

THE USE OF **THE HOLY BIBLE, THE HOLY QU'RAN, JUJU** AND OTHERS  
FOR OATH OF OFFICE: TO FIGHT CORRUPTION IN NIGERIA

**S.A.M. EKWENZE \***

The sword is not so piercing as the nature of an Oath!  
The swearer although he seems to live is already dead,  
and has received the fatal blow.

**John Chrysostom**

To every subject in this land, no matter how powerful, I would use  
*Thomas Fuller's* words over 300 years ago, "Be you never so high  
the law is above you". \*\*

The security of the Prince and the stability of the State constituted an  
end which justified all means for its attainment.

**Niccolo Machiavelli (1469-1527)**

**ABSTRACT**

*The rate and magnitude of corruption (official and non-official) in Nigeria now appear endemic. Many solutions have been proffered and put in place. None appear to have shown any sign of a remedy. Not minding that all the government officials entrusted with the common-weal of our people take oath of office, corruption is still a brooding ominipresence in Nigeria.*

*On one occasion, a Nigerian took an Oath before a Juju when Oba Market was burnt down. In his oath he denied the allegation that he burnt the market. There and then, he charged the person(s) that set fire or looted the market to show up and return their loots. The arsonists and looters brought their loots in broad day light because Juju (Iyalala) was involved.*

*Based on the preceding paragraph, this article will expound the need and the reason why all public officials in Nigeria should swear all oaths ie the Bible, the Qu'ran, juju etc brought to them for oath before their assumption of office. No one should lead or be entrusted with the resources of our people without believing in all that the people believe in, because "All anomalies are inadequate."<sup>1</sup> Jesus could never say "fellow sinner" because He had no sin. Public officers should not use or manage the resources of the people they do not share the same faith with; they used their votes to win election because all believe in ONE GOD. Experience has shown that some politicians, whether Christians, Muslims or adherents of other religions go for and use charms before, during and after elections. So like **General Hamurabi** "where there is no way, the people should create way". Criticism may be either positive or negative; I accept both for writing this article. The essence of this work is therefore a timely refocus of public and scholarly attention on Oath of office and allegiance to curb the menace of corruption in Nigeria.*

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\* S.A.M. Ekwenze Ph.D, Senior Lecturer and the Associate Dean, Faculty of Law Anambra State University, Igbariam Campus. E-mail: ekwenze4me@yahoo.com. Phone 234-8039143119. I am thankful to Prof. E.I. Nwogugu, Prof. Amechi Uchegbu, Rev. Fr. Ikenga Oraegbunam, Mr Jaja Nwanegbo and Eje Adakole Odike for their helpful feedback and suggestions and for shaping my thinking on this topic.

\*\* **Lord Denning M.R.** in *Gouriet v Union of Post Office Workers (1977) 1 Q.B. 729 at 761-762.*

<sup>1</sup> Selwyn Hughes, "Fellow Lepers", Fellowship Bible Ministers, Helen Baugh House, Day 96.

## 1. INTRODUCTION.

This article was prompted by the fire out break at the Oba market at Benin City, Edo state, Nigeria in 2005. As the fire was raging, looters were as usual helping themselves. Most unfortunately to some of the looters, a prominent indigene of Benin, was in town and was touched by the inferno. He quickly mobilized people to assist in putting off the fire, as the State Fire Service Department was out of service as usual.

As this patriotic man and his men were putting off the fire, looters were carrying away their loots. Some of the looters caught by this good Nigerian were handed over to the police. According to the good Nigerian, he handed over to the police a couple or scores of looters<sup>2</sup>. The following day, the police acknowledged about five (5) looters as having been handed over to them. This may be because there were no signed hand over note(s) exchanged by the good Nigerian and the police. This embittered the good Nigerian. For this, the good Nigerian swore to their juju known as *Iyalala* and also demanded the looters during the fire out break to return all they took away from the market or the juju *Iyalala*, a venerated god, will kill all of them (the looters and the arsonists).

Merely two (2) hours, of the charge and his Oath taking, stolen goods had started arriving to the market through their looters. In fact, all the looters returned their loots as soon as they learnt that *Iyalala* has been involved. None of the looters doubted the potency of the juju. It is this rather sync reaction of the looters because of the mere mention of juju (*Iyalala*) that seeks to beg the question – should we (Nigerians) resort to the use of juju for Oaths of Office to stem the tide of official corruption or abuse of office? Could it be said that people fear juju more than the Holy Bible and the Holy Qu’ran? Has there been any Christian priest or Muslim Imam who has asked his member to return his/her loot or stolen item or money, and ensures that it is done? It is not to the knowledge of the writer that such has happened. Instead, looters are honoured, knighted, revered and made cynosure of all eyes. Perhaps, it must be because the world loves a winner and nothing succeeds like success no matter how it was achieved.

My object is not to pass a final judgment – which in any case is impossible but to lay bare some of the complexities and ambiguities of an important episode in Nigerian crucial activity: **Oath of Office!** The continued use of either the Holy Bible or the Holy Qu’ran only for Oath of Office maybe directing us downwards or towards a secular

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<sup>2</sup> *Some of the looters were Christians or Muslims or pagans or atheists, Hinduists, Buddhists etc.*

precipice rather than heavenly redemption. Nigerians have continued to ensconce themselves in western practice,<sup>3</sup> which in most cases are not compatible with our culture, stage of development and environment. The *Corpus* of common law which we adopted is Christianity which historically has no common ground with our customs and traditions. It is for this that the House of Lords in England said in the case of *Bowman v Secular Society Ltd*<sup>4</sup>.

*Ours is and always has been a Christian state. The English family is built on Christian ideas, and if the national religion is not Christian, there is none. English law may well be called a Christian Law.*<sup>5</sup>

For over a century now, the voice of the common people of Africa have not been heard. Africa was streamrolled first into foreign subjugation, by the Europeans who describe Africans as “Continent without hope”,<sup>6</sup> then into an alien form of independence. Up till now, independence has brought little or no relief. Change is still being forced down peoples throats, but with diminishing results; traditional government was stripped of its autonomy and made a colonial lackey.<sup>7</sup> Not much can be expected from a people already stripped of their history, a people often ill equipped to retrieve that history in any form than what fluttered across the television screen, the testimony of what we see every day seemed only to confirm our worst suspicions about ourselves.<sup>8</sup>

Oath of office and Oath of Allegiance<sup>9</sup> as found in the Constitution of the Federal Republic of Nigeria, on its own is not bad as it did not specify the object with which the Oath is to be taken. The impression of most Nigerians is that oath of office and allegiance

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<sup>3</sup> To show that our tradition; custom and practices have some value and are important, a Westerner, **Mrs. Susanne Wenger (Adunni Olorisa a.k.a Adunni Iwinfunke)** a woman married in 1959 to **Chief Alarape** became the “Chief priest” of Oshun deity in Nigeria. She was born in 1915 in the town of Graz, Austria. The time of her birth was during the World War I. She died at 94 at about 2.00pm at Jaleyemi Catholic Hospital, Osogbo; and was buried quietly, according to her wish by 8.30pm on 12-01-09 in one of the sacred shrines near the Osun Osogbo Groves. We also know as a fact that the Westeners buy the juju of our people at all cost. Why?

<sup>4</sup> (1916) 17 All E.R. (reprint) 1.

<sup>5</sup> *ibid* at 30-31 para 1-A.

<sup>6</sup> The British magazine “Economist” headed a cover story on Africa with “Continent without hope”. See generally Ndidi Nnoli Edozien & Obiora F. Ike, **Developing content on Africa-why the West must Take Another Look at Africa**, CID JAP, Uwani Enugu, 2004, 119

<sup>7</sup> A.J.G.M. Sanders, **Towards A People’s Philosophy of Law!** *Journal of African Law*, Vol. 31 Nos 1&2, 1988,37 at 40.

