

TEETERING ON THE BRINK: TRADITIONAL BEKWARRA MECHANISMS OF SOCIAL CONTROL AND LEGAL SYSTEM IN AN AGE OF GLOBALIZATION

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Abstract

In the pre-colonial Bekwarra, the administration of justice like most traditional African societies was through established mechanisms generally accepted by rulers, council of elders, age sets, chiefs, and ancestral cults, as well as religious beliefs, and local deities. These institutions adjudicate on a wide range of cases geared towards peaceful co-existence of members. However, the advent of globalization has done little to sustain Bekwarra justice system. Indeed with globalization, social control fashioned after western methods have been adopted in its place. This paper explores and discusses justice and law in pre-colonial Bekwarra and the transformation it has witnessed in an age of globalization.

Key words: Bekwarra, Social control, Justice System, Globalization and African Societies.

Introduction

Conflict among humans is as old as man. Every strata of society has witnessed one form of conflict or another in its history. Bekwarra aphorism captures it thus, *Ufam ituu k' utuo han r' ubua re* (whenever two hoes or pieces of iron come in contact with each other, they produced a sound). Thus, the society recognizes the possibility of conflicts in human existence and in order not to allow such 'sound' bring about instability in society, normative rules were applied. Whenever conflicts occurred, as it did occur quite often among all human groups, social control mechanisms were introduced for society's stability. Efforts at maintaining social stability through conflict resolution were multi-dimensional, complex and sophisticated. All mechanisms employed in this regard, mirrored the cosmology of the people concerned.

Social conflicts were monitored, prevented, managed and resolved through established mechanisms generally accepted by rulers, council of elders, age sets, chiefs, ancestral cults, religious beliefs, local deities and others. Individual and group attitudes and behaviors were also controlled through these mechanisms (Anyacho & Ugal, 2009). Throughout traditional Africa, decisions concerning social control, and collective decisions taken for the good of the community, were based on cases or precedents. On the whole, justice in the pre-industrial societies in Africa was mainly geared towards deterrence and there was scarcely an idea of retribution or vindictiveness. Persons caught in the act of theft, for example, or in the act of adultery, might receive immediate punishment, but past crimes were rarely followed up and there were hardly any penal institutions. Legal action was initiated in most cases by private individuals, supported by a primary group (Shorter, 1977). Sanctions imposed by deities and by the society (Idjakpo, 2011) were also meted out on individuals, families, etc, that acted in ways contrary to custom and traditions, especially ways likely to cause strife and bloodshed, such sanctions were used to deter conflicts and conflict generating behaviors

such as stealing, adultery, murder, incest, abuse of elders, bearing false witness, poisoning etc (Anyacho & Ugal, 2009).

In spite of that, the idea of crime as an anti-social act certainly existed, and it was the concern of authority in society to restore and promote social relationships. Reconciliation and the restoration of social harmony were the objects of judicial proceedings, not retribution. Hence the importance attributed to compensation, and even ritual feasting as the outcome of a process of reconciliation (Shorter, 1977). The colonial and post-colonial eras had a profound impact on the dispensing of justice by traditional leaders. The colonial system ostensibly enhanced chieftaincy through the system of indirect rule particularly in Nigeria. But the perception that chiefs and kings ultimately derived their power from the colonial power eventually undermined their power. The recognition of “Native Courts” during the colonial era was seen as an essential part of the colonial administration under the policy of indirect rule.

The policy of indirect rule, apart from being a practical administrative necessity for the success of the colonial experiment, was also said to be based on the notion that there was a cultural gap between the colonizers and the colonized (Basung, 2002). 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. The reality is that in most African states, 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 (Otumfuo Osei Tutu II, 2002), although the institution of chieftaincy has been guaranteed in the Nigerian constitutions. This paper examines justice and law in the pre-colonial Bekwarra in the present Cross River State of Nigeria, the different methods of social control among the people and the challenges that face the traditional justice System in this age of globalization. The object of this paper is to explore and discuss justice and law in pre-colonial Bekwarra and the transformation it has witnessed in modern times.

Justice and law in Pre colonial Bekwarra

In the pre-colonial Bekwarra, traditional leaders through their offices played important role in the day-to-day administration of their domain and the lives of their people. The multifarious functions were exercised sometimes by elders or councilors, or communal groups or judicial institutions or state in accordance with customary law (Otumfuo Osei Tutu II). Indeed, the legal systems of traditional African societies were extremely diverse and in some cases there were no units or offices that coincided with the western concept of judiciary (Adejumobi, 2000: 155). Among Bekwarra people for instance, the mechanisms of social control and legal system is bestowed on traditional rulers, council of elders, age grades, chiefs, ancestral cults, religious bodies, local deities and many others. These institutions usually employed different mechanisms which were all geared towards peaceful co-existence of members.

In Bekwarra judicial system, reconciliation is usually the principal aim of such settlements since that would be the only favorable and desirable result of resolution of dispute between parties that are closely related and need each other. That explains why for offences committed within a family the matter was heard and determined by the family head. However, if a family head was

unable to resolve a matter he would call upon the clan elders to adjudicate the matter (Kinyanjui, 2010: 10). Similarly, if the offender and the victim belonged to the same clan, the council of elders in that clan would adjudicate the matter. Both the offender and the victim would have a spokesperson from his or her family to represent the facts to the clan elders. In an inter-clan matter, where the offender and the victim belonged to different clans, elders from the different clans would come together. Spokespersons to represent each clan would then be selected to facilitate the hearing of evidence from both sides (Kinyanjui, 2010: 10).

