

Law in Traditional Yoruba Philosophy: A Critical Appraisal

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What is law?

The word 'law' has been variously defined by lawyers, judges, other scholars of diverse disciplinary backgrounds, and even laymen. It could be used either in a general or technical sense.¹ For instance, we have the laws of God, social group, demand and supply, to mention but a few, which are examples of law used in the general sense. But in this essay, the technical meaning of law is of essence.

*Oxford Dictionary of Law*² defines "law" as the enforceable body of rules that governs any society. Law has also been defined as 'a rule or body of rules made by institutions, bodies and persons vested with the power to make such rules which are binding and enforced among the members of a given state or society'.³

Law could therefore be defined as a body of rules, designed, recognized and applied by the state in the administration of justice. Those rules of conduct, on which the existence of the society is based and the violation of which tend to invalidate its existence are what is meant by law. In this sense, it is man-made, normative in character, has elements of coercion, has territorial limitations and it is dynamic in nature. However, it is pertinent to submit that all definitions of law are arbitrary and *ad hoc*. No definition is universally accepted. There has not been any definition of law to end all definitions. In the words of A.O. Okunniga,⁴ "Nobody, including the lawyer, has offered; nobody, including the lawyer, is offering; nobody, including the lawyer, will ever be able to offer a definition of law to end all definitions" of law.

From the above exposition, law could be viewed from different perspectives. Although majority of the definitions describe law as a body of rules governing human beings, order, regularity and a sense of social obligation are the essential attributes of law, in the Western or African societies. The meaning of law, therefore, depends on the opinion one holds about it and sometimes the context of usage.

The Nature of Traditional African Society

African "traditional" society generally refers to the pre-colonial society, comprising of the socio-political and economic organizations structured after indigenous patterns of existence. "African tradition could be conceived as the ways in which African societies are organized and conduct their

¹ Obilade, A.O., *The Nigerian Legal System*, (Ibadan: Spectrum Law Publishing, 1979), p. 3

² Martins, E.A. and J. Law, ed., *Oxford Dictionary of Law* Sixth Edition, (Oxford: Oxford University Press, 2006), p. 306

³ Sanni, A *Introduction to Nigerian Legal Method*, Second and Enlarged Edition, (Ile-Ife: OAU Press Ltd., 2006), p. 5

⁴ Okunniga, A.O. *Transplants and Mongrels and the Law: The Nigerian Experiment: Inaugural Lecture Series 62*; (Ile-Ife: University of Ife Press 1983), p. 2

daily affairs from classical to contemporary times"⁵. Among all human societies, the Africans inclusive, the family has been the oldest social institution. The identity of an individual is linked to that of his family and these families are formed by the acceptance of marriage alliances. "Many traditional African societies were constructed on the principle of lineage segmentation, outside of which they experienced a precarious unity, focused on the political symbolism of a ruling family, related through links to the clans of commoners"⁶.

Within the family, in most traditional and modern African societies, there was (is) a strict hierarchy of authority, according to which the males ruled and held responsibility for the females. Brothers ruled their sisters and sons, even their mothers when they came of age or succeeded to the inheritance. Women did not enjoy any ultimate authority or responsibility for the household. The husband (or in matrilineal, the mother's brother) was the head of the family and it was clear that this headship was not a joint headship. When a woman is the head of a family or social group in a ruling family or where she was permitted to become a chief, it was largely a question of political-religious symbolism, in which – by a legal fiction a woman was treated as a man. The same was the case in the custom of marriage by which, in order to start a family, a woman was accorded the legal status of father towards the children of a wife who had been impregnated by a concubine. This custom was known among the *Neur* of Southern Sudan, among the *Simbiti* of Tanzania, and is recorded as occurring in the *Yagba* District of Kwara State in Nigeria.⁷

