

The Nature of Laws and Law Making in Precolonial Benin

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Abstract

This paper opines that there was a body of comprehensive and enforceable laws in Benin before contact with the Europeans. It was this body of laws that made peace and stability possible in the vast area of land occupied by the kingdom and her empire. Although it was unwritten, it was latent in the heart of the general populace and engraved in the mind of the leadership classes who could say the position of the law at any instance. Its principles were expressed in proverbs, fables and other forms of documentation and this makes it accessible today through a synthesis of oral interview, research and other previous documentations. Findings reveal that practicable laws existed among the pre-British Benin people, though not as articulated or sophisticated in the contemporary sense. The law of sovereign Benin Kingdom was functional and resulted in peace and stability, which was followed by the development of the Kingdom and then the empire. This body of laws was a means of social control and societal regulations. It includes all the rules and principles that control the behaviour of the ruling class and those of their subjects. It also regulated the communities and maintained the equilibrium of the Benin societies, which were necessary for the existence of the Benin Kingdom to preserve her sovereignty as a corporate whole.

Introduction

Throughout history, man has never lived in a society with any form of political sophistication without law of which he was aware. Logic dictates that in the earliest societies, the introduction of enforceable law was the most important factor that enabled the people to initiate peace and order and maintained them in a hitherto antagonistic and chaotic environment

that prevails at the absence of government and the associated behavioural code. In line with this, Akin Alao points out that the earlier Yoruba people and other African societies before the end of the Nineteenth Century knew peace and societal harmony, which were the direct result of the availability of the machinery of social regulation, deviant control, peace building as well as fair and acceptable litigation, which forms the core of modern judicial system.¹ In line with this, Eddy Erhagbe asserts that 'there existed various councils of elders who at all times acted as moderators and their orders were directed to the promotion of peace and prosperity' even in places where the administrative system was not codified, the people were able to maintain it peace and societal harmony following laid down rules.² From societal convention and acceptable behaviour, like other preliterate societies, Benin people made principles and rules as well as enforcement mechanism or procedure to protect themselves against deviants and govern their social relationship in the society.³ It is amazing to know how the earlier societies were able to maintain order in their domain without multifarious laws and complex enforcement processes such as a standing police force, technical judicial processes, prisons and reformation centres. Indeed, Professor Mitchell Roth writes that, one of the most intriguing questions facing anthropologists, sociologists, historians and other scholars is how the earliest societies managed to maintain peace and order without written legal codes and concrete enforcement procedures.⁴ She reported that the earliest laws were derived from folk customs evolving from loose, but unquestionable rules to rigid and more specific practices.⁵

In independent Benin Kingdom, for example, there were well thought-out rules in that meant the most salient criteria of modern law. Although it was unwritten, the body of law in Benin Kingdom was well known by the people as its principles were expressed in proverbs, fables and other forms of documentation and it 'was latent in the breasts of the court remembrances and engraved in the mind of the leadership classes who could say the position of the law at any instance.'⁶ Omoniyi Adewoye points out that the fact that some laws were not written does not make them 'less real than the written codes of continental Europe.'⁷

In line with Ayinla's observation that the law is the ultimate expression of the 'value systems in any society,⁸ the laws of Benin kingdom revealed the value of the Benin people as it serves as the most accepted regulation of the social values for better societal cohesion.⁹ It is obvious that in the history of man, man has never existed in a 'society devoid of laws that

are obeyed and enforced by him.¹⁰ Law in African perception is basically towards the maintenance of continuous peaceful, harmonious interpersonal relation among the members of the society as a whole.¹¹ 'It is not a gainsaying that customary law structured most social life in Africa. Elegido, thus observes that pristine African societies certainly did have systems of social control which closely resembled modern legal systems.¹² In fact, when 'African legal systems are studied in detail,' it is easy to agree that the difference between 'African laws and laws of other people is only superficial as both are means of social control.¹³

