

The Place of Law and Morality in Pre-Colonial Yourubaland: A Case Study of Akure

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Abstract

This paper examines the significant roles that laws and morality played in the maintenance of law and order in pre-colonial Akure. The paper relies on both oral and written materials in its engagement. The paper argues that though pre-colonial Akure was not entirely free from crime, as no society is absolutely crime free, law and morality were used by the people in ensuring a sane society, where there was reasonable peaceful cohabitation. The paper, therefore, concludes by advocating the resuscitation of morality as one of the mechanisms to reduce corruption and societal decadence that has hampered our society's development.

Key words: Morality; Law; Crime; Security; Society

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INTRODUCTION

In all ages, laws have been evolved for the main purpose of controlling social behaviour and establishing high moral standards. This was so in pre-colonial Akure. Pre-colonial Akure implies Akure speaking communities, which now found in Akure North, Akure South and Ifedore Local Government Areas of Ondo State, Nigeria. Just like many other pre-colonial African communities, Akure communities had mechanisms that impacted morals and obedience to her citizens beginning from the family,

village to town levels. This was because the individual was much less amenable to social control in the form of public opinion in a town than he is in a village, and he is much less so in a large town than in a small one (Fadipe, 1970, p. 30). Similarly, necessary structures were also put in place to punish erring individuals.

Law and morality were parts of these most important mechanisms. Morality is a social phenomenon and is not only a discovery of an individual in a given society. Morality in Akure is as old as man. It regulates the relationship between members of the society (Bankole, 1995, Chapter 1). However, law, in pre-colonial Akure context, refers to the traditional laws otherwise known as natural laws. These are unchangeable laws of nature, which govern everybody. Traditional law asserts that there are laws that are inherent in nature, to which enacted law should correspond as closely as possible. Traditional law is closely associated with morality. It attempts to identify a moral aspect of life to guide the law making power of a society.

However, times have changed and the society is now faced with moral value crisis which has continuously affected the society. It is obvious that the bastardisation of our culture has greatly affected the moral institution. Parents and elders who customarily were responsible for inculcating, in their children, the moral culture are no longer capable of doing so because they themselves are embodiment of immorality and, in many cases, for their lack of spending adequate time with their children. In some respects, some parents seem to be ignorant of the standards and morality of a cultured society.

This paper, therefore, x-rays how laws and morality assisted Akure in the maintenance of law and order in pre-colonial times. The paper advocates the resuscitation of morality in our society as one of the best antidotes to corruption and societal decadence. Finally, it is the opinion of this paper that, while the society should accord punishment to bad conduct, it should also reward good

morals conduct. These will largely discourage corruption and bring about peace and progress.

1. CONCEPTUAL ANALYSIS

For clarity sake, this paper discusses some concepts, which are essentially to our argument herein. These concepts are law and morality.

Law

Law is a social engineering pronounced and expounded in the sociological school of jurisprudence. The aim of social engineering is to build an efficient structure of society as much as possible with freedom, peace, liberty and faith. The structure is required so as to avoid friction, violence, disunity and waste in the society (Akinseye, 1983, p. 83). Law comprises a broad and relatively undefined range of efforts to maintain social order. How to maintain law and order, for instance, varies with and depends on the nature of social organization prevalent in the area (Williams, 2006, p. 18). Law is one of the institutional systems that are common to all societies, not minding their levels of developmental. It is not just an attribute of human corporate existence; it is also a cultural phenomenon, admitting in its trait the characteristics of cultural distinctions.

Law is considered as a living governing system constructed by present and historical debate and moral consensus among juries, and more generally, all citizens under the system. This system is used to maintain order, righteousness, and justice in everyday life. Individual actions or events can be summoned to court for review, investigation and prosecution if it is believed that there has been a breach of morality, that is, violation of law or if a moral implication of law is questioned. A verdict is lawful determination of guilt and guilty party is one that has committed an immoral act.

Morality

Morality has to do with the rightness of behaviour or action of individuals, groups or the society at large. Thus, morality of a class would have to do with the right beliefs, or principles approved and recommended for the class in question (Oke & Esiukot, 1999, p. 3). Thus, morality is not seen as containing essential truth, but as a series of values that is influenced by cultural context. It is the right or acceptable behavioural pattern of an individual in a society. If all laws are reflections of moral system, then it would follow that laws, at all points, reflect the values of whoever makes them. This has been the case throughout history. Consequently, a society where laws have become answers to all human problems, laws get completely confusing and many people seem to be concerned with nothing other than avoiding violating the laws. Such a society is very likely to experience ethics, laid down rules that guide morality.

