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Qualitative Study on Forgiveness in Adversarial and Yoruba Traditional Judicial Systems; An Appraisal from Selected Yorùbá Written Plays

AJUWON, Samuel Adebayo¹

sambayo70@yahoo.com

08058587022

ADAGBADA, Olufadekemi¹

07031885801

¹Department of Linguistics and Nigerian Language, Faculty of Arts, Olabisi Onabanjo University, Nigeria

Abstract

Many factors differentiate the adversarial judicial system from its Yoruba traditional counterpart. This study gives readers a clear understanding of forgiveness and punishment as major components for engendering justice, social peace and reconciliation in Yoruba traditional justice administration. While on the other hand, argues that the adversarial justice has no room for forgiveness and reconciliation but awards penalties as means of retribution, deterrence, which often does not heal the wound occasioned by conflict. The thrust of the essay is that the general mindset of justice in Yoruba tradition engenders peaceful and harmonious settlement of conflicts unlike adversarial justice which leaves no room for reconciliation. The essay adopts Restorative Justice Theory in conjunction with data from Yoruba drama texts; Atari Ajanaku, Ogun Lakaaye and Ebi taa ni? The paper therefore concludes that, it is not in all situations that punishment related judgment serves the purpose of healing the wound, but the combination of the spirit of punishment and mercy foster unity. Therefore, suggests incorporating mercy and forgiveness in its dispute resolution mechanism.

Keywords; Conflict, Justice, Punishment, Forgiveness, Reconciliation

Introduction

Human beings by nature are gregarious and companionable. The more they live together the better lives becomes. However, living together is synonymous with social vices and conflicts which impair peaceful co-habitation. An unceasing existence of a communality is grounded on the peace and safety of an individual member in the community. Whereas, promoting peace means regular settlement of perpetual crisis which coincidentally is on-avoidable as a result of constant inter personal relationship. Thus the onus of engendering social peace lies on everybody, especially in traditional African community where the interest of the community is sacred to all. Every member of the community has a duty to nurture, protect and preserve the interest of the state by being civil and orderly. When there is a breach of social peace, the process of arbitration commences immediately to nip the problem in the bud. Yoruba race have a well-established mechanism through which such interpersonal conflicts and crisis are resolved. The method of adjudication is generally referred to as traditional method of dispute settlement or indigenous court system. In this system, settlement of conflict begins from immediate house hold, progresses to the compound settings, community level and climaxed at the palace of an oba who, with his subordinates has supreme power to judge all types of cases and award any degree of punishments. The weight of a crime, or a dispute determines the level it would be tried.

At the time in question, society was peaceful because everyone was aware of the native law and punishment associated with breaking communal law. On no account an individual claims ignorance of the laws to commit a crime, or willingly run fowl of communal social order because grave penalties and sanctions are there to curb excesses or violation of social norm. The thrust of Yoruba traditional justice worldview is the commitment to give everyone his or her due. To them, injustice brings pandemonium and disharmony. Therefore, the focus of indigenous court has always being to reconcile the parties amicably through inquisitorial methods. Unfortunately, the world is fast changing and evolving. Civilization and modernization brought about by colonial masters have destabilized the social, political and economic lives that were once managed by the individuals and traditional authorities as a whole. Traditional institutions have all given way to colonial imperialism which super imposed its culture on the poor Africans. Any of the African cultural institutions and tradition that could not be completely wiped out somehow co-existed, though with disdain, and often serve as a second fiddle to the British imposition.



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Such a regrettable example is the Yoruba Traditional method of adjudication that is struggling to co-exist alongside the British adversarial justice mechanism which the Nigerian Constitution (2011) as amended, Chapter 1, section 6, sub section 1 -3, adopted and vested all authorities and powers of adjudication and justice. Characteristically, British judicial system incorporates the use of advocates, has written laws, and importantly, is manned by competent judges who are experts in the British law. Perhaps the reason why the nation un hesitatingly adopts it after the independence from the colonizers. Olúwoḷé (1984) opines that one of the major reasons why the nation adopts foreign judicial system was that the native laws are in adequate. He says partly that; “One of the reasons for the introduction of English law into Nigeria was, without doubt, the fact that the rules of customary law were inadequate to cope with the monetary economy and to regulate the large scale peaceful interpenetration of society arising from the establishment of British Administration” Yet, that does not foreclose insinuation of some other peculiar problems associated with adversarial justice, which many researchers like Oluwole, (1984) Aina, (2015) Adebayo and Adefarasin (nd) amongst others who have criticized it in one way or the other and calling for a change and total re-evaluation of judicial system in Nigeria.

