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ADMINISTRATION OF JUSTICE IN COLONIAL ILESA, SOUTHWESTERN NIGERIA, 1900-1960

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Abstract
The Ijesa and the various nationalities that live in Southwestern Nigeria had systems for the administration of justice before the advent of British colonial rule. From the communal courts, age-grade systems and adjudication by adult members of the community directed by the elders in Igboland, to the court of the Oba and his chiefs in Yorubaland and Benin kingdom to settle disputes, there was always a system of administering customary law, which embodied societal norms and morals. The laws administered were accepted standards of usage and practice of the nationalities, mirroring precisely the stage of development of the respective nations. The advent of British colonial rule led to the introduction of the English Common Law and the whole paraphernalia of English judicial process in Ilesa. Although a number of works exist on the judicial history of colonial Ilesa, what has not been emphasised sufficiently is the role of the imported English legal system in the establishment and sustenance of British imperium in the area. This paper, therefore, critically examines the administration of justice in colonial Ilesa, namely, from 1900, when Ilesa came under British colonial rule to 1960, which marked the end of colonial rule. It highlights the motives behind the changes in the town's judicial system and the role of the courts in the administration of justice. An attempt is also made to evaluate the impact of the colonial judicial system on the town's social and political development during the period under review.

Keywords: Colonial Ilesa, Customary law, English legal system, Administration of justice

1. Introduction

Justice is a complex concept. It is both a moral and political issue. It is also related to law and rectitude. However, whatever its precise meaning may be, justice is a moral value, that is, one of the aims or purposes which humans set for themselves in order to attain the good life. Such a system of values may, and in fact, does differ from place to place and from period to period. And, it may be impossible to demonstrate the absolute superiority of any particular system of values over all others. Ilesa and the various nationalities that live in Southwestern Nigeria had

systems for the administration of justice before the advent of colonial rule. The laws administered were accepted standards of usage and practice of the nationalities mirroring precisely the stage of development of the respective nations.

The duty of those who administered the law in settling disputes was "to assuage injured feelings, to restore peace, and to reach a compromise acceptable to both disputants".[49] Therefore, the administration of justice in most traditional communities of southwestern Nigeria was conterminous with peace-keeping. The welfare of the community was the primary concern of criminal sanctions, while the aim of civil law was interpersonal reconciliation. Parties to a suit often left the court, "Not puffed up nor cast down - for each a crumb of right, for neither of them the whole loaf".[50] The justice system in pre-colonial southwestern Nigeria was less formal, it was more arbitral and conciliatory and was geared towards the maintenance and restoration of social equilibrium.

Given the various articulations of law by jurists, particularly John Austin and later legal positivists, the question has been raised, whether pre-colonial African societies really had laws or courts or a judicial system properly so called. To the positivists, what is often referred to as customary law, as it existed in pre-colonial southwestern Nigeria, cannot be regarded as law properly so called. Law, according to them, is a command issuing from a sovereign, and until a custom is pronounced as law by a sovereign backed by sanction, or becomes a ground for judicial decision, it lacks the binding character of the law.[51] However, three principal and distinctive features can be found in all laws, that is; they are normative, institutionalised, and coercive. According to Joseph Raz;

> It is normative in that it serves, and is meant to serve, as a guide for human behaviours. It is institutionalised in that its application and medication are to a large extent .performed or regulated by institutions. And, it is coercive in that obedience to it, and its application are internally guaranteed, ultimately by the use of force.[52]

But even on Austin's own ground, much of the customary law in traditional southwestern Nigeria communities qualify as law. For instance, the human sovereign was not lacking - usually in the form of chiefly authorities, as in the Yoruba and Edo. Kingdoms. Even in the non-chiefly Igbo societies east of the Niger, there were recognised authorities who could pronounce what was the law in given situations. The ruling authorities sometimes legislated for their subjects, and

[49] Elias, T. O. 1962. *The Nature of African Customary Law* Manchester p.52.
[50] *Ibid* p.242.
[51] Austin J. 1954. *The Province of Jurisprudence Determined* London. p. 24. R. Pound 1954. *An Introduction to the Philosophy of Law* New Haven p.13.
[52] Raz J. 1970. *The Concept of Legal System* OUP p. 13.

were to that extent issuing command.[53] Furthermore, judicial decisions are of crucial importance in Austin's concepts of a legal system. In traditional southwestern Nigeria, there were courts at varying levels pronouncing on specific cases. The proceedings in many of them might not be as formal as in European courts of law which Austin and the later positivists had in mind, but there were communities where court proceedings in the adjudication of disputes were no less ceremonious and formal.[54] Therefore, doubts created on the nature of African customary law as law properly so called stemmed from some preconceived notions of the concepts of law, which were not adequately informed. Hence, it became difficult for such analysts to classify other varieties of laws that they probably did not have in contemplation at the time their theories were constructed.

