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African jurisprudence and conflict management: A critical reflection

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Abstract
In this study, I intend to argue for the existence of African jurisprudence in spite of its denigration in the literature. I contend that the hitherto impression of some Western scholars about the inferiority of African Jurisprudence has lost most of its steam. I argue that even though there are various differences between Western and African Jurisprudence in terms of the interpretations of concepts, the use of equity maxims by both legal traditions appears similar. Since African Jurisprudence is a product of its cultural context they reflect the *volksgeist* (spirit) of the people, which evolves through their own usages and practices. As instrument for the maintenance of social equilibrium, the study argues that African Jurisprudence emphasizes distributive justice as against formal justice associated with Western legal system for the regulation of social harmony. Employing the Igbo and Missiraya tribes' strategies of conflict management, I buttress the practicality and showcase the possible conditions for the realization of African Jurisprudence. This paper employs the conceptual and analytic –descriptive methods to examine the use of indigenous management strategies in a manner many scholars have ignored. It is expected that this paper will initiate a perspective different from extant discourse of African jurisprudence and its efforts at conflict management.

Keywords: African jurisprudence, law, culture, customs, conflict management and philosophy

Introduction

The reactions in the literature against the excesses of the 19th century Euro-American scholars on the projections of western superiority have been on for quite some-time now. These excesses are reflected in the beliefs that African customs, mores and cultural practices are not adequate for the management of human social experiences. Thereby operating with the assumptions that African belief systems deviate from what they consider the correct standard against which all systems of thought should be measured. This ethnocentric attitude is what D.H. Munro says is an intolerable excess of interference [1]. And this has not only led to the disruption of ideas and practices in non-western societies, it has also led to the destruction of the mechanism for the promotion and preservation of these ideas and "the denigration and desecration of the essence and existence of African social realities [2].

One significant aspect of this interference or ethnocentric sentiments against African social realities is the torrent abysmal interpretation of *African Conception of Law* and the emerging legal systems arising from it. The Question is: What constitutes African Conception of Law (Jurisprudence)? Or is African Jurisprudence a function of customary practices? And how do these customary laws that form the basis of African Jurisprudence assist in the management of conflict? Before we unpack the above questions, it is imperative to unearth what we mean by customary law? Obaseki, J.S.C. (as he then was) in the case of Oyewumi v. Ogunsesan [3] defined customary law as follows: "The organic or living law of the indigenous people of Nigeria regulating their lives and transactions". It is organic because culture is not a finished product and it obeys the barrage of changing circumstances and time. It is regulatory because it controls the lives and transactions of the community subject to it since custom mirrors the culture of the people.

Customs are the unwritten usages and practices of a given people in a typical social space.

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[1] D.H. Munro(1967) Empiricism and Ethics, London: Cambridge university press, p. 114.
[2] Williams Idowu,(2004) "African Philosophy of Law: Transcending the boundaries between myth and reality" in enter text, online journal, An interactive interdisciplinary e-journal for cultural and creative work, Vol. 4 No.2 pp52-93.
[3] Oyewunmi V. Ogunesan (1990) 3 NWLR (PT 137) 187.

What is known as African customary law is the recognized operative normative system of rules binding on African societies and settings. Customs are the norms of Moral Conduct. They reflect the "volksgeist" (spirit) of a people, evolved through their own usages and practices. In fact, they are the distinctive spiritual, material, intellectual and emotional features of a society or a social group, encompassing, in addition to art and literature, lifestyles, ways of living together, values systems, traditions and beliefs [4]. T.O. Elias [5], in his pioneering works 'The Nature of Africa Customary Law" conclusively demonstrated that African customary law is law like any other system of law. In Africa, law is an integral part of culture; therefore, it is seen as an instrument for maintaining social equilibrium with emphasis placed on distributive justice rather than formal justice as espoused by western philosophy. The law cannot be separated from the culture of the people as it is inbuilt in the life of Africans since it permeates the totality of the facet of their life. Law in Africa is not apportioning of right, but an instrument of social harmony in the society.

The question as to whether Africans had their own system of law before the advent of the colonialists has been a subject of discussion amongst scholars for quite some time. Before the coming of the colonialist in Africa, Africans had their own laws, customs, beliefs and values in spite of the distortion, entrenched prejudices and misleading conclusions about African system of law in the western literature. Majority of laws followed in traditional African society even before the outset of colonial masters came up as a result of customs. This means that traditional African societies were deeply rooted in their customs built on the culture of the people. These customs are not essentially enforced rather they stand as a set of recognized laws which the populace or persons in the society obey and made binding upon themselves.

