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**THE RIGHT TO PROPERTY IN NIGERIA:  
A REFLECTION ON THE LEGAL  
AND BIBLICAL LAWS**

**Introduction**

Haralambos and Holborn says that socialists such as William Chambliss (1976), Milton Mankoff (1976), Frank Pearce (1976: Pearce and Tombs 1993, Pearce and Woodiwiss 1993) and Laurcen Snider (1993) have used Marxist concepts to speak to provide a framework for understanding deviance in capitalist societies.<sup>1</sup> Drummond (1955) says: „the right of property is put down as the juridical fundament of a sound economic order”<sup>2</sup>. The title of ownership and distribution of wealth, and as well as division of property have been a source of bitter conflict between the capitalist and the socialists. But the fact still remains that distribution of property and wealth has been defeating the end which God intends- that it is laboring today under the gravest evils due to the huge disparity between the few exceedingly rich and the unnumbered poor

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<sup>1</sup> Haralambos, M. and Holborn, M. *Sociology: Themes and perspective 7 edition*, 2008, p.340

<sup>2</sup> Drummond W. F. *Social justice*, 1955, pp. 34-50

without property. The remedy is a distribution according to the norms of social justice. This paper seeks to look into the definition of the subject matter, brief history of property, types of property, loss of property, right to property ownership in light of the legal laws in Nigeria and the right to property in the light of the biblical laws and then conclusion. Man has the right to his property. So, he can have a legal suit against any who tries to forcefully take his property or destroy his property. Suffice it to say that even the poor and the underprivileged ones also have this just claim and right. There are so many definitions of right but on contextual basis, „right” according to Webster's New Encyclopedic Dictionary is defined as:

Qualities (as adherence to duty or obedience to lawful authority) that together constitute the ideal of moral property or merit moral approval. Something to which one has a just claim: as (a): the power or privilege to which one is justly, entitled (b) the interest that one has in a piece of property. The property interest possessed under law or custom and agreement in an intangible thing. Something that one may properly claim as due.<sup>3</sup>

Contextually, property according to Webster's New Encyclopedic Dictionary is viewed as:

a: Something owned or possessed; specifically: a Piece of real estate. b:The exclusive right to possess, enjoy, and dispose of a thing; ownership. C: Something to which a person or business has a legal titled: One (as a performer) under contract whose work is especially, valuable.<sup>4</sup>

However, in the light of the above, the right to property under legal and biblical laws is the power, a legitimate right vested in the owner of a means of production called property to use, enjoy and live by them, and as well taken

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<sup>3</sup> Webster's New Encyclopedic Dictionary, 2002, p.1582

<sup>4</sup> Ibidem, p. 1467

legal procedures against those who forcefully claim or destroys such property in either case.

### Historical Perspective of Property Ownership

In the accepted economic theories, the ground of ownership is commonly conceived to be the productive labor of the owner. This is taken, without reflection or question, to be the legitimate basis of property; he who has produced a useful thing should possess and enjoy it. With the socialists, it has served as the ground of their demand that the labourer should receive the full product of his labour. Not only is the productive labour of the owner definitive ground of his ownership today, but the derivation of the institution of property is similarly traced to the productive labour of that putative savage hunter who produced two deer or one beaver or twelve fishes. Thorsten says that the conjectural history of the origin of Property, so far as it has been written by the economists, has been constructed out of conjuncture proceeding on the preconceptions of Natural Rights and a coercive order of nature. The „natural” owner is the person who has „produced” an article, or who, by a constructively equivalent expenditure of productive force, has found and appropriated an object. It is conceived that such a person becomes the owner of the article by virtue of the immediate logical inclusion of the idea of ownership under the idea of creative industry.<sup>5</sup>

Production takes place only in society through the cooperation of an industrial community. There can be no production without technical knowledge; hence no accumulation and no wealth to be owned, in severalty or otherwise. Thorstein maintained that it will hold as rough generalization that in communities where there is no invidious distinction between employments, as exploit, on the one hand, and drudgery on the other, there is no tenure of property. In the cultural sequence, ownership does not begin before the rise of a

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<sup>5</sup>Thorstein, V. The Beginning of ownership. *American Journal of Sociology*, 4, 2015, p. 1898.

