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# Synesis

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## IDEOLOGICAL JUSTICE OR THE JUSTICE OF IDEOLOGIES IN THE QUEST FOR SOCIAL ORDER IN AFRICA: A PHILOSOPHICAL CRITIQUE\*

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**Abstract:** Existing philosophies of justice have failed to challenge and overcome the peculiar African crisis of development. The contract model of justice assumed that there would be justice when people acting as rational agents accepted basic practices of society that would assure their mutual advantage in the long run, this has not really worked in the development practice in many parts of the world, due to the nullifying effects of Kleptocracy, patrimonialism, institutional decay, antinomies and apathy, precipitation of primordial ethno-cultural enclaves and other divisive factors. The utilitarian philosophy of justice, seen as a way of defining the greatest good or happiness of the greatest number of the society and the impartiality or respect model of justice, which suggests the recognition of the intrinsic worth of people as entities deserving of respect, whose interests should be maintained in the interest of the overall common good, have also failed due to the realities of cultural, historical and psychological inducements to truncate or restrictively appropriate the principles and institutions intended for the greater or common good; federalism, industrialization and social services. Taken together, these philosophies have not succeeded, due to obstructive cosmological templates that have re-institutionalized almost globally, a new wave of regressive authoritarianism, denial of economic and political rights, ossified anachronism deriving from both the primordial and colonial forms of ethno-religious prejudices, conflict driven mistrust and mutual hatred among groups. We therefore need to look in other directions.

**Keywords:** Justice; Social Order; Ideology; Africa.

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## 1. Introduction

The traditional Western conceptualization of the philosophy of justice is centered on a tripartite analysis of the social contract model of Thomas Hobbes, the utilitarian model of J. S. Mill and impartiality or respect model of Immanuel Kant and the fairness model of Rawls. These models may have failed to challenge and overcome the peculiar ideological and value-laden character of the erstwhile analysis of justice, thus creating the impetus for overestimation of success in their formulation and implementation. Whereas the social contract model of justice assumed that there would be justice when people acting as rational agents accepted basic practices of society that would assure their mutual advantage in the long run, the utilitarian philosophy of justice, seen as a way of defining the greatest good or happiness of the greatest number of the society and the impartiality or respect model of justice, which suggests the recognition of the intrinsic worth of people as entities deserving of respect, whose interests should be maintained in the interest of the overall common good. The conceptual foundation of justice for Africa must look towards a reconciliatory and negotiated view of justice capable of establishing and sustaining social order in Africa.

## 2. Hobbesian justice and its shortfalls: rethinking the unending state of nature as anarchy or servitude

Hobbesian justice was based on the conception of justice as mutual advantage. This theory holds that the function of justice is to construct social devices that enable people who are essentially egoists to get along better with one another (Nielsen, 1996:86-87). Thus within the egoistic framework of life, the reason for justice is the pursuit of individual advantage. In other words, given that limited resources and conflicting interests characterized human life then people can expect to further or promote their interests, if they live harmoniously with others in the society (Nielsen, 1996:86-87). Therefore, justice emerges here, as “a set of minimal constraints necessary for achieving social coexistence, co-operation and well being” (Nielsen, 1996:86-87). This conception of life concedes that there is a need for justice understood among others as the basis of productive human cooperation.

Within this western Modernist account, we can appreciate a theoretician of justice such as Thomas Hobbes, who insisted on the concept of justice within the ambits of the idea of the Leviathan. The Leviathan retains immense and illimitable powers over men and materials and is thus capable of guaranteeing justice. Hobbes made it clear that the conception of justice and security offered by the Leviathan became imperative due to the low life expectancy, ominous danger and insecurity of life and possessions in the state of nature. Central to the imperative of justice in Hobbes is the appreciation of the circumstances real and imagined prevailing in the state of nature. Hobbes traces the emergence of the Leviathan to the nature of man and the conditions of the state of nature. He says that nature has made men equal in the faculties of the body and mind. Despite that there are differences in the way men are endowed with these faculties, these differences are not so considerable as to allow one man certain qualities that others do not have. For him, this equality of ability among men gives rise to the equality of hope or the belief that all have the same chances of attaining their ends. This equality gives rise to disputes over the resources of nature, in which people exercise their powers in order to conquer, dispossess or deprive weaker ones of their lives, liberties and properties. Therefore, Hobbes contends that the equality of men gives rise to a condition of mutual destruction in which no man can be sure of emerging victorious or subsisting for a reasonable length of time (Hobbes 1963:142).

According to Hobbes, that period of human existence when men live without a common power to control them all or arbitrate among them is called “the state of war” (Hobbes 1963:143). In this state, every man is against every man. Hobbes takes care to point out that this state of war encompasses not just conditions of actual conflict, but also the state of existence in which men are disposed to behave as if they are in a state of war. Furthermore, in the state of nature or war where every man is every man’s enemy and the security and protection of life and property is not assured, there is no industry or fruitful labour. And other human activities like culture, art and society do not exist. For Hobbes, the state of nature is the state of war. It is the state of the violence and anarchy of every one against the other. This condition of life is typified by the inability to guarantee survival and peace for any reasonable length of time. One of the most distinctive features of the state of nature is the fact that it does not guarantee the individual or aggregate of interests except there is a normative exit using the facilities of a contract. Hobbes informs us that it is absolutely important to note that “to this warre of every man against every man, this also

is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law: where no law, no injustice” (Hobbes 1968:188). The outright repercussion of this is that “in such a condition, every man has a right to every thing; and therefore, as long as this naturall right of every man to every thing endureth, there can be no security to any man, (how strong or wise soever he be)”(Hobbes 1991:110).

