# AFRICAN LEGAL THOUGHT: A REFLECTION ON YORUBA LEGAL CULTURE*

**Abstract**

*African law has always been a victim of bias in the study of its way and world by the non- Africans. To say the least, the whites were at a time in doubt as to the human nature of the negro. Although, scholars had written numerous works to rebut these assumptions and assertions by the earlier scholars be they the Europeans. This paper is a reflection on African legal thought. It reflects on the beauty of African legal culture, the functioning, efficacy and engagement in the context of English justice system. The paper identifies the points of convergences and divergences in the English and African justice systems. The paper concludes with recommendation that significant improvements are needed to harmonize the two legal systems to achieve a more effective justice system in Nigeria.*

**Keywords:** African Legal Thought, Yoruba Legal Culture, Justice, Nigeria

## 1. Introduction: African Legal Thought

African legal culture is an offspring of African traditional thought. According to Taylor quoted by Babawale[1], culture taken in its wide ethnographic sense is complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society. Aside this, culture can be simply defined as the way of life of a group of people. However, life for such group of people will be worthless and meaningless if there is no legal frame work in existence or cultivated to regulate human conduct in that society for maintenance of peace and order. Before there can be a way of life, there must first be a society and people within that society. In spite of thousands of ethnic groups in the African continent, there is still a uniqueness and point of convergence in the African way of life. For instance, Africans may describe their gods or heroes in as many ways as the myriads of language and concepts lurk a uniformity of metaphysics and, even of epistemology; which include beliefs about the origin and nature of state, the authority of ruler, the right of citizens and social structure among others. Formation of African societies unlike that of the western world evolves naturally as distinct from the one that evolves from rational calculation or deliberate planning. The Hobbesian state of nature and social contract is an example of this western evolution of state[2].

Uniformity in African thought in spite of the social groups is that all African societies have their foundation on religion. They are all theocratic; religion provides the explanation for the origin of the state and the justification of the authority of the ruler. It also identifies the limits of the ruler's power as well as the right of the citizen and provides the standards by which behavior is judged, crime identified and apportioned. Also kinship has been identified as one of the most profound mark of the African political world view in the continent's social organisation. Kinship is the nexus between all the beliefs and ideas about socio-political order in Africa. It is also common to find different versions of myth of origin among the various ethnic groups in Africa. This explains why African societies have antecedent of supernatural phenomenon. The Yorùbá believe in *òrìsáńlà* (archangel) sent by God for the creation of the earth while *Odùduwà* became the first king. Schapera[3](1955) reports that the Zulu people believe that *Unkunluku* (the high God) created man, food, fire and marriage and then said: 'let there be blacks and chiefs; and the chiefs be known by his people'. According to a study carried out by Beattie in 1974[4], among the Nyoro of the Bunyorokitara join the two word kingdom in western Uganda it was Ruhanga, which is the word commonly used for God, created the earth and the first family from which Nyoro stock blossomed and so on. in fact, myths and religion are found on mutual features common in evolution of societies. They pave way and design the way of life of people. Therefore, an African man who has belief in his source, myths and religion will not do anything to wrong his creator or origin.

Again, kinship is another common and prominent feature among all African states or societies. In Africa, the practice of communalism has enhanced good neighborliness and hospitality according to Olaọba[5]. He stated the example of principle of Ujamaa inaugurated by the Late President Julius Nyerere of Tanzania as emphasising these values. Nyerere has written that:

> There must be equality, because only on that basis will men work co-operatively. There must be freedom, because the individual is not served by society unless it is his. And there must be

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[1] Tunde Babawale, 'Culture, Politics and Sustainable Development: Lessons for Nigeria' (2007) *CBAAC Occasional Monograph Series,* (4), Concept Publication Ltd., Lagos.

[2] Femi Otubanjo, 'Themes in African Traditional Political Thoughs' in Ayoade J.A.A.and Agbaje A.A.B. (ed) African Traditional Police Though and Institutions Lagos, *Center for Black and African Arts and Civilizations.*

[3] I. Schapera, *A Handbook of Tswana Law and Custom.* (Oxford University press, London.1938), p. 326.

