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‘To each a crumb of right, to neither the whole loaf’: The *metaphor* of the *bread* and the *jurinomics* of justice in African legal thought

Summary

The literature on the meaning of justice remains too Eurocentric without a modicum of space for what Africans hold to be an appropriate conception of justice. This article argues that while there exist scholarly interpretations and inspiring analyses on what may be tagged as African contributions to justice conception such as Desmond Tutu’s *Ubuntu*, Gluckman’s *natural justice*, missing in these array of fantastic, breathtaking and insightful definitions of justice in African jurisprudence is the essentially jurinomic dimension towards justice. This article discovers the task of jurinomics to consist in the study of the economic content, context, concepts, contour, characteristic and consequences of law, legal concepts and practice. This article further observes that justice is not just a moral and legal concept but also economic. Taking a cue from a ferreted interpretation of Teslim Elias’ popular proverb, and drawing insights from the African ideal of reconciliationism, the article underscores the view that justice concept in Africa could be appropriately understood, using the bread metaphor, to have a jurinomic character in the light of careful readings of notions such as each/neither, crumb, right, whole and loaf. This article concludes that in African jurisprudential thought and practice, welfarism constitute the basic push and pull of justice.

‘Aan elkeen ’n krummel van ’n reg, aan geen die hele brood’: Die *metafoor* van die *brood* en die “*jurinomics*” van geregtigheid in Afrika regsdenke.

Die literatuur oor die betekenis van geregtigheid bly te Eurosentries sonder ’n mate van ruimte vir wat Afrika as ’n toepaslike opvatting van geregtigheid sien. Hierdie artikel hou voor dat, alhoewel daar wetenskaplike interpretasies en inspirerende ontledings bestaan wat gemerk kan word as Afrika bydraes tot die idee van geregtigheid, soos byvoorbeeld Desmond Tutu se *Ubuntu* en Gluckman se *natural justice*, kort daar in die wese van hierdie verskeidenheid fantastiese, asemrowende en insiggewende definisies van geregtigheid in Afrika regsfilosofie, die “*jurinomic*” dimensie van geregtigheid. Hierdie artikel ontdek dat die taak van “*jurinomics*” uit die bestudering van ekonomiese inhoud, konteks, konsepte, kontoer, eienskappe en die gevolge van die wet, wetlike konsepte en praktyk bestaan. Die artikel neem verder waar dat geregtigheid nie slegs ’n morele en regsbeginsel is nie maar ook ekonomies. Met ’n voorbeeld van ’n uitgesoekte interpretasie van Teslim Elias se gewilde spreekwoord, en die verkryging van insigte uit die Afrika ideaal van “*reconciliationism*”, beklemtoon die artikel die siening dat die konsep van

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geregtigheid toepaslik verstaan kan word, met die gebruik van die brood-metafoor, om 'n “*jurinomic*” eienskap te hê in die lig van versigtige ondersoeke aangaande begrippe soos elkeen/geen, krummel, reg, hele en brood . Die gevolgtrekking word dan gemaak dat subsidiëring die basiese stoot en trek van geregtigheid vorm in die basiese regsfilosofiese praktyke en denke in Afrika.

1. Introduction

It is, without doubt, a truism that the meaning, nature and limits of justice are controversial subject matters of jurisprudence, social philosophy and political theory. Even without going far into the deep recesses of ancient jurisprudential history, and the several intellectual disquisitions over what the concept could possibly mean, an attempt at confining ourselves to modern and contemporary discourses over the exact nature, specific character and undiluted form that justice, both conceptually and practically, presents and displays has been one engagement into which most philosophers dare not go. And, where there is the need to go into it, such a pre-occupation becomes a lifetime engagement from which it may be very difficult to be delivered. In my opinion, it only shows the importance of the concept to our daily and collective life. Agreeably, human existence is sullied and turned into a worthless platitude of dissipating experiences once it is agreed that justice is a mirage, a phantasmagoria or an impossible pursuit. Yet, the spate of controversies in the literature seems to portray that it is either that we do not know what we mean or what we want by reference to the term “justice” or, that, altogether, justice is actually an impossibility, at least as far as this side of existence is concerned, courtesy of Plato.

Interestingly, the controversies themselves do not, in fact and nothing more pretentious, show that justice is a worthless pursuit; the controversies only demonstrate the diversity of human nature and the multiplicity of the cognitive, epistemological and perceptual apparatuses to which we resort in the management of our universe. However, a very patient and pertinent observation about these hordes of criticisms and counter-criticisms, controversies on what we mean by justice, has a cultural dimension that is not too good for the entire history of jurisprudence and political theory; the controversies are specially and particularly lopsided in the sense that they project a specific and uniquely limited cultural perception about what justice is. Unrepresented in this array of tasteful and juicy discussions is the African cultural account on the nature of justice. This article hopes to fill the gap.

It is, however, not true that the underrepresentation implies that Africans do not have a philosophical conception of justice. The major problem, in my own reading, has been the single fact that the social ethics and cultural engineering behind canonisation in general tilt towards the western aegis more than the African. After all, Hegel and Hume, including those who can be regarded as their descendants, for once thought that African reality is a nightmare. My intention in this article is to defend what I call the *jurinomic*

foundation of the concept of justice in African legal thought. In doing so, first, I intend showing that some existing details can be deciphered on what some scholars take to be an African concept of justice but that, while those existing thoughts are not actually deficient in themselves, they do not articulate nor insightfully reflect the jurinomic character of justice in African legal philosophy. It is this jurinomic character and foundation that I intend to articulate and defend. Inevitably, one would need to clarify what the concept of jurinomics actually connotes and the importance of that for a new concept of justice as a core aspect of African legal thought. In order to demonstrate the foregoing, it is necessary to briefly recall to memory the state of the literature and the existing controversies on the western concept of justice

2. On what justice is: Western cultural report and the dilemma over the significance of illusions

In western literature, there are many perspectives on what the nature of justice is. Admittedly, from these hordes of theories, one cannot but suspect that apart from being controversial, these theories often give the impression that justice is somewhat an illusory concept. Nevertheless, one cannot accept such a conclusion from mere face value, especially if the context for its delivery has not been given significant attention and understanding. However, it is important to stress that a basic distinction exists between ancient analysis and modern treatment of the concept of justice. Plato, for example, opined that justice inheres in individuality, not in society; individuals make society just; society does not make people just. Durant¹ and Nettleship² seem to agree on this. In their interpretation of Plato, both scholars contend that justice consists in the power of the individual to concentrate on the duties assigned by the soul. This reading is in line with Plato's intention in the *Republic* which was, among other reasons, written to showcase how peace and justice can be achieved in the Greek city-state of Athens. The tripartite division of the soul is therefore important and illuminating in this respect. In modern readings, justice is not about individuals but about societies. O. P. Gauba calls this a shift from conservatism to progressivism.³

Perhaps, the emphasis on individuals conforming to the inherent structures of their soul, courtesy of Plato, could have stemmed from the fact that at that time societies were not complex in terms of multilingual, multi-ethnic and multicultural tendencies. Currently, nearly all societies are heavily complex. This complexity, in my view, must have informed the reason for the shift towards an understanding of justice in relation to the present structure of human modern societies. Regardless of this important shift, it is still a truism that, in western canonical citations on justice, an imprecise picture prevails. This is the reason why Andrew

1 Durant 1961.

2 Nettleship 1962.

3 Gauba 2003:375.

Heywood opines strongly that “no settled or objective concept of justice exists, only a set of competing concepts”.⁴ In my opinion, the analysis of western literature seems to present a kind of dilemma: justice is important and its significance seems unquestionable. This is why many analysts and scholars have given due attention to its conceptualisations. This is one part of the dilemma. On the other hand, that which is important is not only controversial, unattainable but equally conceptually troubling. The question is: Is justice and the importance placed on it not an illusion, considering that it is hard to agree on its conceptualising apart from the fact that it is still hard to attain it?

