

Justice and Restorative Paradigm in Traditional African Society: The Etsako-Edo Perspective

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Abstract

Consciously or unconsciously, all cultures have some deep-seated notion of restorative, conciliatory, and, in some respect, retributive traditions; thus in this milieu of rapid quest for development and moral order; interests in these traditions are growing. Many researchers are looking back into their existing cultures and finding models and customs that can be adopted both to suit a culturally sensitive dispute resolution or reconciliation process and to develop an effective model of social control and engineering. This is the imperative of this paper—a philosophical analysis of the schemes and mechanisms of social justice (restorative and retributive tradition) in Africa; and it dwelt on the Etsako-Edo practice. So, by examining justice and its applicability among Edo-Etsako, this work exposed to us the usefulness of the past in the present; it is a modern approach that problem solving/social justice could be achieved by active appliance of relevant traditional structures and schemes, and not otherwise. In other words, finally, this work indicated that these traditions (as established among the Edo-Etsako) still could be useful models for justice in modern African States and are thus recommended.

Keywords: *Africa-Etsako-Edo, justice, hierarchy, retribution, restoration*

Introduction

Today, the major concerns and goal of an African approach to justice involve how to mete out justice and in the quickest manner possible; how to use impartial sages as jury; how to reconcile conflicting parties and establish harmony and conciliation; how to restore, defend and protect traditional moral ethic and cultural practices; and how to use the exposure to public shame, the displeasure of the deities and ancestors to keep all members of the society focused on its moral ethic and codes. A discussion of the achievement of these in Africa (the *Etsako-Edo* perspective as guide) is the focus of this article.

Even though what constitutes the province of justice is contentious, of all the concepts in African philosophy, the idea of justice is the most encompassing. This is because the term is eclectic and wide in application; we have various cultural perspectives and relative usages of the term. Thus the difficulty of delineating the prefecture of justice and the contentiousness of it's whatever delineation stems from the fact of this multidimensional status of the term—as is also the case in *Etsakoland*. Suitably, it must be pointed out that “the quest for an appropriate model for the reconstruction of political authority has become an imperative in many African States today...” (Ebijuwa, 2006). Perhaps too, this is true because the existing (Western) socio-political structures for ensuring social responsibility have proved “ineffective for the organization of our daily human affairs” and therefore have failed in retributive/restoration paradigm. However, in Etsako culture, we have workable and practicable system of justice; and this is the object of our study. The objective of this study is both to dispassionately analyse the meaning and nature of justice in general; and seek/provide vivid ideas/conception of the term among the *Etsako*. In other words, our task is to adumbrate and analyse the African traditional conception of justice so as to present its meaning, sources and types (as conceived among the *Etsako*). And, by reviewing the report of the strength and weaknesses of their conception, we shall point out that the Etsako perspective of justice and restorative paradigm is valid and still applicative. What, then, is justice and restorative paradigm?

Justice implies giving each person or group of persons his or their due, and the quality of being fair to others. It involves legal, political and social (restorative) strands. The term, *restorative*, (believed to have been coined by Albert Arthur Eglash (1971) in *Beyond restitution: Creative restoration*) is a process whereby victims, offenders and communities are collectively involved in resolving a dispute and the aftermath of an offence. However, the appeal of the idea of restoration is clearly indicated in Johnstone's (2002, 10) characterisation of restorative justice: that there must be an acknowledged violation; and effort must be made to improve relationship between offenders and the offended. Basically the concern of the victims and the community is still with the need to reintegrate the offender into the society. Thus restoration is humanising criminal justice; being forward-looking and problem-solving oriented.

But this idea of justice/restoration is not new in acephalous (non-State) communities. Among the Etsako, for example, it was prevalent before the introduction of the State-centred Criminal Justice System (CJS). The practice of ostracism, banishment, oath-taking, penance, and propitiation attest to this fact. When an offender admits guilt, penance and appeasement to the gods/ancestors are made through prayers and sacrifices (divination). The tradition is that no *ogie* (Chief) in traditional setting was committed to losing any of his subjects (Bawa, 2008)—though this is burdensome considering the fact that most traditional rulers were partners in slave trade/dealings for centuries (though one can explain away this inconsistency in the fact that those Chiefs were greedy, had excessive lust for materialism, and were ignorant and overpowered by the superior colonialist—and justice was done to them as their empires and kingdoms were subjugated. Still appeasements and propitiation were made to the gods to re-assure development) (Uwemi, 2010).

