

THE IDEA OF LAW IN YORUBA CONCEPTUAL SCHEME: AN INTERROGATORY DISCOURSE

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Abstract

Law is one of the items that galvanise human society. As an item of ensuring social order in human society, it is viewed as inevitable for no society can survive without rules and regulations that is often codenamed 'law'. Thus, law could be considered as a universal phenomenon. However, the universality of law as a concept could be more meaningful if such is envisaged within the society it is adopted. It is within this presumption that the discourse attempts an exposition of the Yorùbá idea of law to orchestrate the inevitability of *individual-universalism* as a measure of sustaining cultural identity. Using the critical method of philosophical investigation, the chapter suggests a possible and positive deconstruction of the imposed status of Eurocentric ideas as a universal ideas, since Yorùbá in her own history is an embodiment of ideas that could qualify her as rational and independent in her own history of ideas. This is amplified by the claim that no culture can claim superiority over the other since each culture is unique in her own worldview. Hence, the chapter advocates *reconciliatory theory of law* as that which is sacrosanct to understanding the meaning and nature of law from Yorùbá perspective.

Introduction

Universalisation of ideas is predominant in scholarship. This age long

presumption remains a clog in the wheel of establishing individual and ethnic identities. It becomes more worrisome within the prism of colonialism that seems to have submerged other identities. As a way of reconstructing the imposed status of Eurocentric ideas as a universal idea, it is the contention of this chapter that Africa in her own history is an embodiment of ideas that could qualify her as rational and independent entity. This is not necessarily refuting the assumption that could be substantiated in the claim that there is an objective reality that every culture and humanity yearns for. However, it is not a dogmatic acceptance of the prevalence position that such objective reality must be within the content of European culture.

While it is not within the context of this study to revisit the age long debate of colonization and decolonization of African ideas, it however sets to pontificate the reality of the idea and concept of law from Yorubá perspective. This is considered worthy of pursuance given the assumed domineering and widely acceptance of the western ideology at the detriment of other ethnic worldviews. Thus, the discourse argues that no universal concept can be properly understood without recourse to its particularity as evolved from different ethnic backgrounds. This corroborates Lewis Tylor's contention that "no empirical sound general theory of society can be elaborated unless account is taken of every known form of man's existence in society."¹ By this, it implies that no culture can claim superiority over the other. It is all about perspectives. Given this possibility, therefore, this chapter is a call on scholars of Yorubá traditions to revisit their methodologies with the sole aim of finding a way to reinvent their worldviews, not necessarily looking for a meeting point from other culture. This is suggestive of the pretension that the best that can be done is to measure the validity of their views within their own cultural logic. It is this that could prove the fecundity of diversity as a necessary ingredient for universality. Hence, this chapter presents an understanding of law from Yorubá perspective. This is projected through the introduction of reconciliatory theory of law in

¹ I. M. "Tribal Society," *Encyclopaedia of the Social Sciences* (New York: Macmillan and Free Press, 1968)

Yorùbá idea of law.

Law in Yoruba Conceptual Scheme

Every human society desires peace and harmony. It is one of the fundamentals that guarantee good living and essence of humanity. However, individuals in human society often than none are always preoccupied with personal interest that suggests the egoistic tendencies of human nature. Yet, no human, especially individual that can survive in isolation, this establishes the social nature of human beings as espoused in the platonic description of human nature where human being is considered as ineradicably social. The individual differences if not properly catered for could jeopardise the desire peaceful and harmonious essence of society. This possibility seems to have propels human beings to emplace rules and regulations that could tame individuals in pursuance of peaceful and harmonious society. The preponderance of human desire, therefore, necessitate the emplacement of law in human society. Hence, law is perceived as a universal phenomenon that guides human actions. However, its universality is made more paramount from its particularity. One is therefore poised to argue for *individual-universalism*. It is within this prism that the idea of Yorùbá law is outlined. It is important to mention that the Yorùbá word for law is *Ofin* and that such is achieved through proverbs and oath-taking.

Though, the word 'law' has been conceived from diverse perspectives, especially from the point views of individuals ranging from the professional lawyers, judges, scholars of different orientations and even the layman. Law as a concept could be explained either in a general or technical sense such that we often talk of divine law and/or natural law, human law, positive law, constitutional law, traditional law among others. Of all these, Yorùbá idea of law tends towards the positive law which does not contradict the tradition left behind by the ancestors.

