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African Metaphysics: *The African legal Quagmire*

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Abstract

African metaphysics has been a subject of great controversy and protracted debate within the African legal system. It is essential to note that good governance and a stable society depends on a sound and balanced justice system. The justice system is based upon legal reasoning, which determines the reasoning process employed by those directly involved in the legal dispensation in a court of law when reaching a verdict. It is the philosophy of legal reasoning that influences the efficiency and fairness of a legal system. The paper argues that, because the African legal system is based on western philosophy and legal reasoning it has failed to establish a just society in Africa that is in sync with the socio-cultural beliefs of the African people. Thus legal reasoning should be based on indigenous philosophies and culture for it to be relevant. The paper explores the possibilities of incorporating African metaphysics within the African legal system as a way of addressing the legal loop holes within the justice system. The paper highlights the possible challenges that might emerge with the inclusion of African metaphysical issues within the legal system and recommends for the institutionalisation of African metaphysics within the legal system.

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Introduction

African metaphysics has been a subject of great controversy and protracted debate within the African legal system. It is essential to note that good governance and a stable society depends on a sound and balanced justice system. The justice system is based upon legal reasoning, which determines the reasoning process employed by those directly involved in the legal dispensation in a court of law when reaching a verdict. It is the philosophy of legal reasoning that influences the efficiency and fairness of a legal system. It can be argued that, if the African legal system is continues to be based on western philosophy and legal reasoning it will fail to establish a just society in Africa that is in sync with the socio-cultural beliefs of the African people. Thus legal reasoning should be based on indigenous philosophies and ways of knowing and culture for it to be relevant. It is necessary then to explore the

possibilities of incorporating African metaphysics within the African legal system as a way of addressing the legal loop holes within the African justice system. However, it is inevitable that such innovative changes can emerge without challenges. The paper attempts to identify the foreseeable hindrances and to recommend possible solutions to addressing the challenges, thus ensuring a justice system in Africa for Africans by Africans.

Metaphysics

Metaphysics is a branch of philosophy that deals with fundamental question about the nature of reality. The etymological definition of metaphysics holds that the term metaphysics is derived from the Greek words *meta-ta-physika* (Kim and Sosa, 1995), meaning after physics or transcending the physical. Among philosophers, from Descartes onwards, the term metaphysical has come to have the distinct sense of having to do with what lies beyond what is available

to the senses, with what is not merely abstract but in some sense transcendent as well (Hamlyn, 1984). In its simplest form metaphysics represents a science that seeks ultimate understanding of reality that is existence and being.

Culture

Culture is essentially the sum total of socially inherited and acquired characteristics of a human group that comprises everything which one generation can tell, convey or hand down to the next; in other words, the non physically inherited traits we possess. Another view of culture we might take to simplify this abstract concept is to picture culture as the luggage that each of us carries around for our life time. It is the sum of beliefs, practices, habits, likes and dislikes, norms, customs and rituals that we learned from our families and societies during the years of socialization. In turn we transmit cultural luggage to our children. Culture maybe defined in areas in relation to traditional health which is a "metacommunication system" where not only the spoken words have meaning but everything else as well. (Bohanaan, 1992)

Law

According Bentham (1970) a law may be defined as an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a person or class of persons, who in the case in question are or are suppose to be subject to his power; such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should, upon occasion, be a means of bringing to pass, and the prospect of which it is intended such acts as a motive upon those whose conduct is in question. Thus three features of law ultimately stand out; (1) That the law is strictly the imperative of the sovereign (2) that the sovereign is empirically (socially) determinate and (3) that there should be obedience to the imperative of the sovereign by a person whose conduct is regulated by the imperative.

The African legal system-A colonial legacy

In his preface to *Images of Africa: Stereotypes and Realities* edited by Mengara, D.M (2001:xiii) Molefe Kete Asante, a renowned Africologist remarks:

At the top of the twentieth century Africa remains the most misunderstood of continents, crippled in our imagination by images rooted in the minds of imperial Europeans who attempted to shape and invent an Africa useful to their political ambitions.

The African legal landscape is largely a colonial legacy for a Africa invented for European purposes and it is becoming increasingly apparent that such socio-economic, cultural and political structures can no longer serve the interests of the African people (Asante in Mengara, 2001: xiv). Despite the cultural onslaught on African metaphysics particularly the belief systems through the spread of the western scientific worldviews and philosophy, Africans have never completely lost touch with their traditional metaphysics. The traditional belief system has continued to inform much of the life and activities of the African people. In times of adversity characterized by legal and social injustice Africans have demonstrated unique qualities of being able to call on their triple heritage in order to respond to the problem sadly by calling upon "informal" methods of legal recourse. It is quite clear that there is a marked difference between our thought and that of the West and yet we still allow western philosophies to govern our education, industry and commerce and most of all our legal system. (Masolo, 1995:196).