This tradition of justice in Etsako is common in most traditional/indigenous cultures. Hence, Bianchi (1984, 15) holds that restorative justice is the “old system of conflict resolution, and disputes settlement survived, openly or covertly, in many centuries and indigenous cultures.” Weitekamp (2003, 111) and Braithwaite (2002, 3) hold that the idea had been in the 'non-State and early-State' society in their family group conferences and circle (*utukwe*) hearings. Likewise, Llewellyn and Howse (2002, 6) aver that today's “public, State-centred, retributive justice” began sometime in the development of civilization which Zehr (1990) suggests “gained prominence” from the 19thC, due to what Berman (1983) calls “legal revolution”, when thus justice came to mean “applying rules, establishing guilt and fixing penalties; and the affinal/communal touch in justification began to be eroded”—replaced by what Christie (1977) calls “stealing of disputes”.

African Traditional Society and the Etsako-Edo Ontology

African traditional society implies the socio-political communities, villages/towns, empires, kingdoms, nationalities, custom and culture, etc under some definite system of organization, which predate and survive the introduction of modern state structure. African philosophy is philosophy by an African and/or African system of world-view. Though many thinkers (Wiredu, 1993; Oladipo, 1995; and Gyekye, 1997; etc) canvass the need for enculturation without compromising basic identity, they do not tell us what aspects of traditional African culture apply vis-à-vis modernity. However, African philosophy is concerned with both traditional/cultural and rational/analytic accounts of general and specific reality, reflecting both individual and particularly cultural postulations since all traditional societies are similar in their essentials; the *Etsako-Edo* is an African culture area.

The *Edo*, mostly known as the Benin Kingdom, is a major ethnicity in southern Nigeria. It is believed (Ainemhomhe, 1980) that the Benin migrated from the Ile-Ife on and organized very formidable and centralized empire under an Oba—held semi-divine

by all. Her unity fortified her against the European adventurers in the 17th century, and ignited her to engage in expeditions to spread and enlarge the kingdom up to Ebiraland in its prime years; but soon met with resistance and retreated to her present communities. Today, these communities stretch from Orionwom, Oredo, Ovia, Ikpoba, and Egor local council areas. The largest (study areas) of Edo South are Egor (with a population of about 445,800) and Oredo (with a population of about 490,600) (*Source: Edo State Independent Electoral Commission 2017*).

On the other hand, the *Etsako* is a division, a clan in *Afemai*-land—comprising the entire geo-political landscape of the northern part of Edo state, Nigeria. Each village is under a Village Head; and several villages under a Clan Head. *Uzairue, Avianwu, Anwan, Ekperi, Aviele, Auchi, Okpella, Jagbe, Weppa-Wanno, and Imiegba* are some of the Clans of 'Etsako division'. These clans have common descent, history, custom, norms and values. Etsako is a border ethnic group—bound to the north by Kogi and Benue States; to the east by Anambra State. Despite Christianity and Islam, Etsako predominantly practice indigenous/traditional idol worship (Idowu, 1973; Mbiti, 1982). Historically, *Etsako* and the entire *Kukurukuland* migrated from the great *Benin* kingdom in the 17th-18th century (Ainemhomhe, 1980, 1-2; Okhaisie, 1999; Asekhauno, 2016). The name, *Kukuruku* (Aigbodioh, 2003), a mimic of the cock-crow, is the people's signal to alert themselves of any invasion. Etsako has a population of 577, 100 thousand people (NPC, 2006/16). This brings the total population of the study area to 1,513,800.

Etsako-Edo metaphysics is a lived metaphysics—practiced in the words and gestures of everyday experience. This metaphysics is not founded on the '*physika*', i.e. it does not accept or even think of a dichotomy between the world of experience and the invisible, meaning-giving world that lies beyond and accounts for it. The Etsako-Edo thus conceive of man as possessing a finite, (corruptible) body, on the one hand; and an infinite, (incorruptible) soul on the other—a sort of dualism, and even “trichotomy”, that man has body, guardian spirit, and self-ego. A 'person' long pre-exists before birth and at birth, he is “believed to have finally emigrated from the super-sensible world to the natural physical world” (Aigbodioh, 2003; Onimhawa & Ottuh, 2005)—though still manipulable by those supernatural forces. To the *Etsako-Edo* then, man is created, dynamic, complex and mythical. The soul can only be accessed through (less commonly) trust, worship, ancestral force, and (more commonly) divination. Man's conscience can be authenticated through oath-taking (a metaphysical approach to justice). Apart from the natural level of the universe, the *Etsako* believe that another plane exists (which is spiritual world), called the *agbo-alimhi*; where minor deities live and have the capacity to perform good or evil, depending on the circumstances. The existence of gods and deities is required to bring justice into the world; it is believed that to get ultimate justice in the universe, there must superhuman forces to bring it about—though if one is to take this as a fair sample, and there is injustice anywhere, the odds are that those gods/spirits/ancestors, perceived as good, either have no perfect

abode or are inefficacious (Russell, 1957). The communication is enhanced by diviners and priests, who placate these supernatural forces with sacrifices.

