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The British Palm Oil Trade, Judicial Development and Denial of Fundamental and Socio-economic Rights in Old Calabar, 1813-1906: A Study in Legal History of Nigeria

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Abstract:
Before the abolition of the slave trade by Great Britain in 1807, the Anglo-Old Calabar relations did not bring about any remarkable change in the indigenous legal system of the people. However, following the abolition of the slave trade and slavery, the Berlin Conference and the General Act of Berlin and the gradual imposition of colonial rule, the contour of the indigenous legal and judicial system was altered and subsequently replaced with the English judicial system. In addition to the English law, international laws were introduced into the Old Calabar territories. Experience has shown that Old Calabar could not develop despite its leading role in the production of the chief commodity of the legitimate trade. The aim of the article is to find out why Old Calabar and its environs could not develop in view of the leading role it played during the palm oil trade. It is believed that the laws and court system introduced by the British did not encourage economic and human capital developments. The article assesses the new laws and the court system that were introduced and their overall impact on the society. The article adopts historical descriptive analysis methodology to interrogate the relevant documents concerning the topic under discussion. The study has revealed, among other things, that the indigenous Courts and Court members were gradually replaced with, first the Court of Equity, and later the English-style Courts. The European commercial transactions and most decisions of the Court of Equity did not favour the Old Calabar traders who engaged in the palm oil trade, especially under the trust system. Prices paid to the indigenous traders and producers were abysmally low. Certain Natural Rulers and middlemen had their palm oil confiscated by the British oil merchants for nay flimsy reasons; they were usually punishes for the offences committed by their subjects. They were greatly discouraged from developing themselves as exporters. All this did not make for socio-economic and human capital developments in Old Calabar, unlike the booming economic situation in the United Kingdom whose economy was chiefly based on the African palm oil and other forest products.

1. Introduction

Old Calabar has had long period of trade and commercial relations with Europe, particularly Great Britain. The Eruo- Old Calabar is said to have commenced in 1432. Old Calabar had been a major international commercial centre during both the Trans-Atlantic slave trade and the legitimate trade. Certain authorities on Nigerian and African Economic History maintain that Old Calabar was the chief producer of palm oil greatly needed in the United Kingdom. Palm oil was first lifted from Old Calabar to Liverpool in 1801 though in a small commercial quantity and by 1813 the quantity of palm oil shipment had admirably increased. Old calabar could not develop despite its leading role in the production of the chief commodity of the legitimate trade. This article seeks is to find out why Old Calabar and its environs could not develop in view of the leading its leading role during the palm oil trade. It is believed that the laws and court system introduced by the British did not encourage economic and human capital developments. The article assesses the new laws and the court system that were introduced and their overall impact on the society. The study analysis is split into fourteen sections. It proceeds from the geographical description of Old Calabar (section 1), assesses the indigenous judicial system (section 2) and the emerging complex society (section 3). It discusses the Treaties protecting the British subjects (section 4), how the British traders, Missionaries violated human rights (section5) and bombardment of Old Town (section 6). It examines the establishment of the Court of Equity (section 7),the 1862 Treaty sanctioning the re-convening of the Court of Equity (section8), punishment on the African Rulers for the crimes of their subjects (section 9) and the 1869 Agreement on oil theft and punishment of the Natural Rulers (section 10). The article examines how the Court of Equity applied the principle of fair hearing (section 11), more fundamental changes in the indigenous judicial system (section12), the British use of force to acquire the hinterland territories (section13), and finally, the summary and conclusions (section14). The scope of the study covers the present-day Akwa Ibom and Cross River states as they were part and parcel of Old Calabar. The period of the study spans from 1813, when palm oil was first shipped from Old Calabar to the United Kingdom in a large commercial quantity, and terminates in 1906 when Old Calabar lost its status as an administrative centre to Lagos.

2. The Geographical Description of Old Calabar

The geographical description of Old Calabar varied from time to time.Therefore, for proper understanding of the study, it is necessary to identify and be acquainted with the location of Old Calabar. According to Effiong- Fuller, initially, Old Calabar territory was identified with the Efik tribe and the territories they occupied.It was written that Old Calabar only "refers to the Efik settlement at the mouth of the Cross River".[i]However, by the end of 18th century, the Old Calabar territory included not just the Efik settlement alone, but the Efut, Qua, Okoyong and Ejagham.[ii] Beginning from 1846 when the Scottish Missionaries arrived at the area, Old Calabar's sphere of influence expanded and covered the entire Cross River basin, known as "Calabar and its Missions". Thus, in terms of ethnic composition the Old Calabar was "made up of Efiks(sic), Quas, Efuts, Ejaghams, Okoyongs, Biases, Ibibios, Yakurrs, Ogojas, and even Ibos(sic) (Afikpo, Arochukwu, Abriba, Ohafia etc, are all Ibo(sic) territories, but were included within the Calabar Mission Field)."[iii]Professor N. C. Ejituwu's assertion agrees with Efiong Fuller's description of Old Calabar, According to Professor Ejituwu, from the eighteenth century, the name Old Calabar was used consistently to refer to the Efik settlement at the mouth of the Cross River[iv]. Ejituwu himself refers to it as a location at the mouth of the Cross River. However, a document from the late seventeenth century used it to refer both to a location in the Niger Delta and to another at the mouth of the Cross River. This description is in tandem with that of Abasiattai and Essien[v] who write that Old Calabar covered approximately the Calabar, Opobo (now in Rivers State), Arochukwu (now in Abia State), Akamkpa, Odukpani, Ubahada in Cross River State, Bakassi (now in Cameroon), and all the territory constituting the present Akwa Ibom State. In the 1920s, Talbot wrote that the name Calabar or Old Calabar was not applied to the Cross River until the 17th century when two Dutch maps carried it. Talbot[vi] believed that the name was later applied to the Cross River estuary with "Old" added to it to differentiate it from the New Calabar River located in the Niger Delta. A District Officer, A. F. P.P. Newns[vii] reported that Old Calabar was originally associated with the entire Niger Delta. For the purpose of this study, Old Calabar is defined to include only the present Akwa Ibom and Cross River States in South-South Nigeria.

It has been stated that the earliest known and documented European visit to the Efik coast of the Old Calabar territory was in 1432[viii].The Europeans, especially the Portuguese, began totrade with Old Calabar in that year (i.e.1432). The Portuguese Mariners and navigators passed through the Efik coastal territory while searching for the sea route to India. The Europeans, especially the Portuguese, began totrade with Old Calabar in that year. The British joined the international trade in 1668, when an English ship named *Peach Tree* of London sailed to Old Calabar, entered the Cross River, and took a ship-load of slaves.[ix] By 1827, a British settlement was established on the island of Fernando Po, near Old Calabar. This was made the base for West African Naval Squadron headed by General (later Sir) Edward Nicolls(1829-1834), charged with the responsibility of abolishing slave trade and slavery. Historians are agreed that the year 1841[x] marked the beginning of formal relations between Britain and Old Calabar. It was in that year that "the two countries"[xi] signed anti-slavery treaties to stop slavery in the area. Additional Articles were signed in 1842 to give Britain the right to intervene with force if slave trading revived in the Old Calabar territory. On September 10, 1884 the British Consul, E. H. Hewett signed a Treaty of Protection with the 'Kings and Chiefs' of Old Calabar.