More so, the arbitral and informal nature of traditional dispute settlement procedure was alien to the Europeans, particularly the British, who were used to the formalised Common Law system, established procedures and rules of evidence with their obvious technicalities. Basically, there were cultural and legal differences between the natives and the Europeans, who felt the need to regulate the emerging commerce by new laws. More importantly, the so-called *"civilising mission"* of Europe could not have left the traditional justice system intact as it met it.

Although historians of modern Africa have not paid much attention to the importance of European law in the establishment and maintenance of colonial rule on the continent, there is nothing new about the role of law in imperialist expansion. In ancient Rome, law occupied a crucial position in the administration of the Roman Empire. As the Empire expanded, the sphere of application of Roman law grew correspondingly. Between 150 BC and AD 150 the metropolitan law of Rome expanded considerably to meet the growing needs of the Empire. In the various parts, the indigenous laws were never wholly replaced, but the *ius gentium*[55], (law of nations), an embodiment of Roman legal culture, stretched in all directions to embrace non-Roman peoples, thereby facilitating their incorporation within the Roman imperial orbit.[56]

It is against the background of the foregoing that this paper critically examines the structure and machinery of the administration of justice in Ilesa under British

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[53] Elias, T. O. 1962. *The Nature of African Customary Law* Manchester; A. N. Allot 1970. *New Essays in African Law* London.

[54] Gluckman, M. (ed.) 1970. *Ideas and Procedures in African Customary Law* London p.45.

[55] In legal theory, *ius gentium* is that law which reason establishes for all men, as distinguished from *ius civile.* Or the civil law peculiar to one state or people. The *ius gentium* was devised by Roman lawyers and magistrates as a system of equity applying to cases between foreigners and Roman citizens.

[56] Kunkel, W. 1966. *An Introduction to Roman Legal and Constitutional History* Oxford p.74.

colonial rule. It highlights the indigenous justice system, the introduction of the English Common Law and its role in sustaining British colonial rule in Ilesa. The study relies on the use of primary and secondary sources. The primary sources derived largely from archival records on Ilesa Division, Ordinances, colonial records, and Law Reports located in the National Archives in Ibadan, Nigeria. Secondary sources included books and articles in journals.

2. The Traditional Justice System in Ilesa up to 1900

Ilesa lies in the Yoruba-speaking country of southwestern Nigeria, around the upper reaches of the Osun, Shasha, and Oni rivers, which flow south and southwest to the Lagos Lagoon some hundred miles away. It is situated between longitude 4^0 30^1 and 5° E and latitude 7° 30^1 and 7° 45^1 N. Much of the Ilesa territory lies in the rain forest belt of the Yorubaland to the North East. Ijeshaland covers an area of 950 square mile out of which Ilesa township alone covers 16 square miles.[57] Ilesa, the administrative and political capital of Ijesaland, situated in the centre of the two Ijesa divisions (now called Obokun and Atakurnosa Local Government Areas), was probably founded about early sixteenth century. The foundation traditions of the Ijesa, as of other kingdoms in the region, take the form of a dynastic migration from Ile-Ife, the sacred centre Yoruba mythology.[58]

Ilesa was an *Ilu*, a self-subsistent community; and since many other settlements in Ijesaland are also, by general consent, designated as *llu*, the privileged political status of Ilesa within the Ijesa kingdom can be expressed by describing it as *Ilu alade* ("community with a crowned head"), being the seat of the *Owa* - the paramount ruler of the Ijesaland. In Ijesaland, the *Owa* was both the judicial and administrative head of his people. He had the supreme power to adjudicate over all cases, both civil and criminal and his judgment was final. The *Owa* was seen as an *Orisa,* (deity) and as such, he did not make frequent public appearances to the people. Instead, he had under him, for the administration of justice, two sets of chiefs. The senior set called *Agba Ijesa,* and the junior set called *Elegbaji.* This basic two-tier system became greatly enlarged and diversified as Ilesa expanded.[59]

Ilesa's communal structure may be derived from two-coordinated principles: a spatial arrangement by quarters, and a political hierarchy of titles, both of which were linked directly to the *Afin* the *Owas's* palace. Ilesa is regarded by its citizens as comprising some forty *Ogbon* or quarters, founded over several centuries. These units exist for maintaining of local order, their chiefs severally constituting the lowest-level of judicial tribunals, and for meeting certain local needs such as keeping the street clean and in good repair. Each quarter has a local head whose title indicates his quarter. For instance, *Lejofi* of *Ijofi, Lorunyin* of *Oke-Iyin, Aloro*

[57] J. D.Y. Peel 1982 *Ijesha and Nigerians* London p.33.
[58] *Ibid*
[59] J. D. E. Abiola, J. Babayemi, & P. Atayero 1962 *Itan Ilesa* Ilesa p. 7.

of Iloro, etc. He presided over a local council of chiefs, minimally six in number, known as the *Iwarefa-mefa,* according to the local norm of the basics of communal government. The young men of a quarter organised under the *Loriomo* (head of young men), who was responsible to the chiefs of his quarters. The *Loriomo* was responsible for enforcing the decisions of quarter chiefs.[60]