<sup>8</sup> Barack Obama, **Dreams From my Father**, Canongate Books Ltd., 14 High St. Edinburgh EH! ITE, (2007)198

<sup>9</sup> See *A.G.Anambra State v A.G. Federation* (2005)9 NWLR [pt.931]572 S.C. See generally Sections 26(1)(c), 27(2)(f) 52, 94, 135(2), 149, 180, 181, 185, 187, 194 and 290 of the Constitution of the Federal Republic of Nigeria, 1999.

are now poisoned chalice for the citizens. However, the rider to the practical Oath of Office taking is the constitutional provision in Section 38 of the Constitution of the Federal Republic of Nigeria, 1999 as it concerns freedom of conscience, thought and religion. This aspect will be discussed later in this work.

It is the view of the writer that given the experience of Nigerians in nearly fifty (50) years that the use of the Holy Bible, the Holy Qu'ran and other foreign/alien objects in our nation is a deliberate attempt to perpetuate fraud, corruption etc. They are reflections of western values and ethos. Such is not home grown, nor does it possess any cultural affinity<sup>10</sup> with our people. It does not reflect the ethos and values found among the people of Nigeria. The nugget of truth is often hidden in the coarse grains of paradox. Now nothing is exactly right as the world has forfeited the right to know what is right.

This is a beautiful world but corruption has made it an ugly age. It is difficult to ignore the paradox. The reason is that man has never been able to solve himself as a problem. Man's best age is also the worst for his mind.

Embezzlement, corruption, dishonesty have become a matter of note. We never would have learnt that a leader of our nation's highest office or that of the States: our priests who are the guardians of our public conscience, were totally bereft of the first notion of natural justice, and of fairness whether as a concept of law or conscience. It is a shock that age-old problems of greed, self-interest, corruption, strife, and petty hatred still remain inherent in the administration of human government. We have to remind ourselves of the fact that a man that is not corrupt is a man who does not tremble before the lash of adversity. His immunity<sup>11</sup> is his belief. This, no one could take away. He is strong in will, to strive, to seek, to find, and not to yield. He is beyond the stings of hate.

As **James Madison**, a father of the U.S. Constitution<sup>12</sup> viewed it, human nature makes internal and external controls on government necessary. He pointed out that if obedient angels were to govern men, no such controls would be necessary and so this unbelievably fatuous article / write-up would not have been also necessary. It is a fact

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<sup>10</sup> *The firewood of a people fires their cookings..*

<sup>11</sup> *There is now debate as to whether the immunity of the President and his Vice, the Governors and their Deputies should be retained or not as provided in Section 308 of the 1999 Constitution. But see (AD v Foyse (2004) 8 NWLR [pt. 876]639.*

<sup>12</sup> *According to William Gladstone, "...the Most Wonderful work ever struck off at a given time by the brain and purpose of man" per his 1878 essay titled 'Kin Beyond Sea' as cited by Paul Kroll, "...to Form a more Perfect Union", The Plain Truth a magazine of understanding, Sept. 1987 Vol. 52 No.8,2 at 7.*

that not up to a percent of our politicians has belief in a religion or at most in the one they feign to believe in.<sup>13</sup> For this, the politicians should not use **Jesus Christ** or **Mohammed** as shield. This is why Nigerians are to put their confidence in another mode of Oath of office because the one before had no result.

## 2. THE PHILOSOPHICAL BACKGROUND

Fear is one of the essential ingredients of Oath. The first thing that will weigh on the mind and spirit of the Oath taker is fear of whatever he believes in. This is because according to the Stoics, “every single human being, just by virtue of being human, contains a portion of the divine”<sup>14</sup> It is this inherent divine nature that anchors the fear of God in man. As a matter of real-world phenomenology, religious convictions exercise a more powerful grip upon the individual psyche than do deeply felt secular convictions.<sup>15</sup> People experience obligations from both secular and religious sources; they nonetheless note that the religious and not the secular ones is the one that “emanate” from a mystical spirit or being. These are “matters of sociological fact”.<sup>16</sup> Oaths are events. Events are more than mere incidents of time. There is a ‘mind in events’. And as a man’s mind is, so he judges things. A fundamental philosophical tenant divides East from West. The latter is dominated by Christians while the former is more of Muslims. The Christians use the Bible and the Muslims use the Qur’an.

The Holy Bible kills but perhaps not as immediate as others because the Christians belief that their God is God of mercy. The Holy Qu’ran kills but may not be as immediate as the others. Moreover, the Muslims do not expect that a Muslim should swear, so also the Christians basically abhor swearing to the Bible. The pagans or the *juju* worshippers know that *juju* kills as others.<sup>17</sup> As the *juju* varies from place to place the worshippers know that it kills and the period of grace vary from *juju* to *juju*.

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<sup>13</sup> Reuben Abati, *Oath taking in Nigerian political episode as contained in The Guardian Newspaper of 3<sup>rd</sup> July, 2009 is a pointer as Alausa may be a Muslim or a Christian.*

<sup>14</sup> Martha Nussbaum, **Liberty of Conscience: In Defense of America’s Tradition of Religious Equality** (2008)98. See generally Abner S. Greene, **Three Theories of Religious Equality --- and of Exemptions**, *Texas Law Review*, Vol. 87 No. 5 April 2009, 963 at 966.

<sup>15</sup> Michael W. McConnell, **The Origins and Historical Understanding of the Free Exercise of Religion**, 103 *Harvard Law Rev.* (1990), 1409 at 1497. See generally Greene *op cit* at 978.

<sup>16</sup> *ibid.*

<sup>17</sup> One common denominator that should not be overlooked is that all the religions serve a Supreme Being nay God. In all the religions they believe in “**THE GOLDEN RULE**”. The following religions, to state just a few, provided the same thing: **BUDDHISM**: Hurt not others with that which pains yourself (**Unanavarga, 5.18**); **CHRISTIANITY**: *So in everything, do to others what you would have them do to you, for this sums*

It is worthy of note that Christianity and Islamism are both for **Peace** and **Salvation** while *juju* is for **Justice**. Based on this background, it becomes more appropriate that *juju* should be used for both oath of office or of allegiance. At any rate the necessary aspect of oath is for the swearer to have the clear provisions of what he/she is swearing impressed in his mind so that he goes on with it throughout his/her execution of the duties of the office. The rather ritualistic, formalistic or rhetoric way of making an oath of office or allegiance without reading the actual verses or the words of the Holy Bible or Holy Qu'ran or whatever book is part of the reason why people take the oath for granted and perpetuate corruption. One sure reason for the continued corrupt practices is because the oath taking is ensconced in the rhetorics and does not sear the conscience of the oath taker. The oath taker uses the day as the day to show that he has arrived and crossed poverty line forever. The prospective public office holder feels and tells people that opportunity has come. To him opportunity is like a tide in the affairs of men. It must be taken at the flood; only then does it lead to fortune.

On another note, the Chief Judge or Justice that administers the oath should not be the only person that should administer Oath but the chief priests of either the Christian or Muslim who knows the actual or relevant portions of the Bible or the Qu'ran. The Chief Priest or the Bishop of the oath taker's denomination or the Chief Imam of the branch of the oath taker's sect of Islam should administer oaths. In fact, before administering the oath, both the Bishop or the Chief Imam should abstain from certain things or fast or be holy for effectiveness of their oath administration. These will instill fear in the oath taker and will make him/her recall the potency of the oath he/she took.

