IMPLICATIONS OF THE BRITISH COURT SYSTEMS ON THE BENIN JUDICIAL SYSTEM DURING THE DECOLONISATION PERIOD

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ABSTRACT
The paper is on the implications of the British court systems on the Benin judicial system during the decolonisation period. The aim is to reveal how the British court system was introduced in Benin and the implications it has on the utility of the pre-existing judicial system. Primary and secondary sources were utilised and the findings show that the British military invasion of 1897, which resulted in the overthrow of Oba Ovonramwen created a vacuum in the judicial system. This is because the sovereign Oba was also the head of the judicial system. The work also shows that to fill the vacuum, the British court system was introduced and the colonial government continued to weaken the Benin judicial system in favour of the newly impose British court system. The work also reveals that under the Benin judicial system, trivial matters such as quarrels between husband and wife, disagreement over non-payment of debts, minor cases of theft and other disputes within or between family members were usually settled within the family and that these duties were taken over by the different categories of courts that were introduced at the early days of colonial rule.

1. Introduction

The paper examines the implications of the British court systems on the Benin judicial system during the decolonisation period. The British colonial enterprise in West Africa and the resultant conquest and colonisation of the Benin Kingdom were the preludes to the eventual dismantling of the independent judicial system. The alteration and overhauling of this system by colonial invaders occurred in between 1897 and 1960 in diverse stages. The first stage was the interregnum of 1897-1914 and these years, which were without the monarchy were years of disruption and adaptation to the emergence of the British judicial arrangement. Thereafter, it became the official policy of the colonial authorities to maintain not only a unified administrative system, but also a common judicial system throughout the protectorate. The judicial system was similar to what was operated in other parts of the Protectorate.

The interruption by the British of the hitherto independent Benin Judicial system after the 1897 invasion through the proclamation of various statutes that resulted in the establishment of Native Courts which were so only in name, but not in operation. They were administered by British officials and paramount chiefs, several of which had no affinity to the indigenous community and no particular rank, but their favourable disposition towards the colonial administration made them a yielding tool in the hands of the colonialist. However, in spite of the volume of cases that came before the Native Courts, as an instance. While the Benin Judicial system was precise, the labyrinth of the British judicial system witnessed series of alterations, the first of which was the reorganisation which occurred in 1914, after the amalgamation of the two protectorates for financial and administrative purposes.

The analysis is presented in four sections. The first is the introduction, which gives the background information on the implications of the British court systems on the Benin judicial system during the decolonisation period. It is followed by the "Emergence of the British Court System in Benin," which deals with how the British military forces conquered Benin and impose colonial rule together with the aforementioned British court system. The third section is on the various implications on the Benin Judicial system at the Eve of Independence" while the four is the conclusion.

The Emergence of the British Court System in Benin

The British military invasion of 1897 resulted in the overthrow of Oba Ovonramwen,

who exercised the supreme judicial and executive authorities in the Country. The collapse of the Kingdom and the removal of the Obaship position disassembled the centuries' old established judicial system, which had the *Oba* at the headship of several judicial authorities. In its stead, the British colonialists throughout the interregnum of 1897-1914, built an administrative and judicial structure around paramountcy and chiefdom. This system, coupled with its shortcomings, however, was not up to the standard of the pristine judicial system of pre-colonial Benin, and as such support for the system from the people was inadequate and problematic. This forced the judicial reorganisation of 1914 on the British political officers. More so, the central figure of the Benin Monarchy, the *Oba* was not part of the system. This necessitated a frequent revamp of the administrative and judicial system in colonial Benin. It subsequently led to the judicial reorganisation of 1914 and the position of the *Oba* reinstalled with the Coronation of his royal majesty, *Oba* Eweka I. This judicial re-organisation introduced by the colonialists in 1914 did not go into operation until 1916 and its framework was made up of the *Oba*, the *Iyase*, the *Oba*'s Council, the ward chiefs, the Native Treasury, the district heads, the village heads and the native courts. At the commencement of the administration, the *Oba* was appointed the nominal head of the new system and was hardly given any real power.