But this is not all about the state of nature. Hobbes informs us that “worst of all, there is a continual fear and danger of violent death. In short, the life of man is solitary, poor, nasty, brutish and short” (Hobbes 1963:143). Against the background of the absence of a common power, law, notions of justice and injustice, right and wrong in the state of nature, Hobbes says that the passions and the reason of man lead him to search for peace. Man’s quest for peace arises from his fear of death, and his desire for those resources necessary for adequate living. By desiring peace and co-operation, man uses reason to fashion some convenient articles of peace out of the right and law of nature. According to Hobbes, the right of nature is the liberty that all men have to use their powers to preserve their lives, while the law of nature is a general rule derived from reason, which forbids a man to destroy his life or the means of preserving his life. For Hobbes, the first and basic law of nature is to seek peace, while the second laws of nature enjoins a man to readily give up his right to self-defence if others show a willingness to do likewise.

He notes that a man gives up his right to self-preservation either by renouncing or transferring it. A right is renounced when one does not care to whom the benefit goes, while a right is transferred when one intends that the benefit goes to some specified persons. Hobbes maintains that the acts of rights renunciation or transfer are conducted through declarations and transactions binding the participants to a term of agreement. The goal of rights transfer is the guarantee of security of life and the means of preserving life. In effect, the realization of the shortfalls of the state of nature would pave the way for the emergence of the commonwealth. According to Hobbes, social order as the great Leviathan, commonwealth, state is an artificial man created to protect and defend the natural man. He says that “the sovereignty of the leviathan is its artificial soul which gives life and animation to the whole body” (Hobbes 1963:139). In his view, the Leviathan’s strength lies in the wealth and riches of all its members. And every part or member of the Leviathan is induced to perform his duties by the sovereign who has the power to punish or reward.

For Hobbes, contract is the name given to the mutual transfer of rights among men. It is the basis of the commonwealth, which exists in order to ensure that lives are preserved and made happy. The protection of life and property is guaranteed in the commonwealth, only when men erect a common power on which they confer all their powers and strengths. Hobbes notes that “this common power can be one man or an assembly of men” (Hobbes 1963:148). The commonwealth is attained through the processes of the transfer and renunciation of the rights of man and the laws of nature. The commonwealth emerges from the debris of the state of nature that was defeated by the superior logic and opportunistic inclination of men. The commonwealth, according to Hobbes, is the only source of security both from human nature, natural forces and other material creations of men. The commonwealth is the aggregation of an institutional arrangement of a multitude that has covenanted through the social contract to form and live in the society in order to assure themselves of mutual defense, peace, progress and protection from internal and external dangers. The power of the sovereign, conceived as either the ruler or the society, is central to attaining justice and security.

The appealing, systematic and well-articulated justice theory of Hobbes suffered from certain internal contradictions that paved the way for the emergence of other views. Hobbes theory of justice and security did not fully account for the dangers arising from the illimitable powers that were bestowed on the sovereign as ruler. Hobbes did not reckon with the fact that these powers would pave the way for dictatorship, primitive accumulation, misappropriation, authoritarianism and the eventual denial of the same justice and security of lives and property. It was this unresolved paradox of justice and security that other theoreticians tried to address.

### **3. Kantian justice and its defects: mythical universalism as illusion or ethnocentrism**

Another relevant conception of justice is the impartiality theory. At the heart of this view of justice is the call for some basis for respectful, fair and equal treatment of all. The impartiality theory of justice holds that “the function of justice is to provide a reasonable basis of agreement among people who seek to take due account of the interests of all” (Nielsen, 1996:86-87). The reason for behaving justly is that whatever happens to a person matters in and of itself. As such, people should not look at things from their own

points of view alone, but they should seek a basis for considering the views of others (Nielsen, 1996:86-87). In other words, the concept of a person, which is operational in the impartiality theory of justice, is that a person is a self-originating source of valid claims. And we accept the claims of that person because we feel that his interest is equally important as ours.

Kant contents that justice is that relation of men to one another which contains the conditions under which it is alone possible for everyone to obtain the right that is his due (Kant 1990:433). This implies that given the essence of justice as “the aggregate of those conditions under which the will of one person can be co-joined with the will of another in accordance with a universal law” (Kant 1965:34). This means that one’s act is just only if it exhibits the character of being amenable to the acts and freedoms of others under a universal ordinance. The highlight of Kant’s justice is the most striking point that “a man realizes his true self when he acts from the moral law (Rawls 1972:254). The moral imperative concerns or affects every being that is capable of being subject to obligation. And only those actions that are done from the motivation of duty can be said to retain moral worth. Duty is the nothing other than ensuring that our actions necessarily derive from acting out of reverence for the law (Copleston 1960:104,109, 110). As Korsgaard (1989: 211) insists “the essential character of law is universality. Therefore, the person who acts from duty attends to the universality of his or her principle.” Thus, according to Kant (1991:241) the vital law of justice is the categorical imperative. Evidently, “the categorical imperative only expresses generally what constitutes obligation. It may be rendered by the following formula: Act according to a maxim which can be adopted at the same time as a universal law.” As Ebbinghaus (1968:214) rightly notes, “the categorical imperative determines the concept of duty solely as regards its form. It states only what duty as such is and consequently what all duties have in common.” But Wiredu has argued that rules especially rules of morality make sense to us not merely on the basis of Universalizability but more importantly on the basis of the connection between morality and human interests. (Wiredu 1995:36). Rules do not make sense as rules, rather they retain significance as rules intended for some purposes. Apart from those purposes there is the question of the context and effectiveness of such rules. Some of the Kantian elements were appropriated by Rawls to advance his own theory of justice.