African jurisprudence, therefore, can be said to be deeply rooted in African customary law which are passed from one generation to the next and do not change radically because it is what has been used to guide their activities in ethical and political terms. In other words, customary law is the backdrop of African Jurisprudence. What then is African Jurisprudence? African Jurisprudence according to William Idowu in his essay *African Philosophy of law* is described as the African conception of law. "He avers that African Jurisprudence thrives on the idea of the moral solidarity of the community and the group that one belongs to [6] ". As a part of African law and its culture, African jurisprudence has characteristics that respond to its unique and distinctive features [7]. African Jurisprudence therefore is a thought system that focuses on the meaning, nature, characteristics and functions of the African law and culture.

However, in African jurisprudence, the sense of what to do and what not to do can be answered by two schools of thought. The first is the believe that the society implants in man the complex of residual habits, nurtures and inculcate in him approved behavior and acceptable character. These notions are what society tends carefully and strengthens with the dispensation of reward and punishment. The second school of thought is adaptive. This is the belief that as a man lives he adapts himself to the environment. Experience soon taught him what could be done and avoided, though the practice varies from one society to the other, the people acknowledge through their own standards, that there is a difference between right and wrong. In the light of the foregoing, we can say that Africans have a concept of law, notwithstanding the arrays of European cynics and skeptics accepting, albeit that African law is ceasing to be the esoteric or purely academic.

There are various features or characteristic of the African jurisprudence that shows an already established African concept of jurisprudence. In analyzing this, the Ibo society of Nigeria will be used in certain instances. As Ijeoma noted, following Gluckman's observation of major similarities in basic doctrines of western court systems with that of Rhodesia and Zululand as well as other African legal systems are founded on strong sense of reasonableness, responsibility, negligence, circumstantial and hearsay evidence, etc. African judges and laymen apply those principles skillfully and logically to a variety of situations in order to achieve justice" [8]. Even though there are major differences between the western and African jurisprudence in terms given to concepts, the use of equity maxims in the western legal tradition to aid justice is the same for Africans as they make use of proverbs and adages to aid justices. In what follows, I intend to emphasis this similarities using Florence Ijeoma's illustration of Igbo proverbs [9]. In the settlement of dispute in many African societies African maxims are commonly used in order to aid justice. These maxims as shown below reflect what has been called the foundation or bedrock of what African law is. As noted by Ijeoma [10], these maxims as exemplified in Igbo societies in

Nigeria include the following

- With respect to the principle of legal personality, The western tradition believes in individualistic

[4] UNESCO, Draft of an International Convention for the Safeguarding of Intangible Cultural Heritage. Paris 2002.

[5] Elias, T. O. (2012)The Nature of Africa Customary Law, Manchester: University Press. Pp.Xii+ 318.30s.

[6] Williams Idowu, (2004) "African philosophy of law: Transcending the boundaries between myth and reality" in enter text, online journal, an interactive interdisciplinary e-journal for cultural and creative work, Vol. 4 No.2 pp52-93.

[7] Marius Pieterse, 'Traditional African Jurisprudence' in Christopher Roederer and Darrel Moellendorf (eds), Jurisprudence (juta 2004) 438 at 455.

[8] Gluckman (1974) cited in Shyllons; Freedom, Justice and the due process of Law (An inaugural lecture delivered at the University of Ibadan on Thursday, 15th May, 1986) in Florence Ijeoma's, The African Concept of Jurisprudence before Western Civilization. https://www.academia.edu/28430568/THE_AFRICAN_CONCEPT_OF_JURISPRUDENCE_BEFORE_WESTERN_CIVILIZATION. See also Ikenga Oraegbunam; The Principles and Practice of Justice in Traditional Igbo Jurisprudence. https://www.academia.edu/26387257/THE_PRINCIPLES_AND_PRACTICE_OF_JUSTICE_IN_TRADITIONAL_IGBO_JURISPRUDENCE.

[9] The Igbo people constitute one of the major tribal groups in Nigeria today. According to the colonial geography, the Igbo occupy mainly the Eastern part of the country. They are found in high concentration in Anambra, Abia, Enugu, Ebonyi and Imo state of Nigeria. There are also large Igbo populations in Delta and River states.