Law, generally from its *Lexicographic* definition is “the enforceable

body of rules that governs any society.”² (E. A. Martins & J. Law, 2006:306). Thus, law could be seen as that which is used to enforce the lay down rules and regulation through which society protected and make whole from unguided acrimony and disturbances that could emerge as a result violation of the status quo. Inferable from this postulation is the codification of law as “a body of rules, designed, recognised and applied by the state in the administration of justice. Law therefore is rule guide that is man-made, dynamic in nature and indispensable because of its characteristics that suggest its normative character, with elements of coercion and territorial limitations. This makes it difficult to ascribe a universal definition to what law connotes. A. O. Okunniga seems to have this understanding when he argues that “nobody, including the lawyer. Has offered; nobody, including the lawyer, is offering; nobody, including the lawyer, will ever be able to offer a definition of law to end all definitions of law.”³

However, it is important to mention that law (*Ofin*) in the traditional Yorùbá society cannot be separated from the moral milieu in which it operated. It operated in a socio-cultural atmosphere dominated by a belief in the existence of supernatural powers and a social structure controlled by a hierarchy of authorities.⁴ The inevitability of moral rectitude as a springboard of law in Yorùbá understanding of law is well captured by Aina and Akintona as they argue “the Yorùbá philosophy of law is enrich with moral rectitude (*Iwa*); and integrity (*omoluwabi*); it provokes reformative mindsets from time to time in order to achieve and maintain social equilibrium.”⁵

Technically, African law is an aspect of jurisprudence in philosophical

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

³ A. O. Okuniga, “Transplants and Mongrels and the Law: The Nigerian Experiment,” *Inaugural Lecture Series* 62 (Ile-Ife: University of Ife Press, 1983), 2.

⁴ See O. Adewoye, “Proverbs as Vehicle of Juristic Thought among the Yoruba,” *University of Ife Law Review* (1987). 3-4.

⁵ A. A. Aina & E. O. Akintona, “The Yoruba Philosophy of Law and the Challenge of Corruption in Nigeria,” *KJU Journal of Humanities* 4(3): 2019. 57.

enterprise. To discuss African law is to discuss African jurisprudence. Jurisprudence as an aspect of philosophy in the view of Freeman is the study of general theoretical questions about the nature of laws and legal system, about the relationship of law to justice and morality and about the social nature of law.⁶ Freeman's definition as prescribed is suggestive of western inclination such that one finds it difficult to establish an understanding of law from African perspective. This section therefore set to demonstrate the viability of Yorubá idea of law on which their social control, social engineering and societal ordering that promotes peaceful and harmonious relationship in Yorubá society is built. These social control mechanisms are codified in African customary laws. T. Elias is one of the foremost scholars who substantiates the possibility and existence of African laws before her encounter with the European culture from which her identity is submerged.

Going forward in defending the existence of Yorubá law, T. Elias argues that the Africans (Yorubá) idea of law are more of custom which is conventionally taken and understood by the indigenous African as what formed part of their obligations to others and the society writ large. Thus, he opines that "laws know no differences in race or tribe as it exists primarily for the settlement of disputes, and the maintenance of peace and order in all societies."⁷ Presumably, the essence of law as graphically represented in Elia's conception of law is that which promotes the preservation and exercise of personal freedom as well as enhances the protection of private property. These two major essence of law forms the fulcrum on which African law hinges. In fact, African law is more of pursuance and emplacement of peace rather than enshrine punitive measure, as such African law is peace-centric. T.Elias emphasises this fundamental attributes of Yorubá law when he argues, "the two functions of law in any human society are the preservation of personal freedom and the protection of private property. African law, just as

⁶. M. D. A. Freeman, *Lloyld's Introduction to Jurisprudence*(London: Sweat & Maxwell Ltd., 2001), 31.

⁷. T. Elias, *The Nature of African Customary Law*, (Manchester: Manchester University Press, 1956), 6.

much as for instance English law, does aim at achieving both these desirable ends.”⁸ This, however, does not suggest that there are no attached punishment to violation of law in Yorùbá society. The preponderance of punishment in Yorùbá idea of law is envisioned in some of the Yorùbá saying *ika ti o ba se l'oba n ge* (it is the offender that kings' punishes), *ilu ti o si ofin, ese o si ni be* (where there is no law, there is no offence). This deconstructs the uncritical conclusion that African law lacks the elements of sanctions and punishment. Aside the aforementioned, evidence abound in Yorùbá society that suggests the inevitability of punishment and sanctions in the social relations. Hence, the objective of law goes beyond the mere resolutions of conflict but for the maintenance of the equilibrium of the society...as a corporate whole.⁹ This is akin to Ayua's claims that “the law aims not only at regulating human conduct and relations but also take into cognisance the dynamism of value-changes and fundamental human rights that goes along with it contemporaneously in the society.”¹⁰