These families now constituted the various communities in Africa. Each community in Yorubaland, for instance, was divided into quarters (*Aduḡbo* in Oyo, *Itun* in Ijebu and *Idimi* among the Ondo people). Each of the quarters is overseen by an important chief appointed by the Oba and these quarters' chiefs represent their people on the council meeting. In addition to the quarter chiefs, there are some traditional chiefs such as the *Balogun* (Warlord) and the *Otun* and *Osi Balogun* (right and left wing assistants to the Warlord). Each quarter is broken into compounds or *Agbo-Ile* whose heads are referred to as *Baale* (father of the house). The *Baale* is usually the oldest male member of the extended family; he is accorded much respect because of his wisdom, age and experience.⁸ The *Baale* settles disputes within his households, represents his family on the council of the quarters chiefs. The African village or settlement usually represented a convergence of loyalties that made for a strong sense of

⁵ Sofola J.A, *African Culture and the African Personality: What makes an African Person African* (Ibadan:African Resources Publishers Co) pp.xii -xv

⁶ Shorter A, *Concepts of Social Justice in Traditional Africa*, Published in *Pro Dialogo Bulletin*, 12 (1977), pp. 32-51 www.afrikaworld.net/afrel/atr-socjustice.htm, Accessed on 27th March, 2013

⁷ Shorter A, *op. cit*

⁸ Ayo B, *Public Administration and the Conduct of Community Affairs Among the Yoruba in Nigeria* (California: ICS Press, 2002), pp. 57-60

community. Very often, family ties criss-crossed the village, added to which were the loyalties of chiefdom and ethnic group, as well as those of professional associations.

Families and neighbours come together for work and recreation, as well as to resolve disputes among each other. The neighbourhood court played an invaluable role in this case, most especially in reconciling disputants, in settling quarrels and in imposing sanctions. A structure like the modern ten house-group system (*kumikumi*) of Tanzania is an interesting canalization and development of African neighbourhood traditions. The small, roving band of hunter-gatherers, typified by the *Pigmies* of Zaire and the *Hadza* of Tanzania, was, perhaps, the most egalitarian of traditional African societies. Isolated, continually on the move, with the minimum of structure, the band of hunters had a continually fluctuating membership. Loyalties were short term and there was no need for elaborate mechanisms of reconciliation. Nomadism applied in varying degrees to the pastoralists. In fact, there is a pattern in the movements of all pastoralists, dictated as it is by the availability of water and grazing. It is a fact too that pastoralists carry out a fair amount of cultivation. Pastoralism has always been precarious and conducted in remote and marginal areas. Many pastoralists exploited neighbouring groups of cultivators or classes of cultivator serfs, denying them full rights of membership of their society, particularly the right to own cattle. The inequality inherent in this situation has had especially tragic consequences in countries with cattle-owning aristocracies such as Rwanda and Burundi.⁹

Generally, pastoralist societies were more egalitarian than chieftain societies, and stratification was one of their most conspicuous features. "The whole society was divided into a greater or lesser number of age sets or generation sets, each of which was composed of a number of age groups or batches of individuals initiated annually. Among some people, the *Nandi* of Kenya, for example, the age sets were cyclical. There were seven recurring sets among the *Nandi*, each having a depth of about fifteen years. Of these sets, five would be in existence at any time. The *Jie* of Uganda, on the other hand had only two generation sets, each composed of five age sets with a depth of five or six years, and this situation was comparable to that of the *Masai* of Kenya and Tanzania with their two-fold division of warriors and elders"¹⁰.

The age-grades also possessed public duties. The elders presided over the community, and the junior adults or warriors acted as a disciplinary force. Girls were usually allowed to marry at tender ages, while men were not permitted to do so until much later, thus permitting a greater number of men to be polygamous. However, adolescent rebelliousness had to be canalized for the good of the society, and the chagrin of young men at losing their sweethearts to old men had to be softened. The warrior

⁹ Shorter, A. *op. cit*

¹⁰ Shorter A, *op. cit*

peer group had all these functions: it acted as a kind of military or police force with its own common living, collective morality and allegiance.

In most of the African societies, ancestors were greatly revered; these ancestors were conceived as gods, the directors of the affairs of men, and their messages were passed to the people through the traditional priest, who possessed spiritual powers. They were not like the ordinary people, they (the priests) were their ancestors' or gods' representatives. The character of *Akuebe* in Achebe's novel¹¹ emphasized this fact when he said to the chief priest of Ulu, Ezeulu thus: "I am not the man to dispute any of the things you say. Ezeulu, I am your friend and I can talk to you as I like; but that does not mean that I forgot that one half of you is man and the other half spirit"¹².