Delegated Legislature in Pre-colonial Benin

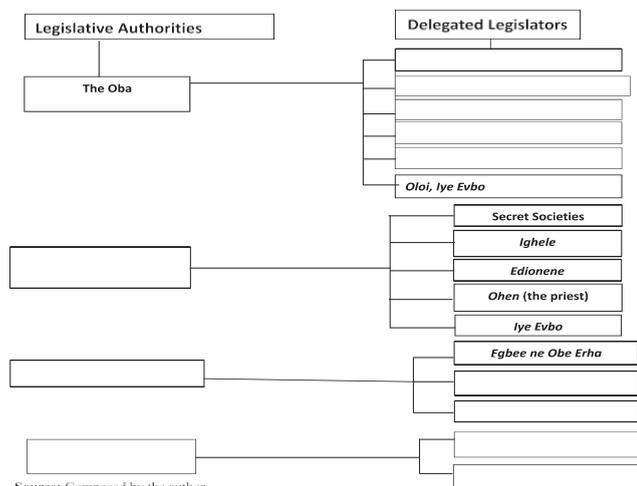
There was also a form of delegated legislation, a situation where the *Oba* and his council empowered professionals like those in the guild to enact laws for their members. Elias explains this nature of delegated legislation in pre-colonial Africa as subsidiary laws, which were 'usually enacted by certain well recognised institutions operating within a given community.¹⁴ Such bodies, according to him, are the so-called secret societies, certain trade associations, which exist for the regulation of internal trade as well as inter-regional commerce, and the innumerable craft guilds of blacksmiths, artists, and the like. All these and more of their kind exercised and still do exercise varying powers of delegated legislation for the guidance of their own members.¹⁵ There are also numerous women that were in the position of authority in Benin and participate in the law-making process through delegated legislative process. Jacob Egharevba explains that 'some women hold titles in Benin and there were the leaders of various guilds that could legislate for their members. The Enigie, Edionwere and Onotueyevbo chiefs could also issue edits or legislate for their constituencies.¹⁶

For instance, *agan* was a childless woman, and the king inherits her property, when she dies. The *Oka Isikhian*, *Oka 'mehe*, *Oka gbezuzu*, *Okasiento*. The *Emelu* (*Oka 'mehel*) was the title of the only wife of the king who was allowed to live outside the palace. The other wives must live in the harem and no other woman is allowed to visit the Royal Chambers in the palace— should one do so, she must offer the necessary sacrifices to make her peace and for purification, women may, however, visit the harem.¹⁷ In their various capacities whether in the Harem or in the market, these women made laws that were applicable and binding and these laws may be referred to as delegated legislature. A common feature was that the leaders, particularly the high ranking chiefs, including the *Oba* who were mainly

males, had many influential women around them who represented the political interests of the female gender in the Kingdom and thus wielded enormous power and influence.¹⁸ Some conspicuous examples include

Ohene and Emotan who wielded power as the *Oba's* counsellors and advisers. Many of these women were spiritualists whose counsel and guidance for the *Oba* were very crucial in legislative and judicial matters. There were also female priests and medicine experts. *Idia*, for example, came to the palace fortified with her medicinal knowledge and magical powers as her war dress for the 1515-1516 battle with *Ida* indicated. *Nkiru Nzegwu* chronicled the medicinal fortifications on Queen *Idia*. *Idia's* successful entrance into the royal palace, for instance, meant that she came with an elevated consciousness that situated her in an empowered, knowledgeable position.¹⁹ It is clear that in African cultures, the ability to display magical prowess and medicinal knowledge were viewed as signs of bravery and valour when channelled towards the benefit of the community. *Bradbury* reinforces this point when he contends that the sanctity of the king's authority lay in acceptance of his ability to control those mysterious forces on which the vitality of the society depended. The case of *Okpota*, the famed *Ishan* ritual specialist and doctor in *Oba Ozolua's* court is a case in point and she wielded great powers in the kingdom.²⁰ Power is not always conceptualised in physical terms to be used and forcefully applied over others. Supernatural power is preferred, revered and feared because of the mysterious way in which it works. Insubstantial, unseen, and hidden, only a ritual specialist who understands its operative principles can manipulate physical and material reality to produce desired effects.

