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THE CHALLENGES OF ACCESSING JUSTICE IN CONTEMPORARY AFRICAN SOCIETY: LESSONS FROM YORUBA JURISTIC PRACTICES

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Abstract. Accessing justice in contemporary African legal system is facilitated by the wholesale estranged legacy of colonial culture and practices over the years. The justification of this formal structure and practice merely emphasize legal binding in its normative sense to the neglect of traditional juristic practices. The study, therefore, examines the notion of adjudicatory practice within the Yoruba culture in order to access and complement the contemporary legal system. The study employs content analysis and reconstructive methodology in philosophy. This traditional practice filled the gap of tension on the meaning of justice among the victim, offender and the community. This enhances understanding of how the disputes are to be addressed, who will address it and what will be the outcome. It underscores the Yoruba saying that *ikati o seniobange* (it is the finger which offends that the king cuts). It also buttresses the judicious imposition of punishment without antagonism and animosity. Besides, it provokes translation of rights into reality with the provision of proportional justice to whom his or her rights is infringed. More so, it constructively addresses the dispensation of justice in the quickest manner possible against the formal and cold systemic procedural nature of justice which nurtures corruption, delay, complexity and cost.

Key Words: Colonialism, Justice, Legal System, Proportional Punishment, Traditional Yoruba Culture

Introduction

My discussion in this paper on the access to justice goes beyond the mere focused attempted rights to sue in court to the promotion and achieving the social inclusion of those excluded from the scheme of things in justice system[1] . But while there may be a need for periodic vindication of such rights in the court, the adversarial culture of the formal court may not always be the best means of helping people to accessing their rights and achieve social justice as the end result is often not encouraging for those who had put their faith in the ineluctability of the truth and the certainty of justice. Contemporary African legal system is no exception to this practice, as her formal structure and practice are grounded on the wholesale estranged legacy of colonial culture over the years. Hence the needs of society have grown tremendously that its complexity demand for a complementary approach to access to justice.

The paper, therefore, aims at this complementary access to justice as a social priority, in the light of this defective equal justice which is too idealistic, in the traditional Yoruba juristic practice. Discussion will be outlined thus: A brief overview of the challenges of accessing justice in contemporary formal system; the traditional Yoruba juristic practices; the Yoruba juristic practice and contemporary society.

A brief overview of the challenges of accessing justice in contemporary formal adjudicatory system

Access to justice has been semantically loaded to mean different things to different people. There has not been an agreed meaning to the concept. The word ‘access’ is overloaded nowadays to be descriptively qualified cynically as a term that appears on the first page of all modern lexicons of political corrections[2]. From a narrow perspective, it may be qualified as a means to overcome some barriers that have been identified and removed, such as to the courtroom door or seeing a lawyer, among others. A close look at societal barriers in respect to access may be provoked by inequalities engendered by the absence of fair determination of rights: social, political, economic, demographic and psychological. In addition to this complexity, the word ‘justice’ can be equated with fair, open, dignified, careful, and serious processes. But there is more to this quip description in legal parlance. It may refer to procedure or institution involved towards the satisfactory resolution of disputes. It can be preventive justice wherein litigant foresees a certain occurrence and nip it in the bud or even apology. The formal system is ill-suited for such outcome or goal, but rather presents justice which many seek. However, justice is a clarion call for social rights whereby

equal access to the justice system and adjudication in accordance with substantive standards of fairness and justice with a view to provoking a comprehensive assault on injustice[3]. Indeed, this is workable only within the framework of an effective judicial system. Thus discussion of effectiveness in access to justice, within our purview, depends on complete 'equality of arms', to use the words of Cappelletti[4], between the litigant and defendant, on the assurance that the final results depends solely on the relative merits of the opposing positions. But this is strictly utopian as there are differences, in the light of societal needs, problems and demand, between the parties which cannot be wished away. These challenges will be considered next.