The quarter, rather than the lineage was the major unit of administration in pre-colonial Ilesa, the link between the household and the community at large. Its mutual ties and services, its roles as unit of mobilisation and control were grounded in traditions and customs of the people. They were aggregates of households; and while some lineages would be entirely limited to one quarter or regarded themselves as belonging essentially to one quarter, very many people had filial connections with lineages in other quarters than the one in which they lived. The larger titled lineages had members in many quarters and the great bulk of quarter titles were open and not restricted to any particular lineage.[61]

The political relations of the quarters to the centre took place through a complex system of titles, many of which had political, judicial, and administrative functions or attributes in relation to the community at large or to lineage interests, which cut cross those of the quarters and spread throughout the town. Title was a publicly recognised status in the town's political structure through which, on the one hand, the community's human and spiritual resources are summoned, and on the other, assets won by the community are redistributed. In Ilesa, as in Yorubaland in general, the contemporary system of justice reveals a large degree of survival of the traditional system of justice. The chiefs were, and still are the custodians of customs and practices known to the community.

In pre-colonial Ilesa, there were three levels of judicial organisations, namely, the administration of justice at the family level, at the quarter or village level, and in a central body for the whole people at the *Afin* the *Owa's* palace.[62] The family court was naturally the least developed form of judicial administration. It consisted of the family council, and also served as the family administrative authority. It met in the family compound with the council of the elders usually sitting on the verandah of the family head house, the *Baale.* The jurisdiction of this court was restricted to minor disputes among members. Such offences included land disputes within the lineage, fighting, petty theft and adultery within the lineage. In discharging these functions, the council acted as peacemakers and arbitrators rather than as a bench of judges, since the notion of justice for the family emphasised reconciliation rather than punishment. Sanction at this level was usually a fine of kola and palm wine and in some cases both disputants were fined. The aim of the elders was mainly to

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[60] J. D. E. Abiola, J. Babayemi, & P. Atayero 1962 *Itan Ilesa* Ilesa p. 7.

[61] *Ibid*

[62] *Ibid*

settle the misunderstanding and not to punish a person. The kola and palm wine were to a certain extent, an offering denoting settlement.[63]

Immediately above the family court was the quarter or village court. Its jurisdiction was both appellate and original in criminal and civil matters. It was presided over by the head of the quarter or the *Baale* and his council, the *Iwarefa Mefa*. This court, in its judicial capacity, met in the same place used for deliberating purposes on other political, economic and religious matters. In this court, when the presiding council received a complaint, it would appoint a day for hearing and notify the disputants. At the trial, the complainant first gives evidence, which may be admitted or rejected by the defendant. The verdict of this court was delivered by the members of the presiding council, who spoke in order of seniority. The *Baale* would then deliver the final judgment.[64]

The third and highest court was the *Owa's* Supreme Court. Its system of appeal was carefully worked out such that the dissatisfied litigants and the members of the lower courts would have confidence in the system. The court in its capacity as a court of first instance heard all major cases, such as murder, arson, land disputes and the likes. The seriousness or peculiar circumstances of these cases took them out of the jurisdiction of the village or family courts. When complaints of such cases were brought to the *Owa's* palace, the first set of people to hear them were the *Agba Ijesa*. They would in turn report to the *Owa* for final judgment. The *Owa* and the *Agba ljesa* would deliberate on the appropriate judgment for the case at hand after the disputants would have been sent out. In cases of appeal from the lower courts, both litigants and court members were allowed a hearing at the appeal sessions and the judgment could be amended or reversed. The *Emese* would then lead the suspect to his punishment.[65] The *Emese* were regarded as the "hands" of the *Owa* in all his business throughout the kingdom. Bearing the beaded staves *(Opa ileke),* they can be likened to the policemen of nowadays.

In the pre-colonial justice system in Ilesa witnesses were not very necessary, for it took the form of investigation and inquisition as opposed to the accusatorial system known nowadays. For instance, in cases of theft or adultery and cases involving disputes, oath taking played dominant role in the weight attached to evidence adduced in court. This had tremendous weight on the decision of the courts to the extent that it might mean exculpation from blame to any oath taker. This might be regarded as extortion of facts from parties or subjecting them to an ordeal, but it helped the traditional courts in deciding guilt or innocence. The procedure appeared to have eased the work of the traditional judges, in that the suspect's shared belief in oath may force him to make a confession of his crime or his level of culpability.