Legislative Authorities and Delegated Legislators in Benin Kingdom



Possession of supernatural knowledge whether real or imagine bestows power in pre-colonial Benin because the perceived carrier of such knowledge became an unseen causal agent. Possession of this power was not determined by gender, but on how psychically strong one was. Herbalists, doctors, ritual specialists and priests were not all men, particularly in *ObaOzolua's* time as the case of his *Oloi, Enaben*, a great sorceress attest. Women ritual specialists and priestesses were as powerful as their male peers, if not more powerful, which was perhaps why they were the ones who had the onerous task of psychically protecting the *Oba* against witchcraft. The awe in which these perceived supernatural power holders were held in Benin allows us to see that the force of an *Oba's* supernatural powers was politically crucial for 'the multitudinous ritual functionaries who were directly beholden to him and by the chiefs whose authority, in the eyes of the people, derived from him.'²¹ It also allows us to integrate this category of magical prowess into our interpretive framework even if it disrupts the dominant empiricist framework of scholarship that dismisses anything metaphysical or supernatural as nonsensical. Acknowledging that possession of esoteric knowledge was important in the social and political universes of ancient Benin, enables us to understand Esigie's investment in *Idia's* prowess since the supernatural is the realm in which real power resides even the power of law making and governance in general in a religious society like Benin.

Laws and Governance in Pre-colonial Benin

The administration of the district was patterned in line with the procedure in the centre. Thus, the district chiefs were also delegated the power to make law and resolve disputes in their districts on behalf of the *Oba*. They derived their existence from the *Oba* who either appointed them or confirmed their appointment in accordance with the tradition of the land. The district chiefs were distributed over the whole of the Benin kingdom.²² Any area outside the main metropolitan Benin was treated as district. The structure of power was such that the *Oba* was at the apex of a hierarchy of chiefs grouped into different orders. The chiefs along with the *Oba* constituted the Benin state council administering the Benin kingdom. Thus, before 1897,²³ the *Oba* was able to co-ordinate the activities of the chiefs to the extent that he had firm control on the metropolis and the administration of the subordinate territories or towns. This was possible because he possessed the power to make new laws as far as the district was concerned,

to abrogate laws made by the district chiefs, to appoint any chief and to create any title he so wished. This was how the *Iyase* and *Esongban* titles were created to water down the authority of the other members of the chiefly order. Also, the district chiefs reported to him and took orders from him regularly. Also, the *Oba* could make any group of chiefs threatening the institution of monarchy powerless and redundant or non-functioning as it happened to the *Uzama* group of chiefs, with the creation of the *Edaiken* title and the two *Eghaevbo* orders which reduced the powers and influence of the *Uzama* title holders. The creation of the seven groups of chiefs, the *Eghaevbo N'Ore* and the *Edaiken* were devised to counter the powers of the *Uzama*.

In addition to these political regulations that kept the kingdom together for centuries, were series of economic laws. Most outstanding of this was the law that bestowed ownership of land on the *Oba*. The Benin adage, '*Oba yan oto ya se vbo ebo,*' which is translated as 'the *Oba* owns all the land up to those of the Europeans' readily shows that the laws conferred ownership of land, anywhere it is located on the *Oba* in trust for the people and he alone can allocate it. He could give it out freely or demand compensation for giving it out. Since farming was the chief occupation of the Benin people and it required land, the *Oba* was highly patronised and the people, therefore had to make very large farms for the *Oba* annually. This contributed immensely to strengthening the economic power of the *Oba* and the state. The farmer, instead of money, deliver clothes, sheep, fowls, yams, and cattle and in fact, whatever the *Oba* may need for his house keeping;²⁴ so that he is not put to one farthing expense on that account and consequently he lays up his whole pecuniary revenue untouched' Industrial activities were organised into various art and craft industries and the guild systems to facilitate specialisation. *Ogiso Ere*, who first organised the guilds enacted laws to ensure standardisation and monopolistic privileges.²⁵

