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Resurgence of the Traditional Justice System in Postcolonial Benin (Nigeria) Society

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Abstract

Rules and norms of behaviour are common features in human society. This is confirmed by human being's desire for protection, fairness and mutual respect from fellow humans in their social groups. Recognized authorities whose sanctions are respected help to ensure fairness and mutual respect for each other. For the traditional Benin (African) society, the issue of law and justice is the joint concern of the deities, ancestors and the human members within the society. The aim of this paper, is to examine (i) the relevance of traditional justice system in postcolonial Benin (African) society; and (ii) the unwavering respect for traditional values which the Benin (African) people have maintained even in a postcolonial era; and argue that the continual preference for traditional methods of obtaining justice by the people of Benin (Africa) are not unconnected with the inherent limitations of the received English legal system within an African terrain. As insiders, we propose a harmonization of a 'euro-afro-centric judicial system, for we believe that this would be beneficial and progressive for us as a people in quest for justice in a postcolonial Benin (African) society.

Keywords

Rule of law; traditional justice system; limitation of English legal system; harmonization of a Afro-Euro-centric judicial system, postcolonial Benin society

1. Introduction

Human beings are by nature inclined to seek the company of other humans. This nature in many ways makes them distinct¹ and as beings in relation, they must understand their world. For Emile Durkheim, understanding comprises shared and collective representations.² Human beings therefore strive to preserve and

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¹ M.Y. Nabofa, 'Theocracy and Democracy from the Perspective of African Traditional Religion', 31 *ORITA, Ibadan Journal of Religious Studies* (1999), 29–44.

² E. Durkheim, Introduction, in '*The Elementary forms of Religious Life*' (trans. by Carol Cosman) (Oxford University Press, New York, NY, 2001), xxvi.

prevent the disintegration of the group's collective representation to which they belong. Regulatory mechanisms are thus put in place as instruments of social control to help promote the well-being of humans within the society. These rules are promulgated by recognized, unbiased and respected authorities who also act as sanctions to these laws if they are violated. This is why Aquinas' definition of law as 'the ordinance of reason for the common good is promulgated by t[he] person who have the care of the community.'³ History shows that this is a common feature in every human community from antiquity to modern times.

In spite of modernization and the influx of Western ideas, it has been observed that certain primordial convictions still endure in the postcolonial Benin (Edo) society. As a people, we believe that the society is the ordinance of *Osanobua* (the Supreme Being). No undertaking with regard to societal institutions can be made without due consultation with *Osanobua* by means of divination. The Benin (African) divination systems, Shaw brilliantly observes, have frequently been viewed as producing a structure of completeness, harmony and continuity through ritual processes.⁴ To become a diviner, Shaw yet noted, is to gain divinatory knowledge and authority.⁵ The divination techniques is however not our concern in this paper and shall not be discussed in detail. To this end, the people consider 'evil' as having a link with the cosmic and esoteric activities, and its interference in human relationship must be tackled through the same experience using known 'traditional' means of adjudication. The wellbeing of the people depends not only on the form of government, but also on the ordinary law of the land as dictated by *Osanobua* or the deities. All these collectively, help to control vices in the society and form the basis of the Benin indigenous method of arbitrating and administering justice.

In addition to what represents the settled tradition or historical judicial heritage of the Benin people, the post-colonial justice system in Nigeria appears to be in sharp contrast with it. It is also a period that explicitly identifies openness to the new as opposed to the old.⁶ During colonial times, Africans were made to accept foreign practices particularly in methods of administration and adjudication. Most African practices during this period were tagged barbaric and were filtered to conform to what is obtained in the colonial context of a 'civilized world.'⁷ Added to this is the identity crisis that sank deep into the marrow of the indigenous

³ Thomas Aquinas, cited in K.E.O. Ikenga, 'Crime and Punishment in Igbo Customary Law: The Challenge of Nigerian Criminal Jurisprudence', available online at http://www.google/ikenga_crimeandpunishmentinigbocustomarylaw.com (accessed 17 August 2010).

⁴ R. Shaw, *Memories of the Slave Trade: Rituals and the Historical Imagination in Sierra Leone* (The University of Chicago Press, Chicago, IL, 2002), p. 70.

⁵ *Ibid.*, p. 103.