[63] *Ibid*
[64] *Ibid*
[65] *Ibid*

In the estimation of the people, the elders before whom oath was administered were representatives of ancestors, who were revered and held in great esteem. The elders on their part believed they were under the constant watch of their ancestors. The occurrence of a dispute would have offered the disputants opportunity to fabricate were it not for the existence of this belief. This belief in the supernatural was a strong regulator of behaviour and had its place in the administration of justice in pre-colonial Ilesa.[66]

Under the traditional justice system in pre-colonial llesa, there was no formal imprisonment as can be described today. Sanctions during this period took the form of fines and light punishments. The peace-keeping elements in traditional approach to justice was much evident at the end of hearing of a civil suit. Hence, the guilty party was usually expected to tender an unreserved apology to the other party in the presence of the whole court. And, since in normal circumstances it is rare in a civil dispute for a party to be wholly right or wholly wrong, members of the court would not be slow to point out the errors or commission or omission even of the party judged to be right. Similarly, the trial of criminal offences was not altogether devoid of consideration of peace-keeping and harmonious inter-personal relations. For instance, theft was often considered a very serious offence, but the thief was punished not so much for his theft as for the element of mistrust, which he was believed to have introduced to the community by his act, making inter-personal relations rather precarious A crime was viewed as a disturbance of individual or communal equilibrium, and the objective of the law in imposing sanctions was to restore existing balance. In Ilesa and most communities in southwestern Nigeria, except for intentional murder and witchcraft, the penalty for which may be death or banishment, virtually all other offences could be neutralised by payment of adequate compensation to the injured party.

3. Advent of Colonial Rule and the Imposition of English-Styled Judicial System on Ilesa

The English Common Law and the whole paraphernalia of English judicial process brought into Nigeria were natural servants of colonialism. The use of English Common Law in the colonial control of southwestern Nigeria began with treaty making. In this spree of treaty making, British officials prevailed upon the local potentates to put their marks on pre-fabricated treaty forms.[67] It is instructive to note, however, that in strict law, most, if not all of the treaties, were not valid. Largely because of language difficulties and differences in political concepts, parties to the treaties were rarely *ad-idem* in their intentions. The period 1862 to

[66] *Ibid*

[67] National Archives Ibadan, hereinafter NAI, CO 147/175 Confidential Affairs of Ilesha, 1899-1905.

1915, witnessed a rapid expansion of English law in much of Southwestern Nigeria. This was necessitated by administrative and economic requirements. Thus, the introduction of English law and legal procedure into Ilesa and the Yoruba states in the hinterland was clearly prompted by the desire to protect the economic interests of Britain and by the requirements of day-to-day administration. It was essential and expedient that an ordered administration be established in the newly conquered territories.

The Ijesa were not conquered by the British, neither did they willingly undergo incorporation into what became the Nigerian state. Rather, like the other Nigerian groups, they were maneuvered by stages into the Lagos Protectorate and its successors - Southern Nigerian, from 1906, and Nigeria from 1914. The Ijesa gradually became aware of the constructions that their 'protector' put upon the relationship. From the 1880s and possibly earlier, the British had been seen as a political resource, which could be deployed by the Ilesa authorities in their struggle against the Ibadan. But as Britain became more directly interested in controlling the hinterland of Lagos, it became more and more impossible for Ilesa to impose her terms on the relationship. The British came to intervene directly in Ijesha affairs in the 1880s, when the armies of Ibadan and Ekitiparapo confronted one another in stalemate in the hills of Northern Ijesaland[8] In 1886, a treaty was signed with Ibadan. The treaty committed the Ijesa to endeavour in every legitimate way to promote trade and commerce and to abstain from acts likely to promote strife, and gave the Governor the right to arbitrate if further disputes occurred.[68]

In 1893, Ibadan came under the protectorate, and in 1897 and 1898, Ilesa was visited for a few days by the Resident in Ibadan. The latter, when he visited Ilesa, was of the view that "the whole place wants knocking into shape".[69] Consequently, late in 1899, Ilesa became the seat of a Travelling Commissioner, Major W.C. Reive-Tucker, whose brief was to cover the whole of North-Eastern District, including all Ekiti.[70] The Travelling Commissioner's presence in Ilesa became a destabilising force, serving to bring resistance out, and to some extent undermined the authority of the *Owa* over his subjects. For though the British liked to think of themselves as superior disinterested guardians, they had become a resource which parties in the town tried to call upon and were thus drawn further into local politics.

The first move British made to establish their rule in llesa was to set up in February 1900, a native council with responsibility not only for the administration of justice in the kingdom, but also with powers over financial administrative and legislative matters. The Native Council Ordinance of 1901, severely undermined the pre-colonial traditional authorities. For instance, a variety of customary levies were to

[68] Akintoye, S. A. 1971. *Revolution and Power Politics in Yorubaland, 1840-1893* London p. 236.

[69] NAI Iba Prof., 3/6, Residential Travelling Journal, 19 August, 1897.