The administrative machinery was characterised by arbitrary appointment of paramount chiefs and district heads, establishment of Native Courts which were not in any way native to the people of Benin and did not conform with the traditional pattern of maladministration on the part of the paramount chiefs and district heads. All these compelled urgent need for a reform in the existing Native Authority System. This also created some problems that led to the colonial, administrative and judicial reorganisation of the 1920s. The judicial and colonial reorganisations of the 1920s also created more problems than the deficiencies it was made to correct and as such the frequent change in the administrative structures and procedures continued to change resulting in the 1939, through the decolonisation period up till the 1960s. The 1939 administrative reorganisation was essentially a victory for the British authorities. The measures of popular representation, which the educated elites had achieved had, in fact given them very little control over either policy making, which in effect remained with the British or the bureaucratic colonial arrangement. The colonisers used illiterate title holders to dominate the administration like the granting of representation to the title holders in the *Ikoredo* in 1945 as against the elective principle which was formerly used in recruiting members.

By 1945, the Benin judicial system was already incapacitated by colonial administration in Benin Division in particular and Benin Province in general. The system has greatly changed from its pre-1897 sovereignty status to its condition in the seventeenth years interregnum when there was no Oba, 1897-1914 and the period of after that. Again, the new laws enacted in the legislative developments of the decolonisation period, 1945-1960 further weakened the system. The major aspects of the Benin judicial system that felt more of the blow during this period was the body of laws, that regulate the individual conduct and promote societal cohesion among the Benin people. The authorities of the Benin judicial system from the lowest level in the family to the hitherto supreme judicial authorities of the *Oba* as well as the laid down court system and procedure were also significantly affected. In addition, the people of Benin were continually awakened to the emergent situation where the office of the *Oba* together with the whole fabric of the judicial system that assisted him became less and less relevant as the imposed British system became more effective after each constitutional amendment and structural reorganisation that characterised the democratisation period.

The installation of the *Oba* forced a major reorganisation on the Benin Native Council. It was reconstituted as Benin Native Administration (BNA) in which *Oba Eweka* II was made the head with other members including Chiefs Iyase, Oliha, Oloton, Ogiamien, Oshodi, Ologbosere, Ine, Uwangue, Osama and Ihaza. According to Simson's *Political Intelligence*

Report, The *Oba* was made head of the 'administration with a council of chief under him. He had many and various duties, and responsible for the administration of the Division and acted in addition as a Court of Appeal from the Native Judicial Council and all business transacted was of course subject to the approval of the government.' Apart from the installation and appointment of the *Oba* as head of the new Native Administration, nothing else changed. The functions of the former Native Council were taken over by the Native Administration, while the five Districts in which the entire Benin territories were divided remained intact. It should be noted that for the British officers, these reforms however minor, adequately satisfied their desire of administration suitable and convenient for their objectives. Following the restoration of the office of the *Oba*, some of the courts at the *Oba*'s palace particularly the *Oguamaton* were revived but not as the supreme courts of the land as they used to be but as subordinate courts.

The British also did not want 'to return the *Oba* to his previous prestige, as his powers were severely curtained. According to Philip Igbafe, "the most important aspect of the restoration is to be found in what was not restored." Series of stern limitations were imposed on the powers of the *Oba* and his chiefs. All these add up to weaken the Oba's courts, which became powerless and mere advisory to the people for which it once had the power of life and death. Also, the agreement of the Governor or his agents and representatives was made provisional to any concession that could be made to him under the above limitations. The *Oba* was forbidden to make war or practice any religion adjudged by the British colonialists as involving acts that are not in accordance to good government and humanity. The prestige and other major attributes of the office of the monarchy were taken from the Oba. The moment the *Oba* was stripped of his executive power, he was forced to surrender all rights to the control and disposal of his lands and collect tribute, it could be said that he had lost the essential attributes of his judicial authority.

