention," (Ibid., 63). Meaning requires a strenuous effort to be drawn or discovered or mediated to us in the real world. Only the person who undergoes the same strenuous effort as one in discovering meaning can be drawn to communicate, to share meaning, (See Ibid., 66).

Socio-political rights emerge within the world shared by individuals-the *Oha* world or the convocation of randomly moving thought particles. The *Oha* is thus constituted as a regulatory body in the designated space of immediacy; *Ohacracy* becomes a form of government that safeguards the basic goods that allow people and their environment to flourish; hence certain rules and rights are made and safeguarded. One can include here the right to expression Okafor discusses, (See 1992: pp. 83-84).

The Dynamics of Ohacracy in the Discovery and Constitution of Rights

We can accentuate legal and socio-political dynamics. With reference to legal dynamics, rules are generated to ensure that people do not bump into each other in their existential space, and also to specify when people can legitimately yield to others in the space, and how through social interactions one is empowered to change the socio-legal positions of others, and how people can through mutual association and interaction negotiate each other's existential highways. Laws then operate here as instruments of social control of behaviour. And this implies a movement from the world received from Chukwu to a world humanised by individuals.

Oha is clearing house of intentions and motives through the use of the palaver method to bridge the "field of experience" (called homophily) (Bittner, 1989: p. 10) of others and negotiate their existential space. By the process of dialogue, people make themselves and wishes present to others. In this way, they

bear a new presence to themselves and to others. Through interactions one minimises conflict and gains intellectual and existential space, without having lost anything. This transformation in social relations could be explained through the helical model of communication.

The Helical Model of Redrawing Relationship

The given from Chukwu is a universe constituted by randomly moving entities. The random movement is natural, and if we call it chaos, this cosmic chaos must be seen to be normal. That is the world as it left Chukwu's hands. Entities move in life-system or universe as bubbles of subsistent energy-packed *thermodynamics*, conserving themselves within their energy constants, still gaining space and undergoing self-actualisation in interacting with other entities. But how do entities interact? The interaction in a naturally chaotic universe is done through the process of *negotiative communication*. This can be explained using the helical model of communication. Each circular entity represents the individual or the cosmos, in which individuals are connected to each other through helical movements. An encounter with the other or movement towards the other is a useful communication in which one is enriched, without losing what one already has. In fact, "the helix provides understanding in some cases where the circle fails. It directs one's attention to the fact that the communication process moves forward and that what is communicated now will influence the structure and content of communication coming later," (McQuail & Windahl, 1981: p. 15). Against the backdrop of a helical model, when a subject sends a message to the other, who receives, processes the message, and by interpreting the message, have a sense of its signification, he increases in knowledge of what has been received; hence the helical model of interpretation (See Ibid., 16). In like manner, interaction with the other enriches one and minimises one's hostile or strange environments

The need for an environment of stability to enjoy the rights of identity and property demands that individuals hold each other in trust. The helix comes into being as a result of much dialogue and bridging of one another's interiorities; hence some law/rules and rights become evidence of reconciled opinions and compromises for the sake of peace and stability of rights. We can then describe the atmosphere of negotiating the various interiorities for mutual enhancement as that of a covenant theory of socio-legal relationship.

Covenant as Basis for Rationalising Igbo Philosophy of Law

From a religiously perspective, G. E. Mendehall, in *The Interpreter's Dictionary of the Bible*, defines a covenant is "a solemn promise made binding by an oath, which may be either a verbal formula or a symbolic action. Such an action or formula is recognised by the parties as the formal act which binds the actor to fulfil his promise." In another place he writes that the act of binding people by oath actually dates back to ancient times, as can be seen in the character of Hittite pacts, (Mendehall, 1970: pp. 25-26).

A covenant group is a ritually established "blood-related entity" whose being is by a common consent a common life. This way of being can be delineated in some talks about friendship in terms of contracted-blood-brotherhood, covenant meals and

oath-taking, which epitomise aspects of people's life in Africa. A covenant can exist between individuals or between individuals and the earth or with God where a closer union is established, (Marie de Paul Neiers, 1965: p. 117), in a symbiotic embrace, (See Senghor, 1964: pp. 72-73). The making of covenant involves a "third"—a witness or a guarantor, who is not part of the covenant relation.