#### 4. Mill's justice and its shortfalls: the greatest good as domination and denial

The idea of justice, for J. S. Mill, arises from the fact of living in society. Justice renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists in, first, not injuring the interests of one another and secondly, that each person bears his share (to be fixed on some equitable principle) of some labours and sacrifices incurred for defending the society or its members from injury. For Mill, justice demands that people observe certain general rules that define what to do and expect. Justice is thus the conformity to law. It implies something, which it is not only right to do, and wrong not to do but which some individuals can claim from us as his moral right. Mill concludes by saying that justice is grounded on utility (Mill 1991:467-476). This principle of utility is the foundation of morals or the ultimate principle, which decides cases in which we have opposing yet valid sides of justice. "Utility or the greatest happiness principle holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to promote the reverse of happiness" (Mill 1962:257, Mill 1991:367).

To press home the nexus between utility and justice, Mill constructs a series of other arguments. He makes it clear that "among utilitarians there is every imaginable degree of rigidity and of laxity in the application of their standard. Again utility is often summarily stigmatised as an immoral doctrine by giving it the name of expediency." (Mill 1991:368). Thus Mill (1962:307) tries to make an ontological connection between justice and natural sentiments. In giving justice a foundation of utility, Mill makes it clear that there are two important elements in the idea of justice. These are the desire to punish someone who has done harm and then the knowledge that there is a specific person who has been wronged or harmed. The first element which is the desire to punish a person who has done harm to another is an instant outgrowth from two ideas that are very natural to man and which we may say are more or less to be taken as instincts. These are the impulses of self-defense and sympathy. "It is natural to resent, and to repel or retaliate any harm done or attempted against ourselves or against those with whom we sympathize" (Mill 1962:307).

Further more, Mill (1962:307) argues that these feelings are very natural to humans and is common in animals. But due to man's higher faculties or intelligence, he is more capable of a wider range of sympathy and operation. Therefore, a person is able to identify a community of interest between himself and the society at large and he is also able

to attach himself to the group feeling arising from tribal, national and global affiliations so that anything which threatens the group or the society, elicits in man, a feeling of resistance and the desire or impulse to self defense. The distinctive feature of this natural sentiment in Mill's view is that "this sentiment, in itself, has nothing moral in it; what is moral is, the exclusive subordination of it to the social sympathies, so as to wait on and obey their call. For the natural feeling would make us resent indiscriminately whatever anyone does that is disagreeable to us; but when moralised by the social feelings, it only acts in the directions conformable to the general good" (Mill 1962:307).

Therefore, Mill thus insists that justice is the "name for certain classes of moral rules, which concern the essentials of human well being more nearly, and are therefore of more absolute obligation than any other rules for the guidance of life" (Mill 1962:316). It is these classes of moral rules called justice, which are evident in those maxims, which forbid mankind to hurt one another. These rules of justice being the most important to human existence, take priority over other rules, which deal with specific departments of human life. Mill insists that the rules of justice are "the highest abstract standards of social and distributive justice; towards which all institutions and efforts of virtuous citizens should be made to converge. But this great moral duty rests upon a still deeper foundation being a direct emanation from the first principle of morals and not a mere logical corollary from second or derivative doctrines; it is involved in the very meaning of utility or greatest happiness principle" (Mill 1962:318-319). So that in the attempt to save someone's life, it is permissible to and in fact our duty to steal food or drugs or equipment and to kidnap or compel the only qualified medical doctor to officiate. In conclusion therefore, "justice is a name for certain moral requirements, which stand higher in the scale of social utility, and are therefore of more paramount obligation. Justice remains the appropriate name for certain social utilities, which are vastly more important and therefore more absolute and imperative" (Mill 1962:380).

But the appealing theory of Mill was beset by a number of difficulties, the most important of which are then fact that the justice or morality of an action is determined by its outcomes or consequences. One outstanding weakness of utility is its violation of equality and liberty especially in the realms of justice in human relations and the subordination of all interests to the greatest good. Apart from the question of undermining individual and non-dominant interests under the majoritarian or collective will, there is the issue of calculating the consequences real or imagined of an action. This situation draws

attention to the real effects of the imagined and actual outcomes and how these vitiate the calculus and validity of the utility procedure. One must worry about the issue of who defines the greatest good of the greatest number. Anyhow, another objection to justice as utility is that a rational person may decide to act on principle without any consideration of the effects. According to McCloskey (1971:59) “it may be thought to be important to be honest, just, fair, for the sake of honesty, justice, fairness and not for the sake of some end or ends to be achieved thereby.” The point can also be made that there is no one theory that can have all the answers to all conflicting attitudes to justice. There may even be cases in which our natural sentiments of justice conflict with those of utility. This means that we can have socially useful, but inherently unjust principles as in the case of unwarranted deterrent punishment. The utility of such an action may not wipe away our negative perception of such conduct. Utility strikes at the human natural perception of justice as desert. As Smart (1973:70) puts it, “a utilitarian will not be able to avoid the offensive consequences of his theory” in so far as we can understand or endorse a principle of justice that justifies on the basis of utility, retroactive, collective or scapegoat punishment or the sacrificing of one for the many. As Smart (1973:73) rightly puts it there is no “ethical system which would be satisfactory to all men or even to one man at different times.”

To the extent that justice as utility does not have answers to all the conflicts arising from varying opinions about justice then we can understand Williams (1973) who says that the utility principle or justice as utility is indifferent to the issues of justice and equal rights and it seems to create room for misuse or manipulation of justice in society. We must admit and recognize the very possibility of alternate conceptions. Thus for Williams (1973:113) “utilitarianism, then, should be willing to agree that its general aim of maximising happiness does not imply that what everyone is doing is just pursuing happiness. On the contrary people have to be pursuing other things.” In addition, there is the problem of the status and influence of the person making or assessing a utilitarian judgement. It raises the question of social reality and social perception. This is equally worrisome in that different groups can perceive utility differently thus creating a quagmire. This point is important because “if we form some definite picture of utilitarian decision being located in government, while the populace is non utilitarian in outlook, then it surely must be that government in that society is very importantly manipulative”(Williams 1973:139). Apart from the denial of desert that utility stands for, it calls for an undiscerning

and often immeasurable collectivist advantages that are tainted by manipulation and denial of identity.