⁶ J.F. Wilson, Modernity, in M. Eliade (Ed.), *The Encyclopedia of Religion*, Volume 10 (Macmillan, London, 2003), p. 19.

⁷ U.I. Osemwonwa, *The Customary Laws of The Binis* (Myke Commercial Press, Benin, 2000), p. 14.

populace as many of the Benin natives began to consider it more fashionable to profess foreign religion and live the European lifestyle.

Despite the effect of the colonial experience, the Benin people have been able to impose respect for their cultural values, especially as it pertains to the Theocentric justice delivery system in the society. Traditional methods and practices are often consulted as a last resort in times of distress and need for survival. Akhilomen, citing relevant judicial cases, noted that ‘the belief in the efficacy of a deity, divinity or *‘uju*’ and in like manner *Ayelala* (the goddess that dispenses justice and protects morality) has never been in doubt even by the ‘organized’ courts.’⁸ This validates Mbiti’s position that the claim by Africans to accept Islam or Christianity does not remove African traditional religiosity from them.⁹

The paper thus explores the extent to which the search for justice and values has promoted the resurgence in patronage of traditional deities and courts (shrines) like those in postcolonial Benin society. It also examines how these traditional measures of obtaining justice have served as deterrent, restorative and transformative principles in conflict resolution among Benin people. It expunges ambiguities concerning the capability of the *Afro-Theo-centric* justice system in the face of modernization. This paper, in the light of this, recommends a symbiosis of an *Afro-Euro centric* justice system as a positive praxis towards the realization of prompt, equitable justice and harmony among the Benin people and indeed other societies in Africa.

2. The Concept of Justice

Etymologically, the term ‘justice’ is derived from an old French word of Latin descent *‘Justicia’* that means ‘righteousness’ and ‘equity’; a similar word from the Latin root is *‘Justus’*, meaning ‘uprightness’ and ‘just’. In this sense, therefore, the term justice is concerned with the proper ordering of things and people within a society.¹⁰ It is an essential element that helps to engender respect and equity in the society. To this end, Rawls posits that, *‘justice is the first virtue of social institution as truth is of the system of thought’*.¹¹ He further observes that since it may not be realistic to prevent all wrongs before they are committed; there is a need to put in place a system of compensation for these wrongs after they have been committed. A justice system, consequently, is a system put in place by human

⁸ D. Akhilomen, *The Resurgence of Ayelala in Benin Kingdom: An Indictment of the Conventional Dispensation of Justice in Nigeria*, available online at http://magazine.biafranigeriaworld.com/akhilomen_don/2006/10/15/the_resurgence_of_ayelala_in_benin_kingdom_an_indictment_of_the_conventional_dispensation_of_justice_in_nigeria.php (accessed 26 December 2011).

⁹ J.S. Mbiti, *African Religions and Philosophy* (Heinemann, London, 1969), pp. 263–279.

¹⁰ Anonymous, *West Encyclopedia of America Laws*, available online at <http://www.answers.com/topic/justice> (accessed 14 May 2010).

¹¹ J. Rawls, *A Theory of Justice* (Revised ed.) (Oxford University Press, Oxford, 1999), p. 3.

beings to protect the individuals in the society from the wrongful acts of its deviant members. Supporting this claim, Durkheim stated that: 'law functions not principally to penalise the criminal, but to articulate and fortify a community's social sentiments.'¹²

Through the ages the term justice has been linked with a variety of applications. Mill suggests that this variety has been responsible for uncertainty.¹³ This explains why the term's definition is as varied as the scholars who have tried to define it. Of the four definitions provided by the Advanced Learners Dictionary of Current English¹⁴ two are relevant to this discourse. Firstly, justice connotes law and its administration; by way of arresting a person or group of people for a crime and arraigning the suspect(s) before a competent court for hearing. In its second sense, it denotes right and fair behavior or the quality of being fair or reasonable. 'Fair' here entails treating each person equally and in accordance with the rule of law.