Hence the *Etsako-Edo* speaks of the influence of “Supernatural Forces”—the affective categories of the “sacred” or “supernatural”. Tempels (1957, 35) said that Africa “hold a static conception of being”. He further pointed out that the West conceives the transcendental notion of “Being” by separating it from its attribute “Force” while the Bantu (Africans) cannot. Truly, the Etsako-Edo conceives of “Force” as being and “Being is force” and the concept “Force” is inseparable from the definition of “Being”; thus there is no idea among the Africans of “Being” divorced from the idea of “Force”. Robin Horton (1969, 146-147), comparing African thought and Western science, tried to explain why explanations in modern western culture tend to be couched in an impersonal idiom while explanations in traditional African society tend to be couched in a personal idiom. But Sodipo (1986) criticized this view by pointing out that traditional Africa was not primarily concerned with cognitive problems but with religious and mythical ones; he does not so much want to know as to what satisfy his emotional needs. According to Ruch and Anyanwu (1981, 146), the “African world is one of participation between what Western philosophy considers as two distinct and partly separate worlds. The world which falls under our sense is not merely a shadow of the sacred transcendental world as it would be for Plato.” Consequently, the African mystical oriented metaphysics avoids the risks of pantheism.

Among the Etsako-Edo, whatever force a man acquires is given him by a superior being—just as any diminution of his force is the result of some evil intentioned agent capable of lessening one's force. This is determinism in the metaphysical sense of the word. Existence is identified with interaction and exchange of forces. What we mean here is that to exist, among the Etsako-Edo conception is to be able to influence and be influenced by others. The living-dead (i.e. the ancestors) exists in so far as his vital force can still be communicated to other beings in the universe. The African universe (as expressed in Etsako-Edo cosmology) is a tiered/structured and each tier is believed to be dynamically constructed. In fact, there is continual flow or movement of the various categories of spiritual beings from one plane to another and their various activities impinge on the fortunes of man.

The word “hierarchy” refers to “organization with grades of authority from lowest to highest” (Hornsby, 1974, 403) and are differentiated according to their vital power or inherent vital rank. At the head of this ontological ladder is God, called *Osinegba*, or *Oghena* in Etsako, derived and substantiated by the nature of the world—from the physical, experiential realities of the world, the wonders of the world such as those of the thick forest, big rivers, birth/life/death, and other mysteries; and revealed by the connotations of His names. The word *Osinegba* is derived from two terms: *osi* (which means incorporeality or spiritual and transcendent) and *egba*—which means: 1. the charm derived from the tusk of an elephant believed to be most powerful of animals and

used by hunters and warriors as protective charm; 2. sensible, as in *egba*—a kind of divinity or super force/protective charm (Isaiah, 2009). The conjoined term, *osin-egba* therefore means *Osi no ne egba* (God that is greater than *egba*)—where *no ne* is the same as *ne*. *Osinegba* thus implies the “Supreme Being that is more powerful than *egba*” (Omonokhua, 2005, 38). *Oghena*, which is derived from *oikhena* (never threatened by any evil or situation) is transcendent and immanent, invisible and omnipotent, omnipresent and omniscient, reachable only by divinities and spirit-beings through divinities; and is one. Ekarika (1979) defines divinity as “the endeavour to obtain information from about the future things or those otherwise removed from ordinary perception, by consulting informants other than human.” Soothsayers, like prophets, read the signs of the times and project into the future. *Osinegba* is *ugbare* (the beginning) and *okpitsike* (the end) of all things. He is who has force-power; gives existence, power of survival and increase to other forces; increases force (Elamah, 2007).