Another philosopher who engages the utilitarian position by further pointing out its grievous defects is Rawls (1972). In responding to classical utilitarianism Rawls brings up the idea of justice as fairness, based on a contractarian conception of reality. According to him “each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others” (Rawls 1972:3-4). He argues further that “when the principle of utility is satisfied, however, there is no assurance that everyone benefits” (Rawls 1972:177). What then are Rawls two principles, and what do they signify? These can be understood only in the context of another theory Kantianism.

##### **5. Rawls notion of justice and its weaknesses: ideological neutrality as ambivalence or formalism**

Rawls, was one philosopher who justified his position using a broadly Kantian contractarian viewpoint. According to Rawls “the principles of justice are also categorical imperatives in Kant’s sense. For by a categorical imperative Kant understands a principle of conduct that applies to a person in virtue of his nature as a free and equal rational being (Rawls 1972:253). Rawls tries to provide what he considers to be a model of social order based on a conceptualisation of justice. His ideas tilt towards the redistribution of wealth and opportunities typical of social democratic theorizing. For Rawls, the identity and conflict of interest that illustrate life in any society marked by social co-operation, collaboration and distribution, necessitate the existence of a set of principles. He says that these principles are to guide our choice among the various social arrangements, which determine the division of advantages and for underwriting an agreement on the proper distributive shares. Thus Rawls goes ahead to defend his two principles of justice on the ground that “the public recognition of the two principles gives greater support to men’s self respect and this in turn increases the effectiveness of social cooperation. Another way of putting this is to say that the principles of justice manifest in the basic structure of society men’s desire to treat one another not as means but only as ends in themselves” (Rawls 1972:178-179).

For Rawls, in a contemporary account, “justice is a set of principles required for choosing among the various social arrangements which determine the division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice, they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation” (Rawls 1971:4). Rawls insists that a society is well ordered only when it is designed to advance the good of its members and also effectively regulate its operation by a public conception of justice. He holds that “the primary subject of justice is the basic structure of society or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social co-operation” (Rawls 1971:7). Moreover, the justice of a social scheme depends mainly on the principles of justice, which free and rational persons concerned to advance or promote their personal interests would accept in an initial position of equality.

Rawls says that the original position of equality corresponds to the state of nature in the traditional theory of the social contract. Understood as a purely hypothetical situation, Rawls argues that the original position is essentially about the fact that “no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, etc.” (Rawls 1971:13). Rawls assumes also that the parties in the original position do not even know their conceptions of the good or their special psychological attitudes and inclinations. Rawls’ idea of justice as fairness emphasises on the procedures by which rights and duties can be determined and allocated in ways that ensure fair distribution of advantages and benefits (Solomon and Greene 1999:426&435). To this effect, Rawls highlights the idea that the human being’s starting point in life is a matter of chance. Hence, Rawls places all choices behind the veil of ignorance, which aims at ensuring that no one is advantaged or disadvantaged in the choice, due to circumstances or chance. Hence, the veil of ignorance describes the operations of the original position in which individuals do not retain any prior knowledge or advantage that can unduly affect their choice of the principles of justice. To the extent that the principles of justice are chosen behind a veil of ignorance, the intention of Rawls is to guarantee that no one is disadvantaged or advantaged in the choice of principles, either by the outcome of natural chance, or the contingency of social circumstances.

According to Rawls, the persons in the initial situation would choose two principles. “The first requires equality in the assignment of basic rights and duties. While the second holds that social and economic inequalities for example, those of wealth and opportunity are just, only if, they result in compensating benefits for everyone and in particular for the least advantaged members of society” (Rawls 1971:14). In other words, Rawls proposes two principles of justice: “Firstly, each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all. Secondly, social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity”(Buchanan 1980:9). Thus, Rawls proposes the greatest equal liberty principle, the difference principle and the fair equality of opportunity principle. Rawls first principle covers basic liberties for instance, the freedom and right to vote, freedom of speech, and of the press, freedom of the persons. His second principle requires that the basic structure be arranged such that any inequalities in prospects of obtaining the primary goods (wealth, income, power) must work to the greatest benefit of the least advantaged in the society. His principle of fair equality of opportunity demands a movement beyond formal equality of opportunity to ensuring that those with similar skills, abilities and motivation, enjoy equal opportunities (Buchanan 1980:9-12).

Some defects have been identified in this theory. It should not be forgotten that Rawls theory is individualistic though it recognizes the least advantaged (Manicas 1981:279). Thus in their most fundamental underpinnings the conceptions of justice discussed above are explicit in their devotion to the western liberal view of reality. This is then the character of a liberal theory of justice that stands in contradistinction to that of Africa to the extent that it is based on “the vision of society as made up of independent autonomous units who cooperate to further the end of each of the parties; which vision Rawls presses to its logical limit by deriving the principles of justice themselves from a notional social contract” (Flew 1976:75). Let us not forget that “contractarian theories are undermined when it is shown that they favour a particular model of society” (Eshete 1975:40). This view of justice is in the first instance, restrictive both from an African exogenous viewpoint and from a parallel western viewpoint of Marxian theorizing. Engels and Marx apparently concur on the “total condemnation of justice-talk as mere ideology, and consequently, justice seems never to mean anything more than “justice within a

particular socio-economic system.” There was feudal justice and there is bourgeoisie justice” (McBride 1975:205). Under such an arrangement, Husami (1978:33) insists that “the distributive arrangements of a society can be evaluated by means of a standard different from the prevailing (or ruling) standard of justice.”