Ozumba (2003) defines African metaphysics as the African way of perceiving, interpreting and making meaning out of interactions, among beings, and reality in general. It is the totality of the African's perception of reality. Africans have a pragmatic metaphysics meaning that if an idea, an explanation, a belief, works it is accepted even though it may not fulfill certain criteria of defining objective reality such as empirical validation. It is the empirical validation that legal reasoning is premised on. However, as Africans we have traditional means of establishing metaphysical injustices but these are not considered because of the colonial justice systems which are premised on Roman Dutch laws which are informed by western philosophies and ways of knowing. Africans have an important component to their conception of reality a domain whose existence is explained mystically. This is one of the strongest beliefs in African cosmology. This has also influenced how Africans come to understand the individual person. The person is seen as a composite of body (material) and spirit (immaterial) yielding a dualistic conception of the human being. The Shona have a hierarchy of existence with God at the top followed by the ancestors in their perking order of seniority and down to the living beings on earth. Among the Shona there is ample evidence that the activities of these spirits affect people in various ways whether positively or adversely and they are those who meddle with these elements in order to harm others and these enjoy legal immunity because of the inappropriately structured justice system.

Perpetrators of metaphysical crimes continue to be above the law.

As we question the Legal set up in Africa we should be informed by Touma's arguments as cited by Nzewi (2007), in which he states that:

If our ancestors had no sound intellectual mettle, how did they develop the scientific cultures of food, childbirth and mental nurture, also the musical arts genres that were non-sanctionable mediators in the indigenous societal polity and social-cultural practices, including the policing of egalitarian law and order, medical arts delivery, etc?

As a result of the colonial encounter and the African legal system has been influenced by the western mode of legal reasoning based on the principles of empiricism and positivism. This implies that for any matter to come before a court certain criteria must be met, for instance there must be physically demonstrable casual connection between the injury suffered by the victim and the action of the offender or a clearly provable link between an offence committed and a suspected offender. The other criteria which must be met for the law to be applied, is that the law to be applied must exist in writing in a known document and laid out by a known sovereign. In the 21st century sovereign is regarded as a constitutionally constituted authority charged with the responsibility of making laws. These principles form the foundations of what has come to be termed international law which governs most justice systems the world over and largely influenced by past and present western domination in economics, socio-cultural and ideological spheres.

While theories come and theories go, the world of the justice system remains largely unchanged. As noted by Wiredu (1984) it is not uncommon to see a Western scientist fully apprised of the universal reign of law in natural phenomena, praying to God, a spirit, to grant rain and a good harvest and other things. The truth then is that rational knowledge is not the preserve of the modern West nor is superstition a peculiarity of the African peoples. African people's culture fits in very well in any developmental discourse including the justice system. Culture therefore should be the driving force of any legal structures. Legal reasoning becomes a cultural construct as are the ways of knowing and legally proving something is thus dependant on ways of knowing.

The Concept of Knowing in African Metaphysics & the Law.

Vandana Shiva (in Ishemo, 2002:35) noted that all societies have "ways of knowing" and "ways of doing" and that:

... all societies, in all their diversity, have had science and technology systems on which their distinct and diverse development have been based. Technologies or systems of technologies bridge the gap between nature's resources and human needs. Systems of knowledge and culture provide the perception and utilization of natural resources.

Whenever ways of knowing, truth or knowledge establishment are discussed one particular question always emerges; what does it mean to really know something? Thus the authenticity of evidence becomes imperative in legal discourses. Western science has discovered an empirical and multi-generational way of obtaining verifiable knowledge in a limited domain of application hence its use in modern day judiciary systems the world over. Western science is the premise upon which the positivist legal reasoning is based; it is used as the basis for arriving at a legal judgement within conventional courts. It is fundamental to note that western science just represents only one form of knowing amongst many other competing forms of knowing or truth discovery. The branch of African metaphysical epistemology offers several alternatives methods of knowing these are divination, revelation, intuition and reason which can be separated into the categories of supernatural and paranormal. (Martins, 2008 and N'Sengha, 2005). The current situation in legal circles is that Afrocentric ways of knowing are not legally accepted in the African judiciary system as ways of legal reasoning in arriving at a legal verdict within a court of law. Many Afrocentric legal experts have bemoaned this state of affairs as it allows metaphysical criminal offences to go unpunished as these fall through the loopholes of the positivist legal reasoning upon which the African justice system is based. There are now increasing calls for the inclusion of African metaphysical epistemology modes of knowing to form part of legal reasoning frameworks of African courts in order to ensure balance and the delivery of accurate legal verdicts. This would ensure that metaphysical criminals do not evade justice simply because of the ill structured one-dimensional approach to legal reasoning based solely on the positivist legal reasoning which is not in sync with the socio-cultural legal environment of African countries.