The formal court system encourages the principle of winner- takes-it all, whereby the losing party pay all the expenses incurred by the winning party during the course of litigation. As a result, the prospective litigant has to strategize to win which may be very rare, given the usual uncertainties of litigation. More so, the lawyer's fees constitute intimidation to some litigants which altogether prevented them from having access to justice. Besides, the financial implications of prosecuting litigation sometimes exceed the amount in controversy, which makes litigation not worth the salt. Another damaging effect of cost is the delay in delivery of justice most especially in an inflationary economy which attracts more burdensome cost for those claims of financial compensation. Indeed, too much time is often resulting to too much money. And lawyers encourage this obscene practice, for more money sake, with defence counsel perfecting strategies of stalling the trial progress via filing pointless interlocutory appeals. Sometimes where pronouncements are made, it cannot be enforced until the confrontational parties received a written copy of the judgement[5].The prosecuting agencies also are not helping here. They arrest and charge offenders before considering investigations and as such they are largely unprepared for trial. Hence, access to justice becomes Herculean where it is expensive and slow.

Another prominent barrier is grounded on the capability of parties to dispute. It is observed that certain class of people are at advantage over others in this respect; this is pronounced in developing world. The judicial arm, in these climes, is structured to be independent of the parties to litigation to the extent that parties to dispute are responsible for payment of lawyer, court fees and delay. In other words, litigants are

overburden with the financial stress. Thus a party with financial capability will be at advantage to outspend the other with an effective argumentation backed by evidence out of thorough investigation of facts and figures in court. Implicit here is the obvious influence of education and family background. Parties must be educationally sound and psychically prepared to pursue their rights whenever trample upon. In addition, background sometimes hinders the pursue of legitimate rights most especially with the vile distrust of legal practitioners, complicated procedures, detailed forms, intimidating courtrooms and overbearing judges.

Furthermore, the challenge of diffused interests constitutes a barrier to access to justice. By diffuse, it means an aggregated interest towards enforcement of rights where either no one has a right to remedy the infringement of a collective interest or the stake of any one individual in remedying the infringement is too small to induce him to seek enforcement action. Though there are competent agencies at both governmental and non-governmental circles responsible for collective rights, but they are barred by challenges most especially in developing world where there are insufficient lawyers with large proportion of population which are impoverished and cannot qualify for legal aids, talkless of insurance scheme. Even the state does not have the political will to prosecute rights of the group to its logical conclusion, most especially where the attorney-general is a political appointee. Hence government approach could have been helpful on this stance but do not entirely solve the access to justice problem of diffuse interests. Rather, private energy and zeal must be added to the bureaucratic machinery of government, which too often becomes slow, inflexible and non-aggressive in furthering the diffuse rights.

However, I ought to say that the challenges mentioned above are interrelated with a common factor: cost. That is to say justice is meant for the purchase of those who could afford it. Thus the have not were considered the only ones responsible for their fate. Hence, in order to unlock the door of justice for many, it is imperative to seek alternative: the traditional Yoruba juristic practice

The traditional Yoruba Juristic Practice

Conflict resolution in traditional Yoruba juristic system, be it civil or criminal, is as old as the history of the people themselves. The Yoruba are conscious of the being ness of the unknown which has a

direct influence on their own being. It is this existence of the invisible beings that play an overarching role in the justification of juristic practice, which engenders a standardized balance of social equilibrium in which genuine reconciliation between parties to a dispute, human well-being and social harmony are settled in the society. This enhances a 'collectivist approach to justice and fairness', to borrow Olaoba's words, whereby the principle of '"give-a-little, get-a-little"' is encouraged towards the restoration of harmony between litigants in such a way that there is "no victor, no vanquished" adjudicatory system among the Yoruba[6]. The wrong ought to be sanctioned for their wickedness, while the rights are to be rewarded for their good deeds. Okafor elucidates on the philosophy behind this in his comparative analysis between the western legal positivism and the traditional African practice, the separability thesis and the non-separability thesis respectively. Okafor posits that legal positivism is 'a theory which recognises as valid laws only such enforceable norms as are enacted or established by the instrument of the state'[7]. It implies that only strictly representational 'command' of a recognised authority is the law. The 'command', according to Okafor[8] quoting the Austinianimperativist's school, involves:

i. A wish or desire conceived by a rational being, that another rational being shall do or forebear.
ii. An evil to proceed from the former, and to be incurred by the latter, in case the latter comply not with the wish
iii. An expression or information of the wish by words or other signs.