Old Calabar had been an administrative centre for many successive colonial political structures in the geo-political entity that later became known as Southern Nigeria. Old Calabar was the headquarters the Oil Rivers Protectorate, 1885-1891;headquarters of the Niger Coast Protectorate, 1891-1900; headquarters of the Protectorate of Southern Nigeria, 1900-1906. As at January 1, 1900 when the Protectorate of Southern Nigeria came into existence Old Calabar's sphere of influence had extended right from Western Cameroons and the offshore Island of Equatorial Guinea (Fernando Po Island) to Lagos, encompassing the entire land area of the former Eastern and Western Regions of Nigeria.[xii]On the recommendation of Sir Walter Egerton, Old Calabar was renamed Calabar in August 1904[xiii]. It has been suggested that the site of Calabar, being part of Duke Town, was chosen as the headquarters of these Protectorates for two reasons: first, consideration was given to its proximity with the British consular offices on the Island of Fernando Po, which had already been established in 1827; and second, the support needed to be given to the Christian missionaries who had been residing in Calabar since 1846. According to Latham[xiv], the future of Calabar as an administrative centre was ruined by the amalgamation of Southern Nigeria and Lagos in 1906, the year Lagos became the new seat of colonial Nigerian government.

The pre- slave trade abolition Anglo-Old Calabar relations did not altered the indigenous judicial and legal system of the people. The system was subsequently replaced with the English judicial system following the introduction of the legitimate trade, which allowed influx of people, thus making the society more complex.

3. The Indigenous Judicial System

Under the pre-colonial indigenous judicial system, the Natural Rulers and their subordinates played very important roles in the dispensation of justice. To them, the end of justice was to maintain peace and order and pursue progress and development, and to preserve social equilibrium. In their administration of justice, the elders strictly adhered to the principles of natural laws and norms with historical legitimacy generally accepted by the people. Guided by the principles natural law, the pre-colonial Rulers, in most cases, delivered impersonal justice to the parties in conflict. The pre-colonial judicial system operated chiefly through councils of elders, secret societies, age-grades, age-sets, women organizations. They listened carefully to civil disputes brought before them with unbiased ears. To arrive at the justice of the case, they would state with unbiased minds the traditional rules of behaviour or conduct of the community and expressed their opinions individually or collectively. Legal opinions stated collectively were usually done after consultation by the elders. The council of elders was assisted in its law- making, implementation and enforcement by certain indigenous judicial institutions.

Indigenous judicial institutions in the Old Calabar territory were *Ekpo, Ekpe, Ubong, Obon, Ataat, Ekoong,Iban Isong* (women organizations) as well as age grades. With the British gradually taking over of authority from the indigenous Natural Rulers, some of

the above mentioned institutions lost their former socio-judicial and political significance. The institutions were viewed by the Europeans as being inimical to their sense of justice.[xv]

It should, however, be noted emphatically that initially the British made use of the indigenous institutions to introduce and enforce their laws that chiefly protected the lives and property of the Europeans and abolished the slave trade and slavery, killing or banishing of twins and twin mothers, human sacrifice and other inhuman traditional practices. The *Ekpe*[xvi]institution for instance, was used by the European supercargoes to recover debts owed them by the Old Calabar middlemen, especially during the consularships of John Beecroft, Hutchinson and R.F.Burton.

The pre-colonial judicial system had the procedure and practice of imposing punishment on offenders or law breakers. For instance, committing adultery was an offence. Adultery with the wife of a chief was a very serious offence that could attract the punishment of a fine, banishment, death or being sold as a slave. Adultery could lead to war between the communities of the husband and the offender adulterer.[xvii] This would change under the English legal system. Other offences such as stealing, killing and treachery, were not without various punishments attached to them. Punishments could be imposition of fine, banishment, selling into slavery or death as earlier mentioned. Killing of a pact person or an ally was a very serious offence against the entire community as well as the gods of the land. Law breakers could also be punished through opprobrium – i.e. by being isolated from the people. Visitations by the gods through the supernatural punishments were also believed to be source of punishment by the people. According to Curwen's *Intelligence Report on Ediene and Itak Clans,* a murderer of an ally or pact person was dealt with in the village square as an offence against the entire village or clan. As a rule, the murderer would be condemned to death by shooting.[xviii]"Living burial" was another form of punishment practiced in some coastal communities such as Oron. According to Professor Okon Edet Uya, "…the Ibibio sold their people (who committed offences) into slavery, a practice which was taboo in Oron". "…unlike the Ibibio, a person who constituted a nuisance to the (Oron) community was not sold into slavery but was buried alive with common consent."[xix]Thepractice of "living burial" as a form of punishment in pre-colonial Oron was confirmed in 1931 by the Colonial District Officer A.R. Whiteman who presided over the case of *Rex v. Antigha Okpobia of Ebughuin Eket Provincial Court*[xx].It appears the punishments meted out to offenders by the artificial House system were harsher than that of indigenous linage(*Ekpuk*) or villages or clan councils. Law breakers could be punished in various cruel, harsh and inhuman ways. Punishments ranged from cutting the ear, putting ground pepper in the eyes and nostrils, drowning, crucifixion, shooting or stoning to death.[xxi]

4. The Emerging Complex Society

After the abolition of the Atlantic slave trade by Great Britain in 1807 and slavery in 1833, there was an intensive search for agricultural and forest products to replace the human cargoes in the newly introduced "legitimate" trade. African commodities found to serve the need of international trade were ivory, gold dust, pepper, rice, gum copal and timber, including cam-wood, bar-wood, red-wood, and bleeding-wood. Ivory and cam-wood were most lucrative. As at 1800 palm oil was little known as a commodity of important commercial value, but in 1801, the largest shipment of palm oil was 96 casks; and in 1813, it rose to 781 casks. These were shipped by the Liverpool pioneer oil brokers, Henderson, Sellar &Co. and James Penny &Co[xxii]. In 1827, palm oil imported into United Kingdom increased to 94,246 cwt. and to 126,553 in 1828. It rose to 179,946 in 1829 and to 213,477 in 1830[xxiii]. As at 1832, the average price per ton was £ 28 in England while the local price per ton averaged £14 and could be as low as £5 in some places where there was no competition[xxiv]. The pioneers of the palm oil trade came from Liverpool and some of the leading slave traders were at the top of the list. The several slave ships owned by Captain E. Deane; James, John, and William Aspinall, Jonas Bold, James Penny and John Tobin, and many others, were now carrying palm oil, ivory, timber, gold dust and later palm kernels from the Niger Delta to Europe.

The reasons for the upsurge in European demand for palm oil have been given by Professor K. O. Dike. Firstly, the increase in population at the time of the Industrial Revolution in Britain came with changes in social customs and industrial requirements. Secondly, as British people began to take washing seriously, the demand for soap rose considerably and palm oil was the chief constituent in its manufacture. Thirdly, the substitution of metal for wooden machinery and the development of railways caused a steep rise in the use of palm oil as a lubricant. Fourthly, the existing sources of animal fats were not only inadequate but sometimes unsuitable. The European needs were satisfied by the palm oil found in abundance in West African territories of the Niger Delta, Sierra Leone, The Gambia, Gold Coast and Fernando Po (now in Central Africa).