The notions that come to mind from the above analysis are that justice is not just a rule of law; it is also a principle of fairness in the administration of that law. We should note that, even though these two elements are conspicuously embedded in Dicey's celebrated expository theory of the 'Rule of Law,' practical experiences have shown that they are lacking in our postcolonial judicial practice in Nigeria.¹⁵

Justice is a theme that operates on both natural and conventional laws. This notion was first enunciated by Aristotle in his '*Ethics*' where he defined political justice as justice not only in a nation-state such as the traditional Benin Kingdom, but also as justice in a social organization administered by 'supernatural' laws.¹⁶ The law is usually made up of a set of rules or standards derived from the political or social entity to regulate individual conduct. This ensures the well-being of the majority of the people under its suzerainty.

The law may be secular or religious in its perspective. It can be transmitted orally, as in the illiterate societies, or codified in writing as in the Judeo-Christian Decalogue (Ten Commandments) in the Bible (Exodus 20:1–17), or the Constitution of countries like the Federal Republic of Nigeria. Each of these codes of law, whether secular or religious, usually contains three classes of laws: natural, civil and criminal. The execution of these laws invariably leads to what Aristotle again describes as natural and conventional justice.¹⁷

¹² *Supra*, note 2, p. xxxii.

¹³ J.S. Mill, 'On the Connection between Justice and Utility', in H. Bedau (ed.), *Justice and Equality* (Prentice Hall, Englewood Cliffs, NJ, 1971), p. 52.

¹⁴ A.S. Horby, in J. Crowther (ed.), *The Oxford Advanced Learners Dictionary of Current English* (Oxford University Press, Oxford, 1995), p. 645.

¹⁵ A.A. Emiko, *The Theory and Practice of Constitutional Law in Nigeria*, (Okhigua Press, Benin, 2001), pp. 211–299.

¹⁶ Aristotle, '*Ethics*', trans. by J.M. Dent (J.M. Dent and Sons, London, 1970), p. 105.

¹⁷ *Ibid.*, p. 106.

The administration of justice, like religion, is a common heritage among various societies of the world. It is the management technique put in place by any community to reproof/correct or punish a defaulting individual. This is geared towards educating others in the way of rightness with the view of making the individual wholesome. Justice and its administration are found in all cultures and it is a universal phenomenon that forms an essential part of human life. The administration of justice is meant to train the mind and build good character, to produce self-control and habits of obedience. This also means punishment meted out to achieve discipline within a community. It is imperative for justice and judgment to be upheld in communities because without justice, law and order will break down.

3. Religion as the Foundation of Benin Traditional Justice System

Justice in the indigenous Benin society is inseparable from traditional religion. Religion, according to Emile Durkheim, is not only beliefs and practices pertaining to the sacred and the profane; it also pertains to beliefs and practices insofar as they forge moral community. For without a moral community, there can be no religion.¹⁸ Thus, religion is human's intuition of the sacred, ultimate reality and his or her expression of that awareness in concrete life;¹⁹ it is this desire that sustains an undeniably inborn craving to seek and preserve some elements that are perceived as super-human in human society. Affirming Emile Durkheim, Idowu posits that religion as a universal trend has been accepted as a valid and essential activity of the human race;²⁰ it is as old as humanity. Its inescapable role in the life of people makes it the most universally discussed subject. Religion is a kind of impulsive reaction consequent upon human being's need for protection against the threats of a universe which appeared too mysterious for their understanding.

In Idowu's notion, the uncertainty implicit in the unpredictability of things, especially of the unknown tomorrow, created in human beings the fear and a daunting sense of inadequacy.²¹ This inadequacy, we believe, leads humans, according to Durkheim, to incessantly make, unmake and remake their categories of thoughts based on time and place.²² And in response, they founded a soothing compensation in filling the void with a 'supernatural and 'native' intelligence' – some supersensible mythical human – who can protect them and their interest, and provide for their needs without being hampered by the circumstances of a

¹⁸) *Supra*, note 2, p. xxii.

¹⁹) R. Ogunade, 'African Religion in Democracy', in A.K. Arap Chepkwony and P.M.J. Hess (eds), *Human View of God: Variety Not Monotony* (Moi University Press, Eldoret, 2010), pp. 63–70.

²⁰) B.E. Idowu, *God in Nigeria Belief* (Public Lecture, published by the Federal Ministry of Information, Lagos, 1963), p. 2.

²¹) *Ibid.*, at 11.

²²) *Supra*, note 2, p. xxiv.

physical universe. Africans, in Mbiti's term, are thus notoriously religious²³ as religion permeate every department (which includes their judicial system) of African Life. Therefore, it is impossible to isolate religion from the African personality.