The institution of traditional leadership played a vital role in African life and, historically, in the body politic of pre colonial African communities. It embodies the preservation of culture, traditions, customs and values of the African people, while also representing the early forms of societal organization and governance (Department of Justice and Constitutional Development Republic of South Africa, 2008). In recognition of the fact that people entrusted with power are capable of political tyranny, to borrow a phrase from John Emerich Edward Dalberg Acton, “Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men”, the council of elders provided efficient checks and balances on a chief’s functions and power to safeguard against abuse of power. The members of the chief’s council (*Ikem Udiara*) in Bekwarra, like in most African societies, were heads of their respective family units.

They met periodically to formulate policies and take decisions on community matters. Indeed these people were generally seen as a ‘committee of wise men’ who possessed the innate ability to understand the intricacies of human organization. The council was presided over by the chief and he was obliged to act on the advice and with the consent of his councilors, whom he had to summon regularly. The councilors freely discussed all matters affecting the community and, in any such atmosphere of free and frank expression of opinions, disagreements were inevitable. But in the event of such disagreements, the council would continue to listen to arguments until a consensus was reached with the reconciliation of opposed views (Senyonjo, 2012). The councilors and the people had a symbiotic relationship and as such no important decision was passed by the councilors without first consulting the people. This point is further buttressed by Meyer Fortes, and E.E. Evans-Pritchard who opine that:

the structure of an African state implies that kings and chiefs rule by consent. A ruler’s subjects are as fully aware of the duties he owes to them as they are of duties they owe to him, and are able to exert pressure to make him discharge his duties” (Fortes & Evans-Pritchard, 1940: 12).

Bekwarra laws, like those of most non-literate societies, were unwritten and may be divided into two classes: legal interdictions promulgated by rulers or arising from general disapproval, and taboos which depended on a magico-religious sanction. Thus, besides civil prohibitions, there were also religious and ecclesiastical inhibitions. But because there was no hard and fast division between the two, it is difficult to say where the former ended and the latter began. A very strong sense of justice prevailed among them, perhaps because the mystical connection between kings and their people meant that their prosperity depended on justice and due observance of the laws and taboos. No difference was made between the executive and judicial powers, as they were combined in the chief ruler, or rulers, of the people (Adejumobi, 2000: 156). The concept of justice had a highly mythical connotation, emanating from a supreme God, and transcending down to the people through the intercession of the ancestors (Fisiy, 1988: 264). It is because of this belief that customary laws were

observed strictly by the people because they felt that any deviation from that could evoke the wrath of the dead ancestors against them.

In fact, the making and administering of laws and the judging of all serious cases appear to have formed the essence and the distinguishing prerogative of the chief and his councilors (*Ikim Udiara*). Once a case was reported to the village head, he consults with other elders in the village and then set a day for the hearing of the case. Both the plaintiff and the defendant were asked to deposit a certain amount of money which was then shared by the presiding elders. On the appointed day, litigants appeared before the elders and other participants who listened to their presentations. The presiding elder outlined the expected decorum and fines for violators and then asks the plaintiff to present his/her case. After the presentation, the plaintiff is thoroughly questioned, by the defendant, elders and members of the audience present. Witnesses are called and their testimonies strictly scrutinized through questioning. Cases not concluded in one day are adjourned till another day. Elders base their decisions within the context of objective evidence, arguments and unimpeachable facts presented before it (Offiong, 1997: 434). It is most probable that the right decision is given with as much certainty as in a European court” (Offiong, 1997: 434). On the whole, Bekwarra laws appeared to have been sensible and the penalties were mild when compared with most pre colonial laws; they were harsh according to modern European standards. Sir James Marshall’s testimony as to the efficiency of the West African pre-colonial justice system is important here. According to him:

... These people have their own laws and customs, which are better adapted to their condition than the complicated system of English jurisprudence. The adoption of them would, it is maintained, be more conducive to the best interests of all than the present system (Balonwu, 1975:31-67).

The court operated according to traditions and customary laws. Obedience to the law was maintained through custom and religion as well as established patterns of sanction (Motala, 1989: 379). A customary law was regarded by the members of the traditional community as binding on both a traditional leader and the people alike. Criminal judicial procedure did not start until guilt had been established from popular rumor, confession, failure under ordeal and refusal to submit to ordeal. The penalties ordained by the laws may be said to have been imposed partly as a deterrent, partly in revenge, and partly because the crimes were thought displeasing to the gods and ancestors. The punishment varied according to how the crime was regarded either as an offense against community law, priest, chiefs or age grade and club laws (Omagu, 1997).

It should be stated here that a dispute cannot be settled unless the victim, as well as the offender agree with the final decision. For the elders to be sure that genuine reconciliation has been achieved after dispute mediation, both parties may be expected to eat from the same bowl, drink palm wine, or local gin from the same cup and/or break and eat kola-nuts. This forms part of the reconciliatory approach intrinsic to most African traditional dispute mediation. The public also partake in the eating and drinking as an expression of the communal element inherently present in any individual conflict and of their acceptance of the offender back into the community (Omale, 2009).

In pre - colonial Bekwarra, Age grades acted as disciplinary bodies and were concerned with the administration of justice. Within the framework of delegation of executive, judicial and political powers from the elders, the younger age-grades hold their councils and courts where they pass bylaws to regulate their behavior and where they deliberate on minor disputes, cases of robbery, adultery, assault and petty theft and defaults within and between age-groups (Onigu, 1972:302-315).