[70] NAI CO 147/175, Confidential Affairs of Ilesha, 1899-1905.

be replaced by revenue, largely fees and fines, which would accrue to the council sitting as court and from which salaries would then be drawn. Naturally, the *Owa* and chiefs were opposed to this new arrangement. They complained that the sum collected fell short even of this inadequate compensation. They were also incensed by the fact that the authorities in Ibadan and Abeokuta were still allowed to levy tolls.[71] The *Owa* and his chiefs, therefore, tried to sabotage the new procedure by hearing cases 'secretly', receiving present from supplicants and litigants, whether individual or subordinate communities in the customary way. In this way they deprived the court, which the commissioner set up, of both cases and revenue. The British took the threat to their authority seriously. Hence, in 1903, the *Owa* was accused by the Commissioner of making proclamation that people were to come to him at the *Afin* (palace) rather than the court at *Oke-Imo* (seat of Ilesha's traveling commissioner) for the settlement of their disputes and for refusing to raise labour force for the new court-house that was to be built.[72]

The chapter of disharmony between the *Owa* and his chiefs and the commissioner grew steadily to a climax. In 1904, the colonial authorities convicted and imprisoned two prominent quarter chiefs; the; *Obaodo* of *Erinmo* and the *Loro* of *Ipetu* for 'receiving bribes in respect of cases, which had come to them from *Erinmo* and *Ipetu,* of which they were the respective *Onile*. (Head Chief). The resistance of the *Owa* and his chiefs was premised on the fact that the new arrangement radically undercut the discretionary power of the *Owa* and his chiefs and made their authority clearly dependent on that of the colonial state. But, from British point of view, the new arrangement would oblige much more of the political and judicial transactions of the kingdom to pass through an arena where they would be subject to the supervision and intervention of the colonial agent, the commissioner.

4. New Innovations and Concepts in the Administration of Justice in Colonial Ilesa

The need felt by the British to further establish as full a control as possible over their new territory in the first years of colonial rule in the country led to the enactment of three Native Court Proclamations of 1900, 1901 and 1906 respectively. The cumulative effect of these proclamations was that, the hitherto indigenous courts under the traditional authorities were abrogated and replaced by Native courts established by statute. These laws however, did not change the tenor of customary law or the permissive expression given to it, provided they were not contrary to equity, good conscience and natural justice and were in conformity with any existing law and public policy.

[71] NAI CO 147/171, Petition: Owa and chiefs of Ilesha, 20 June, 1904.
[72] NAI CO 147/175, Confidential Affairs of Ilesha, 1899-1905.

Britain's acknowledgement of the existing system in Nigeria meant that the traditional judicial system continued to exist in the form permitted by the British, while they were busy establishing English-styled courts. They did not adapt the existing system completely, but introduced new systems and eliminated some of the existing ones. This radically altered the existing traditional justice system, and led to new innovations and concept in the administration of justice in Ilesa.

Though it could be said that the English law had a great impact on the indigenous institutions it did not imply that it had been mainly negative and simply disintegrative. What occurred may be described as a classic example of the gradual application of the Common Law of England and the English judicial system to a new people concurrently with the preservation of the laws and customs handed down to them through the ages by the traditions of their forefathers. Indeed, the two systems existed harmoniously because both the Common Law and what was described as native laws and customs are living organisms growing from the general custom of the people and capable of adapting themselves to changing circumstances and varying conditions of life.

As a result of the Native Court proclamation of 1900, Native Courts were established in the then Western Region of Nigeria.[73] In Ilesa, there were four types of Native Courts: (1) The *Owa's* Court of Appeal; (ii) The Matrimonial Court; (iii) Criminal Court (iv) Civil and Land Court.[74] These courts were created because it was British policy (of indirect rule) to recognise the traditional political and judicial powers of Yoruba Obas and chiefs by fixing them into the new native authority council and courts. However, the court members were not only appointed by British, they could also be removed by them. The Appeal Courts had as its members as the *Owa* together with some of the most senior chiefs, while the lower courts were filled with the lesser chiefs in order of their seniority.[75] The Supreme Court had original and appellate jurisdiction with respect to all civil and criminal matters. The provincial courts were established by virtue of the Provincial Court Ordinance No. 1 of 1914, while the Native Court Ordinance of 1916 graded the Native Courts into four. The four grades were A, B, C, and D.

In Ilesa, there were three grades of customary courts, that is, the grades A, B, and C1 and C2 Courts. Appeals from courts B and C went to court A, which was the first in the hierarchy and was presided over by a legal practitioner as sole judge. Grade B was presided over by three senior chiefs of the *Owa.* Its jurisdiction included divorce, assault, and petty offences, with a fine of two hundred naira or 12 months imprisonment.[76] Grades C1 and C2 were presided over by five chiefs as

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[73] Nwabueze, B. O. 1963. *The Machinery of Justice in Nigeria* London: OUP, p.3.

[74] NAI, ILE Div. 1/1, File No. 827, New Native Courts in Ilesa.

[75] *Ibid.*

[76] *Ibid.*

follows; Court C1: (i) *Obanla (*ii) *Barmura (iii) Saletu* (iv) *Risa Ijoka* (v) *Sapaye.* Court C2: (i) *Odole* (ii) *Ejenmo* (iii) *Lejoka* (iv) *Lejofi* and (v) *Loro.* Its jurisdiction included, divorce, interest taking on loans, assault, bye-law and petty offences. It could impose fines up to a hundred naira or 3 months imprisonment.[77]

However, it is worth emphasising that the English-styled courts should not be seen as institutions designed simply for the benefit of the Ijesa. Although the courts might have served the ends of justice, they served much more beside. Indeed, viewed in the larger context, they were part of Britain's amour in her conquest and control of Southern Nigeria. In the same vein, the courts were only "native" in the sense that their personnel and a part of the law, which the administered were indigenous.