The Benins are a major ethnic group in Edo State, in the southern part of Nigeria. The clan-system operated in Benin helps to foster unity as members of each clan are of the same family. The main families of the clan are usually related by blood. Added to this family tie, there are many others who look to the clan for leadership and protection and have no blood ties to it at all. In many ways, the clan is a source of stability, as ties between clans often prevent feuds and disputes. Powerful chiefs, such as the *Oba* (King) of Benin, impose peace and order over wide areas, and hold law courts within their territories. Like other people within the continent, we believe in *Osanobua*, one Supreme Being called God; albeit, s/he can be reached through intermediaries. The idea of *Osa* began as a spontaneous reaction to human's immediate society awareness of a living power infinitely greater than human. It is an obvious fact that the revelation of God's nature is different from society to society and its perception is nurtured according to the customs of each people. Again, Durkheim affirms this stance when he noted that: "Societies perceive the world differently."²⁴

Justice in Benin traditional society is Theo-centric, that is, it is centred on *Osa*. We believe that the laws governing us have been declared once and for all by *Osanobua*. The ruling class who interprets laws do not declare and lay down new laws, albeit, laws can be modified. The *Oba* of Benin, for example, is believed to be '*Osanobua ogha "gbon" – 'Theo Epiphanes or God manifest', who acts as a representative of the divine to restore and promote social harmony. The functional dimension of myth, according to Branislaw Malinowski, serves as charters for social action.²⁵ Thus, divine kingship is alleged to be a natural outgrowth of societal changes in complex societies where an *Oba* is considered as an incarnation, manifestation, mediator, or agent of the sacred world who is a receptacle of supernatural or divine power, and descended from a divine or semi-divine ruler so that he is made an agent of the sacred²⁶ (similar ideas are found in cultures such as Mesopotamia, Egypt, Greek and Roman empires). In the same way, Benin *Oba* shares God's divine attribute as an heir; with a mandate believed to be from Heaven.²⁷ This capacity of the *Oba* to interact with supernatural powers, to intercede between humans and gods for the good of the community, is a primary characteristic of divine kingship; a phenomenon commonly associated with societies*

²³ *Supra*, note 9, p. 1.

²⁴ *Supra*, note 2, p. xxvi.

²⁵ B. Malinowski, in M. Magoulick, 'What is Myth?', available online at <http://www.faculty.de.gcsu.edu/~mmagouli/defmyth.htm#Functionalism> (accessed 15 May 2011).

²⁶ Anonymous, http://www.mesacc.edu/dept/dio/asb/ancient_religion/pages/divking2.html (accessed 16 May 2011).

²⁷ Anonymous, http://www.mesacc.edu/dept/dio/asb/ancient_religion/pages/divking2.html (accessed 15 May 2011).

making the transition from simple and egalitarian to complex and hierarchical one. By this, the Benin *Oba* is said to be the vehicle through which the transcendent can be experienced. As a sacred (living) deity who possesses the ambivalent characteristics of being the source of both life and death in the society. Today, in the face of ‘modernity,’ the *Oba* and the palace remains the last resort for customary matters as contending parties, local communities and even the government still relies on the traditional ruler to play the very important role of helping to maintain law and order, and resolving conflicts. He is the Supreme Court of Justice in Benin traditional society. This is so because the *Oba*’s word is believed to possess a great reserve of power. As ‘*Osanobua ogha ‘gbon*’ his judgments are true.

We observe that matters that began in the *Okaegbe*’s (family head) court may get to the court of the *Edion-Idunmwun* (quarter/street head), to that of the *Edion-Evbo* and *Enogie* (village heads), and finally to the palace of the *Oba*. Each of these courts has an “*Ogua-Edion*” (ancestral shrine) where the people meet to dispense justice. The divine forces to this end are believed to be present as witnesses to proceedings of justice administration.²⁸ The consciousness of the presence of these unseen forces induces the jury to try as much as possible to be fair in their cross-examination; otherwise the jury, like the offender, will be punished. Where the truth is in doubt, recourse is usually taken to oath and ordeals. The belief is that, after taking an oath, any of the parties that have given false information will earn divine wrath.²⁹

The power to discern and punish evildoers is one of the incontestable attributes of God in Benin traditional religion. Such names as *Osabuohien* – ‘God the arbiter of justice’, and *Osaebueku* – ‘God who does not give untrue or unfair judgment’, reflects the attributes of God as the supreme guardian and sanction of the moral laws of the society. The Benin people, thus, know and uphold the value of justice in the society and work assiduously to attain it in their socio-political and economic life. They believe that God who decreed the law also set up some divinities and ancestors to police it.