For instance, there are justifiable experiences and practices which point to the presence of punishment and sanctions in the Yorùbá idea of laws. Taking a clue from the Yorùbá of the South-West in Nigeria exists some form of punishment and sanctions such as the Yorùbá practice of S'igba - Opening the calabash. This practice is not only social, but entrenched into their judicial processes. This is a form of a pronouncement of the verdict of the community against the excesses of the king. Whenever such decision is taken, it is suggestive of the community rejection of the king who is billed to commit suicide. This practice is avidly captured by Daramola and Jeje inter alia:

In the olden days, when a particular community wants to demonstrate themasculinity or masculine prowess of its monarch, the council of eldersgathers together to prepare 'the egg' in a white calabash for the monarch. Once the monarch

⁸. Elias, *The Nature of*, 33.

⁹. J. H. Driberg, “The African Conception of Law” *Journal of the African Society*, (nd): 34.

¹⁰. I. Ayua, “Law and Development in Africa” *International Journal of World Peace*, 3(1): (1986). 72-74.

succeeds in opening the calabash and actually sees the egg in this white calabash, the end is a 'glorious' exit from earth.¹¹

A critical reflection on the above is suggestive of the irrevocability of the function of law which is set as “a body of regularised procedures and normative standards considered justiciable in a given group.”¹² This body of recognised procedures are envisioned in some of the Yorubá saying such as *Ise ilu, ni ida ilu* meaning the action and inaction of a given society represents its content, and *Ilu ti o si ofin, ese o si ni be* that is, where there is no law, there will be no crime. The preponderance of these sayings among others is amplified in the view of Okafor who recalibrates the ontological status of African law when he argues that; the jurisprudence of the traditional African laws is guided on the ontological framework of the belief-system and the collective decision making method of the people. The concept of sovereign body (law court) issuing command is strange to the African culture. African culture recognises only “leaders and not rulers”, “senior and not superiors” in ushering their laws. He explains further that laws are enacted by joint decisions of the people in the community or by their representatives who are usually elderly men of unquestionable moral character which they believe are next to God and took after the wisdom of their ancestors. Hence, laws made by the African people are ordinances of collective reasoning by the community and not mere command pronounced by an institution or body of persons.¹³

Given the above possibility, it is arguable to support Okafor's submission that Yorubá law is deep rooted in their culture and custom which are inseparable with their ontology. If this is taken, then African and western legal systems will be representative of two different culture, tradition

¹¹. O. Daramola & A. Jeje, *Asa ati Awon Orisa Ile Yoruba* (Ibadan: Onibonje Press, 1970), 160.

¹². N. Otakpor, *Justice in Igbo Culture* (Benin-City: University of Benin Press, 2017), 106.

¹³. F. Okafor, “Legal Positivism and the African Legal Tradition,” *International Philosophical Quarterly*.xxiv(2): (1984). 162

and values.¹⁴ One of such difference is the nature of justice that each of the law pursues. For instance, while African law within its legal and judicial process is reconciliatory in nature that of the western is retributive in nature. This is because, the Yorùbá have a strong sense of law profoundly found in their cultural norms and values. They practise law in addressing issues related to land disputes / matters, inheritance, socio-political, communal clashes, interpersonal conflict, and crime among others. It is important to mention that the immediate objective of law in African society is to restore broken or damaged relationship and rectify wrongs. This in a way galvanizes the peace-centric nature of Yorùbá idea of law as it always focuses on restoring peace, mending relationship without compromising the truth. Thus, one is poised to argue that Yorùbá law reverberates moral solidarity of the community.