## **6. Problematizing the ideological and axiological basis of metropolitan justice**

This is how the problem starts. But another question is what happens when there is a wide gap between one’s professions and the actual practices of the justice principle? It may be true that western philosophies are committed to equality in the political realm, but also and more disturbingly, their economic structures have a libertarian connotation that ensures the susceptibility to gross inequalities in other vital realms of existence. We need to examine the repercussions of such a divergent and contradictory valuation process for the quest to develop a distinct view of justice for the Africans, who already suffer from a plethora of natural and man made problems in their physical environment and social systems.

One major defect of the contractarian view of justice, as proposed by the westerners, is the conflict between the priority that it gives to liberty and its tolerance of inequalities, as seen in the basically worrisome assumption that the free exercise of genius will occasion more talent and productivity and thence, that everyone will be better off at the end. Another problem is its applicability to other worlds as a gift or formula to attain the messianic vision. Taken normatively, this poses a critical difficulty for managing the issue of justice and negotiating its application to other worlds. The discussion of the western idea of justice cannot be divorced from the liberal vision of reality. The liberal conception of justice of the western world is a dominant ideology or set of beliefs about how to attain the good society. Its major exponents include Hobbes, Kant and Rawls. The essence of this liberal view of justice is that it “favors atomistic metaphors and voluntary relations, e.g., the contract; it is conventionalistic, arguing that justice and political society are artifacts deliberately and rationally constructed; it is legalistic, emphasizing formal and procedural justice; it employs market notions of distributive justice” (Manicas 1981:280-281).

But the question is, how does the ideology of liberalism impact on the activities of justice in the institutional or state forms? Conceptually disaggregated, the thrust of

liberalism essentially may lead to alienation, inequality and domination arising from exercise of superior genius (ability, talent and power) that will yield immense gains in influence, control and wealth. More over, the consequential personal and institutional exploitation, differentiation, oppression and hegemony will inevitably breed anarchic injustice, acrimony, and a miasma of uncertainty. Nielsen (1988) has put it correctly that “we need to be concerned with the kinds of social structures, including modes of production, that place some in positions of dominance and control and place others in positions of submission and powerlessness” (Nielsen 1988:30). Thus, the question remains; how can a liberal view that endorses freedom and exercise of genius, tolerate outcomes and relationships that permit huge discrepancies in wealth, possessions and opportunities (Marx and Engels 1990:426)? Practical and conceptual problems such as these have led to the struggles for redistribution and social justice within ideological frameworks. The challenge is at best, to define a basis of reconciling the acceptance of capitalism as the only reliable socio-economic mechanism for generating wealth, and a desire to distribute wealth, in accordance with moral rather than market principles or considerations. These issues can be better situated within the concrete discussions of dominant western theories of justice.

There is another question of, how a liberal view of reality reconciles itself to social morality? This is also related to the question of justice when we recall that justice is one the cardinal moral virtues and the core value of social order. It is however, demonstrated by the existence and analysis of dominant social values. Wiredu (1992:191-199) observes that “any society without a modicum of morality must collapse.” Social morality, of which justice is a key aspect, is a means of clarifying the relationships between men, and a medium of regulating human interpersonal behaviour. Morality is an emanation of man’s overriding desire to preserve social harmony by ensuring that moral codes discourage injustice, deceit and anarchy in any system. The essence of morality is man’s endeavour to harmonize conflicting interests, to play the role of an arbiter, and to secure that greatest possible general good (Perry 1974:373, Bayles and Henley 1989:10, Foot 1985:208). According to Kupperman (1983:4-10) the core of morality must be injunctions against harming others. It is on this basis that the question of the need for morality exhumes the age-long problematic of egoism. Egoism holds that morality should serve the interest of the self and that the goal of a person’s action should be his own self-interest. In effect, egoism holds that man should not only seek his own interest in everything he does, but that he should act morally only if he has something to benefit from such an arrangement



(Hospers, 1973:600).

This is what we see in the justice situation in much of Africa, where in actual fact the dominant institutions for the definition and sustenance of justice have been considerably vitiated and made ineffectual by internal and external factors. The brutal fact is the yawning gap in the expected norms and corresponding institutional practice of justice in most modern African environments. In many African countries, the callowness, disrepute and failure of the police forces, courts of law, prison systems to achieve their basic constitutional goals, are no longer objects of surprise or consternation.

This is why we must not fail to remember that “at certain stages of material civilization, our choice of a distributive principle depends on the consideration given to social values other than justice” (Eshete 1975:38). This means that the issue of justice must be seen against the backdrop of wider historical and social realities. In insisting on the question of social values there is a concern for the intricacies of the cultural operations that underlie social principles and the institutions that are meant to carry them through. With special reference to justice, we are interested in discovering the consistency, viability and approbation derivable from the notions of justice embedded in cosmologies. In a way, a good point of entry into our study is to assume that “justice is satisfied if each person can recognize that the institution is designed to work to his advantage- or at least not to his disadvantage- in the long run “ (Fried 1964:239). If this is the case, we must then try to discover whether, taken together, the endogenous and exogenous western ideas and contexts of justice have worked to the African’s advantage. It becomes clear then that “though individualism, liberalism made some people rich, but did not wipe out insecurity and poverty” (Beland 2000:144).

## **7. Critical analysis of the roles of motives, attitudes and values in the justice issue**

With the normative and operational basis of justice well clarified, we now move on to examine the character and shortfall of the justice problem as interjected by the western ideologies. The difference between the western and other ideas of justice can be understood in terms of the statement that “a society whose idea of justice accords with patriarchal principles of political authority is an unjust society by the test of liberal ideas about freedom, autonomy and the equality of persons” (Bellamy and Hollis 1995:1). If

these values identified above are taken, as the core of justice theorizing then it become s clear that the main elements of traditional African values and justice may not fill into these conceptual moulds.