Abiodun, laying emphasis on this, as a general belief among Africans states that, the divine source is the basic source of African indigenous laws.³⁰ These divine laws derive their source from the Supreme Being and emanate from the supernatural realm. They are discoverable by divine means (through priests). This is why the Benin people, like the ancient Greeks and Jews often turn to the oracle, in this case, *Oronmila* (the great benefactor of humanity and main adviser who reveals the future through the secrets of *Iha*, the supreme oracle),³¹ to find out the will of

²⁸) *Supra*, note 7, p. 78.

²⁹) *Supra*, note 1, p. 40.

³⁰) B.O. Abiodun, ‘Towards an African Concept of Law’, 1 *African Journal of Legal Theory* (2007), 71.

³¹) D.M. Peavy, ‘*Edo Language and Iha Ominigbon: A Comprehensive Way to Understanding Edo Culture*’, available online at <http://ihuanedo.ning.com/profiles/blogs/edo-language-and-iha-ominigbon> (accessed 26 December 2011).

Osanobua – the Supreme God. Once this is done, the injunction from the oracle is strictly carried out. There is a pantheon of divinities in the Benin ontology and each divinity occupies a location where they maintain their status. These divinities either manifest the wrath or blessings of the Supreme Being. They include *oronmila*, *sango* (god of thunder), *ogun* (god of iron), *eziza* (god of whirlwind), *ayelala*, *olokun* (the sea goddess of wealth and prosperity), and so on.³²

The divinities are also crime detectors. They act as the police of the society, that is, they can be invoked to detect and unleash their anger on criminals and evil doers in the community. To this end, the deities in Benin society ensure that everyone conform to the ethos of the community, thereby promoting security, stability and unity within the society. A curse with *Ogun*, for example, is taken very seriously by Benin people, because it is believed to possess a potential for instantaneous manifestation. It is often said that ‘anyone who does not the bidding of *Ogun* has surely set himself for a battle with the messenger of death.’³³ Of particular interest is the hesitation of members of Benin society to swear by *ogun-oba* (*Oba’s* iron god), as it is believed to be very efficacious in dispensing justice; or hear that *ayelala* is going to be invited to arbitrate in a matter. For instance, Madam Osayamen Maria brilliantly describes her encounter with her client in this term:

I am a caterer and had gone to cook for a man who had been bereaved and was burying his father. As part of my contract, I loaned him my food warmer. At the end of the funeral ceremony, one of my food warmers could not be found. I kept going back and forth to my client’s house to ask for my food warmer or an equivalent in monetary form. Each time I went, I was told a different story. On this particular day, I was returning from church (my usual morning prayers), I stopped by his house and it was the usual story. Out of frustration, I told his wife that since he refused to pay for my food warmer, I was going to invite *ayelala* to his house to arbitrate between the two of us. I was stunned when on the following day; my client came to my house to give me the monetary value of my food warmer. I am a Christian, I have no business with *ayelala*, but because that is what they fear/respect most, I decided to threaten him with that, and you see, it worked for me. The fear of *ayelala* is the beginning of wisdom.³⁴

The above description, no doubt, is not only brilliantly affirming our position on the harmonization of Afro-Euro-centric judicial system in Benin society; it also confirms the double religious outlook of the people. She professes to be a Christian but could also avail herself with the *ayelala* goddess when in need.

³² D. Akhilomen, *The Resurgence of Ayelala in Benin Kingdom*.

³³ In a telephone conversation with Chief Nekpen Emokpae on December 22, 2011.

³⁴ In an interview with Madam Victoria Osayamen in Benin City on 13 June 2011.

4. The Benin Traditional Justice System vs. the English Legal System in Postcolonial Benin

The English judicial practice in Nigeria is one of the by-products of colonial enterprise in African societies. The Berlin conference of 1885 sparked off the scramble for African territories by the Europeans. As a result, the hitherto independent empires and kingdoms (which include the Benin Kingdom) became colonies under Britain.