The authority of the *Oba*'s court was further weekend by the demeaning honour and clouts of the *Oba's* authority vis-à-vis those of Agho *Obaseki*, the *Iyase*. The *Oba* did not even have the opportunity to demonstrate the potentialities of his new office. Edo reports that, this was mainly due to the rising position of the *Iyase* particularly the advisory position, which alone 'ensured success as far as the political officers knew. This was implied in Acting Lieutenant-Governor F.S. James public statement on 21 October, 1914 that as long new *Oba* follow the advice of Chief *Obaseki*, he will not go wrong.' So complete was the administrative officer's confidence in Obaseki's ability that the *Oba*'s own personality was concealed. The fact that loyalty to the *Oba* among the Chiefs was divided also weakens the *Oba*'s judicial position. Philip Igbafe reports that the division of loyalty among the chiefs, between the *Oba*, *Obaseki* and resident officer also contributed to weakening the status of the office of the Oba. According to him, the principal chiefs were first loyal to the colonial administrators before the *Oba* and several were not even loyal to him at all but to Obaseki. This was one major challenge among many others that the *Oba* had to contend with and instruments of the British political officer. The paramount chiefs headed by Chief Agho Obaseki were not quite contented with the restoration.'

Another issue that weakened the *Oba* and his judicial council was the selection by the colonialists of Chiefs loyal to their cause and not those of the *Oba* and the Benin people. They were 'concerned with providing compensatory positions for their erstwhile faithful servants and what eventually evolved was neither rooted in the traditional political system to make it 'native' nor was the reality of power ever in the hands of the *Oba* as head of the indigenous political organisation.' The members of the *Oba*'s judicial council were restricted to eight, which was not a sufficient representation of the Benin people and territories. Thus, 'the *Oba*'s judicial council of eight chiefs to serve in an advisory capacity was too restricted in membership to be representative of the traditional ruling chiefs in Benin. Of the four district chiefs on the council, only one, the *Ero* was in Benin.' The *Oba*'s judicial authority was also weakened by the attitude of the British

colonial authority, who continued to deal with Obaseki as the Iyase as it was before the restoration. This led to the creation of 'anomalous situation, whereby, the '*Iyase* aided by his large judicial powers as president of the three native courts of Benin City, Ehor and Ekehuan, and his executive powers as a district head in Benin City, became the actual, while the *Oba* was the nominal, head of the administration.' The position which Chief Obaseki who tripled as President, District head and adviser, whose advised must be adhered to, built up in the period before 1914 was not affected by the *Oba*'s return. He became dictatorial and treated the *Oba* disdainfully, arguing that the *Oba* could not try any case without first consulting him. Thereby, making the *Oba*'s Judicial Council subject to the Native Courts over which him, Obaseki presided.

The adaptation and adjustment to the new system was very cumbersome for the people it was imposed on. The manner and the severity of punishment; the procedure of adjudication; the emphasis on the individual as against the collective responsibility of the family and the roles of the two genders were very different between the judicial system introduced by the colonial administration and the Benin judicial system. Whereas, the aim in settling dispute in the Benin judicial system was to maintain social equilibrium in the community, the focus of the imposed British judicial system was largely punitive and individualistic. Also, while the Benin Judicial system handled members of the community together with the social groups and families they belong to, with a very deep sense of responsibility as a whole body for a single person's illegality, the British system treated them as individuals that were solely responsible for their actions. This individualistic approach is in contradistinction to the conventions in pre-colonial Benin judicial system, which saw the individuals as units of the society, whose actions can affect the harmony of the whole society. Thus, members of the community always respond to conflicts and were actively engaged in resolving them instead of leaving them in the hands of some selected experts or elders as it came to be in the decolonisation period. The rationale for the holistic approach to resolving conflict between individuals is that such conflicts will eventually affect the whole community. It also allows everyone to know how they would be handled by the society should they be involved in similar conflict. Apart from the fact that the colonial government continued to weaken the Benin judicial system during this time, it also greatly inconvenienced the people, who were caught in the middle of the two conflicting systems. This became very pronounced in the period immediately after the legislative developments in the period of decolonisation and constitutional development.