It implies that the command is an order grounded on threat by the sovereign which are to be obeyed by his /her subjects. It strictly excludes the 'positive morality', 'divine laws' and 'laws lay down by private individuals and institutions' [9]. Obviously, legal positivism is enmeshed in the separability thesis whereby positive laws and moral and teleological considerations are sheaved away, Okafor instead confines the traditional African experience to the non-separability thesis where laws are sourced from the African ontological practice whereby both human and divine laws are noted and collapsed with the intent of a peaceful and harmonious human existence in the society. Divine laws represent the exclusive wish of the supernatural being and its breach is regarded 'as an offence not against man or human society but directly against the supreme Being'[10]. Human laws, on the other hand, 'are those laws relating to the economic, social and political life of the community.

Their breach is considered less severe and the offender liable to public obloquy'[11].

Nevertheless, Okafor justifies that this jurisprudence, grounded in the ontological framework, features the belief that decision makings are collectively based in as much as the 'concept of the sovereign' that issues command is strange to African culture 'which recognise only leaders and not rulers, seniors but not superiors'. He explicates further that it is joint decision of all the community or their 'representatives, who are usually elderly men of unquestionable moral character believed to be next to God after the ancestors is wisdom. The laws so made are certainly ordinances of reason (and) not command'[12].

The relevance of the ancestors is not underrated in his proof. Okafor shows that the African creeds underwrite the African positive laws which do not contradict the tradition of the ancestors. The ancestors are responsible to transmit 'codes of moral conduct handed down from generation to generation'. This shows that 'for African positive law to be a valid law, it must be seen as morally adequate' [13]. Nwakeze[14] compliments that African legal tradition 'duly takes into cognisance the survival of the community through the amicable settlement of disputes, acceptable to all parties concerned. Thus the role which the African legal systems play is basically reconciliatory'. It is noteworthy to emphasise that collective conscience saves it all in African juristic practice. So, the positivistic demand for enforceability mentioned earlier is a mirage in African jurisprudence. Rather sanction with less force characterise the legal practice. Okafor [15] adds:

> The legal positivist's doctrine that only enforceable norms are laws indeed, a doctrine based on their concept of a sovereign with the absolute power to secure obedience to its command or law, is contrary to the African social and political reality "in which the principle of equality is respected; in which the use of force is minimal or absent; and in which there are leaders rather than rulers and political cohesion is achieved… by consensus rather than by dictation".

The above analysis implies that law and order are maintained without regard for enforcement agents in as much as decisions are conscientiously taken and attempts to contravene them is meted with the wrath of the ancestors and supernatural disfavour. Okafor[16] stresses that 'these are the lively consideration and conviction which bind the

African's conscience and dispose him to obey the law whether or not there is a permanent or *ad hoc* power to enforce the law'.

To this end, it implies that justice is realistic in African legal experience to mainly promote and protect the interest in the community. Nwakeze[17] adds, oft-quoted in Holleman's *Issues in African law*,

> That the relations between man and his fellowmen are not governed by law alone, hence in the determination of a lawsuit law is not taken as the only determining factor. The whole social setting and relationship of the parties and their position in the community are taken into consideration; and in the interest of justice 'legal rules' are sometimes thrown overboard.

It is a belief that to upset the ontological social order was to provoke calamitous reprisals to fall, not only upon the culprit but the whole community of which one is a member. It shows that the Yoruba society will always experience a considerable set back whenever offences are committed.

Finally, there is a necessary connection between law and morality. The current of the connection boils down to the ontological belief discussed above in the African penal system. Justice strongly holds where the instruction of the spiritual realm is abide by which is grounded on the moral belief. As a result, any adjudication that does not toll this line will be met with calamitous consequences in the community. And in avoidance of this that the family, perhaps the community, strenuously embarked on the training and discipline alike any erring members who attempted to provoke disaffection and disharmony between the planes of human existence.

