THE YORUBA IN TRANSITION

HISTORY, VALUES, AND MODERNITY

EDITED BY
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To Professor E. A. Ayandele
for his contribution to Nigerian studies

Contents

the various pre-colonial systems took care of and resolved most of the legal and political issues that trouble the post-colonial African states, and see the extent to which such questions could assist in redressing some of todays problems.[35] The borrowed ideas could also be refined for adaptation in line with indigenous values to the extent to which they could work here. This is the task African writers, both at home and in the diaspora, as we face the arduous but yet surmountable task of evolving for the post-colonial states in Africa authentically autochthonous legal and constitutional frameworks.

35. Mazrui, "Constitutional Changes," 20–21.

Chapter 7

Dispute Settlement under the Yoruba Culture: Lessons for the Criminal Justice System

Oluyemisi Bamgbose

Introduction

People coexist in groups and communities for many reasons, including commercial dealings, ethnic affiliation, friendship, and historical factors. In such relationships, there are disagreements or conflicts, which, if not properly handled, may lead to anarchy. Different principles have therefore been laid down to settle disputes in such relationships to ensure peace and order.

With the advent of the British, which led to colonization, the Yoruba customary way of dispute settlement paved the way for a more British approach, which no doubt is different. The patterns of dispute settlement under the then-Nigerian customary law and under the British system are predominantly and substantially different.

There are three major ethnic groups in Nigeria. This chapter, however, considers dispute settlement under the Yoruba customary law and the procedure under the formal criminal justice system, and it also examines the advantages and disadvantages of both systems.

Dispute Settlement under the Yoruba Culture

There have been some erroneous beliefs and myths about African states of which Nigeria is one. This was perpetuated by the British colonialists. Some of these perceived prejudices include the continent being static, culturally stagnant and homogenous, and lacking a proper and coordinated judicial system.

Before the arrival of the British, the country now known as Nigeria was not void of law and legal institutions. According to Badaiki, there existed notions, norms, rules, agencies, and institutions of law in the geo-culture groups that made up what is now known as Nigeria.[1] Thus, there were indigenous laws and institutions. Therefore, it is a gross misconception by the British colonial power to assert that there was a nonexistent court system in the traditional Nigerian system.

According to Stroud's, a court is a place where justice is judicially administered.[2] Examining the process of dispute settlement in the centrally organized states within which the Yoruba are situated, it can be confidently stated that there existed courts under the traditional Yoruba judicial process. Lloyd confirmed that the Yoruba society of the western region, with its *oba* (king) and council of chiefs sitting in a judicial capacity, demonstrated the court system.[3]

Nigeria is the largest single geographical unit along the west coast of Africa. The mode of dispensing justice varied from the comparatively well-organized and autocratic Fulani system in the north, through the advanced judicial institution in Yoruba kingdom in the southwest, to the highly decentralized Ibo legal arrangement in the east and southeast.[4]

The Yoruba occupy the southwestern part of Nigeria. Historically the Yoruba kingdoms were very large, and this necessitated the need for the rulers to delegate powers to chiefs, chief priests, and scribes within the province. The Yoruba tribe is divided into several large sub-tribes under recognized chiefs. Each sub-tribe is composed of comparatively large towns, a feature of the social structure/group.

The Yoruba people had for a long time evolved a judicial system that culminated in the establishment of indigenous courts. These courts, whose period of existence are as old as the history of the Yoruba, had significant peculiarities that are comparable with the English-style courts. One peculiar feature of the Yoruba culture is its dynamism. According to Harthshorne, culture is represented, not only by what we make, but also in a thousand ways.[5] The basis for this exposition is that culture is a group of patterned activities, one of which is the administration of justice.

An average Yoruba man maintains control of a more or less intimate character with a much larger circle of blood and affinal relations, neighbors, and friends. These various relationships have a way of bringing together a large group of people whose opinion about behavior the individual must take into account.

The Yoruba, by nature, are not indifferent to the public. This is because right from childhood the public, society, and the extended family play different roles in the upbringing. The child is therefore made amenable to elders in the community. It is therefore very common among the Yoruba to discover that at one time or another an extended family member had taken a turn in disciplining a person for misconduct using various methods of social control, namely, instruction, advice, persuasion, and punishment.

The mode of settling disputes in Yorubaland can be divided into formal, informal methods, and extrajudicial methods.

Informal Method of Dispute Settlement

All members of the society are involved in dispute settlement. This is because of the attitude of the Yoruba to coexist peacefully. Any person who comes across people engaging in a dispute is expected by culture to mediate and settle the dispute. This is particularly mandatory for elders, who are regarded as mediators in any issue resulting in a dispute. This explains the adage, *Agba ki wa loja, ki ori omo titun wo*, literally interpreted as "The presence of an elder in a place expectedly would instill order."

Age under this culture is associated with wisdom. The effect of this is that dispute settlement need not take place in a formalized place/setting. In Yoruba culture, there are impromptu methods of settling disputes. These are done in an informal court setting by "legal officers," who may be persons older than the aggrieved parties that were around at the time of the dispute. In other instances, the "legal officers" may be of the same age as the disputant.

This method of informal traditional dispute settlement lesser is adopted in cases of lesser degree, such as street brawling, use of abusive words, and other forms of minor disagreement.

This method of dispute settlement is held in the public and usually takes place at the point of the dispute. The setting does not allow for any seating, as people gather on the spur of the moment. The disputants are allowed to state their cases, and the verdict is given instantly. No money is paid or ex-

1. A.D. Badaiki, *Development of Customary Law* (Lagos: Tilken Publishers, 1997).
2. John S. James, *Stroud's Judicial Dictionary of Words and Phrases* (London: Sweet and Maxwell, 1971).
3. P.C. Lloyd, *Yoruba Land Law* (London: Oxford University Press, 1962).
4. T.O. Elias, *Groundwork of Nigerian Law* (London: Routledge and Kegan Paul, 1954), 8.
5. Richard Harthshorne, "The Nature of Geography," *Annals of the Association of American Geographers* 29 (1939): 332.

pected, nor is gratitude expected by the adjudicator. Where the dispute cannot be resolved, it is the responsibility of the older person mediating or the other persons around to report the matter to the family heads of the disputants or to the ward /village chiefs.