Two foremost authorities of West African Economic History have stated that Old Calabar was the chief producer of the palm oil. According to Dike, " from the start the trade in the Bight of Biafra was in the hands of private merchants and the first Delta port to deal in that commodity on a commercial scale was Old Calabar, where the pioneers, J.O. Bold and James Penny of Liverpool, had a monopoly for three or four years."[xxv] Professor A. G. Hopkins corroborated Dike's assertion when he wrote: "In the period immediately after 1807 the leading centre of production in West Africa was Old Calabar, which shipped well over half the total palm oil imports entering Great Britain."[xxvi] The supply of the West African palm produce came from an area which stretched from Guinea to the Cameroons, though the most important source lay in the eastern section from the Gold Coat to Old Calabar. In the 1830s the Bonny kingdom joined Old Calabar in production and export of palm oil. Bonny overtook Old Calabar in the oil business and Bonny's supremacy in palm oil production lasted until 1870s, when its supplies and outlets were captured by the nearby port of Opobo following a political coup[xxvii]. Reportedly, in the 1840s, exports from the Niger Delta as a whole averaged 15-20, 000 tons per annum; and this was equivalent to about three-quarters of total oil imports into the United Kingdom.[xxviii]

Apart from palm oil, trade in commodities such as ivory, timber and bee-wax also increased. The growth in the European commerce in the African products attracted them irresistibly to the Niger Delta coasts and the Niger valley, including the Old Calabar territories. This resulted in influx of the European, Africans and the liberated slaves, thus making the Old Calabar societies more complex. The Niger Delta territory, including Old Calabar, became even more complex following the policy of importation of "Improved African Blood" (Liberated Slaves) into the area. Macgregor Laid, an Explorer, who introduced the policy, believed that the "importation of improved blood" was *sine qua non* not only in the development of commerce in the hinterland but also elimination of the powers of the natural rulers. Taking a particular look at the Niger Delta Region, Laid said: "The power of the Tribes in the Delta to impede the navigation of the stream (i.e. the Niger) is owing to their command of arms and ammunition procured from the Coast. This superiority will speedily cease with the opening of trade above them, and the introduction of free Africans who in Sierra Leone and the West Indies have been in contact with a superior race and have acquired European habits and wants."[xxix]Laid further suggested that before the exploitation of West African hinterland could be rendered profitable, these men (i.e. the imported improved African blood) must be introduced to act as retail dealers in British goods, collectors of produce, and purveyors of civilization.[xxx] This policy encouraged Africans from Sierra Leone Liberia and Ghana to migrate to the Niger Delta territory, especially when the African Steamship Company was founded. In 1853, Laid and the Church Missionary Society assisted "the emigration of 100 liberated Ibos" from Sierra Leone who pleaded to be sent back to the land of their birth. The policy impacted on the Houses system which expressed "the new coastal relationship based not on kinship but on common interest and economic necessities."[xxxi]The House system or "House Rule" was therefore "the mixture of peoples" from various parts of Nigeria and from other territories of Africa as well as from Europe and Asia, given the fact that Calabar had been an *entreport* for various races since the 15th century. The mixture of various peoples group in Houses had serious implications not only on the development of economic relations but also legal system. As Dike had noted,

- The mixture of peoples often meant that African law and custom vanish and a new law and order was evolved based partly on African precedent and experience and partly on the lessons of the contact with Europe. In its full development the House became at once a cooperative trading unit and a local government institution. As a rule, every trader of any importance own so many slaves bought from various tribes. These, along with the trader's family, formed the nucleus of a 'House'… The smaller House numbered many thousands. In 1847, King Eyo Honesty of Creek Town Old Calabar, 'had in his House many thousand slaves, and four hundred canoes with captain and crew for everyone. Besides his extensive trade, which amounted to several puncheons (of palm oil) annually, he employed his people reclaiming waste land, founding towns, and planting farms in well-selected positions which gave him command of the rivers and channels of trade. Along with the King's House there would be scores of smaller Houses, each presided over by a wealthy merchant.[xxxii]

The House Rule created a master-servant relationship. For instance, unlike the traditional local government units of lineage (*Ekpuk)* in the hinterland territories of Ibibioand, Annang and *Umunna* for the Igbo, the House rule in the coastal city-states introduced some element of autocracy and "did not make for excess of democracy". Thus, it cannot be denied that an element of cruelty and even brutality was ever present. In fact, a cruel master could, on occasion, take the life of his slave for every trifling offence.[xxxiii]

With the advent of the English legal system, no longer was the right to take the life of the offenders vested in the council of elders of the lineage, village, Village-group or clan. The duties of adjudicating, punishing and enforcing or executing the punishment were now carried out by formerly constituted English-style judiciary institutions. As K.K. Nair has noted, "Indeed, to many laymen of that time, the advent of colonial administration invariably meant the advent of the European judicial system."[xxxiv]

It appeared that more cases were heard in the Old Calabar territory more than anywhere else in the Niger Coast Protectorate, which later became the Protectorate of Southern Nigeria. The first reason was that Calabar was the headquarters of the Protectorate and had earlier been the headquarters of the Bight of Biafra and headquarters of the Oil Rivers Protectorate. The second reason was that Calabar had been in contact with the Europeans and Asians since the sixteenth century, even before it served as headquarters between 1867 and 1914. "The presence of many 'foreigners' (the stranger element from other parts of West Africa and West Indies), whose disputes with the Calabar people and with each other were not inconsiderable increased in the number of Palavers."[xxxv]

The fourth reason for the increased number of cases was the presence of the soldiers and their wives and relatives at the barracks, which by population became a town by itself. Apart from the barracks at Calabar which were in close proximity with Duke Town, other barracks were established at various part of the province after successful British expeditions and pacifications of the coastal and hinterland communities. In such environment there were bound to be frictions between couples or between them and their relatives or civilian population outside the barracks. The fifth reason was that after 1899, cases were transferred to the Native High Court from the District Commissioner's Court outside the Old Calabar Province, such as Cameroons and Ogoja and Owerri Provinces.[xxxvi]

5. Treaties Protecting the British Subjects

Usually, the indigenous judicial authorities and institutions such as *Ekpe, Ekpo, Obon, Ataat* and *Ubong* did not meddle with Europeans and the Kroomen as they were not citizens of Old Calabar. The citizens who worked for the Europeans were also deemed to be British subjects and therefore not under the jurisdiction of the secret societies and their laws. By this agreement, the secret societies were ordered never to flog these categories of persons. The implementation of this agreement was not without conflict. For instance, in December 1849, a missionary-teacher, Edgerly instructed a young man who was a Calabar citizen to go through the town rigging the school bell to pass information to the school pupils and their parents. An Ekpe-man held him and flogged while carrying on the instruction of the missionary-teacher. Apparently being provoked, missionary-teacher Edgerly entered the Ekpe shed located in Old Town and indiscreetly broke the sacred Ekpe drum. The King saw Edgerly's action as sacrilegiously interfering with the customs and tradition of people. The head of missionaries, Hope Waddell apologized for Edgerly's behavior, but blamed the Ekpe-man whose

action he saw the as constituting an interference with educational and spiritual work of the missionary. Waddell suggested that the two rival bells of Ekpe and the mission should not come into collusion; that the bell rigger should retire when he heard the Ekpe-man's bell or drum and likewise that the Ekpe-man should retire when he heard the school bell.[xxxvii]

The interests of the British subjects were further protected by the treaty signed between King Eyo Honesty III and Consul Hutchinson on board the *Spitfire* in January, 1860. The agreement declared that the interests of all British subjects coming to, or residing in the territories of Eyo Honesty were to be placed under the regulation and control of the Consul at Fernando Po. The treaty also stipulated that the consul should give effect to all rules and regulations that were or might be enacted by Her Majesty- in- Council or by any authorized British Officer, as regards the conduct of their trade and prevention of violation of laws.[xxxviii]

