

African Jurisprudence: A Philosophical Reflection on Ogbakor as key in Policy-Making

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Abstract

The human person is the glory of everything God created. Created with rationality, human beings have continued to dominate the face of the earth by applying reason in their activities and using the same reason to control other things in the world. One place where humanity manifests such rationality is in the establishment of systems and structures to guide and guard their activities. Before the advent of Western institutions in Africa, life was orderly and the people were properly guarded. The traditional institutions guided and guarded the people effectively and the acquisition of moral rectitude was efficient. This research investigates how the traditional institutions were efficient in directing the affairs of society before the various institutions of Western origin. Its purpose is to harmonize the various institutional organs in the interest of real peaceful social coexistence. It adopted a critical descriptive method in its investigation and concluded that the traditional way of guiding and guarding the society in Africa was more effective in convincing the people from within. This work thus, delved into a new area of socio-political philosophy with an African perspective and advocates for communal methods of leadership in African societies.

Keywords: Ogbakor, Supremacy, Jurisprudence, Tradition.

Introduction

Many African societies are blessed with sacred and respected traditional institutions. The most significant of the institutions is the traditional justice system, which constitutes the sacred assembly. In Africa, justice and fairness are not decisions of an individual, but of the whole community represented in the traditional assembly. Writing from a background of the Etches, this assembly is addressed as *Ogbakor*. Hence, Etche has various levels of *Ogbakor*, ranging from the family level to the Supreme Council called *Ogbakor Etche*. This holds the same for many other African kindreds, communities, clans, towns, and kingdoms. These institutions have been the main source of legislative guidance before the advent of Western law in Africa. The *Ogbakor* just like many other places constitutes the supreme council of decision-making. Those who constitute the members of this assembly make decisions for the entire people. Rules binding the people are suggested, processed, and

promulgated. The social structure is formed, traditions are made; from childbirth to marriages and down to funerals. It is the people's assembly that form and determine acceptable practices and traditions.

In the constitution of such assembly, certain offices are sensitively necessary. The Convener of the Assembly (*Onye-Ishhi-Nkpor*) and the eldest man in the community (*Onyeokomanu*) occupy the most sensitive positions in policy-making at such gatherings. The elders of the community (*Nde Oha*) also constitute a necessary part of such traditional assembly and decisions reached are binding on everyone in the community. For every gathering, the presentation of kola, of which the native kola-nut called *orjiala* represents the ideal kola, is of utmost importance. It represents more than an edible object to symbolize unity. Sometimes, this same nut serves as an instrument of prayers to invite the ancestor into such a gathering for guidance and directions. The presence of the ancestors is necessary during such a gathering because African spirituality is such that binds the people and their forefathers just like Christians link up with the saints. When serious decisions such as a new law is being enacted, the spirits are not just invited for guidance alone, but to take this law over to the domain of the spirits, so that what is been done here is in agreement with what is being done in the ancestral world. Once a matter is prayed over and libations poured, it is already a decree. However, most decrees in Africa take a reactionary approach. This is so because Africans do not envisage one of their own indulging in crimes, since any crime will hurt a fellow in the community. When eventually surprises spring up with people doing what they were doubted to do, the people gather to proffer a way forward. It is such way forward that eventually emerges as laws in most African societies. As a warm people, whose second nature is in being hospitable, most decrees that are not in the direction of retribution are decrees encouraging the people to love and support one another, which most times are left open to the bond of sanguinity and friendship. So, mutual assistance could be encouraged but it will be left to the discretion of the people to know whom to involve. This research work which seeks to discuss the supremacy of the *Ogbakor* in the African societies therefore is a timely paper. It will adopt a critical descriptive method as its main approach but will do a lot of oral interviews as there are not much academic works done in this area. Therefore, the first challenge of this work is to find research materials but its importance in enlightening Africans about the riches of our traditional practices has become eminent. Many of the traditional African practices are often misinterpreted and such practices when they fall within the ambience of this discussion will be straightened for proper compressibility.

