

Ogba Philosophy of Human Positive Law

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Abstract

This research work is centered on the concept of human positive law in Ogba Land of Rivers State, Nigeria. The law as promulgated in Ogba traditional society was made to protect the traditional values of the land. They were enacted in accordance to the principles of the deities who are responsible for punishing the offenders of the law. In this wise we unveiled the philosophical ideology behind Ogba traditional system of law. Hence Ogba philosophy of human positive law as pertains to legitimate source; rationality, well promulgated, common good, and conformity to the divine laws were researched on. These salient points were very instrumental to our research on the topic in discourse; hence, our research findings were based on them.

Introduction

Laws which regulate the society are very important social instruments and as such must be placed in its proper place to fulfill its ends; they must not only have positive foundations but sound ethical ground (Iwe, 1978). Ogba philosophy of law is inspired as such and founded on the principles of morality, justice, truth, fortitude, and uprightness. Hence, this research intends to explain the philosophy behind Ogba peoples approach to enacting laws based on ethical ground.

Laws for the Ogba people require a moral foundation, while there could be morality without law, laws without moral foundation are inconsistent with the peoples tradition. Ogba philosophy of law could therefore be defined as the analytical or rational principles behind the enactment of laws. An Ogba law is a law not because it has passed through a technical procedure but because of its moral values. For example, an Ogba development law which intends to destroy the people's buildings or crops may receive insubordination from the people because of its economic destructive tendencies. A promulgator of such law may be sued before the shrine of the deity. Some time ago the Oba of Ogba Land, His Eminence, Oba Chukwumela Obi II attempted to abolish one of the aged laws of the and which says that female dogs should not be allowed to live in Ogba Land. This law was greeted with serious insubordination from the people and would have also cost the Oba his stool despite his good intentions of trying to abolish the law (Okoro, 2007)

Therefore Ogba philosophy of positive law is that laws must not be made on the will of any man but on a sound cultural background. In this wise Ogba laws are consciously obeyed by the people because of its ethical or historical background. Ethically or morally they may have originated from Chukwu Abiama. Historically, it may have been legislated by a particular generation of ancestors in the past or by the present traditional authority in Ogba land. Hence, Ogba human positive law could be defined as a reasonable ordinance authoritatively proceeding from the Oba in Council for the purpose of promoting peace, harmony and the general welfare of the community. It is characterized by the following features; legitimate source, rationality, must be well promulgated, common good, conforms to the divine laws (Okafor, 1992).

Features of Ogba Human Positive Laws

There are five features of Ogba human positive laws, namely; legitimate source, rationality, must be well promulgated, common good, conforms to the divine laws.

Legitimate Source: The source by which any law is made in Ogba Land is of utmost concern. Laws made in Ogba Land must bear the stamp of legality. In other words it must proceed from the traditional authority of the land constituted for that purpose. These laws so made must pass through ritual ratification through the use of Owhor a small wooden staff of about ten inches length and eight inches width. The Owhor is the symbolic authority of Chukwu Abiama, the Supreme Being, the ancestors and the deities. This ratification ritual is performed by Owhor holders. Each time the Owhor is truck on the ground, the council which is made up of Oba and the chiefs would say odi kwaya meaning may it be so. This being done, the law is now consecrated and have acquired a new dimension – it is now a spiritual law ready to be promulgated.

Rationality: Laws made traditionally must be rational enough to meet the yardstick of being ethically sound. Ogba laws are identified with the creation of laws according to the ethics of the land. It must have the embodiments of justice and as a

matter of necessity it must be made with honest intentions and with all sense of morality.

Ogba laws are not just the product of a single dictator or an aristocratic set up. Each chief or the representative of the people in council is given a free will to debate on the law, and before the final debate he must have informed his people whom he is representing to know their mind about the proposed law. This enables each representative in council to take a stand based on the collective will of his people. By so doing every adult in Ogba land from the kindred level is involved in the process of law making. Thus unreasonable laws are unenactable in the land, because the people cannot make laws that are impossible for them to obey.

