

# A CRITIQUE OF THE SEPARABILITY THESIS IN THE CONTEXT OF AN AFRICAN JURISPRUDENCE

IDOWU, William Oluwunmi Oladunni  
B. A. PHILOSOPHY (FIRST CLASS HONS.) (IFE, 1992);  
M. A. PHILOSOPHY (IFE, 1998)

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AUTHOR: IDOWU William Oluwunmi

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#### ABSTRACT

The study examined the positivists' view that law and morality were conceptually separable in the light of the nature and substance of an African jurisprudence. This was with a view to understanding the controversy in jurisprudence over the relation between law and morality.

The methodology involved a critical analysis of such concepts on the nature of the relation between law and morality in African jurisprudence as complementarism, epiphenomenalism, assimilationism and accommodationism. Theories in Yoruba social and political thoughts such as the *ebi* theory, *iwa* theory, *imperial* theory, *Roman Empire* theory and the *original ancestor* theory were reviewed.

The results showed that legal positivist's separability thesis was open to some semantic confusion, such as the confusion over conceptual dissimilarity and conceptual separability, and endless emendations which rendered the thesis difficult to understand. The study also observed that many positivists did not even agree on the exact meaning of the thesis, which explained the division between inclusive and exclusive positivism. Exclusive positivism contended that laws did not necessarily satisfy the demands of morality, while inclusive positivism asserted that laws reproduced certain demands of morality. While inclusive positivists were divided over whether morality was a necessary or sufficient ground for legal validity, exclusive positivists were antagonists of inclusive positivists. It was also

discovered that the separability thesis was not generally entertained in the canons of African jurisprudence, which posited the complementariness rather than separation between law and morality. Finally, the study ascertained that dissimilarity between two or more concepts did not entail separation especially if the concepts in question were complementary.

The study concluded that law and morality, in the light of African jurisprudence, were held to be complementary concepts in any legal system and to that extent inseparable.

**SUPERVISOR:**                      **DR. MOSES OKE**  
**CO-SUPERVISOR:**                **DR. ADEMOLA POPOOLA**  
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