A similar agreement was later signed between Consul Hutchinson and the King of Duke Town, John Archibong in May 1860[xxxix]. Archibong's predecessor, King Duke Ephraim had signed a treaty with Consul Hutchinson on board H. M. S. *Scourge* in June 1856. The Consul, the King, and the Duke Town nobility agreed that "British subjects coming to, trading at, or residing within, the Calabar territory shall in no wise be maltreated without incurring the displeasure of her Majesty's government, and that, on a representation of any infraction of Article VI of the Treaty sanctioned by John Beecroft Esquire, her Britannic Majesty's Consul at Fernando Po, shall have a right to demand redress for such grievances."[xl]

6. The British Traders, Missionaries and Violation of Human Rights

On August 1856, King Duke Ephraim was forced by some Krooboys on board the *Scourge* to enter into additional treaty further guaranteeing the safety of the supercargoes and their property. The king did not enter into that treaty without making some reservations as he tendered a request to Consul Hutchinson: "I beg you to do something to stop the white men from going into the house of Calabar men and knocking them. You white men have fashion to bind men to keep the peace, so I beg you to do this, and not let Palaver come up again"[xli].

What King Duke Ephraim was saying in effect was that it was the white men, especially the traders and missionaries, that were the sources of conflict by their incessant interference in the domestic affairs of the people or by applying high handed measures in settling disputes arising from debts. The king therefore advised that for peace to rein, the white men should respect the rights of Africans and treat them fairly.

King Ephraim used the case of a lame beaten by an English ship-captain and supercargo named Cuthbertson to demonstrate other numerous cases of ill-treatment of the Africans by the white men. The King told Consul Hutchinson that an English trader made several attacks on a lame Efik man who was the Head of the Henshaw House. The cause of the attacks was that Henshaw House Head did not want Cuthbertson to keep as his mistress a woman belonging to Henshaw House (lineage). Consequent upon his attacks on the lame, the young men of Calabar reacted against Cuthbertson's brutality. They complained to Consul Hutchinson. The Consul punished Cuthbertson by imposing a fine of four puncheons of palm oil on him. Consul Hutchinson punished the lame House Head and victim of Cuthbertson's attack a fine of twenty puncheons of palm oil. The Consul also ordered that in addition to this fine, the Ekpe titles should be stripped from the Head of Henshaw House.[xlii]

It must be emphasized that though the decision to punish Cuthbertson demonstrated the fact that even the white men were not above law, the punishment meted to the lame victim remained shocking to the imagination of any right-thinking person in the contemporary world. If one, may ask: what right had the Consul to order the stripping of the Ekpe title from the House Head who doubled as the custodian of the Ekpe institution? Was the fine imposed on the House Head fair, just and equitable? Situation such as this had always brought conflict between the people and the white men, particularly the supercargoes, political agents and the missionaries in Old Calabar and elsewhere in the Southern Protectorate.

Although Consul Hutchintson had put excessive punishment on African victims, he, however, did not fail to note that maltreatment, unjust, violent, high handed measures, detaining an innocent person for another person's offence or taking an innocent person's property in place of that of a debtor, were acts that were counter-productive to the spirits and letters of the much taunted legitimate trade. That Consul Hutchinson knew the supercargoes were responsible for worsening commercial relations between the British and Old Calabar could be seen from his report to the Foreign Office that:

- The trading operations in the rivers of Bight of Biafra are not in anything like a condition that promises well for the commercial prosperity of such locality. It is my opinion that Europeans coming out, solely to barter legitimately for the country's products, ought not to interfere in matters of local government, local prejudices, or superstitions with the natives. The short interval that has elapsed (thirty-six years) between the slave trading of former times, and the legitimate commerce of our day, has not made the social and moral condition of the people to be changed pari passue with its progress. That is unfortunately overlooked by our commercial representatives…[xliii]

The British Foreign Office reacted angrily to the complaints the Natural Rulers made against the supercargoes that carried out violent crimes such as rampant hostage-taking, illegal detention on board a ship, seizure property, substitutionary punishments against the people. Lord Clarendon who succeeded Lord Palmerston as head of the Foreign Office agreed with King Ephraim Duke's position on the criminal acts of the supercargoes. Lord Clarendon requested Hutchinson to warn the European traders in the Old Calabar territory that:

- if in order to recover debts due the natives to them, they choose to have recourse to unjust, violent, and high handed measure, such as detaining a man on board a ship as hostage for another, or seizing palm oil, property of one man in payment of a debt, due by another, the British Consul at Fernando Po must leave the supercargoes to themselves, and abandon as useless all attempts to arbitrate between them and the native chiefs.[xliv]

7. Bombardment of Old Town

Old Town was alleged to have assaulted Missionary Edgerley for unlawful entering and destroying items in their place of worshipping their god. The missionaries objected to the proposed burning of the town as "an extreme measure unwarranted by any law or treaty and involving the innocent in sufferings with the guilty."[xlv] The missionaries agreed with King Eyo that the alleged guilty six or seven persons should be arrested and made to answer charges and pay the fine that would be imposed on them. The missionaries blamed the resentment of the people on the sacrilegious acts of Edgerley. On 19 January 1855, the supercargoes bombarded Old Town for almost one hour by their war steamer called *Antelope*. After the shelling, they sent Kroomen and mariners ashore to burn down the town on the pretext that the people committed the crime of immolation, killed some slaves by burning them alive. It has been suggested that one of the supercargoes' intentions for the bombardment was to frighten the King, Chiefs and people of Duke Town who were indebted to the British traders.

8. The Court of Equity

The Court of Equity was founded in 1856 by the European supercargoes following the political and economic turbulence engendered by the commercial malpractices of the supercargoes and the Old Calabar middlemen. Before the establishment of the court of equity, the Kings and Chiefs were usually the ones who integrated and coordinated relations between the European and African traders. They were the supreme political authorities who maintained peace and order in the area. However, due to the economic strain experience in Old Calabar in 1850s, inter-state relations were drastically altered. The change was to such an extent that the external policies of the Old Calabar territory were no longer the exclusive preserve of the Kings and Chiefs but that of an English type tribunal or court. Membership of this court consisted of both the European supercargoes and the kings of Old Calabar. The operation of the court also changed the personal relationships of the kings with the supercargoes as such relationships were now being institutionalised. Initially, the European traders accepted the political authority of the kings on domestic matters. For instance, the foreigners could call upon the kings or chiefs to mobilize indigenous institutions such as Ekpe or Ekpo society to collect their debts for them.[xlvi]

Certain reasons accounted for the establishment of the Court of Equity. First, the Court was established to settle commercial disputes arising between the European supercargoes and the Kings and Old Calabar middle men in the area. The English manufactured goods were exchanged for palm oil through a barter trade, which was locally known as "Trust system." This was a peculiar form of credit where trade goods were trusted to the African traders as middlemen by the British merchants for periods of from six months to a year or more. During this period the middle men were required to trade them for interior produce and pay back their European customers the equivalent in oil, ivory, timber and later palm kernels. In 1848, it was reported that €500,000 to €600,000 of manufactured goods from Britain had to be trusted to the natives before palm oil which eventually reached England could be bought."[xlvii]

Credits were given to great merchant Houses and Princes, Heads of Houses or young traders recommended by Heads and or Rulers. This type of transaction which was based on trust could not go on smoothly for a long time without generating some commercial misunderstandings between the parties. The Court of Equity was, therefore, founded by the European supercargoes following the political and economic turbulence engendered by the commercial malpractices of the supercargoes and the Old Calabar middlemen. The West African Court of Equity was made up of the supercargoes, commercial agents, local kings and the British Consuls.