[4] John Beattie, *The Nyoro State* (Claredon Press Oxford. 1971), p35.

[5] OB Olaoba, *An introduction of African Legal Culture,* (Hope Publications Ibadan. 2008), p.11.

> unity, because only where the society is united can its members live and work in peace, security and well-beings[6].

Among the Yorùbá of south west Nigeria, Akinwowo[7] (1980) projected the ẹbì system as the golden thread that binds group and enhances solidarity and social engineering. The inference which led to the conclusion of African societies as being communal is based on productive imagination such as the Plato's republic, Aristotle's politics, John of Salisbury, Policraticus, Hobbes, Leviathan and Marx's communist manifesto which can only be properly done by the people of the society in Africa[8]. Unfortunately, the non-Africans who are not part of the soil were the ones who studied the evolution of African society thereby applying analytical political theory instead of normative political theory, hence, they misfired and erroneously concluded that Africans have no legal thought. African traditional thoughts are not uniform, also unwritten or undocumented. The unwritten nature of African law being a body of rules among the uneducated contributed to the reasons why some earliest scholars particularly the anthropologist and missionaries that first wrote on African legal system found it difficult to belief in the existence of African legal culture; or better put African legal philosophy. African law has always been a victim of bias in the study of its way and world by the Europeans. To say the least, the whites were at a time in doubt as to the human nature of the Negro. The preface of a book compiled on West Africa by Richard f. Burton (1895) while discussing Africans attests to this:

> Some people on the wild and pastoral tribes of the southern regime have been said to be destitute of traditions. The savage custom of going naked, we are told had denuded the mind and destroyed all decorum in the language. Poetry there is none, the songs are merely repetitions of a few hyperbolic expressions. There is no metre, no rhythm, nothing that interests or soothes the feelings or arrests the passions or admiration.

All the same, these writers became convinced particularly when they had the opportunity of meeting Africans in person, witnessing their history, custom, tradition and laws. For instance, kolle quoted by Richard Burton observed:

> It is vain to speculate on this question whether or not the Negro is part of mankind. From mere anatomical facts from peculiarities of hair, or from the colour of the skin. If it is mind that distinguishes man from animals? The question cannot be decided without consulting the language of the Negroes.

Again when documentation of African legal thought was to be partially given attention, it was done by foreign documentalist. Among the scholars engaged in the writing of African legal system are Schapera, Glukman, Whitfield thereafter scholars like Fage, Ajayi and Dike for African history, Mbite, Taslim Elias and Olaọba[9]. The problems of unwritten and non-uniform nature of African legal system must have prompted Glukman to ask the following question:

> If we are to investigate the customary law of an African people, when and where do we find it? Is it the traditional or ancient law, or the modern (traditionalist might say prevented) law, infected as it is by non-African ideas, administered by non-customary courts, studied by jurists, challenged by the younger generation of those allegedly subject to it, and recorded in a form which may fundamentally alter its whole character and style (whether the form be the technical language of the lawyer or the technical language of the anthropologist)[10]

It is also pertinent to mention that different writer or commentator be they judges, comparative jurists, social anthropologists, or simple laymen had canvassed one or more points of view about African law. Anthony Allot describes their expressions to be partial and gives two senses to the word 'partial'. According to him, they have only told part of the story, and they have been inspired, consciously or otherwise, by a prejudice of some sort. He also states that they sought to justify or defend a thesis (or worse still a hypothesis) instead of looking at the facts. Allot posits further that these are the opinions of ignorance, delivered by outsiders who lack both sympathy and knowledge.