African ways of knowing are bound up with notions of affirming the self and indigenous subjectivity in ecology. Typically, Africans espouse spirituality

centered thought and wisdom (Dei, 2002; Goduka, 1999; Horton, 1967). As observed by Dei (2002), spirituality is quite a broad term with diverse meanings even in the same cultural group. It encompasses relationships between living souls and the living dead, self and collective empowerment, humility, metaphysical and psychic powers, healing, and wholeness. Spirituality defines interactions between body, mind and soul as they relate to values, beliefs, and ideas of integrity and dignity shaping both individual and collective consciousness into unified existence (Dei, 2002). There are several Afrocentric ways of knowing and the list is almost endless. This may include the act of using an altered mental state of individuals in order for them to know the well being of their family members or friends living in distant places, this is practiced by the Shaman of the San of South Africa. (Lewis-Williams and Pearce, 2004) Whilst other African groups utilise the act of peering into a clay pot filled with virgin water in order to view and know about activities conducted in distant places. According to Patrice (1994:25) the Dagara tribe of south-western Nigeria, consults with the Aiyelala priest/priestess who by deriving information from the Aiyelala goddess, identifies and exposes the culprit of a covert crime without exerting any physical pressure on the individual concerned. Such Afrocentric truth seeking methods hold the key in uncovering metaphysical crimes thereby enhancing the justice delivery system in Africa. Thus the epistemic exercise of truth discovery has the obvious advantage of the offender confessing to a crime without being forced, for instance all the suspects of a crime are brought before the Aiyelala shrine to swear one after another while holding a specific object in their left hand. After the swearing the Aiyelala priest/priestess leaves the suspects for a while to see the outcome of the exercise. If the offender is among those who would have sworn, then the offender would voluntarily confess. (Patrice, 1994) However, metaphysically induced criminalities would not be uncovered if one were to rely purely on positivist legal reasoning simply because the crime cannot be ascribed to a given offender if there is no physically demonstrable causal relation between the offence and the suspect thus allowing the offender to go unpunished. This clearly shows the demerits of excluding African indigenous forms of knowing from the legal reasoning framework thereby allowing metaphysical criminalities to go unpunished within the African justice system.

Whereas African ways of knowing have previously been 'misunderstood, misinterpreted, ridiculed and ignored' in colonial discourses, this paper situates

debate on their relevance in establishing an accurate legal dispensation capable of uncovering metaphysical criminalities that occur within the African legal environment. The weaknesses associated with the positivist legal reasoning amply justify the significance of considering the African metaphysical ways of knowing within the African judiciary system in order to address its current limitations. Although modern people (especially the African elite) tend to invest little faith in developing indigenous knowledges, traditional ways of knowing (spirituality centered wisdom) continue to be relevant in modern life and can be utilised to improve the effectiveness of the African justice system especially where metaphysical crimes are concerned. The most enduring commonalities of Africanhood include ways of knowing that are grounded in indigenous African cultural traditions, history and ecology. However, modern Africans operate on a multilayered knowledge system (Mpofu, 2002). In most African countries, Africans use both their indigenous cultural heritage and Anglo-Western knowledge systems. In this context, it becomes practically sound to integrate western legal reasoning and Afrocentric ways of knowing within the African legal system. African ways of knowing not only reflect the African worldview but they also define the African personhood and the metaphysical criminalities that the individuals are capable of and also how these may be proven or uncovered. Indigenous ways of knowing constitute the African paradigm that has been misunderstood, misinterpreted, ridiculed, and ignored during the scramble for and the colonization of Africa. However, it is these traditional ways of knowing that must now form a reliable epistemic methodology of truth discovery capable of reaching accurate legal verdicts that ensure equity and balance within the African judiciary system.