For example, liberalism represents a major tradition on the conceptualisation of justice but scholars do not agree within this tradition; questions about and concerning the place of utility and liberties in relation to justice divide the utilitarians⁵ and the contractarians.⁶ Even Rawl’s extensive and most popular treatment of justice within the contractarian leg in liberal philosophy on justice has received very wide criticism.⁷ Libertarians’ persuasion on the necessity of liberty, even though comforting, could not generate a sense of unanimity with liberalism of the contractual bent. Although there is agreement on the importance of liberty to justice, both schools disagree on what constitutes the intractable character of justice *qua* the liberty principle. Nevertheless, Robert Nozick’s *entitlement theory* is somewhat decisive: it imagines property right as *sine qua non* of individual liberty within the context where the idea of the welfare state is given minimal attention. Consequently, three main ideas constitute the basis of Nozick’s entitlement theory: initial acquisition of bits of the natural world, voluntary transfer and rectification of all principles whereby justice is derivable.⁸

4 Heywood 2004:173.

5 Examples are Jeremy Bentham and J. S. Mill. According to these scholars, justice inheres in social utility in a manner that results in the maximisation of total happiness in society but by counting each person as one and as no more than one. This position was criticised by Rawls when he argued that this position treats some individuals only as means towards the end of others and to that extent is instrumentally liberal in nature.

6 Classical contractarian theorists are Thomas Hobbes, John Locke and Immanuel Kant, but modern contractarian defence of justice was championed by John Rawls who regarded justice as fairness. Unlike Utilitarians, Rawls argued that rights secured by justice are not subject to the calculus of social interests. See Rawls 1972:28.

7 Apart from the criticisms from critical theorists, communitarians and postmodernists, Steve Buckler contended that a major and striking problem with liberalism is that, in its entirety, it is more concerned with how best to justify liberal principles than with the validity of those principles themselves. According to Buckler, justice precepts by liberals based on the absence of non-interference are too thin and too complacent, unlike the absence of non-domination which presents a robust idea of justice than mere non-interference insisted by liberals. See Buckler 2010:173.

8 Nozick 1974.

Marxism does not seem to have a clear and distinct treatment of justice notions except in relation to the overall view that justice cannot be attained in capitalist society but only in a communist order. Class antagonism and conflict is always a precursor to injustice which can only be eradicated where the entire order that breeds that conflict is dislodged. The antidote to capitalists' immoral order is the abolition of private property, that is, the eradication of capitalism. It is evident, however, that Marx may have exaggerated some basic routine of history on which his materialist interpretation of history is based. For one thing, Marx's materialist reductionism is too excessive and too deterministic in a way that is not in consonance with absolute details presented by history. This is because important changes and progress in history have not been essentially occasioned by materialism. A theory of justice that dovetails into history may end up being crushed once there is falsification of the details of history on which it is based. In addition, his theory of justice was not significantly sympathetic to feminist perceptions about justice, even if that concept is tuned and turned towards matters of sexuality. Feminism construes justice and its absence in ways that the majority of scholars and philosophical schools have failed to view it. For feminists, a peculiar kind of authority, namely patriarchal authority, deprives women of the access to justice claims and entitlements. For most feminists, especially the radical ones, what is needed to enthrone justice in human society is the reconstruction of sexual equality through the eradication of phallogentric and patriarchal tendencies which create inequality.⁹

In all, time is taken to portray the line of thought in western literature to show that justice conception is a crucial problem and that an engagement on this special idea in legal philosophy, in particular from the perspective of African legal theory, is not a misnomer. The obvious conclusion is that western report on the nature of justice seems to involve a kind of dilemma simply because its emphasis is entailed in some form of illusionary pursuit and unnecessary abstraction. It is on this account that I have decided to examine what justice conception holds in the canons of African legal theory showing that, while existing thoughts in African legal theory are home to one concept of justice or the other, attention has not been paid to the jurinomic dimension and foundation of justice in African legal thought.

3. Some concepts of justice in African legal thought

It is shattering to know and note that the word "justice" in some cultural groups in Africa does not exist. Phrases that are near representations of justice do exist. For example, Agbakoba and Nwauche argued that, among the Igbo people in Eastern Nigeria, there is no word that clearly translates to the English word "justice". There are equivalent expressions purported to be attempts at conveying what just situations are, but not what justice itself is. In other words, such terminologies are only relational not symmetrical. Examples abound of words such as equality (*nraanya*), truth (*eziokwu*), but

9 Littleton 1997.

no Igbo words translate to “justice”. However, in their opinion, justice has been defined to mean fairness.¹⁰ Since no word directly translates to mean “justice” in Igbo jurisprudence, we can then say that justice, as fairness according to these authors, is an extrapolated and inferred concept rather than a substantive and direct instance. The inference would, admittedly and evidently, be contextually and circumstantially conditioned which means that the justice-as-fairness equation may not hold in all contexts. In addition, the fairness in question is more legal, moral and metaphysical rather than jurinomic, that is, underscoring the connection between law and economics, especially in the regulation of social relationships that creates tendencies towards conflicts.

In addition, while trying to respond to the alleged view that the African system of government was authoritarian in nature, A. M. D’lamini hinted at an unsophisticated but still true concept of justice in African philosophy of law. The basis of his view was derived from the governmental system among the Swazis. According to him, “the powers of the King were limited by the existence of the chiefs, councils and advisers ...”¹¹ D’lamini’s idea was an attempt to refute and debunk certain Eurocentric tendencies which characterise African governmental and political systems in ways that conform with certain conclusions created in line with the spirit of Eurocentrism. Given the governmental structures in existence, especially among the Swazis which was the focus of the article, D’lamini gave heed to the fact that a justice system prevailed in African traditional systems of government. Although justice was not the focus of the article, certain ideas could still be ferreted. In fact, D’lamini gave heed to Gluckman’s view that natural justice was a prominent thought in the structure of public administration in Africa. But then, just as Gluckman’s view analysed below lacks a jurinomic flavour, the same can be said of D’lamini’s position on the nature of African philosophy of law. There is the need to give due credence to D’lamini’s article which was written at a time of popular consciousness towards what an ideal philosophy of law in Africa could be, yet it still stands true that a jurinomic concept of justice is not limited to the realm of law alone but cuts across the interconnected areas of law, morality and economics.