Statement of the Problem

Adversarial adjudicative system promotes resentment and enmity according to Yoruba philosophy because it emphasizes punishment of the culprits without leaving room for genuine reconciliation. This has prompt people agitating for alternative dispute adjudication. This essay therefore focusses on one outstanding difference between British adversarial judicial system and Yoruba traditional judicial system; forgiveness, which the earlier lacks but the later adores.

Methodology

The study is based on secondary sources, including academic literature, as well as analyzing and discussing the judgments in selected Yoruba written drama texts which is repository of worldview of writers. The study gives readers a clear understanding of the perspective of the Yoruba traditional adjudication which recognizes punishment and forgiveness as major components for justice, and perhaps a panacea to facilitate social peace. In other words, the combination of punishment and forgiveness engender social co-existence in the traditional Yoruba land and some native African traditions. While on the other hand, modern criminal justice has little room for forgiveness and thus compounds strife and acrimony. Stephanos (2007) emphatically confesses that, ‘Although, forgiveness and mercy matter greatly in social life, they play fairly small role in criminal procedure... dominated by the state, whose interest is deterring, incapacitating, and inflicting retribution, leave little room for mercy’. Immanuel, (1994) reiterated further that ‘forgiveness is unrelated to the wrongfulness of the crime itself and so seems irrelevant to the grievance retribution’. To him, ‘the offender must pay his debt to the society and purge his blood guilt, and that is all’. These are two clear different world views when considering judicial process which this essay examines in some Yoruba written drama texts. While Yoruba traditional adjudication settles amicably, sometimes through concession, adversarial justice constantly upholds legal injunctions.

Meanwhile, the essay adopts Restorative Justice Theory which emphasizes settlement of disputes by repairing injury occasioned by conflict, rather than merely punishing offenders. Restorative theory views conflict as harmful to relationships and thereby prioritizes repair over punishment. It focuses majorly on reconciling complainant and offender, and sometimes the community at large, through amicable settlement of disagreement. Therefore, the adjudicators strive to achieve a genuine healing of wounds occasioned by the disagreement of the warring parties through provoking a conscious and voluntary reversal of negative feelings and resentment in them. In that vein, forgiveness by the disputing parties cannot be overemphasized. Zehr, (1990) says settlement procedure should ensure that all stakeholders affected by an injustice have an opportunity to discuss how they have been affected and decide what should be done to repair the harm. Thus, key element includes; victim-offender negotiation, where victims express the impact and the wrongdoer acknowledge the fault in the presence of constituted judicial panel, perhaps who have the authority to punish the culprits. The approach and its integration vary across legal cultures. While the Yoruba traditional judicial system upholds the concept of *àfòrìjì* as social behaviour to promote peace in case settlement, so also other parts of African tribes uphold interconnectedness and restoration philosophy according to Braithwaite (2002) aligning with restorative justice ideals theory.

Concept of justice, punishment and forgiveness

Whenever justice is mentioned, what comes to mind may vary according to individual’s point of view. On general perspective however, justice means fairness, uprightness, and impartiality. Laleye, (2014) quoting Raphael says that, the central thrust of justice is ‘how people are treated, what they ought to get and the justification for getting whatever they