Olaoba carefully captures this adjudicatory pattern among the Yoruba. He submits that the type of cases varies from the minor family disagreement to the community wide disputes. This he expresses thus:

> In the minor courts at the family and quarter levels, the cases handled include quarrels among wives…, squabbles between friends or playmates…, abduction, adultery and destruction to farm trees. The family and quarter heads served as the adjudicators. If the dispute involves two families, it will be transferred to the Oba's court. [18]

In general, adjudicators have reputation to protect and are strictly expected to uphold the governing norms of the community. In other words, they are expected to be outstanding in their dealings for the following reasons:

> First, power is invested on them by the norms and customs of the society. Second,
> such power is at a representational level. Third, these categories of officers of law
> are susceptible to intimidation, indignity and indictment should they fumble and
> flounder against the generally acceptable principles and practice of legal norms.
> Lastly, they stand the risk of public molestation [19].

Nevertheless, the *Oba*-in-council, popularly referred to as*Igbimo*, was responsible not only to handle all cases which were believed to be accepted by the subjects, but also to impose punishment. The *Igbimo's* sanction was usually based on a consensus of the adjudicatory chiefs. In this respect, all council members are equal before the law. Though the *Oba* might have a final say on any matter before the council, but this must not be to his whim and caprices as the consequence of such action may be grievous to himself, the litigants and the community. However, in any of the trials, both the accused and accuser were physically present. The accuser would charge the accused in person, and the accused would give his or her own defence. Members of the *Igbimo* would subject both parties to cross examination.

Cross examination, according to Olaoba, is 'anchored on justifiable and equitable network of ideas, perceptions and the preponderance of Yoruba traditional jurisprudence[20]. The basic elements in the art of cross-examination are cross- examiners and cross-examinees. Cross-examiners include the adjudicators, respected elders and the ancestors. The ancestors are responsible for the provision of spiritual guidance at adjudication which serves as cautions to the elders at the point of deliberation and pronouncement in dispute settlement. Olaoba [21]opines that:

> The beauty of the ancestors may be imagined rather than demonstrated. As a matter of fact, the elders have been considered as ancestors who are the wisdom lore of Yoruba society. The presence of the ancestors is significant in providing spiritual dimension to the actualisation of Yoruba jurisprudential thought.

Cross-examinees, on the other hand, are the litigants (the accused and the accuser) and eye-witnesses to the dispute. The eye-witnesses comprise the biased individuals to the course of both litigants and other objectified personalities interested in the acquisition of knowledge in

traditional Yoruba legal practice. Olaoba[22] submits that the eye-witnesses

> have the wherewithal to make or mar the process of cross-examination due to the weight of evidence adduced by them. They could constitute a large- than-life dimension to the thesis of cross-examination, thereby complicating the dispute in vogue.

By and large, witnesses would be called. After thorough scrutiny and deliberation on the case, the council decided to adjudicate on the proviso that 'all disputes that would trigger off public mistrust and ancestral discredit were handled with utmost dispatch and without let or hindrance' [23]. Sometimes, cross-examination brings to the fore hidden evidences not known to the litigants at the point of committing the offence and this usually engendered the spiritual intervention of ordeal practice and oath-taking methods. Nonetheless, Adewoye[24] remarks that,

> It was a court of morals. The chief and his court were concerned with nothing other than the substance of each case. This is why it was not uncommon for the chief and his supporters to deliver end-of- trial homilies to the parties to a dispute- homily that were 'invariably as instructive as they (were) edifying'.