Juristically, early treatment of what the concept of justice is in African legal thought was first offered by the British anthropologist and legal researcher, Max Gluckman. Writing from the perspective of the Barotse in former Northern Rhodesia, Gluckman hinted at the idea that, based on his findings among these people, a theory called the natural idea of justice could easily be defended as consistent with the thoughts of the people. The critical question is whether this particularity can be universalised for the many Africans, on the one hand, and whether it can be particularised for Africa as against the rest of the world, on the other? Nevertheless, the essential principle behind this naturalism needs to be carefully understood. According to Gluckman, “Africans always had some idea of natural justice,

10 Agbakoba & Nwauche 2006:77.

11 D’lamini 1997:69-83.

and a rule of law that bound their kings, even if they had not developed these indigenous conceptions in abstract terms.”¹² In another sense, Gluckman contended that:

When a case came to be argued before the judges, they conceive their task to be not only detecting who was in the wrong and who in the right, but also the readjustment of the generally disturbed social relationships, so that these might be saved and persist. They had to give a judgement on the matter in dispute, but they had also, if possible, to reconcile the parties, while maintaining the general principles of law.¹³

However, while this concept of justice, as provided by the analysis of Gluckman, is novel, considering also the time when he made the assertion, it did not establish a jurinomic dimension to the analysis of justice among the Barotse. In other words, justice can neither be tackled nor treated from a purely legalistic point of view. The reason for this is that, by its very nature, justice cuts across the interconnected and cognate realms of morality, law and economics. Indeed, Gluckman was right to have insisted that the task of justice was to ensure social balance and equilibrium. But then, it will do no good to limit the analysis of justice to frontiers of law because justice is not all about law alone. There are elements of justice that transcend mere legality. Those aspects make a demand on our understanding of how justice is internally connected to social behaviour and attitudes, especially in relation to scarce resources and social conflicts. The mediating possibility that justice holds in relation to social conflict creates the impression that a jurinomic perspective is needed in the analysis of justice.

In another related sense, justice conception as a strictly African affair was equally provided by Bishop Desmond Tutu during one of the sessions of the Truth and Reconciliation Committee in post-apartheid South Africa under the *Promotion of National Unity and Reconciliation Act* of 1995. As Chairman of the Committee, Tutu claimed that African jurisprudence and thus justice conception is essentially restorative. This view is similar to that of Gluckman, only that Gluckman branded his idea of justice in Africa as ingrained in naturalism. In other words, both Gluckman and Tutu share the view and agree on the idea that the process whereby justice is arrived at is primarily the same; the only difference is that Gluckman regarded justice, following from this process, as natural justice whereas Bishop Tutu regarded it as restorative in nature. However, the restorative jurisprudence hinted at in Tutu’s exponential and lucid treatment was founded not on jurinomics, that is, the point at which law and economics intermesh, but on the fact that the foundation for that initial thrust in African justice conception is theology or religion. Tutu’s idea concerning justice in Africa is more metaphysical than jurinomic. According to Tutu,

12 Gluckman 1972:173.

13 Gluckman 1967:28.

God has given us a great gift, ubuntu ... Ubuntu says I am human only because you are human ... You must do what you can to maintain this great harmony, which is perpetually undermined by resentment, anger, desire for revenge. That is why African jurisprudence is restorative rather than retributive.¹⁴

It is somewhat clear from this exposition that Tutu’s juristic thought on the concept of justice in African jurisprudence is not all about analysis but about providing the basis and legitimacy/justification for the justice concept. That basis straddles between supernaturalism and humanism without evidence that there was any preference for a humanistic construct on which justice is based but more evidences showing that there was a preference in favour of a theistic basis for the justice concept in Africa. *Ubuntu* is a gift from God, not a social feeling, idea and principle that evolved from social interactions and encounters. In other words, Tutu’s idea of *Ubuntu* is an ontological claim denying the facticity of social Darwinism. To go this way is to confirm what has been mentioned about Africa all along, namely that the African universe is permeated essentially and intricately by religion such that no phenomenon is interpreted and accepted without reference and appeal to religion. If this is a true assertion about Africans, it is not the totality of truth concerning the philosophical thoughts and speculative thinking among Africans. It can be reasoned that there exists some humanistic flavour that Africans adopt as basis of social life without necessarily appealing to any theistic or religious arguments.

4. From jurisprudence to jurinomics

Many entry points seem to exist and present themselves in the study of the nature of law. These several other entry points of discussion seem to tread on the path of a radical insistence on the ability to provide a sufficiently empirical approach to law. One important direction of thought in the analysis of law is what some scholars have variously tagged as the “economic analysis of law” which is the attempt to understand the influence and importance of economic concepts in the appraisal and determination of law. It is argued that the scientific and empirical status of this approach consists in the relevant and technical senses in which the tools of microeconomic theories are copiously and extensively appealed to in the understanding of law. Definitely, it shows that the approach tagged as “economic analysis of law” is not only interested in proving that jurisprudence and its subject matter, law, can be understood to have an economic content but, also, that law has scientific, empirical and technical dimensions.

That law has economic contents or properties or that law can be viewed from the perspective of economics is not an intellectual orientation/approach that is just emerging. That law can be regarded as having scientific connotations is equally not new. If there is no other classical

14 Wilson 2002.

standpoint to jurisprudential matters with an economic undertone in western scholarship, at least it can be vouchsafed for Marx's jurisprudence that it made brilliant and intelligible attempts at showing that law has an economic side. Thus, we owe it to Marx's eloquent description that the economic means of production determines other important aspects of a society's life such as the legal. However, the difference between Marx's approach and the economic analysis of law consists in the use of the tools of microeconomic theory.

From this brief introduction, it is obvious that law and economics have always been connected with each other. In fact, the origin of law bears testimony to the fact that law was first concerned and conceived in connection with economics rather than morality, for the origin of law, according to Will Durant, comes with property, not morality.¹⁵

The depth of significance attached to the connection between law and morality may, perhaps, owe its origin to the endless, almost dramatic and dripping controversies in classical jurisprudential discourses. Inevitably, it appears that each age and era is often taken over and obsessed with a particular issue to the extent that the nature of that discipline becomes either identified with or ossified by the issue in question. Such is the case concerning the issue and subject matter of the connection between law and morality. Coupled with the dissatisfying nature of definitions of law, the entire history of jurisprudence seems to have been ruled by one passion: to either prove that law is separated from morality or show that both are necessarily connected. It is no wonder that Judith Sklar, in her timely wisdom, commented that the nature of philosophical controversies is such that they are irresolvable since they tend to have this extraordinary capacity for survival.¹⁶

It does follow that, at every point in time and history, law and its central and several features will often be called into question concerning its role, influence, justification, usefulness, importance and limits in relation to some obviously crucial and cultural dimensions of human existence. Because of this observed impact and importance, and because of the fact that law is about the only institution with very great and grave significance in human ordering and social engineering, it is presupposed that its features will be subject to critical scrutiny. Indeed, law is currently the most important, major and central concern in our world. This is one of the reasons why debates about, concerning and centred on law are controversial because of the several implications law has for human life, welfare, well-being and freedom in general.