[10] Florence Ijeoma's, The African Concept of Jurisprudence before Western Civilization. https://www.academia.edu/28430568/THE_AFRICAN_CONCEPT_OF_JURISPRUDENCE_BEFORE_WESTERN_CIVILIZATION

organization while the African society, such as the Ibo and other African societies is based on a communal organization, It is then very common in African societies for a dispute to involve not only with the direct parties to the incident which caused it, but also the family or kinship groups of both immediate parties. Thus, this presupposes collective responsibility, and a kind of interdependence. The maxim used in explaining this in the Ibo society is *Ofu mkpulu aka luta mmanu o zue ndi ozo onu,* which when translated means when one finger gets soaked with palm oil, it quickly spreads to other fingers.

- This refers to the social or corporate explanation of justice or injustice among the Ibo. For the igbo, what this implies is that justice includes help to the needy and obligation to help the needy, the lowly and the helpless members of the society.
- The Principle of Fair-hearing demand that parties should be given the opportunity to put forward their case. This principle further entails the principle of Natural justice that encompasses the principle of *Audi Alteram partem (hear the other party) can be translated to mean Eze ebenipe notu onu, eze be ipe notu onu, obu na eze amare epe (eze ekpe na ikpe n'otu onu, eze kpee ikpe n'otu onu o buru na eze amaghi ekpe ikpe)* which means a king does not judge one voice, when he does such, he is not a good king.
- The existence of law in African societies undermined by the western scholars because of the absence of the paraphernalia associated with the law in terms of lack of enforcement agencies notwithstanding, this does not reflect the true position of things in the sense that there are the secret societies which serve as the police or regulators of societal order and punishes offenders. The Ibo maxim for this is *Isi kote ebu ebu agbagbue ya* which means if anybody attracts the bee, the bee will sting him to death.
- The right of possession of one's land is recognized in African jurisprudence. The Ibo have their main occupation as farming and agriculture and as such have an unprecedented attachment to land. In addition to this, one's land is almost an absolutely inalienable property. Until recently, lands were a communal property which could be partitioned to individuals for settlement and farming purposes. At the event of boundary dispute or trespass, the Igbo sense of justice was brought to bear by way of traditional history and adjudicated over by the Council of Elders. In land disputes, what is therefore just is identified with the goodness of the title and correspondence with boundary. Some proverbs assert the need for individual rights in spite of the community consciousness of the Ibo. *E kechaa n'obi eke na mkpuke* which means after sharing on the basis of extended family, there will be sharing on the basis of nuclear family, *Nke m bu nke m, nke anyi bu nke anyi* which means my own is my own, our own is our own.
- The essence of law in any organization and society is to create peace and harmony. Firstly, there is a group of proverbs that emphasize the Igbo philosophy of peaceful coexistence and consideration for the needs of others. Example of this proverb include *"Egbe bere ugo bere nke si ibe ya ebela nku kwapu ya"* which means let the kite perch and let the eagle perch also, whichever denies the other its perching right, let its wings break off.

In the light of the foregoing, even though Africa is reflect with cultural diversities and political rivalries, the continent is essentially one people with centuries of mutual interactions and social solidarity. African Jurisprudence thrives on the idea of the social solidarity of the people and the group that one belongs to. African Jurisprudence demands the incorporation of practical approaches such as reconciliation, consensus and inoperative advocacy to Judicial Administration. The question now is what is responsible for conflicting situations in Africa in spite of these regulatory apparatus in our cultural settings and how can they be ameliorated using the theoretic skills of African Jurisprudence? Let me unpack this question by first looking at the colonial dimension in this dilemma.

Colonial dimension in the emergence of African conflict

Obviously, ideas vary regarding the structures and institutions bequeathed to us by our colonizers. Some scholars have suggested that many crises in Africa are not a product of the way ethnic groups were crammed together into African states as a result of colonial conquest. This is because to say the above is to say that there is something inherently conflictual about social or cultural pluralism [11]. Some culturally plural societies do not have crises or are not as crisis-ridden as those we find in Africa (e.g., Nigeria, Côte D'Ivoire, Somalia, Democratic Republic of the Congo, Rwanda, etc.).

Nevertheless, it is equally misleading in the sense that if we examine the issue in this light, we are likely to overlook the intention of our colonizers concerning state formation and its implication for social cohesion. In the words of Olusegun Oladipo [12], with regard to state formation, the colonizers combined the "territories of formally distinct people to form colonial territories." Eme Awa [13] notes that:

"The colonial systems and the political processes of both the pre-and-post-independence era turned the normal cultural differences into debilitating ethnic cleavages. Poorly formulated and inefficiently executed economic policies over the past 50 years caused the retardation of certain areas and there by tended to aggravate tension along ethnic lines in many countries."

