

Doing Justice Without the State

The Afikpo (Ehugbo) Nigeria Model



O. Oko Elechi

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To the

*Ever loving memory of late Mama Aliji Uro-Elechi (1925 – 2005)
for your love, support, and inspiration, and for giving so much and
expecting so little,*

*And to Ola, Ogbonnia, Nnenna, Eze and Ugo Elechi, my family,
my rock, for their love, support, understanding, patience, and
inspiration*

And to the

People of Ehugbo (Afikpo).

Foreword

The Case for Traditional Jurisprudence in a Modern Nigerian Setting

This innovative book makes the case for the continued applicability of a traditional system of settling legal cases at Afikpo, one of over 200 groups of Igbo living in southeastern Nigeria. I have personally known the author for some time, as I was external examiner on his Ph.D. dissertation at Simon Fraser University. Afikpo, his original home, which he writes about here, is familiar to me; since I carried out extensive cultural and social anthropological field research there in 1952–1953 and 1959–1960, with brief return trips since then. Professor Elechi's knowledge of Afikpo language and culture, combined with his training and experience abroad in criminal justice studies, makes him the ideal scholar to present interpretations of an African indigenous legal system and its applicability today. The book is unusual, among studies of the application of the law in African societies and countries, in arguing for the considerable advantage of retaining and supporting traditional legal systems in the modern era, rather than totally replacing them with Western European models, which are often ill-suited to African societies. The latter is the general rule today on the continent. Professor Elechi is writing about what he describes as acephalous societies, an anthropological term, which technically means "headless," but, in fact, refers to those indigenous societies in Africa, of which there are many, which have lacked centralized state controls. An acephalous society generally resolve accusations of law-breaking and conflict through forms of resolution that allow both accuser and accused to go on living together in peace, a necessity in order to prevent the disruption of the small-scale society with its constant face-to-face relationships. While it has always been possible for the guilty party to move away to reduce friction, and this sometimes has

occurred, the resolution of the conflict so that both parties can continue to interact with one another, and other members of their society without friction, has been much preferred. This maintains the stability of the society.

Africa's non-centralized societies developed different techniques for dispute-resolution procedures in order to maintain internal peace. In some cases elders of the whole community have handled the matter, and in other disputes the accusation has been settled by the senior members of the families of the two sides involved, who have met to work out a resolution. Again, appointed or elected officials of known wisdom have adjudicated cases. In still other instances religious officials have played roles in the settlement. A non-centralized African society may employ two or more of these devices depending on the nature of the dispute. The point is that after the resolution both parties agree to live together comfortably. The emphasis is on reconciliation. This does not always mean that one party is always fully satisfied, though this is the goal, but that whatever dissatisfaction exists on the part of some persons, it is publicly put aside in terms of their members' relationship to others in the society, including the members of the other group involved in the case.

In the traditional system of adjudication at Afikpo, which I became familiar with by the 1950s, if there was no resolution of a case, if final agreement failed, there was a turn to one of two religious mechanisms to reach finality. The accused, if denying guilt, could swear innocence at an Afikpo spirit shrine. If the person became ill or died within a year he or she was believed guilty of lying, the spirit having caused the harm. If the individual remained healthy he or she was considered to be innocent. A second mechanism was for both sides to consult an Igbo oracle outside of Afikpo, the most popular being *Ibini Okpabe*, located in the town of Aro Chukwu, some fifty miles to the south. The oracle arrived at a decision by apparently mystical means, but in fact, this occurred with the assistance of persons associated with it. The power of the oracle, as a spiritual force was greatly feared at Afikpo, and its decisions were respected. These two seemingly irrational methods of settling cases (in the eyes of Westerners) in fact, often led resolutions that prevented serious community disruption, which would otherwise have occurred due to the failure of settlement at Afikpo. It should be noted that litigants were invariably backed up by a host of family members, age and residential mates, and friends, so that any single case might involve numerous community members. Social schism was prevented, and the local group was preserved through ritual means. Today such legal mechanisms are rarely employed, rather litigants can take cases that are very difficult to resolve in the traditional sector to a government court. However, they often prefer not to, as court decisions are quite unpredictable.