That a conscious attempt is made to understand, scrutinise, critique and interrogate the link between law and economics is, from the foregoing, not a misnomer. Indeed, this new approach has its own peculiar and exciting history. Apart from the fundamentality of law to human existence, economics, as the discipline interested in the science of human wants,

15 Durant 1963:25.

16 Sklar 1964:29.

natural resources and human needs, is equally fundamental and important. The importance derives from the fact that “all human motivations and interactions have a bearing with economics”, especially considering the fact that we live in a world whose daily attention seems to be focussed, energetically, on the “pervasive fact of resource scarcity.”¹⁷ It follows that economics and economic concerns are precursors and producers of some of the social behaviour in which law has been classified as being characteristically and naturally interested: the regulation of social conflicts. In most instances, those conflicts are creations of certain economic behaviours. However, the coverage included in these careful and studious interrogations of the interconnectivity between law and economics is not limited to a negative adventure into social conflicts alone. Such interrogations extend to interesting positive dimensions. This is necessary at once to set forth a very useful boundary on the relationship between law and economics.

In general terms, therefore, all conceptual, causal, logical, necessary and contingent connections between law and economics, broadly defined, is what this article has creatively captured as belonging to the field of thought called jurinomics. Jurinomics simply means the discipline that studies or that area of intellectual study of the intersection between law and economics. Jurinomics attempts to prioritise the study of law from the perspective of economic issues and interests that are imbued and embedded in law. This discipline is not and should not be taken as a one-sided affair as if the only object and subject of interest is law; law is actually crucial to this discipline, as the author conceived it, but it sounds incomplete to approach jurinomics from the perspective of law alone. The fact that there is always room for an economic undertone of law in a special and very significant sense shows that economics and the economic content that law carries is what gives jurinomics its special and interesting flavour. Defined simply, therefore, jurinomics means the study of the economic content, context, concepts, contour, characteristic and consequences of law, legal concepts and practice.

Admittedly, it follows that where law introduces economic flavour into the understanding of society, social behaviours and practices, the concern and curiosity of jurinomics is awakened and its interest in social re-engineering is underscored. Moreover, where a piece of legislation is introduced in a particular community with fantastic impact on pricing, trade and economic interaction, then it is presupposed that such a study into the carefully worked out influence of law on economics has only shed light on what jurinomics is interested in. Trenchantly, we have to admit that all conceptual and non-conceptual issues on the intersection between law and economics belong to the field of study called jurinomics. Jurinomics is, therefore, in my understanding, all intellectual matters that relate to the study of the interesting overlap between law and economics. We may, therefore, regard jurinomics as the science that is concerned with raising the most fundamental of issues that illuminate and enlighten our

17 Hirshleifer 1987.

understanding of the connection between law and economics. Interestingly, these issues, since they are fundamental in nature, have a very wide scope ranging from epistemological, metaphysical and logical issues to cultural, scientific, moral and practical issues as long as the border, the scope in addition to the issues involved/raised enhance our understanding of the dynamic interrelationship between law and economics.

Given this broad definition, conceptualisation and characterisation of jurinomics, it is not surprising that the discipline called “economic analysis of law” lies within its reasonable boundary. This field is, therefore, one aspect of jurinomics. What we have tagged as jurinomics is not dramatically different from and diametrically opposed to the salient principles and ideas of the economic analysis of law, although the latter is emphatic about the importance of macroeconomic tools of analysis. However, at the outset it is important to state that something approximating an economic dimension to law is what is hinted at when the concept of jurinomics is isolated for discussion and critical analysis. The view is that there is a sense in which the proposition is true that economic concepts have a bearing on the way we come to understand law or the way law functions. Thus, the boundary of jurinomics is a wide one. It is within this context of possibility that jurinomics is underscored coming from the perspective of African legal thought. What do we mean by an economic analysis of law?

The discipline concerned with the economic analysis of law has been historically tied, in legal debates, and as early as the 1960s, with the works of Ronald Coase,¹⁸ Guido Calabresi¹⁹ and, in the 1970s, with the works of Richard Posner,²⁰ Ronald Dworkin²¹ and Jules Coleman,²² to mention a few. However, a little before and after the turn of the twenty-first century, Kaplow and Shavel²³ and, more particularly, Lewis Kornhauser²⁴ defended and articulated distinct concepts and terminologies as embodying the body of thoughts on what economic analysis of law means. Based on the works of these scholars, two popular concepts in the overall understanding of the economic analysis of law are that the application of the tools of microeconomic theory into law and legally related concepts is important and that the utility of law in economic terms can be underscored in relation to the amount of welfare it creates. The latter has been conceived in different and often controversial senses. But the central emphasis is that law has an economic value only by determining how committed that legal rule, institution or norm is to the issue of welfare. However, some scholars in this tradition have argued that welfarism does not, in any way, portray the essence and heart of the economic analysis of law. The troubling issue still is whose welfare and how is this welfare determined?

18 Coase 1960:1-44.

19 Calabresi 1961:499-553.

20 Posner 1973.

21 Dworkin 1980:191-226.

22 Coleman 1988:95-132.

23 Kaplow & Shavel 2002.

24 Kornhauser 2003:303-330.

It appears, therefore, that the more controversial issue in the discipline centres on the interpretation of welfarism. But this is not all; the question of normativity of law is equally controversial. To have a full understanding of these issues, there is the need, first, in conceptualising what we mean by economic analysis of law. According to Kornhauser, economic analysis of law centres on the analyses of the “causes and effects of legal rules and institutions”.²⁵ According to the same author, it implies the attempt to explain and predict how private citizens and public officials will respond to legal rules and institutions.²⁶ Given this definition, it appears that economic analysis of law is interested mainly in that there ought to be a sense of determinism in the analysis of law. This is a brand of economic determinism but the determinism in question is not the Marxist version. The determinism in question is centred on the idea of welfare. A law is economically beneficial and worthy of analysis in terms of economics just in case or if it is the case that it promotes welfare. It implies that the welfarist commitment of law can best be demonstrated by how efficient law is. This is what Richard Posner posed as the normative claim.²⁷

While this approach is laudable, it does not seem to represent the core of what is regarded as the economic analysis of law. Many reasons account for this: the concept of welfare is not the same as efficiency and as such we may not reduce both concepts to each other; welfarism itself is not a monolithic concept inasmuch as scholars have and will continue to hold its meaning in several ways; welfarism is not the only way whereby the efficiency of a thing can be established, even though it is not wrong to claim that the promotion of welfarism is a strong indicator of efficiency, and welfarism is not limited to the realm of economics alone: the interdisciplinarity of the term can be established beyond the boundary and the frontiers of economics. Welfarism can be approached from the social and cultural angles which do not indicate a commitment to the economic analysis of law.

With this conceptual clarification and conceptual usefulness of welfarism as representing one core of the economic analysis of law, in projecting the nature of African legal thought, the author is inclined to adhere to the concept of welfare in interpreting the meaning of African legal thought and the jurinomic implication of that concept in the light of the ideal of reconciliation. But there is a distinction to be made: the welfarism ingrained in the jurinomics of reconciliation in African legal thought is specific, on the one hand, and broadly conceived, on the other.

