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Rethinking Indigenous Knowledge in the Maintenance of Law and Order: A Case of the Lugbara of Uganda

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Abstract:

In spite of modern law, post-colonial states still face increased social disorder, violence and crime. Although post-colonial theorists associate it to colonialism and modernization theorists attribute it to the effect of development such as industrialization and urbanization, their theories are not sustainable in explaining the prevailing social disorder. This paper attempted to historicize law and order by tracing the origin of social disorder, violence and crime. It argues that, the social philosophy of shared culture, values and history, the basis of indigenous social order and collective responsibility is neglected. Colonial law upon which modern law is established was exotic and serving testate and ruling class. Social disorder, violence and crime are a product of the clash between indigenous and modern law. It recommends a hybrid model of law and order integrating positive aspects of indigenous law into the modern system.

Keywords: Lugbara, indigenous law, social order

1. Introduction

Post-colonial African states have witnessed increased social disorder, violence and crime which this study perceives as a product of the failure of modern law and order system. Comaroff and Comaroff (2006) and Chanock (1998 & 2001), associate social disorder in the post-colonial period to the disruptive effect of colonialism. Roger (1989) conceptualized it as the cost of development. However, this study contends the above arguments do not adequately explain the phenomena of social disorder, violence and crime given that its five decades since most African nations attained independence from their former colonial masters. Like Arthur (1991), this study postulates that the modernization theory insufficiently explains social disorder, violence and crime given that crime rate in developed economies is lower than those in the developing economies. It therefore attributes social disorder, violence and crime to the neglect of indigenous knowledge and law which were organically developed in society and instilled in the individual.

This paper is a product of the PhD study on effect of the interface between modern and indigenous law and order systems among the Lugbara of Uganda. The qualitative research with the historical design was adopted to explore the rising social disorder, violence and crime. The Lugbara ethnic group was studied as a case to enable an in-depth examination of the phenomena of social disorder, violence and crime in order to explain their prevalence.

2. Statement of Problem

There is increased social disorder, violence and crime in spite of the existence of scientifically developed modern law and order system. This raises the question why is social disorder, violence and crime rising in spite of the use of modern law? A paradox which has not been sufficiently explored and explained. Post-colonial theorists attribute it to European colonialism while the modernisation theorists perceive it as the effect of development, urbanisation and industrialisation. This study argued that the rise in social disorder, violence and crime is a result of the neglect and weakening of the indigenous systems in social ordering.

3. Lugbara Society

The Lugbara society is acephalous without a king or chief. Their affairs are managed by a council of elders who were the custodian of law. As a social group, the Lugbara developed indigenous mechanisms of law and order which has been passed through generations to the contemporary generation (Interview, Jackson Abiria, 2014 & Jason Avutia 2014).

The Lugbara society comprises about 60 clans whose members have agnatic relations, claiming historical origin to a common ancestry, Jaki and Dribidu (Middleton, 1992). In spite of being acephalous, each clan have its corpus of indigenous law with a sense of social order and harmony. This is not to say that the Lugbara live in total tranquility. Often a time they are faced with skirmishes which are considered as justified conflicts. These conflicts are then handled using indigenous knowledge and custom in order to restraint social disorder and maintain law more collective.

The Lugbara are Sudanic-speaking people of north-west Uganda and the north-east Congo. In Uganda, they inhabit the districts of Arua, Maracha and Yumbe and the three parishes of Paduba, Oliri and Angar in Kango Division in Zombo District (Haruna Ndema & Jackson Abiria, 2014). They emerged as an ethnic group in the last quarter of the nineteenth century after the migration and settlement of the Moru-Ma'di in Uganda and eastern Democratic Republic of Congo. The

cradle land of the Lugbara is believed to have been in present Bari land, the modern day Rejaf-Juba region in the South Sudan. (Shiroya, 1972: 23-34).

4. Conceptualizing Indigenous Knowledge and law

Indigenous knowledge is part of a people's knowledge system developed from accumulated experience and long practiced custom passed down through generation. It is embedded in the people's belief system, value, norms, practice and custom (Capra, 1982: 41, Fox, 1999:2). Indigenous knowledge a component of knowledge has been neglected due to the influence of modernization and urbanization, resulting into social disorientation that has taken the form of social disorder, violence and crime (Arthur, 1991: 500-501).