Formal Traditional Method of Dispute Settlement

The Yoruba speaking states in Nigeria can be classified under the centrally organized states.[6] These states classified by Elias are characterized by a hierarchical system of government with an administrative and judicial setup.[7] The oba and his council of chiefs are at the apex of authority, while the family heads are at the base.

Falola and Oguntomisin identified three courts under the traditional Yoruba culture.[8] These courts, which they described as being hierarchical and in ascending order, facilitate the administration of justice in traditional Yoruba society. They are: the court of the compound head (Ile ejo ti baale), the court of the ward chiefs (Ile ejo ti ijoye), and the royal court (Ile ejo ti oba). With this classification, the issue of jurisdiction is recognized under the Yoruba traditional judicial process. Cases are not arbitrarily taken to any court. The jurisdiction of the different courts depends on the parties involved in the dispute and the type of issue or case involved.

The family court described by Falola and Oguntomisin as the court of the compound head formed the base of the hierarchy of traditional courts.[9] The family is the foundation of legal obligation, hence, the adage "charity begins at home." The family bond is a recognized aspect of Yoruba culture. However, there are rifts within family members that have to be settled. The family here denotes the extended family unit, and not the nuclear family, consisting not only of the immediate children and their children, but descendants and remote collateral relatives that remain within the scope of descendency from the common ancestor upon whom the particular family bases itself. The extended

6. Fildelis Ejike Ume, *The Court and Administration of Law in Nigeria* (Enugu: Fourth Dimension Publishing, 1989).

7. T.O. Elias, *The Nature of African Customary Law* (Manchester: Manchester University Press, 1954).

8. Tovin Falola and G.O. Oguntomisin, *The Military in the Nineteenth Century Yoruba Politics* (Ile-Ife: University of Ife Press, 1984), 19.

9. Ibid.

families were actually the smallest political unit in Yorubaland. The family court is usually presided over by the eldest family member, usually a male. He is seen as representing the ancestral powers. His role is seen as that of a defender of social justice and an enhancer of family morality. Family disputes are settled in this court.

In Yoruba culture, the administration of justice starts in the family court, while the actual settlement of a dispute begins at home. Thus, it is very rare for disputes to get the notice of the authority without having been addressed at these levels. A dispute occurring among kinsmen or within the same family is usually settled within the family, and recourse to outside intervention is avoided at all cost.

This is particularly true in minor cases of theft, marital disputes, inheritance cases, divorce, adultery, and quarrels between wives in the family. The emphasis in the dispensation of justice in such courts is the family bond. This ensures that all family members, no matter the case, pursue the notion of social justice and equality. The family court is held in a formal place and at a set time. It is usually held in the early mornings or late in the evening as these are the times when it is expected that persons within the family or witnesses are available within the family compound or back from the day's chores or business.

In cases involving disputes between persons from different families, the two heads of families are involved in the mediating process. However, this can be so when the two family heads are on good terms. It is also important to note that such cases are heard in the compound of the older of the two family heads.[10] All cases that cannot be resolved at the family court though are referred to the ward or quarter courts, also known as the village or district court. They are superior in jurisdiction to the family courts. The ward or village courts denote a clan. It embraces many family compounds or units, and generally many extended families. The chief of the clan, a tribal or ward chief, also heads the ward or village court, assisted by a council composed of heads of families in the clan.

The ward chief, also known as the quarter chief or head, is responsible for regulating inter-compound disputes and settling disputes between persons from different compounds under his care.

The chiefs who adjudicate at the village or ward courts are usually considered knowledgeable in the legal traditions of the people. They are men of proven integrity and of propriety of manner that have acquired a reputation for judicial wisdom and temperament. In this regard, age is of paramount im-

10. N.A. Fadipe, *The Sociology of the Yoruba* (Ibadan: Ibadan University Press, 1970).

portance in the selection of the chief.[11] Cases heard at the ward courts include referrals from family courts or cases involving persons from different families.

In settling disputes referred from family court, the family head or his representative must be present to brief the ward head about the case. This will guide the ward head as to the direction of adjudication. The ward court is not only for appeals. Rather, disputes/cases involving different families are handled at this court. Cases may also come directly at the first instance from a dispute involving persons from different families or as an appeal from the decision of a family court.

Under the Yoruba culture, there exists a strong tradition of chieftaincy; hence, there existed a court known as the royal court. The machinery of government consists usually of the council made up of the king as president and the chiefs. The oba, sitting with his council of chiefs, is responsible both for executive governance and administration of justice.

The king is the supreme head of any Yoruba society. According to Asein, the king is the head of the political order, and he performs social as well as political duties.[12] The king is regarded as the high priest, and an embodiment and symbol of authority. At times, the king delegates powers to subordinate authorities like the village or ward chiefs. They are empowered to settle minor disputes arising within their area of authority. Appeals from village or ward courts go to the royal court, usually the court of last resort. It is the highest traditional court in the Yoruba community, and the king has a special prerogative to grant pardon.

As a judicial court, the royal court deals with disputes between chiefs, among parties belonging to different wards, and serious cases of appeal from lower courts. It deals with criminal cases of murder, manslaughter, rape, treason, witchcraft, sorcery, incest, arson, assault on chiefs' or kings' wives, or adultery with the wife of any king.

Non-urgent cases are dealt with at the weekly session of council, which transforms from an executive to a judicial council. Urgent cases are dealt with as often as occasion warrants, and the council could be summoned at short notice.

11. O. Adewoye, *The Judicial System in Southern Nigeria, 1854–1954* (London: Longman Group, 1977).

12. John Ohireime Asein, *Introduction to the Nigerian Legal System* (Ibadan: Sam Bookman Publishers, 1998).

Other Forms of Traditional Courts

There exist other forms of traditional courts in the Yoruba culture, which are well recognized. These include professional or market courts. These courts are set up by members of a particular trading or professional groups, and saddled with the responsibility of maintaining peace and order. There are rules to be adhered to by all members. Flagrant abuses of rules, or disputes, arising between members are settled in these courts.

