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EXTRA-JUDICIAL METHODS: AFRICAN TRADITIONAL RELIGIOUS LEADERSHIP STRATEGY FOR PEACE- MAKING AND SECURITY

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Abstract

The treatise aims at answering the following crucial points; what are the environing forces which have over- whelming influence on human activities? What are relevance of the extra-judicial methods to leadership and peace- making process and security in contemporary African states? How can one articulate the derivation of power from the spiritual forces toward the ennoblement of harmonious relationship in leadership in African society? These among other issues form the crux of this essay. The study hypothesizes that traditional African religious approach to extrajudicial methods can be a humble template to be used for better leadership, restoration of security and peace-building in contemporary Africa.

Key words: Leadership, Security, Peace building, Extrajudicial methods

Academic Discipline: Religious Studies

Subject Classification: Sociology of Religion

Method: Literary analysis

Introduction

This paper examines extra-judicial method as a traditional African leadership strategy and mechanism for Peace making and consequently security. It was employed by the autochthonous Africans with a view to fostering unity, ensuring the maintenance of *esprit de corps* and the facilitation of peace as well as the ennoblement of social harmony. Such strategies entailed the totality of commitment to the social interest and survival of the people as well as those of customs and norms of indigenous African society. Leadership and Peace – making was seen as a useful process of creating meaningful atmosphere for mutual understanding of group identity and solidarity and social development – all subculture in African cultural heritage.

Leadership and Peacemaking process engendered all that was good in traditional African societies. Part of it was security and social welfare. Security of people, property, environment (society) and traditions – all blossoming and

productive towards making the indigenous African societies so composite. Indeed, you will appreciate the fact that Africans would do everything humanly possible and enhanced by the supernatural elements, to actualize security issues for the development of the society. In traditional African society, man cannot neglect the over bearing influence of the deities. This belief in the supernatural to lead and govern the entire society was borne out of the fact that man was not alone in the psychic arena. Certain other forces of the environment existed to complement man's frailties. In that sense, therefore, those forces would have been expectedly responsible for conflicts to ensue in the society. Ironically, when some of the resources inherent in those forces were spectacularly tapped; it often yielded great dividends. Those forces, which were quite spiritual and metaphysical, also influenced leadership and peacemaking in traditional African societies. A lot, therefore, depended on the adjudicators or peace facilitators (leaders and Peacemakers) to employ the forces to greater advantage in leadership and peacemaking process.

The strategies for leadership, peacemaking and security in traditional African society included both from the physical and spiritual angles. The former derived from the wisdom of the elders, kings and chiefs while the latter included the Supreme Being, divinities, priests and priestesses as well as the diviners. The latter group, of course, employed what was regarded as extra-judicial devices. Extra-judicial devices were associated with the religious inclinations of the Africans. They were means beyond the physical power and wisdom to resolve conflict by the kings, chiefs and elders as well as the age-grade association and other professional associations in traditional African societies.

The extrajudicial devices were administered by leaders of secret societies, priests and priestesses as well as the diviners widespread in traditional African societies. The extrajudicial devices included oath- taking, use of ordeal, curses, excommunication and blood feud. The extrajudicial methods were employed to resolve conflicts whose causes were unknown and whose method of resolution were beyond human comprehension and wisdom. It is important to have a holistic knowledge of the strategies evolved in traditional African societies even in the modern times. Indeed, it is not possible for the indigenous communities to be wiped out completely in Africa. If this is possible at the geographical space (on earth) it is not practically possible to wipe off the psychic (religious) space or cosmos where the primordial forces reside.

Nature of Extra-judicial Method

Extra-judicial methods of leadership for conflict resolution in traditional African societies involved the discernment of devices that provided for the knowledge of hidden causes of conflict. It was a means of reaching out to the unknown aspect of conflict to the degree of facilitating the process of conflict resolution.[1] While it was true that conflict was often hidden from the autochthonous people, it was equally possible for accessing the nature of such a conflict through the divine wisdom. This stood the forebears in great advantage for tapping the resources of their environment to put things right in their society. It is very important to know the leadership devices employed in traditional African societies to facilitate peace and ensured harmonious relationship.[2] To this end, understanding of the characteristics of extra-judicial methods will go a long way to appreciating the wisdom and peace initiatives of the autochthones.