Relationship Between Power and Authority

The power of a leader comes from the people. It is a person that the people judge as capable of leading that they hand over their powers to create an authority. Traditionally, this gathering that makes the king or leader of any acronym is the *Ogbakor*. Like many other words in African languages, *ogbakor* has a verbal root word, “*gba-ko*” which means “to assemble”. (Ndimele, 2010, p. 41). It shares such traits with other words *ri-be* which means “start to eat”, *we-ta*; “bring towards”, *we-re*; “take for one’s self”, et cetera. The act of gathering (*ngbakor*) is always a response to an invitation (*kpoko*-call together), an associative word. The assembly of people therefore is called *Ogbakorin* Etche grammatical lexicon. The place of *ogbakor* is called *Ogbakorror*, which, its closest English translation is the meeting hall. But traditionally it enjoys a deeper meaning of authority than its English translation. The highest socio-cultural gathering of the Etche people is *Ogbakor Echie* translated as “Gathering of Etche People.” There, major policies are decided. The *Ogbakor is supreme*, means that it had the “Highest authority power; undivided authority.” (Spellchecker, 2013-2018, p. 1) in Etche land. Within the traditional setting in many African communities, the various traditional heads enjoy certain authority but supremacy belongs to the cultural groups. As such even the community leaders depend on groups to implement their authorities. This is so because every traditional assembly will accommodate the commoners in representative bases, the chiefs, the enlightened, the elders, the convener but most importantly, the Chief Judge, who naturally belongs to the eldest man in the community. Age is considered as both blessing and grace and the mark of this is visible in the display of wisdom by elderly people.

As a supreme decision-making council, it is also the center of jurisprudence. “Jurisprudence, otherwise known as legal philosophy or philosophy of law is the critical study of the nature of law.” (Omogegbe, 2011, p. ix). The people form the laws according to their common interests. According to Sotonye Denton-West, “For every law, there is a policy behind it and for every policy, there is a philosophy beneath it.” (Denton-West, 2016, p. 1). The philosophy is native to the people and the policy is communal interest. When people are sent to represent their constituencies in the houses, it emanates from the fact that he or she is supposed to voice of this *ogbakor* at the level of his or her representation. When people are well represented, the documented laws of the place are supposed to be an assemblage of the various traditional stools whose interests are represented by their son or daughter.

Therefore, the firmest foundation on which power can rest is legitimacy. This is because legitimate power permits men to give orders and expect obedience based on rightness and propriety. Legitimacy further permits the institutionalization of power into social statuses. The term “authority” designates legitimated power. But “Power refers to the ability to have

one's will carried out despite the resistance of others.” (Power and Authority, Retrieved July 17, 2020, p. 1). Max Weber discovered three different kinds of legitimate power which becomes authority as traditional authority, rational-legal authority and charismatic authority. Whereas traditional authority is power rooted in tradition, rational-legal authority derives its legitimacy from the law and charismatic authority stems from an individual's extraordinary personal qualities and the individual's hold over followers because of these qualities. (Power and Authority, Retrieved July 17, 2020, p. 3). The question now is; who then governs the society?

The Social Contract Theory on-a-Spot

The social contract theory, one of the earliest theories in Philosophy, holds the view that “persons' moral and/or political obligations are dependent upon a contract or agreement among them to form the society in which they live.” (Friend, Retrieved July 17, 2020, p. 1). Socrates uses something quite like a social contract argument to explain to Crito why he must remain in prison and accept the death penalty. However, social contract theory rightly as a modern moral and political theory is given its first full exposition and defense by Thomas Hobbes. After Hobbes, John Locke and Jean-Jacques Rousseau are the most popular proponents of this enormously influential theory, which has been one of the most dominant theories within moral and political theory throughout the history of the modern Western Philosophy. In the twentieth century, moral and political theory regained philosophical momentum as a result of John Rawls' Kantian version of social contract theory and was followed by new analyses of the subject by David Gauthier and others. One of the strong points we learned from Socrates is to obey the laws of the society, even when they seem unjust. The reason behind this obedience is the fact that the individual at least once enjoyed the good fortunes and protection of the city and if the city turns against him, he should abide by its provisions, even if it is unjust. While explaining this position of Socrates, Celeste Friend says:

In the early Platonic dialogue, *Crito*, Socrates makes a compelling argument as to why he must stay in prison and accept the death penalty, rather than escape and go into exile in another Greek city. He personifies the Laws of Athens, and, speaking in their voice, explains that he has acquired an overwhelming obligation to obey the Laws because they have made his entire way of life, and even the fact of his very existence, possible. (Friend, Retrieved July 17, 2020, 2).

