

Indigenous Judicial System And Governance In The Old Ondo Province, Southwestern Nigeria

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Abstract

The Indigenous judicial system and governance in the Old Ondo Province, like other Yoruba communities, evolved during the long process of the people's historical, political, economic and other social evolution. In other words, the people evolved a system of justice and governance that was relevant to them despite the complexity of justice before the advent of the British. The indigenous system of governance recognized that judicial function was an essential part of government and it was divided into three major levels: the king (*oba*), the chief or village head (*ijoye/baale*) and the family head. The people's traditional structure of governance with its judicial system, as a key element, was unique and judgments were adhered strictly to. But recently, our societies had reached a stage where the courts are no more respected, most especially owing to cases of disobedience to court orders especially by the prominent citizens. Therefore, this study is imperative to the positioning of our judicial system for better justice delivery. This study is approached from both historical and legal perspectives. This work is justified in the words of Dwight D. Eisenhower, that though force can protect in emergency, only justice, fairness, consideration and cooperation can finally lead men to the dawn on external peace. Thus this work enables us to know the efficacy of a good judicial system and governance as the bedrock of the survival of any nation all over the world, particularly on the socio-political dispensation of such nation. This paper argues that indigenous judicial administration strategies are still in existence today; they had not remained static for all time. To an extent, the evolution of modern judicial system can be achieved with the fusion of indigenous and foreign experience by changing circumstances such as increase in the population, the interplay of the economic situations, contact with different peoples, cultures and modernization. This paper concludes that indigenous judicial system and governance will, for a long time, continue to function complementarily in contemporary socio-political imaginary.

Keywords: Ondo, Indigenous, Province, Judicial and Nigeria

Introduction

This paper discusses the indigenous judicial system and governance among the people of Ondo Province, now Ekiti and Ondo States of Nigeria, they used the system to maintain law and order before the advent of the British. The level of legal and judicial administration in a society depicts the level of its political and administrative sophistication (Alao: Ajayi and Fabarebo: 2009). Hence, in a well established society, judicial system is the hub of human existence. However, justice, despite being a very popular and ubiquitous expression, is an elusive and complex concept. For example, it pervades almost all areas of our social interactions. Children want justice from their parents, wives want justice from abusive husband, a worker wants justice from his employer, and citizens want justice from their government. In other words, justice is at the heart of our very existence and this accounts for why the notion has been so pervasive. So the people of this area of study evolved a system of justice that was fair to them despite the complexity of justice during the pre-colonial times (Osei, n.d.).

The judicial system of the people of the Old Ondo Province, like other Yoruba communities, evolved during the long process of the people's historical political, economic and other social evolution. It also recognised the Judiciary as an essential part of the people's traditional government (Fesobi: 2007). Therefore, this paper attempts a vivid discussion of the nature and character of the judicial system of governance among the people of the Old Ondo Province and indeed in Yorubaland in the period before the British colonial administration.

The Judicial System and Governance

The judicial system developed gradually during the long process of the historical, political, economic and social evolution of the people. Recognising that judicial, function was an essential part of government, the people's traditional structure of governance with its judicial system as a key element was unique. This traditional structure is still in existence, (Alade: 2007) but it had not remained static for all the time. By and large, it came to be affected by changing circumstances such as increase in the population, the interplay of the economic situations, contact with different peoples and culture and modernisation.

The structure of government in the pre-colonial period, among the people of the Old Ondo Province, could be divided into three major levels: the king (*Oba*), the chief or village head (*Ijoye/Baal* and the family head. The king was always the paramount authority when major disputes or criminal offences were involved. But as far as the everyday life of the ordinary people was concerned, the *Oba* and the *Ijoye/Baal* were not that important. Whenever disputes arose among the people because of not too significant reasons, it was the family heads that settled them. By tradition, they were responsible for maintaining social stability and resolving disputes.