A president and a few selected members of the group head the professional or market courts; the venue is the marketplace. Justice is administered with a focus on the unity of the association, facilitating peace and harmony among members, and equally safeguarding the association's etiquette.

According to Olaoba, another type of court known as the age grade court plays a crucial role akin to the modern police force in enforcing law and order.[13] According to him, the age grade courts are the executors and performers of judicial decisions reached by the various traditional courts in the society.

Secret cults are another type of traditional court. In the administration of justice under the Yoruba culture, certain cases are considered very serious. These cases include wrong doings toward ancestors, for example, in the form of disgracing deities or practicing witchcraft. In addition, in a situation where a case remains unsettled, maybe due to the untruthfulness of a party in a dispute or where evidence is inconclusive, resort is made to supernatural techniques. Such cases are tried by secret cults according to their rules. Bascom and Morton-Williams noted that in some parts of southwest Nigeria, a body known as Ogboni and Osugbo in Ijebu-Ode ruled the people.[14] These cults played important roles in the administration of justice in this society.[15]

Lucas pointed out that these societies rest upon strong psychological cases.[16] Ojo asserts that members of these groups were popular, influential, and well-to-do elderly citizens who organized and directed the performance of the legislative, executive, and judicial activities of the state.[17]

13. O.B. Olaoba, *Yoruba Legal Culture* (Ibadan: FOP Press, 2002).

14. W.R. Bascom, "The Sociological Role of the Yoruba Cult Group," *American Anthropologist* XLVI, Memoir no. 63 (1944) and Peter Morton-Williams, "The Yoruba Ogboni Cult in Oyo," *Africa* 3 no. 1 (1960): 362–374.

15. O.B. Olaoba, *An Introduction to African Legal Culture* (Ibadan: Hope Publishers, 2002): 56.

16. J.O. Lucas, *The Religion of the Yoruba* (Lagos: CMS Bookshop, 1948).

17. Afolabi Ojo, *Yoruba Culture* (London: University of London Press, 1967).

In Yorubaland, Okany asserted that members of the Ogboni society arrogated the power of deciding all matters of importance and settling all serious cases.[18] They are said to also serve as a bulwark against tyrannical chiefs. Members of the society confer authority upon the Ogboni society to act as state police in certain cases, and as a trial court in other instances.[19]

Describing the Ogboni secret society, Johnson said:

> Among the Egbas and Ijebus, the Ogbonis are the chief executives. They have the power of life and death and power to enact and repeal laws but in Oyo provinces, the Ogbonis have no such power. They are rather a consultative and advisory body. The king or Baale being supreme and only matters involving bloodshed are handled over to the Ogbonis for judgment or for execution as the king deems fit.[20]

Cases that are decided by the secret cults are usually held in sacred groves or isolated places where there will be no disturbance.

Personnel in the Traditional Courts

The personnel of the traditional Yoruba courts portrayed the simplicity of the court and the adaptation of the court to the traditional setting.

Due to the simplicity and non-formality of the family court, there were no designated personnel apart from the adjudicators attached to the court. The setup discussed below is found in the village/ward courts and the royal courts.

The adjudicators are judges in all the traditional courts. In the family court, the ward/village court, and the royal court, the respective adjudicators are the family head, the village or ward chiefs, supported by some family heads, and the oba and the council of chiefs.

The issue of status, age, and respect for age is firmly entrenched in the Yoruba culture of appointment or selection of adjudicators. Adjudication is sanctioned by age. It is regarded as an indication of enhanced experience and ideas while status represents personality and moral disposition. It is a belief among the Yoruba that the magnitude of justice and equity under the judicial process depends on the characteristics of the adjudicators. They are regarded

18. Martin Chukwura Okany, *The Role of Customary Courts in Nigeria* (Enugu: Fourth Dimension Publishing, 1984).

19. B.O. Nwabueze, *Machinery of Justice in Nigeria* (London: Butterworths, 1963), 1.

20. Samuel Johnson, *The History of the Yorubas* (Lagos: CMS Bookshop, 1921), 651.

as repositories of custom and tradition. The adjudicators are usually of the male sex, respectable, transparent, honest, and knowledgeable in the customs and tradition of the people. It is expected that, because of their status and age, they must be above board in the family and community settings.

The orderlies/messengers are important for the maintenance of law and order, a significant feature of the traditional Yoruba courts. Orderlies are found in the ward/ village and royal courts. They are responsible for delivering messages before and during the settling of a dispute. This includes informing the defendant of the complaint against him, or informing any head of family or ward/ village chief about a pending case that affects his jurisdiction or person. The orderlies also inform witnesses to a dispute about the case and the importance of attending the trial. They communicate hearing dates to the parties and witnesses. During the trial or settlement of the dispute, the orderlies are responsible for ensuring silence and orderliness throughout the proceeding.

Town criers are features of traditional settings. They are attached to the village/ward chief or the king. They announce important news and events to the whole community in the language of the people.[21] Local gongs are beaten intermittently throughout the community, while the information is disseminated to the people. The sound of the gong is intended to attract the attention of the community, to the importance/ urgency of the information. In response to the call, the people are expected to leave whatever they are doing to listen to the information with perfect decorum. In a dispute settlement, the announcement by the town crier will include the case to be resolved, the parties, the venue, the date, and time. After the hearing, it is also the responsibility of the town crier to go around and inform the community of the outcome of the case.

It must be acknowledged that this is a very effective method of disseminating information to a large number of people. With this method, it is rare for a person to feign ignorance of vital public information, the reason being that after the town crier has carried out his duty. The information becomes an agenda for public discourse/debate.

Procedure in the Traditional Yoruba Courts

The traditional style of dispute settlement is commendable for many reasons. These include simplicity, affordability, lack of formality, and timeliness.

21. Olaoba, *Yoruba Legal Culture*.

Time was of the essence in the dispensation of justice. Under the informal setting, cases were usually heard and decided anywhere and at any time of the day and the court could be constituted at a very short notice in a formal situation.

Technicalities are eschewed in the earnest endeavor to dispense justice, fair play, and equity. The fact is taken into consideration that parties to a dispute, and even the judges, are usually involved in complex relations outside the courtroom. This relationship existed before the dispute and is likely to continue after. Therefore, a common sense approach rather than a legalistic one was adopted in resolving issues.