Must Be Well Promulgated: Ogba laws as made from the authoritative source must be well promulgated to ensure its knowledge in the society. In the ancient time it need not be published or written in a book. It is the responsibility of the Chief, Eze, or elder who represented his kindred in the council to convey a meeting of his kindred and explain every bit of the law to his people. Town crier is also dispatched from the Oba's palace to carry out the information round the whole town and villages of Ogba land. In Ogba judicial system a reasonable ignorance of the human positive law is an excuse of the law. Hence, promulgation is a very important aspect of the traditional laws. The laws are not made so that people would fall prey to it by way of violating or going contrary to them. They are made to protect individuals and the society, thereby ensuring peace, harmony, security and further civilization in the land.

Common Good

The aim of man made laws in Ogba community cannot be over emphasized. The law is made for the benefit of all segments of the society. It is in this sense that it must be understood that laws are made for the common good, the welfare of all. This is why in Ogba community retrospective or retroactive laws are not made. Retrospective laws are seen as victimization laws, not meant to protect the people at present or in the future but to haunt the victims. Culturally in Ogba it is inconceivable to enact such laws. Those laws must be made

for the interest of all accounts for the major reason why every adult in the community must participate in the law making process. Anybody who has a contrary view on a proposed law is given a fair hearing to express him or herself on it. To put it clear, the common good of the people is the sole aim of Ogba laws. "Injury to one, injury to all" could be said to be an ancient concept found in the law making process in Ogba community, which is still being practiced today.

Conforms to the Divine Laws: The divine law is immutable and unchanging. The divine law is superior and very corrective of other laws such as the positive law or civil laws. Examples of the divine law include the equality of all men, right to life, right to equal legal protection etc. No man can violate any divine law without doing some harm to himself (Omoregbe, 1994). The divine laws are latent in our beings and we consciously or unconsciously obey them when we are confronted with them in our mundane life.

All laws enacted by the Oba in Council must conform to the dictates of the divine laws. Thus, any proposed law that runs counter to the divine law is being rejected.

OGBA PHILOSOPHY OF HUMAN POSITIVE LAWS

We must understand that the difference between Ogba philosophy and other tribal groups is resident in their personal world-views. It follows as a corollary that even though the five features discussed in the preceding pages may be found in other tribal or the Nigerian legal system, Ogba people have a different conception as to why a proposed law must pass through those technical procedure. It is this difference of conception that makes Ogba philosophy of human positive law exclusive. Hence, we are to undertake them now, one after the other.

Ogba Philosophy of the Legitimate Source of the Law: Ogba philosophy of legitimate source of the law is hinged on spiritual connotations. For the Ogba man when God has crowned a king all is expected to obey the king. Such is the case with Ogba people with respect to enacting laws. The Oba in Council is the legitimate authority that has been spiritually crowned by gods of the land to oversee the affairs of the people. The Oba in Council does not err. It is deemed that

whatever pronouncement he makes is being inspired by the deities. Even if the Oba errs, it is not the duty of the chiefs or any other citizen of the land to pronounce judgment against him. It is the duty of the gods to do that. Before the Oba assumes duty after his nomination he was administered an oath of office. The Oba's duties were being made lucid as he takes the oath. Among the enormous duty, the Oba was charged with, and sealed under traditional oath includes that of making laws for the people. It is for this singular reason the Oba remains the most suitable person that will append legitimacy to any proposed law in Ogba Land.

Ogba Philosophy of Rationality of the Law: That a law must be rational in Ogba Land also implies that the law as made in Ogba Land has spiritual colouration. The law is made to please the gods or the deities who are the spiritual governors of the Ogba territory. In other words, the Ogba people do not enact laws to please her citizens whereas the people cannot legislate laws that they cannot obey, the obvious truth is that these laws are made to please the decrees of the deities who are always in one way or the other demanding a task from the people. Thus laws are increasingly being enacted to protect the taboos of the land. Thus there are ethical laws underguiding the attendance of market on approved days, marriages, circumcision, farming, festivals, building, mating, incest, homicide etc.

Therefore, a proposed law in Ogba Land becomes irrational or inconsistent when it cannot in content act in favour of the gods. The god of prosperity cannot prosper any Ogba son or daughter when he or she is living in opposite directions to the laws of prosperity in Ogba Land.

Ogba Philosophy of a Well Promulgated Law: Philosophically, the Ogba people believed in the ideology of "never kill a man who has said nothing". No reasonable man says anything when he is ignorant of what to say. I have stated it on the preceding pages that research shows that the ethical laws are promulgated in accordance to the rational will of the deities. To that extent, the gods are also responsible for punishing the offenders of the laws.