The most distinctive characteristic of the structure of the traditional judicial system and governance among the people is that there was no arrangement whatsoever for the separation of powers. The three basic functions, namely the enactment of rules (legislature), interpretation of rules (judiciary) and execution of rules (executive) were vested entirely in the king. It is expedient to state that the purpose of fairness, peace, protection of justice, (Driberg: 1970) which the traditional law was set to achieve had implications for the administration of justice. It was not the duty of the *Oba* to seek out crime in order to punish. It was specially the duty of the youths, hunters, *erinse* and also that of every member of the community to maintain law and order, owing to the fact that it was a collective responsibility to report any breach of law to the authority concerned. It was customary for litigants to a case or their relatives to challenge the judgements made by the family head at the village or quarter court. The right to appeal only stopped at the king's court, which was the apex court.

Among the people of the Old Ondo Province, administration started from the family level. The head of the family structure was the *Baale* (Olajubu: 1976). He was usually among the oldest male persons in the family. He was the head of the family affairs and had jurisdiction over the family members. Minor disputes within the family were taken to him for settlement. He was duty bound to summon some other elderly men in the village to assist him settle the dispute brought to him. Judgement depended on the nature of each dispute. He had the last say in family quarrels and matrimonial disputes. The family members assembled met for festivals, religious worship and other important matters under his direction. It was his responsibility to ensure that the family was a place of refuge for an offender until his case was decided at the appropriate higher courts (Alokan: 2004). The *Baale* of a compound was responsible for the preservation of order in the group of dwellings occupied by his family and dependents. He settled all minor disputes among those under his control, but if the matter involved the subordinates or another compound, it was taken to *Baal*, head of village or the quarter chief who was responsible for peace and order within the area (Ajayi: 2008). If it was an ordinary or minor crisis, the *Baale* (family head) settled it, but if it was serious, he had to refer it to the *Baal* of the village (Alade: 2009).

The court of the family head also assisted in bringing to book any culprit within the compound who had committed a serious crime so as to present such a person for trial by higher courts (Ellis: 1974). In the court, no fee was charged and fine was rarely imposed. Its purpose was not necessarily to punish the guilty party. Rather, it was to effect reconciliation with a view to maintaining kinship solidarity (Falola and Akinrinade: 2009). At the family level, the family head sat with other elders in council. A decision was usually reached not only in the interest of disputants, but the overall interest of the family. There was usually the consciousness not to wash the family's dirty linen outside. Therefore, disputants got influenced by family sentiments to accept the pleaded courses of resolution in the interest of their ancestors or family lineage (Atanda: 1969).

It is important to note that apart from adjudicating in disputes, the *Baale* was duty bound to normalise relationship so that any apprehension could be resolved in the family. That was why the head was always the oldest and experienced male. Also, he was duty bound to protect members of the family. In fact, he was a symbol of the Yoruba concept of *Alajobi* (is *sine quanon* of *esprit de corps* among the family).

In the settlement of dispute in each lineage, *Olori-ebi* (patriarch) held the sway by keenly cross-examining parties involved in the matter, but he also ensured that the quarrelling parties got their hearing and justice. Should a party prove stubborn or not ready to tell the truth, the spirit of *Alajobi* was usually invoked in a way akin to a curse (Osanyintuyi: 2009). In short, the *Olori-ebi* maintained peace and unity in a lineage.

In Owo, heads of compound (*Agbo ile*) headed by the most elderly male among the people. The people attached much importance to old age, life experience, wisdom and integrity. But within each compound, there were different families with heads known as *Olori-ebi* or *Elebirin* in Ekiti and Akure (Adebowale: 2009). Such family heads complemented the effort of the compound head to govern the larger compound effectively. Periodic meetings were held between the compound head (*Olori-ebi*) and the family heads, *Baale*, to discuss issues of common interest to the various families within a given compound (Afe: 2009). In other words, both *Olori-ebi* (or *Elerebi* as in Ekiti and Akure) and *Baale* performed the same functions, which only differed in scope.