The underlying principle adopted in the traditional court is to promote reconciliation of the parties in a dispute. Consequently, the maintenance of social equilibrium is the primary objective of the Yoruba legal system. The procedure in a dispute settlement under the Yoruba culture takes the form of a complaint and accusation stated to the stipulated authority, apprehension of the accused or informing the defendant of a complaint against him or her, a trial or hearing according to local procedure, judgment, and punishment.

The complaint stage is the starting point of the procedure in the traditional court. According to Ajisafe, the procedure in a traditional court starts with the formal lodging of complaint by an aggrieved party.[22] The complainant is made to pay a token fee called a summons fee. The adjudicators usually share this fee for sitting over the case. A small amount is given to the orderly and, in certain cases, part of it is used to buy kola nuts or wine to celebrate the reconciliation of both parties. If and when necessary, part of it is used for sacrifices to appease the ancestors.

The next stage is that a messenger is sent to the other party to the dispute informing him/her of the complaint. This is an important feature of the Yoruba culture, which is also found under the English system. It is based on a Yoruba legal adage that "A ki fa ori lehin olori," which literally interpreted means "You cannot shave a person's hair without his consent."

The message to the defendant is not usually sent directly to such a person. This is because under the Yoruba culture there is respect for territories. The summons from the ward chief or royal court is sent to the family head and the ward chief respectively as a sign of respect for the territory. Where the summons is from the king to the ward chief, the messenger is sent with the staff from the office of the king. This is not the case where the message is for the family head. The summons gets to the defendant from the appropriate quarters.

22. A.K. Ajisafe, *The Laws and Customs of the Yoruba People* (Lagos: Kash and Klare Bookshop, 1946).

The defendant is also expected to pay the same amount of money or more as a summons fee to the ward chief or king. After the payment of the fee, the court fixes a date. This is communicated to the parties and their witnesses and, if necessary, to the community as a whole. It is the responsibility of every person within a community to bring a culprit who has committed a crime to justice. It is therefore morally reprehensible for anyone to refuse to bring to book any member of the community known to have committed a crime that will affect the peace of the society.

At the trial stage, the dichotomy of criminal and civil law as known under the English law did not exist under the Yoruba judicial setup. The different aspects of a dispute are handled in an indistinguishable manner. There is no segregation of these two aspects of law in the sense of two separate hearings or institutions.

A feature of the traditional court is the organized form and serene atmosphere in which issues are resolved. According to Olaoba, the maintenance of absolute silence and tranquility is the hallmark of the judicial process among the Yoruba.[23] Punctuality is a striking feature of the court. Parties to the dispute, witnesses, and the audience arrive punctually at the court venue.

The arrival of the ward chief or king and his council of chiefs are welcomed by the subjects either kneeling or prostrating depending on the sex. It is an abomination to stand on one's feet while the king is on his feet. In the royal court, the king is welcomed into the court with talking drums and chanting of praises of his greatness.

The court proceedings start with an order from the court orderly. According to Olaoba, during the settlement of a dispute, all persons must maintain order and complete silence without distraction.[24] Ajisafe states that the following statement heralds the beginning of a dispute settlement.[25]

Atoto arere o.
Ki oniko pa iko re mo
Kabiyamo toju omo re
Ki elenu pa enu re mo
Okun aiye ja.
Okun ore meji ja.
Awon agbagba fe tun so
Enikeni to ba di won lowo
Awon agba yio je niya.[26]

23. Olaoba, *Yoruba Legal Culture.*
24. Ibid.
25. Ajisafe, *The Laws and Customs.*

Literally translated, it means:

Silence in the court.
There must be no coughing
Mothers, take care of your babies
There must be no talking
The cord that binds humanity is broken.
The cord of friendship is broken
The family tie is broken.
The elders are here to tie the broken cord.
Please let there be no distraction
The elders would punish anyone that flouts this order.

To show the importance of order in the court, distracters during the proceedings may be fined, sent out, flogged, or disgraced. This warning of silence sets in motion the beginning of the trial.

Another feature of the hearing process is the positioning of the disputant and the audience. This is to ensure that all parties are able to see that justice is being done.

Unlike the procedure under the English style courts, parties to a dispute and their witnesses do not swear before giving evidence. This may be attributed to the respect and reverence the disputants are expected to have for the king or ward heads, who are regarded as representatives of the ancestors. It is also assumed that their position will deter the parties from lying. Another reason given by Olaoba is that the unseen and ever present ancestors who are considered very important under the Yoruba culture are a working force on the minds of the parties, propelling them to tell the truth.[27] This is because of the belief that the ancestors know what the truth is even when the adjudicators do not.

In the family court, in an attempt to emphasize the importance of telling the truth so that peace can be restored, family member who are parties to a dispute are reminded of the significance of bonding of kinship by reference to the family ancestors known as "Alajobi."

The next stage of the trial is the stating of the issue in dispute. The complainant is always the first to state his case. Unlike the English style courts, this is done by the complainant himself or herself and never through a legal representative.

An important feature at this stage is that the parties are never interrupted when stating their cases. This is to allow for flow of thoughts, eloquence, and clarity. Talking is regimented and systemized. Both parties are allowed to state their cases one after the other. They are allowed to call their witnesses who must all be heard. No case is decided until thoroughly investigated. The principle of *Audi alteram partem* is an important feature of the Yoruba legal system[28]. This fact was recognized by Pollard (acting judge) in the case of *Thomas v. Ademola II*.[29] The speed of procedure is not as important as presentation, information, and discussion.

Unlike the position in civil cases under the English courts, where a party can be given judgment in a case even where the other party did not turn up after being given adequate and proper notice, this is not allowed in the Yoruba traditional courts. The above principle is found in the Yoruba maxim that states "Agbejo enikan, agba osika," meaning that "It is wickedness to base judgment on the evidence of only one party to the case."

It is significant to point out that persons are never allowed to stand upright to state a case before the adjudicators. It is a Yoruba belief that no one is above the king or the head chief who remains seated throughout the proceeding. It is considered an act of disrespect to tower over the king. Parties to a dispute are allowed to kneel down or crouch during the presentation of their respective cases as a sign of respect to the traditional authority.