Yorùbá Reconciliatory Theory of Law

There exists different forms of theories of law such as legal positivism, legal realism, Marxist theory of law, historical theory of law, sociological theory of law through which law is explained. However, the understanding of the aforementioned theories fails to project Yorùbá idea of law. Given this, it becomes imperative to advocate a theory of law that captures the intent of Yorùbá idea of law. It is within this purview that *reconciliatory theory of law* is proposed from the Yorùbá idea of law. This theory that is reconciliatory theory of law suggests the essence of law in Yorùbá society as that which enhances peaceful and harmonious existence as the primary purpose of court which is the harbinger of law. In this, law is conceived as a tool that is dispensed through judicial process in maintaining peace and order in any given culture, society and worldview. The purpose and end of judicial process in Yorùbá society that centres on reconciliation informed the idea of reconciliatory theory of law. This is evinced in the pursuance of justice which does not reflect a situation where victory is given to one party but one that projects mutual and social benefit to all parties involved. This is adequately captured in the view of Oke when he posits that in Yorùbá judicial system, justice “is

¹⁴. See F. Okafor, “From Praxis to Theory: A Discourse on the Philosophy of African Law,” *The Cambrian Law Review*, Vol. 37. (2006). 39.

not victory for one party in a game or battle, but socially beneficial, peaceful resolution of dispute that could otherwise constitute a threat to the purity, well-being and prosperity of the entire community.”¹⁵ The sense in Oke's submission as quoted herein is well captured in one of the folklores that Yorubá in their mode of justice uses to justify the fact that adjudication is not all about victory for one party, is the *chameleon's myth of conflict resolution*. In the myth; the chameleon was invited to adjudicate between death and sickness over a disagreement. They (death and sickness) were both friends but as a result of their engagement, one accuses the other of not giving its due to it and vice versa. After their narratives, the chameleon was said to resolve their differences by telling both that they were just in their own right. This is symbolically represented in the movement of chameleon which in Yorubá mythology is re-interpreted to mean “*Íkú tí é tó, àrùn tí é tó*” meaning 'death, you are just, sickness, you are just.' At the end of this, both death and sickness were said to have left the scene in peace, thus, their friendship continued. The preponderant reality of this myth is considered to be the reason why virtually all incident of natural death are predicated on sickness. This is more pronounced in the Yorubá saying *ìgbà mélòó láà fí kú, à fí àiráyè s'áàré* that is, 'what it takes to die is sickness.' This implies that, at the end of the adjudication, it was not the case that each went on its own way, rather they were re-united. This was made possible because of the fact that none was adjudged victorious outright by the chameleon who arbitrated in their dispute.¹⁶ The simple law adopted here is akin to natural law.

¹⁵ M. Oke, “Judicial Cross-Examination in Yoruba Culture: A Philosophical Critique,” *Yoruba Fiction, Orature and Culture: Oyekan Owomoyela and African Literature and the Yoruba Experience*. eds. T. Falola and A. Oyeade (Treton: Africa World Press, 2011), 421.

¹⁶ Readers can assume that another interpretation of *Chameleon's myth* can be that the adjudicator attempted a perversion of justice. This is, because, it can be assumed that the adjudicator is afraid of being afflicted by sickness or killed by death if he apportions blame on either. However, this assumed interpretation is outside the context of this current engagement. See also S. L. Oladipupo, “Yoruba Justice and the Quest for Sustainable Development,” *Africa: Journal of Contemporary Issues*, Vol. 13, No. 13. (2015). 104 - 105.

The above evidence of reconciliation in Yorùbá judicial and legal system is missing in western theories of law and penology where the offender is punished without making restitutions; and emerging from prison, he is reconciled neither to himself, his victim, nor to society.¹⁷ In the same vain, Fadipe articulates the interest and expectation of the Yorùbá jurisprudence as that which is “interested not only in retributive and reparatory justice but also in what may be called peace-making.”¹⁸ This peace-making nature of justice transcends its retributive counterpart in the western idea of law which solely aims at requiting the offender but never attempting to resolve the underlying grievances between or among the parties concerned, as it is often said that absence of crises does not mean peace. This kind of system is not only harmful to others but also immoral and blameworthy. It should be noted however, that the aim of peace-keeping justice in and among the African is to intervene and arbitrate in quarrels and misunderstandings which impair peaceful co-existence of the individuals in the society so that such does not result to breach of law that can rupture societal peace. By implication, Yorùbá judicial system is socially inclined as against the legal justice of the western world. In line with this position, Alao argues that social justice was the common goal and, in many instances especially tort, the courts decided cases based on the application of the principle of social justice. It would seem that the society acquiesced to this if we considered the saying, “*Ó sẹ sí apá ní èní ni ò, ó le sẹ sí ẹsẹ lóla.*” (It is just bad that we are at the receiving end of it today, but remember you could be in our shoes tomorrow).¹⁹ This conforms to Idowu's position when he argues that law is an instrument of peace-keeping and peace-making through conciliation, compromise and reconciliation.²⁰

¹⁷ J. H. Abraham, *Sociology: A Historical and Contemporary Outline* (London: Holder and Stoughton, 1975), 187.