We must not forget that our African customs and traditions are not the same with that of the Europeans. What is customary or traditional in a given society such as ours

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*up the Law and the Prophets (Bible, St Matthew, 7:12); CONFUCIANISM: Is there any one maxim which ought to be acted upon throughout one's life? Surely the maxim of loving kindness is such. Do not unto others what you would not they should do unto you. (Analects 15:23); HERBRAISM: What is hurtful to yourself do not to your fellow man. That is the whole of the Torah and the remainder is but commentary. (Talmud); HINDUISM: This is the sum of duty; do naught to others which if done to thee, would cause thee pain. (Mahabharata, 5:1517). ISLAM: No one of you is a believer, until he loves for his brother what he loves for himself. (Traditions); JAINISM: In happiness and suffering, in joy and grief, we should regard all creatures as we regard our own self, and should therefore refrain from inflicting upon others such injury as would appear undesirable to us if inflicted upon ourselves. (Yagashastra, 2:20). It will be noted that the traditionalists or the pagans believe absolutely in the Golden Rule. They believe and practice oral tradition. See generally Frederick R. Gould, **Developing Your Latent Powers – Thirty Practical Steps to Spiritual Satisfaction**, David & Charles Newton Abbot London, Vancouver, 1976, 28.*

need not be socially just or right. “We seek to do the right” said **Lugard**, “as we see the right--- as God gives us to see the right”<sup>18</sup>

Some people, however, may not mind if they die but feel that their children will never be poor or be in want again, so will go ahead to loot the treasury. After all, there is death penalty for armed robbery or the now kidnappings, still there are armed robbery every where and kidnappings are on the increase. Notwithstanding, we should avoid the danger of complacency. Whatever may be the artificialities of modern life, we still live to a great extent with nature, and in the state of nature nothing is stagnant. Whatever does not progress, regresses.<sup>19</sup> All concerning and affecting our oaths should be reviewed, to make our people do good, because a good work is an offering to God. There is only one God that does not know any other God<sup>20</sup>

### 3. WHAT IS AN OATH?

Oath has been defined as “Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully”.<sup>21</sup> Also Prof. (Canon) Israel Okoye (J.P.) saw an Oath as a pledge that commits the totality of one’s being to a cause, in respect of which the individual concerned submits himself/herself to the accompanying punishment for its violation<sup>22</sup>. On another note, it is seen as “a statement, assertion, or solemn affirmation usually involving the penalty of divine retribution for intentional falsity, often used in legal procedures”.<sup>23</sup> Oath, particularly the oath of office or allegiance is “a mutual covenant” between the elected or appointed official and the citizenry.

The Oath according to **Meek** is not merely a solemn assertion that speaker is telling the truth - it is a self-implication charged with punishing power.<sup>24</sup> The administration of oath took a matter out of the hands of mortals and placed it in laps of

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<sup>18</sup> See generally, *Folarin Coker, Sir Adetokumbo Ademola: A Biography*, Lagos Time Press, Lagos, 1972, 53.

<sup>19</sup> *ibid.*

<sup>20</sup> *Isaiah 45:80*, “ --- Is there a God beside me? Yea, **there is no God; I know not any**”. *The Thompson Chain Reference Bible 5<sup>th</sup> Improved Edn. 10<sup>th</sup> Print, 1997 K.J.V.*

<sup>21</sup> See *Black’s Law Dictionary, 6<sup>th</sup> Ed. 1071-72.*

<sup>22</sup> Prof (Rev. Canon) Israel Okoye (J.P.) *Public Perception and Attitudes Towards Oath of Office in Nigeria: A Survey*, UNIZIK Law Journal Vol. 1 Nos 3, 2001, 94.

<sup>23</sup> *This indicates that there are various situations and circumstance that demand Oath taking. These may be contractual relationship of individuals, groups of people, communities/ towns, judicial proceedings, commercial or political activities etc. See also the New Encyclopedia Britannica, Vol. VIII, 1975, 458.*

<sup>24</sup> *Meek, The Northern Tribes of Nigeria, Frank Cass & Co. Ltd, 1971, 1<sup>st</sup> Published, 1925, Vol. 1, 264.*

the gods, the gods were then awaited, even for years to either exonerate or condemn the accused. Refusal by any of the parties to a dispute to take the oath is taken as a confession of guilt, while its acceptance by the defendant is an indication of ‘not guilty’. In **Ume v Okoronkwo**<sup>25</sup> Ogwuegbu J.S.C. held that oath-taking was one of the methods of establishing the truth of a matter and was known to customary law and accepted by both parties. A party who alleges the existence of customary law must prove that customary law because the law of evidence regards it as a fact, unless it can be noticed judicially.<sup>26</sup>

For oath of allegiance, it is a promise to God to serve, abide, obey, respect and be loyal. It is to abide by the principle in that area of life. Human beings are not perfect so we need the spirit of God and His love for us to abide by His Laws. Inability to keep to an oath is an irresponsibility. Oath taking dates back before civilization and ancient times. For this, the bible says, “you shall not swear falsely, but carryout the vows you have made to the Lord”<sup>27</sup>. But I say to you, Do not swear at all, either by heaven, for it is the throne of God, or by the earth, for it is His footstool, or by Jerusalem, for it is the City of the great King. And do not swear by your head, you cannot make one hair white or black. Let your word be “Yes, Yes” or “No, No”, anything more than this comes from the evil one.<sup>28</sup>

In our society, many “claim” to be Christians although Christianity is still fairly young in our society. This has not enabled many really know much about Christianity as the history of Christianity known by most ‘Christians’ are not more than what they were told by the Europeans. As they (the Christians) do not know more than the history given to them, some rush to *juju* or traditional religion when ever they have one problem or the other.<sup>29</sup> For instance, most Christians do not wish to destroy the ancestral idols in their

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<sup>25</sup> (1996)12S.C.N.J. 404; (1996)10 NWLR [pt.477]133.

<sup>26</sup> See Section 14 of the Evidence Act, Cap. E14 L.FN., 2004; *Angu v Atta* (1916) P.C. 43; *Buraimo v Bamgboye* (1940)15 NLK.R. 139; *Adagun v Fagbola* (1932)11 N.L.R. 110; *Giwa v Erinmilokun* (1961)1 ALL N.L.R. 294; *Ekpana v Uyo* (1986) 3 NWLR [pt. 26]63; *Onyenge & ors v Ebere & ors.* (2004)11 M.J.S.C. 184.

<sup>27</sup> *Matthew* 5:33-37

<sup>28</sup> *ibid.* By this Biblical injunction, Christians ought not swear at all. Since they swear against the intendment of the Bible they should jolly well swear by every other thing presented to them for oath of office. From all indications other holy books or objects may likely make the same provisions.

<sup>29</sup> See The Guardian newspaper of July 3, 2009, 51 where a legislator (politician) was said to have posed nude while taking oath in a shrine at Ogun state, Nigeria. The essence of the oath was to make him not to go contrary to the agreement he had with his sponsors. He obviously took this oath more seriously than the oath of office/Allegiance.

families or towns notwithstanding their preaching of “do as I say, not as I do”. This is the evidence that Christianity has not fully permeated our society. So what is contained in the oath of office and of allegiance is Christian based for which reason it has not been fully appreciated as to be conscious of its implications and weight. This is why it does not sear the conscience of the taker in our society.

If our society has fully appreciated its (oath) implications, it would have translated to public morality of our people. To pattern the attitude, orientation and behaviour of people in accordance with their oath of office or allegiance we have to inject some moral standards into public office. This could be done by (a) better education so that public service morals should be inculcated in our children and future generation; (b) public opinion should be made to be pure and unbiased at all times.

In fact, in traditional African society, if evidence at a tribunal’s disposal was insufficient or contradictory the surest resort was to the supernaturals via the Oath and the Ordeal. So the oath and ordeal systems were rules of evidence. They were systems which depicted the level of sophistication of the particular societies. The oath was essentially the normal mode of proof in disputes about property and complemented by the ordeal in the proof of criminal accusations. In this paper the writer is not concerned with ordeal because it is unconstitutional.

#### **4. TYPES OF OATHS?**

There are various types of oaths prescribed or necessitated by events and circumstances. In all political systems that claim to be democracies, oath of office or affirmation of its terms is constitutionally provided as the legal instrument for empowering people elected or appointed to managerial or executive positions in the public office / service to exercise the authority and functions of their respective offices.<sup>30</sup> It is this type of oath or perhaps affirmation that this work is concerned with. The universality of oath of office indicates its acceptance as an instrument conferring authority on individuals to exercise the authority and power of a public office. Its contents basically underscore the existence of a contract between public officers and those under their authority.<sup>31</sup>

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<sup>30</sup> *Op cit fn 9.*

<sup>31</sup> *Ibid at 95.*

Apart from oath of office there are other forms of oath. They vary from place to place; the pagan *Fulani* swore by lightning; the *Mbarawa* swore by a sacred sword, which was expected to magically slay the accused if he was lying. Other tribes such as the *Jukun* associated oath with the gods – the *Jukun* swore by *Echu* the god of lightning, and the *Yoruba* by *Ogun*.<sup>32</sup> Among the *Igbo*, *Ofo* is an instrument of Oath. It is a sacred symbol in the form of a small wooden club, sometimes bound with iron. The head of each lineage in Igboland is the rightful custodian of *Ofo*. It is a symbol of authority and innocence and by it an unknown criminal maybe cursed or a man suspected of crime may swear his innocence”,<sup>33</sup> but cannot be used by woman.