25 Kornhauser 2005:68.

26 Kornhauser 2005:68.

27 Richard Posner postulated that common law is not only efficient but ought to be efficient. The second claim is what scholars have branded as the normative claim that is different from the former which is interpreted as the positive claim. Interestingly, the normative claim has generated several controversies than the positivist claim, giving rise to hordes of interpretations. Overridingly, efficiency in this normative sense has been popularly termed to mean promotion of well-being of individuals in society. It is in this interpretation that the jurinomic implications of justice in African legal thought is defended in this article.

The meaning is that welfarism, in African legal thought, has an economic implication, and is so broadly construed that it not only appropriates the economic but also embraces the non-economic, an appropriation that is essentially corroborative, not oppositional. This article now wishes to clarify and defend these thoughts in relation to African jurisprudential thought.

5. The burden of African legal thought

The full and complete nature of African jurisprudence is still an emerging one, although the controversy that tended towards rocking its ancient, modern and contemporary breath seems to have been given a placid silence. This article argues extensively on what is considered to be the prime subject matter and the main characteristic principle and core theoretical orientation and emphasis of African jurisprudence.²⁸ Previous attempts and efforts have been made to articulate what the author considers to be the controversial steps to birthing the nature and substance of African jurisprudence. In any case, in general, it is argued that if we are to make a preference on what the ideal of African jurisprudential thought is, that ideal should be the reconciliatory thesis. Perspicaciously, this thesis is “discernible in the African conception of the essential nature and structure of life in the society”²⁹ or what Omoniyi Adewoye, in his wisdom, tagged as the “African philosophy of society”.³⁰ In what follows, the article states the body of the controversy and then attempt to explain what the reconciliatory thesis stands for and the jurinomic importance of that thesis for African legal thought.

In articulating what is meant by African legal thought, the author is aware that a possible question to ask is: Which African legal thought is being canvassed in this instance: the past or the present? If it is the past, it could be claimed that that reality no longer exists and carries no weight. If it is the present, much of what can be said would be hybrid in nature owing to the contact, influence and contamination brought about by colonialism, western civilisation and modernisation. Of course, a futuristic possibility can be concocted in this instance where the globalising agenda will leave the entire world in a lingering limbo. Another disturbing possibility with respect to the meaning of African legal thought concerns the view of one ‘Africa’ or of many ‘Africa’s’.

As argued earlier, the “African of today is the African of the past in the sense that we can discern sameness in the reflective consciousness, memory, awareness and remembering of the past. A conscious cognitive continuity can be perceived as a phenomenological possibility in describing existence in relation to Africa”.³¹ Teslim Elias once reiterated the fact that

28 See Idowu 2003:63-89; Idowu 2006:34-48; Idowu 2006:1-16; Idowu 2008: 64-186.

29 Idowu 2006:1.

30 Adewoye 1987:1.

31 Idowu 2009:437.

It is not to be expected that, amidst such a diversity of peoples and in such a considerable land area as the African continent, any uniform and invariable pattern of society should exist ... but in spite of this diversity, we have to bear in mind the strong evidence of general similarities which writers who have studied Africa at first hand and appreciatively, have vouchsafed to us.³²

The author has previously argued³³ that the controversy over the nature and possibility of an African jurisprudence is presented in a fourfold manner: the *sceptical* argument;³⁴ the *ignorance* argument;³⁵ the *difference/non-difference* argument,³⁶ and the *existence/reality* argument.³⁷ The basic arguments in favour of the reconciliatory elements in African jurisprudence can be itemised as follows:

1. Daily life and activities in Africa revolve around and rely on tradition.
2. A particular tradition becomes special and unique to a people when it is the case that such tradition becomes the carrier or is an embodiment of their identity.
3. One major index of African traditional identity is the general attitude towards maintenance of peace, collective equilibrium and social cohesion; that is, the idea of brotherliness.
4. The general and philosophical name for this attitude in African social life is reconciliatory philosophy.

6. The jurinomics of reconciliation

To what can we attribute the jurinomic nature of African legal thought? If African legal thought and its principles and features revolve around the thesis of reconciliation, what is essentially jurinomic about reconciliation? In other words, what economic determination or dimension can we attribute to the theory of reconciliation? The author's argument is that reconciliation, as conceived in African legal thought, is corroborative of the principles and practice of welfarism. In other words, the emphasis on reconciliation consists in the belief that the essence of law is to keep the socio-political and economic equilibrium that society is known to enjoy. Law is therefore instrumental in maintaining social equilibrium; this means that law is the instrument for the safeguard of welfare in the community. Welfarism is thus a major economic behaviour, principle and motivation underlying the idea and ideal of reconciliation in African legal

32 Elias 1956:8.

33 Idowu 2006a; Idowu 2006b.

34 Driberg 1935; Holleman 1974; M'Baye 1975.

35 Smith 1965:30; Hartland 1924:5-6.

36 Okafor 1984; Taiwo 1985; Oladosu 2001.

37 Gluckman 1964; Gluckman 1967; Allot 1960a; Allot 1960b; Allot 1980; Elias 1963; Elias 1956.

thought. The maintenance of social cohesion is the driving force behind legal concepts, practice and the legal institutions in African societies. It is in this sense that reconciliation is adopted as the golden ideal of legal practice, administration of justice, especially adjudicative processes, as well as the great emphasis of legal thinking. Thus, it is an ingrained cultural practice that both law and its administration ought to and, indeed, should incorporate the ideal of reconciliation. Reconciliation is thus both a legal and an economic orientation and practice in African legal thought. Law strives to ensure conciliation and reconciliation among every aspect of societal life and every economic group. By this vision of societal reconciliation, law promotes the welfare of every member and of society at large. It appears that what is implicit in African legal thought is the view that welfarism is a key and major focus of the legal culture of society. The implication is that law, normatively, ought to promote welfare. This presupposes the fact that a law can be assessed based on the criterion of welfarism; a law that fails to promote welfare is deemed to have contravened the essence of its existential instantiation. There is therefore a distinction between law as a means and law as an end. There is also the distinction between existential understanding of law and essential understanding of law in African legal thought. Unlike Austin who separated the “is” from the “ought”, it appears that the main driving force behind African legal theory rejects such a distinction and is completely antithetical to such a theoretical position. While the “existence” of a law can clearly be studied separately, in African legal thought, the difficulty of engaging in such a separate study is obvious if it is truly the case that the “essence” of a law is imbued and embodied in its “existence”. In relation to African legal thought, these distinctions can be further reflected upon to showcase the jurinomic implications.

From this reading, it follows that there is an economic reading and implication in the concept of reconciliation. This economic implication is portrayed and meaningfully and insightfully defined using proverbial statements, witty sayings and parabolic contents but with profound economic implications and meanings. This is not out of place in African legal thought since proverbs have not only epistemological, metaphysical and logical significance but also judicial, juristic and legal importance. A careful study and critical reading of selected African proverbs show and demonstrate the jurinomic import, implications and dimension such proverbs carry in African legal thought. We must first demonstrate the juristic significance of proverbs in African thought and philosophy.