The objective of this practice among the Yoruba was to reach a decision that would be accepted as fair by both parties, so that the dispute could be resolved. Adewoye compliments:

> This is why those who administered justice in the various communities were usually the elders and the rulers. They drew no distinction between their executive and judiciary functions; the two were complementary one to another in the ruler's task of maintaining peace and order. In dispensing justice, they saw themselves essentially as peace makers, called upon at each instance of a dispute, 'to assuage injured feelings, to restore peace, to reach a compromise acceptable to both disputants'. [25]

This also reflects that both the litigants and their witnesses are abreast with the trend of proceedings to the extent that they are pre-eminently in the know of the outcome of the dispute before the final pronouncement. It shows that the art of cross-examination in the Yoruba juristic tradition enhances the dispensing of justice in the quickest manner possible rather than the formal and cold procedural nature of justice hinged on technicalities in western adjudicatory system. Olaoba quotes Anthony

Allot on the latter's remark on the quality of evidence in African legal tradition thus:

> The roles of evidence are elastic and less likely to work injustice in the African context than English rigid rules. African justice often has the qualities of being arbitrage, consensual of simplicity and publicity. The law and procedure are intelligible and acceptable to the people, and the *voxpopuli* often gains a hearing not least when bystanders join in and give their opinion on the merits of the case. In brief, judicial procedure reflects the common African principle of popular consent [26]

This is why the *Oba* throws open to the people issues which are hardnut to crack. I need to emphasise that this represents the genesis/means through which norms and regulations governing the community emanate. In this situation, the town crier is ordered to summon the townspeople to the palace for deliberation. J.D.Ojo descriptively accounts for this situation as being quoted by Olaoba thus:

> Difficult matters of those needing a consensus or the backing of the townspeople were spotted and earmarked for a general discussion by the townspeople. A date was fixed and on the preceding night, the chief would send out a man to ring the bell to the townspeople warning all the men, women and children not to go anywhere the following morning and that whoever disobeyed the order would be punished. The bell ringer also announced the place of meeting which is generally the chief's residence or if it was considered too small, the market-square.[27]

Also, the purpose of dispute settlement in Yoruba culture was not only to discover who was really guilty or innocent, but also reconciliation of parties to dispute. To reconcile means the restoration of what is out of harmony, in this sense between the natural and spiritual realms of existence. The restoration of concord may entail no more than open acknowledgement of harm caused and experienced by both parties respectively as prerequisite for reconciliation. Olaoba adds that:

> Reconciliation is seemingly the basic objective and sine qua non of Yoruba indigenous judicial procedure. The restoration of peace and harmony, through effective adjudication, was joyously celebrated through provision of food and drinks by the litigants…. The celebration symbolised the end of the dispute. The hearing and summoning fee paid by the litigants, which facilitated the seating of the court, financed part of the expenses for the celebration while the rest was used for sacrifices to the ancestors.[28]

The above position is premised on the fact that justice demands fairness and commitment from all parties to a dispute. Implicitly, where there is injustice in this respect the society will be vulnerable to disintegration out of disharmony between the worlds of existence.

The Yoruba Juristic practice and contemporary society

The impact of the colonial sponsored justice system in post-independence Africa could be seen to derive mostly from the perception of the system's concept and practice as alien, and prone to abuse and corruption. As pointed out from the onset of this work, one of the major challenges to access to justice germinated from this intruded 'formalism and cold' nature of justice. Legal formalism brings to the fore high crime rate by the permissiveness that they ascribe to the formal dispensation of justice. It inculcates a 'routine oppression rather than a liberating justice'[29] which makes justice be cold in nature. One may recall the war on corruption whereby numerous counter legal motions are instituted by the accused in order to evade arrest and subsequent pervasion of justice in Nigeria, for example. The latest in rank of this exploitation is the discretionary system grounded in the plea-bargain principle. The corrupt practice involves the striking between the state and the corrupt official a plea-bargaining after which certain charges may be withdrawn. The court at this point does not participate in the negotiation and turn the other way against justice by refusing to deny the plea-agreement when she is not convinced of the guilt of the accused. The court would not refuse to accept the suggested sentence, since she is indirectly part of the abusive game, even where the court is not satisfied that it would amount to a just sentence. A fitted example was the trial and sentence of a former Inspector-general of Nigeria Police Force, Mr Tafa Balogun, over corrupt enrichment and abuse of office to the sum of seventeen billion naira. By plea-bargaining with the state, he was only jailed for two years out of which he had spent seventeen months in incarceration. Indeed, it is perversion of justice on the part of the less-privileged in the society on whom such a huge amount would have provided some basic social facilities.