The Igbo proverb "*ana eri n'aiya dibia afu mmud*" (one sees the spirit through the eyes of the dibia) also stresses this point further.

The above is further cemented in the belief among many African communities in the saying that a river that forgets its source will run dry; so they make it a point of duty to consult and obey their ancestors or gods for instructions at any given time. In the Yorubaland, a highly hierarchical society, the king is addressed as *Iku baba yeye, alase ikeji orisa* (the one who has control over death and the second in command to the gods). The king is regarded as the representative of the gods and fore-fathers.

The traditional system of government in Africa embodies indigenous socio-political institutions. Most observers of traditional African political systems recognize two main forms; namely the non-centralized or fragmented traditional state and the centralized state.¹³ The colonial and post-independence eras had a profound impact on traditional institutions, in particular chieftaincy. The colonial system ostensibly enhanced chieftaincy through the system of indirect rule particularly in Nigeria and Ghana. But the perception that chiefs and kings ultimately derived their power from the colonial power eventually undermined their power. In some African countries the colonial authorities appointed chiefs directly thereby underscoring the uncomfortable fact that they were colonial creations, which were ultimately abolished with the demise of colonial rule.

As far as post-colonial African regimes were concerned, it is hardly contestable that they saw traditional authorities as a dangerous bastion of rival political power and largely succeeded in dismantling or attenuating their authority. Examples exist in Liberia and other African states. The

¹¹ Achebe, C. *Arrow of God*, (London; Heinemann, 1986) p. 133

¹² Achebe, C op.cit

¹³ Speech delivered by His Royal Majesty, Otumfuo Osei Tutu II: *Asante Traditional Systems of Government in the Modern State*, 4th African Development Forum, Addis Ababa, 12th October, 2004.

reality is that in most African states, our traditional systems have been divested of their formal executive, economic and judicial powers except in narrowly defined areas. Even more critical, they have been denied the requisite resources for effective functioning, although the institution of chieftaincy has been guaranteed in some constitutions e.g. Ghana. However, the modern chief, stripped of political and executive power and formal financial support, has to address the basic needs for his people using his ingenuity, diplomacy, power of motivation and sometimes his own personal resources. Chiefs have been most active in dispute resolution and have clamoured for traditional techniques of conflict prevention and resolution.

Legal System and Justice Administration in Traditional Nigerian Society: A Case Study of the Yoruba

A system connotes an ordered set of ideas, theories or principles¹⁴ interacting within a given framework, or the organized relationship between the component parts of a body. Long before the advent of European settlers in the earlier half of the nineteenth century, the various communities constituting the geopolitical entity now known as Nigeria had their respective traditional systems of law and their machinery for the administration of justice. The judicial machinery installed by each community was dictated by its historical past, political structure and socio-cultural values. Nevertheless, they all aimed, not at doing justice in the modern sense of that word but, at the maintenance of peace and order, the promotion of social welfare and the sustenance of the social equilibrium in the society concerned. The prime motive was the reconciliation of disputants.

The political structure of the traditional societies may be classified as monarchical and republican;¹⁵ chiefly and chiefless;¹⁶ or centrally and non-centrally organized¹⁷ states. One remarkable characteristic of the various governments was the absence of clear demarcations between judicial, executive and legislative functions.

The monarchical states were organized in a hierarchical order of political authority. At the head of this was the *Emir* in the North or the *Oba* in the Yoruba and Edo states. They were assisted by their councils of chiefs. Collectively, they exercised the functions of government. Power was often delegated to subordinate authorities like the village heads or chiefs. These subordinate authorities were thereby empowered to settle minor disputes arising within their areas of authority while appeals went to a

¹⁴ Hornby A.S. (ed.), *Oxford Advanced Learner's Dictionary of Current English*, 4th Ed., (Oxford: Oxford University Press, 1974)

¹⁵ Okonkwo, C.O. (ed.), *Introduction to Nigerian Law* (London: Sweet and Maxwell, 1980), p. 60

¹⁶ Elias T.O., *The Nature of African Customary Law* (Manchester: Manchester University Press, 1952), p. 17

¹⁷ Umeh F.E., *The Courts and Administrative of Law in Nigeria* (Enugu: Fourth Dimension, 1989), pp. 39-40

higher chief, *Oba* or *Emir*. The *Oba* or *Emir* had his own court for this purpose and for the determination of the more serious disputes and offences against the state. His court usually the court of last resort and was constituted by the *Oba* or *Emir* and his council of chiefs.