There is, however, an exception to this rule. This is where one or both parties involved in a dispute is/are highly placed persons, high-ranking chiefs, or important personalities in the community. In such a case the person is allowed to sit down while stating his or her case but subject to the special permission of the chief or king. This privilege is given to the person only after paying homage to the king or chief by kneeling, if a female, or prostrating, if a male. This is the cultural way of showing respect in Yorubaland.

Generally, there are other features peculiar to the Yoruba culture in the process of settling disputes. These are highlighted below:

- There is no limitation of time within which a matter can be heard.
- The dispute is heard and settled in a relaxed atmosphere familiar to the parties.

26. Ibid.
27. O.B. Olaoba, *The Significance of Cross Examination in Yoruba Traditional Jurisprudence* (Ibadan: John Archer's Publisher, 2000).
28. Folarin Shyllon, *Freedom, Justice and the Due Process of Law* (Inaugural Lecture. University of Ibadan, 1986.
29. *Thomas v. Ademola II* 18, Nigerian Law Report 12 (1945).

- Unlike the formal court decorum, the procedure is informal and simple.

The issue of relevant and irrelevant evidence does not arise under the traditional Yoruba method of dispute settlement. Aggrieved parties are allowed to talk about many issues, which may appear irrelevant to the case at issue but may be found to be of relevance later. The parties to the dispute are allowed to cross-examine each other and their witnesses personally and not through a legal parishioner.

The adjudicators, after listening to both parties and their witnesses, are allowed to cross-examine the disputants and witnesses. According to Olaoba, with the wisdom with which they are imbued, trials do not take long to resolve.[30]

Cross-examination under the Yoruba culture is fluid, flexible, informal in nature, open minded, and organized, unlike the English style courts, which are technical and directional to the weight of evidence.[31]

Judgment is given after the parties have presented their cases. The family head and the elders, or the ward chief and his chiefs, or the king and the council of chiefs consider the issues and come to a verdict. There is admiration in well-tried cases for the adjudicator who gives the judgment with clarity and cites past cases of significance. Justice in the traditional courts is not in accordance with any written code, but based on a body of customs, usages, and code of manners, which has long been established and sanctioned by customs. Each case is decided based on its facts and peculiarity.

In coming to a verdict, the principal objective is the reconciliation of the disputants. This is a marked characteristic of the Yoruba judicial process where the interest is in facilitating peace, and not essentially reparatory or retributory justice. As stated by Olaoba, there is no victor or vanquished in a dispute settlement. Disputants are encouraged to adopt a "give a little, get a little" principle.[32]

The adjudicators are not out for a brutal judgment but an amicable settlement and maintenance or restoration of social equilibrium of the community. This is also to prevent a dispute deteriorating into an actual breakdown of peace. In doing this, all issues raised during a case, and not only the issue that precipitated the proceedings, are considered. In effect, a general settlement is attempted.[33] This is unlike the English court where only matters pleaded are considered.

Another feature of the Yoruba traditional court worth considering is, when delivering judgment, the adjudicators—aside from their official legal responsibilities—also assume the office/ role of an educator. In announcing the verdict of the court, the disputants are reminded of the basic norms of the community in order to restore social equilibrium.[34] Thus, such conceptions as seniority and superiority are taken into account in settling disputes.[35]

The disputants sometimes celebrate the restoration of peace and harmony through the provision of wine and kola nuts. According to Adewoye, this celebration symbolizes the end of the dispute, which is characterized by begging, embracing, dancing, and rejoicing before the court.[36] All this points to the acceptance of the verdict and proves to the audience that all is now well. Where a fine is imposed, the party must pay the fine to the adjudicators for their services. If the fine is for damages for a wrong done, the plaintiff or complainant is given the money. It is, however, customary that part of the fine be given to the adjudicators.[37]

It is important to state that the main objective in any traditional dispute settlement is to reconcile the parties. However, this does not preclude punishment if necessary. The punishment meted on criminal offenses, or offenses against an offender, is in accordance with the magnitude of the act and its effect on the community. Punishment ranges from a fine, confiscation of property flogging, compensation, reprimanding, chaining, execution, ejection, castration, emasculation, selling into slavery, death penalty, imprisonment (which was rarely used), and banishment.[38]

Banishment as a punishment is considered very severe, and it is used in very grave cases where the offender would be better ostracized from the community. Severity is considered from the point of view of the importance attached to family ties and kinship in Yorubaland. To live apart from the family under such a situation means extreme hardship and being labeled a fugitive.

Apart from the informal and formal methods of dispute settlement under the Yoruba culture, there is the extrajudicial method. It plays a crucial role in the maintenance of law and order. This method is socially endorsed and accepted by members of the society where it is operational.

Oath taking is an extrajudicial method used in dispute settlement. Under the Yoruba culture, the belief in ancestors binds the people and ensures their interest in the continued peace and solidarity of the community, more so when it is considered that the Yoruba legal heritage is intermingled with reli-

30. Olaoba, *The Significance of Cross Examination.*
31. Ibid.
32. Olaoba, *Yoruba Legal Culture.*
33. A.N. Allot, *Essays in African Law* (London: Butterworth & Co. Publishers).
34. Ume, *The Court and Administration.*
35. Ajisafe, *The Laws and Customs.*
36. Adewoye, *The Judicial System.*
37. Ajisafe, *The Laws and Customs.*
38. Ibid.

gion.[39] God is upheld as the supreme judge who knows what man does not know. Belief in God and other deities instill psychological fear in the people. It is believed that anyone who incurs the wrath of any of the deities has himself or herself to blame. Disputants are made to swear to an oath to determine the guilt of a person. The oath has a psychological effect where a party falsely swears to it.

Another extrajudicial method of setting disputes in Yoruba culture is by ordeal. This is used where a person is accused of a serious offense. The ordeal takes different forms depending on the offense. It could be that the juice of a tree or burned powder from wood is mixed with water for the accused to drink, a knife or iron is heated in fire for torture, or the accused is immersed in a pond or river. The death of the accused in any of these cases is regarded as proof of guilt.[40]

In difficult cases where it is not so clear identifying a culprit, divination as an extrajudicial method is used. The juju priest is consulted, and with the help of the oracle, what seems like a mystery is unraveled. Usually, sacrifices are offered to the deities. It is apt to state that under the traditional system, supernatural pronouncements cannot be challenged or appealed.