Socrates therefore proposes that since the society made him through its laws, the society unmaking him through the same laws is fair enough. This simply connotes that once we enjoy the protection of the state, we are under compulsion to obey its laws. As such the individual is free to leave the city if they deem it unnecessary to live in. But to live in the

city and enjoy its protection automatically implies a social contract to keep its laws. In Book II of his Republic, Plato explains the need to obey the laws of the state through the explanation of the natural human desire to be treated justly. Anyone who seeks the protection of justice from a state is obliged to obey the laws of the state. According to Hobbes, the justification for political obligation is this: given that men are naturally self-interested, yet they are rational, they will choose to submit to the authority of a Sovereign in order to be able to live in a civil society, which is conducive to their own interests. (Friend, Retrieved July 17, 2020, 2). Therefore, a social contract is an effort to protect human interests. According to Locke, societies are based on voluntary agreements to care for children together, and they are moral but not political. Political society comes into being when individual men, representing their families, come together in the State of Nature and agree to each give up the executive power to punish those who transgress the Law of Nature, and hand over that power to the public power of a government. Having done this, they then become subject to the will of the majority. In other words, by making a compact to leave the State of Nature and form society, they make “one body politic under one government” (par. 97) and submit themselves to the will of that body. One joins such a body, either from its beginnings or after it has already been established by others, only by explicit consent. (Friend, Retrieved July 17, 2020, 3). If men freely submitted their individual autonomy for their social life, they are therefore under a social pact, bound to obey the laws of the land. For Jean-Jacques Rousseau, society came as necessary changes with time and the introduction of private property was the beginning of the downfall of humanity. In 1972, John Rawls published his book titled; “A Theory of Justice”, where he postulated that the need to abrogate impartiality gave rise to civil society. By and large then, there is always a need to live in society. In living in society, individuals enjoy favors as well as responsibilities. It is in responsibilities that authorities are to be obeyed.

The People and Their Tradition

The previous subtopic has highlighted the need to oblige legal demands from the angle of the rationality of social contract. Quite true, one of the unique beauties of the human person is the fact that he is both natural and cultural. At birth the human person is completely a natural being, possessing nothing apart from what was given to them by nature; their DNA, Genotype, Blood Group, et cetera. But as the human person grows and develops his being, he acquires a lot from their surrounding environments and practices around them, which is their culture. As such, classical philosophers such as Plato, Aristotle, Zeno, Plotinus and so on, considered the human person to be a natural being: a being constituted of an immutable essence that is given from nature, from which he derives the biological laws. However, modern philosophy did a complete turn-around on the reality of the human person. It no

longer sees the human being as a part of nature, but rather as a product of themselves. Philosophers such as Nietzsche, Hegel, Sartre, Heidegger, and many modern philosophers see the human person in this new light. Since culture forms a large part of the factors influencing people's reasoning, the human person is therefore also a product of their culture. In the words of Battista Mondin, "...a great part of that which we possess and do, already from when we are one year old, is not the fruit of nature, but rather of culture." (Mondin, 1991, p. 147). This is the most remarkable characteristic that distinguishes the human person from other living beings whose being is entirely produced and prefabricated by nature; the human person is capable of cultivating nature and profoundly transforming it, adapting it to meet their own needs. It is also a fact that since the human person is greatly influenced by their culture; it is also remarkable to note that culture itself is a product of the human person. Therefore, the human person is a cultural being in two senses: (1) as a producer of culture, since the human person is the artifice of culture, and (2) as a product of culture, since the human is still the receiver of culture that in turn, makes them.

Tradition which forms the core of culture is often at the heart of the people especially in Africa. As such, instructions and laws established on traditions penetrate the heart easily and gains better acceptance by the people. It is through tradition; the practicable aspect of culture that human persons learn and develop. Tradition which is exhibited through foods and ways of eating, clothes and ways of dressing, languages and dialects, relationships and habits, et cetera is transmitted from one generation to another. It is through tradition that people learn behavioral patterns, speeches, and lines of judgment. Tradition therefore makes the people and also empowers those established with its authority. For this reason, constituted traditional leaders have some level of influence over those they lead. In recent times, most governments use traditional institutions to maintain control over the people; thereby forming a blend of two aspects of authority.

Ogbakor in Matters of Law and Justice

It is obvious that tradition is closer to the people's heart than established legal principles. Traditional institutions do not work with the Forces such as the military, the police, navy, civil defense, et cetera. Yet, it has a way of controlling the people. It becomes interesting to seek to understand the source of the traditional authority. Eboh states that; "Lack of satisfactory solutions to the hydra-headed global problems of our time calls for a rethinking of what has hitherto been the guiding principles which underlay the solutions so far proffered." (1996, p. 2). The truth is that in recent times, the traditional authorities seem to be losing their grounds and authority in the societies and moral decadence has been of great increase. Of the three kinds of authority; traditional authority, rational-legal authority, and charismatic authority, the *Ogbakor* falls into the first category, the traditional authority.