Oaths are also taken in judicial process and proceedings. Affidavits are backed by oaths. This should comply with *Section 13 of the Oaths Act* and *Schedule 1* thereto.<sup>34</sup> In a judicial proceeding witnesses are made to swear to an oath or solemn affirmation to give evidence in court truthfully. This is when the person objects to taking of an oath on the ground that he has no religious belief or that the taking of an oath is contrary to his religious belief. According to **Martin Ross**, “An Affirmation is just as binding as an oath in the event of perjury”<sup>35</sup>

In our courts, the Holy Bible, the Holy Qu’ran and Juju (in the form of gun, iron, wood etc) are used to swear before giving evidence. It is for this that we have sworn evidence and unsworn evidence in our Evidence Act. Where a witness’ real testimony in Court contradicts or is inconsistent with the previous extra – judicial statement, the court should not only regard the sworn oral testimony as being unreliable but also the previous statement whether sworn or unsworn as not constituting evidence on which it (the court) can act.<sup>36</sup>

Indeed, a prohibition on killing is central to the pre-Christian fount of Western medical ethics – the *Hippocratic Oath*.

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<sup>32</sup> Meek, **A Manual of Nuer Law** (London: Oxford University Press, for International African Institute, 1954)219’ see generally Prince E.K. Quashigah, **Reflections on the Judicial Process in Traditional African**, *The Nigerian Juridical Review*, vol 4, 1 at 8.

<sup>33</sup> M. M Green, **Igbo Village Affairs** (London; Frank Cass & Co Ltd). 1964, 132.

<sup>34</sup> See *New Nigerian Bank Plc v IBW Enterprises Nig. Ltd* (1998)6 NWLR [pt 554]446; *Ojibara v Gov. Kwara State* (2005)1FWLR [pt.243]39.

<sup>35</sup> M. Ross, **Handbook of Everyday Law**, New York: Fawcett Crest 1975,30.

<sup>36</sup> *Obri v State* (1997)7 NWLR [pt.513]352; *Onuoha v State* (1998)5 NWLR [pt.548] 118 C.A.

*“To please no-one will I prescribe a deadly drug nor give advice which may cause his death. Nor will I give a woman a pessary to procure abortion”.*<sup>37</sup>

And the modern reaffirmation of that Oath by the (arguably post-Christian) Declaration of Geneva, states:

*“I will maintain the utmost respect for human life from the time of conception; even under threat, I will not use my medical knowledge contrary to the laws of humanity”.*<sup>38</sup>

And many non-believers recognize the right of human beings not to be intentionally killed.

## 5. HISTORY OF OATH TAKING

Oath and Oath-taking have been practiced by Africans from time immemorial but we have to recall that in England, oath was introduced by Equity which **John Seldon** remarked somewhat cynically that “Equity is a roguish thing----”. At this time when a petitioner comes before the chancery, the Chancellor after duly satisfying himself that a cause of action was disclosed would direct the attendance of the defendant to respond to the petition. Since such petitions were not backed by royal writs, such as were employed in the common law courts, the Chancellor had to devise an alternative means of securing the defendant’s presence. This was achieved through the instrumentality of the *sub poena* which is an order addressed to the defendant directing him to appear before the Chancellor or forfeit a sum of money during the ensuing proceedings. The defendant would be required to respond on oath to the plaintiff’s complaints. So oath and writ were introduced by equity. Equity we know was concerned with conscience. So would want you just to admit not for equity to impound on your estate like the common law does.

The religious root of oath-taking emanated from the reality of human fallibility and the belief in God as the Supreme Being whose judgments and actions are never fallible or subjectable to any other authority. This is because in God’s case, there is no appeal. The practice is true of all known cultures. However, it differs in form and demands.<sup>39</sup>

The roots of oath of office could be traced to the social contract between leaders and the led and the religious practices whereby individuals invoked God as the witness to

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<sup>37</sup> J.K. Maso & R.A. Mccall Smith, **Law and Medical Ethics** (4<sup>th</sup> ed.) 1994, 429

<sup>38</sup> *ibid* at 430.

<sup>39</sup> *op cit* 99.

their faithfulness and truthfulness in respect of declarations made on a subject.<sup>40</sup> In fact, during the commemoration of the founding of the **Othman Dan Fodio** empire, one of the values highlighted was the control by religious leaders of Sultans on behalf of the people.

Some ancient tribes such as the Germanic, Greek, Roman and Scythian tribes swore by their swords or other weapons. In essence, that practice primarily involved invocation of a symbol of power of a war god as a guarantee of their trustworthiness, thus indicating the religious intent behind such acts.<sup>41</sup>

Similarly, *the Nuer of Sudan* ‘may at any time lick a spear or metal bracelet as a sign that he is speaking the truth.’<sup>42</sup> In that context also, their god of war is believed to be the witness.<sup>43</sup>

Some scholars have traced the origin of swearing of an Oath before divine symbols to be the Sumerian civilization<sup>44</sup>. In that respect, an *Iranian* god called *Mithra* was, for example, regarded as the god of contracts (that is the guardian of Oaths and truth)<sup>45</sup>.

The Old Testament in the bible is replete with instances of Oath taking in the ancient Jewish society. It has been noted that the Hebrew term **Shev’ah (oath)** comes from the same root as the number seven, which refers back to a vow in which seven ewe lambs were used as witnesses that the patriarch Abraham made with the Philistine King, Abimelech<sup>46</sup>. It was applied in confirming covenants<sup>47</sup>; deciding controversies<sup>48</sup>; affirming allegiance to a “sovereign”<sup>49</sup>; binding one to performance of a particular act<sup>50</sup> etc.

In Islam, oath-taking is also in practice. It has been noted that ‘a Muslim may make a **qasam** (oath), in which he swears for example, upon his life, soul; honour or

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<sup>40</sup> *ibid* at 98.

<sup>41</sup> *The New Encyclopedia Britannica, Vol VII, 1975, 458, ibidi, 98.*

<sup>42</sup> *E. Evans, Pritchard, Nuer Religion, Oxford: The Clarendon Press 1956, 297, as quoted by Prof. Israel Okoye op.cit at 99.*

<sup>43</sup> *ibid* at 99.

<sup>44</sup> 4<sup>th</sup> – 3<sup>rd</sup> Millennium B.C.

<sup>45</sup> *The New Encyclopedia Britannica op cit.*

<sup>46</sup> *ibid* Genesis 21.

<sup>47</sup> Genesis 26;28; 1Samuel 20:12ff

<sup>48</sup> Exodus 22:11

<sup>49</sup> 2King 11:4

<sup>50</sup> Genesis 50:25; Joshua 2:12

faith'. Its gravity is highlighted in the remark to the effect that because 'the **qasam** is primarily a pledge to God, a false oath is considered a danger to one's soul'.<sup>51</sup>

Among the Igbo of Nigeria, Oath taking is the highest step an individual could take in affirming his faithfulness on a promise and truthfulness in respect of views expressed on an issue. In this regard, a person notes that in the process of investigating cases that are considered intractable, "appeal is made to a supernatural tribunal which is the last court of appeal". He further notes that "this appeal to the supernatural tribunal takes the form of swearing. The accused may swear his innocence upon invoking a powerful oracle".<sup>52</sup> This in fact is what also obtains in Edo State for which reason the good Nigerian swore by juju (Iyalala).