In the republican states, prevalent in Igboland and parts of the middle belt, there were no recognized heads as such. Each clan or village was governed by the council of elders often constituted by the adult male members of the community concerned. They jointly exercised judicial control in the society though the adult members could settle minor disputes within the family.

Traditional religious institutions and beliefs helped in the sustenance of the adjudicatory system. The communities had a very broad view of their societies as comprising their dead ancestors, the living and generations yet unborn.¹⁸ The strong belief in deities and the ubiquitous spirits of their ancestors was a compelling force in ensuring due regard for the law. The frightening displays of the *Omebe* in some parts of Igboland; the *Ekpe Society* in Efikland; the *Sekini* of the Kalabaris; the *Oro* in Ijebuland or the *Adamu-Orisa* in the Lagos area are examples of this. The influence of secret societies and the awe with which elders were held as representing wisdom and the voice of the ancestors further strengthened the orthodox system. The traditional style of adjudication was commendable for its simplicity and affordability. But these same qualities were part of its weakness. Its simplicity was soon overtaken by the social and economic revolutions experienced in various localities following the embrace of western values.

The picture of centralized political dynasties was better evidenced in the North part of Nigeria before the amalgamation in 1914. The Fulani conquest of much of Hausaland, Western Borno and parts of Northern Yorubaland in the nineteenth century Jihad led to the establishment of Fulani Emirates under the rule of *Emirs*¹⁹. Islamic jurisprudence of the Maliki School was also introduced along with the Islamic faith and culture. Since this was an import from a relatively more advanced culture, Northern states inherited a more organized and developed administrative and judicial machinery. The *Emirs* were assisted by executive councils in the formulation of policies and the general administration of the Emirates. These councils also doubled as the supreme courts. The *Emir's* court heard appeals from the subordinate districts headed by lower chiefs who were appointed by and responsible to the *Emir*. A measure of adjudicatory powers was delegated to *Alkalis*²⁰ who also entertained cases in their own courts with a further right of appeal to the *Emir's* court.²¹

¹⁸ Adewoye O., *The Judicial System in Southern Nigeria 1854-1954* (London: Longman, 1977) p. 7

¹⁹ Imoagene, O., *The Hausa and Fulani of Northern Nigeria* (Ibadan: New Era Publishers, 1993) p.10-14

²⁰ These are officers who are trained in Islamic law and doctrines

²¹ Okonkwo C.O., ed., *op. cit.*, p. 57

The organized system of adjudication and government prevailed in the North with the adequate support of the Islamic religion and its firm injunctions calling for obedience to the rulers. The great awe, in which an *Emir* was held, in some instances, meant total submissiveness to his authority as the custodian of their law, the defender of the faith and an embodiment of the state. Though unfamiliar, the system could not have been strange to the early Europeans who were not aware of the Islamic culture in the Middle East and North Africa. Now, let us turn our attention to justice administration in traditional Yoruba.

The 'mythical charter' which embodies the traditional Yoruba worldview is centered on *Olodumare*. *Olodumare* is regarded by the Yoruba as the Supreme Being (*Oba to ga julo*) who is all-knowing (*arinurode olumo-okan ti oju re to ohun gbogbo*), all powerful (*eni ti gbogbo agbara wa ni owo re*). he is also regarded as the creator (*eleda*) and maker (*aseda*) of the world and everything in it. He is the undying king (*oba aiku*) whose habitation is in the heavens above (*oba orun or Olorun*) and whose work is done in perfection (*asekanmaku*); a supreme judge who judges in silence (*adakedajo*); and the controller of man's destiny. In short, *Olodumare*, for the Yoruba, is a complete being under whose ambience human problems can be resolved. Hence, they pray to him for guidance in their daily activities.²²