This study calls for rethinking of indigenous knowledge and law as a strategy for social ordering. It questions the use of universal approaches in solving societal problems across diverse cultures and raises the debate on modernity versus indigeneity. Rethinking in this case is to reconsider the use of indigenous knowledge as strategy for social ordering. This paper does not aim to romanticize indigeneity and custom but rather historicize indigenous knowledge as means to develop a model for social ordering. The integrated use of modern and indigenous approaches, taking advantage of their strength will provide an inclusive and homemade solution to societal problems. Uganda is a multi-cultural nation with each ethnic group having unique social practices and values.

5. Research Methodology

Historical inquiry was made into the facts of the past by using historical sources and methods (Carr, 1990). Historical sources as oral tradition (Vansina, 1985, Atkinson, 2010) were used to retrieve indigenous systems used in social ordering in the pre-colonial period. Written documents from official colonial reports, and anthropological studies on the Lugbara were used to explore the effect of modern law on societal law and order. Oral history (Bryman, 2012) was used to retrieve the experiences and opinions of the respondent who either witnessed or participated in the maintenance of law and order in colonial and post-colonial period. The Lugbara an acephalous society was purposefully selected in order to understand how in their political structure characterized by absence of kingship or chieftaincy were able to have social cohesion and order. Cultural leaders such as the clan elders, retired and active politicians and civil servants, and former convicts were interviewed to capture their experience and opinions on the prevailing social disorder, violence and crime.

6. Study Findings

These study findings showed the following

6.1. Indigenous Society and Law

The Lugbara society has unwritten law, stored in memory and organically developed from their collective experiences over time. Law is embedded in their belief, values, norms, practices and custom as handed down through generations. Clan elders are the custodian of law and order in the society. Indigenous law is transmitted orally by word, through songs, folktales and proverbs meaning it is in the body and mind of the individual (Field interview, John Ondoma, 2014). The Lugbara society is managed by council of elders elected by the clan assembly. According to the fieldwork narratives by the Ombia clan elders, members of the council of elders are elected based on their seniority in age, integrity, wisdom, knowledge of the clan history and conflict management skills.

Law among the Lugbara is conceived as a guide to social behavior, defining relations between persons, the living and dead, the gods and God the creator. Indigenous law is enshrined in traditional religion which influenced social life. Therefore, offence is perceived as sin rather than crime. According to the narratives, an act of offence by individuals affects the family and whole community thus, the sense of social order is upheld as a means to peaceful coexistence (Field interview, Sila Amaga, Ayivu clan elder, 2014).

From the narratives, law is conceptualized as culture and therefore a tool of social identity and belonging (Field interview, Jason Avutia, Lugbara Paramount Chief, 2014). Allott (1957, 1969:12), noted that the laws reflect the different types of indigenous society in which they flourish. Each clan has its distinct way of life which is its identity. Law is therefore used to define social trait, behavior and identity. A breach of indigenous law implies, straining relationships with the bigger clan and therefore a psychological and social alienation of the culprit. The lineage and clan are therefore considered eternal, implying indigenous law has the role of preserving the continuity of society and its identity.

Indigenous law embedded in custom, belief, value, norms and practices is instilled in the member from childhood, and therefore it is part of a child's growth and development into adulthood. The narratives describes indigenous law as a living law which develops and grows with society influencing every component of human and clan life (Field interview, Jason Avutia, Lugbara Paramount Chief & Haruna Ndema, Prime Minister, Lugbara cultural institution, 2014). Members of the society therefore respect and keep the law as it is a part of their life. The linkages between past, present and future enables the Lugbara to develop durable laws.