Horton (1967) demonstrated how African traditional thought is a fully-fledged theoretical model for understanding the world. The differences between West thought and African thought is that African traditional thought uses a personal idiom (of spirituality centered wisdom) whereas the West uses an impersonal idiom (of science) to explain reality. As rightly argued by Horton (1967), the difference in the idiom for expressing world views should not be used to imply the absence of philosophical ideas in Africa nor should it be used to disregard African ways of knowing whose efficacy has been proven for centuries in the laboratories of human existence. As confirmed by Obotetukudo (2001), Africa has rich philosophical ideas capable of spearheading development in various disciplines in Africa, including law. Horton (1967:69) is right to dismiss

the established false dichotomies between African traditional thought and Western science: “intellectual versus emotional; rational versus mystical; reality-oriented versus fantasy-oriented; causally oriented versus supernaturally oriented; empirical versus non-empirical; abstract versus concrete; analytical versus non-analytical”. These false dichotomies tend to reinforce prejudiced mental sets that are impervious and retrogressive to the understanding and accommodation of cultural diversity and alternative ways of knowing. Hence the resistance that is often encountered in any attempts to include Afrocentric approaches in formal disciplines such as law despite the value attached to those approaches in addressing certain limitations.

In his own contribution to the discussion of African epistemology, Denise Martins (2008), quoting N’Sengha (2005), mentions four key ways in the knowing process peculiar to the African knower. He states that:

African epistemology is already equipped to discuss... views of reality because it contains four basic ways of knowing: divination, revelation, intuition, and reason which can be separated into the categories of supernatural natural, and paramount.

African metaphysics is epistemological in focus in the sense that it makes an attempt, among others, to yield a coherent understanding of the relationship between the world of human beings in Africa and the extra-sensory world of ancestors, spirits, gods and goddesses. Likewise, African epistemology is metaphysical in methodology in the sense that it accords much importance to spiritual mode of knowing. It is the spiritual mode of knowing that is essential in uncovering metaphysical crimes within African law. For it follows that if there is no possibility of knowing the truth of whether or not a crime has been committed, bringing about some harm; the truth of who the actual criminal or offender is; the truth of who has been actually wronged or harmed, then there will inevitably be miscarriage of justice especially with matters relating to African metaphysical criminalities. As long as African ways of knowing continue to be excluded from forming part of the African law legal reasoning systems then the African legal system will continue to be flawed by overlooking metaphysical criminalities.

The Weaknesses of the Pro Western legal Reasoning in the African Justice System.

The empiricist and positivist legal reasoning is largely fundamentally flawed in that it ascribes significance to only existential or empirical realities. By so doing it erroneously holds on to the belief that extra-sensible or trans-empirical realities do not have any legal significance in the system of justice. This results in metaphysical criminalities going unpunished. In so doing the justice system in Africa fails to accommodate for the provision of evidence through culturally sound metaphysical methods and indigenous ways of knowing for metaphysical crimes. The colonial legal system in Africa is a blind romanticization of western legal reasoning which is not in synch with the socio-cultural milieu of the metaphysical crimes perpetrated by “super criminals” on their fellow innocent country man in Africa. The skewed pro-western legal reasoning presumes that truth discovery, which is essential in reaching an accurate legal dispensation, should be confined to the realm of the physical. Thus this is in direct conflict with the belief of the duality of reality within African cosmology, it is this Afrocentric belief which should guide the legal process to ensure an accurate and balanced legal dispensation within the milieu of African legal justice.

It can therefore be argued that the dominant Anglo positivist legal reasoning prevalent in Africa is the major reason why metaphysical injustices continue to be perpetrated unchecked whilst African courts and judiciary systems pretend to be blue eyed to the metaphysical criminal acts. In Zimbabwe there has been much debate the witchcraft act. Instead of our law makers fully confronting the vile act, they have chosen to bury their hands in the sand and pretend that such practices do not exist as they continue to blindly subscribe to the colonial legal reasoning. This is in sharp contrast to the practical examples of witchcraft acts which are pervasive in the Zimbabwean society and most African societies and which continue to manifest themselves, inflicting untold suffering on victims. Thus there is ample evidence to show that witchcraft does indeed exist. So in the name of witchcraft innocent citizens are subjected to killings, rape and physical disfigurement amongst other vile acts with no legal redress as the dominant positivist legal reasoning fails to make a physically demonstrable causal connection between perpetrators of metaphysical crimes and the victims of such criminalities.