However, in spite of the Yoruba belief in the perfection of *Olodumare*, they also believe in the existence of some other powers and principalities. Prominent among these are the primordial divinities. These includes, among others: *Obatala* (or *orisa-nla*) who, according to the Yoruba, assisted *Olodumare* in the making of other primordial divinities in heaven. Also, when *Olodumare* decided to make human beings in his image; *Orunmila* (the god of knowledge, wisdom and anticipation); *Ogun* (the god of iron and creativity); *Esu* (the so called trickster god about who the Yoruba are ambivalent). It is the belief of the Yoruba that these divinities knew about the beginning of the world and were among those sent to the world to take care of human beings. Prominent among these are the spirit who, according to Bolaji Idowu²³ are those

dreadful divinities whose habitations were the thick dark grooves and unusual places; those who walk the world of men at night, and prowl the place at noonday; the very thought of which was hair-raising; to pass by whose grooves was blood curdling; with whom man feels compelled to make terms for his safety; more propitiated out of fear than worshipped in reverence²⁴.

²² O. Oladipo, ed., *The Third Way in African Philosophy: Essays in Honour of Kwasi Wiredu*, (Ibadan: Hope Publications Ltd, 2002), pp. 155-164.

²³ Idowu, B. 'The Yoruba Spirit World' *Orita: Ibadan Journal of Religious Studies*, Vol. 1 No. 1, June, 1967.

²⁴ Idowu, B, op. cit

Thus, the Yoruba character is not of aggressive; rather, it is one of temperance. The following Yoruba sayings support this assertion.

Eso l'aye gba – The world should be approached with caution
Pele-pele ni ejo ngun agbon – The snake does not climb the coconut tree in a hurry
Oni suuru ni yoo j'ogun aye. – The patient shall inherit the world²⁵.

We see then that temperance is one of the ideals of life which derive from the Yoruba world view, the basic outlines and presuppositions of which have been discussed above. Other ideals which play a significant role in the definition of good character and the regulation of conduct include: truthfulness, humility, compassion, trustworthiness, love, respect for elders, etc. Creative singers in Yoruba society also has this song which says:

Ema s'ika l'aye – Let us avoid doing evil on earth
Nitori a ti r'orun – Because of the journey to heaven
Ema s'ika l'aye – Let us avoid doing evil on earth
Nitori a ti r'orun – Because of the journey to heaven
Bi a ba de bode – When we get to heaven's gate
A o ro'jo. – We'd give an account of our deeds²⁶.

The above song implies that an idea of ultimate human destiny plays a role in the inculcation of moral values on Yoruba society. It is clear that the Yoruba also recognize in their wisdom that religious exhortations, however persistent, are not enough to make a person become an *Omoluabi* (a person of good character). For them, moral training is very crucial to moral development. Some of these ways which were considered very important in traditional Yoruba society include, among others: *apeere iwa* (leadership by example, particularly by parents), *itonisona* (moral guidance), *imoran* (counseling), *itan ati alo* (short stories and tales) and *eewo* (taboos).

Ofin (law) in the traditional Yoruba society cannot be divorced from the moral milieu in which it operated. It operated in a socio-cultural atmosphere dominated by a belief in the existence of supernatural powers and a social structure controlled by a hierarchy of authorities.²⁷ God, *Olodumare*,

²⁵ Fieldwork 2012. Interviews with Elderly Informants in Ibadan

²⁶ Fieldwork 2012. Interviews with Elderly Informants in Ibadan

²⁷ Abimbola W., *Iwapele: The Concept of Good Character in Ifa Corpus*, (Oxford: Oxford University Press), cited by Omoniyi Adewoye in 'Proverbs As a Vehicle of Juristic Thought', *Obafemi Awolowo University Law Journal*, 1987, 3&4.

has implanted in man *ifa-aya* (oracle of the heart) that guides him in life. The way to good life is to live in harmony with forces that rule man's universe through good moral character. *Iwa*, good character, is of great importance which everyone must cultivate because this makes life a joy; it is pleasing to God, providing sufficient armour against any untoward happening in life. Good character encourages good social relations within the community.²⁸

Odu Ifa (unwritten scriptures) emphasizes the different features of *Iwapele*. They include hospitality, patience and consideration for others. The Yoruba concept of morality prohibits acts like lying, stealing, cheating and wickedness. This is evident in the Yoruba proverbs which state:

Eke o sunwon ara eni – Falsehood is not right for one
Odale o sunwon ara eniyan – Covenant breaking is good for no man
B'eniyan ba nyo 'le da – If anyone surreptitiously breaks covenant
Ohun buburu a maa yo won se. – Ills surreptitiously will befall him²⁹.