Next to the compound-family court was the court of the village head. Any issue found too knotty or intractable by the compound head was referred to the village head, *Baal*. They tried all civil cases involving persons belonging to different compounds but living in the same village. Cases in which both sides of the dispute belonged to the same compound and which got out of hand in the *Baale's* court would be heard in the court of

the village head as an appeal. Apart from all these, the village court head conducted preliminary investigation into cases which occurred under his jurisdiction such as matrimonial cases (Falola and Akinrinade: Aborisode: 1986) (mainly divorce), debt claim, while land matters were transferred after preliminary investigation and hearing to the king's court.

In Akure, for example, land was apportioned among families and family heads settle all farm disputes or provided for its allocation to strangers with the covering approval of the village council. In rare occurrences where there was unoccupied land within the town boundaries, that is, land not apportioned to families or which had fallen into continual disuse, the village council effected disposal (N.A.I. CSO. 26/30012). The system in villages under Akure was different. Although families controlled their family land, a large portion was regarded as personal gift to the *Deji* (king) by the community.

Among the people, there were many ways of acquiring interests in land before the advent of the British. First and foremost, there was the individual's right to ownership of land. In fact, from birth, every individual had the right to ownership. In the same vein, from birth, every member of a family was entitled to a stake in the family land. There existed what was tantamount to a permanent interest in land in the sense that an individual family member exercised control over the use of land with a condition that he could not alienate it without the consent of the entire members of the family (Famoriyo: 1979).

Also, land could be acquired through pioneer clearing. Most of the land owners today in Yorubaland got their land through this method, either their parents carried out the clearing or their forefathers did. According to Meek, land clearing was largely based on the principle that he who cleared a piece of land was the owner (Meek: 1970). As is the case in other communities in Yorubaland, it was a taboo for slaves to own land. Also, a person could lease land from another family. In this regard, such a person would offer three gourds of palm-wine and a few kola nuts to the owner (Oguntuyi: 1979).

Under the Yorubaland land tenure system, the *Oba* or *Baale* had additional right to land by virtue of his position as the administrator of the town or village. He was regarded as the trustee of the land of the community. Any individual who wished to use any family land had to seek the consent of the *Oba*. Land dispute could be settled at village or quarter level. If unresolved, the case could be transferred to the king's court.

Each court was headed by an *Olori Adugbo* (quarter head) who had an advisory council composed of other titled men and influential elders in the quarter. This was subordinate to the village head or king. In some large towns in Akoko such as Ikare and Oka, quarters were further divided into units, with each unit having a group head. This head of unit was subordinate to the village head. There were different names for titled heads in different towns and villages in Akoko. Such titles included *Ighare* or *Ihere*, *Ogboni* and *Amurun* (Okajare: 2004). These titled men were required to rise through the ranks of age-grade to the highest level before they could rank with superior title.

Strictly speaking, the primary duty of an *Ijoye* (Chief) or village head like that of family head was to see to the welfare of the people in his ward. Indeed, he served as their representative in the government of the town, for which reason he was an officially recognised personage. This court was a court of first instance, for inter-lineage disputes as well as serious offences within his ward, which fell outside the competence of the family head (Atanda: 2007). It also served as court of appeal for all cases that defied settlement at the family head's court.

A cursory look at both the family and village or quarter courts shows that this indigenous traditional judicial system among the people was a carefully thought out and closely knit- authority that was able to attend to the judicial needs of the people right from time immemorial. Regardless of the fact that this system was fashioned out some centuries back, it can still be considered useful in contemporary times.

The highest court in any of the communities in Yorubaland was the king's court. According to (Johnson: 2001)

The word king which was generally used in this country includes all more or less distinguished chiefs who stand at the head of a clan, one who is a ruler of an important town or a province especially those who can trace their descent from the founder or from one of the great leadership heroes who settled with him in this country.