canon of exploit; but it is to be added that it also does not seem to begin with the first beginning of exploit as a mainly occupation. In these very rude early communities, especially in the propertied hordes of peaceable savages, the rule is that the product of any member's effort is consumed by the group to which he belongs; and it is consumed collectively or indiscriminately, without question or individual right or ownership.<sup>6</sup>

The earliest occurrence of ownership seems to fall in the early stages of barbarism, and the emergence of the institution of ownership is apparently, a concomitant of the transition, from a peaceable to a predatory habit of life. It is prerogative of that class in the barbarian culture which leads a life of exploit rather than of industry. Wycliffe Bible Dictionary says that possession of property by inheritance is best understood by comparing it with the pertinent Mesopotamian customs. Only those holding the legal status of sons were eligible to succeed to landed property. Wives and daughters were afforded some degree of economic security, as reflected in the code Hammurabi, but only sons were regarded as heirs of real estate. The legal status of son ship was all-important in this matter.<sup>7</sup>

### **Types of Property:**

Property can be owned in a number of ways. Not only money and other tangible things of value, but also includes any intangible right considered as a source of element of income or wealth. The right and interest which a man has in lands and chattels to the exclusion of others. It is the right to enjoy and to dispose of certain things in the most absolute manner as he pleases, provided he makes no use of them prohibited by law in Nigeria. Obviously, Dadem states that property can be own via pledge of it, gift, leases, mortgages, donation, sales or alienation.<sup>8</sup> The types of property are as follows:

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<sup>6</sup> Ibidem, p. 1899.

<sup>7</sup> Wycliffe Bible Dictionary 2001, p. 183.

<sup>8</sup> Dadem, Y. Y. D. *property law practice in Nigeria*, 2009, p. 3.

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**Sole Ownership:**

This is ownership by one person, which is individual ownership.

**Tenancy by the Entirety:**

John says that this type of property has to do with co-ownership available only to a husband and wife. If a house is to be sold or even refinanced, both parties must agree beforehand. Should one spouse die, the house/property goes to the surviving spouse automatically and the children get none. Survivorship is important when it comes to ownership. However, tax/laws and estate laws governing tenancy come into play. Your best bet is to always discuss both ownership and survivorship with a competent attorney before signing any loan documents.<sup>9</sup>

**Joint Tenancy:**

This is an equal undivided ownership of property by two or more people. During their lifetimes, any of the owners may sell their interest to whomever they choose. If one of the joint tenants happens to die, the ownership interest passes to the surviving joint tenants rather than to the heirs of the deceased. Therefore, an involvement of probate court is not required. Most married couples select Joint Tenancy with Right of Survivorship (JTWROS).

**Tenancy in Common:**

Tenancy in Common according to Real Estate 101 (2010) is a type of ownership taken by two or more people, who can have unequal amount of interest in the property, but have the right to use the entire property. Tenants in Common do not have the right of survivorship. Therefore, upon death of one of the Tenants in Common, his/her ownership interest passes to his/her heir(s)

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<sup>9</sup> John, W. *Four types of property ownership*, 2007, pp. 87-88.

and not to the co-owners. Therefore, an involvement of probate court is required.<sup>10</sup>

Regardless of the types of property, house, car, boat, recreational vehicles, motorcycles, seriously consider the type of ownership agreement into which you will hold title. Legally, the ramifications could be costly or at the least expensive. Note that property is said to be absolute property which is seen to be our own, without any qualification whatever; as when a man is the owner of a watch, a book, or other inanimate thing: or of a horse; a sheep, or other animal, which never had its natural liberty in a wild state.

Qualified property consists in the right which men have over wild animals which they have reduced to their own possession, and which are kept subject to their powers; as a deer, a buffalo, and the like, which are his own while he has possession in them, but as soon as his possession is lost; his property is gone. The sea, the air and the like, cannot be appropriated; every one may enjoy them, but no man has exclusive right to them.