5. The Administration of Justice in Colonial Ilesa, 1900-1960.

The very processes and procedures of the administration of justice underwent what could be described as radical transformation in Ilesa during colonial rule. An important result of the British court grading system was the reduction in the number and classes of chiefs who could participate in the court. The British system left out entirely the *Omode Owa* and *Elegbaji* chiefs in the courts' administration.[78] However, just as certain traditional chiefs were left out from court membership, at least for some time, new classes of judges and other court members were introduced by the British. For instance, from 1900, the representatives of the new monotheistic religions, Christianity and Islam, were included in the customary court in Ilesa, presumably in order to ensure that acts considered repugnant to British ideas of justice were not encouraged in the new courts and that the converts to the new religions, were not victimised.[79] However, as those representatives, two or three in all, were not chiefs, their inclusion in the Ilesa Council and later in the Grade B customary court in Ilesa was an innovation that the majority of the people including the chiefs resented.

The new system introduced certain changes, which inevitably altered the processes and procedures of administration of justice in colonial Ilesa. In place of the hitherto one system, there were now three, that is, the customary courts directly under the traditional rulers; the political officers' courts, which also administered customary law usually of an appellate nature. Finally, there was, the Supreme Court, which at various times exercised appellate jurisdiction over the other courts Meanwhile, as at 1930, there were only two customary courts directly under the *Owa* and his chiefs in the whole district.[80] Although by 1950, the number of customary courts in other parts of the district had increased to eleven, the number of customary courts

[77] NAI, ILE Div. 1/1, File No. 827, New Native Courts in Ilesa.
[78] NAI ILE Div. 1/1, File No. 7B, Native Court Returns, Ilesa District.
[79] *Ibid.*
[80] NAI, ILE DIV 1/1 File No. 827: New Native Courts in Ilesa.

in Ilesa remained two. Nevertheless, these two undergone a measure of specialisation. Hence, in 1946, there was the *Owa's* court of Appeal, which heard cases from all subordinate courts in Ijeshaland.[81] In addition was the criminal, civil, and matrimonial courts. A year later, further specialisation led to the institution of the lands and civil court.[82] Throughout virtually the whole period 1900-1960, the District Officer's court at Ilesa considered appeals from the *Owa's* court. Further appeals lay to the Resident's Court in Ibadan and ultimately the Governor's court in Lagos.

The pre-trial and trial procedures introduced by the British were far more complex than what obtained under the traditional justice system. In the new procedures, the court must first ensure, from the Ordinance setting it up, that it has jurisdiction over the matter. Next would be the taking of pleas. Thereafter, the prosecution presents its case followed by examination of sworn witnesses. Defence, judgment and cost then followed.[83] The forms of punishment adopted in colonial customary courts in Ilesa had a measure of conformity with past practices but their incidence and severity were altered to a very large extent under the new setup. The type of punishment imposed in each case was not the same. Sanctions often took the form of reconciliation, fine, restitution and compensation. It was only on rare occasions that the offender may be banished or ostracised from the society and this would only happen in the case of serious offences.[84] Although native courts in Ilesa could apply the whip, it is clear from available information that they were reluctant to use that power. However, in 1947, five males aged between 14 and 29 were sentenced by Ilesa customary courts to be given minimum of six and maximum of twelve strokes of the cane each for stealing.

Corporal punishment was, however, expunged from both customary courts and English courts following the strongly worded dispatch that James Griffiths as the Colonial Secretary in London sent in 1950, to all colonial governors. His unequivocal request that steps should be taken to stop whipping and flogging within measurable time left colonial administrators with little or no room for maneuver.[85]

The courts in Ilesa during the period under consideration were of two types, namely, civil and matrimonial courts. The latter specifically heard matrimonial issues and the civil courts considered all land related matters. In traditional Ilesa society, as in many African communities, entitlements to individual rights in land depended more or less on membership of a family recognised as land owners. Generally speaking, however, Ilesa land comprised royal land including disputed parcels of land; chieftaincy land and community or communal land, which also embraced markets

[81] *Ibid.*
[82] *Ibid.*
[83] NAI, ILE DIV 1/1, File No. 15A: Instructions to Native Courts.
[84] *Ibid.*
[85] NAI ILE DIV 1/1, File No. 1534: Corporal Punishment, p.4.

and shrines. Other categories of land were hereditary family land and individual land. Permanent transfer of land whether in town or in farm from one category of owners to another was subject to very strict laws designed as much as possible to make such transfers difficult if not impossible. On the other hand, temporary transfers, though also controlled by custom, were not encouraged.