However, the Yoruba juristic practice is rather quick and informal. It is quick in the sense of being inclusive in nature. The system embraces the victims, offender, their families and the general community involved in defining the forms of punishment and reconciliation. It exhaustively

addresses the interests of all parties to the conflict. It is engendered by the dialogic nature of Yoruba jurisprudence. John Murungi adds:

> Although it may strike one as obvious, an African is an African in the context of other Africans, and, as a human being, he or she is a human being, in the context of other human beings. What African jurisprudence calls for is an ongoing dialogue among Africans on being human, a dialogue that of necessity leads to dialogue with other human beings. This dialogue is not an end in itself. It is a dialogue with an existential implication. It aims at living in accordance with what one is, which implies living in accordance with what one ought to be. Although one is what one is, one is what is dialogically. To be dialogical, this necessarily is to engage others, leaves open what one is, and calls for dwelling in this openness. [30]

This 'openness' involves social solidarity system whereby no family or group would allow its members to be unjustly punished or subjected to inhumane treatment with impunity. It is also a system which restrains individuals on certain reciprocal obligations as the mutual interest of the group.[31]This humane access to justice is reflected in the treatment of offenders. Offenders are encouraged to understand and accept responsibility for their actions. The offender is expected to accept accountability with discomfort but not so harsh as to degenerate into further antagonism and animosity, thereby alienating the offender. Strenuous efforts follow chastisement to integrate the offender back into the community. The institutions of social control are formal agents of re-socialization, hence providing offenders support through teaching and healing. By teaching and healing, it is meant the reasons for inculcation in the offender traditional institutions of criminal justice system and the implications for flouting them.

More so, the traditional Yoruba juristic practice further prevents greater conflict and revenge in contemporary society. It implicitly emphasizes the fact that genuine reconciliation demand for peace as the foundation for humanity to realize its highest essence. For it is the basis of advances in knowledge, culture, prosperity, mutual relations and development as a whole. All this is realized through the practice of inherent natural morality in the dispensation of justice. For the Yoruba, the concept of justice means the upholding of the principle of natural rightness or wrongness on the assumption that morality is a natural property inherent in humankind, an instinctual kind of impulse which creates feelings of acceptance or rejection of what is either good or bad.

What it means is that law becomes unenforceable and meaningless when its moral import is jettisoned. In other sense, law receives its moral sense of obligation when rendered and evaluated in a moral sense rather than what the 'separability thesis' claim in western penology. In fact Yoruba jurisprudence is used on a daily basis, with emphasis on the ontological principle in order to settle dispute at different levels, and it is therefore central to the idea of reconciliation. This testifies to the dynamism and vibrancy of the belief system, which revolves around deterrent principle including fear of harsh punishment, supernatural retribution, curses, ostracism and gossip. It develops a deep respect for human values and the recognition of the human worth based on a philosophy of humane principle.

To this end, this juristic practice conveys genuine reconciliation which transcends established normative rules, institution and formal procedures, which are inadequate to resolve conflict, to a creative and a flexible human activity that is undertaken for the sake of humanity as a shared community. Individuals in such cultures are enjoined to think in terms of what the society can gain from them so that all can prosper. Rather than chasing the shadow of self-aggrandizement. In other words, it involves the principle of adjustment of personal interest to the interests of others even at the possible cost of some self-denial. It provokes the acceptance of responsibility, as alluded to earlier, to the point of willingness to be part of the search for a solution. In fact, it is not an alternative to conflict but a transformation of the conflict. Both parties to conflict would be able to define the stakes involved and relate them for the sake of the wider community as well as for the future of next generation.