In pre-colonial Bekwarra judicial system, age grade played a role in adjudicating on adultery cases involving a member or his spouse. Adultery among the Bekwarra was regarded as both sin against the deity of social morality (*Ndem*) and a crime against the age grade whose member was violated and as such, a man found guilty of committing adultery was bound to pay compensation to the husband of the woman through members of his age-grade. The fine collected was used to buy some sacrificial items to appease the deity of social morality (*Ndem*) (Omagu, 1997). Age grades have different forms of ensuring discipline; this could be in the form of punishment or fine on a member. Where a member fails to pay up his dues, the age grade would assign a day to pay a visit to his home to cart away some of his domestic animals and or property until such a time he is able to pay. They taught their members such virtues as accountability and self-reliance. A member who violates the rules of the group is brought before the group for trial and where he or she is found guilty, the culprit is made to face the maximum punishment prescribed by law. In Bekwarra, individuals are held responsible for their actions, be it good or bad. If an individual's actions are bad, punishment was dished out to the person according to the grievousness of his crime.

The older age grade's task was not as clearly spelled out as the others. The younger age grade performed administrative functions such as presiding over pre and post-funeral meetings to settle property claims, initiating compromises in conflicts, and seeking the advice of elders when in doubt. They also served as messengers between elders of different ethnic groups. They performed most of the functions that in modern system would entail adjudication, such as settling land and bride wealth disputes and mediating assault and accidental injuries. There are a variety of other matters in which their advice was sought. Elders, few as they were, often very deeply attached to religious priests, acted largely as advisers and were deeply involved in the decision making process for two reasons, namely; for their wealth of experience, and more importantly, they represented the spirit of the ancestors whom the society could not afford to ignore.

In the determination of any charge against a person, professional legal representation is not a feature of the traditional justice system, nor can it be regarded as required. Litigants appeared before the elders who were their blood relatives and leaders in all other community affairs who listened to the whole story and based its decision only on objective evidence, arguments and facts presented before it. In delivering the verdict, the spokesman relied on proverbs because they convey wisdom (Offiong, 1997).

Indeed, with traditional justice system, decisions can be delivered more promptly and financial costs involved for litigants, are minimal (Stevens, 2000). The importance of traditional courts derives from the fact that proceedings are quick and take place within walking distance. They are also conducted in the local language and carried out in a manner which everyone understands by people who are socially important to litigants, rather than impersonal state officials (Stevens, 2000).

The main thrust of 'traditional' Bekwarra justice system is often to bring closure to disputes between people living in the same community, based on restoration and who will have to live and work together in future. Braithwaite, for example, asserts that "restorative justice has been the dominant model of criminal justice throughout most of human history for perhaps the entire world's peoples" (Armstrong et al, 1993: 14). Its emphasis, according to Armstrong *et al*, is on the "processes of achieving peaceful resolutions of disputes rather than on adherence to rules as the basis of determining disputes" (Armstrong et al, 1993: 14). A fair and just judgment must take into account a wider range of facts and interests, including that of the community, without necessarily compromising

the facts of the matter in dispute and the rights of the litigants. Nsereko notes that African customary legal processes “focused mainly on the victim rather than on the offender” (Nsereko, 1992: 22).

The goal of justice was to vindicate the victim and protect his/her rights. The imposition of punishment on the offender was designed to bring about the healing of the victim rather than to punish the offender. In any conflict, rather than punish the offender for punishment sake, the offender was made to pay compensation to the victim. Compensation according to Nsereko goes beyond restitution. It also represents a form of apology and atonement by the offender to the victim and the community (Nsereko, 1992: 22).

African indigenous justice systems support offenders by persuading them to understand and accept responsibility for their actions. Accountability may result in some discomfort to the offender, but not so harsh as to degenerate into further antagonism and animosity. Obligations must also be achievable hence justice processes recognize and respond to community bases of crime. Above all, efforts are made by the community to disapprove of wrongdoing, rather than the wrong-doer. As such, collaboration and reintegration as a process of justice-making is encouraged, rather than coercion and isolation. Underlying this approach is a belief that all human beings are important and are not expendable. In addition, it is generally believed that human beings are naturally good and are capable of change. Healing must go deep to the center of the problem, to the soul of the person (Elechi, 2006: 40). In pre-colonial Africa, the traditional forum in a number of societies assumed a more adjudicatory role for the most serious crimes such as murder and witchcraft and capital punishment was on occasion resorted to (Elias, 1956: 288).

African justice system which Bekwarra is part empowers victims, offenders, their families and the entire community to participate in the identification, definition of harm and the search for restoration, healing, responsibility and prevention. Traditional justice is inherently flexible and can adjust to changing circumstances more easily. Although not mandatory, family participation in the legal proceedings was an important feature of the Bekwarra justice system. The involvement of the families of the wrongdoer and wronged party reaffirmed the communal ties. Having in mind that individual conduct had repercussions for one’s kin, individuals bore the responsibility to act properly. Therefore, this social structure, which was based on communal living, facilitated the operation of restorative justice (Kinyanjui, 2010).

Justice making is an opportunity for dialogue amongst the victims, offenders, and their families and friends, and the community. When the primary stake-holders to a conflict participate in the definition of harm and potential repair, all complaints and issues relevant to the case are openly discussed. The thorough airing of complaints “facilitates gaining of insight into and the unlearning of idiosyncratic behavior which is socially disruptive” (Gibbs (Jr.), 1973: 374).