Some deny the character of law to African law. Altogether, others declare that if there are legal rules in African societies, those rules and their administration are or were characterised and dominated by belief in magic and supernatural blood-thirsty and cruelty, rigidity and automatism and an absence of broader sentiments of justice and equity. Allot concludes that ideas of this sort send to be propagated by those who wrote about 'primitive law

[6] JK Nyerere, *The Purpose is Man, Freedom and Socialism, Dur es Salam* (Oxford Unuiversity Press, 1968)
[7] Akinsola Akinwowo, 'Ajobi and Ajogbe: Variations on theme of Association' 1980, *Inaugural Lecture Series, (46)*
[8] Otubanjo op. cit,.
[9] Olaoba op. cit,.19&23
[10] Allot, Apstein & Gluckman, *Ideas and Procedure in African Customary Law.* (Oxford university press London. 1969) p.9

as a whole, instead of making the effort to study particular legal system in action' In view of the problems facing the study of African legal thoughts Otubanjo[11] was right when he contended that the study of African thought should be from normative political theory and not empirical or analytical. Normative political theory encompasses imaginative and speculative ideas, which may occur randomly or in a systematic and coherent form. About socio-political organizations relationships, these ideas, which are prescriptive, have a legitimizing import. They also provide insights into structure processes and institutions. However, owing to the differences in legal heritage of countries in Africa, we shall not delve further on the legal systems available in African states. For instance, the Yorùbά people of sub-Sahara Africa do not have a centralised forum like the English Court for litigation. At family level, there is the family head who plays the role of a judge in tacking any dispute that ensured. Where he cannot resolve the dispute, the matter goes further to the *Baálẹ's* Court which is more or less the compound Chief and finally to the palace which is the zenith of all the judicial fora. Paul Bohannam says that 'jir' among the Tiv is a centralized forum trial of every dispute[12]. Finally, there is always invocation of supernatural powers or supernatural involvements in criminal matters common among African state particularly where the offender is unknown.

## 2. Yoruba Legal Culture

### Administration of Justice among the Yorùbά in the Pre-colonial Era

The bulk of the Yorùbά are today found in the south western part of modern Nigeria, where they form one of the leading ethnic groups. Specifically, they effectively occupy the whole of Ògùn, Òndò, ÒṢun, Ekìtì, Òyọ and Lagos states and substantial part of Kwara state in the country. A substantial number of the Yorùbά people also inhabit the South-Eastern part of the Republic of Benin (i.e. former Dahomey) which is continuous with the area the people occupy in Nigeria. All these areas enumerated in Nigeria and in the Benin Republic formed what was formerly known as the Yorùbά country [13]. Long before the establishment of British rule in Yorùbά land, the people had reached the stage where redresses for injuries suffered directly, was taken out of the hand of the individual and his kindred. In other words, the stage of public as opposed to private justice had already been reached[14]. The Yorùbά justice system is not winner takes all but peace-making justice (win-win approach). It is retributive and reparatory justice. Administration of justice among the Yorùbά is not in compliance with any written law or a codified law but with a body of customs, usages and codes of manners. In other words, their body of rules flow out of their way of life and this settles why they all live communally also in peace and harmony. The guiding laws flow from the cultural texture of the society and this makes compliance easy.

Under the Yorùbά legal culture there is no express distinction between civil and criminal actions, but categories of cases which came up for court decision were only divided into their categories but their descriptions were also substantially similar to those of the western countries. In other words, the classification of cases which is well pronounced under the English Legal system is not pronounced under the Yorùbά indigenous law but unconsciously, there is classification of cases relating to recovery of debt, seduction, breach of contract, land matters, compensation for unintentional injuries to persons and property (tortuous actions) and divorce[15]. The Yorùbά Legal Jurisprudence also recognizes criminal action. These include cases of stealing, homicide, witchcraft, incest, divulging secret of certain religion and political organizations, arson, assault occasioning harm etc. Under the Yorùbά legal thought in Africa, there is in existence our idea of law. To the Yorùbά, law is a well known body of customary rules by which everyone regulates his conduct, we still have some divergent views by various scholars about Africa legal system from which Yorùbά legal thought shares similar features. It is one view that there is no clear distinction between civil and criminal law as we have earlier stated thus the notion of wrong which could either be civil or criminal in nature. It is also another perception that since the end result of Yorùbά legal thought is reconciliation or restoration to 'status quo' it is against the principle of absolute liability. Driberge is one of the proponents of this conception[16]. It has also been contended that the primary role of law in Africa sometimes is to preserve the social equilibrium. But that does not mean that deliberate acts that offend against the rules of the society and constitute a violation of the right of members are treated on the same or with the same revulsion as accidental occurrences or mere inadvertence between voluntary and involuntary homicides, and drunkenness is known to be a mitigating factor in Yoruba legal thought.