Law enforcement is everyone's responsibility and therefore, social order and tranquility is a product of a social process. The doctrine of 'brother's or sister's keeper' is the basis of social responsibility among the Lugbara. Meaning that, the maintenance of law and order is not a preserve of a specialized agent as the police and state. The failure to deter a member of the family or clan from sinning or committing offence is considered a negligence and therefore sin of omission. The clan elder's narrative confided that law and order is enforced by both the living and dead (Field interview, Sila Amaga, Ayivu clan elder & Salome Agabu, elderly woman 2014). Disobedience brought calamity upon the society and therefore,

natural calamities such as lightning striking persons and animals, rivers over flooding their banks and sickness are viewed as ancestral intervention into sin or offence. Sin by an individual is as well linked with the mystery of re-generation. Impotency and barrenness are associated with individual or family sin. Giving birth to disabled babies is perceived as effect of sin. The respondent confided that, loss of her big left toe was the effect of the sin of her father who failed to pay back a cow he had borrowed (Interview, Salome Agabu, elderly woman 2014). The remedy is performance of rituals to appease the ancestors and reconcile the living society with the living dead. An elder noted, "Our great grandparents are living. They see what we do and hear what we say. They often communicate to us by possessing a child in the family and we hear the dead's voice speak through the possessed child. When we fail to identify the voice, he mentions his name which is traced through oral history. Similarly, often a time our ancestors appear to us inform of a mysterious gigantic bearded and tuft-headed snake who speaks to the one who encounters it." (Field narrative, Yakobo Aliosa, Ombia Clan elder, 2015).

The Lugbara philosophy of justice and punishment is reconciliative and restorative rather than retributive and restitutive as in modern justice system. It aims at mending relations and built social fabrics, and therefore, it upholds the principle of truth telling and taking responsibility for offence as means to unveil the root cause of conflict. The individual takes oath and swear in the name of the ancestors, gods and God the creator. The oath implies that the individual is sacrificing himself, his children and grandchildren to the alter of justice, and risking losing his lineage if he has not spoken truth (interview, Sila Amaga, Ayivu clan elder, 2014 & Jason Avutia, Paramount chief, 2014).

6.2. Modern Law

Modern (customary) law created at colonial time was exotic and foreign to the indigenous people. Customary law was invented as a hybrid law aimed at distorting and weakening indigenous law, values, norms and practices (Allot, 1984: 58, Mamdani, 1996: 49) and was aimed at serving the interest of the colonial master. African custom was used to develop customary law as a means to impress upon the African subject colonial intent to preserve African custom. The distortion of indigenous law created a lacuna resulting from the dilemma of which law to follow. Justifying colonialism and colonial law, Perham argues that colonial law and order enabled Britain attain her five main purposes: expansion of trade, security to protect their world-wide commerce, emigration of their nationals, philanthropy and dominion over subjects (Perham, 1962: 126-127). Modern law was a tool of economic exploitation by which subject labour and resources were exploited for the good of the ruling class and the state (Alexander, 1982: 4, 57, Ajayi, 1969: 505).

The post-colonial state adopted the principles and practices of customary law to maintain law and order without indigenizing it. Modern law has therefore invented crime by criminalizing African custom and practices. According to modern jurisprudence, crime is viewed as "an act deemed to be 'criminal' in law, further described as an 'act' of commission, omission and possession (Hollin, 2013: 8), contrary to indigenous law in which offences were viewed as sin.

Allot noted that East African countries havenot gone far to eliminate the European-type law and Africanizing the law did not mean putting back of legal clock (Allot, 1967: 57). Goodfellow & Lindemann (2013: 5, 13-16) and Fitzpatrick (1984: 21) further observed that, African governments after independence sought to ban or limit traditional authority. Therefore, post-colonial law was not decolonized from the influence of colonialism.

Modern law is a body of rules imposed and enforced by an authority or state to guide human conduct (Barker & Padfield, 1996), and therefore is in the service of the rulers and the state which uses it as a tool for domination and oppression. It is imposed and enforced by specialized agents such as the police and judiciary who are at the service of the state and the ruling class (Weber, 1978: 31-36). The narratives noted that, modern law is feared rather than respected, for its ruthless punishment as reward for its breach (Interview with former inmate, anonymous on request, 2014).