Implications on the Benin Judicial System at the Eve of Independence

These cases treated by the colonial and the Benin courts led to the colonial blending of the African and European laws, which became a conspicuous result of the development during the decolonisation period in Benin and other parts of British West Africa. The Supreme Courts of the Protectorate of Southern Nigeria and Lagos Colony 'recognised the common law of England, the doctrines of equity and the statutes of general application as they operated in Southern Nigeria as well as those aspects of Nigerian customary law which were not 'repugnant to natural justice, equity and good conscience' nor incompatible with the existing legislation. This blending has serious effects on customary law and seriously threatened its validity in Benin Province. It also tagged all other aspects of the Benin laws not blended with those of the British as 'repugnant to natural justice' and make them look barbaric. Another significant change brought in was a judicial pronouncement in 1931 popularly known as Eleke case. The Lords of the Judicial Committee of the Privy Council expressed an opinion which, *mutatis mutandis*, could also be applied to the period before 1914.

The judicial pronouncement and the resultant change in the legislation transcended the limitations of the *Eleko* case and the customary law concerning deportations and banishment. It also applied to the modifications in such practices as infanticide, ordeals and the death penalty in witchcraft accusations and offences, reparation in certain cases of homicide, severe penalties for theft, human

sacrifices and the like. 'At the various stages of the judicial process in Southern Nigeria, the series of law courts exercised their power of modification in several cases which did not necessarily go as appeals to the Privy Council. Thus, they helped to modify the content of customary law without considering the effects of their action among a largely illiterate population. The mixing process also extended to the personnel of the newly-organised or regulated Native Courts or Councils, where British political officers sat with 'warrant holding' chiefs. Serious human problems eventually resulted. The dual role of native courts and councils as judicial and administrative institutions left the door half-open to instances of cases settled 'politically': for instance, the land disputes of the Eastern and Central Provinces of post-1906 Southern Nigeria.' The *Oba*'s court and the laws in which it relied on were also affected. The apparatus of law courts in colonial Benin became a blend of Western European and African forms and standards of justice comprising "the Supreme, Divisional and District Commissioners' Courts, which adopted the British model. Native courts and councils were reorganised on the African model. Links were, however, provided through the intricate procedures for appeals which in certain cases went to the Judicial Committee of the Privy Council in Britain" instead of the *Oba*'s Court.

There were series of shortcomings that affected the British imposed judicial system during the decolonisation period. First, the Supreme Court in colonial Nigeria was not quite comparable with that of the High Court, which was its equivalent in England. After the act of Settlement in 1700, judges of the court in England became removable only with the consent of the British Parliament and this went further to promote the principle of separation of power and safeguarded the independence of the judiciary, but this principle was disregarded in the colonies making the judiciary to be subservient to the executive. *Terrel vs Secretary of State* for the colonies in 1953 affirmed what had all along been felt to be the position of the British authority on the position of a colonial judge. It affirmed that the colonial judge 'held office at the pleasure of the British Crown' meaning that the colonial judge can be removed from office by the executive and thwarting the principles of separation of power. This also means that the Act of Settlement, 1700, which solidified the independence of the judiciary and protects judges from the executive arm of government, was held inapplicable to the colonial laws and practices. It is important to note, too, that colonial judges were members of the Colonial Legal Service since 1957 replaced by the Overseas Civil Service and that a judicial career under the service was 'not radically different in quality from that of a Civil Servant.'

The judges in colonial Nigeria were further reduced to the mere position of the ordinary civil servant. This position of the colonial judges that the governor of a territory has power to write report on the judges to the colonial office in London and on the judges under into the governor period the idea of a territorial governor having to furnish reports on judges within his territory is clearly out of harmony with judicial independence. Omoniyi Adewoye explains that it was not surprising that colonial judges were held in subordinate position to the executive because it was clear that the 'the exigencies of a colonial situation precluded putting in to practice' the ideal of separation of power and the associated idea of the independence of the judiciary. He further argues that until the power of the Executive was strengthened and its position, to some extent, accepted by the colonised population, the colonial government "could hardly afford to have its actions challenged by any other authority within its area of jurisdiction."