The subject of witchcraft continues to create controversy in many African countries including Zimbabwe. Whenever a discussion on this issue begins people usually fall into two groups. In the first group are those who say witches do not exist, and in

the second group are those who say witches do exist and the formal court legal position seems to support the former. In Zimbabwe this difference of opinion extends to the courts of law. There is conflict on the subject of witchcraft between the traditional courts and the formal courts. Traditional courts agree that witches exist while the formal courts by large doubt the existence of witchcraft and opt to use the porous positivist legal reasoning in trying to determine metaphysical court cases hence the miscarriage of justice continues unabated.

According to Chavunduka (1980) witchcraft ideas are not universal, although they are widespread, but belief in witches does exist in most African countries. Traditional courts accept the view that witches and witchcraft does exist. In the past, once an individual was found guilty of practicing witchcraft, he or she was sentenced by the court and the sentence took various forms. In extreme cases the witch was beaten or even killed. Other witches were ordered to leave the village and had their houses destroyed. Ostracism was the mildest form of punishment and some witches were cured. In such a case a witch doctor was ordered to neutralize or eliminate the evil spirit that possessed the witch. Although many traditional courts as well as family gatherings still try certain cases of witchcraft, legally it is difficult to prove witchcraft by basing on western science and the positivist legal reasoning. The positivist legal reasoning hinders the successful trial and prosecution of metaphysical cases largely because of 'lack of scientific proof to try such cases.

The positivist legal reasoning is a very unjust form of legal reasoning it fails to punish witches or any metaphysical criminals but those individuals who name others as witches become liable to defamatory charges, these are in most cases the victims of metaphysical crimes. This is a very huge flaw on the part of the positivist legal reasoning based acts. Thus officials of the formal courts of Zimbabwe and others across Africa see their jobs as those of eradicating the belief in witchcraft which some people hold. To them the witchcraft and other metaphysically induced criminalities do not exist, and any person who purports to be able to prove metaphysical crimes is the real public enemy. Such medieval and pre-colonial legal acts do not have any place in the post colonial legal system in Africa as they are baseless and myopic as they do not consider the socio-cultural environment of African countries and the indigenous ways of truth discovery. Although the formal courts are largely informed by the legal positivist legal reasoning this is not to say that officials of the formal courts agree completely with the positivist legal

reasoning. Hence the witchcraft suppression act was repealed in Zimbabwe in order for the courts to be allowed to try metaphysical crimes. However, the courts still remain handicapped because of the positivist legal reasoning which is used to arrive at a legal verdict.

In Zimbabwe the failure to successfully prosecute metaphysical crimes serves to send negative messages to metaphysical crime perpetrators that they can continue to rape through "*mubobobo*" (an act of having sexual intercourse with an individual without the individual concerned being aware or having given consent to the act, a form of "telepathic sex"), kill and torment their fellow citizens with impunity and as long as they are smart enough to evade the positivist legal scrutiny. However, if the contemporary African state is really committed to establishing and ensuring a just and efficient legal system that is functional enough to track convert metaphysically induced social and political criminalities, then a complementary methodology of truth discovery in legal dispensation is required to complement the dominant positivist legal reasoning in Africa. Thus the methodology of African metaphysical epistemology based upon indigenous knowledge systems and indigenous ways of knowing becomes critical in arriving at an accurate legal judgment.

Institutionalizing African Metaphysics within the African Justice Systems: Possible Solutions & Challenges.

A coherent system of legal dispensation was not foreign to pre-colonial African societies. (Oke, 2007; Idowu, 2009 and Balogun, 2007:71-83). However, since the post colonial African states were established there has been failure to institutionalize African metaphysics epistemology within the legal framework of the contemporary African state despite the potential benefits it holds in providing justice to those harmed by metaphysically induced crimes. A reliable epistemic methodology of truth discovery cannot be over emphasized in ensuring an accurate legal dispensation. The current system of western forms of legal reasoning being misguidedly applied on African metaphysically induced crimes cannot continue as victims continue to witness miscarriage of legal justice. Thus African metaphysical epistemology should drive the legal reasoning in the African justice system. It is imperative to note that the legal theory and practice of a society should recognise and reflect the specificities of the society if it is to be pragmatically effective.