The colonizers did this because they needed to separate the spheres of influence of different European rulers. That is, the colonizers did not seek to create new states in the colonies for social and economic development; rather, as

[11] See Uroh, C. (1998), "Beyond Ethnicity: The Crises of the state and Regime legitimation in Africa" in Oladipo, O. (ed) RemaKing Africa: Challenges of the Twenty-First Century, Ibadan: Hope Publications, pp. 94-105. See also Ebijuwa, T. (2000) "Ethnic Conflict, Social Dislocation and the Search for a
New Order in Africa. Indian Journal of Politics. Vol. xxxiv Nos. 3 – 4, July –
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[12].Oladipo, O. (199), "Modernization and the Search for Community in Africa:
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123.

[13] Awa, E, (1996), "Emancipation of Africa" Lagos: Emancipation Consultants
Press.

Oladipo observes, the demarcation was meant to "ensure colonial control and dispossession could be achieved without undue rivalry among colonizers".

The emphasis on the separation of ethnic groups created a new sense of communal consciousness and identity for the people where none existed and provided a new symbolic and ethnocentric focus for each group. This, of course, has not only complicated the task of molding diverse elements in each colony into a coherent whole, but also became the "source of many life threatening conflicts, which were to proliferate, and consequently impede the process of community development and social solidarity, in many African countries, a few decades after independence." We have examples of these conflicts in states like Liberia, Somalia, Sudan, Zaire, Rwanda, Côte d'Ivoire, Sierra Leone, and Nigeria, among others. In all, we can say that the divide-and-rule mechanism adopted by the European colonizers widened the social distance among the communal groups, consequently reinforcing the ethnocentric factor in the emergence of communal conflict and ethnicity.

If the foregoing discussion of the social predicament of the African state is valid, then Africa's current situation is one of uncertainty and despair. Thus, the question becomes how African jurisprudence can help to ameliorate the perceived conflicts arising from these new symbolic ethnocentric sentiments?

African jurisprudence and cultural solutions

The attempt here is to create an alternative platform that would assist us in the amelioration of the perceived conflicts. This is with a view to providing an appropriate theoretical context for the analysis of the platform that will lead to the resolution of conflicts through the employment of the strategy of African Jurisprudence. Recall that we have said earlier that in the settlement of disputes in African societies African maxims are usually used to aid justice. The reason for this is that African jurisprudence does not have an existence outside its cultural space. It is a thought system that is an essential part of its culture. This mode of thought is what some have identified as the bedrock or foundation of African legal system.

When Africans employ the use of maxims in the resolution of dispute in their social and political lives, it is because of their realization of the fact that to aid justice decisions must be fair by respecting the opinions of everyone in dispute without discrimination or oppression. Knowing that this can engender disaffection among conflicting persons, Africans believe in the principle of fair-hearing. That is the principle of the recognition of the voice of the other party in a dispute. This is because to talk of the idea of resolving conflict is to recognize that there are at least two sides to a dispute. As stated earlier, to do otherwise is to obstruct the cause of natural justice as exemplified in the igbo maxim *as Eze ebenipe notu onu, eze be ipe notu onu, obu na eze amare epe (eze ekpe na ikpe n'otu onu, eze kpee ikpe n'otu onu o buru na eze amaghi ekpe ikpe)* which means a king does not judge one voice, when he does such, he is not a good king.

The above indicate that the recognition of the opinion of all stakeholders in a dispute involves an encounter of the disputants who are willing to transcend their differences to a position of agreement. Such encounter does not exist in an atmosphere of the domination of one party or the relegation of the voice of the other. This is to say that in this type of arrangement there is no privilege position. All positions are subjected to rigorous deliberation by the *elders in council* (ohaneze) who by their disposition and orientation operates without discrimination by giving equal opportunity to the disputants to be heard. Where parties are given opportunity to be heard and the charge or complaint against party standing trial or being investigated made available to them, they cannot complain of breach of fair hearing principle, which entails the principle of Natural justice that encompasses the principle of *Audi Alteram partem (hear the other party). As an act,* which denounces the relation of domination, this orientation is a task of responsible people who operate in an arena of freedom.