The first half of the 20th century brought a number of significant socio-economic transformation and changes to Ilesa. The basis of the new prosperity was cocoa, oil palm and rubber. These crops, introduced through the spontaneous initiatives of local farmers, provided the means for a considerable diversification of local occupational structure and opened new sources of income less dependent on the old status system with important consequences for the social and political life of Ilesa. More so, the suppression of internal wars and promotion of community health measures led to an increase in population and the concomitant increased pressure upon land. The increased demographic pressure gradually led towards a breakdown, though at first a partial one, of the customary land tenure practice in the city, in that ownership of land became less and less a corporate affair.

The native court in Ilesa, as reflected by its judgments during the period under review affirmed, and even seemed to encourage the sale of land. For instance, in *Buraimoh Igbalajobi vs Ariangele,*[86] which came before the Ilesa District Officer's Court of Appeal at Ilesa on 14 February, 1948, the Plaintiff/respondent's claim had depended on the purchase of the land in question by his great grandfather, Fasunloro. This claim was, however, faulted and dismissed on the grounds that it would have occurred, going by the latter's claim "at a time when the sale of land was not in practice". The judgment of the Ilesa Native Court of Appeal was, therefore, annulled and appeal allowed, thus testifying to the superior court's recognition of the fact that no sale of land was normally accepted in Ilesa before the arrival of the British.

By 1949, it had become necessary for the senior District Officer in Ilesha T.B. Bovel-Jones, to clarify the jurisdiction of the customary court in land cases for the benefit of the *Owa* in the latter's capacity as the president of the Ilesa Native Court of Appeal. For declaration of title, the plaintiff must satisfy court of his indisputable and absolute title. For recovery possession of land, he must have a better title than that of the defendant.[87] Customary courts in Ilesa had thus not only recognised that there was a departure from the ancient custom which did not approve the transfer of land by sale to individuals, but had considered it necessary in addition to lay down guidelines on the title that is to be transferred. The number of land cases heard in Ilesa customary courts remained relatively small throughout the period under review, whether in absolute terms or in comparison with other causes.

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[86] NAI ILE DIV 4/1 Appeal Cases S7/48; 1948.

[87] NAI ILE DIV 1/1, File No. 1444: Judges, Ilesa Lands and Council Court, etc., 19488-1958.

Although the number of land cases involved was low both in absolute and relative terms, these cases had a significance out of proportion of the increasing role played by land in the modernisation efforts going on in Ilesa during the period under review. It should also be noted that there were in the middle 1940s less than 6000 taxpayers in Ilesa,[88] giving at least the incidence of a land case per 600 tax payers.[89] Also, only cases of disagreement went to court. Although no figures exist of the total number of transactions involving land in Ilesa, during the period of study, it is nevertheless certain that new concepts like sale, lease and mortgage were introduced into land dealings in Ilesha during the first half of the 20th century.
Another useful indicator of the social and economic changes of which the Native courts in Ilesa acted as a mirror between 1900 and1960, was in the institution of marriage. In pre-colonial Ilesa, marriage was a bond with legal, social and religious implications created between two families. Not even death of the husband could release the widow of her late husband's family.[90] The overwhelming business of Ilesa Native Courts in the 1930s and beyond was the handling of divorce cases. Matrimonial cases dealing with the return of dowry from divorced wives to their former husbands dominated the civil cases dealt with by Ilesa Native Courts. Indeed, towards the end of the period under study, more than 20 percent of all cases judged were matrimonial ones.[91] Few application were turned down, and the court's main practical concern was with fixing the amount of dowry to be returned to the woman's husband by the new suitor.
In criminal cases, perhaps the most important changes brought to Ilesa by British rule during the period under review was the abolition of the murder of twins and witchcraft rituals with their attendant ordeal. This practice was in consonance with the British decision that only, customary law which passed certain tests could be enforced by the new customary courts that they had set up. Ordeal by the drinking of the *Obo* (Sasswood), or the murder of twins certainly failed to pass the three tests of natural justice, equity and good conscience. The Ilesa Council in its lawmaking role passed a law in 1905, requiring that all cases of the birth or death of twins must be reported ostensibly by the parents to the Council, which was also empowered as a customary court to try cases of infractions of the law. One of the cases on this issue was *The Council of Ilesa vs. Oluborode of Ilesa* on 19 February, 1906. The defendant was accused of having killed twins. He was, however, not found guilty on a technical point.[92] The act had been committed in 1893, before the law against it was passed. The court's decision must be considered an enlightened one in that it

[88] NAI ILE DIV 1/1 File No. 1485: Population Ilesa Town District, 1946.
[89] NAI ILE DIV 1/1 File No. 1491: Ilesa Native Courts Statistics.
[90] Fadipe, N. A. 1971 *Sociology of the Yoruba* Ibadan: IUP p.171
[91] NAI ILE DIV 1/1, File No. 1444: Judges, Ilesa Lands and Council Court, etc., 19488-1958.
[92] The Council of Ilesa Criminal Record Book, Volume 2, 1905-1907

recognized the injustice of retrospective law. However, there was a very low incidence of cases of killing of twins brought before native courts in the succeeding five decades.