Professor Elechi advocates a system of local-level jurisprudence based on the value and experience of tradition, somewhat modified due to changing social and political circumstances. It is not a static model but allows for reasonable change, while maintaining its basic legal principles. As the author indicates, it does not apply to serious crimes such as murder, armed robbery, arson and violent sexual assaults, but to accusations that are mostly in the field of what in the West are generally called civil law. The more serious crimes are still to be adjudicated by government courts. The author, in fact, argues for the juxtaposition of two legal systems, and their integration within the larger system of law within a modern African state, rather than the complete integration of Afikpo and other non-centralized African societies into a Western legal system at both the microjudicial and the macrojudicial level.

Curiously, that which Professor Elechi prizes, harks back to the British colonial system in Nigeria which instituted a system of indirect rule developed in the early twentieth century, for less serious crimes and accusations, with an emphasis to varying degrees based on indigenous culture, on the use of native law, native police and native courts. Serious crimes were tried in the colonial courts; in Nigeria's this was based on British law and not on indigenous Nigerian legal principles. This bipolar legal system developed since the British lacked the colonial personnel to operate at all legal levels. It required colonial officials, and sometimes anthropologists hired by them, to study and report on "native law and custom." Today, the Nigerian federal and state governments and their lackeys (the army, the police), are in many ways more exploitive of individuals at the local level as were the colonialist. But now the "native," is mostly educated, and has a public voice while this rarely occurred under colonialism. Professor Elechi is a product of this change. The similarity of his approach to colonial legal processes that formerly existed at Afikpo do not mark the author as an apologist for colonialism, as the today's political setting differs markedly.

Part of the author's motivation for the development of his views is his experience and that of others in Nigeria, with the police, who are often corrupt and allow or disallow cases going to courts according to the bribery that they are able to extract from the litigants. And unlike during in the colonial system, there are plenty of Nigerian personnel to man the police and the courts at all level, often strangers to Afikpo. The present system of state and federal government justice in Nigeria is a farce; it is rarely fair, it seldom work well and it often leaves one or both sides involved in a case financially in ruin from the pressure of having to bribe the police, and even a judge, in order to have a hearing, no less a fair one. Professor Elechi's writings contribute to a broader move among Nigerian today to rethink

governance in the country, particularly among individuals and groups living in the southern half.

The author's thorough familiarity with Afikpo culture and society makes his assessment of the situation realistic. During the colonial period and until a good many years after post-colonialism began about 1960s, scholars, such as I, writing about the continent's cultures and their social groupings were almost entirely from the West. The situation has changed in recent years, as Africans more and more have become the spokespersons for their own societies. Professor Elechi's book exemplifies this newer trend. He is a sensitive observer and recorder on his own people. Afikpo, the society he writes of, is unusually complex in social groups—age grades, men's societies, title societies, organized matrilineal and patrilineal descent groups, both village and general Afikpo leadership, the presence of descendants of non-Igbo peoples in a largely Igbo cultural environment, and so on. He shows how these and other social elements have meshed in the past into an intricate social system that belies the frequently expressed popular stereotypes in the West that Africans are simple people living in simple societies with social principles of behavior. There has not only been social complexity at Afikpo, but the traditional legal system long ago established clear rules for case settlement procedures and the nature of punishment for particular crimes.

The author's approach is based on his experiences in two worlds—on the one hand university training in Norway and Canada and teaching in the United States with the knowledge acquired in living in these places, and on the one other hand a deep knowledge of his own African culture in which he was brought up in and has kept in contact with. It is his ability skillfully to combine these two orientations, sometimes seemingly at odds with one another, which greatly enriches his writing. His analysis can serve as a model for other African societies undergoing change and modern influences. His book speaks for the value of tradition, even if modified, in the context of modernity.