Several guilds were established including goldsmiths, brass smiths, carpenters, porters, etc. and the best of these products were collected and sent to the *Oba*. By the law, the *Oba* held the monopoly of international trade. He chose certain councillors and merchants who also were allowed to come to the European traders at the port of *Ughoton*. Indeed, it was the special duties of chiefs *Uwangue* and *Eribo* to supervise commerce and transact business on behalf of the *Oba*. By law, the common man could only take part in the trade, after the royal transaction was over and with the special permission of the *Oba*. European visitors to Benin in 1699 reports

that the 'king has very good income for his territories, which are very large and full of governors and each one knows how many bags of *boesjes* (cowries) the money of his country he must raise annually for the king, which amount to a vast sum which it is impossible for me to estimate.²⁶ Philip Dark reports that, everyone pays a certain sum annually to the governors of the place where he lives for the liberty of trading; he sends a part of it to the king; hence the king can estimate what he has to expect annually.²⁷ It is reported that *ObaEwuare* the great had organised his

enlarged state so that tribute came regularly into Benin City from all his subjects. Twice a year, the tribute units, which includes single villages, groups of villages or chiefdoms-dispatched their offerings in the form of foodstuffs from those nearer the capital and slaves or livestock from those at a distance. The town and palace chiefs responsible for the tribute units took half of what was delivered and presented the rest to the *Oba*. Revenue was also derived from tolls collected at the gates in the city wall; the large markets held in Benin continued its trade with Europeans, a trade of special importance to the *Oba* and palace chiefs because they controlled it.²⁸

Philip Igbafe reports that the *Oba's* ability to create new titles increased these sources of revenue. After the political crisis of the 18th century, the rulers resorted to creating many new titles, possibly to secure support in the struggle against the old and established titled chief. *ObaOvonramwen*, for example, created the titles of *Obayagbona*, *Aiwerioghene*, *Obamarhiaye*, *Obakhavbaye*, *Obaseki*, *Obayuwame* and a few others.²⁹ They also enjoyed a monopoly of many of the products, such as pepper and ivory, that figured in it. The 17th century witnessed a great expansion of the European trade as Dutch and English merchants competed fiercely for Benin's ivory and cloth. To meet that demand, the *Oba's* agents and private traders travelled far inland, and it is probably from this period that we may date the trading associations that controlled the long-distance trade of Benin. All accounts of European visitors to Benin City during those years described it as a very large and well-ordered. This is in no doubt due to the carefully legislated laws that were judiciously enforced. Thus, despite the decline in the authority of the *Oba*, the state was borne along on a general tide of economic wellbeing. The vast sources of income for the state boosted the *Oba's* political power, though it is probable that with a shrinking of the kingdom and loss of trade under the last king of independent Benin, *Ovonramwen's* income was smaller than that of his predecessors.³⁰

The *Oba* also had numerous slaves from various sources. Those captured in war, gifts from prominent chiefs, those inherited from estates of deceased persons who left no heirs and persons sent as part of the yearly tribute from dependent territories. As a rule, the slaves of the *Oba* were comparatively better treated than those of the *Oba's* subjects.³² Also, a hunter of elephants has to render to the *Oba* one leg of the elephant and the biggest tusk. The fishermen in the rivers of the land, must send a certain amount of fishes to the king through the Minister of Fish *Ogua*, who was appointed, by the king. Every leopard killed or caught alive in any part of the Benin Kingdom had to be taken to the king as a special tribute.³³ The *Uwangue* together with *Eribo*, performed the task of regulating prices in the market and supervising the custom duties to be paid by foreign merchants. This was done in a bid to control trade. They, therefore, held court and settled arguments in matters of finance and trade. They were usually consulted on matters regarding relations between middlemen and the Europeans.³⁴