Secondly, the Court of Equity was founded because the supercargoes needed to have a choice of law and not just the traditional legal system that was based only on indigenous authorities and institutions. This led to strained relations in the 1850s between the European supercargoes and the people because the European oil dealers wanted to be free to choose between English law and Efik laws under which they were to be judged or they could judge others, as circumstances might warrant. The indigenous legal authorities of Old Calabar included the Kings and Chiefs and their traditional institutions such as *Ekpe, Ekpo, Obon, Ataat*,*Ubong*, which could be invoked to enforce the law. These indigenous secret societies could be "blown" (i.e. invoke) to stop trade with the Europeans. Thus, the institutions served as the law enforcement agents. Hutchinson, who was then Consul for Old Calabar, did not want the supercargoes to play double standards with regard to choice law and law enforcement agents. The Consul warned that in accordance with the April 17, 1852 Treaty, *Ekpe* laws should not be invoked upon supercargoes who were British subjects and therefore outside the jurisdiction of the Old Calabar laws, customs and traditions.

The third reason for establishing the Court of Equity in Old Clabar was that the European supercargoes entertained fear that without an English type ofCourt they could lose their capital if they relocated to another territory to further their business. In fact, following the bombardment of Lagos in 1851 and its subsequent annexation to the British Crown in 1861, the supercargoes began to express doubts regarding the future security of oil trade, and in particular about the collection of outstanding debts owed them by the Old Calabar middlemen. The fears were borne out of the fact that Lagos and the territory now constituting South-West Nigeria gradually became a major producer of palm oil, competing with Old Calabar for the English market. Some of the supercargoes were contemplating relocating to Lagos but they were not sure of the new environment.

The fourth reason was that, in spite of the existing Anglo-Old Calabar treaty, there were reported cases of illegal detentions of the African traders by the European supercargoes. For instance, Captain Baak detained Egbo Bassey on board a Dutch vessel, *Endragt.* The alleged offence of Ekpo Bassey was that he owed two puncheons of palm oil and a trade cask due for about three years. The supercargoes accused Ekpo Bassey of being indebted to six British supercargoes and Dutch trader. They alleged that Eyamba owed them thirty-five puncheons, (about twenty-five tons) of palm oil. In 1846, the European traders arrested King Eyamba and put him in chains on board the *BrigMay*, as a debtor. The supercargoes later released the King on sureties. King Eyo was also indebted but the supercargoes did not arrest and detain him[xlviii]. They did not arrest King Eyo, perhaps, because his debt was not a big one or because of his growing influence among the European merchants and the Missionaries.

It appeared the Consuls were not satisfied with the way the supercargoes were interfering with the running the Court of Equity. The Consuls therefore made persistent demands for government intervention. Consequent upon the Consuls' advice, the British government drafted the 1858 Order-in-Council which provided for, among other things, the protection of "Kroomen" or Kroo boys and others serving on British vessels.[xlix] The Kroomen needed protection because of the risky nature of the duties they performed for the Europeans. For instance, on 19 January 1885 after Old Town was shelled by the war steamer *Antelope*, the kroomen and mariners were sent on to shore to set fire to every part of the town. In addition, the Krooboys were the ones Consul Hutchinson sent to bring Great king Ephraim Duke on board the *Scourge* after "a little war-like demonstration by the supercargoes who pointed their guns towards the town.[l] These two pieces of evidence indicate that the Kroomen acted like modern day police officers or military officers. The evidence also show that the British were not yet prepared with police, military, administrative and judicial personnel administer the area.

9. The 1862 Treaty Sanctioning the Re-Convening of the Court of Equity

The 1862 Treaty signaled the second phase of the Court of Equity. Due to the adverse impact of the Court of Equity on the people, the new treaty, though seeking to reform the Court, attracted negative reactions from certain African Rulers and traders. The first phase of the Court of Equity was bound to fail because of its inherent defects. For one, the regulations of the Court seemed to have been designed to benefit only one of the parties to the arrangement, which were the European supercargoes. It failed in its task as an arbiter for the settlement of trade disputes and for establishing fair and equitable trading conditions. Consequently, on May 5, 1862 Consul Burton who took over from Hutchinson called a meeting of the European supercargoes. Part of the agenda of the meeting was to consider a re-establishment of a Court of Equity based on the articles of previous treaties concluded with late Governor Beecroft and Consul Hutchinson in 1856.[li] Burton resurrected the Court of Equity at the meeting on board H.M.S. Griffin.

King Archibong of Duke Town persistently refused to assent to the treaty seeking to revive the Court. The king sent excuses that he was sick and could not attend the meeting. However, the British medical officers named Griffon and Gressy who were attached to the ship on which the meetings were held, examined the King and reported that he was well enough to attend the meetings. The reasons the King refused to honour the Consul's invitation to attend the meeting were not far from the desire to protect both personal and communal interests. The first reason, which had to do with his personal interest, was the fact that the compulsory breakfast for the king was abolished and the king was unhappy about this abolition. Secondly, the king and people of Duke Town thought they would lose from the new treaty framed exclusively by the Europeans. They believed that such a unilateral treaty would not consider their communal interests. Thirdly, the terms of the treaty prevented the people from adjusting the price of palm oil according to current market prices. Fourthly, the new agreement took away the right of the African middlemen to refuse to sell their produce below a certain price or in smaller quantities than the usual trade casks and or puncheons. Fifthly, the agreement robbed the people of the right to insist on local labour being used to erect the cask houses and trade establishments for the European traders. K.K. Nair summarized the situation thus: "in spite of the King's pretence to have been taken ill and being therefore unable to attend a meeting, he was forced to sign an agreement on 7 May (1862), sanctioning the re-convening of the Court of Equity."[lii]

Even though the Consul forced King Archibong to sign the court reviving treaties, the King had vehemently resisted implementation and enforcement of the treaties, especially in the Itu territory now in Akwa Ibom state. Unlike the old Equity Court that was almost entirely in the hands of the supercargoes, the consul supervised the revived court. Accordingly, on 9 May 1862, Consul Burton accompanied by West African Naval Squadron and supercargoes arrived at Itu, which was an important market town located forty miles from Duke Town. The Itu market was one of the markets the consul and his entourage needed to be inspect. There at Itu market, some sixty slaves of the Duke Town people pointed their muskets at the squadron and the consul and order them to go back. The consul asked king to apologize for the humiliation and to produce the ring- leader of the militant slaves who threatened the lives of the Europeans.

Rather than complied with the Consul's demands, King Archibong warned all foreigners to leave his town. His armed men filled the town and resisted the Consul and supercargoes and their attempts to burn down the town. The members newly revived Court of Equity resolved to do two things, probably for the purposes of saving their humiliated faces, ensuring safety and opening up channels for negotiation. One of the two things they did was that they moved the shipping to Parrot Island. This movement was necessary in view of the fact that the season for yellow fever was fast approaching in Duke Town. Reasoning that the yellow fever would sweep the Europeans away, they therefore moved to the Parrot Island, some few miles down the river, which was always considered a safer and healthier place for the white men. The second thing the squadron and supercargoes did was that they kidnapped chief Iron Bar who was a very highly influential man with considerable power in Duke Town. The purpose of taking Chief Iron Bar hostage was probably, to use him to bargain or negotiate with the kings and chiefs of Old Calabar for a better deal with the Europeans.