The king's court was the highest court in all the communities in the Old Ondo Province like other Yoruba communities. Exceptions to this were the *Ogboni* and *Osugbo* among the Egba and Ijebu respectively, which constituted the highest courts enforcing law with utmost severity of punishment meted appropriately to deserving offenders (Olaoba: 2008). Being a formal court, the king's court charged fees and imposed fines. It

served as court of appeal for all cases that could not be settled at the courts of chiefs in various quarters or villages. For instance, in Ondo, the *Osemawe's* court served as the appeal court and it tried criminal cases like arson, murder, manslaughter. Cases tried by lesser *Oba* under Ondo Kingdom were usually transferred to the *Osemawe* for final adjudication and he was the only one who could impose capital punishment on anyone found guilty (Fawehinmi: 2007).

In other words, the *Oba* were rulers in every sense of the word as they derived their executive, legislative and judicial functions from the traditions long rooted, recognised and revered by the people of their respective area of authority. They combined temporal and spiritual powers. While the *Oba* combined legislative, judicial and executive powers, in reality, most communities established elaborate procedures to ensure that the rulers did not become autocratic or abuse their powers as indicated below (Agbese: 2009.).

Traditional judicial system and governance in pre-colonial times with the monarchy at the apex was good, revered and effective. The efficacy in the power of the kings during this period could be likened to the authority of the kings in Europe and other places that had an organised governmental system. The kings in the Old Ondo Province, like their counterparts in other Yoruba towns, were not dependent on any higher body to exercise their authority. They were not, however, absolute rulers. Rather, their authority and political behaviour were limited by institutional restraints, convention and customs (Agbese: 2009.). In theory, the ruler had an absolute power but in practice, an institutionalised council of chiefs checked him (Atanda: 2007). Examples of such councils included *Iwarefamefa* in Ekiti, *Iwarefa* in Akure, *Ewarefa* or the *Eghae* in Ondo. According to (Olomola: 2002)

The *Oba's* powers were (and still) subject to considerable checks and curtailment of freedom of action. His installation rites included period of seclusion during which he received instruction on his roles and relationship with the chiefs, who, it was obligatory on him to consult on every aspect of the state affairs. Thus, the *Oba* reigned but did not rule. He was forbidden from any direct contact with the public at large; he saw through the eyes, heard through the ear and spoke through the mouth of his principal counsellors.

Members of the council acted as a form of check to the monarch's powers. These chiefs, in fact, represented the people in government in the sense that every chief belonged to a lineage, an age grade and also was a member of a titled society. Fundamentally, legal authority among the people was placed firmly in the hands of the *Oba* and chiefs in the community.

For instance, in Ondo, the traditional system had its safety value in some high chiefs who provided checks and balances on the power of the *Osemawe* (the king) of Ondo. These chiefs were known as *Ewarefa* or *Eghae*. They included *Lisa*, *Jomu*, *Odunwo*, *Sasere*, *Adaja*, and *Odofin* (they were six in number). In the past, the absolute power of an *Osemawe* was said to have been threatened by powerful *Eghae*. The influence of such powerful *Eghae* might have eroded the powers that were traditionally exclusive of the *Osemawe* and diluted them to the level where it might appear that at some point in time, the authority had been shared between the *Oba* and the *Eghae* (*Ekimogun Day Brochure: 2009*). Be that as it may, the *Osemawe* still remained paramount. Both the *Osemawe* and the *Eghae* worked hand in hand for the betterment of the people. In other words, the *Osemawe* remained the receptor, repository of all powers which delegated for administrative as well as traditional purpose in those quarters and villages (*Ekimogun Day Brochure: 2009*). The *Eghae* performed the role of advisers to the *Osemawe*.

In theory, the king had the power of life and death over his subjects and was not answerable to them for any of his actions. In practice, however, the king was not absolute. It was true that as the executive head of government, he exercised considerable powers, especially over ordinary citizens. He could order their arrest, detention or even pronounce capital punishment without trial or whenever he thought it necessary. But these were powers which he had to use sparingly and with justification and he did not rule the kingdom single-handedly. In effect, Yoruba *Oba* was *primus inter pares* among his principal chiefs. He ruled, gave orders with their concurrence. In Akure for instance, the *Deji* ruled with a council of chiefs known as *Iare*, who were themselves representatives of their different quarters in the town (Arifalo: 1976). The *Deji* could not take any decision on important issues affecting the town without the concurrence of *Iare*. If he behaved in an oppressive way, grave consequences might follow.