[11] Otubanjo Op, cit.,3-4
[12] Paul Bohanna, *Justice and Judgment Among the TIV* (Routledge Publishers, 1968)
[13] Olatunde O. Olatunji, *Features of Yorùbá Poetry* (Ibadan University Press Ltd Ibadan 1984) , p.14
[14] OO Okedeji & FO Okediji,' Marital Stability and social Structure in an African City' 1966, *Nigerian Journal of Economic and Social Studies (*8) (1), 151.
[15] Okediji op.cit.,
[16] JH Driberge, 'The Nature of African Conception of Law '1934 *Journal of the African society* (34)

Some scholars also have the notion that wrongful acts and conducts curbed by supernatural phenomena. Yorùbá legal thought has many features which inform its dynamic nature. Adjudication is the nucleus and locus of this culture. Its significance lies in the fact that it is resourceful toward, facilitating and enhancing peace and harmony as well as administration of justice. In spite of the characterized reconciliatory preponderance, Yorùbá legal culture abhors wrongdoings and frowns at impiety of manners. It does award blames and punishment to offences adjudged to be inimical to the development of legal norm. The principle of reconciliation and society harmony also explains why the instruments of the judicial system were moved into socio-political organisation. There were no isolated court houses, the three-tier court were within the precincts of the compound head for the lineage, the house of ward chief for the ward and in the palace of the *Ọba* for the town or kingdom. There were no isolated prison houses. Those confined stayed in the abode of the compound head, ward chief or in the palace of the *Ọba*. When crimes were committed against any person or property under the Yorùbá legal culture, complaints were lodged at various quarters at any of the tiers depending on the gravity of the offence. Lesser offences were treated by the family heads, higher ones by the chief and most grievous offences by the *Ọba* in the palace. It must be emphasized at this juncture that there is nothing new or special about western legal culture which is alien to the African legal culture. Under the Yorùbá culture, trials normally began with complaint which is common to both civil and criminal matters. In civil matters, complaints are lodged to the heads of the judicial unit as we had earlier stated depending on the nature of the complaint pronouncement had once been made at compound level. The great majority of cases were, as a matter of course, brought before the central tribunal. When the parties, the complainant and accused, are kindred or friendly with each other, such could be treated before it got to the notice of the central authorities. Among the *Ọyọ Yorùbá,* criminal cases of incest could be treated in the compound while in Èkìtì and Ìjẹ̀sà communities a case of incest was one for the central tribunal to deal with in a rather serious-conical ways. The head of the tribunal is the king. Fadipe claimed that the central tribunal is the last court of appeal[17]. Ọlaọba considers it as an important courtyard in *Yorùbá* palaces[18].

However, just as we have the Martial courts created for those under the service law like the police, Nigerian Army, Navy, Air Force, custom and other para-military under the English Legal system, so also we have court of special jurisdiction under the Yorùbá Legal system.