It must be stated that King Archibong's resistance against the implementation of the 1862 treaty paid off. For one, the Consul granted him the right to nominate local workers to construct the cask houses for the Europeans. The Consul also granted the King the right to sanction locations for houses the European agents would construct ashore[liii].

The supercargoes were complaining that they did not obtain redress for their grievances from King Archibong who humiliated them at Itu and from King John who invoked the Ekpe authorities against one Roy's boat when he attempted to stop the custom of providing breakfasts on the arrival of any ship on the shore of Old Calabar.

10. Punishing the African Rulers for the Crimes of their Subjects

The 1862 treaty had revived the Court of Equity. However, contrary to its avowed intention, the reformed Court did not depart from the unjust practices of the old Court. The reformed Court continued to impose undue and excessive fines on the local traders and debtors. For instance, in December 1867, the Chiefs of Duke Town who had no money to pay their fines had promised to pay the chairman of the Court of Equity or the Consul twenty puncheons of good palm oil before a specific date. They promised that should they fail to pay on the agreed date, they would pay thirty puncheon of oil at a later date. The Court imposed this fine on King Archibong alleged to have ordered his men to attack a village, killed its inhabitants and sacrificed two women. The two women were said to be among the seven women who survived the attack. King Archibong was also alleged to have levied war on several other villages, but the Court of Equity did not know what to do with him.[liv] The Court threatened King Archibong II with calling the Consul and his man-of-war if he did not pay up the agreed puncheons of oil the agreed date. A meeting was held between the king and the European traders on board *Araminta*, and it was decided the case should be handed over to the Consul.[lv]

It should be pointed out that some of the crimes were committed by the citizens without the knowledge of the King. As one British Historian rightly noted, "Archibong found it extremely difficult to contain the excesses of his own men who either committed armed robberies or engaged in assaults on the cask houses of European traders thus violating Article 19 and 23 of the Code of Trade Regulations of 1862."[lvi] In July 1868, "about five hundred Calabar armed men and slaves burgled the cask house of the supercargo captain Thomas and stole about a hundred puncheon of palm oil" at Duke Town.[lvii] The King had no option than to demand for casks to pay the fine and the court agreed to provide the casks as requested.[lviii] The supercargoes wrote to the consul to procure the assistance of a gunboat, go to Calabar and punish the offenders to prevent the recurrence of such criminal incidents. However, that threat did not deter the people from breaking into Captain Thomas's cask house or any other cask houses to take away oil.

This magnitude of crime of stealing was and still is not in the character of the people of Old Calabar. "There is no smoke without fire", is an adage very relevant here. One should look at the Anglo-Old Calabar relations very critically with regard to commercial activities. The European supercargoes had been cheating the people most of the times by paying the unimaginable low prices and by imposing unjustified and excessive fines on their rulers. The commercial malpractices appeared to have been enough impetus to provoke the incidents of taking away the supercargoes oil in retaliation. The Court of Equity had always fined kings and chiefs for any offence committed by their subjects. Such fines would be based on the argument that the kings. By the provisions of the treaties they entered into with the Europeans, the rulers were to be held responsible for the safety of all British property within their respective jurisdictions. In two years alone – 1868 and 1869, the Court imposed a fine of more than about 200 puncheons of oil on King Archibong. Where did the court expect the king to obtain this quantity of oil from to pay the supercargoes? The Court acted so unjustly to punish the rulers for the crimes allegedly committed by their subjects. The Court should have also punished the supercargoes for their commercial dishonesty. The actions of the locals should rather be diplomatically seen as trying to make up for the losses they incurred because of trade and commercial malpractices by the supercargoes. The incidents of carrying away some of the supercargoes' oil should, therefore, be viewed as a retaliation on the part of the Africans against exploitation of the European traders.

11. The 1869 Agreement on Oil Theft and Punishment of the Natural Rulers

The incidents of taking away the supercargoes' oil warranted the Court to enact fresh regulations for the conduct of trading activities in the territory. Consequently, the Court called a meeting on 23 February 1869 on board H.M.S. *Speedwell.* The supercargoes and the Natural Rulers of the area attended the meeting. They deliberated on the incidents of "stealing" oil and other issues. The Court fined King Archibong ten puncheons of oil for allegedly failing to stop his subjects from stealing the supercargoes' oil in his area of jurisdiction. The meeting also mandated the Rulers to prohibit any of their subjects from visiting the cask houses of the European traders on any pretext whatsoever. The Court further decreed that the Rulers should be held responsible for all the thefts committed by their subjects if the Court proved that such crimes or losses were caused by the inhabitants of their respective towns.[lix] The Rulers pledged that no British subject would be detained onshore or maltreated in any way or under any pretence. In addition, they ignorantly accepted that if they did so they should be declared enemies of Great Britain. The parties further agreed that should there be any violation of the terms of the treaty, the man-of-war would hasten to the Calabar River to protect British subjects and their property.[lx]

In June 1871, the Court ratified the Agreement of 7 May 1862 with a view to cancelling certain articles that were deliberately inserted in order to check the excesses of the Europeans. To this end, the court sought to abolish the trust system of trade. It declared certain Articles of the 1862 Agreement to be obsolete because the articles were being constantly violated by the European supercargoes. The British government was of the viewed that important legal safeguards for trade relations should not be removed from the 1862 treaty. Although the government was not in the position to encourage a revival of the trust system, it requested that the entire articles penciled down for deletion be retained.[lxi]

12. The Court of Equity and the Principle of Fair Hearing

A critical look at the operation of the old and new Court of Equity would reveal that it did not give fair hearing to the Africans who brought matters before it for determination. Most judgments of the court were repugnant to natural justice equity and good conscience as most decisions of the Court usually fell below the standard of justice expected of the so-called "civilized people" of Europe. Majority of court members were the European supercargoes.

Successive Consuls, failed, refused or neglected to observe or put to use the principle of *nemo judex in causa sua* (no one or no man should be a judge in his own case), one of the oldest principles of customary international law safeguarding natural justice. The supercargoes and the Consuls were judges in the cases they had vested interests and to that extent they could never give judgment in

favour of the Africans. The case of king Archibong would suffice to drive home this point. As earlier hinted, in July 1868 "about five hundred Calabar armed men and slaves" were alleged to have "stolen about on hundred of puncheons of palm oil belonging to one of the European supercargoes, Captain Thomas. The court decided that king Archibong should hand over David King the suspected leader of the gang that took away the oil, to the authorities of the hulk *Winefred* for trial on charges of theft and assault in Captain Thomas' cask house. The King was also fined ten puncheons of oil because by the treaty 1862 ratified on 5 February 1869, he was responsible for the safety of all British property within his jurisdiction.

There is no evidence to show that before the Court handed down these punishments on the king it gave him any chance to rectify the allegation through application of justice in accordance with the customs and traditions of the people. The traditional method would have enabled the king to determine and fish out the actual persons that were involved in the oil-stealing incident. The method would have enabled the king to determine and produce the ringleader. The method would have also enabled the king to confirm the actual puncheons of oil that were carried away. If the Court had given the king any chance to carry out investigation through any known traditional methods of investigation, it was likely that he would have discovered criminals and would have ordered them to bring back the stolen oil.