7. The jurinomic significance of proverbs in the African thought system

The juristic significance of African proverbs has recently gained much currency among African scholars. Contemporarily, proverbs are regarded as significant but not in a legal and jurisprudential way. William Bascom

pontificated that proverbs among Africans is a kind of verbal art³⁸ which means that proverbs perform certain aesthetic functions when interpreted correctly. In other words, it is often regarded as a linguistic performance of the internal state of beauty using words. However, it is only in recent times that African scholars have taken time to underscore the juristic importance of proverbs among Africans. Examples can be cited from the works of Omoniyi Adewoye³⁹ and Oladele Balogun,⁴⁰ both scholars from the Yoruba cultural group in western Nigeria. Despite the depth and breadth of their analysis, it is still within reason to contend that the jurinomic foundation of African proverbs has not been underscored. As Taiwo Oladele rightly reiterated, “proverbs deal with all aspects of life”,⁴¹ yet it stands true that the jurinomic dimension of African proverbs has yet to be explored, especially in relation to justice. Indeed, although many of the proverbs in African communities have legal and juristic implications, it is the contention of this work that they tend to have a wide interpretive possibility that transcends the juristic and the moral. The remainder of this article intends to underscore how the idea of justice can be given a jurinomic interpretation using selected or isolated proverbs.

8. The reconciliation theory and the jurinomics of the justice concept in African thought

There is no other way of corroborating, expatiating and exponentially interpreting the jurinomics of African legal thought, the reconciliatory thesis, by means of proverbs other than the profound statement and famous proverb “to each a crumb of right, to neither the whole loaf”. The full meaning of this proverb was given by the late Teslim Elias, one of the most original exponents of juristic thought in Africa. According to Elias, in the most original sense, parties to a suit left Yoruba courts neither puffed up nor cast down. The saying then goes, “for each a crumb of right, for neither of them the whole loaf”. This statement is proverbial in all its intent. It captures the heart and the philosophical direction, goal and focus of cross-examination, adjudication and the dispensing of justice in Yoruba land and, as argued earlier, among Africans in general. This adage and proverb is universal to the many Africa’s and particular and peculiar to Africa. It is in this sense that Asiwaju, like Gluckman, Desmond Tutu and other jurists argues that African jurisprudence is neither adversarial nor accusatorial; its recent occurrence is a British imposition.⁴² British jurisprudence emphasises a winner-takes-all approach. By focusing on this proverb and adage, which is representative of the push-and-pull of reconciliatory jurisprudence in Africa generally, it is believed that the jurinomic character of this proverb can be determined, articulated and

38 Bascom 1956:245.

39 Omoniyi 1987.

40 Balogun 2006:85-94.

41 Taiwo 1976:32.

42 Asiwaju 1991:229.

expounded carefully. The concepts with jurinomic implications in the statement can be isolated and they are as follows: *each/neither*, *crumb*, *right*, *whole*, *loaf*. These words and concepts are used in an economic sense to portray what is meant by the aspiration and struggle inherent and inbuilt into the practice and development of the culture of reconciliation.

8.1 Each/Neither

The words *each* and *neither* are used in a special sense. Taken together, the words signify both a picture of the contrast between individualism and the community. Individualism is a social, moral, political and economic doctrine. As reiterated by Andrew Heywood, it is not merely about belief in the existence of individuals but, more properly and basically, about the belief in the primacy of the individual over any social group or collective body.⁴³ The classical root and origin of the philosophy of individualism can be explained in the thoughts of John Locke, Adam Smith, with John Stuart Mill⁴⁴ constituting the major defence. In the economic sphere, both liberalism and individualism support the extensive protection of the right to private property and the doctrine of the free market. It follows that liberalism and individualism are key players in the entrenchment of capitalism. In other words, capitalism, individualism and liberalism are coterminous with each other as they are neither oppositional terms nor antithetical ideas.

From this analysis, although the word “each” could easily be interpreted as connoting the doctrine of individualism, it appears that the picture conveyed, in this instance, does not capture the idolisation of individualism. The reason for this is that, in African legal thought, the idea of the individual is subsumed under the concept of the community. This is the meaning of the phrase “for each ... for neither ...”. The implication is that while each, the individual, is recognised, the needs and rights of the individual are still viewed in the light of the community. What follows is that society and its values of cohesion are regarded as sacrosanct and salient. In other words, cohesion serves as a general political philosophy pushing and pulling together the societal string. One member has a stake but that stake does not have to impinge on other members. That is why, according to the proverbs, each, that is one, cannot take all the crumbs; there is a crumb for each and everyone. This is the political dimension.

Nevertheless, there is an economic, or more importantly, a jurinomic dimension to the concepts of “each” and “neither” in African legal thought. The dimension is that each person’s welfare and interests are not mortgaged as much as the interests and welfare of the community are also not compromised. This is the beauty of the point that reconciliation seems to be driving at in the understanding of the core aspect of African legal thought. In the context of African legal thought, there is a place for each. Justice therefore transcends individualism or is not responsive to

43 Heywood 2004:27.

44 Mill 1998.

individualism alone nor is it sensitive to individual actors considered alone. For each to have a crumb of right means that the aggregate of the crumbs obtained from each is what sums up what African scholars regard as the general welfare. In other words, no individual is entitled to the whole since there is the need to make room for others. This conception of law shuns and avoids the unhealthy competition for resources that is usual and in consonance with truly liberal societies. No single individual has the right to take all. The African concept of justice, from the perspective of jurinomics, is not sympathetic to liberalism or the liberal ideology. Given the each/neither dynamics inherent in African legal thought, the liberal state, for instance, would be found inadequate in an average African society. The law recognises not only the evil of the Iron Rule where perhaps a single individual or a few dominate but also, quite prominently, the necessity of imbibing the culture reiterated by the Golden Rule of sharing. Reflectively, law and justice conception are instrumental in the general welfare both in the economic sense and as supported by the law. The driving force of law in African legal culture is therefore to rule out unhealthy competition, compromise, and mismanagement of resources. The cultural economy is therefore not one of alienation or exclusion but one of inclusion and belongingness. Resources, as rightly portrayed in the proverbs, are collectively owned. It is in this sense that no one can take all. The justice system advocated in this instance is thus economically sensitive. To be just economically is to pave the way for one and all; that is, to make room for the welfare of everyone. The crumbs, it is believed, can go round without anyone holding all to ransom. This is the point conveyed in the proverb which has become the standard bearer of the truth of the legal culture, justice principle and practice in African philosophy.

8.2 Crumb

The word “crumb” is also an economically significant concept. It is often used to explain bits, fragments and small pieces and portions of bread or a cake or any foodstuff that has the potential for creating satisfaction when consumed. In other words, it points to the fact that food is an important part of societal cohesion. The implication is that, metaphorically, “crumb” projects the economic identity and structure or process subsisting in society. Thus, by using the idea of “crumb” metaphorically, African legal thought, in a way, projects the belief that no single individual can have all that is owned by society. Apart from depicting ideals of reconciliation in African legal thought, the proverb portrays the idea of common ownership of properties found in society and the view that everyone in the community has a share. Reflectively, therefore, it speaks of the fact that, although each and everyone has a share in the whole lot, that is society, no one individual can be full and fulfilled outside the whole. The rationalisation and distribution of crumbs to each, not the whole to one, reveal that the individual is a tiny fragment of society. The jurinomic implication of the “crumb” metaphor is that justice inheres in the law that provides the means whereby equity and equality are ensured and established in society. Thus,

it means that every individual in human society, no matter how bad, will always have his/her good and, no matter how good, cannot have the whole. There is always a portion that everyone is entitled to which cannot be taken by another. Economically, this means that every individual, irrespective of his/her standing and status in society, will always have a crumb which makes life worth living. Metaphorically, "crumb" refers to the idea of economic sustenance. That law provides and creates room for justice means that law promotes welfare which means that a modicum amount of economic sustenance is guaranteed which serves as the goal and driving force of society. Thus, the requirement of justice in African legal thought, as encouraged through the process of reconciliation, is that law promotes economic sustenance. The welfarism inherent in the canons of law is what "crumb" stands for, namely economic sustenance.