If participants are free to express their feelings in an environment devoid of power, there is nothing left to embitter leading to a more enduring peace. Further, when people involved in a conflict participate and are part of the decision making process, they are more likely to accept and abide by the resolution. Furthermore, conflict provides opportunities for stake-holders to examine and bring about changes to the society’s social, institutional and economic structure. The institution, therefore, symbolizes stability. It is through this legal role that the traditions, norms and values of the community are validated and transmitted. The powers, roles and functions of traditional leaders were defined in terms of customary law. It was through this framework that the traditional political institution in Bekwarra, like other African societies, functioned and was not as claimed by the

Europeans that the traditional system lacked cohesion and was inundated with disorder and confusion (Elechi, 2006).

There are norms and taboos that try to address the need of individuals for security of life and property (Ejizu). The vast majority of norms, taboos and prohibitions are directed towards protecting the community and promoting peace and harmony (Tonukari). Traditional Africans believe that spiritual beings, especially ancestral spirits guarantee and legitimize the ethical code. Communal farmland, economic interests like the market-place, stream, or shrine are generally surrounded with taboos, including who may or may not enter, and when, and under what circumstances people are permitted or not to enter such places. There are also special restrictions and norms regulating the behavior of people towards public functionaries like lineage heads, the king or queen, traditional priests, diviners and medicine-practitioners. Such persons are generally regarded as specially sacred, and representative of the community. Their residence is equally sacred and so are instruments of their office (Ejizu).

The belief in *Atabuchi* (Supreme God) as the purveyor of human existence, working through such intermediaries as ancestral spirits and the elders as the lynch pin, motivated all to obedience. People, no doubt, acknowledge the social basis of ethical norms. Fines may be imposed or material reparation demanded. But they seriously reinforce the norms with the supernatural authority and sanction of invisible beings. As such, agents of divinities, including traditional priests, and more frequently special masks representing individual deities or ancestral spirits, participate actively in the execution of communal law and morality in many traditional African societies; they impose sanctions and take active part in the recovery of fines imposed on defaulters (Ejizu).

The process of dealing with offenders was based on a hierarchical structure that had procedural guidelines. Every society is aware of the repercussions of unresolved conflicts. Consequently, every human group has developed informal and formal mechanisms to bring about conflict resolution (Offiong, 1997). The next part examines mechanisms used in Bekwarra to address crimes in a number of areas.

Marital / Family Tension

The family unit is the first major identifiable framework through which the people function socially and politically. It has vital and organic links with society since it is its foundation and nourishes it continually through its role of service to life. It is also within the family that they find the first school of social virtues that are the animating principle of the existence and development of society itself. Thus, far from being closed in on itself, the family is, by nature and vocation, open to other families and to society, and undertakes its social role (familytofamily.com). Encouraging and supporting healthy marriages is important among Bekwarra people and as such,

A simple domestic squabble between husband and wife will bring together a small group of immediate neighbors', who, acting in an advisory capacity, will initially seek to reduce the level of violence and will then attempt to resolve the actual dispute through mediation alone. If they do not succeed, or if a more complex issue is at stake, there is justification for calling in the larger participation of community members (Stevens, 2000).

Customary gender roles and stereotypes inform decisions in cases involving husband and wife. Custom dictates that women in a patriarchy be submissive to men. Thus, a case which a woman would win outright in an egalitarian society may not be decided in her favor here because this would

give her license to be at loggerheads with her husband; decorum and harmony in the family are possible only if a woman is submissive. If a woman cursed her husband, she is fined a cock; if she wished her husband's death, she is fined a she-goat. After resolution of the conflict, a wife's first meal for her husband is pounded yam, which is considered a delicacy. In deciding a case, a woman is reminded that two he-goats, two rams, or two male dogs cannot live under the same roof. In other words, a woman must not behave as if she were an equal to her husband: she must be submissive (Offiong, 1997).

Although the legal termination of marriage through divorce is discouraged, a marriage could be dissolved on grounds of barrenness, adultery and theft. If a woman is adjudged guilty of adultery, the man has a right to ask for his bride-wealth which must be paid back to him. A man caught committing adultery was bound to pay compensation to the husband of the woman through members of his age-grade. The fine collected is used to buy some sacrificial items to appease *Ndem*, the deity of social morality (Offiong, 1997) and sacred guardian of all marriages in Bekwarra.

Inheritance Issues

The transfer of property from an original owner to an heir or heirs after the property owner is deceased provides another avenue through which the Bekwarra justice system is practiced. In this regard, justice is more or less practiced in terms of equity rather than equality. It is based on this practice that the property of a man who died intestate is inherited by male children alone. If he had no male children, the inheritance goes to the brothers (Oraegbunam, 2009). Indeed, indigenous proverbs and metaphors such as 'Only cock crows, a hen does not crow' or that 'a child can only play with his/her mothers breast and not his/her fathers testicles' explains some of these thought systems about women.

It is right to suggest that the society seems to invest more inheritance rights on men than women who are regarded as temporary and soon to be married out of the family. At the same time, a wife's claim to her husband's property is limited or non-existent because it is believed she is inheritable. Inheritance is, therefore, thought to belong to males on whom it is believed that the burden of family responsibility and upkeep lies. Even when a part of the inherited property is in the custody of the wife, for instance, the wife is taken to be a mere trustee thereof for the benefit of the male children especially (Oraegbunam, 2009).