Next in the ontological hierarchy are the 'living-dead or ancestors' (*alimhufe*). This group is a chain which binds man to God. According to Mbiti (1970, 62), the “living-dead are still people and have not yet become 'things', 'spirits' or 'its', they return to their human families from time to time and share meals with them however symbolically.” The “living-dead” know and have interest in what is going on in the family. They know the needs of men; they have full access to the channels of communicating with God directly or through their own fore-fathers. Therefore, men approach them more often for minor needs of life than they approach the supreme being-God. In other words, “the living-dead are now spiritualized beings belonging to a higher hierarchy participating to a certain degree in the divine force” (Tempels, 62). However, to qualify as an ancestor in Etsako, one must have lived an exemplary life, had children (particularly male), and attained ripe age before death, and accorded the full rites of passage (*itolimhi*), and, according to Omonokhua (34) “are now living in the ancestral home, namely, heaven” (*ovha-ofue'egbe*)—and this rules out the plausibility of reincarnation.

Next is man, *oya*, the 'being-with-intelligence'. The Etsako believes man has physical body and spiritual aspect. The Etsako-Edo admits that, while man's physical and animal life on earth comes to an end at the moment of death, he is more powerful than life here on earth in the sense that his participation in the “vital union” with the ontological life-force originating from God is closer to the source of force and freer from the limitations which material life imposes on us.

Very closely related to, but beneath the category of human-force are animals, plants and minerals forces. These include sacred places. According to Ekarika (1979), anyplace is sacred because it is the dwelling place of the divine. Sacred places have significance because they are objects of divine powers and is endowed by God or closely connected with a god. Such places in Etsako are spectacular places where some ancestors who were warriors had experienced the divine (and some hunters had

experienced transcendental powers in such places, as in river *oile*, *utukue*-Afasio, etc). Also within each of these categories is found a hierarchy based on vital power rank and primogeniture (Idara, 2009). Thus, “life’ does not necessarily imply immorality which seems to be generally restricted to man, the “being-of-intelligence’ who alone has experience in the full sense of the word. Man “exists-with-life”, but his existence is not identified with or reduced merely to living. According to Kagame (1996, 181), “life” could be defined as the union of the “shadow” (in the sense of principle of life) with the body. The foregoing discussion has implication for justice—though it is not unique to Etsako.

Justice: A Broader-spectrum Approach

The term justice has its roots in the Latin word, *justus*, which means the quality of being *just*, fair or impartial. It means even-handedness and adherence to truth or fact and the rendering of what is due or merited to ones-self and others. It also means conformity to right principles with honesty and integrity (Webster, 1978), and is historical. Among the ancient Romans, for example, *jus* has a variety of meanings. But *jus* was also a precept of law which implies “to live honourably, not hurt one another, to give each man his due.”

In the words of Grisez (1979, 180), “justice requires due respect for liberty which, while itself is not one of the basic human goods, is a necessary condition for the active human realization of any of those goods.” Justice cannot be realized outside a system of Law and its institutions. It is a system in which law is a vital aspect of man's culture and social existence; embodying the collective will of the community and binding its members in a unity of purpose amidst the essentiality of the exercise of reason. Aristotle, Kant, and Rawls were clearly concerned with distributive and retributive justice and therefore did not go far enough in the analysis of the connotations of the concept; there has hardly been any interest in cultural modes of justice. Such interest is essential. So let us now present the delicate conception of the term in traditional African societies, dwelling on Etsako-Edo where it means the ultimate telling/determination of truth, fair or correct application of rules, distribution of goods/services, allocation of roles/duties, rewards and punishments.

Justice and restorative paradigm among the *Etsako-Edo*

Admittedly, the idea of justice is universal but culturally definite. Every culture recognizes an order of things “beyond each and every man”. Without this, life may be a gaping void. Justice therefore clearly pervades and encompasses the institutional framework intended to protect the human good” (Otakpor, 2006).

Justice in Etsako-Edo is derived from and represented by a number of words and phrases. The key words for justice in Etsako are: *u'lelu* (which means acting/doing well); *u'legue* (right judgment); *u'leke* (meaning equitable distribution); *u'resah* (meaning restoration and reconciliation); *emho-ete'somiotse* (in the long run, truth will

prevail, a kind of retribution/vindication); and *ule'remhokhia* (right process or procedure). These terms may have but insignificant variations among some relative accent. But all could be summed up in the concept of *emeza* (rightness of a course of action) or *emedioh* (the right course of action in a given situation/peculiar). *Emeza* is a fundamental legal and moral norm; it does not originate from another norm. *Emeza* is “meta-legal”. So, it is legal, if by that is meant anything which has legally relevant functions; and meta-moral, for exactly the same reasons. Therefore it is as cultural, social, religious and political as it is legal and moral because it has relevant functions in these domains. *Emeza* or *emedioh* is the only standard or reference point for all of justice. This informs such phrases, as: *ifaotsa* (reward or payment for any work done); *akayanoso* (wrong action or bad behaviour); *oya-ibosi* (anyone characterized by immoral, wicked/bad personality/character); *oya-tso* (anyone characterized by moral, right, and good personality/character) (Omolue, 2008).