In Ogba community, when any body is sued before a deity shrine for violating a particular ethical law, there are traditional procedures, which the gods will use to seek redress or vengeance for the petitioner. One of the procedures is that the deity would invite the spirits or the spiritual beings of both parties to himself. Here in spirit, the deity will give fair hearing to both persons. In stating his case, the sued or the respondent can make a case in spirit that he is ignorant of the matter before him. This is a proper defence which automatically frees the respondent, thus in Ogba Land the gods do not punish people for what they are ignorant of, neither, will the Ogba gods inflict punishment on anybody for violating a law which he or she is ignorant of. This also accounts for the reason why Ogba children and some strangers are innocent before the gods of the land. To avoid any future problem of this sort it is the duty of the traditional government of Ogba Land to ensure that every adult citizen of Ogba land is knowledgeable about the enacted laws of the land.

Ogba Philosophy of Common Good of the Law: In the contemporary time, co-operation is needed to attain a well being in a world of changes and unprecedented circumstances. This could be achieved in various ways. In Igbo community one of the possible way of doing this is in enacting laws for the common good of all. This identifies the community in togetherness, in unity, peace, orderliness in carrying out religious duties in obedience to ethical laws of the land.

Ogba laws are made for further civilization of the land. This is why when a taboo or law involving the whole community has been broken, it is the whole community that will come together to perform the sacrifice to propitiate the gods of the land. Therefore, philosophical common good of the law is that the law must be enacted to develop all parts of the land, including individuals. This is further buttressed in the ideology that a tree cannot make a forest. In other words the individual alone cannot create civilization but the collective effort of all and sundry.

Ogba Philosophy of Conformity to the Divine Law: Cosmologically, Chukwu Abiama is the Supreme Being, the

creator of the universe and all that is in it. It is also believed that divine or natural laws were decreed by Chukwu Abiama in the beginning of the world as fundamental basis for all creations to work with. For this fact or world view observed as truth by the Ogba ancestor, all human positive laws enacted in Ogba Land must be in conformity with an existing divine law. This research attest that Ogba people have numerous ethical laws legislated by the past and present Obas in ocunci. But none of those laws conflicts with the divine laws.

Change in Ogba Characteristics of Human Positive Laws

There have been changes in Ogba characteristics of human positive law with respect to the following – legitimate source, rationality, and promulgation of the law. These changes owe their existence to Ogba science, Christianity and education.

Ogba Philosophy of the Legitimate Source of the Law: In this modern time, it is said that whatever pronouncement the Oba makes from the throne is a spiritualized one; the reason being that the Owhor, the symbolic authority of ancestors and the deities of the land have all been incorporated into the Oba's throne. Therefore whatever law the Oba in Council pronounced is under the oath of the Owhor. Before this pronouncement, the proposed law must have passed through a voting stage by which each expresses his view about the law, of course a required vote in accordance with the custom enables the Oba to append legitimacy to the law.

By this explanation we mean to state that the Owhor holders no longer carry the Owhor to the venue or palace to strike on the ground. Rather the Owhor has been scientifically spiritualized on the Oba's throne, the Oba is said to be sitting on it. This system is different from the ancient time where the Owhor holder must carry the Owhor to the venue where the law would receive stamp of legitimacy.

Ogba Philosophy of the Rationality of the Law

Ogba philosophy of rationality of the law states that the law is made to please the ancient gods and the ancestors of the land. Nowadays, there have been changes in this concept among the educated chiefs and citizens of Ogba Land.

Among the Ogbas who have come in contact with western education, some of them deride the traditional concept of the deities. Some of them see some occurrences like thunder striking, accident, and illness as not just handwork of the deities, but mere natural occurrence. Some simply believe that accident could occur as a result of mere carelessness and mechanical faults. Likewise some believe that illness could occur as a result of unhygienic way of living and that thunder also could manifest as a result of coming together of some vicious spiral elements in the sky – heaven. This sort of belief transcends many things in the modern Ogba today. Thus some traditional concepts like the observances of taboos, sacrifices etc. and the laws protecting them are constantly being violated mostly by the educated ones and Christians. To that extent ethical laws are no longer made to please the gods but to protect the individuals and the territorial integrity of Ogba land.