## 6. WHAT IS JUJU?

"Juju is nowhere defined in the Black's Law Dictionary.<sup>53</sup> However, it is found in the Longman Dictionary of Contemporary English as a type of West African magic involving objects with special powers<sup>54</sup>. Juju is a metaphysical and mysterious phenomenon that lacks empirical verification. Sometimes it is magical, mystical and spiritual.<sup>55</sup>

From the provisions of the Criminal Code<sup>56</sup>, it appears that 'juju' is a god that is capable of being worshipped or a substance like drug or charm possessing some powers to do something or cause a phenomenon to happen in a supernatural way. Witch or witchcraft has the same connotation. From the way 'juju' and witchcraft are described in *Section 207 of the Criminal Code* and the court's pronouncement in *Rv Udo Aka Eka Ebong*<sup>57</sup> it appears that both mean the same thing and can be used interchangeably.<sup>58</sup>

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<sup>51</sup> *op.cit.*

<sup>52</sup> *F.U. Okafor, Igbo Philosophy of Law, Enugu: Forth Dimension Publishers, 1992, 9. see generally Prof. Canon Okoye op. cit. 98.*

<sup>53</sup> *See Black's Law Dictionary 6<sup>th</sup> edn. and Centennial Edition (1891-1991).*

<sup>54</sup> *Chris Fox et al, Longman Dictionary of Contemporary English, 3<sup>rd</sup> edn Longman London 1995, 765,*

<sup>55</sup> *Borokini, The Admissibility of Juju in Nigerian Courts Journal of Public & Int'l. Law, I.U.O. vol 1 No. 1 Feb. 2005, 90 at 92.*

<sup>56</sup> *See Sections 207 – 213 of the Criminal Code.*

<sup>57</sup> *(1947) 12 WACA 139. See also R v Odo & ors. (1938)4 WACA 71; R v Gadam (1954)14 WACA 442; R v Nwaoke (1939)5 WACA 120.*

<sup>58</sup> *Borokini op cit, 92.*

It is note worth that juju (witchcraft) is referred to in the Holy Bible. The Bible<sup>59</sup> refers to “witch”, “wizard,” witch-craft in derogatory and condemnable terms as evil and wicked<sup>60</sup>. The *Fraudulent Mediums Act 1735* and the *Witchcraft Act 1735* both of England, punished people who pretend to exercise any kind of witchcraft, sorcery or conjuration<sup>61</sup>.

According to **James Neal**, an investigation officer in Gold Coast (Now Ghana) who was a victim of strange happenings and later developed a mysterious illness which defied medical prognosis:

*“There is not a shred of doubt in mind that the Africa today has, in his own mysterious ways, harnessed one of the strongest powers of all --- the thing they call JUJU---”*<sup>62</sup>

Professor **Bolaji Idowu**<sup>63</sup> spoke about African Magic or charm which upon incantation being said upon it make a woman to give consent instantly to a man’s proposal. **Lamikanran Rotimi**<sup>64</sup> also described a situation sometime in 1979 when some students went and swore before an oracle to the effect that whoever stole an article (money) should confess within three (3) days. On the third day, one of he students ran about naked confessing that he was the one who stole the money. Also **Borokini T** wrote of his personal encounter with juju when he was in the Secondary School in 1977.

In his words, some students who were his colleagues stole, killed and ate a goat that strayed into their school premises. The owner of the goat, an old man in the neighbourhood, got to their school premises and promised to deal with the ‘robbers’. Two weeks after the incident, they started their promotion examination. During the examination something strange happened; one of the thieves who stole the goat wrote “ I stole a goat” - in all his examinations.

The above shows the reality of “Juju” in Africa. However, by the Acts of 1735 it follows that the colonialists know about juju as well as witchcraft and infact practice them. The ceremony concerning and effecting the Olympic Torch which is lit to mark the preparations and commencement of **Olympic Games** seems to go back to the earlier

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<sup>59</sup> *Leviticus 20:6,27; Kings 9:22; Exodus 22:18.*

<sup>60</sup> Borokini op cit.

<sup>61</sup> *See generally Borokini 93.*

<sup>62</sup> *ibid 92 – 93.*

<sup>63</sup> *Bolaji Idowu, African Traditional Religion – A Definition, SCM Press, 1978, 194-195.*

<sup>64</sup> *Lamikanran Rotimi, in an article Published in the Journal of LAWSA of the University of Ife, vol. 7, 1979-81,6.*

Greek period when the Olympic Games had a religious setting.<sup>65</sup> A careful observation of the ceremony during the last Olympics in Greece confirms their practice of *juju*.

## 7. WHAT IS CORRUPTION ?

To be corrupt is to fail to follow accepted standard of behaviour or the willingness to act dishonestly or illegally purposely for personal gains.<sup>66</sup> According to *Transparency International* “corruption involves behaviour on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves or those close to them, by the misuse of public power entrusted to them”.<sup>67</sup> Also **Bairamina J.** laid down in the case of *Biobaku v Police*<sup>68</sup> a working definition of corruption. He said:

*The mischief aimed at by Section 98 of the Criminal Code is the receiving or offering of some benefit, reward or inducement to sway or deflect a person employed in the public service from the honest and impartial discharge of his duties – in other words as a bribe for corruption or its price.*

The Nigerian Criminal Code<sup>69</sup> states that an offence of corruption is committed where a public officer corruptly asks, receives or obtains any property or benefit. On another note the **Corrupt Practices And Other Related Offences Act**<sup>70</sup> declares that corruption “includes bribery, fraud and other related offences. Corruption comes in various forms, shapes and colours”<sup>71</sup>. It is not only Nigerian problem but a global problem. The only difference is that some countries appear better than others in terms of degree.

The Nigerian Criminal Code followed the English Draft Code of 1879 after the report of Commissioners made up of **Lord Blackburn, Barry J., Lush J., Stephen J.** The introduction of any Criminal Code in any society must introduce in its wake some concept of values and morals, these values and morals are what the code think are good for the society in which they live. These must have contributed to the continued existence, peace, unity, progress and love in the society before the time of such code. In the case of the Criminal Code, whilst some of these values are universal, like punishment

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<sup>65</sup> Alfred North Whitehead, **Religion in the Making**, New York, Meridian Books, 1960, 21.

<sup>66</sup> Taiwo Osipitan et al, **Structuring Measures Against Corruption for Sustainable Development**, NALT Proceedings of 38<sup>th</sup> Annual Conference, LASU April 23-26, 2002, 331.

<sup>67</sup> <http://www.adb.org/Documents/Policies/Anti-Corruption300>.

<sup>68</sup> (1951) 2 NLR 30

<sup>69</sup> See Section 2 of the Criminal Code Act Cap C38 LFN, 2004. See also Sections 98-102 Criminal Code Act Cap C38 LFN, 2004 which deal with Corruption and kindred Offences.

<sup>70</sup> **Corrupt Practices And Other Related Offences Act** Cap C 31 LFN 2004.

<sup>71</sup> See *R v Olukolu* (1939)5 W.A.C.A. 118, *Fasaye v Bayulaiye* (2003)4 WRN 33.

for theft or murder, some are peculiarly alien to our society even now. Some of them are so alien that they remain in the statute books only to be obeyed in breaches.<sup>72</sup>

According to **Dr Akinola Aguda** in his book *The Criminal Law and Procedure of the Southern States of Nigeria*, he had this to say:

*The most serious defect of the Code, perhaps lies in the various sections relating to Corruption and Abuse of Office, a class of offence which comes with distressing frequency before the courts. In this sphere it is not easy to define both precisely and comprehensively the acts of omission which ought, in the interest of society to be punishable, and on a number of reported cases show the difficulties which confront those responsible for the administration of the law. **It does not make for public respect of the law if an accused person is acquitted merely because he was charged under the wrong section of the code, and while in some cases, the fault has lain in leaving the charge to be on inexperienced police officer. The Code itself is not easy for the trained lawyer to master as regards this class of offence.***<sup>73</sup>

Since after the introduction of the Code some other Laws have been enacted to combat corruption still without success. Examples are *Economic and Financial Crimes Commission (Establishment) Act (EFCC)* of 4<sup>th</sup> June, 2004; *Money Laundering (Prohibition) Act, 2004*; *Advance Fee Fraud and Other Fraud Related Offences Act, 2006*. All these have not shown any sign of a remedy. It has been this same corruption that led **Major Chukwuma Kaduna Nzeogwu** and his co-plotters to plot a take over of Nigerian Government on the 15<sup>th</sup> day of January, 1966. This led to the Nigeria – Biafra War that claimed many lives and property. The wounds of the war still linger in the minds of the people of Nigeria. Just as **Winston Churchill** said: “democracy is the worst form of government except all the others that have been tried”<sup>74</sup>, Nigerians have seen the worst of military governments, so should nurture democracy for the benefit of the future generations.