8.3 Right

Rights, no doubt, constitute one of the most important and indispensable elements of justice. They form part of the normative fabrics on which every political society, in both ancient and modern times, is based. The concepts of right and justice are thus equally important and the whole history of jurisprudence is incomplete without an adequate mention of them. Justice is thus viewed from the perspective of right. A robust treatment of the nature of justice dovetails into a careful consideration of rights. Right is both a moral and a legal term. In fact, it is often said that only law can define what the concept of right means. An agent can lay claim to a right just in case there is a law that guarantees such a claim and declares such as justified. Admittedly, the institution of rights in a society acts as a form of protest and protection against oppression and domination. Thus, law is an embodiment and carrier of rights. A right is, therefore, what a law permits as accruing to an individual. Nevertheless, both the moral and legal definition of rights accords the agent and claimant a special status often regarded as normative in nature. The basis of the normativity, however, differs from one political community to another. Moreover, the theoretical and ideological basis of this normativity also differs from one school of thought to another. In jurisprudence, the question of the nature of rights and what makes them indispensable has been a history of antagonism between legal naturalists and legal positivists. The history of right conceptualisation is a chequered one and it only shows that the subject matter of right is a very rich one, especially when considered from the controversial senses in which scholars and philosophers have viewed it historically and conceptually.

There are diverse types of rights: legal, political, civil, moral, social and economic. Right concept is always, most often, used in relation to citizenship. This rightcentric definition of citizenship history owes its fame to the influential work of T. H. Marshall who divided rights-based nature of citizenship into three important components: the civil-legal, the political and the social. This means, for Marshall, that a citizen is a carrier

of rights. Citizenship is also an embodiment of rights. Most scholars who have paid critical attention to the concept of rights have often dubbed rights as connoting entitlements that are protected or recognised by law. The absurdities in the conceptualisation of right in the literature does not centre on the actuality of political rights and its civil/legal components but on the absence of a commensurate provision of equality of rights in terms of economic status and welfare. This is one of the fallouts of the liberal tradition which claims that citizenship implies equalisation of rights but fails to explain and account for the lingering difference between citizens on account of the fact of deprivation, on the one hand, and affluence, on the other, even within the same economic system.⁴⁵

In African legal thought, right is a communal property enforceable by the “spirit of the law” and with everyone having a stake. No matter how hopeless a case may appear to be, under the ambience of the theory of reconciliation, rights are apportioned accordingly, although always in view of the overall aim of maintaining social equilibrium and cohesion. The implication is that, given the principle and philosophy of reconciliation, the ideal of social cohesion often drives the wheel of society in recognition of the fact that, in every dispensation of justice, the rights of everyone are always to be preferentially safeguarded and mutually protected. The rights provided for, protected and safeguarded are treated thus and given in such a way that everyone, especially in economic terms, is accommodated by the social principle of general well-being. This means that there is always a sense in which everyone, regardless of economic status, has a right which is the duty of the whole to guarantee and enforce. It is important therefore to see the principle of justice in operation by the fact not only that general well-being is guaranteed, but also that no one is made to lose out in any administration of justice.⁴⁶ From this African jurinomic perspective, justice and rights are so construed as having a special and enduring connection to the principle of welfarism. Both justice and rights seek to promote the welfare of the community. Welfarism thus stands very critical to the heart of the African justice system and practice from the perspective of jurinomics, that is, the point at which law and economics make use of similar principles and concepts to achieve their ends. In this instance, this means that the idea of economic justice is promoted via the instrument and method of law. Jurinomically, legal justice intermeshes with economic justice. The crumb of right that each person in African society is entitled to, irrespective of his/her legal and economic status, constitutes one of the crucial ways in which the canons of justice and its enduring epistemological and ontological foundations have been established.

45 Turner 1990:190-191.

46 See Balogun 2006:90. The principle of fairness in the administration of justice among the Yoruba people in Nigeria, according to Balogun, is contained in the proverb *aki fa ori olori lehin re* which ordinarily means that a person's hair is never shaven in his absence.

8.4 Whole

The concept of “whole” has deep methodical and mathematical meanings.⁴⁷ Interestingly, it also has an economic meaning. Apart from these scientific meanings, there are basically cultural and social meanings of the concept of “whole”. In my view, the concept of “whole” tries to create the picture that, even if and although everyone has rights in the African milieu and culture, the cultural practice of right accordance does not suggest the view that everyone can have the whole or that even one person, no matter how prestigiously situated, can have the whole. The whole is therefore a neutralising concept in relation to justice and law conceptions in African legal thought. The reason for this is that the African legal mind is not screwed towards the parts but towards the whole. It thus seems that the ideology of communitarianism is more compatible with African philosophy of social and economic life.⁴⁸ Therefore, the concept of “whole” seems to have political, economic, social, moral, and legal implications, going by this emphatic reiteration of the communitarian ideology.

As a political concept, the whole signifies that all political units of society are well knitted together such that there is adequate representation of all units in major political institutions in society. Inevitably, decisions taken are so communally sensitive that such major decisions are held to be truly representative of all political units. Such representations are conscious attempts to ensure that no political units are excluded. This is the reason why African legal thought, stripped of colonial influence, paves the way for the articulation of views of atomic units in society such as the age grades, the market women group, the nobles (called the *otokulus*), and so on. The central idea behind the representation and the purity of the decision-making process is the calculated desire to achieve maximal attainment of cohesion of the entire society. This is the sense in which political holism is practised, given the nature of African legal thought. It is no wonder that the ideal of reconciliation is ample evidence in support of this holism. By and through reconciliation, the major aim is to ensure that no part is excluded from the whole.

As an economic concept, holism is also evident in the canons of African legal thought. One way in which this holism is demonstrated is the manner in which the ideal of welfarism and well-beingness is given ready application and collective attention, especially in the way in which traditional economy operated and still operates in African societies with little or no significant colonial influence. While it is true that colonialism and modernisation exert profound influence on the economic template in Africa, the fact remains that an exclusively traditional approach to life

47 John 2010:267-284. The concepts of whole, average, sampling, ratio, random, etc. all have very wide meanings and useful applications in research generally and in the social sciences.

48 According to Masolo, the self in African thought is conceived as a metaphysical collectivity meaning that individuals depend on others – parents, extended family, the cultural associations, the state, etc. Masolo 2005:483-498.

and existence, among Africans, gives ample instantiation to the idea that everyone is a brother/sister to another and, consequently, should help in managing the affairs of others.