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Preface

The Afikpo indigenous justice system is examined as an alternative system of justice in South-East Nigeria from a restorative, transformative and communitarian principles. Despite the dominance of the Nigerian state criminal justice system in social control, the Afikpo indigenous justice system still holds sway, and is perceived to be more effective and legitimate. The Afikpo model is rooted in the traditions, cultures and customs of the people. Indigenous social and political institutions function as channels for conflict resolution and justice. The processes and principles of conflict resolution are emphasized. The model's continued perceived popularity and legitimacy are discussed, as is the basis for the system's co-existence with the Nigerian State agencies of social control.

A major finding of this study is that the Afikpo model is victim-centered. Restoring the victim's emotional and material losses is the goal of justice. The system recognizes the victims' needs for information and vindication. Victims are empowered and vindicated by all stakeholders acknowledging their suffering and loss. Victims, offenders, and their families, as well as the general community, are involved in defining harm and repair. Offenders and their families are held responsible for the victims' injury and material loss. Offenders are persuaded to pay restitution to victims. They also apologize to the victim, his/her family and the community. In sum, the goal of justice is the reparation of harm done to victims and communities by offenders. Appropriate support is accorded victims and their families by the community. Social control is a community property, therefore necessitating collective effort and responsibility. Its survival and relevance is proof of its popularity, effectiveness and legitimacy. The research findings show that litigants are happier and more satisfied with the justice system as is shown by their cooperation and compliance with the decisions of the tribunal. Acceptance and compliance with the decisions

of the tribunal are more likely when the litigants are actively involved and participate in the justice-making process. In the Afikpo indigenous justice system, decisions are reached through a consensus of all stakeholders. The cathartic and educational value of the justice process is reflected in the positive behavioural changes of offenders in particular, and other community members in general.

In addition, the Afikpo conflict resolution model is inclusive and seeks to address the interests of all parties to the conflict. The social solidarity and humane emphasis of the system is reflected in the treatment of offenders. The institutions of social control are formal agents of resocialization, hence providing offenders support through teaching and healing. The offender must first acknowledge the wrong, then, show remorse, shame, and accountability through reparation and expiation.

This study is grounded in theories of restorative, transformative and communitarian justice and other concepts of African justice. Inquiries into state, state/society and postcolonial state theories are undertaken to further illuminate this phenomenon of an alternative conflict resolution model. An inquiry into the Afikpo community's conflict resolution mechanism and processes is also an inquiry into the community's system of governance, social, political and economic institutions and activities. Being an exploratory study, several qualitative research methods were utilized. They include participant observation, oral history, in-person and focus group interviews of 40 men and 15 women.

The Afikpo indigenous justice system is functional, effective, unique, democratic, and allows for the participation of all community residents. This study unveils a different kind of knowledge, which will contribute to the growing body of literature in restorative justice.

It is reiterated that the Afikpo indigenous justice system is unique, effective, and humane.¹ The system is flexible, dynamic, and allows for the democratic participation of villagers. Group interest and social solidarity are the goals of the justice process. Victims, offenders, their families, as well as the general community, are involved in defining harm and repairing harm, and resolutions of conflicts are arrived at through rigorous discussions of all stakeholders. Judgments are based on consensus and derive from available evidence and the opinions of participants.

The book is organized into eight chapters. Chapter One introduces the study and briefly reviews the theories and history of restorative justice. It is reiterated here that the Afikpo indigenous system of conflict resolution functions as an alternative system of conflict resolution. Ultimate power and authority reside with the Nigerian State courts and other officials of the Criminal Justice System. However, the Afikpo indigenous systems of

conflict resolution remain the primary avenues for conflict resolution in the community. Although litigants not satisfied with judgments of the traditional courts may seek redress in the State courts. Only State courts have jurisdiction over serious violent crimes like murder, armed robbery, arson and violent sexual assaults and so on. Ironically, most cases of murder in the community are through sorcery and witchcraft, which the state courts do not recognize. Cases of murder through sorcery and witchcraft are brought to the Afikpo indigenous courts, which handle such cases.

Chapter Two of the book reviews some of the major theories of restorative justice. The arguments for restorative justice are reviewed, as well as the benefits of restorative justice approaches to victims, offenders, the community and the criminal justice system. Further review of how the state systems and community's indigenous systems of conflict resolution co-exist, were undertaken. The chapter concludes with a selective exploration of African philosophies of justice.