The reception of the English common Law in Nigeria dates back to 1863 when the British administration introduced the English law and court system into the colony of Lagos, under Ordinance No. 3 of 1863.³⁵ The Supreme Court of the colony was established in that same year with civil and criminal jurisdiction. There is no gainsaying that the English legal system has many principles of justice and good sense which can be applied with advantage to people all over the world. In terms of adjudication, one basic principle of the English Law is the right to a fair trial. That is, in the determination of the civil rights and obligations of a person, he or she is entitled to a fair hearing within a reasonable time by a competent court or other tribunal established by law and constituted in such a manner as to ensure its independence and impartiality.³⁶

The result of the introduction of this foreign legal practice is that most of the values of the Benin traditional systems received a hard 'knock on the head,' having been categorized as barbaric and fetish, and in some cases earned outright abolition. The principle of the English legal system undeniably rendered the traditional system redundant. These were occasioned by a set-up that failed and still fails to undertake relevant cultural study of the traditional practices, including the legal and judicial systems. No doubt, this colonial antipathy to traditional patterns, in this way, spells doom for the development of the justice system in Benin City, Nigeria. For instance, Section 36(12) of the 1999 Constitution provides that 'no person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore prescribed in a written law.'³⁷ Certainly the traditional laws which are basically unwritten cannot thrive in this kind of arrangement. Of course by implication, the traditional justice delivery system as practiced by the Benin people, insofar as their principles are not enacted into a written law by the appropriate legislative body, the continued implementation and administration of their indigenous justice would be clearly unconstitutional and illegal.

More challenging is the attitude of the English legal system towards spiritualism. Modeled after the British court system, their adjudicatory parameters are

³⁵ A.O. Obilade, *The Nigerian Legal System* (Spectrum Books, Ibadan, 2000), p. 18.

³⁶ T.O. Elias, *The Right to a Fair Trial in Judicial Process in the Newer Commonwealth* (University of Lagos Press, Lagos, 1990), p. 184.

³⁷ The Constitution of the Federal Republic of Nigeria 1999; See also Section 22(10) of the 1963 Republican Constitution and Section 33(12) of the 1979 Constitution.

confined to issues and evidence adduced before it. Whereas in the Benin traditional system, administration of justice goes beyond the presentation of physical evidence, it involves the supernatural forces playing active role in ensuring effective justice delivery, especially in cases beyond evidence. The Benin people believe that the all-seeing God can discover criminals that mortal eyes cannot discern. Adegbola rightly observes that ‘everywhere, African morality is hinged on severe sanctions, but the most fundamental sanction is the fact that God’s all seeing eyes sees the total area of human behavior and personal relationship; for God is spoken of as having eyes all over like a sieve.’³⁸

Another disturbing factor in recent times is the political interference in postcolonial judicial system. This has led many people to lose confidence in the prospect of getting justice in this institution. What more can one expect from a judge who is an appointee of the head of government. He may obviously feel a sense of obligation to give up the rule of law for the benefit of the government that appoints him. Of course the judiciary in Nigeria is fraught with allegations of corruption. For instance, in 2006 the Vanguard reported that:

Magistrate, 2 others arraigned for receiving N45,000.00. They had demanded the sum of N125,000.00 from detainees to effect their release from jail. But they ran out of luck when the suspects delivered marked currency to the magistrate promising to come with the balance within a short time.³⁹

Igbinovia observes also that the English legal system at a time was the envy of the continent.⁴⁰ It was so venerated that its superior, predictable and timely judgment brought respite to the distressed and reprove to the guilty. He, however, was quick to add that in postcolonial times, this once-upon-a-time ‘celebrity’ is almost a shadow of its old self. He lamented the reality that litigation is now meant only for the affluent and influential people in many societies, particularly Nigeria. Every form of evil becomes possible within the postcolonial justice system. The widespread miscarriage of justice is a common phenomenon. On one hand, it leads to the distrust in the inherited English legal system, and on the other hand to the resurgence of traditional means of adjudication by the ordinary person in search of fair and quick justice in Nigeria. The perceptions that English legal system is cumbersome and expensive have added to potential litigants’ frustration with the legal system. Many a time he or she is a sacrificial victim to the few in power whose moral bent dictate what to them is ‘good’ for the whole. These have left the ordinary persons with no option than to go in search of justice from supernatural

³⁸ E. Adegbola, *Reading in African Humanities, African Cultural Development* (Onyewengi, 1978), p. 252.