This kind of authority rests on the established belief in the sanctity of immemorial tradition and the legitimacy of the status of those exercising authority over them. Going by its nature, traditional authority is *de facto* as against *de jure*. Whereas *de jure* kind of authority works on an established set of rules (Peters, 1967, p. 8), *de facto* comes by the recognition of another person as having the legitimacy to command (Encyclopedia of Philosophy, 1991, pp. 215-218). The *Ogbakor* authority comes from both the constitution of verbal rules and the recognition of such authority.

Whereas those in the legal-rational form of authority, such as the governors and other people in places of power enjoy their authority through set rules and forcefully obtain compliance from the people, the traditional rulers draw their authority from established customs and obtain compliance through convictions. The pure intention of the *ogbakor* towards the common good of the people seems to enjoy better acceptability by the people in their local settings. As such, the people without cohesion provide compliance with the guiding principles of the *Ogbakor*. In moments of crisis, it takes the *Ogbakor's* intervention to establish peace. As a sacred assembly, the *Ogbakor* is expected to always consult with the deities in order to maintain the right track in the leadership of the people. Most times in moments of crises, it is through the traditional settings that true peace is restored. This truth is well known beyond Africa and the United Nations states that: "Traditional justice systems are normally community-level dispute resolution mechanisms with non-State origins, even if subsequently recognized and regulated by the State." (United Nation, 2016, p. 12). The *ogbakor* intervenes in such matters to punish offenders and reward the just. Through adherence to established traditions, the hold on to norms as laws guiding the people. Africa dominated by this kind of leadership witnessed a lot of peace. It could be imperative to say that the present state of living in Africa with violence, negligence of norms and laws, abuse and bastardization of justice have a link with our neglected socio-cultural institutions

The I-Thou Relationship in *Ogbakor* Philosophy

Philosophy as a discipline is sustained by disagreements in opinions and varied views on a number of issues. Even the structure of human existence itself has remained a source of argument; if the 'I' comes before the 'We' or otherwise. Whereas some Philosophers believe the 'I' comes before the 'We' as every 'We' is an aggregate of a number of 'I(s)', others believe that each person comes from the community. The 'I-Thou' Philosophy of Martin Buber is a clear example of a philosophy that believes in individuality giving rise to the group as the 'I' must exist first and then relate with the 'Thou'. The existentialists such as Martin Heidegger, Soren Kierkegaard, Jean-Paul Sartre, and so on also believe in the 'I' giving rise to the 'We'. Therefore, for such Philosophers, we are because I am. Even Rene Descartes's *cogito Ergo Sum* is a pointer to the 'I' first; I think, therefore I am. But most

conservative Philosophers such as Plato, Aristotle, St. Augustine, Thomas Aquinas, and so on believe that the 'I' is subsumed in the 'We'. It is within this context that genre and species are found as a group of beings. African Philosophy is built on the philosophy of 'We' giving rise to the 'I'. When a person is born, they are born according to specie to qualify them. Therefore, at birth, if a human gives birth to a goat-like creature, it is abnormal. This is because humans are expected to give birth to humans as other animals are expected to give birth to their kind as well. So, at creation, a being is created after a particular group of beings.

The *Ogbakor* adopts its supremacy from this communal idea of existence, which is also supported by the social contract theory. Without denying the autonomy of individualism, it must be said that each person is created into a group of people and is expected to behave like their kind. It is at this level that decisions are made to bind on all the members of that deciding community. On matters of justice, the *Ogbakor* is supreme over the individual members of its society and makes laws binding on all of them. There are levels of *Ogbakor* that make rules to govern at their levels. The family *Ogbakor* can only make rules binding on the family and the same with clan and community *Ogbakor* and so on. Each *Ogbakor* makes rules binding on its subjects and must respect the boundary jurisdiction. As such, decisions are collectively taken and charitably enforced. The social union of the *Ogbakor* enables places to be governed, protected, and guarded.

Conclusion

Authority and power are common issues all over the world. Undoubtedly, there are cross-cultural influences in different parts of the world. But we must protect what is good and valuable in our culture. The *Ogbakor* ideology is supposed to be the foundational guiding principle of various constituencies' representatives. The government at the center understands the idea of the social contract and makes provisions and avenues for the people's representation. Unfortunately, many representatives hardly understand the core of their assignment. This is significantly caused by the loss of the sense of cultural sanctity. The adverse effect is that people will be representing what they hardly understand. As such, they think that their only function is to get their constituencies, allocation. This also reflects how they dispense them. In the face of cultural negligence, the people feel detached from their roots and have lost every form of cultural value. We must therefore return to the root, to aid our legal institutions combat crimes and enthrone true peace and effective coexistence in our communities. Although we did not choose to be created in this part of the world, but we must consciously choose how to live together and enjoy the warmth of togetherness. This is a universal truth for all humanity.

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