Emphasizing these moral principles, there is a belief in the capability of the spiritual forces to influence the physical world. The ancestors are believed to be spirits that are omniscience and in addition to this are the complex hierarchies of gods, goddesses and unfamiliar spirits, carrying with them their swords and scale of justice.

As said earlier, law in the traditional African society derives its essence from this moral milieu. The maintenance of a peaceful social order is regarded as the duty of the ruling elites. This is evident in the saying “*agba kii wa l’oja, k’ori omo titun wo* (elders in the market will never allow a new-born baby’s head goes astray). A dispute between two parties is the responsibility of the elders to settle and also to maintain the cord that binds humanity. Law cannot be viewed in the same sense of right and wrong as such.³⁰ The objective of law goes beyond the mere resolution of conflict but for the maintenance of the equilibrium of the society... as a corporate whole.³¹ The application of law cannot be removed from some circumstances of a conflict such as the inevitability of human in independence. A proverb reinforces this thus:

²⁸ Idowu B, *Olodumare, God in Yoruba Belief*, (London: Heinemann Publishers, 1962)

²⁹ Fieldwork 2012. Interviews with Elderly Informants in Ibadan

³⁰ Mbiti J., ‘African Religion and Philosophy’, cited by Omoniyi Adewoye in *Proverbs As a Vehicle of Juristic Thought*, Obafemi Awolowo University Law Journal, 1987, 3&4.

³¹ Driberg J.H., ‘The African Conception of Law’, *Journal of the African Society*, p. 34

Otun we osi – When the right hand washes left
Osi we otun – When the left hand washes right
Ohun ni owo mejeeji fiimo. – Both hands are clean³².

The primary aim of law in resolving any dispute is not adjudication but settlement and the traditional court has its eyes on the future relation between the parties which are so vital to the life of the community itself.³³ This is evident in the following proverbs:

Ti a ba k'ilo fun ole – When we warn the thief
Ki a k'ilo fun onisu. – We must also caution the owner of the yam.

Ti kukuru ko ba g-bon – If the short one has been unwise
Kinni se eyi gigan? – Why has the tall one not exhibited greater wisdom?³⁴

It could be inferred from these proverbs that extra legal conditions may be taken into consideration in the process of settling a dispute; this could include the age of the disputants, status in life and modes of behaviour at the time of the dispute. African law encourages the largeness of mind, especially on the part of the superior of the two disputants. Thus the following sayings:

Bi a ko ba tori epo j'esu – If one is averse to taking yam with palm-oil
Ki a tori isu j'epo. – Let him, on account of yam, take the palm-oil.

Bi a ni k'aje ekuru ko tan l'awo – If we intend to eat up the 'ekuru meal'
A kii gbon owo re s'awo. – We do not drop the crumbs back into the plate³⁵.

In the adjudication process, the principle of fairness to both parties is adhered to. For instance, both parties to the dispute must be heard before a judgment is passed. This is evidenced in the popular Yoruba proverbs thus:

³² Fieldwork 2012. Interviews with Elderly Informants in Ibadan

³³ Holleman J.F., *Issues in African Law*, (Berlin: De Gruyter Mouton, 1974) p.36

³⁴ Fieldwork 2012. Interviews with Elderly Informants in Ibadan.

³⁵ Fieldwork 2012. Interviews with Elderly Informants in Ibadan. Also see Delano, I.O. *Owe L'esin Oro: Yoruba Proverbs, Their meaning and Usage* (Ibadan: University Press, 1983)

A gbo ejo enikan da – He who based his judgment on a party’s complaint
Agba osika ni. – Is a wicked elder³⁶.