Thus, the disproportionate exclusion of women in terms of inheritance matters is administered in accordance with the need and maturity of the heir instead of by arithmetical equality (Oraegbunam, 2009). This social construct gives men greater access to control and use of property and relegates women to dependency, to the extent that it has become part of the social conscience of the people that when a man is not physically, politically or economically strong, he is described as being a woman (Gedzi, 2009: 117). These socio-cultural practices succeeded in influencing both indigenous law and formal law (customary law) in conceiving a wife as part of the husband's economic unit. This means that a wife's claim to her husband's property is limited or nonexistent (Gedzi, 2009).

Stealing

Stealing is abhorred and it is in fact, an abomination to steal things relating to people's vital life-interests and occupation, like agricultural products or animals caught in a snare laid by a hunter or farmer in the bushes (Tonukari). Indeed, thieves are treated with the severity their crimes deserve.

The penalties usually focus on compensation or restitution in order to restore the *status quo*, rather than punishment (Merry, 1982:17-45). However, sometimes, traditional justice forums may order the restitution, for example, twice the number of the stolen goods to their owner, “especially when the offender has been caught in *flagrante delicto*” and fines may be levied (Elias, 1969: 20). Imprisonment did not exist as a penalty for any offence. Corporal punishment, however, has been and continues to be administered by a number of traditional systems in Africa – almost invariably on juvenile offenders, but never on women or girls (Elias, 1956: 288).

Such offenders are isolated and despised by their peers and the community at large, but a habitual criminal who has consistently manifested a propensity for stealing is banished from the community. It is however, only after several attempts by the community to restore order by employing corrective action has failed would an offender be banished from the community – this would be a last resort where an offender did not attempt to mend her/his ways. Public consensus is necessary to ensure enforcement of the decision. It is, therefore, not surprising that the procedures used in traditional systems allow members of the public to tender evidence and generally make their opinions known (Allott, 1968:146; Elias, 1956: 244).

Land Disputes

The complex interplay of land both as an economic resource and as a basis of the political superstructure cemented, tie and break bonds among nations, ethnic groups, religions, genders and classes in the pre-colonial and independent periods (Mufeme). Bekwarra method of shifting cultivation and the dire economic condition provoked tensions over land as farmers left land fallow for some years to allow it regain fertility. Although crises over land are often amongst the most bitter sources and forms of conflict, peaceful settlement was considered the best option. Land related conflicts could be resolved by family heads, or expressed in terms of litigation before the chief and elders.

At the event of boundary dispute or trespass, the Bekwarra sense of justice is brought to bear by way of traditional history and adjudicated over by the council of elders. In the olden days when the use of modern day beacons was unknown, boundaries were demarcated by the use of some economic trees like palm trees and coconut trees which can survive the adverse effects of various weathers. In land disputes, what is therefore just is identified with the goodness of the title and correspondence with boundary.

Social Outcast and the Witch

Belief in witchcraft is widespread across Africa. Witchcraft symbolizes anger, hatred, jealousy, greed, lust, poison, and relentless secret crime. It is the explanation for otherwise inexplicable misfortune among people who are looking for personalized causes (Shorter, 1977). They are not only responsible for misfortune but also for success and wealth. Accused witches can be young or old and they can be men or women, although women are generally thought to outnumber men. People protect themselves against their nefarious activities through different kinds of ritual practices including offering ritual sacrifice, making and wearing of charms and amulets (Ejizu).

One basic approach adopted to test the innocence of an accused of witchcraft is through the process of trial by ordeal. This could take different forms including oath taking and appeal to god or supernatural forces. Oath taking (*Uchon*) was very common among pre colonial Bekwarra people and is still being practiced today by some. Oath taking is done in the shrine of the village deity or that of a

medicine man or sorcerer. This strategy helps in establishing innocence and guilt and discouraging dishonest attitude and (wicked) evil actions in the society (Anyacho & Ugal, 2009). Oath taking enhances social control and because of the belief in its potency, people preparing to swear to it are interviewed by their relatives and are often advised to search their conscience and accept their guilt if they committed the offence. Often during such interviews, people break down in tears, and confess to their culpability.

Another common kind of ordeal was the appeal to a god or some supernatural force to kill the criminal, or send them serious illness or misfortune, if they made a false statement or were guilty of the charge. A period of three months to a year would be set by the judges, within which time the appeal should take effect. If nothing happened during this time, the accusation was considered false and the person who made it was severely dealt with; often he or she was awarded the same penalty as his or her victim might have suffered (Adejumobi: 156).

Victims accused of witchcraft are subject to psychological and physical violence, first by family members and their circle of friends, or traditional healers. Suspects certified guilty of witchcraft are stigmatized, discriminated against for life and stood irrevocably condemned to whatever penalties the law prescribed (Omagu, 1997). The fate of witches was death or perpetual exile, the former being, in fact, the lesser alternative (Shorter, 1977). For most African groups, ostracizing an individual or group that has fragrantly disobeyed the community is thought to be the most severe punishment that could be meted out to any body. It feels like death for any one so punished since such a person is regarded as an outcast. He/She would not be allowed to share in the life of the community anymore. There would be no visits to the family, no exchange of greetings, no one would sell or buy from members of the affected family, and they may not be allowed to fetch water from community streams. So severe is the punishment of ostracisation that every member of the community highly dreads it, and would do every thing possible to avoid it. It does, on the other hand, show the tremendous power of the community in traditional African background (Ejizu).