The liberal notion of justice is founded on the notion of liberalism. Thus a conceptual view of liberalism is necessary for the conceptualization of the value it places on just principles emanating from basic considerations of liberty or personal autonomy as the fundamental good. The liberal idea emphasizes the opportunity for individuals to be self-determining. The liberal goal is therefore to construct a society within which individuals can flourish and develop each pursuing the good as he or she defines it, to the best of his or her abilities (Douglass 1996:135, Macridis 1989:22, Heywood 1997: 41). In this way the individual's interests and experiences form the core of liberalism. Individualism as a central element in liberalism reflects a belief in the supreme importance of the human individual. According to Amin (2000:28) "triumphant liberal ideology reduced society to a collection of individuals and, through this reduction asserted that the equilibrium produced by the market both constitutes the social optimum and guarantees, by the same token, stability and democracy.

We must not fail to note however that "the kind of liberal society historically associated with capitalism was, from its very beginnings, hostile to any political or "social" definition of distributive justice (Kristol 1977:94-95). It calls for justice for the individual who is the basic category that is used to define social morality and values. The justice that operates here is that the individual should keep the material and social goods that come from the works of her hands. And if she is to share these with others, it must be seen from the point of view of the individual offering others (people or society) something. The implication of this is that the liberal vision runs contrary to the possibility of socialist or collectivist thinking concerning claims, planning and entitlements. Taken in its most individualistic form, the liberal philosophy of justice persistently prosecuted by the western vision is definable as "justice is nothing else than the advantage of the stronger" (Johnson 1985:37). The concept of strength must now be seen broadly in terms of a wider view of power, understood as authority, talent, knowledge or privilege. Under the liberal view, the 'strong' person is thus seen as a ruler of others who cannot match her in a chosen area. Liberalism certifies this power and gives people room to use and benefit from it, first on an egoistic basis, which later become rationally motivated to assure mutual continuity.

Basically, the above view lends credence to the idea that the 'strong' or rulers

(national or international) rule in the self-interest. But we also know from history that “the source of all instability in the community lies in the fact that rulers tend to think first of their own families or property interests” (Laing 1933:412). Therefore, the primary basis of the search for political community at all levels is to define the ways by which individuals (persons or states) can rise above the natural and primordial self-interestedness that will lead to negative mutually destructive results. There are two immediate consequences of this truncated notion of justice. There will be stultification and stagnation and the fostering of acrimony and hate. This is the situation of justice in modern Africa presently when we evaluate the defective instrumentalization of justice via the individualistically based courts and systems of justice delivery.

Some related questions arise here and need to be tackled. Is there an affinity between liberalism and self-interestedness or egoism? Can we justify morality on the basis of egoism? Can self-interest be a genuine basis for enduring morality? How can the presence of altruism be explained in social life? It seems that a strictly egoistic moral life will not be conducive to personal and social morality. The promotion of self-interest as the moral rule may ensure that the goal of harmonizing conflicting interests is largely defeated. Only confusion can attend any order or society founded strictly on egoistic principles of morality to the detriment of rules of mutual relations that justice embodies. The juridical egoistic morality underlying liberalism ensures that the gross inequalities in the ownership of wealth and income arising from the operation of a free market economy could neither be acceptable to the oppressed or underprivileged nor justified even on ideological grounds. This is worrisome when situated in the context of an Africa whose notions of justice derives from that emanation of a critically authoritarian esoteric cosmology that irrevocably places modern coercive powers in the hands of old anachronisms and hegemonic structures. The possibilities of power and wealth occasioned by the liberal justice model, combined with the predominantly anachronistic and communalistic closure typical of social and political spaces in Africa, will translate into a time bomb.

#### **8. Auto-critique of the metropolitan views of justice vis-a-vis dominant African cultural forms of life**

The intrinsic failure of erstwhile classical philosophies of justice for African development and social order to counteract discriminative moral and political conduct elicit

a dilemmatic situation. The traditional Western conceptualization (DeMarco and Richmond 1977:86) of the philosophy of justice is centered on a tripartite analysis of the social contract model of Thomas Hobbes, the utilitarian model of J.S. Mill and impartiality or respect model of Immanuel Kant. These three models among others, have failed to challenge and overcome the peculiar African crisis of justice and development. Whereas the social contract model of justice assumed that there would be justice when people acting as rational agents accepted basic practices of society that would assure their mutual advantage in the long run, this has not really worked in African development practice, due to the nullifying effects of Kleptocracy, patrimonialism, institutional decay, antinomies and apathy, precipitation of primordial ethno-cultural enclaves. The utilitarian philosophy of justice, seen as a way of defining the greatest good or happiness of the greatest number of the society and the impartiality or respect model of justice, which suggests the recognition of the intrinsic worth of people as entities deserving of respect, whose interests should be maintained in the interest of the overall common good, have also failed due to the realities of cultural, historical and psychological inducements to truncate or restrictively appropriate the principles and institutions intended for the common good; federalism, industrialization and social services. Taken together, these traditional western philosophies have not succeeded in Africa due to obstructive traditional cosmological templates that have re-institutionalized regressive authoritarianism, tenuous hegemony, ossified anachronism deriving from both the primordial and colonial forms of ethno-religious prejudices, stratifications, conflicts, mistrust and mutual hatred among groups.

As it were, even in traditional African cosmology, justice and human relations principles are a key component of culture. Thus the justice practiced by the Africans is to be seen in their age-long activities that depended on robust sense of social or ethnic identity. This kind of justice was often kinship in nature operating on internal familial principles of intense human homogenous coexistence. Thus in this sense, the African cosmological justice was one that operated in a community of people bonded by kinship and familial ties, and thus could not operate on the impersonal and impartial laws decreed by Kant. So also due to the smallness and knit character of the traditional African communities, kinship justice connoted a concern for attending to the actual interests of every member, such that the good was seen as the well being of the entire society and not of the majority as Mill opines. Obviously, the ontological bonding typical of justice in a knit community did not allow for any demonstration of the trappings and chaos typical of the

state of nature as proffered by Hobbes. It is therefore clear that the core western conceptions of the justice idea may not have easily fitted into the African cosmological models. But then let us not preempt the argument.