All laws are reflections of morality. We have law against murder, kidnapping, and false imprisonment

because these acts are considered wrong by the majority of the populace. At one time in the history of mankind, this was not the case. In ancient times, there were many slaves. Slaves could be killed at the whims and caprices of the masters. In fact, it was considered amusing to arm the slaves and watch them fight to death. They called them gladiators. This form of murder was not only quite legal but was also considered a great form entertainment, because it was in accordance with the pagan value system of the time (Mechan, 2002, p. 1).

Morality, from the outset reflects the understanding that human beings have not been living in isolation, rather they have been living as a social group for which reason they must have some rules for orderly social life. In the same discreet sense, the evolution of law represents man's unique development, understanding of his society and representing efforts at ensuring the cohesiveness of the society in which he has found himself (Williams, 2006, p. 18).

2. LAW AND MORALITY IN PRE-COLONIAL AKURE

Akure people, in pre-colonial days, knew how to run an orderly society where laws and morality are obeyed and strictly adhered to. To achieve this, they knew and appreciated fair play, justice and equity before the advent of the British. In pre-colonial Akure, judicial system was partially decentralised in that virtually everybody was involved in the process. In other words, there was a judicial hierarchy. For instance, there was the family system under the *Baale* (head of the family). This was at the bottom of the hierarchy. In Akure, the oldest man in each family acted as the family head or the title holder of the family. Minor disputes within the family were taken to him for settlement. When the family head thought it necessary, he invited some other families in the village to assist him settle dispute brought to him. Judgment depended on the nature of each dispute. The guilty paid a fine of kolanut or a hen (Afe, 2004, p. 35). The guilty might be reprimanded or told to apologise to his or her partner. The *Baale* of a household was responsible for the preservation of order among his family and dependants. He settled all minor disputes among those under his control, but if the matter involved the subordinates or another household, it was taken to the *Baale*, head of village or the quarter chief who was responsible for peace and order within the area (Elias, 1974, p. 166).

The court of the family head also assisted in bringing to book any culprit within the compound who had committed serious crimes, which could only be tried by higher courts. In this court, no fees were charged and fines were rarely imposed. Its purpose was not necessarily to punish the guilty party. Rather, it was to effect reconciliation with a view to maintaining kingship solidarity. At the family level, the family head sat with

other elders in council. Decisions were usually taken not only in the interest of disputants, but of the family. There was usually the consciousness of 'not washing the family's dirty linen outside'; not exposing the family's secret unnecessarily. Therefore, disputants were cajoled by family sentiments to accept the pleaded course of resolution in the interest of their ancestors or family image (Adedeji, 2001, p. 5).

Next was the court of the ward chief or the village head which tried all civil cases involving persons belonging to different compounds, but living in the same village. In situations where the disputants were from the same compound and the disputes could not be managed by the *Baale's* court, such cases were heard in the court of the village head as appeal cases. Apart from all these, the village court head conducted preliminary investigation into cases which occurred under his jurisdiction, such as matrimonial cases (Falola & Akinrinade, 1986, p. 6), while cases such as divorce, debt claim and land matters were transferred, after preliminary investigations and hearing to the court of the *Deji* (paramount ruler of Akure Kingdom).

At the apex of the hierarchy was the *Deji-in-council* or the *King-in-Council*. The council consisted of the *Deji* (king) and six senior chiefs (*Olisa, Odopetu, Elemo, Asamo, Aro* and *Sao*) (Arifalo, 1991, p. 3). The council was the highest court in the land and the final court of appeal with the exception of the special prerogative of the king. As a judicial body, the council dealt with disputes between chiefs and parties belonging to different quarters and villages (Fadipe, 1970, p. 20). Before the advent of the Europeans, both the judicial and security systems of Akure were established under the *Deji* and crime was effectively detected and checked. Anybody that violated the law of the land and those that committed immorality were reviewed as having committed crime against the community.

3. SOME UNLAWFUL AND IMMORAL ACTS IN AKURE

In pre-colonial Akure, stealing was morally wrong, murder was evil and it was morally right to show hospitality and help to the disabled. Both rape and adultery were against the traditional laws of Akure and constituted immoral acts. Any rape-related case was usually heard by the *Deji-in Council*, usually, at the market place. This was very effectively partly because Akure people held their king (*Deji*) and the chiefs in very high esteem. Elders are equally respected. It was immoral to use abusive language on the *Deji* and his chiefs. Though they could be kind and loving, they did not tolerate any assault and harassment by outsiders (Afe & Okajare, 2001, p. 54). Thus, the guilt first offender would have to pay a compensation of two bags of cowries to the injured party (Arifalo, 2007). In a case where guilt was recorded more than one for a culprit, he would be sold into slavery (Talbot, 1967, p. 216). Cases

related to adultery were first settled at the family level or village level, from where the litigant, if not satisfied could appeal to the *Deji's* court. A compensation of ten cowries would be paid to the appellant by the offender and the offender would also not be allowed to seduce the woman again. Adultery with a chief's wife carried the same penalty. Usually, anyone found guilty of this offence was instantly sold into slavery as an undesirable element in the society. Any of the *Deji's* wife involved in adultery would be killed (Arifalo, 2007).