Chapter Three reviews the custom versus law debate, which is at the heart of restorative justice principles in the African context. Issues of human rights and the status of human rights in pre-colonial Africa are explored. To illustrate that human rights was recognized by pre-colonial African societies, the socio-political organizations of the Ashanti of Ghana and that of the Igbo people of Nigeria are examined. A brief socio-historical inquiry into the concept of human rights is also undertaken.

Chapter Four examines the Nigerian Criminal Justice System in post-colonial Africa. It is argued that corruption is mostly responsible for the ineffectiveness of the Nigerian criminal justice system. The system alienates the people it serves. A brief examination of the operations of the Nigerian Police is undertaken to illustrate the ineffectiveness of post-colonial state criminal justice systems. Post-colonial theories and the dependency theory are reviewed to get insight into why post-colonial states of Africa have failed to perform.

Chapter Five provides an historical overview of Afikpo town to enhance an understanding of the historical basis of the Afikpo system of conflict resolution. Economic activities are important to understanding the system. It is believed the economic system reinforces the communities' egalitarian and cooperative outlook which is essential for the effective functioning of restorative justice systems. There is a State-sponsored customary court in Afikpo intended to bridge the gap between the colonial imposed systems of justice and that of African indigenous systems of conflict resolution. The customary court is examined to understand its relevance in conflict resolution in Afikpo. Owing to certain methodological difficulties, only the structure and process of the courts are examined with respect to the general objective of the book.

Chapter Six examines some major Afikpo indigenous institutions of conflict resolution. These institutions are also major agents of socialization and resocialization. Some of the institutions of conflict resolution are extensions of primary groupings and so tend to apply more mediative techniques in conflict resolution. Some of the institutions of conflict resolution are more formal and apply both mediative and arbitorative approaches. However, all the systems of conflict resolution are, guided more by group interests rather than the narrow interests of litigants, and decisions are reached by consensus of participants. While every case is examined on its merit and past judgments do not determine cases, past judgments are sometimes used as precedents.

Chapters Seven and Eight present the research findings. Chapter Seven begins with a review of the available literature on African institutions of marriage, family, and divorce to understand how they affect women. To appreciate the status of women in African societies, an understanding of the workings of certain traditional institutions and their effect on the well-being and rights of women are important. Certain African traditional practices such as dowry and female circumcision are considered oppressive to women. These issues are examined in light of this argument, especially since these issues are often the basis of the conflict that come to the traditional courts. Women are focused here because most culturally based systems of justice are perceived to oppress and alienate women. One of the fears expressed by some Canadian Aboriginal women with the proposed devolution of justice to the Aboriginal people was that the transfer of power to customary laws that derive from patriarchal values may not serve the interests of women and children especially as it relates to cases of violence and sexual abuse. Modern Canadian laws they argued were becoming more sensitive to women's issues and therefore better suited to family violence cases.

Chapter Eight presents the responses of the various institutions of conflict resolution to violations of customs and other offenses. To understand the prohibited acts and the responses, a review of the sanctions of other African societies is undertaken. Such crimes as murder, sorcery and magic, theft, adultery, rape and incest, are examined. The position of the victim and offender in the Afikpo indigenous systems of conflict resolution, are further examined. The chapter concludes with an examination of the challenges confronting the Afikpo community model of conflict resolution. It is suggested that demographic changes, the existence of Christian and Moslem groups and economic factors present challenges to the system that need examination.

I have provided at the appendix an overview of the research methods employed in the collection of data for this study. The interest in the

processes of data collection is because it further highlights the dynamics of social interaction in the community to have a better appreciation of the culture that informs and sustains this system. The issues of justice and politics are complex, and one research method cannot adequately cover the issues. Several research methods, known as triangulation, were employed in the study. Methods include participant observation, oral and focus group interviews, oral history, and archival research. Prior to the field trip, ethical approval to conduct interviews was obtained from the Simon Fraser University Ethics Review Committee.

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