Communal Clashes

Inter group relations were based on the assumption that there were codes and rules to guide the actions and activities of groups, that one state recognized the leadership of another and that there were avenues by which to conduct politics. No African community could be treated as an island, removed from other communities. In fact, the political and economic survival of each community depended on how well it could manage the relationships, either of friendship or of hostility that it maintained with its neighbors. Among the major features of this relationship were trade, diplomatic relations, exchange of political and cultural ideas, and war (Falola, 2000: 19).

The pattern of inter-group relationship that existed between Bekwarra people and their neighbors was first dictated by circumstances, the chief only influenced it positively or negatively as these circumstances presented themselves. Although tension and insecurity are not uncommon in inter-group relationships, the maintenance of peaceful relations in the immediate vicinity are all too common among Bekwarra and its neighbors.

Peace and war are both aspects of society's relations with other societies and are linked by "an intermediate zone in which the tension caused by the interaction of two or more societies is mitigated towards one end of the scale of their relations by peaceful tendencies, while towards the other it is exacerbated by influences hostile to peace" (Smith, 1976: 1). More often than not, the causes of this face-off include but are not restricted to land boundary disputes, murder of a member of

a particular town, feuds for farm lands, and market quarrels and so on. Resolution of issues of conflicts took the form of negotiation and plea bargaining between the two towns. Often, representations from the two towns would meet to deliberate on the issue. At the end justice is done in terms of compensation, reparation, apology, and payment of damages.

Murder

There was a clear recognition of the distinction between the secular and the sacred, and between crimes against the society and crimes against the person. Crimes against society often weighted more and called for a greater retribution. Murder was often included in this category because of its dislocative and destructive impact on the society (Adejumobi: 155). Murder cases were handled with utmost care and evidence relating to the charge was critically analyzed and any iota of doubt observed was resolved in favor of the accused. However, where all available evidence pointed incriminatingly at the accused, no amount of plea could save him/her from the full wrath of the law.

In crimes like murder, considered as defilement against the community, the crime called for atonement, propitiation of gods or ancestors and punishment which was as severe as banishment or even death sentence (Adejumobi: 155). Whatever approach is adopted, first, the moral pollution has to be cleansed in order to appease spiritual beings and ancestors who are believed to have been also offended without which the entire community stood a real and imminent danger of suffering a disaster.

The foregoing discussion exposes the falsity of Eurocentric theses of scholars like Arnold Toynbee, David Hume, George Hegel and Hugh Trevor-Roper about Africa and its people. Indeed, Africans had mechanisms of social control and legal system that was predicated on their customs and tradition. These mechanisms, however, have been largely influenced by the current trend of globalization.

Challenges of Traditional Justice System:

The advent of Christianity and entrenchment of colonialism marked a turning point in the traditional Bekwarra methods of social control and conflict resolution. Although Christianity offered solace to the afflicted and sought to re-connect the common folks to the original sense of communalism that was shattered by colonialism and slave trade, it introduced new values, new theory and practice on the issue of enforcement and effectiveness of law which did not conform to the African cultural milieu. This development may have been hinged on the cultural arrogance of the British which saw African institutions and its core observance and rituals as antithetical to the ideals and objectives of good governance. To this effect, the missionary strategy of incorporating Christian elements became the single most important attempt to suppress African culture.

The option to introduce Warrant Chiefs had series of implications for the local community. In the first place, public authority figures were no longer chosen by the people themselves. They became largely handpicked by external forces and imposed on the people, thus manipulating the flow of responsibility and commitment of these public officers to their local constituencies (Clarno & Falola, 1998: 170; Uzochukwu). The introduction of the warrant Chiefs (among other policies), undermined the powers of the chiefs. It re-arranged the political terrain by introducing a new organizational superstructure. This new order, which the Warrant Chiefs signified, created a new socio-political climate in which uncontrollable deceit, extortions and various forms of corruption held sway. Unlike in the traditional society where decisions were reached in the presence of the community and

anchored on accepted customs, the Warrant Chiefs operated under a different system characterized by surreptitiousness. They were accountable only to the colonial officer and not to the people or community. Once the colonial officer was happy with them, then they needed not border about their people. Due to the manner of their selection, these public officers themselves never felt any loyalty or responsibility to their own people. As a consequence, authority in the community began to move away from working for the well being of the people to working for the interest of the colonial master – a culture, which has largely remained up till date both in the African ecclesiastical circles and the socio-politics (Njoku, 2005: 99 - 116).

The Warrant Chiefs took undue advantage of the authorities bestowed upon them by the colonizers and the linguistic barriers between the people and the colonizers. Within a few years the appointed warrant chiefs became increasingly oppressive. They seized property, imposed draconian local regulations, and began imprisoning anyone who openly criticized them. Justice in the case of settling disputes became a commodity to be sold to the highest bidder. (Afigbo, 1972: 316; Isichei, 1981: 316). An additional measure introduced by the British to achieve its imperial design was the establishment of native court where members of the community had their disputes resolved. With the native courts proclamation of 1900 and 1906, Bekwarra people fell under the jurisdiction of the divisional native court at Ogoja which they attended from 1915 till 1927 when a separate session was held at Abouchiche, Bekwarra (Omagu, 1997: 145). The establishment of these courts was based on the wrong assumption that the groups never had institutions capable of settling inter-group disputes, maintain law and order as well as regulate other local matters. These courts not only served as tribunals of justice but were also regarded as the local executive arms of the central government. According to Hailey these courts were vested with judicial responsibilities empowered to make laws (with the sanction of the Governor), modify any native law as required for the peace, good order and welfare of the natives in their areas of jurisdiction (Hailey, 1951).