Membership of witchcraft was immoral in pre-colonial Akure. Whenever a case of witchcraft was reported, the Oba and his Council heard it at the market place. Anybody found guilty of practicing witchcraft was given *obo* (a preparation from the bark of sassafras) to drink. The concoction was usually administered by *Erinse* (the security agents). On the day the concoction was to be administered to the accused persons on a particular street, the cry of *obo, osoo erukufoko*, would rouse people to the spot. Usually, men were made to drink nine cups, while women drank only seven. It is believed that if the suspects actually committed the offence, they would first of all vomit and then fall down and die. Bodies of victims were usually dragged into a special forest (*Igbo oro*) meant for them (Arifalo, 1976, p. 22-23).

It was also immoral to play with oath-taking. The dreaded shrines and groves of secret societies, cults, priests and priestesses or ancestral guides and nature-spirits, among others, under the traditional social order, commanded so much public confidence that oath-taking, for whatever reason, was a serious matter (Ellis, 1974, p. 166). It was believed that untimely death was the price for playing with oath-taking.

Being a debtor was an act of immorality. As a result, the following are the customary means of execution for the recovery of debts. *Ogo*, the creditor would send someone to occupy the house of the debtor until the debt was paid. This person had a right to eat the food of the debtor and could take it by force if not offered. He or she could also put on the debtor's wearing apparel without permission and generally do things that would irritate the debtor and compel him or her to pay the debt. As a rule, the debtor was not to touch or eject him. If the debtor, in anyway, interfered with the occupier, such an action was regarded as a public offence, which he must be purged in addition to paying the debt (Alade, 2007).

Edan was another method used to recover debt. This was a staff mounted with an image also known as *Edan*. It was used by the head chief when a public offence was committed or a large debt was to be recovered. It was sent by a public messenger to the debtor's family head. As soon as it was delivered, the family must find the means of paying the debt, otherwise the family would be ruined, for the authorities would order all the property of the family to be sold for the debt, and if the amount was not realized, individual members of the family would

continue to be sold into slavery until the debt was finally paid. Consequently, members of the family usually flee once they suspected that *Edan* would be sent to them. And when the public messenger found no one in the house, he would place down the *Edan* on a cloth spread on the threshold. No one was allowed to touch it or to pass over it and it could not be removed until the debt was paid (Arifalo, 2007).

Another means of debt recovery was by seizure. If the debt was long standing and the creditor had run out of patience, he had a right to seize any property of the debtor or of any member of his family. Thus, he had to inform the authorities of the town, who would notify the debtor of what was seized. A fine would have to be imposed on the debtor, being the cost of maintenance and safe-keeping of the article or object seized. If after judgment, the debt was not paid, the authorities might sell the debtor into slavery, on the application of the creditor (Arifalo, 2007).

In pre-colonial Akure, communal life was highly entrenched whenever someone was offended. First, the offender would be warned to desist from wrong doing and if the offender showed recalcitrance, he would be summarily punished. A societal code of conduct, which ensured morality in the society, was entrenched.

Religion played prominent role in ensuring that law and morality were adhered to strictly. Religious practice represented a major element in the community's moral code. Everybody had his belief in a god, which has dos and don'ts that guarded their activities on earth. For this, good programmes were drawn up on how to appease and thank the gods for their vigilance, while existing problems were also presented to him for solution. Among the gods in Akure were *Ogun*, *Egungun*, and so on. It was generally believed that gods in Akure were quite ready to fight the people's cause. These gods were believed to rain instant judgment on any erring member of the community.