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got, as well as what they could not get within the context of a particular socio-political arrangement'. Bearing that description in mind, justice then is the commitment to give every man his due irrespective of status, race and colour. A good judgment is commonly referred to as 'justice'. Where justice is lacking, peace will certainly remain elusive. Justice and Punishment are like twin cam that hardly separated. One complements the other for effective outcome. Where there is true justice, often, the degree of punishment given to the culprit always serves as the barometer to evaluate the appropriateness of justice. That is to say punishment, or an intentional infliction of harm or burden as a result of infraction committed by a person is always preceded justice. It is better defined by Ani (nd) who quotes the black law Dictionary defines as; "Any fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offence committed by him, or for his omission of a duty enjoined by law". A word of caution in awarding punishment is that, punishment must be commensurate to the offence committed, without which no justice is served. In the light of the above, utmost diligence should be exercised in the course of executing punishment so as to achieve peace which is the primary aim of justice and punishment. Meanwhile, the mission of institution of judicial process determines the tone of judgments of the court, and this is what sets an adjudication procedure apart from another. For example, while the Yoruba traditional judicial worldview is often not a total castigation of the culprit, rather reuniting the petitioner and the defendant in such a way that the aftermath of settlement will engender peace and genuine reconciliation, the adversarial judicial court is a direct opposite. State uses punishment in adversarial courts as instrument to deter and suffer offenders. Or simply put, paying evil with evil without leaving the possibility of reconciliation. No wonder Yoruba succinctly adjudges the outcome of adversarial court in her proverb; 'a kì í tí kóòtù bọ ká tún sọré mó' (which literarily means that, there could be no more true relationships between the petitioner and the responder after the court lawsuit). The proverb which underscores the philosophy of adversarial justice in Yoruba worldview.

The insinuation is that adversarial judicial system devoid reconciliation. Conversely however, Yoruba form of adjudication leaves room for reunion in his decisions. Thus, rarely uses punishment as initial weapon to settle conflict. This is not to say that there is no punishment for the offenders. However, the interest of the society is, to first maintain social harmony and cohesion through persuasion and appeal, after which inflicting punishment (physical pain, financial, economic sanctions, psychological or whatever form of punishment) to the culprit perhaps as second option if their needs be. Onadeko, (2008) testifies that Yoruba traditional judges seldom declare anybody completely guilty or completely innocent, especially in civil cases. They preferred stances of 'guiltier and less guilty' to strike a balance. This leads us to the issue of 'forgiveness', which is another salient phenomenal in judicial administrations. Often, there are times when punishment, no matter the degree or the type assuages the feeling of resentment and able to fully compensates the wrong done to the defendant. This insinuation questions the effectiveness of punishment as a double-prop of justice. Moreover, apart from assuaging the resentment, there are instances when defenders accept their mistakes, exhibit genuine remorse and plead for mercy, after all to err is human. This is not an uncommon experience in any form of judicial exercise. This time around, punishment is sometimes waived or shelved depending on type of adjudication system. The instance of forgiveness is another land mark difference between the adversarial justice mechanism and Yoruba traditional judicial system.

While Yoruba tradition favourably disposed to forgiveness, English laws appear to be cheerless. Take for an example, the Yoruba perception is shown in their axioms; À ñ bẹ Olúwa, Ó ñ gbó, á ñ bọtáşe ọmọ èdá (we appeal to God for mercy, He hears and pardons, how much less human beings) this proverb invariably in support of forgiveness when an accused pleads for one. Or in; Ọmọ àlè èniyàn ni ó ñ rí inú tí kì í bí, sùgbón ọmọ àlè èniyàn ni wọn ñ bẹ tí kii gbà (it's only a bastard that would not get annoyed when he is being wronged, so also, it's only a bastard that when he was begged that he would not forgive) is logically saying that, unless one is culturally bastard, one is morally bound to pardon, and forgive at the instance of defendant's pleading. Laleye, (2014) says further that 'the determination to pay evil for evil prolongs social strife...and undermines the possibility of reconciliation. He stresses that the combination of punishment and forgiveness are the hallmark of the Yoruba traditional adjudication so as peace and reconciliation to foster in the community. Meanwhile, forgiveness appears not a common occurrence in adversarial judicial system as evidenced from our literature review as well as the Yoruba written play analyzed. While he was analyzing impediments to taking steps to forgiveness in modern law suits, Stephanos, (2007) examined the police and lawyers role, and says;



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Modern ... criminal justice...has little room for forgiveness, ... police and lawyers take control of the process from the moment of the crime report, and they forbid or discourage offenders and the victims to have any contact or discuss a case. The logic of adversarial combat leads each side to take antagonistic posture, instead of engaging in dialogue and seeing the other's point of view

He went further to point an accusing finger at the state. To him criminal matter is dominated by the state whose interest is deterring, incapacitating and inflicting retribution thereby leaving no room for mercy. Just like Immanuel, (1994) has this to say that; "Forgiveness is unrelated to the wrongfulness of the crime itself and so seems irrelevant to the grievance retribution; the offender must pay his debt to the society and purge his blood guilt, and that is all".