³⁹ Vanguard (Nigerian Daily Newspaper, Thursday 6 July 2006), 11. Cited in ‘Corruption in the Nigerian Society: Suggestions for Moral Rearmament’, in C.O. Isiramen (ed.), *Religion and The Nigerian Nation; Some Topical Issues* (En-Joy Press & Books, Ibadan, 2010), p. 70.

⁴⁰ P.E. Igbinovia, in *The Criminal in all of us: Whose Ox Have We Not Taken?* (Inaugural Lecture Series, University of Benin, Benin, 2005), pp. 71–94.

deities which are always available to all, whether rich or poor, at minimal cost and with relative speed.

These scourges of corruption and other questionable practices on the part of key players in post-colonial judicial practice have made the system neglect its fundamental function in postcolonial Benin society. This, among other factors, has made the Benin traditional justice system remain quite resilient. Osenmwowa states emphatically that rigid adherence to their custom has made the Benin people stand out among the adherents of ancient tradition in Africa.⁴¹ They hold tenaciously to their ancient laws, even in the face of imperialism. Of course if you tell a Benin elder why a particular Benin Custom should be changed, the response you will get is that “the wrath of the (*enikaro*) ancestors would descend on anyone who dares to alter their customs.”⁴²

One conjecture is that the strategy of the invading religions/cultures to introduce new ways to the Benin people, without considering their unwavering attachment to traditional norms, led to uncertainty and conflict. This is especially noticed in the resistance that led to the punitive expedition of 1897 and the subsequent deportation of *Oba* Ovoramen to Calabar. It has been alleged that many who profess to a foreign religion only outwardly conform to the new, but retain inward loyalty to the old. This is why basically, in the postcolonial Benin society, people of two-worlds in terms of religious belief are found (as displayed by Madam Osayamen Maria); a people whose hearts still accommodate an unbroken adherence to the things connected with their old ways. The effect of the new religions on the life of the Benin people could be measured in terms of external manifestations. Therefore, it becomes difficult to accurately assess the degree of the hold of foreign religions upon the hearts of new converts. While the foreign religions possess the bodies of the adherents, it appears as though their hearts are largely still with their old ways of belief system.

In support of this claim, Odey posits that the early missionaries knew next to nothing about the people they came to evangelise.⁴³ They came with closed minds so that today the life of a split personality that is lived by many, and the eruption of the theology of inculturation, stands out as an eloquent testimony that something fundamental was left unattended to. Today, for example, many Benin people are caught in the wheel of indecision as to what faith to embrace. They still adore the efficacy of the rings, charms and amulets prepared for good luck and the potency of the concoctions smeared for protection against evil forces. Little wonder how the lapses in the Eurocentric justice system spark a resurgence of traditional justice system in postcolonial Benin society.⁴⁴ The emergence of imposed foreign

⁴¹ *Supra* note 7, p. 95.

⁴² In an interview with Chief Omosese Ogiemudia on 18 December 2011.

⁴³ J.O. Odey, *Mahatma Gandhi: Profile in Love, Peace and Non-Violence* (Snaap Press, Enugu, 1996), p. 189.

⁴⁴ E. Aibangbe, 'Evolution of African Religion', available online at <http://www.edofolks.com> (accessed on 14 May 2010).

practices has little impact on their way of life. Patronage of shrines of traditional deities like *ayelala*, *ogun ne'khue*, *aranmwonka*, *azigidi*, etc., soars in geometric progression compared to the patronage for western judicial system in postcolonial Benin society. It is obvious that the tendency for man to circumvent secular justice is one basic reason why the Benin person explores the divine source to compensate for human limitations, whereas an accused person in a modern court may jump bail, resist arrest or manipulate justice. The Benin person believe that with deities like *ayelala*, *ogun*, *sango*, *arosan'oba*, *eziza*, and so on, no one can flout the moral order and go free. This explains why goods hitherto carted away by hoodlums in the 2005 Oba Market conflagration resurfaced when the priest of *ayelala* was invited to place a curse on the unknown culprits.⁴⁵

5. Towards a Harmonised Afro-Euro-Centric Judicial System in the Postcolonial Benin Society

To conclude that the English legal system is entirely destructive to the Benin people would be irrational and a fatal error of judgment; so to would concluding that every aspect of the Benin traditional justice system was perfectly humane. However, there is no gainsaying that one important feature of culture is that it is dynamic; no culture is a finished product. We therefore argue that it then follows that both the Benin justice system and English legal culture must learn to borrow from each other.