In a broadcast on radio Kaduna, Nigeria on the said 15<sup>th</sup> January, 1966 **Major Chukwuma Kaduna Nzeogwu** spelt out the general aim of the coup when he said among other things:

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<sup>72</sup> Hon. Justice A. Ademola, **Problems of Public Accountability – Nigerian Experience**, 2<sup>nd</sup> Anambra State Law Conference, 1988, 7-9 Dec, 1988, 3-4.

<sup>73</sup> Aguda A; *Criminal Law and Procedure of the Southern States of Nigeria* 434-35. This brings about the phenomenon of “Law is an ass”. see for instance the case of *Umani v State* (1988) NWLR [ pt. 70] 274 per **Nnamani JSC** at 286; *Emmanuel Ebiri v State* (2004) 11 NWLR [pt. 885] 589 per **Niki Tobi JSC**.

<sup>74</sup> Winston S. Churchill, *Speech Before the House of Commons (Nov. 11,1947)* in 7 Winston S. Churchill: *His Complete Speeches, 1897-1963*, at 7566 (Robert Rhodes ed., 1974). as cited by Keith Y. Cohan in *Texas Law Review* vol. 87 No.5, April 2009, 1009 at 1032.

*The aim of the Revolutionary Council is to establish a strong, united and prosperous nation, free from **CORRUPTION** and internal strife. Our method of achieving this is strictly military, but we have no doubt that every Nigerian will give us maximum co-operation by assisting the regime and not, repeat not, disturbing the peace during the slight changes that are taking place -----<sup>75</sup>*

*My dear countrymen, you will hear and probably see a lot being done by certain bodies charged by the Supreme Council with the duties of national integration, supreme justice, general security and recovery ---  
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One of the 10 points of the **Nzeogwu's Revolutionary Council** was:

*“You are hereby warned that looting, arson, homosexuality, rape, embezzlement, bribery or **CORRUPTION**, obstruction of the revolution, sabotage, subversion, false alarm, and assistance to foreign invaders are all offences punishable by death sentence.”<sup>77</sup>*

After the 10 points he continued by saying:

***Our enemies are the political profiteers, swindlers, the men in the high and low places that seek bribes and demand ten percent, those that seek to keep the country divided permanently so that they can remain in office as ministers and VIPs of waste, the tribalists the nepotists, those that make the country look big for nothing before international circles, those that have corrupted our society and put the Nigerian political calendar back by their words and deeds”.**<sup>78</sup>*

It is doubtful if any lesson has been learnt by Nigerians in view of the above previous experiences. At exactly 6.30.p.m. on February 23, 1966, **Isaac Jasper Adaka Boro**<sup>79</sup> with his lieutenants left their Tontonbau Camp advancing the course of the Niger Delta Volunteer Service. Corruption is not far from the main reason for their agitation for Niger Delta Republic. As **Nzogwu** had his own “Republic” **Isaac Jaser Adaka Boro** had his own for twelve days.

There is no area of our national life where the corruption canker worm did not eat deep. Judiciary of all places was not spared not minding that they take an oath before they assume office also. Under the oath they swear that by the help of God, they will well and truly exercise the judicial functions entrusted on them and will do right to all manner of people in accordance with the laws and usages of our laws without fear or favour

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<sup>75</sup> Obasanjo O., *Nzeogwu*, Spectrum Books Ltd, 1987, 97. *Emphasis Mine.*

<sup>76</sup> *ibid* at 97.

<sup>77</sup> *ibid* at 98 *Emphasis Mine.*

<sup>78</sup> *ibid* at 99. *Emphasis Mine.*

<sup>79</sup> See *R v Boro* [1966]1 All N.L.R.266; [1967] N.M.L.R. 163

affection or ill will.<sup>80</sup> There have been occasions when the oath taken by the judges in Nigeria were questionable. This led to Justice Kayode Esho Commission in the judicial arm of government.

**Mr Justice Apaloo**, the longest serving indigenous Chief Justice of Ghana from 1977 to 1986 on his retiring on 9<sup>th</sup> January, 1986 after 26 years service on the bench made this poignant remark:

*The one great quality I would wish to see in my colleagues, is courage – they should be in a position to defend to the death, positions they believed to be right. Indeed fearlessness as a judicial quality is a constitutional requirement of all judges and magistrates. Upon appointment every judge is obliged by law to swear that he would do right to all manners of persons without fear or favour.*<sup>81</sup>

In the recent past there was allegation of gift of cars and more recently the allegation of alteration of judgment and of bribe before a particular judge. None of these were investigated and the result has not been made known to the Nigerian public. It has been drowned till date.<sup>82</sup> Now, Nigerians think of honour and integrity as a large obsolete virtue. The oath ties the performance of public office closely to “human honour and obligation”.<sup>83</sup> Honour is all the more important in a nation “lacking an established aristocracy”, in which the display of public virtue and trustworthiness is one of the few “proving ground(s)” available; “a source of stability in a contested political [and social] landscape”. [A] man of honour was defined by the respect that he received in public.<sup>84</sup> Oath ties the office holder’s personal honour to the conscientious performance of his duties linking him in **Alexander Hamilton’s** words, to “the restraints of public opinion” and “the jealousy and watchfulness of the people”.<sup>85</sup>

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<sup>80</sup> Hon. Justice J.N.K. Taylor, **The Concept and Problems of Public Accountability Under Ghana**, 2<sup>nd</sup> Anamrba State Law Conference, 1988, 7-9 Dec., 1988, II.

<sup>81</sup> *ibid* see (1983 – 86) 15 R.G.L. 10.

<sup>82</sup> See generally the cases of *Federal Republic of Nigeria v Chief Samuel O. Mbakwe, Chief Melford Okilo; and Alhaji M.I. Hassan between 1979-83* (unreported). Under Section 116 of the Criminal Code the duties of the officer concerned will always touch the administration of justice. Once the corruption affects justice in some way, the offence is considered much more serious, and the maximum is 14 years. By virtue of Section 19 of the Criminal Code the court has a power to order forfeiture of the bribe to the state once they are under Sections 99, 100, 112, 114, 115, 117, 126, 128 or 494 of the Criminal Code.

<sup>83</sup> Michael Stokes Paulsen, **The Constitution of Necessity**, 79 NOTRE DAME, L.R. 1257, 2004. see <http://www.law.northwestern.edu/lwreview/v103/n2/1067/LR103n2Horwitz.pdf> visited 19/06/09.

<sup>84</sup> Joanne B.F. Reeman, **Affairs of Honour: National Politics in the New Republic** (2001)

<sup>85</sup> *The Federalist No 70 at 477-79* (Alexander Hamilton) (Jacob E. Cooke ed. 1961).

Stop and imagine. If the crop of the top officials or office holders we have now were the people that fought and won independence for this country, what could have been left of this country? More than 95% of our resources would have been made personal or family property. Many Nigerians may not have survived. This will make us appreciate the sacrifices and selfless services of people like **the Rt. Hon. Dr. Nnamdi Azikiwe, Ahmadu Bello, Tafawa Balewa, Chief Obafemi Awolowo, Herbert Macaulay, Dr Akanu Ibiam, Chief M.I. Okpara** and many others. It is a notorious fact that most of them were unable to build a house anywhere in this country or overseas.<sup>86</sup>

Our educational system is on the verge of collapse because of corruption in both high and low places. This has made most countries reject our certificates. The school environments are not suitable for decent people and this is the reason why our students engage in all manner of indecent activities. Our officials do not tell the students and the nation the truth. What of the school feeding? It is no more? The Education Trust Fund's impact is not noticeable in our educational system. Rather our students and young ones are being used for assassination, tuggery, armed robbery, human trafficking, prostitution and many others. This is because the government does not have any plan to at least feign/pretend to give hope to the youth. There is nothing like merit now but connection or man-know-man or woman-know-man. Let there be change of course by trying oath of office/allegiance with everything. If elected or appointed officials swear to all these, there will not be bogus contracts or white elephant projects.