The sample cases where forgiveness as hallmark of traditional Yoruba justice was demonstrated were drawn from Yoruba drama texts; Olatubosun's, (1983) *Ogun Lakaaye*, Ogunniran, (2001) *Àtari Àjànàkú*. The two-playwright proved beyond reasonable doubt that there is no degree of crime in Yoruba judicial viewpoint that could not be forgiven if the culprit show remorse and perhaps pleads for forgiveness. At the same time Adigun, (2001) *Ebi taa ni* berated the lack of forgiveness in the adversarial justice no matter the obvious the necessity of forgiveness. Therefore, before we examine the cases, here is the synopsis of the texts in question. Olatubosun's (1983) *Ògún Lákááyé* bothers on a story of a warrior, Ògún Lákááyé in an ancient town named Àgbàògún. Àgbàògún was prone to incessant communal war, whereas the man, Ògún Lákááyé was the chief commander of the armed forces who always waded off wars in defense of his father land. His prowess in wars earned him great honour and respect from old and young ones, including the monarch and the chiefs. Somehow later, the euphoria of fame and honour accorded him by the community beclouded his sense of reasoning. He was so power obsessed that he plotted to topple the king. After all, he claimed that he was the force behind the success of the ever-persistent wars that always raged against his community. Ògún Lákááyé's inordinate thought and the execution of his ambition brought an untold hardship into the entire community. Lives and properties were lost and destroyed.

Being a warrior with a standing army, Ògún Lákááyé could not be faced by his community using the conventional military war. Therefore, the community adopted a subtle means by conniving with his wife to uncover the secret of his military power. After so many attempts with the attendant of loss of lives and properties, they discovered the secret of his power, and got him captured. He was arraigned before the highest court and before the king that he wanted to topple. His charges were rebellion against the constituted authority, public disturbance and destruction of lives and properties. All these charges in Yoruba native laws Ajisafe (1906) says attracted death penalty if found guilty. *Ògún Lákááyé* indictment is similar to that of Ogunniran's (2001) *Àtari Àjànàkú* where the political and economic administration of Gbándú, a small town, was under the control powerful Alaafin of Oyo. Alaafin oversaw the affairs of this town through an ambassador, the 'Ìlari oba' who resided in Gbandu and collected royalties and reported same to Alaafin on yearly basis. The Ìlari to Gbándú during the time of the story was named Mòbòlájé who happened to be exceedingly corrupt. He colluded with the Baálè of the town to exploit the town via tax hike unlawful levies and other slavery tasks. People complained bitterly about their plight but he did nothing to reduce the burden, because he benefited from the Baálè and some of his chief's exploitation. The people's predicament was also heightened by the presence of Tela, the prince of the late Alaafin of Oyo who sojourned in the town too. Although Tela had no official business in Gbándú, yet he constituted a nuisance through unlawful confiscation of people's properties, including hijacking people's wives and bullying their husbands. None of these vices were known to the Alaafin who owned the land.

When the youths of the city could no longer bear the assaults anymore, they conspired together and assassinated the baálè and his chiefs. They took over political administration, changed the system of governance, abolished taxes and royalty payment to the Alaafin as the law demands. Ìlari Mòbòlájé, failed to report the gruesome murder and the change of government to Alaafin who appointed him. However, after a total breakdown of law and order in the land, Aláàfin got to know about the development. He ordered a forceful arrest of the dissidents and thus were made to face justice. But before we examine the procedure of the trial of the two cases in the two texts, let us look at the synopsis of a similar case judged in adversarial court in Adigun (2001) *Ebi Taa ni? Ebi taa ni?* highlights the un-employment problem among the graduates of higher institutions of learning in the country named Lágbondókò, where Bamidele Oloyeede was a victim. Bamidele Oloyeede's classmates were all gainfully employed either as a judge, custom official, polish, teacher and a journalist, but