¹⁸ N. A. Fadipe, *The Sociology of the Yoruba* with Introduction by Francis Olu Okediji and Oladejo O. Okediji, (Ibadan: Ibadan University Press, 2012 Third Reprint), 223.

¹⁹ A. Alao, “Judicial Process in Pre-Literate Yoruba Societies of Southwestern Nigeria,” *Oral Traditions in Black and African Culture*, eds. A. Ajayi & S. I. Fabarebo. (Palmgrove: Concept Publications Limited, 2009), 17.

²⁰ W. Idowu, “African Jurisprudence and the Reconciliatory Theory of Law,” *The Cambrian Law Review*, Vol. 37. (2006). 12.

Beyond this, African law is designed in such a way that room is given for full integration of parties into societies again. This is reflective of the communalistic attribute of African idea of law. The potency of this position assumed a spiritual dimension in African society, especially in their jurisprudence. This is because, law that enhances justice, in an African society, is dual in nature; it operates both at temporal and transcendental realm. Establishing the transcendental nature of law in ensuring justice in Africa is reflective of their belief that for the realization of peace and harmony in the society, no offender should go unpunished. This reflects in some of their proverbs such as *Bí a da d́́a Olórún á tun d́́a; bí aò da d́́a Olórún á tun d́́a* (if we judge rightly, God will judge; if we judge wrongly, God will judge), *Mo fà é lé kóòtù Olórún lówó* (I leave you to God to judge). They are of the view that under no circumstance can an offender escape the wrath of the gods, even if his offence was committed in secret without any eyes witness. This is popularly echo in one of their proverbs *Bí oba ayé ó rí ó, Oba ọ̀rún n'wò ó* (If earthly king cannot see you, do you think that the eyes of the heavenly king are not on you?)²¹ The reference makes to the Supreme Being in African idea of law is succinctly captured by Dukor *inter alia*:

The African understanding of God, nature, man and justice could decipherable through a member of metaphysical and transcendental macro-concepts. One of them is the concept of 'Polymonotheism' which enunciates African belief in a supreme being (monotheism) and in a smaller or lesser god. In essence the Supreme Being is the creator, and the smaller gods, who were created by the same Supreme Being intermingle with mankind as the guardian of public order, morality and justice. Polymonotheism is unity (Supreme Being) in diversity (smaller or lesser gods). It is a pragmatic and existential humanistic culture.²²

²¹. N. Fadipe, *The Sociology of the Yoruba* (Ibadan: Ibadan University Press, 1979), 279.

²². M. Dukor, "The Concept of Justice in African Philosophy," *Perspectives on African Communalism*, ed. O. Ike. (Canada: Trafford Publishing, 2007), 51.

In the same vein, Bolaji Idowu writes “the whole of African concept of justice is based upon the fact that the world belongs to a deity; that the social and moral order are his ordinance, and that he is far above all divisions into races, ethnic groups, clan differences or political partisanship.”²³ Dispensation of justice through the aid of existing law is an important aspect of the day-to-day activities in the Yorùbá traditional society, Ikimi (1980), Olajubu (1978) and Idowu (2004). All these scholars affirmed that before the advent of western civilization, the Yorùbá operate their own judicial and/or legal system from where justice is served. This starts from the populace and/or citizens and terminates with the king (*Oba*). However, as the *Oba* (king) is considered the apex in the dispensation of justice, he is not above the law. Johnson clarifies this “... although the king as supreme is vested with absolute power, yet the power must be exercised within the limit of the unwritten constitution.”²⁴

The agents of justice that help in interpretation of law in Yorùbá societies include *Baálé* (house head), chiefs, elders, kings, among others. In a modest way, the elders (*Àgbàlagbà*) are seen as the arbitrators in Africa socio-political model for conflict resolution. By implication, their mode of justice is attached to 'the eldership institution' which is “primarily of conciliation of disputes and armed conflicts. It does not have the force of law, but derives its authority from religious base, communal norms and values and social acceptability.”²⁵ The elders are believed to be the custodians of culture, and they consequently guide in dispute resolution. It is, however, significant to mention that it is not all elders that are recognized to have the potential of interpreting laws aimed at dispensing justice, though they may be seen as custodians of culture but when an elder is found wanting morally, he/she cannot be trusted with the task of interpreting law and/or administering justice. A major presupposition in this tradition is the equation of old age with wisdom. Thus, in Yorùbá

²³. E. B. Idowu, *African Traditional Thought: A Definition* (London: SCM Press, 1986), 164.