[1] Adewoye, O, (1977). *The Judicial system in southern Nigeria 1854-1954,* London: Longman Group Limited. p. 12

[2] Ibid., 12

In the first place, extra-judicial methods had the feature of derivation from the environment in Africa – both physical and spiritual. This you will discover was borne out of the observatory trend of the forebears and their strength of familiarization with their environment thereby tapping its resources. Secondly, the extra-judicial method was never the preserves of all and sundry in the society. Indeed, you will find out that only specialists in divination, medicine and magic had the knowledge of devising the extra- judicial method. Thus, the "scientific" basis of devising the extra-judicial method also had hidden knowledge quite uncommon in traditional African societies. One will expect, therefore, that the administration of the extra- judicial device was carried out by specialists who kept the members of the society spell bound at the result of the extra-judicial device.[3]

Thirdly, it is interesting for to observe that extra-judicial leadership devices in traditional African societies were anchored on traditional African religion.[4] Thus, the command of those who administered them was very significant. Obviously some elements of faith were associated with the command. On the part of the victims of extra-judicial leadership devices, some elements of guilt was evident in their mood and appearance.[5] Once they were offenders whatever extra-judicial device was administered on them quite often worked. Indeed, you will be amazed that extra-judicial devices were never administered in secret. It was open ended and in public gaze. This again one will discover often harassed and embarrassed the culprit towards submitting to the occultic credence of extra-judicial devices.

Conceptualizing Extra-judicial Methods in Pre-Colonial African Society

In traditional African society, leadership and peacemaking models, religion and philosophy were inseparable. Thus, dealing with extra-judicial methods in African societies, the force of traditional religion is inevitable[6]. Adewoye succinctly subscribed to this view[7]. It thus shows quite clearly that in the African setting, there were known and unknown causes of conflict. In the known causes of conflict, the kings, chiefs and elders stood the ground of resolving them, while in the unknown causes of conflict, the supernaturals and their ministers/representatives (such as priests, priestesses and diviners) stage managed the conflict resolution through strategies considered very metaphysical in approach and administration.[8] In the belief system of African people, the Supreme Being was adjudged a perfect judge who oversaw the affairs of men from the religious/spiritual space. The Supreme Being is, indeed, a silent judge and the Africans believe that it is a dangerous thing to incur the wrath of the Supreme Being.[9] Thus, the Supreme Being had been considered as a power to reckon with in the enforcement of the moral ethics of both the earthly and spiritual spaces. Strong social organizations with unlimited power as you will find out, existed in chiefly African societies and had played vital roles, not only in the dispensation of justice in leadership but also in the restoration of peace and harmony back to the society.[10] Indeed, secret societies were strong organizations for the administration of justice. For example, there is the *ogboni* society in most Yoruba communities especially among the *Egba* and the

[3] Ibid., 13
[4] Ibid., 14
[5] Ayisi, E.O, (1979). *An Introduction to the study of African culture,* London: Heinemann. p, 45
[6] Ibid., p.45
[7] Ibid., p. 7
[8] Ibid., p.45
[9] Ibid., p.45
[10] Elias, T.O, (1956). *The Nature of African Customary Law,* Manchester: Manchester University Press. p. 102

Ijebu. There are the *Poro* and *Sande* societies of the Mende of Sierra Leone[11]. Even in the chiefless communities, there are the *Ekpo* (Leopard) and *Ekpe* (Spirit) societies in south eastern Nigeria as well as the *Ndi- diabia* (spiritual men in Igbo Society).[12] Members of these societies usually claimed superiority of intelligence and thus exerted overwhelming influence in the administration of justice and the display of conflict resolution wisdom in their respective domains.