The warrant chief system was inseparable from the native courts. Hatch, observed that as members of the native court, these warrant chiefs wielded full executive powers in their respective villages. The District Officer dealt almost exclusively with these court members, passing all orders to the villages through them. They also performed such functions as keeping the peace inside the towns, turning people out to work on the roads, collecting taxes (Hatch, 1969) which were unknown to the people. As a matter of fact, the native court and the warrant chiefs had taken over the executive, legislative and judicial responsibilities of the age grades (*Aten*), the traditional rulers and the council of elders (*Ikim Udjara*).

In Bekwarra, for instance, it was no longer the responsibility of these indigenous institutions to make laws or punish offenders who went contrary to these laws. These responsibilities had been taken over by the native courts; a situation which amounted to introducing foreign elements into indigenous system and the destruction of the sovereignty of the people of Bekwarra. Forde observed, concerning the loss of judicial power by natural rulers that,

What would be regarded as civil actions in British law such as settlement of debt, criminal charges including assault and also breaches of native system formerly punished by the native elders in councils were all actionable before these courts (Forde, 1939: 34).

Indeed, the British government undermined the political authority of the natural rulers through the native court system. The natural rulers were relegated to the background becoming mere figure-heads and in some cases ceasing to exist and the warrants chiefs of the native courts usurped

their position and authority. Thus, the personality of these warrant chiefs and their corrupt practices did not inspire confidence on the people. It is, therefore, clear that the native court system not only constituted a check on the political influence of the traditional institutions in Bekwarra but also undermined them. According to John Lonsdale, the instrument of political control and economic allocation in African states had been violently constructed by outsiders, that is, the colonizers (Lonsdale, 1986: 126-157). Consequently, the new “bandwagons” of rulers, as Lonsdale describe them, did not see the need for discipline and responsibility in the constitution of political power but simply applied the principle of rewarding and absorbing the recruitment of supporters and civil servants: neo-patrimonial (Alemazung, 2010). Colonial rule wiped out the dependency of the chief on his councilors, as was the case in pre-colonial rule, replacing this with autocracy and replacing the ruler’s dependence on the people to elite rulership which depended upon colonial superiors and later foreign power (Nugent, 2004: 107-108).

This situation was further exacerbated following the end of British administration whereby the Nigeria legal system viewed the customary laws as inferior. The domino effect is that much of the colonialist antipathy to traditional customs has been maintained almost wholesale up till today in the Nigerian legal and judicial systems. The early employment of police resources to advance the colonial political agenda in fact shaped the future of policing as an agency of oppression in the whole history of Nigeria. According to Alemika:

The colonial objectives were (to varying degrees during the phases of colonialism in Nigeria) prosecuted through organized governmental violence, vandalism and plunder on the part of the colonizers...The sundry administrative, coercive and surveillance organs (police, prisons, courts, tribunals, “native” authorities, Residents and District Officers) were established to prosecute, promote, and defend British imperialistic interests in Nigeria (Alemika, 1998: 164).

The establishment of police forces in colonial Nigeria reflected administrative policy and concerns (Alemika, 2010). The indirect rule system was adopted as a means of reducing the cost of running the colonial bureaucracy. Police forces were therefore established along the lines dictated by the indirect rule policy. According to Tamuno:

The Native Authority Ordinance (No. 4 of 1916) conferred on the Native Authorities the responsibility for maintaining order in their respective areas. Under it, they were allowed to prevent crime and arrest offenders by employing ‘any person’ to assist them in carrying out their police duties. Their police powers were increased under the Protectorate Laws (Enforcement) Ordinance (no. 15 of 1924) (Tamuno, 1970: 90).

During the colonial era, the police were not accountable to the colonized but to the colonizers and they had unlimited powers (Tamuno, 1970: 90). As a result, the colonial police forces behaved as ‘army of occupation’, killing and maiming, and looting (Tamuno, 1970: 90). During colonial rule in Nigeria, members of various colonial police forces were accused of ‘looting, stealing and generally taking advantage of their positions.’ Rather than keep peace for the community they “turned themselves loose upon the people, filling up the role vacated by kidnappers, and rioters ... marauders and free booters” (Alemika 2010). Onoge, for instance, opines that “the police in the consciousness

of the people became the symbol of the dictatorial establishment rather than the protector of the people's rights. As the people had no checks over the arbitrariness of the police, they either avoided "police trouble" or mediated inevitable contacts with bribe offerings" (Onoge, 1993).

Worthy of note is the fact that imperial policing orientations and preoccupations have been maintained and strengthened by postcolonial governments in Nigeria. The Nigerian police embraced a culture of impunity. As a result, extra-judicial killing, detention without trial and corruption became widespread and were condoned by the successive governments. The police in Nigeria, with the backing of autocratic leaders and repressive laws - frequently acted outside the rule of law. Often, they were laws unto themselves, maiming, killing and detaining persons arbitrarily and with impunity (Nigeria Politico).

The Nigeria Police Force is still largely vicious and corrupt. Political opponents of governments and military administrations – usually workers, students, radicals and human rights activists – continue to suffer excessive and recurrent waves of brutalities, abductions, unwarranted searches and violations of privacy and private family life, extra-judicial killings, bodily injury, intimidation, harassment and loss of personal liberties in the hands of the police and sundry state "intelligence" and security agencies in the country (Alemika, 1993: 208).