²⁴. S. Johnson, *The History of the Yorubas* (Lagos: CSS Bookshops Limited, 1921), 49.

²⁵. A. K. Fayemi, “Agba (Elder) as Arbitrator: A Yoruba Socio - Political Model for Conflict Resolution - A Review of Lawrence O. Bamikole, *Journal of Law and Conflict Resolution*, Vol. 1(3): (2009). 64.

societies, elders are embodiments of wisdom and experience, neglecting them in the process of interpreting law could cause a lot. This might have been responsible for Idowu's position that:

The prevalence of conflicts and violence in most African countries is so because the elders are not often consulted and where they are consulted; their views are either neglected or disrespectful. It does not follow that only elders have the answers to the resolution of conflicts. The idea is that their understanding of issues can be employed to arrive at resolution of conflicts whether at the local or national level.²⁶

It is important to mention that there exists various courts of law where judicial processes through the interpretation of law is achieved in Yorubá societies. The hierarchy of court in Yorubá societies is structured such that parties involved in disputes can assess it within their domain. For the purpose of settling conflicts and dispensation of justice; courts of different types are put in place, Falola and Oguntomisin state that, “to facilitate the administration of justice, there existed three types of courts in ascending order, viz: the court of the compound heads (*ilé ejó ti báálé*), the court of the ward chief (*ilé ejó ti ijòyè tabí Olórí òtún*) and the court of *Oba* (*iléejótíoba*).”²⁷ It is in view of this that in Yorubá society, conflict and unjust actions are resolved in stages, it may start from group levels, to community and if it remains unresolved such conflict may be taken to the group of elder(s) such that all parties involved will be summoned in a bit to address such conflict and see that justice is served. If it cannot be solved at this stage, then, the *Oba* (king) will come to the scene together with his chiefs (*Baálé*). It is with reference to this trend of resolving crisis in Yorubáland that credence is given to their collective belief that *Òkú ejó l'oba n dá* - meaning the king merely ratifies the decision of his council of chiefs or the king merely adjudicates cases already decided by his chiefs and *Òkú ejó tí ọlọjá sị dá ni orísun agbára Oba, èyí sị ni ó sọ Oba di*

²⁶ W. Idowu, “A Philosophical Analysis of Conflict in Africa,” *Perspectives on Peace and Conflict in Africa*, ed. I. O. Albert. (Ibadan: John Archers Publishers Ltd., 2005), 23.

²⁷ T. Falola & D. Oguntomisin, *The Military in the Nineteenth Century Yoruba Politics* (Ile-Ife: University Press, 1984), 19.

asòròṣẹ́ tí kì í sọ òrò tì that is the ratification of cases already decided by his (king) council of chiefs is the source of the king's power and this makes him (king) an unquestionable authority who does not blab respectively.²⁸ It is evident therefore that, in Yorubá traditional judicial system, despite the position of the king (*Oba*) “in practice, and in judicial sense kings could not be said to possess power but what they did possess was authority.”²⁹ The implication of this is that in Yorubá judicial system, “monarchs (*Oba*) have always been at the apex of the hierarchy of palace officials (royal officers of law) administering justice and fair play.”³⁰

The reality of the above process is well articulated by Olaobawhen he states that, “the people, over whom the monarchs governed, also believed strongly in the efficacy of the word and authority (with which the law was tinted) of the Yorubá kings.”³¹ By implication, there exists a popular consent to the authority of African (Yorubá) monarchs which enabled them in interpretation of law for administering justice and fair play. This might be responsible for Adewoye's contention that, “the fear of the supernatural characterized the indigenous judicial system. Such a fear was transferred to the royal potentate representing the supernatural.”³² Thus; there had been the place of the supernatural in both civil and criminal cases (Ojo 1978:31) which the Yorubá monarchs typified.³³

The final and most respected agent of justice in Yorubá judicial system is the *Oba*. The *Oba* is endowed with the power from which he draws the strength for the maintenance of law and order in his domain as well as the cooperation among his subjects in ensuring social engineering. It is in

²⁸. S. L. Oladipupo, *Justice in Yoruba Culture* (Ile-Ife: Obafemi Awolowo University Press, 2023 in press), 25 - 26.

²⁹. Dukor, “The Concept of,” 60.

³⁰. O. B. Olaoba, “The Indigenous Judicial System in the Yoruba Kingship Institution,” *The Chieftaincy Institution in Nigeria*, eds. T. Babawale et'al. (Palmgrove: Concept Publications Limited, 2010), 255.