Beside the issue of freedom as expressed in the maxim of fair- hearing, *the Igbo elders in council* (Ohaneze) saddled with role of the management of conflicts recognize the fact that to overcome the differences of the disputants all parties must come to the table with some sense of humility or what Francis Deng called the Reaching out Principle in his essay titled; "Reaching Out: A Dinka Principle of Conflict Management". This is to say that if a party considers itself over and above the other(s), or that it has the monopoly of knowledge, what will find is a case of one party manipulating the discourse for its own advantage. For example, if I am tormented and disturbed by the possibility of being displaced or if I am close to and even offended by the contribution of others, how can there be dialogue? This is to say that in an arena of discourse, we must develop the spirit of tolerance while admitting the fact that it is possible for previously held views to change. Deng state this position in his discussion of the Missiraya Arab tribe of southern Kordofan in Western Sudan [14] thus:

Chief Babo Nimir told of a peace conference between his tribe and the Rezeigat, another tribe in the Western province of Dafur. A Missiraya had killed a man from Rezeigat. According to Missiraya custom, blood wealth was thirty head of cattle, while among the Rezeigat, it was one hundred. A negotiation of price was deadlock. We spent that whole day without result. The following morning, we withdrew and reviewed our Position. I was the one who spoke with the Mamour. I said, `Here we are, stuck at 30. Our position, I believe is wrong. We are basing our argument on our own custom within our tribe. Conflicts within one tribe are not the same between separate tribes. His position moderated the demands of the Rezeigat and a compromise was reached at ten cows, with one bull for the burial cloth, setting a precedent at 71 cows.

The above resolution does not only rest on the humility of the Missiraya tribe but that the "Reaching out Principle" is a bridging function that involves magnanimity and generosity rather than weakness. It evokes a sense of social order that would have caused civil strife between the two tribes. This principle of reaching out as espoused above involves the smoothening of edges or the sorting out of differences to arrive at what Ali Mazrui [15] has called shared images. This is possible, Mazrui says, because images grow, are modified, interconnect with other images through what we may call rational discourse. Put differently, it is through this mode of conversation, that is, the recognition of the voices of all stakeholders, that we can arrive at what may be considered suitable to all.

14 Deng, F. M. (2008) "Reaching Out: A Principle of Conflict Management" in Zartman, W. I. (ed) Traditional Cures for modern conflicts: African Conflict "Medicine" London: Lynne Rienner Publishers.P.96.

15 A. Mazrui, "Towards shared images" of cultures" in his A world Federation: An African Perspective (New York: The Free Press, 1990), pp. 380-403.

Let us ask at this point see the conditions for the practical realization of this form of agreement as stated above? Besides the humility of the Missiraya tribe, it is important to note that for a discussion to yield any meaningful result there must be an intense faith in one another. Without the initial faith in the possibility to transcend our differences, there cannot be meaningful discourse. To put this in another way, faith in one another is an *apriori* requirement for discourse.

Founding itself on freedom, humility and faith, discourse becomes a horizontal relationship of which mutual trust between discussants is the logical consequence. Of course, it will be contradiction in terms of dialogue based on freedom, humility and faith does not create the atmosphere of mutual trust that will eliminate the imposition of ideas. As Paulo Freire avers:

Trust is contingent in the evidence which one party provides the others of his true, concrete intention; it cannot exist if any party`s words do not coincide with his actions. To say one thing and do another or to take one`s word lightly cannot inspire trust [16].

This is to say that since faith in one another is an apriori requirement for discourse, mutual trust is established by discourse. When these conditions are absent, we cannot talk of any meaningful discourse.

It is important to note at this point that these conditions, as espoused above, are given expressions in different cultural settings in Africa. As a social ethic, for example, the concept of Ubuntu in the Zulu language of South Africa, Ujamaa in Kiswahili and Parapo of Yoruba of Nigeria are concepts that emphasizes cooperation, mutual respect and support as well as unity within and across the community. The prevalence of this vital force in our communities is manifest in our collective goal, which is peace and justice.

Conclusion

The attempt so far has been to establish the existence of African Jurisprudence and its place in the management of human social experiences, in spite, of the excesses of the denigration of Western scholars. In doing this, I argue that since African Jurisprudence is a product of the customs or culture of the society, they reflect the Volksgeist (spirit) of the people, which evolves through their own usages and practices. I contend that, in spite of the differences in the interpretation of concepts between the Western and African jurisprudence, the use of equity maxims in both systems of thought have some clear similarity. As a platform for the regulation of social order, African Jurisprudence emphasizes distributive justice as against the formal justice known to Western legal tradition. I demonstrated this by employing the Igbo and Missiraya tribes' strategies of conflict management to showcase the practical realization of African Jurisprudence.

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