Through the maintenance of law and order, the production process in Benin was jealously safeguarded by the state, which also monopolised many of the sources of income including foreign trade which was managed by the various palace societies that formed the hub of the economic organisation of the Kingdom. Igbofe writes that the *Oba* had monopoly rights over certain articles,³⁵ the most notable being palm oil, kernels, ivory and pepper. The revenue derived from this source was quite considerable. The only subjects who shared the palm oil trade monopoly privileges with the *Oba* were a few of the important chiefs in Benin that the *Oba* bestowed such privileges on them. The *Oba* could close all the markets and routes to traders at will, and when *Oba Ovonramwen* did so, it was partly because of a growing fear of European incursions into his kingdom and partly because of a desire to make more money out of Benin's external trade.³⁶

The chieftaincy titles also helped to ensure the personal loyalty of the recipients to the *Oba* and the state. Conferment of titles was also designed to empower the state and the *Oba* economically by series of enactment during the reign of *Oba Ewuare*. *Oba Ewuare* also passed into law a system of entitlement known as *atoro*. *Atoro* was a share of the titleholder's estate at death that went to the *Oba*, a practice that continued until the end of the seventeenth century, ending during the reign of *Oba Ewuakpe*.³⁷ The *Atoro* law had the potential of reducing the wealth of heirs of titleholders and thereby forestalling the concentration of wealth in any

one family. This helped to weaken the potential threat that wealthy individuals or families could pose to the monarchs' powers. Adewoye has also observed that the task of legislative duties among the pre-colonial states of Southern Nigeria, where Benin was the most outstanding requires leaders of sound mind and as such no one was made a chief at any level or placed in a position of authority unless he was adjudged to be of a sound mind with adequate knowledge in the laws and customs of the people. It was, therefore, not every aged man that was allowed to hold high political position even at the village level. For a better governance and societal progress, emphasis was duly placed on these mental qualities because once in power, the African pre-colonial political office holder could not be easily dethroned and his mental ability, therefore, had a long-lasting effect on governance whether good or bad.

Another requirement for the existence of law that was easily noticeable in the study of law and law making in Benin Kingdom is general acceptability. The laws in the Kingdom were recognised and accepted by the people and was not seen as imposed. This is because it evolved from their socio-historical development. This is in line with Elias' observation that, 'the law of a given community is the body of rules, which are recognised as obligatory by its members. This recognition must be in accordance with the 'principles of their social imperative' an accepted norm or behaviour, which the vast majority of its members regard as 'absolutely necessary for the common wealth. This determinant of ethos is a social imperative.'³⁸ In line with his view, A.O. Obilade explains that customary law consists of customs accepted by members of a community as binding among them.³⁹ This

recognition by its constituent community as a requirement is a central theme in Oyewo and Olaoba's book, *A Survey of African Law and Custom*, where customary law is defined as unwritten law or rules, which the community recognised and applied as governing its transaction and code of behaviour in any particular manners.⁴⁰ It is obvious, therefore, that the customary laws of the people are the custom, rules and traditions, which govern their relationship as members of a community. Laws were acceptable because they were for peace and order and for the general good of everyone in the Society.

Enforceability of the Laws of Benin Kingdom

Irrespective of the level of articulation, law in Benin Kingdom was real and enforceable by human agents despite the belief in powerful

abstract being. Benin laws recognised the existence of various crimes and the penalties that were appropriate for them as well as the constituted authorities that served as the enforcement officers. Perjury, arson, theft were punishable by fine such as cowries, fowls and goats according to the decision of the presiding chief, while more hideous crimes such as murder, manslaughter, adultery with the king's wife, witchcraft, bad medicine against neighbours and treason were punishable by long term imprisonment at the *Oba's* palace, banishment or even execution without waiting for any abstract being to act. Without the human agents who serve as judicial authorities to enforce law, it will not serve its purpose of social control in any society. Thus, A. L. Goodhart explains that 'there must be in all societies a class of rules too practical to be backed up by religious sanctions, too burdensome to be left to mere good-will, too personally vital to individuals to be enforced by any abstract agency.'⁴²