Justice, as conceived in Etsako-Edo, is hinged on a macro conception of man as a being-in-relation with others, God and morality or natural law. Hence the eternal law is nothing else than the plan of the divine wisdom considered as directing all the acts and motions of creatures. Offenders are automatically interdicted from the society until the stain of their crime has been duly wiped away from the land (Okafor, 1983, 43-44). An immoral act is considered as irreligious. This springs from the fact that God is required to ensure the objectivity of moral standards. Without *Osinegba* it would be difficult in the ultimate analysis to ground morality. In philosophical knowledge, we direct our attention, above all, to existing things themselves and we point to God as a final—non-contradictory reason for existence and being. A rejection of *Osinegba*'s existence leads to contradiction in the ultimate explanation of the world. Hence Krapiec (1983, 229) insists that God is the ultimate cause of the intelligibility of things and of their inclinations and purposes.

Enforceability and sanction is an essential element in the positivist notion of law. In Etsako conception, there are series of sanctions strictly backing every law. For divine laws, there are divine sanctions, and equally for human laws, human sanctions. All the various shades of law bind the individuals in conscience (*in foro in terno*). Law and order are observed in the Etsako traditional society because the ancestors have so desired and the society so commends as moral. If the ancestors desire law and other, it is because God also desires the same. Adegbola correctly observes:

Everywhere African morality and law is hinged on many sanctions. But the most fundamental sanction is the fact that God's all seeing eyes scan the total area of human behaviour and personal relationships. God is spoken of as having eyes all over like a sieve (1978, 252).

To violate therefore the law of the land duly enacted or “consecrated” is to incur human and supernatural disfavour. Ill-fortune, sickness, famine, or death could be the result of an unlawful act. All these traditional Etsako views and

mode of thinking make enforcement of a law all the more unnecessary. Consequently, it must be pointed out that Etsako conception of justice is tied to her conception of personhood, cosmology and mythology. Justice is *emedio-oya* or *emetsq-ya* (one's desert). Generally, *emedio-oya* (or *emetsq-ya*) means what is due to one, including “wage, salary, payment for work done” (Williamson, 148). But in this case relevant issue here is reward for work done or undone with regard to act or omission. Hence the statement, *ara wha fa-otsa* means that everybody will receive a reward for work done or undone. There is also reward, as in *abugbe, iyu ra vie ifa-otsa*—that is, one will reap what he sew (Idara, 2006).

Among the *Etsako-Edo*, divine justice fulfils the following features: (a) it is impartial; (b) it is absolute; (c) it is immutable; and (d) it is not bound by space and time. This is why also for the *Etsako*, the highest court of justice is *Osinegba* or *Oghena* (God) who is spoken of in highly superlative and perfect terms; and because of the finiteness, deceptive nature or precariousness of man, human justice can never be held final or absolute (Okafor, 1992, 40; Elamah, 2007). Any person who allows the precepts of *Oghena* and is judged to be an embodiment of goodness, kindness, sincerity, truth, morality and other attributes of *Osinegba*; such person is the one who has righteousness and is blessed; he is an exemplar of good deeds, an *anabui* (one to run to) who knows the truth and upholds it, no matter what that is. So the desire for truth and justice arising from the inner compulsion to follow the dictate of *Oghena* is most often not manifested in those who are evil, unrighteous and insincere; unkind/selfish—*otuelo/omuolo*; bad, wicked, evil, niggardly—*oya-obe*; and most often they are driven by selfish and myopic impulses—*okhuagbu-egbo*. And such person cannot be entrusted with leadership role in the community (Elamah, 2007).

To the *Etsako-Edo*, truth is life; and this is expressed lucidly in the following two statements: One, *ugiemho khu'we*—truth is life (true word is life); and two, *oso ne nare rue who'bore lastsi nare muelo*—it is better to be a spendthrift than to be a rogue/selfish. Hence the corresponding labels: *oya-tso*—good person; *emetse/akaya-tso*—good deeds, righteousness; *ughiemho/egbemho/emho-tso*—truth statement; *iyolo/iyokhia*—it is so, right; *gwu'ugiemho*—tell the truth, make a statement that is true (Okomi, 2008).