### **Self-Ownership:**

This refers to sovereignty of the individual or individual autonomy. This is the concept of property in one's own person, expressed as the moral or natural right of a person to be the exclusive controller of his or her own body and life. According to Cohen on the concept of self-ownership says „that each person enjoys over himself and his power, full and exclusive rights of control and use, and therefore owes no service or product to anyone else that he has not contracted to supply”.<sup>11</sup>

Some have traced the concept of self-ownerships to certain individuals such as John Locke. Locke cited by Olsaretti says „the individual has a right to decide what would become of himself and what he would do, and having a right to reap the benefits of what he did”.<sup>12</sup> Locke cited by Dan-Cohen succinctly states

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<sup>10</sup> Real Estate 101, *Ownership types*, 2010, pp. 34-35.

<sup>11</sup> Cohen, G. *The Blackwell dictionary of Western philosophy*, 2004, p. 630.

<sup>12</sup> Olsaretti, S. *Liberty, desert and the market*, 2004, p. 91.

that „everyman has a property in his own person”.<sup>13</sup> Seeing it in the light of private property, Harris opines that sovereign-minded individuals asserts a right of private property, external to the body with the reasoning that if a people own themselves then they own their actions, including those which create or improve resources; they therefore own both their own labor and the fruits thereof.<sup>14</sup> Describing it as a labor market, Ian holds that the market in labor affirms self-ownership, because if self-ownership were not recognized, then people would not be allowed to sell the use of their productive capacity to others.<sup>15</sup> He says that the individuals sell the use of his productive capacity for a limited time and conditions but continues to own what he earns from selling the use of that capacity and the capacity itself, thereby retaining sovereignty over himself while contributing to economic efficiency.<sup>16</sup>

#### **Lost of Property:**

The Lactic law states categorically that property is lost in general, in three ways; the act of man, by the act of law and by the act of God.<sup>17</sup>

#### **Act of Man:**

First is Alienation; but in order to do this, the owner must have a legal capacity to make a contrast. Secondly, by voluntary abandonment of the things; but unless the abandonment be purely voluntary, the title to the property is not lost; as, if things be thrown into the sea to save the ship, the right is not lost. But even a voluntary abandonment does not deprive the former owner from taking possession of the things abandoned, at any time before another takes possession of it.<sup>18</sup>

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<sup>13</sup> Dan-Cohen, M. *Harmful thoughts: Essays on law, self and morality*, 2002, p. 296.

<sup>14</sup> Harris, J. W. *Property and justice*. 1996.

<sup>15</sup> Ian, S. *Democratic justice*, 2001, p. 90.

<sup>16</sup> Ibidem, p. 93.

<sup>17</sup> The Lactic Law, *Property*, 2014, p. 23 of 34.

<sup>18</sup> Ibidem, p. 23.

**Act of Law:**

The title is lost by operation of law. First, by the forced sale, under a lawful Process of the property of a debtor to satisfy a judgment, sentence, or decree rendered against him, to compel him to fulfill his obligations. Secondly, by confiscation or sentence of a criminal court. Thirdly, by prescription. Fourthly by civil death. Fifthly, by capture of a public enemy.<sup>19</sup>

**Act of God:**

Title to property is lost by the Act of God, as in the case of the death of the slaves or animals, or the total destruction of a thing; for example, if a house be swallowed up by an opening in the earth during an earthquake, fire outbreak, or flood. In some cases, accident can also be seen as the Act of God. It is proper to observe that in some cases, the moment that the owner loses his possession, he also loses his property or right in the thing while he retains the possession of them. But in general, the loss of possession does not impair the right of property, for the owner may recover it within a certain time allowed by law.<sup>20</sup>

**Right to Property in Nigeria under the Law and Capitalism**

According to the Constitution of the Federal Republic of Nigeria Amended, (Section 43) states: "Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria".<sup>21</sup> In Section 44 Subsection (1) of the 1999 constitution, it states that:

No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over interest in any such property

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<sup>19</sup> Ibidem, p. 24.

<sup>20</sup> Ibidem, p. 25.

<sup>21</sup> The Constitution of the Federal Republic of Nigeria Amended, 2011, p. 46.