Cases of witchcraft proved more difficult to eradicate than that of the killing of twins because the former is based on a firm belief, which a Yoruba man, no matter his level of education, has in the physical reality and virtual omnipotence of witches and sorcerers as dreaded agents of '*aye'* (the world), which is the domain of evil itself. It is believed that if his constantly felt fundamental need to destroy witches and sorcerers cannot be easily overcome, his overt act with respect to them can be controlled by the law. And, that is where the Ilesa Council, in its dual capacity as customary lawmaker and customary court, concentrated its attention.[93] The first known case of ordeal by drinking the lethal *"Obo"* (Sasswood) mixture was brought before the Ilesa Native Court presided over by Captain A. H. Blair on 26 August, 1908, against Arire of Ifewara and others.[94] The defendant claimed that although her husband had accused her of witchcraft, she had not drunk *Obo.* In spite of this, however, she and her husband were found guilty and fined an astronomical sum of £5.

About fifteen months later, a similar judgment was given against one Fagbure and Fajoluya, who were brought before the Council for having taken *Obo* on February 27, 1910, at Ipetu. Meanwhile, twelve people were reported to have succumbed to the *Obo* poison ordeal in the northeastern district of Ijesaland in 1908.[95] A far more involved case dealing with witchcraft came before the Council on 23 August, 1911, when one Mr Ogunleye and madam Ode, both of Erin, appeared before it. The defendants agreed that he had taken *Obo* because no one in the village would give him his daughter in marriage as his own mother, accused of witchcraft sometimes in the past had died of *Obo.* He had found it necessary to prove that he was not a wizard. Ode also pleaded guilty. Both were found guilty and each fined £2.10.[96] However, whatever might have been believed to the contrary, the outcome of an ordeal was no conclusive proof of guilt or innocence.

It is worth noting that all reported cases of witchcraft when the defendants were found guilty attracted only fines. No option of imprisonment was given. However, one should not make much of this because of the very few instances involved, but one could nevertheless advance the tentative opinion that the courts avoided the harsher prison terms because its Ilesa court members, unlike their British counterparts, felt that witchcraft was a living reality.[97] However, ordeals for

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[93] Ilesa Native Court Criminal Record Book, Volume 4, 1908-1910.

[94] Ilesa Native Court Criminal Record Book, Volume 4, 1908-1910.

[95] *Ibid.*

[96] *Ibid.*

[97] Bolaji, I. 1962. *Olodumare, God in Yoruba Traditional Belief* London: Longman, p.177.

witchcraft either ceased in Ilesa as from the 1930s, or were no longer considered necessary to bring to the customary courts. Adewoye has probably identified the cause of this disappearance in his criticism that the traditional judiciary system relied on ordeals because they lacked the machinery for conducting thorough investigation.[98] As the necessary machinery became more and more efficient under the British, the necessity for ordeals gradually disappeared. Hence, by the middle of the 1930s, the list of criminal offences coming before Ilesa native courts did not include witchcraft cases. Prominent cases during this period were cases on tax, sanitation, fighting and stealing. Most of defendant in such cases ended with different categories of fines and light imprisonment terms. There were also a few incidence of flogging in the open courts.[99]

6. Conclusion

A very potent factor in consolidating and stabilising colonial rule in Ilesa was the imported English-styled justice system. In the hands of British colonial administrators, law was a veritable tools, stronger in many ways than the maxim gun. Indeed, Ijesa people had no choice whether or not to adopt English law. Hence, the Native Court in Ilesa, as revealed in the course of this study, was supposed to administer native law and customs, it did so practically in the light of the English common law and what was acceptable to the colonial ruler's sense of justice.[3] Although the native courts might have served the ends of the justice, but they served much more besides. In other words, British-established court served the dual function of forging some kind of formal relation between the Ijesa and British, and of extending British influence generally.

The various statutory native courts were very much part of the process of subjugation of Southern Nigeria by the British. Everywhere they were expected to give stability and permanence to what had been achieved by force of arms. In official eyes, they were not seen as mere judicial institutions, but as instruments for bringing under effective administrative control the areas in which they were established. Although there were some indications that at the outset that the people of Ilesa were resorting to the new judicial machinery, it took a fairly long time before the local population was reconciled to its operation. Indeed, the colonial administration sometimes had to resort to the use of force to compel attendance of the courts.

It is also important to note that the British-established courts did not entirely replace the indigenous judicial system. In matters wholly concerned with indigenes, the

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[98] Adewoye, O. 1977. *The Judicial System in Southern Nigeria, 1854-1954* London: Longman, p.100.

[99] Ilesa Native Court Criminal Record Book, Volume 5, 1948.

traditional courts continued to hold their own. However, the new courts were to operate outside the control of the traditional rulers, thus representing sources of justice alternative to what they could offer. Hence, the whole paraphernalia of the English judicial process brought into Ilesa as natural servants of colonialism, divested the *Owa* and other traditional authorities in Ilesa of| their powers. The Ijesa gradually came to realise that the *Owa's* decision was no longer final