This study further noted that punishment under modern law is retributive and restitutive and therefore promoting more of individual interests and rights. According to Josephine Angucia, the Police Spokesperson, punishment was to deter unwanted behavior which breached the law, rights and peace of others (Interview, Josephine Angucia, Police spokesperson 2014). John Godo, a respondent questioned the extent to which victims of crime benefited from legal punishment and observed that in the case of criminal offences, the state benefits more from the punishment than the victim and society as the case is considered a crime against the state and not the plaintiff or victim. He further noted that, the nature of modern justice has had the effect of denying the complaint satisfaction with legal justice as the form of punishment given to the offender is not commensurate to the physical and psychological damage and loss suffered by the victim, family and community. Godo further noted that, the sentence which aims at removing the offender who is considered dangerous to the community, without reconciling him to the community has witnessed deep-seated grudge and repeated criminal behavior, a cause of mob justice an explicit self-help justice (Interview, John Godo, 2016). According to Huyse (2008), such self-help justice triggers social and political violence causing disorder, violence and crime (Huyse, 2008: 4).

7. Discussion of Finding

Indigenous law is perceived as culture and its cultural significance is the adherence to it. Law in the indigenous society has an organic connection with society and is developed within a specific social environment with established culture, language and social institutions (Savigny, 2002: 27). As law is culture, it therefore thrives within a geographical location and society. It calls for acculturation of indigenous law into modern law by upholding key customs and cultural values.

The effect of modern law has often resulted into society questioning it as a means to emancipate itself from the yoke of the law, hence leading to what Marx regards as staging revolution as resistance to the law. Modern law has been used for state conspiracy against society and strategy to appropriate factors of production and resources (Giddens, 1971: 8, 30, 121). This study conceptualizes crime as a form of resistance to the existing modern law. Using Anderson (1991) view, enlightenment and rationalist secularism brought with it its own modern darkness (1991:11), similarly, modern law brought with it its own modern lawlessness and disorder.

Modern law was not introduced in the service of the people, but rather it served the interest of the ruling class and the state hence an apparatus of power (Agamben, 2009:2). Unlike indigenous law which aimed at building social cohesion, modern law created a social class based on their economic and political power relations resulting into class struggle. It created an imaginative community of the 'other' who were defined by their socio-economic and political power position. This study therefore asserts that the prevalent social disorder, violence and crime is a symptom of class struggle

Modern law by viewing offence as crime has criminalized society which had lacked a criminal mind. Bankole, linked crime in the colonial period to the "new socio-economic problems created by the colonial political economy" (Bankole, 1999: 91). The primary cause of British colonialism in Africa was economic imperialism, arising from the desire to control the raw material and supply; and markets for the benefit of the metropolitan. Therefore, the laws developed equally had the effect of creating socio-economic crimes

According to the narrative by Gad Ezayi a former parish chief, there were several laws relating to taxes, labour, market, cash crop production and food security which created enormous burden on the citizenry, who unintentionally failed to meet their obligation hence were criminalized. Therefore, the introduction of several new and exotic crimes which were economic and political in nature increased the chance of law being consciously or unconsciously breached due to the burden of adherence. Similarly, the numerous laws had the danger of not being subsumed into individuals and society. Hence, John Godo, in his narrative noted that "Uganda has so many laws which cannot be effectively adhered to or enforced thus they practically cease being law" (Interview, John Godo, 2016). Coupled with that, unlike indigenous law which was instilled in a child from childhood, modern law in Uganda was applicable to individuals from the age of eighteen years (Constitution of Uganda, 1995).

This study argues that, at eighteen years of age, the individual would have acquired ideas and habits which are likely to contravene those defined by law. Therefore, the process of unlearning old knowledge and practices for new ones is a challenge. This was corroborated by the Officer in-charge of Arua Prison that, majority offenders of modern law were teenagers of age 15 -17 and youth of age bracket 18-35 years (Interview, Mushabe John Allan, 2014). This study observed that this was the age teenagers and youth were caught up in the transition from custom which was more controlled to a liberal modern one. The effect was that, the youth who moved to urban centres were more prone to crime than those who remained in the country side under the control of custom. This study therefore contends that, the delay in exposing and instilling modern law into an individual, and making him accountable at a legally defined age of adulthood could affect the level of acquaintance and adherence to the law. Although psychologists would consider it as a period of transition in growth and development from childhood to adulthood, they fail to consider that this physical growth is a social process that takes place within society through 'imagined' or 'real' initiation processes. Development need to be viewed as a social process which transforms both social and structural component of society.