One of the problems of the nation that fuels corruption is election rigging. What is happening in Iran (June 2009) in the form of protests because of election rigging should not be wished Nigeria by her greatest enemy. However, Nigerians are too resilient for such, otherwise many lives would have been lost because of our multi-ethnic, multi-religious platforms and population density.

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<sup>86</sup> Today even ward councilor without any qualification can afford to go abroad for medical treatment while Supreme Court Justices, Professors and some other honest highly placed civil servants cannot afford even local treatment. Most politicians scatter estates in all cities without efforts. Legislators negotiate and appropriate/allocate salaries and allowances to themselves before any other business. This is why people win elections even when they are in custody. Political assassinations are the order of the day.

## 8. FUNDAMENTAL HUMAN RIGHT OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION.

The Constitution is a Social contract or agreement. Each individual, in obeying the general will merely obeys himself. This is because his individual will is merged in the general will. By the provisions of Nigerian Constitution there is freedom of thought, conscience and Religion<sup>87</sup>. However what has been effected by agreement can be undone by agreement – *eodem modo quo oritur, eodem modo dissolvitur*. Invariably, government inevitably constitutes the options of a free people. Even, in law, any contract tainted with duress or fraud would be voidable. So the social contract that resulted in the provision of *section 38 of the 1999 Constitution* is by the degree of corruption in Nigeria avoidable/voidable. Moreover, the oppressed and their oppressors cannot enter into contract any more than sheep and lions could. Even if the pre-independence Constitutional Conferences resulted in a contract, corruption has wiped the Slate clean – the contract has been breached.<sup>88</sup> The law is not autonomous from society, and that law must evolve with and serve social needs. Government and Law merely reflect the other activities of society, most of them in surprisingly clear details.<sup>89</sup> It is our duty to bring into law the community's sense of right because law is a reflection of social processes and it functions to serve social needs. The conception of law is as a means to social ends and not as an end in itself.

A law is not law merely because it bears that label. It becomes law only if it satisfied the basic norms of the legal system of the country/place and receives the stamp of validity from the law courts or people.<sup>90</sup> In Benin City the **Oba** 'proclaimed' or ordered that no person should roast yam in the city to avert incessant accidents at some points in Benin City. For over 15 years, no body has roasted yam but plantains or / and cocoa yams. This is legitimacy and stamp of validity. Neither Christians, Muslims nor pagans disobeyed this proclamation/ order. They knew the consequences of disobeying. All have given up their right to the enjoyment of roasted yams as a 'price of society'. This brings about "a politics of solidarity," where "citizens belong to a single society and

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<sup>87</sup> *Section 38 of the Constitution of the Federal Republic of Nigeria, 1999*

<sup>88</sup> *Peter C. Adigwe My Philosophy of Law for Nigeria, The Barrister UNEC, May 1973, 2 at 7.*

<sup>89</sup> *Leon Green, My Philosophy of Law GUILD REV. Oct. 1941, 10 at 12 cited by Brian Z. Tamanaha, Understanding Legal Realism, Texas Law Review, March 2009 vol. 87 No. 4,731 at 756.*

<sup>90</sup> *See Jilani v Govt. of Punjab Pale L.D. (1972) S.C. 137 at 261 per Sajjad Ahmat J. See also Oppenheimer v CatterMole (1975) 2 All E.R. 538, at 571-2.*

share a common fate”<sup>91</sup> This “cluster of attitudes towards fellow citizens” is “a sense of common nationality”.<sup>92</sup> No society can function well without reciprocal sacrifices. Also politics should be practical, and practical politics should mean a lively interest in the affairs of our country, and a contribution to the daily life of the society in which we live.

Taking all oaths at the same time before the assumption of office should be seen as ‘price of society’ and because mankind has a need of society, the price must be paid. A society has an undeniable right to stand against internal and external danger in any way it deems fit. The moral judgment of society will be ascertained by reference being made to the judgment of “right – minded man” (not to be confused with “the reasonable man”) and not the majority. Let the judgment of the right-minded man prevail and, for the purpose of the law, let immorality (corruption) be thought of as a ‘seamless web’, which will collapse unless the community’s vetoes are enforced by law.<sup>93</sup>

The claimed content of the rights of citizens as we have in *Section 38 of the 1999 Constitution* has a direct bearing on the powers of state institutions. Rights are defined by reference to those powers and can be understood only in the context of the same state – based on integrity which is essential to understanding of the relationships between institutions themselves. The core idea of reality is one, which sustains and is sustained by integrity.<sup>94</sup> In any institution, there are certain ideas (intangible to describe), certain conceptions, certain values of what the institution ought to embody and embrace, which should form the moving spirit that animate the institution. Thus in addition to the institution of democracy, there ought to exist the “*democratic spirit*” that invisible and intangible spirit without which the institution cannot be properly run.<sup>95</sup>

The constitutional provision that only the Bible should be used by Christians, Qu’ran by Muslims and gun/iron by the pagans as an instrument of oath from independence should stop, although we have been obeying it to avoid scandal.<sup>96</sup> Since

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<sup>91</sup> Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (2001), 300. see generally Abner S. Greene op cit at 971.

<sup>92</sup> Ibid at 80.

<sup>93</sup> L.B. Curzon, **Q & A. Series on Jurisprudence** 3<sup>rd</sup> Ed. Ch. 14 Cavendish Publishing Ltd., 2001,318-319.

<sup>94</sup> T.R.S. Allen **Law, Liberty and Justice** (1993)44-47.

<sup>95</sup> The Honourable Chukwudifu Oputa, **Democracy: What is it all about?** Democracy and the Law being paper presented at the 2<sup>nd</sup> Conference of the Body of Attorneys General in the Federation, Held in Abuja 9<sup>th</sup> – 12<sup>th</sup> Sept., 1991, 32 at 33-34.

<sup>96</sup>Summa Theologia, II a IIae q----a----

corruption is crippling the nation, we should rebel against it because the whole moral basis of the society is at the risk of being overthrown. There will be more social cohesion if we do away with corruption to come above poverty line which the society for now is under/below. This will make the constitution/law have the expected human face.

The purpose of law is for social control and for survival. Corruption in Nigeria has made Nigerians not to know what is meant by *freedom from want and dependence, freedom from poverty and destitution and freedom from illiteracy and ignorance* so that everyone, irrespective of accident of birth as Nigerians, or possession of wealth, should have equal opportunity for economic gain, self advancement and self fulfillment. This in practical terms is the content of the *Freedom* known as *Equality before the Law* which should be conspicuous badge of democracy in developing countries, Nigeria inclusive.

The only safe rule for doing justice between man and man in a democracy is to assume that all men are equal and that the resources of the nation should be at the disposal of all in the country. Also the whole foundation of political system in a democracy such as ours should be of rights and equal opportunity for all, under the constitutions and other laws.<sup>97</sup> However, Laws will affect different religions differently, but it is “a mistake” to claim that such disparate impact “is a sign of unfairness”.<sup>98</sup> Out of the former Governors arrested by the EFCC, how many have been convicted and how many are still being prosecuted?<sup>99</sup>

With respect to conscience, how will it be possible and proper for the electorate to have conscience and show it in their dealings with the elected when the elected treat the electorate with contempt and ignominy from the point of their assumption of office. The elected officials take all that belong to the entire society without remainder. This leaves the citizens without right to food, shelter, water, roads, health facilities, light and education. Of what benefit then is the right to freedom of conscience, thought and religion in the Nigerian context? It is a similar constitutional right that necessitated **Justice T. A. Aguda’s** lamentation as follows:

*“Can we imagine a greater torture for an able bodied man or woman than to wake up in the morning and not have the smallest clue as to how or where he is*

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<sup>97</sup> Ibid at 41

<sup>98</sup> Barry *op cit* at 34.