In all, the concrete reality of the tripartite western ideas shows a commitment to values that may not work in the African spaces. This is so, when we realize the cosmological and social interest imperatives underlying the foundations of justice. These considerations effectively make the discourse on justice a cultural or context bound event. This claim however, is not to detract from the clear universal expectations of an idea of justice. The basic truth is that the Hobbesian idea of justice fails in so far as the individualistic rational egoism that led to the emergence of the state or society has created a state that now unleashes the very injustice or non-justice situation that the state was supposed to arrest or modify. What this means, is that the application of Hobbes theory of justice to Africa may not work not only due to the nullifying injustices perpetrated by the state, but also due to the fact it refuses to recognize the communalist non individualist ontology or basis of the African societies. In modern Africa the Hobbesian model of justice refuses to foster the definitive distinction between the state of nature and the state itself. The core visions and values of the state in Africa, is to persecute, terrorize and subjugate the mass of Africans. The real tragedy of an inclusive communalism grafted on a modern individualist perception of reality occasions a crisis of identity and national planning that turns virtually every institution or structure into a vector of injustice. The real failure of machineries such as the police, armies, census, education, etc, can be tied to the irreconcilable contradictions arising from the desire to communalise and ethnicize individualistic mechanisms designed for social order and change. The communal factor therefore becomes the currency that nullifies the play of individualism as a directing principle.

In the same vein the utilitarian theory of Mill does not succeed in Africa because, clearly the authoritarian cosmology of the Africans grafted unto the modern state system practiced in Africa, only served to ossify the principles of domination and exploitation handed down by the metropolitan powers. In effect, there was a regime that did not concern itself with the greatest good or interests of the teeming masses of Africans, rather there was the installation of a myopic elite control whose directing principle was the corrupt material accumulation and appropriation of African wealth and resources for restricted selfish purposes. Utilitarian justice was impossible to attain due to the real

complications emanating from a resistant communalism that became the more parochial and ethnocentric owing to scarcity and competition for resources. The greatest good theory was defeated by fractious and factional divergences between the ontologically xenophobic groups, whose speciality is the nurturing of hate and anarchy. Cultural differentiation and the denial of dialogue, coupled with the lack of visionary leaders, served to constitute many African societies into arenas for the denial of liberty and fraternity.

Similarly, the Kantian theory of justice as law was seen to be a failure because modern African experiences increasingly showed a tendency to lawlessness and anomie, that solidified the antinomies and antagonisms deriving from ethnic and religious propensities that would not allow people to be law abiding. Essentially, the possibility of a universal justice was remote when considered side by side with the real tragedies of exclusionist communalism and irredentist anachronism that retained a surprising depth for hatred, apathy and irrational denial of the need for progress and cooperation. The Kantian law was impossible to install, owing to the gross disregard for neutrality, fairness and recognition among divergent groups, such as could guarantee reconciliation, cooperation, stability and positive change in Africa. Hence, the three theories, which were derivation from the core western liberal proclivities, were themselves agents of a new form of domination and denial that eventually reinforced the very injustices that they sought to challenge. As things stand therefore the concrete formulations, applications and repercussions of the primordial traditional African justice and western models of justice, had a colluding agreement when it came to the continuation of the oppression, domination and injustices to be perpetrated against the hapless Africans who are more than at any other time now in need of development and justice.

## **9. Repudiating the past and present conceptions of ethnicity as systems of social control**

In looking at the mechanism of social control that both embodies and underlies ethnicity we cannot but examine what ethnic groups are, what are those things that make ethnic groups distinct? What are the manifestations of ethnicity and how do these become consequential for human social and political existence whether positively or negatively? The popular conception of ethnicity is that which highlights its prominent negative aspects. Odugbemi (2001) makes it clear that “ethnicity undermines the fundamental values without

which we cannot build a sane, serious, democratic society” (Odugbemi 2001:70). This insinuates that the current expression of ethnicity directs the human ethical conscience away from civility and order, to putatively violent, primeval and bestial exhibitions. But this is only possible against the background of the arrangements that ethnicity represents and the phenomenological possibilities that such cosmologies can display. Thus Galey (1974) holds that the processes of culture that define ethnicity may also influence citizenship attitudes to development and integration in a national context (Galey 1974:270). These cultural processes and influences are therefore essentially cognitive and transmittable.

If this is so, then ethnicity becomes potent because living styles, values and behaviour are cognitively acquired and transmitted to new generations through social institutions such as family and tribe. These may encourage resistance and/or openness to change (Galey 1974:270), which either relates to the self or even others. There are a number of values and visions that ethnicity transmits which make it a force that is self-animating and equally countermanding to dominant modernizing instruments such as the state, etc. Ethnicity transmits specific views of economic relations, loyalty, identity, etc. Clapham (1991) holds that ethnicity is a very effective basis for mobilizing political support and family and kinship ties provide more reliable means of achieving loyalty than the state and its bureaucracy (Clapham 1991:98). This situation obviously has profound consequences for establishing and sustaining community and consensus. Goulbourne (1997) notes that the mobilization around ethnic credentials as seen in the operations of minorities or majorities, depends significantly on the political and economic circumstances that define inter-group relations. Thus the mobilization of ethnicity entails the mobilization of bias (Goulbourne 1997:166).