It is also significant to note that the supercargoes did not make any complaints to the king before approaching the Court of Equity. The traders only demanded, through the court, that the king should produce the suspected culprits. As Professor Kannan Nair rightly noted,

- It seems unfair to accuse (King) Archibong entirely for the lawlessness of the (Calabar) River. Apart from the fact that the supercargoes were guilty of engendering many of the disputes, no real opportunity was ever afforded to the Efik rulers to settle the trade palavers… it is not that (king) Archibong was reluctant to bring the juveniles to justice; he was never allowed time to do precisely that. When the king insisted on looking into the matter himself, and refused to hand over persons arbitrarily to the supercargoes as in the case of David King, the supercargoes promptly complained of their inability to 'get satisfaction' from the King and forthwith appealed to consul for assistance. It would sound absurd, therefore, for the traders to hold the king responsible for the safety and protection of all British property within the jurisdiction without at the same time allowing him the necessary leave to punish those who contravened the regulations.[lxii]

It was not only absurd but also against the principle of natural justice, equity, good conscience and fundamental rights to hold the King responsible for the safety of the British property when the King or his agents were not serving or being paid as security guards of such property. It was also against the law to impose fines on the King for an offence presumably committed by another person without the consent or knowledge of the king. One wonders why such punishment was imposed on the King when the British government had abolished the practice of substitutionary punishment in Old Calabar through a treaty signed between consul Laughland and the Kings in 1861.[lxiii]

Also seen as illegal, unjustifiable, and ungodly, was the fact that the Court of Equity was in the habit of punishing the Africans including children (juveniles) without first proofing their guilt. Yet the Court was composed of Europeans who imported the time-honoured principle of criminal justice that espoused the point of law that "every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty"[lxiv]. As far back as 1789, the Europeans were preaching the rights of man and of citizens thus:

- Men are born and remain free and equal in rights…Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes...No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law…The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense… As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law[lxv].

It is not out of place to state here that these humane principles of law were applied in Europe but not used in Africa, probably because of racial and discriminatory notions such as the one held by Chamberlain. Chamberlain had, while addressing the British House of Commons on Colonial Supply on 28 June 1895 advised the British government not to extend its humane laws to the non-Europeans whom he saw as "savages" in the uncivilized corners of the globe. To quote him precisely, Chamberlain told the House of Commons: "It appears to me to be absurd to apply to savage countries the same rules which we apply to civilized portions of the United Kingdom."[lxvi] It is reasonable to suggest that that the British political agents and even missionaries had adopted such discriminatory legal theory and wherefrom imposed unjust laws and punishments on the people of Old Calabar in particular and Africa in general.

13. More Fundamental Changes in the Indigenous Judicial System

Between 1841 and 1872, international trade was carried in the Niger Delta without English or Western law; the Europeans made use of the indigenous judicial institutions to settle commercial disputes[lxvii]. Unlike the Colony of Lagos where "the main body of English law was introduced in 1863, apart from the British Treaties, rudimentary English law was introduced in Niger Coast Protectorate in 1872[lxviii]. More fundamental changes in the indigenous judicial system, therefore, began to occur in 1872 following the promulgation of the Order-in-Council in that year.By virtue of the 1872 Order, membership of all the African Kings and Chiefs or middlemen and traders in the Court of Equity ceased. Thenceforth, the British took over virtually all the judicial, legal and political powers and authorities of the Natural Rulers and institutions in the acquired territories. However, more remarkably changes occurred in 1891 when Major Claude MacDonald was appointed High Commissioner and Consul-General of the Oil Rivers Protectorate. From that year (i.e. 1891), MacDonald became the new "paramount ruler" and by 1900 when Great Britain took over direct administration of the

Northern and Southern Protectorates, virtually all the judicial powers of the natural rulers had been replaced with the English legal system.

As Professor Nair had rightly noted, the judicial system established by the colonial administration represented an important transition in the change from the preservation of the social equilibrium by chiefs to the impersonal justice of the courts acting under the rule of law. In the pre-colonial era, the councils of elders and chiefs listened to civil disputes brought before them and expressed their opinions, stating the traditional rules of behavior or conduct of the community. It was up to the plaintiff himself to assert his rights with the support of his kin and friends, and the general outcome normally consisted of a reconciliation of the disputing parties in the light of the merits of the case. What was most crucial in this form of justice was the reconciliation and delimitation of conflict, rather than the punishment of an offender. It was only when an individual persistently flouted the approved norms of behavior of the community that his kin withdrew their support, and every man would the rise against him.[lxix]

The traditional legal system had fundamentally changed. The changes could be seen in terms of methods and procedures as well as the ultimate aims of law and justice. Under the English legal system, the council of elders could no longer play the dominant role. In the first place, the courts were no longer held in the King's and Chief's palaces as before. Bribery and corruption were rare in the indigenous courts. Taking bribe to pervade the course of justice was viewed by the elders as a very serious crime against the "God of Justice" and such a bribe-taker could die mysteriously. Also witnesses to parties in disputes had to be true witnesses who would testify without fear or favour. Biased witness stood the risk of incurring the wrath of the gods, especially in cases involving the kinship institutions of grandchildren (*eyeyen*), in-laws (*ukod*), strangers/visitors (*esen-owo*), allies (*imaan*).[lxx] Bribery, corruption, and false witnessing were not encouraged because the immediate and remote end of justice and the law itself was not to punish the offenders but to reconcile the disputing parties so as to maintain peace and order in the communities and foster peaceful co-existence amongst the people. The gradual introduction of a modern system of legal procedures finally did away with the traditional legal system. The ultimate objective of law was no longer the application of the idea of reconciliation between conflicting interests or the idea of obtaining reciprocity but the punishment of the offender.[lxxi]

However, it must be noted that the advent of English judicial system did not automatically bring about a clean break with the traditional legal system. There were now three levels of courts in existence, namely, the "NativeCourts", Courts of Equity, the Consular Courts, and the High Court. The Native Court continued to hear cases; but more civil and criminal cases were heard by the Consular Court. For example, in 1896 the Consular Court heard 504 criminal and civil cases; whereas in 1894 it entertained 286 of such cases. Between March 1899 and March 1900, the High Court tried a total of 244 civil and 120 criminal cases while the minor courts tried 613 civil and 141 criminal cases within the same period.[lxxii]

It was as from the 1930s that certain aspects of the traditional legal system and institutions were officially ignored. As a matter of deliberate policy of the British government, the colonial officers were instructed to "ignore existing boundaries… and to resist the temptation of trying to preserve ancient institutions merely out of respect for their age."[lxxiii] The nature of cases adjudicated upon by the new courts could be inferred from Marry Slessor's report. Mary Slessor was "the magnificent Scottish mill-girl", a Missionary Evangelist and a Vice-Consul who served the people of the Cross River basin. In recognition of her great influence over the people, the British Government granted her magisterial powers to adjudicate over cases brought to her court by the people. One day, while working in her Court at Itu, Mary exclaimed with a mixed feeling of surprise and excitement:

- What a crowd of people I have had to-day and how debased! They are just brutes in regard to women. I have had a murderer, an *esere* (poison ordeal) case, a suicide, a man for branding his slave wife all over her face and body, a man with a gun who has shot four persons – it is all horrible.[lxxiv]