Types of justice among the *Etsako-Edo*

Accordingly, one still could extrapolate a typology of the concept of justice in Etsako-Edo. **a. *uleke* (Distributive justice):** This is economic justice—what people receive as due or not, fairness in the allocation of rights, awards, and proceeds; that persons are equal and should be treated so.

In *Etsako*, each individual is given his due within the scope of his expectations.

Distribution is made to people according to rank, status or function, and though there were no classes in the strict economic sense, there were social strata defined by age and achievement (Okomi, 2008; Johnson, 2008).

b. *ewaye* (Retributive justice): This is also termed rectificatory justice. It implies seeking to balance an injustice by rectifying the situation, or by regaining an equality that the injustice overturned. It is most succinctly summed up in the principle of 'an eye for an eye' and 'tooth for a tooth'. It may involve subjecting the offender to some punishment. These vary from reparation, imprisonment, fine and even death.

In Etsako-Edo, simple retribution is not prevalent (Asekhauno, 2002) but it appeals to the notion of “just dessert”—the idea that people should be treated the way they have treated others (Maiese, 2003). *Etsako-Edo* believes in the concept of oracle, *oitsa*. In the absence of strict judicial authority, the *Etsako* settles disputes and law matters by the institution of oath-taking/swearing to a god or ancestor. If that person dies or suffers certain pestilence within certain length of time, he is held guilty as accused; if not he is vindicated and free. It is believed that *oitsa* will vindicate anyone that is wrongly accused or unfairly treated of a crime as long as one's “hands are clean”. And it is only the one who is on the side of the *oitsa* that can call its name in prayers. Otherwise such a person will face the wrath of the *oitsa* in form of misfortunes such as sickness, attacks, etc (Ikhumetse, 2006; Imie, 2007; Amedu, 2008).

c. *ule'gue/ule'remhokhia* (sound judgment/procedural justice): This is connected to distributive justice, though not a strict term in Etsako conceptualization. If people agree that there was fair play leading to the process of allocation of goods, then they are likely to accept any imbalances in their allocation in comparatively with others. But if they see procedural and distributive imbalance, they are likely to resort to restorative and retributive justice (Aliu, 2006). Thus this is justice in a special sense, due process.

In *Etsako-Edo*, what constitutes due process is hierarchical authority. Grievances, quarrels, misdemeanours, crimes, and other forms of injustice involving individuals of the same community are first of all reported at the (immediate) family; unsatisfactory judgements may go to the extended family—where the eldest male presides; then appeals could be made to the village Council (if it involves any Association member such as age grade, it must first of all be heard there). Inter-communal dissent is resolved at the Clan level, with the Clan head presiding. It is only where all these channels of redress have been followed that one would say that there has been due process in the administration of justice in Etsako (Bawa, 2008).

d. *aizolo'oya* (Social justice): Individuals often seek to participate in the processes and running of larger society—social, economic, and how political institutions are organized. This is social justice—an obligation to be active and productive participant in the life of the society. And the society has a duty to allow then so (Catholic, 2009).

So strictly, social justice in *Etsako-Edo* is achieved through hierarchical authority attached to but distinguished from status or political influence. Status is respected and recognized. Performance of duty is held highly. It is respect for individuation amidst

communal interest; a balance of duty and obligation. Clan Heads/Councils, Village Heads/Councils, leadership of recognized associations/groups, communal functionaries (town criers, spokesmen, and other socio-political paraphernalia) are highly respected in their judgments. Litigants or dissenters, and their witnesses, must be heard; otherwise it will be a breach of due process and against the very principle of social justice (Oshiorenoya, 2007).

e. *uresai (Restorative justice)*: This refers strictly to corrective justice. The first thing an aggrieved person may seek from the betrayer is to seek some form of restitution, putting things the way they ought or should have been in the first place. This is corrective justice in that it aims at remedying an earlier injustice, a kind of redress. Any inter-personal dispute resulting to one hurting the other amounts to a violation, a crime against that other individual; restorative justice aims at redressing it and healing the wounds (Maiese, 2003).