In many communities, according to Fadipe[19], war chiefs were specially organised into a corporation over their members. Cases in which both parties belonged to the warrior's group were dealt with either in their meeting house or in the house of their head. The machinery of justice was regularly carried out in spacious courtyards collectively called the throne of judgement in Yorùbá society. Among Èkìtì, a sub-group of the Yorùbá race, the courts were variously referred to as *Agbarowa* in Oye, *Ode-Ayadi* in Ogotun, *Umorun* in Ikere,*Arogbejo* in Ìkòlè and Aiyèdè [20], Odi among Ilaje, *Owa* among Ìkálè, and Apoi of Ondo State. The Yorùbá administration of justice system is divulged of technicality which webs the English Legal system. The procedural aspect of the legal system is not cumbersome. It begins with payment of hearing fees for summon upon which the complainant lodges his complaint against the defendant. The defendant would be summoned either through his ward Chief or compound Chief and in some jurisdictions like Àkúrè[21], Òndó, Ìlàjẹ, Apoi and Ìkálè the message would be delivered directly to the defendant and the staff of the king showing sign of authority with the emissary of the Ọba to the defendant. The defendant would enter appearance forthwith and where there was no enough time for the matter, adjournment would follow the complaint. The complainant would first give evidence and called witnesses if any while the defendant would give evidence and called his witness. Cross examination was also allowed which could be done by both the sitting panel and the parties themselves. Thereafter, judgment followed. Judgment in this legal parlance is by way of contribution from the sitting panel with each member of the panel expressing his view [22]. In other words, the judges or some person next to him then summed up and asked the opinion of the associated judges, beginning with the most junior (only in Oyo, does the senior member of the tribunal speak before the juniors). Those who spoke after the most junior judge usually expressed their support unless they have reasons for adding to what had been said, or for expressing dissent. The president then pronounced the judgment. The tribunal takes the percentage from the awarded damages and fines in the matter and the kings takes the largest share. It was submitted by Ọlaọba[23] that Ajisafe the pioneer documentalist of Yorùbá Legal Tradition, glossed over Yorùbá proverb as Legal data in his classic books – Laws and customs of the Yorùbá people. Proverbs play a prominent role in the Yorùbá jurisprudence. The elders are so versed and versatile in the usage and application of Yorùbá proverbs then in the role of elder in Yorùbá society to maintain peace and settle conflict. Olatunji says a Yorùbá

[17] NA Fadipe, *The Sociology of Yoruba* (Ibadan University Press Ibadan1970)
[18] Olaoba op.cit.,23
[19] Fadipe op.cit.,230
[20]OB Olaoba, 2008. *An introduction of African Legal Culture.* (Hope Publications Ibadan 2008),
[21] Fadipe op.cit.,231
[22] Ibid 232
[23] Olaoba op.cit.,

elder worth is his salt, must be self respecting. *Àgbàlagba tò wewù àṣejù ètè ni yóò fi ri* meaning: An elder that put on the garb of immoderateness will be disgraced. Still on this usage of Yorùbá precept and proverbs and the role of elders, Olatunji (1984) says: *Àgbà kìí wà lojà kí orì Ọmọ titun wó* meaning: an elder should not be in the market- place and allow a child's head to bend. Another proverb could be added: *Tí ọmọdè bà bè loko,àwọn àgbà ló mọ ibi tó màa wó sí.* Meaning if a child is felling a tree in the farm, it is the elder who will know where the tree will fall.