Dispute Settlements in Particular Activities of Yoruba Culture

The structure of government of individual Yoruba kingdoms and communities is diverse.[41] There are activities that are of great importance within the Yoruba culture. A few of these are highlighted, and the method of settling disputes arising from such activities are discussed:

a. Marriage
b. Child custody
c. Inheritances
d. Criminal acts.

There is no doubt that the rule governing traditional marriage varies from one place to the other. There are more than a hundred different systems of marriages in Nigeria. Each has its own peculiar requirement for validity and

39. Adewoye, *The Judicial System.*
40. Ajisafe, *The Laws and Customs.*
41. S.O. Biobaku, *The Egba and Their Neighbors, 1842–1872* (London: Oxford University Press, 1987).

dissolution. Generally, under the traditional Yoruba culture, a customary marriage is almost indissoluble because of the cumbersome process a man goes through to marry a wife. Justifiably, this is to ensure a lasting relationship between the families concerned. In this regard, divorce is greatly discouraged. Marriage is considered a permanent social and unique bond between man and woman on the one hand, and their respective families on the other.[42] It is a principle that the marriage be kept alive at all times and under all conditions. However disputes arising from such marriages are considered in the family court with the hope of reconciliation. On the contrary, under the English law, a divorce petition can be brought only after three years of marriage except in special circumstances.

There is no hard and fast rule as to the time within which a petition for divorce can be brought. Accordingly, reconciliation and tolerance are suggestions put across to the parties in a petition for divorce in customary marriage. When it is apparent to the adjudicator, who in this case is the family head, that the parties cannot be reconciled, the marriage can be dissolved. Grounds for dissolution of customary marriage are not specific. However, the recognized ones are adultery, usually on the part of the woman, cruelty, barrenness and impotency, insanity or mental illness, and death of the husband.

The Yoruba cultural belief is that the essence of marriage is to have children. Marriage is not regarded as providing companionship and affection only. Therefore, every marriage is expected to produce children. Sterility after a reasonable period of marriage is a ground for dissolution, and the burden is usually on the woman. This was the basis in the case of *Ester Akande v. Karimu Apero.*[43] In another instance, a man who has sexual relations with a mature girl who is not betrothed is made to pay a reasonable amount of money to her father, in addition to marrying the girl, unquestionably.[44]

The death of a spouse should normally terminate a marriage. However, because of the Yoruba culture of inheritance, a male member of her late husband's family inherits a widow. It is imperative for a widow who does not wish to be inherited to seek dissolution of the marriage in a family court, so that she can be free to remarry. The court may exercise discretion in granting the dissolution by asking her to pay back the dowry to the late husband's family. This was the principle adopted in *Misutura Abeo v. Salatu Amosu.*[45]

42. Ajisafe, *The Laws and Customs.*
43. *Esther Akande v. Karimu Apero* Grade B. Customary Court Egba Odeda Civil Record Book No. 12 (1962).
44. Ajisafe, *The Laws and Customs.*
45. *Misutura Abeo v. Salatu Awosu* Grade B. Abeokuta Case No. B 242/62 (1962).

Respect for elders, family members, and the husband is expected and highly regarded among the Yoruba. In a divorce proceeding, this is often used against the wife more than the husband. Persistent lack of respect by either spouse to in-laws or the extended family is a serious offense, which could be a ground for dissolution.

Adultery in the Yoruba culture is different from that of the English law. It is the sexual cohabitation by a married woman with a man who is not her husband where the dowry has not been refunded to the husband. In settling disputes accruing from adultery, the complaint of a woman against her husband is not tenable. This is because polygamy is a norm and accepted in Yoruba culture. Besides, the man may claim that he intends to marry the woman. On the contrary, polyandry is an abomination. In the event of the latter, and the marriage breaks down, the man may be ordered to return the dowry paid on the woman to her husband.

The issue of child custody arises where a marriage relationship has broken down due to separation, divorce, or death. In such a dispute, the court considers the person who is in the best position to protect the interest of the child.

Among the crimes recognized under the Yoruba culture is violence, which is universally condemned in all human societies. Violent acts include manslaughter, murder, and theft. Crimes against family security include incest, rape, and adultery. Crimes reflecting more particularized values of the Yoruba include those involving disrespect of the family or tribal elders, dignitaries, profanation of religious ceremonies, symbols, and duties.

Dispute Settlement in the English-Style Courts

Before 1900, there were no statutory established courts in Nigeria. The arrival of the British colonial powers in Nigeria brought about a fundamental revolution in the traditional judicial process.

At the end of the nineteenth century, there existed three different British jurisdictions in Nigeria controlled by the colonial powers. None of these adopted or modified the existing traditional courts in existence. This was because of the instructions given to the English consular officers beginning in 1849 when the first consular officer was appointed. This was to the effect that they were not to interfere with the administration of justice of the native people and, as much as possible, they were not to interfere with the traditional government.

As a result of interaction of the British colonialists with the local traders in the various jurisdictions, trade disputes started. It became imperative to establish courts that would settle such disputes involving trade matters. This led to the establishment of the first court in 1854, known as the court of equity, to deal with local and commercial disputes. The court was presided over by traders, and the rules were flexible without technicalities. This court established the subtle presence of the British government in Nigeria, and it eroded a lot of the authority and control of the traditional courts.

The native king and the British government, as a result of an agreement of the local community, represented the beginning of a systematic native court in Nigeria. This was in 1861, when King Dosunmu of Lagos signed a treaty of cession with the British consul of Lagos, and Lagos became annexed to Great Britain.