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shall be acquired compulsorily in any other part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things.<sup>22</sup>

a. requires the prompt payment of compensation therefore; and<sup>23</sup>

b. give to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or anybody having jurisdiction in that part of Nigeria.<sup>24</sup>

The Land Use Decree of 1978 which is still operational in Nigeria does not give owners of property absolute right over their property. Section 44 Subsection (3) of the 2011 Constitution states that:

Notwithstanding the forgoing provisions of the section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive economic zone of Nigeria shall vest in the government of the federation and shall be managed in such manner as may be prescribed by the National Assembly.<sup>25</sup>

Chambliss (1976) states; „the heart of a capitalist economic system is the protection of private property, which is, by definition, the cornerstone upon which capitalist economics function. It is not surprising, then to find out criminal laws reflect this basic concern”<sup>26</sup>. Capitalism is based on the private ownership of property personal gain rather than collective well-being. Capitalism is a competitive system. Mutual aid and cooperation for the betterment of all are discouraged in favor of individual achievement at the expense of others. Competition breeds aggression, hostility and – particularly for the losers – frustration which obviously is the case in Nigeria.

In the Nigeria state, the clamor for democracy is the order of the day but what operates in the system is a state where injustice is celebrated and the poor robbed of their rights of inheritance openly by the rich. This situation is what

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<sup>22</sup> Ibidem, p. 46.

<sup>23</sup> Ibidem, p. 46.

<sup>24</sup> Ibidem, pp. 46-47.

<sup>25</sup> Ibidem, p. 48.

<sup>26</sup> Chambliss, W. J. *Whose law? What order*, 1976, p. 341.

necessitated Chambliss in his argument that the greed, self-interest and hostility generated by the capitalist system motivate many crimes at all levels within society. Members of each stratum use whatever means and opportunities at their class position to commit crime. Thus, in low income areas, the mugger, the petty thief, the pusher, the pimp and the prostitute use what they have got to get what they can. In higher income brackets, business people, lawyer and politicians have more effective means at their disposal to grab a larger share of the cake.<sup>27</sup>

Currently there is a new bill passed into law in Nigeria which protects the females the country gain right to property ownership. Equal right to the sharing of property is now to be given to them among their brothers in the family setting.

### **The Right to Property under Biblical Law**

These rights were to be sacredly guarded and all violations, such as fraud of theft, were to be severely punished. Inheritance regulations were designed to prevent land from passing out of the control of the tribes in Israel to which it had been allotted. In most cases, no problem would arise, since normally only the sons participated in the division of the landed estate; but daughters were permitted to inherit land in the event that there were no sons (Num 27:1-11). Num 27:8 says "... if a man dies, and has no son, then you shall cause his inheritance to pass to his daughters". However, in order to retain this right, such daughters were required to marry within their own tribe. Their successors to the land would therefore retain the land within the tribe (Num 36:3-11). Num 36:6-7states:

...let them marry whom they think best; only they shall marry within the family of the tribe of their father. The inheritance of the people of Israel shall not be transferred from one tribe to another; for every one of the people of Israel shall cleave to the inheritance of the tribe of his father.

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<sup>27</sup> Ibidem, p. 345.

On landmark, much near Eastern culture was oriented to real property. This is clearly the case in Israelite culture as indicated by the importance placed upon keeping a tract of land within the clan (Num 27:1-11, 36:7) as well as the legal injunction against tampering with the boundaries of such property (Deut 19:14; 27:17).

The custom of Levirate Marriage (Deut 25:5-10) appears also to work toward the retention of land within the tribe. A widow evidently did not inherit her deceased husband's estate, but sons were reckoned the heirs. If she was childless, the brothers of her deceased husband inherit the property in the name of the deceased husband (Deut 25:7 with Ruth 4:5, 10). For Christ, he says, „blessed are the meek, for they shall inherit the earth” (Matt 5:5).

### Recommendations

1. Property law in Nigeria is not absolutely practicable when it relate to the rich depriving the poor of their rights because they have more money to bribe their way and turn injustice into justice all to their advantage.

2. There should be serious monitoring team set up by the Nigerian state as a watch dog that will actually bite very hard on the obnoxious widowhood practices prevalent in the cultural setting of the Nigerian state, protecting the rights of women and widows.

3. The Land Use Decree of 1978 of the Federal Republic of Nigeria should be abolish because the Government uses this Act to absolutely deprive, forcefully take, eject and even displace owners of landed property from their legitimate land most times without compensation.