Ogba Philosophy of Promulgation of the Law: There have also been changes in the Ogba traditional system of promulgating the law. These changes owe its existence to modern means of communication. Thus in addition to dispatching a town crier to make the law knowledgeable, research observed that the Ogba traditional government have cleaved to mass media - television and radio networks, news paper stands and books as a means of promulgating the law. This is commonly done when the Oba had made pronouncement scheduling a particular date for an event like Nchaka festivals. These dates are these days made known in the mass media. Most of the Ogba laws guiding traditional marriages and burial rites are now put in book forms and sold in bookshops and news paper stands.

Also in Ogba community today ignorance of the law is not entirely an excuse of the law. The law must be obeyed by all including strangers. Consideration may be granted to children depending on the age.

The Way Forward/Recommendations

There is need for other tribal lands including the Nigerian government to emulate or inculturate the good aspects of Ogba traditional legal system into theirs. The Oba in Council is

given the spiritual mantle to append stamp of legitimacy to the law and when this is done all must obey. I think the same should become operational in this country. When the national house of assembly have passed the law and the president has append his authority all should obey the law. The ideology by which the law is being made and violated by the senators and other law makers is unculturally Ogba tradition. All should obey the economic, traffic, professional laws etc. of this country to ensure further civilization.

There is need for the Nigerian government to be rational in her legislating laws in this country. It is not true that our law makers have been rational in the making of all laws. The rule of law have been tampered, hence it is my recommendation that immunity clause that was introduced into the 1999 constitution should be abrogated. Also the land use decree which cheated the actual owners of the land should be expunged. Also the issue of resource control should be properly addressed. Resource control issue should also transcend to professional or labour productivity. The idea by which a law maker would earn twenty times the salary of a university professor is irrational and unculturally Ogba, and should be properly addressed by the law makers. In Ogba community the law is made to protect the bourgeois and the so called proletariat, this is a good example to be emulated by all law makers.

Summary

The research tabulated five features of human positive laws of which seems to be operational in enacting laws in other tribes as well. Nevertheless, Ogba philosophy which under tones these features is what makes the Ogba case different from other tribes in enacting or making laws. Hence research observed the following: The Oba in Council is the only personality given the spiritual mantle by the Ogba ancestors and the deities to append legitimacy to any proposed law which have passed through the traditional technical procedure.

Ogba philosophy of rationality of the law implies that the law is made to please the gods of the land.

Ogba philosophy of a well promulgated law also points out that "the circumstance" and "laws" which anyone is ignorant of cannot be used to harm him before the deities or the gods of the land. To that extent children and some strangers in Ogba Land are seen or declared as innocent by the gods.

Ogba philosophy of common good of the law implies that the law must be enacted to develop all parts of the land including individuals.

That all human positive laws must conform to the divine laws is based on the ancestor's belief from ancient times that the Supreme Being decreed the divine laws as a foundation stone for all other laws. Hence subsequent human positive laws must be in alignment with the divine laws. Nevertheless, there have been changes in the process of making laws in Ogba land.

Conclusion

Ogba land legal system is inseparably bound with their traditional religion. Hence religion is the parent body of law and morality, this is why in this land, and law enforces the principles of morality. In this sense law without moral basis is a failure in Ogba community. Ogba human positive laws are backed by the gods of the land, through their ratification by the Owhor holders. Examples of these types of laws include laws guiding against homicide, stealing, raping etc. Disobedience to these laws may attract the punishments of the deities which may lead to death. Hence, it is our submission that for any one to enjoy peace, happiness, health and prosperity in Ogba land, he or she must observe the promulgated human positive laws of the land.

The process of making laws in Ogba land is very clear. Every adult male citizen of the land is involved in the process through his representative in council. The representatives or the law makers are the chiefs, these together with the Oba forms the judicial body in Ogba land and all these positions in council are hereditary. There have been changes in the process of ratifying the law. In the ancient times, the Owhor holders must carry their individual Owhor to the venue or palace where the law would receive stamp of authority, nowadays or in this modern time they no longer carry it as

such. The reason being that on installation of any Oba, the Owhor's efficacy and all its spiritual power have been incorporated into that throne which the Oba sits when in council or in important meetings. It is like a wise man who instead of carrying his talisman about everywhere, now decides to modernize it by putting it into his body. Having done so, he no longer needs to carry the talisman or amulet, yet he gets the same result.

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