This further touches on the conscience of those involved in the dispensation of justice, the police, public prosecutors and court, as a proved challenge to the adjudicatory system in contemporary society. Despite its strong institutional practice and structure, it has become inadequate, wasteful, inflexible and ineffective. But the Yoruba endeavoured to observe law and order because of their ontological and moral conviction that a breach of it would upset the ontological order. It is important to note that it is the general belief that to upset the ontological order is to invoke calamitous reprisals to fall, not only upon one's head, but also upon the whole community of which one is a member. It assists to minimize most difficulties associated with matters

of justice and fair play. This juristic approach may have its weaknesses but these are counteracted by the socio-legal-ritual structure of the society. This adjudicatory experience makes arbitration a viable complementary (alternative?) towards conflict resolution in the society. Indeed, individual differences are recognized and appreciated automatically as part of the judges in its own case. That is to say every adjudication can be overruled at any time by a more superior verdict provided by the unity of purpose grounded on all whose interests are at stake and one that is rooted on the ultimate foundation of meaning as is represented in the deities and spiritual forces. Innocent Asouzu, in his work *The Method and Principle of Complementary Reflection*, explicates further on this 'ontological character of truth' thus:

> The issue of legality, justice and fair play transcends mere litigation and arbitration of mortals. For this traditional African, there are no strict differences existing between formal court proceeding and the law deriving from the binding force of the transcendent complementary unity of consciousness. This naturally leads to a fusion of horizon between the factual and the logically in a way that generally helped safeguard the ontological character of truth.[32]

This underscores the argument that the performance of ritual and the explicit public verbalization towards the maintenance of social control is preserved. For example, when every party to oath-taking is aware of its juristic measures in the event of derailment, then sanctity of social control will be jealously guarded. This mystical link forces both in the making and enforcement of Yoruba law and custom, before contact with the Europeans, is of crucial importance. The fear of breaking such Laws and customs, involving the juristic practice in traditional criminal justice system, will provide an effective preventive factor in contemporary society.

Conclusion

I have been able to argue that access to justice is grounded not on an evaluation based on values *a priori*, but evaluation in light of societal needs, problems, or demand that was at the origin of the legal institutions process or rules in traditional Yoruba juristic practice. Accessible justice in contemporary society is designed for the affluent and influential class which makes it often more a façade than a reality; it was merely a mockery for those to whom the caustic motto could apply. Though in reality, equality is utopia but parties to a dispute should be fairly equipped, as being observed in developed world with its

shortcomings, to the extent that justice only calls for the legal arguments the parties can muster. Thus, the viable complementary (alternative?) to the formal adjudicatory system should be sourced from the traditional Yoruba juristic practice because of its connection with social inclusion of those excluded from the scheme of justice system, as in the way of philosophy of reconciliation, appeasement and reconstruction of social order and cohesion but more importantly, because of the crucial impact it will serve in determining the direction of the contemporary justice system. In final submission, this will rather push for access to justice being available to all, including the poor in the train of social justice.

End Notes

1. Some of the socially backed rights grounded in justice for all are the rights to work, to health, to material security and to education.

2. Estelle Hurter, "Access to Justice: to dream the impossible dream?,"*The Comparative and International Journal of Southern Africa*, 44(3) (2011) : 413-414.

3. Hurter, "Access to Justice." *The Comparative and International Journal of Southern Africa*, 44 (3) (2011): 413

4. M.Cappelletti, "Access to Justice: Comparative General Report," *The Rabel Journal of comparative and international private law*, 40 (1976): 673

5. F. Osman, *Problems of formal justice systems in Bangladesh* (Mimeo, Dhaka: BRAC Research and evaluation Division, 2006).

6. O. B. Olaoba,*Yoruba legal Culture*(Ibadan: FOP Press, 2002), 47.

7.F.U. Okafor, "Legal positivism and the African legal tradition," *International Philosophical Quarterly*, xxiv. 2(94) (1984): 157.

8. Okafor, "Legal positivism,"159.

9. Okafor, "Legal positivism,"159.

10.Okafor, "Legal positivism,"160.

11. Okafor, "Legal positivism,"160.

12. Okafor, "Legal positivism," 160.

13. Okafor, "Legal positivism," 160.

14.P.C. Nwakeze,"A critique of OlufemiTaiwo's criticism of 'Legal positivism and African legal tradition,'" International *Philosophical Quarterly*, xxvii, 1(1987), 105.