This brand of economic holism also has a translatable effect in the social sphere. Just as the concept of the whole is preserved in the economic principles undergirding society, in like manner, there is the wholehearted acceptance of the concept of social holism. As hinted earlier, social holism is premised on the view that society is an organic whole. As part of the fabric of the social milieu, notions of psychic individualism are not existent. Everyone is considered part of the organic continuum which holds society together. That is why in cases involving two or more parties no one is viewed as absolutely wrong and absolutely right. This is reconciliationism and that is why the most popular proverb used in expressing this reconciliationism is that each has a crumb regardless of what and none can take the whole loaf regardless of right. This reconciliationism derives from this social philosophy which literally means that existence and living is organic in nature.

In respect of legalism, the concept of “whole”, that is, reiteration of organic existence, is buttressed in the premium placed on collective rather than individual liability. Collective liability is meaningfully assigned a strong sense of forceful obligation more than individual liability, although it may not be necessarily true that individual liability does not exist. The denial of individual liability is most often premised on the denial of the ideology of individualism in African socio-political philosophy. In fact, in African legal thought, collective liability is viewed as one of the best ways to enforce individual liability with its enduring significance. It is in this sense that there seems to be a conflation between law and morality since, apart from viewing every law as legally binding, its source of authenticity and originality derives from its moral soundness and contents. Thus, the concept of the whole explains that both legal and moral liabilities are inseparably explaining each other mutually and complementarily.

From the above, it is a proposition too plain to be contested that what is important in the consideration of African legal thought on justice and the jurinomic undertone that it displays is the whole idea of reconciliationism. The principle of reconciliation invokes an attractive appeal in the jurinomic foundation of African legal thought.

8.5 Loaf

The word “loaf” is metaphorically used, in this instance, to describe a crucial aspect of African legal thought. While metaphor is clearly a literary word, a figure of speech, the meaning that it carries is thoroughly economic in nature. “Loaf” is an economic terminology for food. The other word for “loaf” is “bread”. They both speak of sustenance, nourishment, health and well-being. Bread is a staple food everywhere and enjoys a kind of popularity based on the fact that it is often very cheap to buy and, more

importantly, it is common and an easy food to consume. In this sense, this means that bread is common to everybody, regardless of economic status.

Given this kind of usage, bread is captured as signifying how important the well-being of society is. If bread is a kind of food that almost anyone can purchase, it follows that law is a protector of the well-being of the community. This means that law is no respecter of person and is not produced in exclusivist terms. The same holds for the concept of justice. It follows that since no one can have the whole loaf, bread, no one can capture the instruments of law as a personal thing. Perspicaciously, this means that justice is a free commodity and a popular one in the sense that it is people-oriented. As a people-oriented concept, justice and law are not strange bedfellows but allies in achieving communal welfare and well-being. Just as the body cannot exist without nutrient, without nourishment, society cannot exist without law and justice. Again, since “bread” also indicates sustenance and well-being, it follows that the essence of law and justice is the sustenance and well-being of the people. Law is thus an instrument for actualising the gains of justice for the people in a process in which all have equal stake. There is no exclusive agenda in the understanding of law and justice. Bread does not alienate, even though it is true that one must at least purchase it or have the purchasing power. Interestingly, the purchasing power for bread is not something that is high, that only the rich can obtain or so low that only the poor can be interested. Justice is for all since its implications are a general concern. In African legal thought, in order to portray this notion of law and justice, “bread” is metaphorically used to capture the idea of what welfare and well-being mean to the African people. This idea of well-being and welfare is realised during the process of adjudication where reconciliation becomes the reigning concept and the yardstick for measuring communal interests and welfare.

The implications of the “bread” metaphor in relation to reconciliationism in African legal thought can be interpreted along the following lines of thought:

1. By conceptualising justice using the metaphor of a “bread” or “loaf”, it appears that, in African legal thought, justice is viewed or conceived as a commodity. One practical process whereby this idea is portrayed and the commoditisation is achieved is through the reconciliatory theory of adjudication. This idea has far-reaching implications for justice theorisation and the field of jurisprudence in general.
2. This commoditisation theory of justice is in line with the searching and reigning concept of economics in which, to some scholars, economics is not interested in people but rather in commodities. It does not follow that this concept of economics is an invincible, untouchable theory, but the reasoning is that it happens to fall in line with the idea projected, in this instance, in African legal thought.

By reducing the process of adjudication through reconciliation to the ‘bread’ concept, it is believed that the economic aspect of legal thinking and culture is therefore intensified and established.

3. The “bread” metaphor indicates that justice cannot be conceptualised outside the catchy but important yardstick of accessibility. Interestingly, what is hopeful and helpful about this model is the fact of accessibility.
4. The ‘bread’ metaphor also shows that the process for acquiring the gains and strength of legal justice is a non-expensive process. The idea, in this instance, is that of availability.
5. Law and justice are institutional processes that create satisfaction and nourishment to all and sundry. It is implied that one of the canons and features of justice is the fact that it is able to create a kind of satisfaction to those who experience it, just as bread gives satisfaction to those that partake in it. The idea concocted, in this instance, is enjoyability.
6. The “bread” metaphor also hints at the idea of affordability as a *sine qua non* when proper consideration is brought to bear on the nature of justice in African legal culture.

Derivatively, the jurinomic flavour of justice in African legal thought, using the idea of reconciliationism, draws on the important concepts of accessibility, availability, enjoyability and affordability. These terms assist in defining the jurinomics of justice in African philosophy of law. They also help in providing the basis on which the jurinomic contour of welfarism, as a social and legal philosophy, has come to determine the heartbeat of African philosophy in general. Jurinomically, therefore, there is no irrationality in contending that justice notions in Africa, using the “bread” metaphor, engages the interconnected realm of the moral, the legal as well as the economic showing, as it were, that welfarism constitute the push and pull of justice in African jurisprudence.

9. Conclusion

It is indeed true that the realm of justice spans the entire length and breadth of the moral, the legal and the economic. It follows that justice is answerable to specific but profound and fundamental questions in the domain of moral, legal and economic inquiries. It is inconceivable to propose a theory of African law and justice which fails to cover and address specific issues in these fields of human concern. In fact, most justice systems in the world, aside from the theory from which such systems are derived, make concerted efforts to sustain the justice interests in terms of their economic, legal and moral effects, impacts and implications on society. It is in sustaining this ideal that a jurinomic theory of justice is proposed and viewed as meaningful in terms of what Africans believe and practise, especially when viewed beyond the influence of colonialism.

Given this jurinomic interpretation of justice in African legal thought, one brilliant idea to be ferreted out of this is the singular fact that African legal thought embraces some kind of universalism. This is because, going by the Yoruba proverb hinted at above and argued to be representative of the view of justice in Africa, that is, the reconciliatory thesis, justice captures the needs and interests of all and sundry. This means that, in dispensing justice apart from the fact that special attention is placed on the moral, legal and economic spectrum, the promotion of general welfare is also covered. This promotion shows that, in African legal thought, there is an acceptance of the need to cater for everyone. Thus, reconciliation is an appeal to a universal drive in that no one is left out and no one takes all to the detriment of all. Specific societies in Africa may in fact have systems of justice distinct from those of others, but the author is of the opinion that this general jurinomic character presents an auspicious post-colonial context for majority of African societies.

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