However, in respect of criminal matters under the Yorùbá legal culture, there is need for us to identify situation where the culprit of a crime was suspected or known and situation where the culprit was unknown. Where a person was suspected or known to have committed an illegal act, the procedure of the proceeding is similar to that of civil cases. The judges played the role of the prosecution. The trial is accusatorial unlike the English Legal System which is inquisitorial, the prosecution proves the guilt since the State asserts and is thus expected to prove, while under the Yorùbá legal milieu, the accused must prove his innocence. The judges evaluated the evidence before them and cross-examine. They made use of Yorùbá precepts which could be described as legal aphorism that are tantamount to legal maxims. These include principles of circumstantial evidence *Àjẹ kè lànàá, Ọmo kù lónìí, taa ni kò mò pè Àjè tó kè lànàá ló pa omo je* meaning a witch cried yesterday a baby died today, who does not know that the witch that cried yesterday killed the baby. In case of conspiracy, there is *Ìka kan kò mú òkúta dè òkè* meaning a finger cannot pick up a stone from the soil among others. On principle of natural justice, Audi altarem patem hear the other side, we have *Agba osika ni gbo tie nu enikan da'jo* i.e. only a wicked judge hears one side before passing verdict. Nemo judex in causa sua meaning a person cannot be a judge on his own cause. Yoruba will say : *Abe kon o kin mu ko da bo epo ara re* . This is also reflected in the latin maxim: *Nemo potest esse simul actor* i.e. no man can be a s suitor and a judge at the same time. In *Dimes .v. Grand Junction Canal Co*[24], The Lord Chancellor himself who appointed the judge was found to have made a decree in favour of Grand Junction Canal Co in which he himself is a shareholder unknown to other parties, the House of Lords held that 'It is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred'. In the case of an interested and biased witness, the common law of England recognizes that the stream of justice must be left flowing and clean also that judges must not pollute it like wise the witnesses. A judge must be careful in making use of evidence emanating from an interested witness. This is also known to us in the African jurisprudence. Yoruba will say: *Tani esisin ma gbe biki se olojuju* meaning: whose cause will a fly support when called as a witness if not of the party with an open ulcer. Malice, grudge and prejudice are acknowledged as fertile fields for bad faith and discoloration of opinion. Yoruba will say: Esin ota eni ki ga loju eni. Meaning the horse of one's enemy is never huge in one's assessment meaning that no lie is too fat or to fabricate in other to implicate one's enemy. Hearsay evidence is also tantamount to the Yoruba aphorism: *Oju mewa ko jo oju eni, iroyin ko to afoju ba* news is unreliable like one witness. Ọlaọba reported the development of documentation of proverbs by scholars in his book. It was credited to among scholars of Yorùbá proverbs in sociological context[25]. There may also be some situation where the accused will admit the guilt without trial. In that circumstance, the stolen goods would be returned to the owner. Hence the Yorùbá will say: *Tàa bà ti lè olè, tó bà ju erú owo rè silè, nṣe làá padà leyin re* meaning where a thief being chased has dropped the exhibit with him, the accuser has to leave the thief. The civil version of this Yorùbá legal aphorism is: Tí elejó bà ti mo ejo rè lebi kò ní pe lòri ìkùnle meaning a party's acceptance of a litigant's guilt would speed up the process of adjudication.

Still on the situation where there was a suspect or the offender is known and refused to accept verdict, there could be administration of poison of trial by ordeal. For instance, where somebody was accused of taking the life of another person, in order to clear himself, he may be subjected to oath taking or poison. The implication of this is that his innocence would avail him.

The second class of criminal cases under the Yorùbá traditional jurisprudence is when the offender was unknown and they have to engage in trial by oath taking. This involved invocation of religion-magical power usually done by the priest or medicine man who was an expert in the area. In most cases, there was no forum named as court but shrines. In other words the shrines were the venue of adjudication which could be related to court. This found support in the work of Ọlaọba (2008) when he observed that religious institutions play prominent roles in conflict management, maintenance of peace and harmony in the pre colonial Yorùbá settings. He posited that various sacred divinities existed in traditional Yorùbá land, who, when they were vexed would revenge with severe consequence.

[24] (1852) 3 HSC 759; see also, *Dr Alakija .v. Medical Dental Practitioners Disc. Comm*.(1959) 4 FSC 38
[25] Olatunji op.cit.,

Several of these divinities have featured in the writings of Olumide Lucas (1984)[26], and Omosade Awolalu, (1968)[27] and (1981)[28]. These writers believe that cult of divinities in Yorùbá land work on the principle of punishing the offenders and covenant breakers. Therefore, they submitted that divinities like *sọnpònná* and *Oro* as well as *ṣàngó* and *Èṣù* are executors of judgment. Ọlaọba (2008) concluded that they can be considered as agents of justice in the Drama of adjudication. It is from the perspective of Ọlaọba which is not only on social or religion perspective but as a judicial institution African legal culture is designed with a unique speedy practice and procedure and justice is seen to be done. The legal culture recognises legal principles which are *Yorùbá* aphorism that normally come into play during entertainment of disputes. Replica of these proverbs could as well be found in the English legal system. Conspiracy as an offence is also recognised in the primitive settings hence, they say in Yorùbá land *Ìka kan ò mú òkúta nílẹ̀* - meaning a finger cannot pick up a stone from the ground. This comes into play where more than one person is involved in commission of an offence.