There are problems of "God-fatherism", in the funding and abetting of vices and shielding "connected" criminals from justice by government agents and highly placed officials entrusted with the power and authority to investigate and prosecute such vices. It has become a dominant issue in African polity and impedes the course of justice in virtually all the countries in Africa. Many highly placed public officers in Nigeria are known to pervert the course of justice by the virtue of their closeness to the seat of power. The Nigerian police are highly and visibly subservient to the rich and powerful, even in the rendering of services. (Nigeria Politico) Ibrahim Coomassie, a former Inspector-General of Police of the Nigeria Police Force, aptly observed with respect to Nigeria that:

...any time a citizen becomes a public figure, his first official correspondence on assuming duty is to write the Inspector-General of Police to ask for an orderly and policemen to guard his house ... Everybody wants to use the Police as status symbol, yet the members of the organization remain without accommodation, adequate remuneration, tools to work with, transport to patrol, effective communication and appropriate intelligence outfit to support their operations (Coomassie, 1998).

Police corruption is another gangrene, which has eaten deep into the fabrics of law enforcement apparatus in Nigeria as in other parts of the continent. Allegations of police corruption are replete and assume different dimensions that include: extortion from motorists at illegally mounted road blocks, collection of monetary gratification (bribery) in order to alter justice in favor of the highest bidder. This cankerworm had deeply affected the social image of the Nigeria Police perceived as a corrupt law enforcement agency. Closely related to the problem of corruption and extortion is the incidence of collusion of some police officers with criminals, resulting in increased insecurity and police inefficiency in tackling crime. The twin phenomenon of police brutality and corruption constitute the main barrier between the police and public in Nigeria (Clean Foundation).

Again, in spite of the provision made for customary laws as part of the “existing law” in the 1999 Constitution of the Federal Republic of Nigeria, in actual practice, customary laws are made subject to the overriding provisions of the Nigerian English-type laws. The constitution is not without its snag. Indeed, section 36 (12) of the Constitution provides that “...a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore prescribed in a written law...” and such written law refers to the Acts of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law. In a similar vein, section 36 (4) of the Constitution stipulates, among other things, that “whenever any person is charged with a criminal offence, he is entitled to a fair hearing in public by a court or tribunal established by law”. A cursory look at these provisions is indicative of the fact that Bekwarra crimes like all unwritten crimes and all crimes not created together with their penalties by any of the aforementioned legislative authorities or belonging to any of the aforementioned groups of laws do not qualify to be part of Nigerian body of criminal laws. Again, the restrictive provision of the court proceedings that bars women and children from attending and watching the proceedings are injurious to traditional courts. Based on this provision, traditional Bekwarra criminal trials whether by arbitration, oath-taking, or trial by ordeal which often take place in camera are rendered illegal because they fail to meet the requirements.

In law courts fashioned after European models, the process of establishing the truth is acted out openly in front of all those concerned. This public control, combined with elaborate rules of evidence and technical procedures, should guarantee that the truth comes to light. But in the eyes of many Nigerians, all the intricacies of an alien judicial system, which was imposed on them at the dawn of the twentieth century, do not create transparency but impede the quest for justice. Court cases drag on for years and in the end lead only to arbitrary results, as the crucial dealings take place behind the scenes. Even within the courtroom, observers find it difficult to follow the proceedings because their outcome is determined by a profusion of legal regulations. The practices of abandoning the trial when errors of procedure are made, or ruling in favor of the accused in case of doubt, had already undermined the authority of colonial jurisdiction.

There is strong evidence that the traditional mechanisms for social control, justice, and law in indigenous Africa remain strikingly relevant in modern Africa (Okafor, 2007). For instance, the courts recognize the validity of customary arbitration practice and also accord legitimacy to traditional methods of civil dispute resolution based on oath-taking. Agbakoba held that:

Oath-taking is a recognized and accepted form of proof existing in certain customary judicature. Oath may be sworn extra-judicial but as a mode of judicial proof, its esoteric and reverential feature, the solemnity of the choice of an oath by the disputants and imminent evil visitation to the oath breaker if he swore falsely, are the deterrent sanctions of this form of customary judicial process which commends it alike to rural and urban indigenous courts. It is therefore my view that the decision to swear an oath is not illegal although it may be obnoxious to Christian ethics... (Oraegbunam, 2009: 76).

Curiously however, some holdings of the courts in some cases show that some believe that the “practice of oath-taking is not only fetish, barbaric, uncivilized, outdated, anachronistic, criminal, illegal but also contrary to Nigerian jurisprudence as it is superstitious, mysterious, and spiritualistic in a society that is supposed to be dynamic and not static” (Oraegbunam, 2009: 78 citing Nwakoby, 2007). Although such views cannot be totally ignored, it is also true that in spite of the overriding

influence of Christianity and the level of educational attainment in the society, individuals, politicians among others “still resort to oath-taking as a means of dispute settlement and which is given recognition by courts” (Oraegbunam: 79).

Conclusion

The administration of justice in pre-colonial Bekwarra was through established mechanisms generally accepted by rulers, council of elders, age sets, chiefs, ancestral cults, religious beliefs, local deities and others. The different social control mechanisms cover a wide range of cases spanning from felony to such serious offenses as murder. The punishment varied according to how the crime was regarded, either as an offense against community law, priest, chiefs or age grade and club laws. The main emphasis of ‘traditional’ Bekwarra justice system is often to bring closure to disputes and use restorative justice to promote reconciliation between parties who have to continue living in the same community. The unfortunate thing, however, is that Bekwarra method of social control has gradually been weakened into ineffectiveness following colonial incursion. Indeed, colonialism and globalization have done little to sustain it. Rather methods of social control fashioned after European models have been adopted in its place.

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