First, we must note that the Benin judicial approach does not negate in any way the objectivity of the existing techniques of the West. The Benin traditional justice system deals with cases beyond evidence that may be falsified due to human bias, irrationality and judgment. Secondly, evidence of postcolonial trends shows that the indigenous pattern of obtaining justice, even though unscientific and associated with many unanswered questions is still preferred by many Benins to the English legal system.⁴⁶ There is, thus, the need to carefully appraise what values have permanent validity in the traditional system so that they should in some suitable form be codified and integrated with positive aspects in the Western system.⁴⁷ This proposed *Afro-Euro-centric* symbiosis will not only rejuvenate the African indigenous mode of arbitration and justice delivery system, it will also reconcile the African system with Western practice.

⁴⁵ Sometime in 2005 the Oba Market, located in the Benin City center went into flames. As the fire raged, hoodlums in the area had a field day looting goods belonging to traders in the market. A prominent citizen in the area, Osamede Adun, invited the chief priest of *Aiyelala*, a goddess widely feared and revered in Benin to place a curse on the unknown criminals. Alas! The following morning items earlier carted away resurfaced in the market.

⁴⁶ W.E. Ehianu, 'The Resurgence of Ayelala Deity in Benin: An Indictment on The Church and the Judiciary?' 1–2 *Ekpoma Journal of Religious Studies* (2005), 317.

⁴⁷ *Supra*, note 30, p. 80.

The metaphysical dimension of invoking the spirits and deities in Benin traditional justice system, for example, should be integrated into the English system. This is very relevant in situations where traces of evidence that vindicate or convict a culprit are difficult to establish. The effectiveness of this method cannot be over-emphasised because a Benin person will think twice before she or he takes an oath in the name of such traditional deities as *ogun* (god of iron); *ayelala* (goddess of justice and morality) or *sango* (god of thunder) and yet attempt to lie.

Abiodun affirms this when he posits that the use of metaphysical forces in traditional African legal process is very relevant in modern times.⁴⁸ This, he states further, will involve the active traditional oath-taking by the judges, which will compel them to be impartial in their judicial pronouncement. The disputing parties should also be made to swear to a local deity or religious symbol(s) or take a concoction (as the case may be) before giving evidence. Of course, instances of false evidence and testimony will be effectively checked. This system also has the advantage of revealing hidden truths in the process of the cross-examination. To meet these demands, it is suggested that instead of staying away from spiritually-related cases, a better judicial attitude would be to create courts that would be vested with jurisdiction on metaphysical matters. These courts would be composed of judges, learned, knowledgeable and disposed to spiritually related-criminal cases. Such courts, no doubt, would be in a position to resolve many societal conflicts that irritate the indigenous populace, but which are treated with 'judicial injustice' by our present crop of court system and justice administration.⁴⁹

6. Conclusion

The Nigerian jurisprudence generally does not concern itself with matters bordering on spiritualism,³³ but from our findings above, it is quite clear that the mainstay of Benin traditional justice system is the wholesome involvement with the supernatural, especially in very serious offences. A Benin maxim (also applicable among the Yoruba) says 'even though one who steals in the dark may not be caught by earthly rulers, the king in heaven who sees all is looking at the person.' To this end, the Benin people believe that the divine justice of God is inescapable and timely. This is why we give utmost preference to our traditional methods of obtaining justice, even in a postcolonial world order. Therefore, in order not to throw away the '*baby with the bath tub*', a careful study, and a cross-fertilization of the Benin *Theo-centric* justice system with the received English legal system is imperative in postcolonial Benin society and Africa at large.

⁴⁸) Ikenga, p. 27.

⁴⁹) Ikenga, p. 24.