³¹. Olaoba, “The Indigenous Judicial,” 263.

³². O. Adewoye, *The Judicial System in Southern Nigeria 1854 - 1954* (London: Longman Nig. Ltd., 1977), 9.

³³. J. D. “The Place of Supernatural Powers in Criminal Law with Reference to Nigeria,” *Nigerian Behavioural Science Journal*, Vol. 1/1. (1978). 31.

this sense that the Yorùbá monarch is considered as the custodian of legal consciousness and it is this legal consciousness of the *Oba* that empowered him to wield power and authority through the symbols of jurisprudential tradition in a typical Yorùbá society. Olaoba clarifies the supremacy of the *Oba's* in the dispensation of justice in Yorùbá traditional society when he contends that, “the Yorùbá monarch gave the final verdict to the dispute in vogue. His word was authoritative and unchangeable in the matter before the court. Anyone who failed to respect him in that regard was reprimanded in the royal prison.”³⁴ This was attested to by Asabia who testifies thus:

'Ení bá ọba jiyàn ní n'pé l'áàfìn' (To argue with the king is to be kept long at the palace). The main interest of the Yorùbá monarch is to see to the welfare and development of his kingdom and subjects. This alone makes him down-to-earth with truth and justice towards ensuring peace and harmonious relationship among his subjects and between his kingdom and surrounding neighbourhoods.³⁵

Thus, the administration of law in Yorùbá society is institutionalized.

It is important to mention that one of the fundamental instruments through which law is relish in Yorùbá legal system is proverb. The Yorùbá according to Fayemi believe that, “the sagacious usage of spoken words is the harbinger of peace and war; the engine of culture and civility; the hallmark of conversational prudence and the epitome of intellectual maturity that man socially used in conflict matters.”³⁶ It is in this sense that the saying *òrò ní í yọ ofà lápó, òrò náà ní yọ obì lápò* (it is word that commands arrows from the quiver and another type of word that commands kolanut from the pocket) meaningful. Proverb is sacrosanct in Africa (Yorùbá) jurisprudence that explains that proverbs serve as the conveyor belt for juristic engagement.³⁷ The rareness of this

³⁴. Olaoba, “The Indigenous Judicial,” 255.

³⁵. S. O. Asabia, “Foundation of Yoruba Government” *Odu*, Nos. 7/9. (1963). 23.

³⁶. Fayemi, “Agba (Elder) as Arbitrator,” 63.

³⁷. Adewoye, “Proverbs as Vehicle of.”

belief is built on the fact that proverbs abound that reflects and help in the interpretation of law in Africa (Yorubá) society.

Oath-taking is also a fundamental tool used in Yorubá justice to guide against miscarriage of justice in judicial process; The Yorubá in their judicial system embarks on oath taking with alacrity. The nature and procedure of oath-taking as obtainable in Yorubá process is sacrosanct to truth and as a means of codifying the essence of truth in dispensation of justice, they make sure that oath is not sworn to before the commencement of a trial. It is only made necessary at particular stages when there seems to be doubt about the position of the disputants. As such, oath-taking in Yorubá judicial system is to enhance the commitment to saying the truth. The swearing here usually has to do with the person taking the oath asking some evil things and/or calamities to befall him if any attempt is made to mislead the panel of judges in the course of presenting his evidence. Oath taking is a tool in the hand of the panel of jury in getting to the root of any case when the elders find it difficult to believe the witness or the accused explanation lead to oath taking and this according to Fayemi “they do through administering metaphysical oaths of the spirit of the gods and other primordial entities among conflicting parties in order to ensure compliance to the voluntary terms of agreement, which the reconciliation is based.”³⁸

System of Arbitration in Yorubá Society

The Yorubá people had ways of settling their civil and criminal cases; by means of an institution as old as the history of the Yorubá people themselves.³⁹ This system of arbitration is hierarchical in nature. It is like a chain that is woven around societal strata such that sanity is maintained in the administration of justice through existing laws. Four different courts however are identified to be involved in Yorubá judicial system. These courts according to Toyin Falola include the *Ìgbéjò, Agboolé, Ìgbéjò Ìjòyè, Ìgbéjò Balógun* or *Ìgbéjò Baalè*, and the *Ìgbéjò Ilú*. The first

^{38.} Fayemi, “Agba (Elder) as Arbitrator,” 64.