A report in 1862 on the state of affairs and the administration of justice in Lagos by the secretary of state on foreign affairs and the administration of justice in Lagos by the secret act of state on foreign affairs may be said to have accelerated the establishment of a new form of court for the effective administration of justice in Lagos. A police court was established in 1862 and—probably due to lack of performance—of that court it was replaced by a Supreme Court in 1863.[46]

The function of the Supreme Court in settling disputes was soon made apparent to the natives. It was to uphold justice as demonstrated in the 1882 case of *Regina v. Satomi & Others* where three natives were charged with killing a woman who was believed to be a witch. [47] Within the culture, it was believed that a witch should be killed. The community was concerned about the trial and even the jury pleaded for the accused on the ground of ignorance of the English law. However, the court was of the view that they had to stamp out a cruel and inalterable vendetta. The accused were all sentenced to life imprisonment for manslaughter, and the decision caused wide resentment. However, it is important to note that the Supreme Court during this period recognized the operation of the customs and traditions of the people, which were not repugnant to natural justice, equity, and good conscience. In *Cole v. Cole*, Rayner (chief judge) stated that the applicant was not barred from claiming native law in the case.[48]

The establishment of the Supreme Court in Lagos further eroded the authority of the traditional ruler, and it resulted in the assumption of judicial authority by the British governor who gave audience to complaints and gave redress in his official residence.

46. Ume, *The Court and Administration.*
47. Ibid.
48. *Cole v. Cole* 1 Nigerian Law Report (1893), 15.

In 1885, at the Berlin Conference, international recognition was given to the British as having jurisdiction in Nigeria. In 1899, with the establishment of the northern and southern protectorates in Nigeria, it became imperative to formalize and establish on a statuary basis a unified judicial system. This brought about the establishment of a Supreme Court for southern Nigeria in 1900. Because of the vastness of the area, and to ensure close supervision, two categories of courts were established out of the Supreme Court. These were the native council and the minor court, presided over by a British and native respectively. Appeals went from the minor court to the superior native council. The native council was to supervise the minor court and had jurisdiction to hear all cases that could go to the minor court. Appeal from the native court went to the Supreme Court. The minor court had jurisdiction to determine cases relating to land and other minor cases.

The British further established themselves in some other Yoruba towns. In 1904, a treaty was signed by the governor with the ruler of Egbaland. This resulted in the Egba (Jurisdiction of Supreme Court) Ordinance of 1904 with the power to settle disputes in Egbaland. It brought about the establishment of a court consisting of a British president and two natives as members. Similar treaties were signed in the Yoruba towns of Oyo and Ile-Ife in 1908 and Ijebu-Ode.[49] Several events led to the complete and rapid takeover by the British of the judicial process in Yorubaland. One was the request of the king of Egbaland in 1912 for the British troop to assist in quelling a riot in Abeokuta. This resulted in the signing of an agreement in 1914, and Egbaland was totally placed under the control of the British government. This led to the extension of the jurisdiction of the Supreme Court to the whole of Yorubaland by virtue of the Jurisdiction of Court Extension (Protectorate) Ordinance of 1915.[50]

In 1914, the amalgamation of the southern and northern protectorates took place, and a colony and protectorate of Nigeria was established. Consequently, the need arose for a unified judicial setup for the whole country. The Supreme Court Ordinance of 1914 established a Supreme Court for Nigeria. For the first time, the 1914 ordinance allowed and entrenched, in Nigerian laws, the common law, the doctrine of equity, and statutes of general application, which were in force in England on January 1, 1900, and these were to be forced on the Supreme Court. The ordinance also recognized the continued existence of the native law and custom, which were not repugnant to natural justice, equity, and good conscience.

49. Elias, *The Nature of African Customary Law*, 8.
50. Ume, *The Court and Administration*.

With the amalgamation, native courts were established for the whole country by virtue of the Native Court Ordinance of 1914 and later in 1918. For the first time, the native courts were graded A, B, C, and D. In southern Nigeria, the courts took over from the native council and minor courts. A feature of the native courts during this period was that they were similar to the traditional courts. In 1954, with the introduction of federalism in Nigeria, the country was divided into regions. Each region was empowered to have a judicial setup. The Yoruba speaking states came under the western region, and customary courts were established to replace native courts.[51] The courts were graded A, B, C, D, and were given powers to try offenses against customary law even if such offenses were in the criminal code. However, punishment for such an offense could not be more than prescribed by the code, and could not be repugnant to natural justice, equity, and good conscience.

It is, however, important to state that the introduction of the English-styled courts did not completely sweep away the traditional machinery of adjudication. The traditional courts were intended to exercise jurisdiction alongside the new courts. Nevertheless, the natives were reluctant to approach the new courts. Another problem was the dearth of trained and qualified personnel. In addition, the views of the natives became divided because those that had been indoctrinated into the English way supported the subjection of the traditional courts, which were classified as offensive.

The continued effect of colonialism and the English-styled courts brought about the gradual disappearance of the traditional judicial process and opened up a new form of crime to which the customary law and the judicial process had no answer. This resulted in the culture of the people and the known judicial process being disliked, ridiculed, discouraged, and made to appear shallow in modern times.[52]

The Distinction between the English-Styled Native Courts and the Traditional Courts in Yorubaland

The native courts established by the colonialists were to a large extent different from those that were in existence before their arrival in the Yoruba kingdom. Some of these differences are highlighted:

51. Chapter 31 in *Laws of the Western Region of Nigeria Volume II* (1959).
52. Okany, *The Role of Customary Courts*.

(a) The English-styled native courts are located in a collection of town and villages. This grouping was without regard to tribal or archival affiliation.
(b) Unlike the traditional courts, the British high commissioner in charge of the protectorate established the English-styled courts.
(c) Unlike the traditional courts, headed the by a native, the head of the English-styled court was the British district commissioner with a few natives as members
(d) In the English-styled native courts, the members of the court, who were natives, were appointed by the British district officer who invariably appointed them, not on the basis of age or other factors used under the Yoruba culture, but on the basis of loyalty.
(e) The British president of the court relegated members to onlookers and rarely consulted with them. He dominated proceedings in the English-styled native courts.
(f) The applicable law in the English-styled court was the English law, with which the president was familiar and to which there was objection in southern Nigeria because the courts were considered not to be like native courts at all.
(g) The jurisdiction of the English-styled native courts was limited, unlike the different classes of traditional courts that had unlimited jurisdiction.
(h) The method of enforcing the decisions of the English-styled native courts was similar to the method used in England. Unlike the traditional court system, which had rudimentary and effective ways of enforcing court decision, the English-styled native courts adopted such methods as arrest and levying execution in the English manner.
(i) The English-styled native courts kept records of decisions of the court with a court clerk unlike the traditional courts. Examples of such records are found in *Mosunmola Abike v. Peter Dehinde* and *Oyinsola Agbeke v. Ede Obasoko*.[53]

Merits of the Traditional Courts

In the records of proceeding of the African conference on local courts held in 1963, several merits of the local courts were highlighted. These include the following:

53. *Mosunmola Abike v. Peter Dehinde* Grade B. Customary Court. Ilesa No. 158/59 (1959) and *Oyinsola Agbeke v. Ede Obasoko* Grade B. Customary Court. Egba Odeda No. B 236/62 (1962).