Both known and unknown causes of conflict were treated in the religious cults in African societies.[13] The divinities played crucial roles not only in deputizing for the Supreme Being, but also in the enhancement of social stability and harmonious relationship. They were significant anchors of leadership and peacemaking through the invisible order. They instilled psychological fear in the people. Among the Yoruba, for example, *Sango* (god of thunder) *Ogun* (god of iron) *aiyelala* (god of social (justice), had great force on the administration of justice and moral ethics. Woe betides an erring African who encounters the wrath of these gods.[14] This you will get to know, explains why *Sango* usually exposed theft and lying. Lightening usually struck the offender dead. The emblem of *Ogun* (iron) was always given to a witness to kiss as a means of verifying his claims of truthful disposition.

Ordeal was also associated with the extra-judicial methods in traditional African societies.[15] Ordeals unravel whatever doubt or misery that enshrouded the offenders either civil or criminal. Ordeals take many forms from community to community. For example, among the Kalabari, a person accused of witchcraft was asked to swim across a creek full of crocodiles. The Ibibio and the Efik had an Ibiam oath capable of destroying those who swore falsely.[16] In Buganda, chief Muganda was the mixer of ordeal liquor called *Madudu*[17]. In all the ordeal, you will discover that the victim falls into a coma typifying the severity of his misdemeanour. Oath-taking is anchored on the extrajudicial methods of conflict resolution in traditional African societies.[18] Among the Gurage, ritual oathing featured prominently in the process of determining guilt or innocence. Among the Ashanti, the oath was used for seeking redress of infractions of the social norms[19] The *Kithitu* and *ndundu* oaths were employed to determine guilt among the Kamba[20]. The Asande usually employed oath to detect witchcraft and adultery[21]. In some African societies, oath was used as a curse. For example, Chagga witnesses were solemnly cursed by the chief prior to giving evidence.[22] Both oath and curses have the psychological influences attached to them. It is important for to understand that the ancestors in African setting

[11] Ibid., p. 197
[12] Ibid., p. 102
[13] Ibid., p. 103
[14] Okojie, C.O. (1980). *Ishan Native Laws and Customs* Yaba: John Okwasa & Cokabo. p. 30
[15] Ibid., p. 30
[16] Ibid., p. 30
[17] Kagwa, A. (1969). *The custom of the Buganda,* New York: AMS Press, p. 129
[18] Ibid., p. 30
[19] Ibid., p. 65
[20] Elias, T.O, (1956). *The Nature of African Customary Law,* Manchester: Manchester University Press, p. 230
[21] Evans – Pritchard, E.E (1937). *Witchcraft Oracles and Magic,* London: Oxford UniversityPress, p.33-34.
[22] Opoku, K.A. (1978). *West African Traditional Religion,* Accra: DEP International Private Limited. p. 66

have the power to afflict or plague an uncompromising member of the family attempting to dislocate peace and harmony in the family. Such a plague ranged from sickness to calamities.[23] Among the Ishan ethnic group (in Nigeria), an adulterous husband or wife in the family soon receive the wrath of an ancestor. The husband or wife falls ill until confession was penitently made[24]. Accompanying the extrajudicial processes adopted in African traditional societies, was the point of psychological fear and inducement of anxiety, which overwhelmed the victims. There was the fear of the supernatural, ordeals and blood feud as well as excommunication stress. No African lived in isolation of others in the community.[25] He was part and parcel of the social ordering in the society. Hence, he must comply with the customs of the society. Extrajudicial processes, therefore, enhanced the capacity to unravel conflict issues in traditional African societies even-though modern trends have overtaken them.