^{39.} T. Onadeko, “Yoruba Traditional Adjudicatory Systems,” *African Study Monographs*, 29 (1). 2008. 15.

operated in the compound; the second dealt with cases involving members of different compounds; the third was an appeal court; and the last was the Supreme Court as well as the only court with jurisdiction to try the serious cases of murder and others that call for capital punishment. Those males condemned to death were killed by the *Ògbóni Ojaba*, while females were killed in the *Egúngún* groves.⁴⁰

After all these is achieved the guilty will be reconciled with the victim so that the guilty will see the need to tread the path of justice and by so doing the guilty will be re-absorbed into the society. In a way to fast track the reconciliation “a dinner party sometimes followed the settlement to restore the mutual love within the family. Libations were poured to appease their progenitors before they themselves consumed any food or drink.”⁴¹ This position is a reflection of what Alaomeans when he states that “arbitration, reconciliation and amelioration were major objectives of bringing any matter before the courts for intervention.”⁴² This in a way makes social justice the ultimate of Yorubá judicial process, the social nature of Yorubá judicial system might be responsible for Alao's position that, “social justice was the common goal and, in many instances especially in tort, the courts decide cases based on the application of the principle of social justice.”⁴³ This is built on the significant fact that judges and mediators who interpret law in promoting social harmony in Yorubá judicial system make decisions based on rules. But, while doing this, they look forward to future, for improved relations not only between the disputants but also in the whole community and humanity at large.

One other fundamental purpose of Yorubá justice is that it takes the future into consideration. The futuristic nature of Yorubá justice is to enhance the achievement of what Akiwowo as cited by Alao called the five categories of inalienable social values that constituted the purpose

⁴⁰. T. Falola, *Ibadan: Foundation, Growth and Change 1830 - 1960* (Ibadan: Bookcraft, 2012), 329.

⁴¹. O. B. Olaoba, “Yoruba Traditional Court Model,” *Journal of Humanities*, 1&2. (1997): 76 - 79.

⁴². Alao, “Judicial Process in Pre-Literate,” 15.

⁴³. Alao, “Judicial Process in Pre-Literate,” 17.

and goal of human society. He listed these categories as: (i) *Ireàikú* (the value of good health till old age), (ii) *Ire owó* (financial security), (iii) *Ire oḡḡ aya* (the value of intimate companionship and love), (iv) *Ire oḡḡ* (the value of parenthood) and (v) *Ire àborí òtá* (the value of assured self-actualization).⁴⁴ From this, Alao (2009:12) posits that, “the Yorùbá believed that justice was all about using the agency of law at whatever level to ensure that human efforts to achieve these goals were not abridged.”⁴⁵ To him, law must then be administered to teach human beings the basic moral lessons in behaviour, as stated in one of the chapters of *Ifá* verse that is *Odu Ofunsa* that says:

Òtóró! Aiyé já
Ògbàrà! Aiyé là kanlẹ̀
Bí aiyé bá tí ọwọ́ ẹ̀ni bajẹ̀
Aìmọ́wa hù wa ni

This *Odu* is translated to mean:

Òtóró! The world has flown off its hook into space
Ògbàrà! The earth is rent asunder to its core
 If the world becomes unliveable in our time
 It is because we no longer know how to behave.⁴⁶

The above *Odu* is a reflection of what could cause injustice in the society. That which can cause injustice in the society is abnormal behaviour, hence, the need to behave well so that society can be in peace and harmony that will in turn foster peace and justice in human society.

Conclusion

This article within its scope attempted an exposition of the Yorùbá idea of law to synchronise the inevitability of *individual - universalism* as a modicum of sustaining cultural identity. It suggested that each culture is unique in her own worldview from which virtually all universal concepts derived its understanding and meaning. This formed the fulcrum of the

⁴⁴. Alao, “Judicial Process in Pre-Literate,” 11 - 12.

⁴⁵. Alao, “Judicial Process in Pre-Literate,” 12

⁴⁶. See Alao, “Judicial Process in Pre-Literate,” 12.

discourse through an overview of what law means to Yorùbá. Within its context, the article advocates *reconciliatory theory of law* as that which is sacrosanct to understanding the meaning and nature of law from the Yorùbá perspective. Thus, it argued for a possible and positive deconstruction of the imposed status of Eurocentric ideas being a universal ideal of justice, since Yorùbá culture in her own history is an embodiment of ideas that could qualify her as rational and independent in her own history of ideas. This is amplified by the claim that no culture can claim superiority over the other. It is all about perspectives.

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