Among the Etsako-Edo, justice is largely committed to the restoration of past injustice or injury. Stolen items could be recovered and returned to the rightful owner; fine or apology could be demanded from the guilty to the aggrieved party. In serious cases, offenders could be ostracised or banished to another village. If an offence involved the shedding of blood or adultery, for example, certain appeasements/sacrifices must be offered to the ancestors and relevant divinities. In fact, the offender could attract some retribution and some propitiation may be necessary in order to redress some grievous wrong and to achieve final restoration indeed. However, this desire may not be achieved especially where the offence had resulted to major psychological consequence on the aggrieved (Ozemoya, 2006).

f. *Commutative justice*: This kind of justice calls for fundamental fairness in agreements and exchanges between individuals or private social groups. It demands respect for human dignity in all transactions, promises, duties, contracts, etc. This is common in *Etsako* and is called *ule'ye, are'kpene gbe* (respect for one another (Ozemoya, 2006).

Sources of justice in Etsako-Edo

a. *ukpo'sisi (Self-help)* Anyone injured person could engage in some activity of his own to redress the wrong done to him (*qya'odui'sualo*). According to Nwanunobi, (1992, 155) such activity could include satirical singing, ridiculing, and various physical acts of self defence and protection and report/complain to authorities as in almost all of un-centralised societies). But the step must be positive and well meaning (Idara, 2009). According to Uwemi (2010), self help seem to be the emerging strongest source of justice in Etsako since all other sources are steps in furtherance of it.

b. *unu'ogie'elo (The family)* Among the Etsako-EDO, the basic component of social structure, the family is a product of affineal and cognate relationships with a strict sense and hierarchy of authority, according to which the males rule and hold responsibility

for the females. Thus, disputes between families members could be resolved by the immediate family head, *okpisa-elo*; but if this fails, it is referred to the council of family elders at the level, *ikpisa-ede* whose words also connote some force, for it is said that “failure to instruct (the youth about their wrongs) kills the elderly, and failure to heed the instructions of the elder kills the young” (*okpisa okha mie khôa-gwere, lo gbq-okpisa; agwe mie-omo, omo-omo-aso, logbomo*) (Idara, 2009). Sometimes, the married daughters, *Idegbe-elo*, of the family are called to admonish wives on minor problems such as nagging. The most senior member/elder, *okpisa*, reflecting the opinion of majority voices at such courts is responsible for the final decision. Unsatisfied party could appeal to the village Council via relevant Association.

c. *igbai* (Neighbourhood, age grades and associations) Neighbourhood in *Etsako-Edo* is defined by a convergence of close settlement and age grouping/association (*otululogho*). Age grade member, for example, is one which has passed through the required initiation to adulthood along with his age-mates and are bound by some rule and laws. They come together not only for work and recreation, but also to solve disputes and the role of the neighbourhood/associations could be invaluable in reconciling disputants, in settling quarrels and in imposing sanctions.

d. *egua-ogie* (Village or Clan Council) This is Council of Elders, (*ikpisa*) comprising of the most senior from all but each extended household, with the Village-Head as chairperson (at the village level). Junior adults or warriors are invited to maintain order and to enforce Council decisions. At the clan level, conflict between tribesmen is resolved by the Clan-Head. Issues that involve Clans are resolved by the Council of Clan Heads according to precedent reflecting the fact that indigenes have enforceable rights compatible with communal interests. There are recognized social values and norms of behaviour to which people are expected to conform and to which appeal is made when conflicts arise. Village or Clan, traditional courts are there primarily to redress wrongs, preserve norms, and prevent the break-up of interpersonal and group relationships. However, far from being dictators, Village- or Clan-Heads sit in council and therefore reflect their deliberation in judgment to avoid perversion and the wrath of the ancestors/gods. *Iyabana* is one secret cult which is an instrument of justice by the gods and ancestors. The village Council could resort to this where mysterious cases arise. This is still direct action compared with oracle and divinity (Elamah, 2007).

e. *eboh/ebho* (Priests/oath/oracles/divinities) An oracle (Azinge, 2006, 3), is “the medium through which a god reveals his purpose about the immediate or distant future.” When the facts of a case are unclear or the offender's identity uncertain, oracles are resorted to. Thus divination is used to determine mysterious causes and circumstances. For example, in most instances of sudden (untimely) death and mysterious illness, an oracle (priest) is consulted for diagnosis or remedy. Hence

oracles and shrines (with their priests) exist to assure continuing interpretation of/adherence to the will of bonds, ancestors and gods of the land. We also have a Council of priests at the Clan level. Where litigants were unsatisfied with the judgments of the various Councils, they could resort to the shrine in appeal to the ancestors and gods, *isinegba* which can redress any injustice retributively by the use of terrestrial and celestial forces of evil (Ulokoigbe, 2007; Oliver, 91; Omonokhua, 2005; Omo-Ananigie, 1946). A case in point is that that involved two friends, Omoze and Oshiokhuane (who accused the former of defrauding her). Upon Omoze's denial, she was asked to swear to an oath, which did. Oshiokhuane returned home and took another oath/curse to the effect that if he lied/is guilty, the oath should kill her; otherwise, Omoze be killed. Severally, Omoze fell ill and visited by the oath spirit, asking her to confess her cheat; though she did confess lately, but died begging for Oshiokhuane's forgiveness. So an oath has its own efficacy (Uwemi, 2010). This is an expression of *abu'gbe*, which means “to each according to his or her moral goodness”.