This belief by the authorities of the colonial office, led to very powerful positions of the colonial executive at the detriment of the legislature. The colonial authority in Southern Nigeria "had to remain paramount, otherwise, it would be ineffective, and colonial rule might be impossible. This was, by and large, the broad framework within which a colonial judiciary had to operate' and it became a major motivating factor for the agitation for change during the decolonisation period. The courts dealt with such cases as slave-dealing, firing on trade canoes, adulteration of palm kernels, and various types of civil disputes despite the series of limitations. The most conspicuous of these

problems is that the personnel of the courts were not trained lawyers forcing the courts to use 'individuals with no qualifications other than the knowledge of the environment, long patience, self-command and firmness' as judges in the court of Equity. Most of them were merchants, a British firm, between 1886 and 1899, in its area of jurisdiction, Peter Nwankwo also laments that 'the court of equity and their immediate successors had no officer qualified in law. This insufficient knowledge on western legal system led to poor formalities in legal matter to such an extent that they were condemned for administering 'their own notions of fair play and justice."

The situation was so bad and the status of the *Oba* was deliberately reduced to the level of other Chiefs by the British political officers. They prohibited the practice whereby the *Oba* 'could call at will for the services of his subjects. The *Oba* was also deprived of his judicial and administrative control over all villages except about twelve small villages that 'belonged to him as an individual and not as the *Oba* of Benin.' These villages were small and they were only twelve compared to those that belong to some of the chiefs like Oshodi, Ologbosere, Orhiakhi and so on. The payment of tribute to the *Oba* was also 'abolished except only in those areas where he was still allowed some control. Most of the *Oba*'s personal attendants and dependants were disbanded and all these were calculated to strip the *Oba* of his political influence.

The administrative reorganisation between 1945 and 1950, which saw the abolition of the *Iyase* title in 1948, started a new phase in the pattern of socio-political relations in Benin that fuelled the dwindling status of the Benin judicial system. The Benin judicial authorities continued to lose power and authority and this time, not only to the British imposed judicial system, but also to the newly established political associations, vibrant civil society and the democratisation process that finally culminated in independence in 1960. The emergent situation was characterised by the control of a relatively larger measure of state power by the educated elite in Benin at the detriments of the *Oba* and the several subservient institutions. Victor Osaro Edo explains that the nationalist agitations, which had been intensified by labour militancy during and immediately after the World War II had forced the colonial state into starting a gradual decolonisation process through the granting of political concessions to the rising nationalist groups and political associations. This further weekend the traditional institutions and their power to compel obedience in their various courts. In 1948, for example, apart from granting a review of the Richards Constitution of 1946 after only two instead of nine years of its intended operation, the colonial authorities also embarked on the democratisation of the native administration system, the Nigerianisation of the Civil service and the establishment of a university all targeted at the devolution of state power. This gradual devolution of state power to the nationalist movement, created new opportunities for class and individual advancement as well as competition for access to the control of state power where the monarchy and the surrounding institutions were not beneficiaries.

Yet, affected the power of the Benin Judicial system during this period is the emergence of two political organisations contesting for power. The two parties, the Tax Payers' Association and the Otu Edo became so strong that the power of the monarchy in Benin also dwindled as several of its policies were challenged. The Tax Payers' Association had been formed just before the Benin Water Rate Agitation of 1937, but it did not constitute itself into a political party. It was led by Chiefs Okoro-Otun, the Iyase; Omoruyi, the Ezomo; Erebo, the Osodin and H.O. Uwaifo, who serves as the General Secretary. The Tax payer's Association became the party of the masses and educated men who were in constant opposition to the government. The Otu Edo was formed in 1950 as the Otu-Edo Union and later renamed Otu-Edo Party and was the party of the aristocracy. The party was pro-monarchy and was strongly supported by the *Oba* who described the members as 'not a pack of yes-men or mummies but intelligent responsible citizens.' Edo reports that the Otu-Edo also set itself up in opposition to the Tax Payers 'Association, and there followed a very bitter struggle between the two parties. The leaders of the Otu-Edo