Although there appeared to be no specific way of removing the king in Akure, like other towns in the Old Ondo Province, the chiefs could decide on a line of action. If his behaviour became unbearable or his actions were regarded as *ultra vires*, they could boycott his palace. They could refuse to hold meetings or attend any function there. Whenever he summoned them they might refuse to answer his call. If the rebellion of the chiefs did not cause the king to mend his ways, there was likely to be a general uprising of the people. In an extreme case, middle aged women in their hundreds, could demonstrate nude round the town carrying their weaving staff (*apasa*). Meanwhile, before these actions, it would have been discussed everywhere in the kingdom (Atandare: 1973). If the king still remained adamant, he could then be driven from the kingdom. In Oyo Empire, it was easy to remove a bad king. According to (Johnson: 2001)

..... if he (the king) is ultra-tyrannical and
withal unconstitutional and unacceptable to
the nation, it is *Basorun's* prerogative as the
mouthpiece of the people to move his
rejection as a king, in which case His
majesty has no alternative but to take
poison and die.

While the above was typical of Old Oyo, what operated in other parts of Yorubaland was not fundamentally different. In order to avoid any unpleasant action of the populace against the *Oba*, it was a common occurrence that the *Oba* in the Old Ondo Province, like other Yoruba kings, often consulted with *Ifa* priest (Akinola: 2007). The *Oba* needed the *Ifa* priest for decision making on the good governance of his domain. He had to organise regular consultations for performing rituals and sacrifices for the peace of the community. The *Ifa* priest guided the *Oba* against breaching taboos held sacrosanct by the people (Alokan: 2004).

However, heads or quarter chiefs under the political rulership of any king in this area of study carried the king along in the judicial administration and governance of the people of their different villages or quarters. The chiefs and the village heads made laws not only for maintaining law and order in their domain, but also for the economic activities around the town. They met to deliberate on cases brought before them earlier from the villages or their quarters. The *Oba* and the *Iwarefamefa* constituted the supreme court of the town. Major cases were dealt with centrally in the *Oba's* court (Olaopa: Aborisade: 1986). Cases of theft, adultery or rape were reported by the head of a family to the head of the village or quarter. Rarely were matters reported directly to the head of the village or quarter without going through the head of the family. The *Oba's* court was the apex court and tried all appeals from the lower courts that is, *Baale* and *Baalṣe's* courts, be it civil or criminal (Falola and Akinrinade: Aborisade: 1986). The court had the sole jurisdiction to try all criminal cases. The mode of dispensation of justice among the people as elucidated above contributed much to its governance.

Conclusion

This paper has discussed the indigenous judicial system and governance in the Old Ondo Province. It has been shown that the people had a well established judicial system and governance before the advent of the British and eventual colonisation of Nigeria. The most distinctive characteristic of the structure was that there was no arrangement whatsoever for the separation of powers. The three basic functions, namely the legislative, executive and judicial functions rested entirely on the *Oba*.

The modern dictum that everybody is equal before the law did not apply to the people. Thus, it is also observed that in spite of dominance of religious influence, the powerful, the wealthy and their relatives were sometimes above the law. Where they took the law into their own hands, customary machinery of justice prove totally inadequate to deal with them. They and their relations rarely suffered the full penalty of the law. Regardless of the inadequacies, on a general note, judicial administration and governance in the traditional society ensured relative peace, orderliness and respect for constituted authorities. In fact, we must admit that the traditional legal concept was the direct result of a process dominated by laymen, because it does not require academic exercise.

To sum up, we observe that some of the characteristics of the judicial system and governance among the people of the Old Ondo Province in pre-colonial times still exist today. To an extent, the evolution of a modern judicial system could be achieved with the fusion of traditional and foreign experience, when conjoined with changes in the people's social structure and social life.

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