Importantly, what the principles adumbrated above indicate is that they never imply the idea of a society in *state of nature*—nasty, brutish and chaotic in the past as painted by Hobbes. This is because there have always been socio-cultural, legal, political and other mechanisms for the protection and enhancement of individual rights, privileges, freedom and interests amidst social expedience. Again, these principles advocate tolerance, accommodation of, respect for others and their rights. The principle of fair hearing emphasizes the regard for due process in the determination of guilt or innocence. The observance and adherence to these principles is a major determinant of peace on earth and security of life after death—ancestry. They guarantee maintenance of values and conservation of tradition in child-rearing and social organization. The principles are *communis consensus*—based on common-sense and community wisdom and are therefore enduring and efficacious or, as Recasens-Siches (1962, 204) has suggested, “...they are based on the logic of the reasonable.” Hence these principles, for Perelman (1965, 1), “unlike demonstrative reasoning are never correct or incorrect, but either strong or weak.” Some of these principles tie as law. However, law in Etsako-Edo means *usi*. This is often referred to as *usi-evho*, that is, the law of the land, of the town, or of the country. This is important because from *isi* (laws), the plural of *usi* (law) in Etsako, the following principles are derivable: *aishio*—it is forbidden by law, illegal; *emo'ebe*—crime, offence, law-breaking, sin, wrong doing; *ugbusi'a/upio bo do*—to break the law; *aghua*—taboo.

The essence of justice in Etsako-Edo

Justice among the Etsako-Edo is directed towards some end; and these include to: restore social equilibrium or balance disrupted by bad conduct of any kind; repair and readjust a relationship (which has been fractured) between two persons, or persons and community; reconcile and reunite parties to a dispute; restore relationships and re-emphasize communal bond; re-integrate the offender into the mainstream of social life

and existence; re-emphasize the being with others—the spirit of co-operation, mutuality, reciprocity, and inter-dependence; reprimand, apportion desert and punish offenders for deterrence; ensure and promote the good and well-being of persons and community; promote order, peace, fairness, good and effective management of community affairs; and safeguard/guarantee the security of persons and property.

Evaluation & conclusion

The main character of justice in Etsako-Edo is that it is dual in nature—hinged on the divine and human; the divine pattern is held perfect. It is human in the sense of involvement of man in the final application of norms; divine in terms of the involvement of spirit-forces in the ultimate arbitration between and among men. The over-all goal is to seek and achieve reconciliation and restoration but not essentially vindictive or retributive. There is a steady process of adjudication from the family, village, and clan levels. This system is historical and effectual. It was observed in the study that several concepts and ideas are conceived differently by different clans within the Etsako community. Particularly, some offences (such as adultery) are held less seriously among the Okpella than as held by the Uzairue. Again, in some Islam-dominated societies (the Ibies, Jagbe, and Agbede), it is more common to resort to self-help, appeal directly to divinity in form of oath or invocation (Omolue, 2008). This variety is more of emphasis/accent than of kind—in the past or present.

Now, the criteria for judging the relevance of values, ideas, and institutions of a past to the circumstances of a present are: one, the fundamental nature of a set of positive values and attitudes; and two, the functionality of past ideas and institutions in the sense of the present. Though Africa lost *most of* its culture to colonialism, it must be reclaimed; beginning with communities and villages, Kings must stand in their clean toes for trans-valuation of foreign values and keep our cultural values alive (Ebijuwa, 2006; Gyekye, 1997; Oba Momodu, 2008; and King Zwalithini Zulu, 2009).

Today, many of the functions of the various segments of the *Etsako-Edo* social justice are performed by the Courts of justice under government strict scrutiny and control (hence declining efficiency or efficacy). This ought not to be the case. As has been described in the *Etsako-Edo* example, the idea of justice does not end with the social and political, but importantly connotes cultural, psychological, metaphysical efficacious features/nature—a nature that is also its essence. Such effective mode of justice should be refined and adapted to suit modern realities and challenges.

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