Use of Extrajudicial Remedies in Biblical worldview

As in other ancient civilizations, the earliest method of vindicating violated rights under biblical law was self-redress. A burglar at night may be killed on the spot (Ex. 22:1), life may be taken for life[26] and limb for limb.[27] Even when another man's rights were violated, one was exhorted not to stand idly by, but to interfere actively to vindicate them (Lev. 19:16; and cf. Ex. 23:4–5; Deut. 22:1–4). Again, as in other systems of law, self-redress was largely superseded by judicial redress – firstly because of unavoidable excesses on the part of avengers, secondly because the effectiveness of self-redress always depended upon the injured party being stronger than the wrongdoer and the weak victim was in, the danger of being left without a remedy, and thirdly because an injured party ought not to be the judge in his own cause. The right to self-help survived in the criminal law mainly in the form of self-defense or the defense of others; but in civil law self-redress is in Talmudic law much more in evidence than in most other systems, and was a well-established legal remedy.

The biblical license to kill the nocturnal burglar (Ex.) is retained in Talmudic law for the reason that such a burglar presumably knows beforehand that, if caught, he might be killed by the irate landlord and is therefore presumed to come with the intention to kill the landlord first, and: "whoever comes to kill you, better forestall him and kill him first" (Yoma 85b; Maim. Yad, Genevah, 9:7–9). There is no restriction in law as to the mode of killing such a burglar: "you may kill him in whatever way you can" (Sanh. 72b). But if the thief is caught alive, no harm may be done to him; nor may the landlord lay hands on him if he knows that the thief comes for money only and has no murderous designs, or where there are people around who would hinder him (*ibid.*; Maim. *ibid.*, 10–12). Similarly, the biblical allusion to the duty of saving the girl in danger (Deut. 22:27) led to the rule that a man was allowed to kill the persecutor in order to save the persecuted girl from death or rape (Maim. Yad, Roẓe'ah u-Shemirat Nefesh, 1:10). While efforts must be made to avert the danger by means other than killing, a man is not to be charged with culpable homicide if he did kill even though the danger could have been averted by other means (*ibid.*, 13). A person is under a duty to save another from death or rape even by killing the offender, and his failure to do so, while not a punishable offense (*ibid.*, 15–16), is considered a grave sin (Lev. 19:16; Deut. 25:12).

[23] Ibid., p. 66
[24] Okojie, C.O. (1960). *Ishan Native Laws and Customs* Yaba: John Okwasa & Cokabo, p. 146
[25] Ibid., p. 66
[26] see Blood-Avenger
[27] see Talion

The general right of self-redress in civil cases has been stated by Maimonides as follows: "A man may take the law into his own hands, if he had the power to do so, since he acts in conformity with the law and he is not obliged to take the trouble and go to court, even though he would lose nothing by the delay involved in court proceedings; and where his adversary complained and brought him to court, and the court found that he had acted lawfully and had judged for himself truthfully according to law, his act cannot be challenged" (Yad., Sanhedrin, 2:12). This final rule was preceded by a dispute between Talmudic jurists, some of whom held that a man may take the law into his own hands only where otherwise, i.e., by going to court, he would suffer monetary damage (BK 27b). This view was rejected because there could be nothing wrong in doing what the law had laid down as right in the first place (*Piskei ha-Rosh* 3:3). The party taking the law into his own hands only took the risk that the court might, on the complaint of the other party, overrule him; so that in cases of any doubt it was always safer to go to court at the outset.

There were, however, cases of doubt as to what the law actually was, and as to where the respective rights of the parties lay – in which instance the court would uphold the title of that party who had already taken the law into his own hands and put the court, so to speak, before a fait accompli (*kol deallim gaver*: BB 34b). The reason for this rule – "a very startling phenomenon indeed" (Herzog) – is stated by Asheri to be that it would be unreasonable to leave the parties quarreling all the time – one trying to outwit the other – so it was laid down that once one of them had possessed himself of the chose in action, he was to prevail; the presumption being that the better and truer one's right is, the better and more unrelenting effort one will make to vindicate it, while a man with a doubtful right will not go to the trouble of vindicating it at the risk of being again deprived of it in court (*Piskei ha-Rosh* 3:22). This reasoning appears to be both legally and psychologically unsatisfactory; a better explanation might be that where the other party did not establish any better title to the chose in action, he could not succeed as against the party in possession, such possession being for this purpose recognized as accompanied by a claim of right.