The people's customs and usages which formed subjects of court cases were human sacrifices, killing of twins and twin mothers, cannibalism, confinement of girls in "fatting houses" before marriage, and the *esere* – "poison ordeal by which numerous people perished."[lxxv]Perham reported that after Captain (later Sir) Richard Burton had visited the "sacrifice house at Bonny" he remarked "there is apparently in these people a physical delight in cruelty to beast as well as man… the sight of suffering seems to bring them an enjoyment without which the world is tame."[lxxvi]It would be recalled that when Sir Burton was appointed to take over from Hutchinson as Consul to the Bight of Biafra he was dreaded of the West African climate and therefore told the Foreign Office officials who posted him "They want me to die, but I intend to live, just to spite the devils."[lxxvii]

The nature of cases dealt with could help explain the reason for the unavoidable clash between the modernity and tradition. Take the case of adultery, for instance. In the yhe pre-colonial times, adultery was viewed as a criminal offence that could the killing of the paramour or banishment of being sold into slavery. However, since the colonial period and under the English legal systems, adultery has not been seen an offence. Thus, in the adultery case of *Aoko v. Fagbemi*[lxxviii], it was held that adultery was not a crime on the ground that in the English law which Nigeria had adopted, no person could be convicted on an offence unless the offence was defined by a written law and the penalty for it prescribed by a written law.

14. Use of Force to Acquire Hinterland Territories

The British acquired the hinterland territories of the present day Akwa Ibom and Abia states by threat of force or the actual use of force and diplomacy. The British political officers, missionaries, explorers and traders facilitated the acquisition. For instance, two British merchants, A. A. Robertson and George Watts explored the Qua Iboe estuary in 1871 and 1881, respectively. They commenced trading activities with the people on the river after the exploration. In the 1880s, Consuls E.E. Hewett and Harry H. Johnston similarly explored the Cross Rivers' estuary and the adjoining coast. In 1894, a Consular agent, Rogers Casement penetrated the Itu, Ediene, Essene, and Southern Iman areas, encountering considerable opposition from the people on the way. The following year, A.A. Whitehouse, the newly appointed Pro-Consul for Qua-Iboe in Eket District ascended the Qua Iboe River from Eket to Enen

in Annan gland where the people forced him to return.[lxxix] Penetration into other areas by British explorers, traders, missionaries and political officers was not without resistance by the people. The people's resistance majorly stemmed from the British intention to impose foreign laws on them. The coastal and the hinterland people rebuffed any attempt by the British Consular agents and missionaries to interfere in their political, social or religious affairs. The people did not want the British to exercise legal authority over them or over any matter they claimed to have been vested with territorial jurisdiction. The people of Ikot Apatek community offered a typical example of opposition to the British authority. In Eket District, the people persistently refused to recognize the authority of Pro-Consul Whitehouse. They refused to pay a fine he imposed on them.[lxxx] Consul A. C. Douglas who succeeded Whitehouse met more stiff opposition from the Afaha people of Ubium. They refused to abide by the foreign law that abolished human sacrifice.

The British people instigated misunderstanding between the Afaha and Opobo leading to the murder of some Opobo traders who stationed at Nnung Obong which was said to be an Afaha village.[lxxxi] The people of Mkpok in Eket District were also not willing to abandon human sacrifice. In 1896, the Mkpok was alleged to have assaulted the British officials and Missionaries.[lxxxii] In reaction to the Mkpok incident said to have involved inflicting wounds on a Whiteman, the High Commissioner and Consul-General of the Niger Coast Protectorate Sir Ralph Moor sent a punitive expedition from Calabar against those the British described as "very truculent" Ibibio. The expedition did not only overrun Ibibio land but the entire present- day Akwa Ibom state and up to Arochukwu in the present-day Abia state where Ibibio oracle, Ibini Ukpabi (Long Juju) was custodied. The expedition subjugated Afaha Eket, Eket, and from there moved to Mkpok. The Chief of Mkpok village was taken prisoner to Calabar, the then capital of the Niger Coast protectorate, where he died. From Mkpok, the British Expedition proceeded to Ubium, Iman and Nsit communities. The "Ibibio Column" under Captain Morrison marched through coastal community of Itu and from there they proceeded to Ibiono, Ediene, Itak, Nkwot, Ukpom, Ndiya and to Ikot Ekpene. The troops subdued the people, burnt their villages, confiscated guns and forced them to enter into treaties, thus forcing the people to accept the British rule that came with the English legal system and some aspects of international law.[lxxxiii] In Uyo, the District Commissioner, Major R. B. Brooks' attempt to move the government station from Ukpom in Annang land to Aka Offot in the present-day Uyo was rebuffed by Offot people who ambushed the troops while returning from Ukpom. The Chief of Offot was caught and beheaded by the British troops[lxxxiv]. A fine of 7,000 manilas was levied on the people, who paid it promptly. In 1905, the Natural Rulers signed treaties with Major Brooks whom they guided to Uyo village wherein he established a new government station, now the headquarters of Akwa Ibom state.

In terms of provision of infrastructure, the colonial administration did not implement is policy adequately in the area. The British development policy as presented in 1895-1903 by the Joseph Chamberlain, Secretary of State for the Colonies was the British government had the moral obligation to establish in the British dependencies developmental infrastructure such as railways, ports, bridges, telephone and lines, amongst others. Chamberlain told the House of Commons in 1895 that he regarded many British colonies as "undeveloped estates" which could not progress unless they were given imperial assistance. Contrary to this policy, the British left the area covered by this study, which is the present-day Akwa Ibom and Cross River states, the number one world producer of palm oil and kernels, without any railway line, unlike the situation in other parts of the colony[lxxxv] that did not produce the then chief export commodity.

15. Summary and Conclusions

Great Britain initially inserted its informal legal and political influence on Old Calabar though the treaties it had signed with the Kings and Chiefs. Treaties abolishing the slave trade and that abolishing the killing of twins and human sacrifice were signed between Great Britain and the Kings and Chiefs of Old Calabar in the 1840s.The missionaries began to settle in Old Calabar since early 1840s. By 1846 schools and churches were opened in the area for spreading of Christianity and education of the indigenes. Great Britain and its political agents, traders and missionaries also the *General Act of Berlin* of 1885 as useful legal instrument to penetrate and alter the legal, judicial, economic, social, religious and political lives of the people. Certain principle of law that had been abolished in Britain, were still being applied in Old Calabar: Substitutionary punishment, though abolished in Old Calabar, was still being imposed on the Natural Ruler and palm oil traders by the Court of Equity. Besides, the Court was in the habit of punishing the Africans including children without first proofing their guilt. The Court did not apply principle of criminal justice which presumed every person charged with a criminal offence innocent until the person was proved guilty. African Rulers and traders accused of owing the supercargoes were humiliatingly chained and detained. Communities that resisted implementation of the obnoxious commercial laws were bombarded or burnt down. The adultery case of *Aoko v. Fagbemi* clearly shows that while the native authorities were protesting that the Whiteman had encroached upon their traditional judicial jurisdiction and even their inflicted punishments on them, the ordinary citizens, including women, who were in most cases victims of injustice, were obviously in support of the new legal system. Apparently, the ordinary citizens formed the bulk of those who brought cases before the courts, in most case at the behest, instigation and support of the Europeans, especially the missionaries and colonial officials. Although the new legal system and some of the laws introduced had undoubtedly modernized the society and liberate the people, they did not encourage the development of indigenous entrepreneurs in Old Calabar.

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