<sup>99</sup> See for instance the *Guardian Newspaper Tuesday Feb., 12, 2008, 1.*

*going to find a meal to eat the whole of the day, not to talk of the day after? I take it as inhuman and degrading for an able bodied man or woman willing and able to work to find himself or herself a victim of unabated and frustrating prolonged unemployment. Such a situation leads progressively from optimism to pessimism and from pessimism to fatalism, accompanied by a dreadful feeling of insecurity, of complete economic helplessness and failure. When that stage of economic helplessness and failure is reached that surely must be a stage of torture.<sup>100</sup>*

Our elected/appointed officials see and recognize the citizens more as possessions, or ‘assets’ than people. In all, what conscience can a poor hopeless person have when the person he elected into office has made barren and sterile the future generations of Nigerians. If he is cheated of his right to conscience, thought and religion, he would certainly prefer to leave the matter in the hands of God and gods than allow himself to be deluded in believing that there is something called constitutional right or fundamental human right. This is to live in a fool’s paradise. It is this that made **Justice T.A. Aguda** say:

*“- - - The practical actualization of most of the fundamental rights cannot be achieved in a country like ours where millions are living below starvation --- in the circumstance of this nature fundamental right provisions enshrined in the constitution are nothing but meaningless jargon to all those of our people living below or just at starvation level ---”<sup>101</sup>*

In the same vein, the former Chief Justice of India, **Mr Justice Bhagwati** observed in a case that:

*“--- The large majority of people who are living in almost subhuman existence in conditions of abject poverty and for whom life is one long unbroken story of want and destitution the notions of individual freedom and liberty though representing some of the most cherished values of a free society would sound as empty words bandied about in the drawing rooms of the rich and well to do and **the only solution for making these rights meaningful to them is to remake the material conditions and usher in a new socio-economic justice which will inform all institutions of public life so that the preconditions of fundamental liberties for all may be secured.**<sup>102</sup>*

To know if corruption would be reduced to the barest minimum let Nigerians try Oath of Office and Allegiance with the Holy Bible, the Holy Qu’ran and *juju* at least for a change. This is because the oath is “a mutual covenant” between the elected or appointed official and the citizenry. *People will know good government because they will see it in their roads, schools, homes, hospitals and other places.* The citizens do not know good government because the elected and appointed officials sit and forget the citizens

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<sup>100</sup> Justice T.A. Aguda, “A New Perspective in Law and Justice in Nigeria”, *National Institute for Policy and Strategic Studies, Kuru. Distinguished Lecture Series October 25, 1985,9.*

<sup>101</sup> Aguda A., **Judicial Process and Stability in the third Republic**, *National Concord November 7, 1987,7.*

<sup>102</sup> Cited from Aguda, *op.cit.* *Distinguished Lecture Series, 1985, 9-10, Emphasis Mine.*

when benevolence cracks the kernel of life for them. Laws are a form of expression of social ideas, and therefore must adapt as social ideas change.<sup>103</sup> *Section 38 of the 1999 Constitution of Nigeria* should not be made the dinosaur of modern life where credibility, honesty and accountability do not come first. Law must be receptive to, infused by and permeable to morality and politics produced by society, and attentive to the purposes and needs of society.<sup>104</sup> This will usher in emollient relationships and sentiments in national affairs.

The Roman Maxim *ubi societas ibi ius*, that law is found in every human society merely expresses an eternal truth. The human society is more than a mere aggregation of human beings. Reflective of that inherent sociability which characterizes man is the concomitant resort to some form of political organization for orderly and patterned behaviour and achievement of societal goals.<sup>105</sup> The felt necessities of the society and the imperative of co-existence generate norms of behaviour consisting of positive prescriptions and negative prohibitions of conduct.

In the words of **Professor D.P.O' Connel**,

*“Law is a spontaneous generation from the needs and aspirations of man in community”.*<sup>106</sup>

The need may, and often does, arise to reconcile conflicting demands on the members of that society. **Hooker** puts it thus graphically:

*“Suppose that tomorrow the power that hath dominion in justice requires thee at the court; that which is war, at the field; that which in religion, at the temple: all have equal authority over thee, and impossible it is, that thou shouldest be in such case obedient to all: by choosing any whom though wilt obey, certain thou art for thy disobedience to incur the displeasure of the other two”.*<sup>107</sup>

## 9. CONCLUSION

One of the obstacles to our success in the war against corruption has been greed and misplaced value system. Money is now everything. The end now justifies the means.

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<sup>103</sup> William Draper Lewis, **The Social Sciences as the Basis of Legal Education**, 61 *U.P.A.L.Rev.* 531,532-33 (1913).

<sup>104</sup> John F. Dallon, **Our law: Its Essential Nature and Ethical Foundations and Relations**, 3 *Counsellor* 99, 103 (1895).

<sup>105</sup> Ciceror, **Do Re Publica**, 1,25,34 III, 33, 45.

<sup>106</sup> D.P.O.' Connel, **International Law**, 2<sup>nd</sup> Ed. Vol. 1, Stevens, London, 1979, 3.

<sup>107</sup> Hooker, **Ecclesiastical Polity**, VIII, ii, 18; Okere, *Evolution of the Concept of Sovereignty*, Lecture Note, UNEC, 1.

Again the provision of *section 38 of the 1999 Constitution* may be used by many as a shield not a sword for fighting corruption. We have to know that law is not devoid of purposes rather it has to be understood that law is “all means and no ends”.<sup>108</sup> It was for this that **Lon Fuller**, resident jurisprudent at the Harvard Law School, asserts that “If it (Law) is empty of ends the law can hardly be attractive in the means it employs”.<sup>109</sup> Whenever there appear to be a conflict between what the law dictates and what justice demands, we should attempt to resolve the apparent conflict in favour of justice to all, as intended when oath of office or allegiance was introduced. Because the law is, if you will, the part of politics of religion should be down played for the survival of the society.

In fact, **Professor Rostow** tells us that the law is a living institution capable of learning from its own mistakes. Its deficiencies can be acknowledge and, at the same time, discounted by the laws own regenerative powers. As one radical critic sarcastically puts it, “Law therefore modestly suggests that it is *all-changing*, yet always *constant*; it is both *all knowing* and *all seeing, old and new combined*.”<sup>110</sup> We should not make our laws the escape goat of our malaise. Battle against corruption should be seen as the “mother of all battles”. In view of this, we should not spare any option. For the present, one cannot see beyond the horizon; but gazing at the distant horizon, one may well murmur the prayer of the poet:

“God give us men – a time like this demands –  
 Stout hearts, strong minds, true faith, and willing hands –  
 Men who will not be bought or sold;  
 Men who in their inmost heart are pure and true;  
 Men who do not fear to call sin by its right name;  
 Men who will stand for the truth though the heavens fall –  
 Men of courage and discernment –  
 Strong in purpose –  
 Straight in deeds -“<sup>111</sup>

We should allow our resources liberate us not to imprison us. The person to be elected or appointed must be *man-of-the-people* and the philosophy should be *you-chop-I-chop* as said by **Chinua Achebe**. Our misplaced value system should be corrected in the interest of the future generations. “--- it’s a lot better to initiate change while you can...”<sup>112</sup> We have to also remind ourselves that “The Lord changeth not what is in people until the people change what is in them”.<sup>113</sup>

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<sup>108</sup> Lon Fuller, *Anatomy of the Law* (New York: New American Library, 1969,) 11.

<sup>109</sup> *ibid.*

<sup>110</sup> Kenneth Cloke, *The Economic Basis of Law and State* in Robert Lefcourt, ed., *Law Against the People* (New York: Vintage, 1997), 76.

<sup>111</sup> Folarin Coker, op cit. at 92.

<sup>112</sup> Spencer Johnson, M..D. *Who Moved My Cheese?* G.P. Putnam’s Sons, New York, 1998, 83.

<sup>113</sup> The Holy Qu’ran as quoted by Prof I.C.I. Okafor on the 28<sup>th</sup> Nov., 1992, Nnamdi Azikiwe University, Awka, when it held a special convocation for the conferment of the honorary degree of Doctor of Laws (LL.D) on The Rt. Hon. Dr Nnamdi Azikiwe. Being the first paragraph of the citation by the University Orator. 1.