### Conclusion

The right to property connotes a strong legal proceeding to obtain, achieve, reclaim and use one's property the way he/she wants. Any infringement is

displeasing to the owners who in turns fight for a just claim. You have a right to your property and to safeguard it. From a Marxist perspective, laws are made by the state, which represents the interests of the ruling class. Many sociologists have noted a large number of laws dealing with property in capitalist society. Mannheim wrote „the history of criminal legislation in England and many other countries shows that excessive prominence was given by the law to the protection of property”.<sup>28</sup> According to Chambliss, such laws were largely unnecessary in feudal society, where land-unmovable property was the main source of wealth, and land owners were the undisputed Masters of the economic resources of the country.<sup>29</sup> Haralambos and Holborn opine that the increasing importance of trade and commerce (which involve movable property) and the eventual replacement of feudalism by capitalism resulted in a vast number of laws protecting the property interest, of the emerging capitalist class.<sup>30</sup> The Nigerian state needs to review her ideology to issue that pertain to property protection of her citizens. She should learn the unbiased biblical principles of which reflects justice, and fair share of property to the female gender. The Government infringes on the right of her citizens when they need to use land or discover mineral resources in a particular place without due compensation. The judiciary is corrupt as they pervert justice to favour those who have money to bribe their way. In a bid to exert right to ones’ property in Nigeria, the “Ahabs in authority use their position of whatever magnitude to eliminate and imprison the Naboths”.

### Summary

The right to property in Nigeria is the exclusive privilege of a Nigerian citizen to acquire or own by hereditary important goods, lands, minerals, houses, companies etc for survival but these rights under consideration are in the spirit of the legal and biblical laws as the main focused areas. Historical perspective of property ownership, types of property, lost of property, right to property

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<sup>28</sup> Mannheim, H., *Comparative criminology*, 1960, p. 340.

<sup>29</sup> Chambliss, W. J., *Whose Law? What order*, 1976, p. 234.

<sup>30</sup> Haralambos, M. and Holborn, M., *Sociology: Themes and perspective 7 edition*, 2008, p. 341.

in Nigeria under law and capitalism, the right to property under biblical laws and recommendations are the core areas addressed by this paper. This research made use of historical method and recommends that the poor should be protected in Nigeria especially by not making them property of the rich ones.

**Key words:** the right of property, citizen, law, history, Nigeria

### Bibliography

- Chambliss, W. J. (1976). *Whose Law? What order*. New York: John Wiley and Sons.
- Cohen, G.(2004). *The Blackwell dictionary of Western philosophy*. Cambridge: Blackwell Publisher.
- Dadem, Y. Y. D. *Property law practice in Nigeria*, Jos; University of Jos, 2009.
- Dan-Cohen, M. (2002). *Harmful thoughts: Essays on law, self and morality*. Princeton: Princeton University Press.
- Drummond W. F. (1955). *Social Justice*. U.S.A: The Bruce publishing company.
- Haralambos, M. and Holborn, M.(2008). *Sociology: Themes and perspective 7 edition*. London: HarperCollins publishers.
- Harris, J. W. (1996). *Property and justice*. Oxford: Oxford University Press.
- Ian, S.(2001). *Democratic justice*. Yale: Yale University press.
- John, W. (2007). *Four types of property ownership*. U.S.A: Mortgages Publishers.
- Mannheim, H. (1960). *Comparative criminology*. London: Routledge and Kegan Paul.
- Olsarretti, S. (2004). *Liberty, desert and the market*. Cambridge: Cambridge University Press.
- Real Estate 101 (2010). *Ownership types*. California: Trademark Publishers.
- The Constitution of the Federal Republic of Nigeria Amended (2011)
- The Lectric Law (2014). *Property*. Retrieved from w.w.w. lectriclaw.com on 4<sup>th</sup> May 2016.
- Thorstein, V. (2015).The Beginning of ownership. *American Journal of Sociology*, 4, 1898-9).
- Webster's New Encyclopedic Dictionary (2002). Springfield: Federal Street Press.
- Wycliffe Bible Dictionary (2001) U.S.A: Hendrickson publishers.

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