From the foregoing it is easily discernable that there is a need to institutionalize African metaphysics within the African justice system but the major question lies in on how it is to be done. It is only pragmatic that traditional associations do spearhead such initiatives in collaboration with justice ministries. Traditional associations such as ZINATHA must look inwards and bring out those that are tried and true among their members as well as tap into the best methods of establishing proof of metaphysically committed crimes. In addition it is necessary for these traditional metaphysical experts to be trained properly so that they may fit well into the established legal system. The presence of the traditional metaphysical experts within the justice system has to be reinforced by the promulgation of appropriate laws by African parliaments to ensure that perpetrators of metaphysical crimes are duly prosecuted without any loopholes which they may manipulate to escape justice. In Zimbabwe the first port of call would be the repeal of the witchcraft suppression act.

In the process of establishing a new legal reasoning order care should be taken to incorporate all possible criminalities that may be perpetrated by would be metaphysical criminals and these would range from murder, rape to theft. Thus care should be taken to avoid lumping together various metaphysical crimes without giving distinction to the gravity of the crimes. This may result in low penalties being given for serious crimes such as rape or murder. In creating this new legal dispensation of institutionalizing African metaphysics within the African legal system a number of challenges emerge, one of which pertains to the methodology of how the institutionalization of the African metaphysics within the African legal system will work. One approach is to call upon metaphysical experts from national traditional associations such as ZINATHA to work within the justice system as a panel of metaphysical experts who work on part time or full time basis to give expertise within particular court cases involving metaphysical criminal issues. The other approach would be to establish or empower traditional courts to deal with special cases involving metaphysical crimes.

The other aspect to consider when institutionalizing African metaphysics within the justice system is the level at which traditional metaphysical experts may be incorporated. For instance should they operate at an advisory level as with other experts who are called upon to give expert evidence such as forensic experts and hand writing experts just to mention a few, or should they be part of judges. The level at which

traditional metaphysical experts will operate within the legal system will depend largely on the approach or method chosen by a particular country in institutionalizing African metaphysics within the justice system. For instance if traditional courts are empowered as special courts to deal with metaphysical cases then it would be appropriate for traditional metaphysical experts to operate as judges. However, if traditional metaphysical experts are called upon to provide their specialist services in the modern legal court room setup then they would act in expert panelist advisory capacity and not form part of the judges or jury.

The institutionalization of African metaphysics within the judiciary systems comes with genuine fears that African countries judiciaries will be labeled pseudo legal institutions which run parallel to international laws hence African courts may be charged with violating international laws and human rights. It is a given that western knowledge systems dominate the world in all sectors such as in philosophy, education, health and in areas of technology and any attempts to circumvent or challenge western legal reasoning will meet strong resistance. African governments have to be strong willed to fight off any political and economic pressures that will emerge with the incorporation of the African metaphysics within African judiciary systems. African countries along with many other countries the world over have pluralistic societies who consist of citizens with different religious and ethnic backgrounds, there are those who do not subscribe to African traditional beliefs though they might be ethnically African while others have African citizenship but are not of African descent. Such groups are likely not to be in favour of the institutionalisation of the African metaphysics within the judiciary system since this will be in conflict with their religious beliefs. In addition it becomes difficult for the African metaphysical experts to deal with cross cultural metaphysical criminalities involving members of different races (if such cases are to emerge) or even to deal with cases of metaphysical criminalities of individuals who are of different African origin or are of non African backgrounds. It would appear that the institutionalization of the African metaphysics within modern law would fail to be holistic enough to include all the diversity of possible metaphysical criminalities that are likely to occur within any African society. In light of such challenges the best principle to adopt is that of the utilitarian principle of ethical consideration which holds that greater good to the majority of people is to be given priority, in which we have to assume that the institutionalisation of the dominant African

metaphysics within any African country's legal system would serve the majority of that country's citizenship the greater good.

Conclusion

It may be argued that the positivist legal reasoning has largely failed to fully capture the holistic understanding of reality within the purview of African cosmology, since it approaches reality from the empiricist, scientific perspective thus overlooking metaphysically induced criminalities. It is not the aim of this paper to discredit the positivist legal reasoning in the African legal system but merely to mention that they are other ways of knowing which are premised on African metaphysics that can be used to reach an accurate legal judgment when the positivist legal reasoning falls short. It is important to note that though the positivist legal reasoning has served the African legal system well, it has not served it well enough as many metaphysical criminalities go unpunished. A just and balanced society can only be established by institutionalizing African metaphysics within the African justice system thus establishing a justice system by Africans and for Africans. There is need for the hybridization of legal reasoning by fusing the positivist legal reasoning and the institutionalization of African metaphysics within the justice system to adequately cater for the cosmology of duality of reality in Africa thereby ensuring a balanced and effective legal justice system in Africa.

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