- The traditional courts were the bedrock of the administration of justice in Nigeria especially in the rural areas and well as urban.
- They are now transformed into customary courts and are as old as the communities where they are found.
- The language adopted in the court is the language of the people. The litigants, therefore, are able to express themselves well and follow the proceedings of the court.
- The procedure is simple and easy to follow. The court proceeding is tension free. The personnel of the court are persons known to the litigants.
- The rules adopted are known and understood by litigant. The absence of legal practitioner in these courts is one of the reasons for the low litigation fee for disputants. Another reason is that justice was found right at the doorsteps of litigants, who need not travel far to receive justice in an unfamiliar environment.
- The constitution of the court is accepted by the people and recognized as their own institution. Therefore, there is the satisfaction that justice will be done and understood to be done. This is because of the absence of technical jargon.
- The machinery of justice is inexpensive as the natives who constitute the court are not legally trained and the court is not so much constituted for salary to be paid for the preservation of social justice and peace. Therefore, the traditional court did not impose heavy budget on the state.
- Under the cultural policy for Nigeria, one of the objectives is to promote the country's cultural heritage.[54]
- The traditional courts hold and preserve the customs of the people and retain experienced persons that are knowledgeable in the law.
- Claims under customary law cannot be defeated by passage of time.

The merits highlighted above were summarized in a memorandum submitted to the commission of inquiry into the Aba riots in 1929. Thus, it was stated:

> There is no writ of summons. No journey to a possibly distant court, no fear of adjournment on some specious ground or because the other party has bribed the clerk or the member or court messenger to procure an adjournment. The parties are permitted to make their statement in full instead of being cut short as they often are by the members or the clerk because the time is short or from some ulterior motive.[55]

54. Frank A.I.G. Imoukhuede, *A Handbook of Nigerian Culture* (Lagos: Federal Ministry of Information and Culture, 1992), 171–179.
55. Biobaku, *The Egba and Their Neighbors*.

The important advantage of all, however, lies in the fact that the chances of bribery diminished. The absence of delay in hearing the case, the nonexistence of legal practitioners to represent the parties and strangers apart from the villagers or natives themselves, and the fact that any attempt at bribery would soon become public knowledge in the village were reasons for this.

Lesson for the Criminal Justice System

Culture comprises material, institutional, philosophical, and creative aspects. The institutional aspects deal with the political social, legal, and economic structures. The process of dispute settlement comes under the institutional structure. Culture is not merely a return to the customs of the past. It embodies the attitude toward traditional values of a people who are faced with the demands of modern technology, an essential factor for development and progress.[56] The Yoruba culture and values play an important role in the judicial process in the states comprising the old western region today. The culture has absorbed numerous new traits and has breathed into these traits new life from the old traditional culture. To some extent, the present criminal justice system in the Yoruba-dominated states of Nigeria has changed rapidly by becoming Westernized, but at the same time, features of the traditional courts can still be seen in the customary courts and in the rural areas where they continue to play an important role.

Culture is the totality of the way of life evolved by a people in an attempt to meet the challenge of living in their environment.[57] It is true that the European colonial power brought a fundamental revolution to the criminal justice system in Nigeria generally, and the Yoruba speaking states in particular. The effect is still felt today in the criminal justice system. However, it would be wrong to assert that as a result of the incorporation of foreign cultural elements, the Yoruba cultural aspects of the criminal justice system are doomed to disintegrate. The candid truth is that the culture is elastic enough to absorb new ideas and, as reflected in the present criminal justice system, the foreign system introduced by the colonial powers has absorbed some of those cultural traits.

In the proposed reform of the criminal justice system in Nigeria, a suggestion for the committee to be set up is that the survival of the customary courts in the states comprising the old western region (most especially the Yoruba

56. Imoukhuede, *A Handbook of Nigerian Culture*.
57. Ibid.

speaking states), despite the colonial influence and modernization, can be attributed to the inherent resilience, strength, and compatibility of the culture of the people with modernization. Culture has never been static, nor has it been immutable. It has displayed an organic quality receptive to change and adaptable. Aspects of the imported British law, which can develop and extend the Nigerian criminal justice system in the face of modern technology, advancement, and progress, should be embraced and retained. In the same vein, the system should take into account the nation's cultural, political, and economic background in evolving a suitable criminal justice system in Nigeria.[58]

Conclusion

A cue can be taken from the Bantu of Congo-Kinshasa (now the Democratic Republic of Congo). The institution of tribalism has survived among the Bantus because of deliberate choice and/or inherent strength. There is no doubt that these tribal units of the Bantu were influenced by the colonial powers; however, their culture and social aspects remain real and vital. Despite the loss of direct political power and function, the tribal chief remained a prestigious and influential figure among the Bantu people and even by the political authority.[59]

Under the Yoruba culture, the continued prestige and influence of the traditional heads—chiefs and kings—are more in the nature of sociological and cultural phenomena than of legal and official structures. In the judicial sense, the native courts have retained their authority and vigor as part of the functioning apparatus of the customary courts.

The adaptable nature of the Yoruba culture is a great asset in this contemporary society.

58. Gbolahan Mudasihru, "Opening Address at the Nigerian Bar Association Conference," *National Concord* (29 August 1984): 16.
59. John H. Crabb, *The Legal System of Congo-Kinshasa* (Charlottesville, VA: Michie Company Law Publishers, 1976).