Furthermore, this study attributes social disorder, violence and crime to the lack of a common understanding of the purpose for punishment in the indigenous and modern society. While indigenous society developed punishment as a reconciliative and corrective tool for social order, modern law used punishment as a tool for vengeance and domination. Therefore, punishment in indigenous society has the effect of healing relationship, while punishment under modern law seem often to have less focus on healing relations.

This study affirms Foucault (1977) notion that the use of modern system of punishment such as prisons does not diminish crime but rather could escalate it. This is because crime and punishment as phenomena are ambiguous to the citizenry and are best understood as political creations rather than social processes. This is affirmed by Ajorlui & Mardani (2017: 99) argument that, by defining crime and punishment, the state can prevent crime and preserve the community and people from committing crime. However, he does not mention the important fact that for crime to be understood and prevented, it ought to be socially defined so as to have meaning in society. As Ajorlui & Mardani observe, punishment for crime is for the benefit of the state rather than victim of crime, who benefits incidentally and on minor incidents. This is contrary to indigenous punishment which benefits the victim, offender and the society (ibid).

This paper associates social disorder to the manner in which law was enacted, and its enforcement as a privy of the state rather than the citizenry, creating social and political chasm which triggers discontent and social disorder. Respondent's narratives attributed social disorder to the manner in which crime and offenders are handled by police and court. The narratives questioned the integrity of modern law system with its police and court. A respondent noted that, "police and court were market places for bidding and transacting justice, and the highest bidder takes it all" (interview, John Godo, 2016). This is a pointer to question of integrity, value and wisdom rather than academic qualification of public leadership. Indigenous society groomed future leaders from childhood. A child who consistently adhered to societal law was earmarked as future leader and potential member of the council of elders. The neglect of critical leadership qualities by modern law and democracy has had the effect of appointing to leadership members who lacked the knowledge, values and aspiration of society.

8. Conclusion

Crime in indigenous society was a colonial creation through which sections of African customs, norms and values were systematically weakened and destroyed, and replaced by a foreign western culture. The purpose was to suppress, weaken and dominate Africans for effective exploitation. Post-colonial states as well adopted the use of crime as a strategy for political domination and economic exploitation.

The study findings indicate that indigenous and modern society does not have a common understanding and meaning of the concept law and order. The indigenous Lugbara society perceives law as a guide to social behavior, defining relations between persons, the living and dead, the gods and God the creator, while law in modern jurisprudence is a corpus of rules imposed and enforced by an authority for the guidance of human conduct. Therefore, when law in the indigenous Lugbara society defines relationship, then modern law defines power-relations between the ruler and the subject and is more a tool for domination and oppression lacking linkages with the past.

This study concludes that, the prevalent social disorder, violence and crime cannot be associated with the effects of colonialism and modernization, but rather post-colonial state neglect of indigenous knowledge and law, resulting from the state usage of law as tool of political oppression and economic exploitation.

The use of law as tool of oppression and exploitation often causes dissension, triggering political and social conflicts with social disorder, violence and crime as its product. Law, therefore, should be a tool for social ordering, imparting moral values, and promoting people's aspiration and in the service of the citizenry, rather than a power apparatus. This study argues that when law reaches its niche of serving the masses, social, economic and political injustice will reduce and social order characterized by justice and protection of individual and societal rights and privileges will be achieved. The study further notes that the dichotomy in meaning and purpose of law has been responsible for the resultant social disorder in post-colonial state. This situation is worsened by the isolation of the family and society in their agency role as socializing agents. Therefore based on the agency theory, indigenous institutions could play a complementary agency role in the maintenance of law and order in the post-colony.

9. Recommendation

In view of the prevalent social disorder, violence and crime resulting from the alienation of indigenous knowledge and custom in the maintenance of law and order, this study recommends that African law is being modernised with a higher respect to African philosophy of shared culture and history as well as being adapted to a modern society with changes in family structure, fast urbanisation, environmental challenges, cybercrimes etc. Therefore a hybrid model of law and order system is needed, providing a legal base for indigenous law system in the nation's constitution in order to revamp law and order.

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