## **10. The character of Human Nature in the ontology of justice**

Also Lemarchand (1974) says that the overwhelming aim of ethnicity is its focus on exclusion of others from power. The ensuing contexts and struggles for control have decisive negative impacts on patron-client relationships, inter ethnic identities (Lemarchand 1974:143). Such convolutions in social organization and psychological predispositions simply replace the question of human survival on the center stage. Taken theoretically, this implies a complete gyration to human conduct in a modern era operating according to the primordial basics of human nature. This naturalism at the individual and group levels then

ascend to impact on modern human society through an intensification of self determining and separatist movements. Once ethnicity forces us to place the issue of human well being and survival on the front burner then we have to understand the motivations and compulsions of human nature. This is a philosophical task that examines how and why individual and collective human nature and actions have been at the core of violence, injustices and domination in history. We are also interested in the prescriptive and practical possibilities of change.

Human nature is a critical aspect of human existence. Berry (1986:xiii) insists that “social and political organization has to accommodate itself to the human nature and not vice versa.” In other words, human nature is a primal symbol in the quest for understanding ethnicity. This is a conceptual issue having far reaching empirical consequences. Dewey (1974) makes the vital point that the nearly immutable innate needs of human beings define human nature. Permit me to put the ideas exactly in his words. Dewey says that

I do not think it can be shown that the innate needs of men have changed since man became man or that there is any evidence that they will change as long as man is on the earth. Needs for food and drink and for moving about, need for bringing one's power to bear upon surrounding conditions, the need for some sort of aesthetic expression and satisfaction, are so much part of our being. Pugnacity and fear are native elements of human nature. But so are pity and sympathy (Dewey 1974:116-118).

The foundational character of human nature is to be apprehended and connected to what Mill (1962) refers to as the natural sentiment of justice, which is defined by the interplay of the purportedly innate ideas of punishment, self-defence and sympathy. Permit me again to quote Mill at length. He states that

two essential ingredients in the sentiment of justice are, the desire to punish a person who has done harm, and the knowledge or belief that there is some definite individual or individuals to whom harm has been done. The desire to punish ...is a spontaneous outgrowth from two sentiments, both in the highest degree natural, and which either are or resemble instincts; the impulse of self-defense, and the feeling of sympathy. A human being is capable of apprehending a community of interest between himself and the human society of which he forms a part such that any conduct, which threatens the security of the society generally, is threatening to his own and calls forth his instinct of self-defense (Mill 1962:306-307).



Human nature and its significance for survival and progress make further sense only in the context of the social nature of man. According to Mackenzie (1963:35) “human association, societies are first formed for the sake of life; though it is for the sake of good life that they are subsequently maintained. The care of the young, the preservation of food and drink, the provision of adequate shelter and protection would suffice to account for the existence of human societies.” This implies that society is necessary for some level of comfort and hope for the human being.

But we also know from history that human associations have been the core sources of security problems. For example, there is the problem of tyranny and man’s inhumanity to man, as seen in the internal operations of human actions in a society. There is the wider social insecurity generated by human intercultural conflicts among human associations. All of these problems can be predicated upon the personal and social manifestations of human nature and human actions. The clearly psychological, cultural and economic motivations of human nature are further highlighted in the problems of human finitude and limitations, seen as our ethical and metaphysical imperfections. We also confront the restrictive limitations of our peculiar human natures as individual men. And all of these taken together pose a stumbling block to our search for perfect human relations. Given the reality of conflicts and prejudices, Brown (1989:3) says that ethnic conflicts can be explained using the natural tendency towards ethnocentrism: people seem to trust and prefer those of their own cultural group, while being distant and distrusting of others.

The increasing tendency of ethnic people to think fundamentally in terms of the ethnic group (Said and Simmons 1975:65) leads to the real threat of mutual annihilation or the massive repression of the less privileged and competitors. We can understand the full import of things, when we read and see that ethnicity has led to state- sponsored slaughter, the oppression and murder (Riggs 1994:584), unparalleled cultural diversity heralding constant conflict and bloodshed (Campbell 1992:58) and sentiments motivating people to acts of extreme violence against the Other (Turton 1997:3). For Turton (1997:11) ethnicity has a strong mobilizing power to acquire greater leverage and competitive advantage. Thus ethnicity often gives rise to ethnic conflicts in which people decide to employ their ethnic differences in pursuing competing interests (Osaghae, 1994:9). The end result of all of this according to Rosel (1997) is that ethnic conflicts have become politicized and radicalized thus assuming a self-sustaining character, which threatens the legitimacy and integrity of

multi-ethnic states. Through the politicization and militarization of ethnic conflict, groups acquire the self-awareness and organization, cohesion and bitterness and finally, intransigence and cynicism, which make a peaceful and enduring resolution or settlement difficult to negotiate (Rosel 1997:146&153). The ethnic phenomenon has core cosmological features that define or explain its operation.

## **11. Conclusion**

The traditional Western conceptualization of the philosophy of justice was centered on a tripartite analysis of the social contract model of Thomas Hobbes, the utilitarian model of J. S. Mill and impartiality or respect model of Immanuel Kant and the fairness model of Rawls. These models apparently failed to challenge and overcome the peculiar ideological and value-laden character of the erstwhile analysis of justice, and thus created the impetus for overestimation of success in their formulation and implementation. The social contract model of justice assumed that there would be justice when people acted as rational agents accepted basic practices of society that assured their mutual advantage in the long run, the utilitarian philosophy of justice defined the greatest good or happiness of the greatest number of the society hence established a doctrine of exploitation and the impartiality or respect model of justice suggested the recognition of the intrinsic worth of people as entities deserving of respect, whose interests were maintained in the interest of the overall common good even though people viewed life from a standpoint that was not often objective . The search for a conceptual foundation of justice for Africa looked towards a reconciliatory and negotiated view of justice that established and sustained social order where other conception seemed to have failed.

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