The African legal system also recognises the principle of natural justice; *viz a viz*: *Audi altarem patem* and *Nemo judex in causa sua*. *Audi altarem patem* means hear the other side, *Nemo judex in causa sua* means you can not be judge in your own cause. Likewise, in Yorùbá legal thought, we say *Àgbà òṣìkà níí gbọ́ ẹjọ́ ẹnìkan dájọ́* meaning only a wicked elder hears one side of a story and pass judgment and *Abẹ kìí mú títí kó gbẹ́ èèkù ara ẹ̀* meaning however sharp a knife may be, it cannot carve its own handle. However, the intervention and the arrival of the Europeans into the country and their presence among the indigenes and introduction of their legal system have no doubt, altered and polluted the unique legal culture of the Africans.

Under the Yorùbá legal culture in Africa, there is in existence their idea of law. To the Yorùbá law is a well known body of customary rules by which everyone regulates his conduct. We still have some divergent views by various scholars about African legal system from which Yorùbá legal culture shares similar features. It is one view that there is no clear distinction between civil and criminal law as we have earlier stated thus the notion of wrong which could either be civil or criminal in nature. It is also another perception that since the end result of Yorùbá legal culture is reconciliation or restoration to *'status quo''* it is against the principle of absolute liability. Driberge is one of the proponents of this conception[29]. It has also been contended that the primary role of law in Africa sometimes is to preserve the social equilibrium. But that does not mean that deliberate acts that offend against the rules of the society and constitute a violation of the rights of members are treated on the same basis or with the same revulsion as accidental occurrences or mere inadvertence. Some scholars also have the notion that wrongful acts and conducts are curbed by supernatural phenomena. Yorùbá legal culture has many features which inform its dynamic nature. Adjudication is the nucleus and locus of this culture. Its significance lies in the fact that it is resourceful towards facilitating harmony as well as administration of justice.

The principle or reconciliation and societal harmony also explain why the instruments of the judicial system were moved into socio-political organization. When crimes were committed against any person or property in the African settings, complaint was lodged at various quarters at any of the tiers depending on the gravity of the offence. Lesser offences were treated by the family heads, higher ones by the chief and most grievous offences by the *oba* in the palace. It must be emphasized at this juncture that there is nothing new or special about western legal culture which is alien to the African legal culture. Under the Yorùbá legal culture, trials normally began with compliant which is common to both civil and criminal matters. In civil matters, compliant are lodged to the heads of the judicial unit as we had earlier stated depending on the nature of the compliant. This explains that there is legal procedure in Yorùbá indigenous courts. There is hierarchy of operation recognisable in Yorùbá legal judicial system. Fatola and Oguntomisin[30] identified Courts of compound heads, *Ile-Ejo ti Ijoye* ward-chief and that of the Oba. The legal process is open; participatory and inquisitorial; the presumption of innocence is not prominent since it is inquisitorial. The reason is that according to them ''there is no smoke without fire''.

In criminal matters, where there was an alleged offence and a compliant was lodged, the suspect was usually invited for interrogation just like arrest in the English legal system where the statement of the suspect is obtained and police commence investigation. It was the findings, therefore, that would help determine whether or not the suspect should be prosecuted or not by charging him to court. Likewise, in the Yorùbá settings, there was invitation for interrogation before trial and at times investigation. This may take place either before trial or the course of it.

Among the Ilaje and Apoi people, before the advent of English legal system, upon such complaint, the interrogative stage in criminal matters was the stage when the judicial organs would discharge their duties by