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horse feeder in the palace. Meanwhile, in the adversarial court in the text *Ebi taa ni?*, the judge established that the accused person Bamidele Oloyede deserved to be forgiven because he had no decent job as graduate. He said partly asked rhetorically that; “Kin ni ebi Bamidele Oloyeede fun aronuda ... ogbon inu lati jare osi? Se ti a o ba ki ogbeni bamidele Oloyeede pe o ku ogbon inu, o ku atinuda ... gege bi akekoo to gboye jade ni ile eko giga. Ohun ti o to suna ni fun ijoba lati wa ise fun Ogbeni Bamidele, paapaa julo niwon igba ti o ti fi odidi odun kan sinruulu labe ofin ijoba” What was wrong with Bamidele Oloyede’s creativity ...to survive poverty? We rather praise him for his resilience and survival instinct.....as an unemployed graduate. Government has the obligation to provide a job for Mr Bamidele who has voluntarily served his nation under National Youth Service Scheme under law for a whole year.

The judge’s rhetorical question *Kin ni ebi Bamidélé Olóyèédé fún àronúdá ... ogbón inú láti jàrè òsì?*, suggested that the accused should not be awarded penalty because the government of his country was supposed to have provided a job for him, having fulfilled all requirements of the law, including voluntarily serving his father land for a whole year. Unfortunately the government has failed in her responsibility, thereby, the accused deserved forgiveness. However, he as a judge is restrained under the law to forgive an accused who has been proven guilty under the law out of mere sentiment. Owing to that reason, the court sentenced him to five year imprisonment. The judge however tendered what supposed to be an apology to his friend whom he has sentenced to imprisonment under the law that; “Tó bá ẹ̀ pé òfín gbà mí láàyè láti dín ọ̀dún ẹ̀wọ̀n rẹ̀ yí ju éléyí lẹ̀ ní, ilé ẹ̀jọ̀ yí kì bá ẹ̀ bẹ̀, sùgbọ̀n níwọ̀n igbà tí òfín kò gbà mí láàyè, ilé ẹ̀jọ̀ yí paá láse kí iwọ̀ Ọ̀gbéni Bámidélé fí ẹ̀wọ̀n ọ̀dún márùn ún jura” (If the law had permitted me to reduce your years of imprisonment above this, this honourable court would have done so, but so far that the law did not permit me, this court therefore decided that you Mr. Bamidele be lock up in the prison for five years)

The judgment of the court in this matter portrays the philosophy of adversarial justice as the one that believes in punishing of offenders as the justification for getting whatever they got, as well as what they could not get within the context of a particular arrangement as suggested by Raphael (1970). Apparently, this is what Adigun (2001) was saying in his story. It goes along to confirm Stephanos’s (2007) insinuation that interest of criminal procedure in adversarial system is deterring, incapacitating, and inflicting retribution, and leaves little room for mercy. If Bamidele in this context had been tried in traditional Yoruba law court, may be, his plea for mercy and the genuine remorse shown during the course of trial and perhaps the judges privy to his predicament, being a formal school mate may have earned him mercy. One has to say unequivocally here that the Yoruba traditional judges are free to exercise their judicial powers unlike the British counterpart who are legally restrained from ultra-vire. The text under study confirms the belief that forgiveness is a rare commodity in adversarial justice which calls for reformation.

Conclusion

There is no doubt that the adversarial judicial system of the British has come to stay in Nigeria. Yet, it not without bottle neck problems which constitute major setbacks that makes the vast majority of plaintive opt for alternative dispute adjudication channels to seek redress. This essay examined forgiveness issue in both Yoruba Traditional and adversarial judicial system as salient point and recommended that time has come to heed to the clarion calls of the literary artists as well other stake holders to reform judicial system in order to address justice mechanism in the system.

Recommendation

1. Reforming Nigerian judicial system by blending traditional approaches with the adversarial method especially in civil cases where there are traditional laws
2. As seen in this discussion, strict punishment does not always bring about soberness or true repentance of a criminal or compensates the victims in its true sense, therefore the adversarial judicial system should encourage the spirit of forgiveness in its judgment delivery in order to pave the way for genuine reconciliation as well as given the offender a second chance
3. There should be promotion of Alternative Avenue for multi-door courthouses especially where the concerned parties indicated interest.



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