The Igbo verb *igba-ndu* is used to translate the word c*ovenant*. *Igba* means "to join together," and *ndu* means life. Thus, *igba-ndu* means to join lives together. This understanding brings out the meaning of covenant as a cultural expression through which persons or families or clans enter into a pact following some solemn ritual procedure. Covenant in the Igbo context is not just a joining of lives, but a mating of lives. The word "mating" carries the air of at once joining and co-mingling and producing a hybrid that is life itself. It also connotes a biological and religious reality whereby the ideas of producing a hybrid retains the biological dimension (blood)-closer relationship-highlighted within the arena of socio-religious commitment. Persons, families, communities and nations want to come together and recognize an atmosphere of trust and mutual support as brothers. How much closer beyond brotherhood can people get! People then relate to each other in the manner demanded by their covenanted commitments, for rights and duties and models of social order emerge as products of wills of covenant partners. Thus, individuals as well as communities need the atmosphere of brotherhood and mutual acceptance to flourish. Thus, the ethics of covenant is rooted in people's lives and family spirit, (Ruch et al., 1984: p. 8). In this sense, the covenant theory of legal theorising incorporates the view of law as "a reconciliatory instrument for the enhancement of social cohesion," (Idowu, 2006: p. 9). To survive, *Eri*, the proto-ancestor made a pact with the earth through the ritual killing of his children. Against this background, we can talk of covenant as a basis for Igbo philosophy of law and right.

Rights within Covenant Perspective

Covenant making creates conducive environment for action and exercise. Through covenants individuals and communities create an environment of trust and mutual acceptance, thereby enlarging their space. Given that covenants are built on grounds of accepted rules between peoples, they generate accepted codes of conduct available to all partners. Thus, a covenant generates its own ethics of doing anchored on a guarantor that is above the sum total of the wills involved in the pact. The actions and rights accepted within the covenant environment come from within, that is, they are the products of the participants, and not something imposed on them; covenant ensures the rights of individuals and rules arise to make sure the rights are maintained. Now, the rights or laws are positive in the sense that they are given by people to themselves, not as commands of the sovereign to the inferiors. The laws can also be founded transcendentally since the world between covenant partners is a public world that belongs to all but to none, as it transcends their isolated individual wills. Besides, the guarantor of the world is a third, who, as guarantor, safeguards impartiality. The covenant arena protects already existing natural law prescriptions, establishes second-order rules for the regulation of conduct to safeguard first-order rights (right to life and property). Contract laws and other rules regulating other aspects of social relationships such as Okafor's *iwu obodo* (community rules)

are positive as they express sentiments of different authorities and peoples. To drive on the left or right is not a natural law command; it is a particular positive law, but it can embody a natural law principle to do good and avoid evil in a particular instance. Through covenants people assume that the carriers of meaning employed by individuals in *Ohacracy* are recognised as such. Covenants ritualise and legitimise the concerns raised, the agreements reached, basic goods on which all stand.

Again, *Oha* (or *Ohacracy*) is a clearing house for resolving conflicts and making alliances in order to realize the mission of each one; thus the *Oha* will recognize existing natural law rules, and discover further natural law principles that are operative in the inter-subjective world, and also generate new positive laws to facilitate social cohesion; after all, law is an instrument of social control of behaviour. In fact, the Igbo society will have laws built on natural and positive principles. To attempt to confine Igbo legal theorising solely to legal positivism or natural law bent is restrictive; it incorporates all. In fact, its type of theory can be referred to as *legal coherentism*. It is a view that law or value or action is justifiable according as it coheres with cherished or accepted principles beliefs. That something is coherent does not make it necessarily right, but it could be right. The point is that coherence is not co-extensive with truth or good morals. According as Igbo rules or beliefs cohere with their natural or pragmatic view of reality it is justifiably adopted; its moral is not always right or the good moral of natural law Okafor might claim for it. Reality, for the Igbo person, has a lot of shifting inner throbbing and shades; value is not co-extensive with facts, but the Igbo is armed with practical reasonableness as he fixes his gaze in a world where order co-exists with disorder, and where he can drag reality to conform to his own bidding or performatively concur to his needs.

To a certain extent, the Igbo would follow the natural law platform as Okafor would agree; but the Igbos are also pragmatic, and might at times go against the will of a particular deity to conform to theirs; hence the common saying-*anyi si eke noro ebe ono*-that is, it is us who fixed where *eke* (the deity of a particular market day) is to be honoured. In other words, something is at times what it is because we have named it so, at least from the world's perspective. Igbo language (ordinary or special) is not always descriptive; words can be employed performatively or ritually. This is not a denial that deductive or descriptive propositions hold truth values; it is, however, not right to force the Igbo legal mind into one straight jacket confined solely either to the camp of natural law theorizing or legal positivism. A careful study of Igbo world would be found to show that the dichotomy Okafor creates in the Igbo legal world between natural law theorists and legal positivists is not necessary. We might debate on the merits or demerits of each tradition, but all homes existentially within the Igbo legal world. A synthesis of these two legal traditions is what *legal coherentism* intends to encapsulate.

REFERENCES

Abanuka, B. (2004). *Philosophy and the Igbo world*. Onitsha: Spiritan Publications.

Agu, J. A. (1985). *Political changes in Igbo tribe Nigeria—Dissertatis ad lauream in facultate scientiarium socialium apud*. Rome: Pontificium Universitatem S. Thomae de Urbe.

Anya, A. O. (1982). *The environment of isolation 1982*. Ahiajoku Lecture, Owerri: Ministry of Information, Culture, Youth and Sports.