were Chief H. Omo-Osagie, who served as the President-General, Mr. J. O. Edomwonyi, the General Secretary, Mr. E. O. Imafidon, Mr. A. G. Bazuaye, Chief Natigbe Oboh, Chief Izama, Chief Obanor Osayande, Chief Idahosa Oshodin, Messrs Aguebor and S. J. Obasohan.

The grades A B C and D courts established and supported by the colonialists took precedence in all judicial matters between 1945 and 1960 and made the Benin judicial system irrelevant to a large section of the Benin people, particularly the educated class. By 1960, the hitherto sovereign Benin judicial system was already incapacitated and became only a shadow of its pre-1897 era. It became utterly subjected to the British imposed system in all judicial matters despite the fact that few still relied on it.

2. Conclusion

Under the judicial system before 1897, trivial matters such as quarrels between husband and wife, disagreement over non-payment of debts, minor cases of thefts and other disputes within or between family members were usually settled within the family (*Egbe*) or concerned families with the family head–*Okaegbe*, presiding. However, complicated and serious disputes such as adultery, dispute over a piece of farmland, arson etc., involving members of different families, or quarters, were referred to the village council, headed by the *Odionwere* or the *Enogie*, if the village has one. The Village Council alone possessed the power to dispense justice between parties in these cases.'

The centuries – old defined role of courts within the pre-colonial Benin Judicial system meant that every hierarchy of court had a scope and limit to the punishment it could pass on a culprit. As reported by Frank Ikponmwosa, for instance, 'the only form of punishment which the village council could impose was a fine, or declaration, except in the case of witchcraft where the accused was banished from the village. If the culprit fails to pay the imposed fine, his livestock or that of the family member were confiscated in lieu of the fine. But where neither he nor his family possesses a livestock, the culprit was compelled to render free labour for specified number of days either clearing the footpath to the village market and river or renovate the village ancestral house (*Oguedion*). Alternatively, the culprit could be sent to and detained in the *Oba*'s prison (*ewedo*) for a specified period during which he rendered compulsory services to the *Oba*,' 'The *Oba* and his council was the final judicial authority. All cases beyond the powers of village councils such as serious crimes like manslaughter, robbery with violence, boundary disputes between villages and several appeals from the villages and quarters in Benin City were held by the Oba-in-Council. Hence, the popular saying in Benin that *egua-oba emwense* and *enobakhare orode*, meaning the "Oba palace is the final court" and "the instructions of the Oba can never be overruled" which signifies the supreme position of the pre-colonial *Oba* in judicial matters.' In effect, 'all those who were entitled to exercise judicial authority were well known; heads of family, the village or quarter heads (assisted by their council members) and the *Oba* with his Council members. In all criminal and civil matters, the adjudicating heads or groups received a reward for their services, usually paid by the culprits in criminal cases, or the successful parties in civil cases. Fees or fines were usually what the parties were made to pay and affordable. The rules or conventions were not violated with impunity neither were penalties imposed for the purpose of exploiting the people or coercing them towards rendering involuntary services for those exercising judicial authorities or functions. This consequently enhanced peace and harmony between the rulers and the ruled in the kingdom.'

It was only as a last resort that civil matters were only brought before the village councils. Most civil matters were settled by arbitration within the family. Only after this option has been exhausted, without solution that such matter was brought before the village council. If the parties were dissatisfied with village council's decision, their usual channel of redress was to appeal to the *Oba*'s council through the *Onotueyevbo*.' This evolution of a judicial system was already conventional to pre-colonial Benin before the British invasion of the Empire.

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