The importance of social cohesion cannot be over-emphasized in the African juristic thought. This explains the inherent principle of collectivity in the definition of a legal person. In the African juristic thought, the legal personality goes beyond the individual. John Mbiti made this point when he said that,

The guilt of one person involves his entire household including his animals and property. The pollution of the individual is corporately the pollution of those related to him whether they are human beings, animals or material goods³⁷.

Hence the Yoruba proverb:

Isu eni – It is a man’s yam (in the process of being eaten) and
Ni k’owo eni bo epo – That pushes his hand into the palm-oil³⁸.

Collective responsibility imposes collective obligation to ensure cordial relationship in the society. Thus the following proverb:

Bi ara ile eni ba nje kokoro buruku – If one’s kinsman/neighbour eats poisonous insects
Ti a ko tete wi fun un – And was not warned
Here-huru re koni je ka sun l’oru. – The resulting itching and discomfort
will keep the whole family awake³⁹.

However, the principle of collective responsibility will not come to play in matters of crime and punishment. But the family’s reputation would be tarnished because of a singular act of one of its kinsmen. Thus this proverb:

Ika ti o ba se – It is the finger that offends
Ni oba nge. – That the king cuts.

In the application of law in the traditional Yoruba society, the reasonable man’s test was often applied. This test was not applied in abstraction but was usually based on the status of the disputants

³⁶ Delano, I.O. *Owe L’esin Oro: Yoruba Proverbs, Their meaning and Usage* (Ibadan: University Press, 1983)

³⁷ Mbiti, J. S. *Introduction to African Traditional Religions*. (Nairobi: Heinemann Educational Books, 1978).

³⁸ Delano, I.O, op.cit

³⁹ Fieldwork 2012. Interviews with Elderly Informants in Ibadan

which include the age, experience and responsibility, and such persons are expected to act according to their status in the society. Hence the followings:

Agbalagba to w'ewu aseju – An elder that wears garb of immoderateness

Ete ni yoo fi ri. – Earns disgrace.

Bi omode ban se bi omode – If a youth is behaving like one

Agba a se bii agba. – An elder should behave with maturity⁴⁰.

Finally, as said earlier, the principle of collective responsibility does not mean a denial of individual rights. Thus;

Oko kii je ti baba ati omo – A farm that ostensibly belongs to the father and son

K'oma ni aala. – Invariably has its boundary of demarcation.

A kii gba akata lowo akiti – One cannot deprive the monkey of its agile spirit

A kii gba ile baba eni lowo eni. – A man cannot be deprived of his family property⁴¹.

Conclusion

The problem of the African jurisprudence projection is multifarious and this is animated by the quest for relevance. This quest stems from one end of intellectual consideration to another. In other words, it arises both from the problem of substance and method. But while the problem of method is far reaching due to the fact that African jurisprudence still requires a method for its activation and intellectual clarity, the problem of substance only needs to be excavated. It requires an honest uncovering of Africa's past. This was the focus of the paper and we were able to establish this with the examination of law in traditional Yoruba society/philosophy.

We were able to underscore the fact that law in the traditional African society is part of a complex social totality in which it constitutes as well as it is constituted. The premise of law is that the individuals should be seen in the light of the whole, and the whole ever conscious of the individuals within. African law hinges heavily on the moral solidarity of the community and was never divorced from socio-cultural considerations. Thus, justice in traditional African legal system and administration

⁴⁰ Fieldwork 2012. Interviews with Elderly Informants in Ibadan. See also Delano, I.O. *Owe L'esin Oro: Yoruba Proverbs, Their meaning and Usage* (Ibadan: University Press, 1983)

⁴¹ Fieldwork 2012. Interviews with Elderly Informants in Ibadan. See also Delano, I.O. op.cit

of justice was based on the moral rectitude of the parties as well as the reconciliation of both parties. Conflict resolution mechanisms can therefore be found in Africa's own indigenous systems through the hierarchical system of jurisprudence embedded in most traditional African societies. What is also glaring is that many proverbs may be regarded as legal maxims since they are utilized most frequently in disputes resolution and determination of criminal cases.