Austin, J. L. (1962). How to do things with words Oxford: Oxford University Press.

Austin, J. L. (1979). *Philosophical papers* (3rd ed.). Oxford: Oxford University.

Bittner, J. R. (1989). *Mass communication: An introduction* (5th ed.). New Jersey: Prentice Hall.

Chukwuma, H. (1994). *Igbo oral literature: Theory and tradition*. Ikot Ekpene: Belpot Nigeria Co.

De Paul Neiers, M. (1965). The people of the Jos Plateau of Nigeria, their philosophy, manner and customs. Frankfurt: Peter D. Lang.

Echeruo, M. J. C. (1979). *A matter of identity: Ahiajioku lecture 1979.* Owerri: Culture Division Ministry of Information, Culture, Youth and Sports.

Ede, E. M. P. (1985). *Towards an Igbo metaphysics.* Chicago: Loyola University Press.

Ekwuru, E. G. (1999). *The pangs of an African culture in travail: Uwa Ndi Igbo Yaghara Ayagha* (The Igbo World in Disarray). Owerri: Totan Publishers Limited.

Eliade, M. (1959). *The sacred and the profane: The nature of religions trans.* New York: A Harvest/HBI Book.

Ezekwugo, C. U. M. (1987). *Chi: The true God in Igbo religion.* India: Mar Matthew Press.

Idowu, W. (2006). African jurisprudence and the reconciliation theory of law. *The Cambrian Law Review, 37,* 1-16.

Ilogu, E. (1985). *Christianity and Igbo culture.* Onitsha: University Publishing Company.

Isichei, E. (1977). *Igbo worlds: An anthology of oral histories and historical developments.* London: Macmillan Education Limited.

Kelly, J. C. (1981). *A philosophy of communication.* London: Centre for the Study of Communication and Culture.

Lonchamp, J.-P. (1999). *Science and belief.* Middlegreen: St. Pauls.

McQuail, D., & Windahl, S. (1981). *Communication models for the study of mass communications*. London: Longman.

Mendehall, G. E. (1970). Ancient oriental and biblical law. In E. F. Campbell, & D. N. Freedman (Eds.), *The biblical archaeologist reader.* New York: Anchor Books.

Njoku, F. O. C. (2004). *Development and African philosophy: A theoretical reconstruction of African socio-political economy.* New York: iUniverse Inc.

Nwakeze, P. C. (1897). A critique of Taiwo's criticism of legal positivism and African legal tradition. *International Philosophical Quarterly, 27,* 101-105.

Nwoga, D. (1984a). *The supreme being as stranger in igbo religious thought.* Imo State: Hawk Press.

Nwoga, D. (1984b). *Nka Na Nzere: The focus of Igbo world.* Ahiajoku Lecture, Owerri: Culture Division, Ministry of Information, Culture, Youth and Sports.

Okafor, F. U. (1984). Legal positivism and the African legal tradition. *International Philosophical Quarterly, 24,* 157-164.

Okafor, F. U. (1992). *Igbo philosophy of law.* Enugu: Fourth Dimension Publishing Company.

Okafor, F. U. (2006). From praxis to theory: A discourse on the philosophy of african law. *The Cambrian Law Review, 37,* 37-48.

Okere, T. (1983). *African philosophy: A historico-hermeneutical investigation of the conditions of its possibility.* Lanham: University Press of America.

Okogeri, G. O. (1995). Reviewer Okafor's Igbo philosophy of law. *University of Benin Law Journal, 2,* 214-219.

Oladosu, J. (2004). Choosing a legal theory on cultural grounds: An African case for legal positivism. In Law, Morality and Legal Positivism. *Proceedings of the 21st World Congress of the International Association for Philosophy of Law and Social Philosophy,* Lund, 12-18 August 2003, Sweden: Franz Steiner Verlag.

Osuagwu, C. (2003a). *Truth and chaos: Dynamics of truth within Igbo Cosmology.* Owerri: African World Communications.

Osuagwu, C. (2003b). *World struggle for a just world: Dim Chukwuemaka Odumegwu-Ojukwu 70th birthday lecture.* Owerri: African World Communication.

Ricoeur, P. (1969). *The symbolism of evil.* Boston: Beacon Press.

Ruch, E. A. et al. (1984). *African philosophy: An introduction to the main philosophical trends in contemporary Africa.* Rome: Catholic Book Agency.

Rutherford, F. J. et al. (1981). *Project physics*: *Text.* USA.

Senghor, L. S. (1964). *African socialism.* New York: Preager Press.

Taiwo, O. (1985). Legal positivism and the African tradition: A reply. *International Philosophical Quarterly,* June 1985, 197-200.

Zizioulas, J. D. (1991). On being a person: Towards an ontology of personhood. In C. Schwobel, & C. E. Gunton (Eds.), *Persons, Divine and Human*. Edinburgh: T & T Clark.