15. Okafor, "Legal positivism," 161.

16. Okafor, "Legal positivism," 163.

17. Nwakeze,"A critique of OlufemiTaiwo's criticism."103.

18. Olaoba, *Yoruba legal Culture*, 49.

19. Olaoba, *Yoruba legal Culture*, 60.

20. O.B. Olaoba,*The significance of cross-examination in Yoruba tradition jurisprudence*,(Ibadan: John Archers ltd., 2000), 4.

21. Olaoba, *The significance of cross-examination*, 4.

22. Olaoba, *The significance of cross-examination*, 5.

23. Olaoba, *Yoruba legal Culture*, 66.

24. O. Adewoye,*The legal profession in Nigeria: 1865-1962*, (London: Longman Nigeria ltd., 1977), 5.

25. Adewoye,*The legal profession in Nigeria*, 5.

26. Olaoba, *The significance of cross-examination*, 14.

27.O. B. Olaoba,*The town crier and Yoruba palace administration through the ages*, (Ibadan: John Archers, 2001), 8.

28. Olaoba, *Yoruba legal Culture*, 47.

29.MartinChanock,*Law, Custom and Social order: The Colonial Experience in Malawi andZambia*, (Portsmouth: Heinemann, 1998), 125.

30. John Murungi, "The Question of an African Jurisprudence: Some Hermeneutic Reflection," in *A Companion to African Philosophy*, ed.KwasiWiredu. (U.S.A., Oxford, Australia: Blackwell publishing Ltd., 2004), 525.

31.FrancisDeng, "Human Rights in the African context," in *A Companion to African Philosophy*, ed.KwasiWiredu. (U.S.A., Oxford, Australia: Blackwell publishing Ltd., 2004), 501-2.

32. InnocentAsouzu, *The Method and Principles of Complementary Reflection: In andBeyond African Philosophy*, (Calabar: University of Calabar press, 2004), 188.

Bibliography

Adewoye, O. *The Legal Profession in Nigeria:* 1865-1962. London: Longman Nigeria ltd., 1977.

Asouzu, Innocent, I. *The Method and Principles of Complementary Reflection: In and Beyond African Philosophy*. Calabar: University of Calabar press, 2004.

Chanock, M. *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*. Portsmouth: Heinemann, 1998.

Cappelletti, M. 'Access to Justice: Comparative General Report', *The Rabel Journal of Comparative and International Private Law*, 40 (1976): 669-717.

Deng, F. "Human Rights in the African context."In *A Companion to African Philosophy*, edited by K. Wiredu., 498-510. U.S.A., Oxford, Australia: Blackwell publishing Ltd., 2004.

Hurter, E. "Access to Justice: to dream the impossible dream?" The Comparative and International Journal of Southern Africa, 44(3) 2011: 408-427.

Murungi, J. "The Question of an African Jurisprudence: Some Hermeneutic Reflection." In *A Companion to African Philosophy*, edited by K. Wiredu., 514-553. U.S.A., Oxford, Australia: Blackwell publishing Ltd., 2004.

Nwakeze, P.C. "A Critique of OlufemiTaiwo's Criticism of 'Legal Positivism and African
legal tradition.'", International *Philosophical Quarterly*, xxvii. 1(1987):98- 105.

Okafor, F.U."Legal Positivism and the African Legal Tradition." *International Philosophical*
Quarterly. xxiv (1984): 21-94.

Olaoba, O.B.*The Significance of Cross-Examination in Yoruba Tradition Jurisprudence*. Ibadan: John Archers ltd., 2000.

Olaoba, O. B. *The Town Crier and Yoruba Palace Administration Through the Ages*. Ibadan: John Archers, 2001.

Olaoba, O. B. *Yoruba Legal Culture*. Ibadan: FOP Press, 2002.

Osman, F. *Problems of Formal Justice Systems in Bangladesh*. Mimeo, Dhaka: BRAC Research and evaluation Division, 2006.