For a firmer grip and better regulation of the vassal states and regions that were under the Benin Empire, it was required of a newly installed *Oba* by law to visit the *Aruosa* shrines or sites of the old Roman Catholic Churches established in the sixteenth century at Ogbelaka, Idumwerie and Akpakpava for thanksgiving. As a sign of rejoicing, a knob of chalk would be sent to all the ruling Princes whether *Enigie* in Benin, *Eze* or *Obi* among the Igbo people or *Oloja* among the eastern Yoruba of the Benin Empire. If any chief refused to accept the chalk, he was considered a rebel and war was declared on him and his town.⁴³ After such a town had been conquered, he and his immediate subordinates would be brought to the king of Benin, who might pardon, execute or deprive him of office and put his brother or another member of the same ruling family in his place.⁴⁴

There were also the series of laws that ensured the *Oba* controlled the district and made it impossible for any *Onotueyevbo* to amass wealth in the district allocated to him in such a magnitude as to constitute a threat to the *Oba* and the stability of the Kingdom. These series of law that govern the intermediary of the *Onotueyevbo* between Benin on the one hand and the regions and vassal states on the other are also part of the evidence of the existence of laws in Benin during the pre-colonial era. Edo observes the provisions in the laid down principles that prevented ambitious chiefs from acquiring too much power in the districts or vassals that were assigned to him. According to him, no chief was expected to make regular visits to the areas under his control, but to stay in the capital where he received deputations and conducted them to the *Oba*.⁴⁵ Secondly, the units under an

Onotueyevbo chief were dispersed throughout the territories to prevent him from building up too much power in a large consolidated area. Thirdly, by law, the Onotueyevbo were drawn from the Eghaevbo order of chiefs. Since this order was not hereditary chiefs, there was little tendency for certain villages to become permanently associated with particular noble families in Benin City. Fourthly, the *Oba* could redistribute the units at his own will particularly when the Onotueyevbo chief was not functioning properly or he is elusive. Fifthly, the Onotueyevbo chief was not the sole channel of communication between the *Oba* and his subjects.⁴⁶

Egharevba asserts that the laws in Benin had fixed punishment for various crimes. Perjury, larceny, receiving stolen property, manslaughter, burglary and false accusation were punishable by heavy fine or imprisonment, while the more serious offences such as murder, rape, sorcery, witchcraft, spying, malicious administering of medicines, the practising of quack remedies and treason were punishable by execution, banishment or sometimes only imprisonment. Conspiracy to steal, murder, or to undermine the law of the land was considered a serious offence, and the culprit would be punished by flogging, binding, heavy fine or long term of imprisonment. These rules governing the Onotueyevbo's relations with the districts and other evidence of the availability of sound laws in Benin kingdom in addition to these penal codes clearly showed that there were laws in pre-colonial Benin kingdom.

Conclusion

Laws in Benin were acceptable, not only because they met the requirements for peaceful coexistence, but also because they fitted into the conditions and circumstances of the society, safeguarded peace and order and met the most salient criteria for the existence of law. It is, therefore, plausible to assert that these laws were deeply-thought-out codes on which the experience and intellect of generations have worked to make useful tool for societal cohesion. If the law is considered overbearing and may be contrary to the collective aspiration of the people in terms of the accepted standard of social behaviour, etiquette or decency, it will be largely ignored by the people and fall into disused. In the case of judicial law-making, the limits of the changes introduced into customary rules will be set as much by the authority and prestige of the individual judge as by the apparent conformity of the newly initiated rule with established standards and usage. Elias explains that 'public assemblies are usually held for the express

purpose of a full-dress debate on the public affairs of the community, with a view to making the various laws accorded as far as possible with the facts of daily life and become more acceptable to the people. Participation in the deliberations is not limited to the chiefs or elders of the community and anyone present who has something useful to say can do so. Thus, Law in Benin was a method of social control and was in line with societal values.

Endnotes

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