The rule applied not only to land but also to movables and money. Although courts are no longer competent to award fines, where a person entitled in law to a fine has taken it from the wrongdoer, *tefisah*, he may retain it (BK 15b; Sh. Ar., ḤM 1:5); and where he had taken more than was due to him, the wrongdoer may sue only for the return of the balance (Tur and *Rema, ibid.*). A wife who had succeeded in collecting her *ketubbah* from her husband is allowed to retain it notwithstanding the husband's contention that only half of it is due to her (Ket. 16b). The holder of a bill which was unenforceable because of formal defects may retain the amount of the bill if he succeeded in collecting it (the numerous and rather complicated rules of *tefisah* were compiled by Jacob Lissa and are appended to ch. 25 of the standard editions of Sh. Ar., ḤM). But there is a notable exception to this rule; namely, no creditor may enter the debtor's house against his will, for it is written, "Thou shalt stand without" (Deut. 24:11); nor may the debtor's property be attached or sold in satisfaction of a debt otherwise than by process of the court (BM 9:13). Even where the debtor had agreed, by contract in writing, that the creditor may satisfy himself by seizing the debtor's property in case of default, the creditor was not allowed to do so except where no court was available to award him a legal judgment (Sh. Ar., ḤM 61,6;).

Two instances of extrajudicial authority in inflicting punishments for crime may be mentioned. One is the prerogative of the king to kill any person disobeying or slandering him (Maim. Yad., Melakhim, 3:8) – not only is the king not bound by the rules of law and procedure, but he may lawfully execute murderers acquitted for lack of evidence or

other formal grounds if he considers it necessary for the public good (*ibid.*, 10). The other is the right of zealots (*kanna'im*) to kill thieves of Temple utensils, idolatrous blasphemers, and men cohabiting with idolatresses, without legal process, if they are caught *inflagrante delicto* (Sanh. 9:6): this rule derives its justification from the praise God heaped on Phinehas for his impassioned act in stabbing the man whom he found cohabiting with the Midianite woman (Num. 25:6–13).

Extralegal Remedies in Biblical world view

Instances are already reported in the Bible of punishments being inflicted, mostly drastic and wholesale, and sometimes at the express command of God, but outside the framework of the law and without legal process (e.g., Gen. 34:25–29; Ex. 32:27–28; Judg. 20:13). With the elaboration of Talmudic criminal law and procedure and rules of evidence, and the consequential complication of the criminal process, the necessity soon arose for extraordinary procedures in cases of emergency (*Hora'at Sha'ah*): it was in such an emergency that Simeon b. Shetaḥ is reported to have sentenced and executed 80 witches in Ashkelon on one day (Sanh. 6:4). Extralegal punishments such as these were stated to be justified or even mandatory whenever the court considered their infliction necessary for upholding the authority and enforcing the observance of the law (Yev. 90b; TJ, Hag. 2:2,78a). With the lapse of capital jurisdiction (see *bet din*) – but not previously, as some scholars wrongly hold – this emergency power was called in aid to enable courts to administer the criminal law and uphold law and order generally, the very lapsing of the jurisdiction creating the "emergency" which necessitated the recourse to such emergency powers. Thus, courts were empowered to inflict corporal and even capital punishment on offenders who were not, under the law, liable to be so punished (Maim. Yad, Sanhedrin, 24:4); and there are instances already in Talmudic times of illegal punishments being administered – such as cutting off the hand of a recidivist offender (Sanh. 58b), or burning an adulteress alive (Sanh. 52b; the Talmud (*ibid.*), however, adds: "That was done because the *bet din* at that time was not learned in the law."), or piercing the eyes of a murderer (Sanh. 27a). In post-Talmudic times, new forms of capital punishment were advisedly introduced, not only for penological reasons but also to demonstrate that these courts were not administering the regular law. Justification for such innovations was found in the biblical reference to "the judges that shall be in those days" (Deut. 17:9), the nature and content of the *Hora'at Sha'ah*, as the term indicates, depending on the circumstances and requirements of the time (*Bet ha-Beḥirah* Sanh. 52b; Resp. Rashba vol. 5, no. 238). The same considerations led to a general dispensation with formal requirements of the law of evidence and procedure (Resp. Rashba vol. 4, no. 311). Conversely, prior deviations from such law, as, e.g., executions on the strength of confessions only, were retrospectively explained as exceptional emergencies (Maim., loc. cit. 18:6).