There existed a prison system which also served as a mechanism for ensuring that law and morality were enforced and respected. The prison yards called *Igbon* (the house of wisdom) were of three types. Two of these were for the generality of Akure community under the supervision of *Ologbosere*, and *Olusogan* respectively. The third *Igbon* was for the *Deji's* palace and it was under the control of a palace chief named *Saruku*. One peculiarity of this system was that in *civil* cases, both the complainant and the defendant had to be remanded in custody, so that investigations might be made without any form of influence from either the accused or the plaintiff. Those accused of burglary, kidnapping, murder, possession of dangerous charms and witchcraft were kept at *Igbon*, pending their trial. In such rooms, holes were made in the walls in which the legs of the accused persons were put and chained on the other side. Sometimes, heedless persons were sent to the *Igbon* as a corrective measure. Whenever anybody was detained, it was the responsibility of his people to feed him (Atandare, 1973, p. 92). There was no village chief, landlord, market chief or

warrior that had the power to keep somebody at *Igbon* or that even had *Igbon* in his domain.

In ensuring good moral behaviour, Akure also had a corrective measure for the lawbreakers. This was in form of songs during the *Obalufon* festival. The instrumentality of *Omojao* group (Women devotee of the *Obalufon*) was used to practice this. Thus, during their annual *Obalufon* festival, which might last for seventeen days, the women, wearing beads and leaving the upper parts of their bodies uncovered, sang and danced round the kingdom at night. On the final day of their annual celebrations, they had to dance in the day time. They seemed to have had the license or immunity to abuse and castigate evil doers in the kingdom without any hindrance. They preached morality per excellence. Those that have contributed to the social, political and economic developments of the community were praised, people who were suspected of witchcraft or some other evil practices were warned to desist from their anti-social behaviours. Names of those who had committed serious crimes were sometimes mentioned in the front of their houses. This system of social control was effective in the olden days. In fact, it is said that some of those who were identified by the *Omojao* dancers as criminals packed out of the kingdom or committed suicide (Ajiisegiri, 2004).

Folklore also served as a means of obeying law and morality in Akure. Most of the stories told teach morals and served as guide against social conducts of the land. Folklore, in its broadcast sense, is the part of the culture, customs, and belief of the society that is based on popular tradition. It is produced by the community and is usually transmitted orally or by demonstration (Olatunji, 1982, p. 13-15). Folklore could also be in form of music and poem. These were targeted at instilling morals in people.

Similarly, proverbs were important and widely used among the Akure people. Proverb is the apparent truth reflecting human experience. Proverbs is a wise saying of the people that often refer to social situations. It is this social context that determines the sense or meaning of a particular proverb (Fatoye, 2005, p. 5; Sheba, 2006, p. 7). Proverbs were used by the people to teach morals. Two examples of such proverbs are provided here. *Iyan ogun odun e joni lo* (no matter how long it takes nemesis will still catch up with an evil-doer). *Ore ko ba se ka ma ro fo a se danu* (whatever good we do is not lost). These two proverbs, among others, emphasise that we must do good at all times, which is the hallmark of morality.

CONCLUSION

Like every Yoruba community, the pre-colonial Akure had norms, morals and standards, which formed the basic laws of the society. Such laws were used in governing the people before they were abrogated by the English law and subsequently the establishment of the Native Courts in Akure in 1915. This was because the British

believed that some of these indigenous laws could not pass the repugnancy test which they claimed must be in line with the rules of equity, good conscience and natural justice. However, the people believed in the idea that law is always from morality. In other words, law is the practical application of moral. Laws are enforced by the community, which has the customary power on the use of force, to prevent immorality from the society. Laws are often the practical solutions for evils that might have befallen the community. It is evident that both law and morality served as channels of the societal behaviour in Akure. Law accomplished this primarily, through the threat of sanctions. Morality in pre-colonial Akure involves incentives, while bad acts usually resulted in guilt and disapprobation.

Crime was regarded as the anti-social act, and it was the concern of the authority in the community, acting as the representative of the divine, to restore peace and order and promote cordial social relationship. In order to deal with those people that violated the law of the land with impunity or unknowingly, well-established mechanisms were put in place. The prison system was to accommodate criminals in the society as a means of punishment and rehabilitation. Different categories of courts were also operated. The prison system and modes of executing judgments were all geared towards meeting the needs of the people at a particular time. All these enhanced good morals in Akure. This is not to say that immorality was not in place, but the mechanisms put in place served as checks and balances.

It is, therefore, the opinion of this paper that, in ensuring that moral are imbibed in the younger ones, elders in the community must continue to preach morals through advice, folklores, folktales, proverbs and sharing of life experience with the younger ones. Through these, societal problems may be reduced drastically. Also, it is the opinion of this paper that law and morality are interwoven so, in order to reduce crisis in our society, parents must take adequate care of their children by teaching them ethics and morals of the society. They should set good examples for their children to copy. While bad conduct should be penalised, good conduct should be commendable.

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