[26] Olumide Lucas, *Religion of the Yoruba* (C.M.S. Book Shop Lagos 1948) 49-68
[27] JO Awolalu, '*Ayélála* a Guardian of Social Morality' 1968, *Ibadan journal of religious studies orita* ( 2)(2), pp79-89.
[28] JO Awolalu, *Yorúbá Beliefs and Sacrificial Rites.* (Longman group Ltd London) pp.41-45.
[29] Driberge op.cit.,
[30] Fatola & Oguntomisin, *The Military in nineteenth century Yorúbá policies.* (University of Ife Press Ife), p19

sitting and hearing the matter. Upon the denial of the allegation by the suspects or his failure to accept the verdict, there would be invocation of supernatural means. This basically has to do with religio-magical practices and belief. Allot (1960) was, therefore, right while discussing customary law and its administration particularly when he mentioned this as one of the distinctive features, attitude and procedures in the field of legal studies. He emphasized this religio-magical practices and belief and said that they were common and highly predominant in the spheres of (i) land tenure (ii) family organization and government (iii) succession to property and position on death (iv) criminal investigation and decision of charges and complaints by supernatural means e.g., divination/ordeals, oaths taking. All these ways of crime detection were fully adumbrated by Eniola.[31] Olaoba also corroborated this position.

**3. Conclusion and Recommendations**

Yoruba traditional justice system is effective, swift and potent though it does not encompass all that exists in English justice system. There is a structure wherein there is investigation of complaints like in the English criminal justice system through divination and involvement of sacred divinities. It is a justice system for deterrent against crime which is the essence of English justice system. Yoruba justice system recognises the principle of natural justice; it affords parties the opportunity of stating their cases like the English justice system and does not exhibit any bias in rendering her judgment. Perversion of justice that characterises the English justice system is not to be seen in the African legal culture. Yoruba justice system is less expensive and devoid of technicalities prevalent in the English courts. Unlike the English courts, cross examination of witnesses is dispensed with. Corrupt priests or arbiter are apprehended and punished by the sacred divinities of the land. Oath taking is common to both justice systems however, it is feared and revered under the Yoruba traditional justice system because oath taking which turns out to be false results in fatal consequences and this makes testimonies of parties more reliable than the English justice system where witnesses will hold the Holy Bible or Quran and still proceed to lie on oath in the witness box. Forfeiture of properties is common to both English and *Ayélála* criminal justice systems. There is accelerated hearing, prompt judgment in Yoruba justice system. Investigation of complaints, bail, plea taking, confession, admission, conviction, sentencing and death sentence are found in both justice systems. The trial is adversarial and accusatorial; there is no legal representation of parties, no address of counsel and proceedings are basically unwritten while all these are present in the English justice system. It is must be pointed out that in criminal trials where sacred divinities are involved under the Yoruba justice system, judgments are final while the English courts allow appeals even to the apex court. Jurisdiction is also known to both justice systems and where a party errs as to jurisdiction under the Yoruba justice system, such is not fatal as cases may be transferred to the appropriate quarter unlike the English court which can be dismissal or striking out. The most interesting part of Yoruba legal culture is that the end result of proceedings particularly civil proceedings is reconciliation or restoration to 'status quo'. It is against the principle of absolute liability contrary to what is obtainable under the English justice system and this marks the beauty in the justice system. It has also been contended that the primary role of law in Africa sometimes is to preserve the social equilibrium[32]. Without any hesitation, it is the writer's opinion that Yoruba legal culture plays similar role. Finally, it must be emphasised that this paper is not advocating or canvassing a total condemnation of English justice system. We are of the view that a justice system fashioned from the social fabrics of the natives will make compliance easy for them. Also, an effective and efficient justice system can easily be achieved. It is in view of the foregoing we advocate an incorporation of African justice system into the English justice system which may be in the area of oath taking, proceedings or the traditional courts to exist on their own with free access for people to lodge complaint instead of customary courts which have assimilated the English justice system procedure. Finally, we recommend a law reform for the purpose of unification of Yoruba customary law as this will bring improvements on the legal thought and makes harmonization of the two legal systems achievable with a view to having an effective justice system in Nigeria.

[31] Akintunde Emiola, *Emiola's African Customary Law,* 3rd Ed, (Emiola publishers Ltd Ogbomosho 2011), p.30.

[32] The perception has a bit flavor of the sociological school of thought led by Sir Roscoe Pound that law is an instrument of social engineering and a means of balancing the conflicting interest in the society and that of Savigny (the *volkgeist*).