A peculiar instance of an extra-legal remedy is the rule that where a litigant has a dangerously violent man for his adversary, he may be allowed to sue him in non-Jewish courts under non-Jewish law (Maim. *ibid.*, 26:7; Resp. Rosh 6:27; Tur, ḤM 2; see Judicial Autonomy; *Mishpat Ivri*). In civil cases, courts are vested with proprietary powers so as to be able to do justice and grant remedies even contrary to the letter of the law (Maim. loc. cit., 24:6; and see Confiscation and Expropriation; *Takkanot*).

The fundamental provision referred to above allowed the *Bet Din* to deviate from original Biblical and Talmudic law in matters of evidence, procedure and penal policy, guided by the needs of the time and the place. Based on this

provision, both the courts and the communal leaders utilized their authority to enact communal regulations (see entry: *Takkanot ha-Kahal*) with detailed legislation concerning penal policy. Formally, such regulations are defined as "emergency provisions" (*hora'at sha'ah*), but they were in fact incorporated into substantive Jewish law. Indeed, Jewish courts throughout the Jewish Diaspora occasionally exercised their extra-legal punitive powers to adjudicate capital cases, and even to impose death sentences, without requiring a court of 23, and without being bound by the stringent rules of evidence imposed by the original Jewish law.

The Israeli Supreme Court discussed this issue at length in the *Nagar* case (Cr.A 543/79 *Nagar v*. State of Israel 35 (1) PD 113. Based on this principle, Justice Elon ruled that suspects could be convicted for the commission of murder even where the Court had no direct evidence of their commission of the crime, and even where the dead body had not been found.

The Relevance of Extra-Judicial Method in Contemporary Society

Extrajudicial method was designed in traditional African societies for the purpose of unraveling difficult and unknown conflicts aimed at resolving them. You must understand the fact that there were different types of conflict with some issues attached. Such issues were not easily identified for resolution. They sometimes deserved divine ordering when human comprehension has failed. In this wise, wisdom and diligence were significantly resorted to. Extrajudicial method was adjudged so relevant to speedy understanding and early resolution of conflicts in traditional African societies. Indeed, the knowledge of conflicting situation often resulted in the understanding and articulation of the suitable resolution model attendant on it. This suggests to that history played a crucial role in dictating the trend or magnitude or direction of conflict resolution. It is also vital to know that the designing of extrajudicial method of conflict resolution has gone a long way to demonstrate the fact that the designers were quite wise and resourceful, tapping from the environment those things that make for the development of the society. It reveals the fact that development issues out of the initiatives of the people. Such initiative often articulated peace process and harmony in the society. In contemporary world, extrajudicial methods can be used as a good template for leadership and peace building in current turbulent African states.

Conclusion

Issues of conflict have not been easily determined in indigenous African societies; parties to the conflict had ways of hiding facts and withholding the truth. To reveal the truth in a conflict situation was totally beyond the power and capacity of the leaders and peace-makers who depended so largely on the kind of methods employed. Again deciding on what method to adopt was not all that easy. This was why the indigenous leaders and peace-makers employed extrajudicial methods to unravel unknown causes of conflict and the associated issues.

Extrajudicial methods of conflict resolution were borne out of African cultural heritage. The Africans would do all things possible within the reach of the customs and norms, to ensure amicable resolution of conflict. In the event of not deciphering the truth of the matter, the Africans resorted to employing other means of facilitating peace and restoring harmonious relationship. Conflict resolution was, therefore, a positive innovation and accreditation of social relationship in traditional African societies.

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