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AFRICA Vs THE WEST IN THE COURT OF REPARATIONS*

GONFERENCE PAPEL

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INTRODUCTION

The return of the National Theatre-Sponsored television epic, (1) 'Roots' on the Nigerian Television screen, in 1992 was anything but a coincidence. The timing of the return clearly shows how far television can be used to whip up national sentiments in support of the crusade for reparations for the 'injustices' done Africa and Africans during the over four hundred years of slavery and slave trade.

No doubt, 'Roots' is a moving recapture of those terrible days. No one in his right frame of mind will refuse to condemn the obnoxious trade in human beings no matter the reasons for it. I respect the brains behind the adaptation of Alex Haley's bestseller to a moving television epic. More importantly, I admire the courage of late Chief M. K. O. Abiola for almost single handedly standing up to the intimidation and manipulation in demanding for reparation for what he and his alies perceive as 'injustice and rape of Africa's resources, human and material'.

In this paper, I intend to raise some fundamental questions which expect will crop up in the course of our demand for reparations. Interestingly, some of the questions are already, albeit, in another direction being debated on 'SORAC DISCUSSION' (2) When the modified version of this paper was first published in the Guardian Newspaper in Nigeria, the controversy it generated lasted for more than a year. However, I must begin by concurring that reparation is good and dear, at least in these trying times, but the truth, I must say, is better and dearer.

^{1.} Alex Haley's 'Roots' was first aired on Nigerian television in the 1970's. It suddenly came back on screen in 1992. Incidentally, it returned at a time when late Chief M.K.O. Abiola was championing reparations. A coincidence?

^{2.} I refer here to the Ayittey Vs Mengara et al on SORAC discussion forum.

When in the 1970's 'Roots' was first serialized on Nigerian television, I was too young to appreciate it beyond seeing it as the story of slave trade. On the one side were the whitemen on a savage mission of capturing as many slaves as possible to feed their ever expanding plantations. On the other side were the 'innocent, peaceful and primitive' Africans unaware of other civilizations. The whitemen came and changed this scenario They were ' rapacious, brutal and callous'. Africa lost its best generation of young men, its huge resources. The result has been a retardation, in some cases, a total stagnation of the hitherto 'advanced African civilizations'. For these reasons, Africans of our time are demanding reparations for 'atrocities' committed hundreds of years ago.

Using the facts of history, the polemics of philosophy and evidence in law, simulate a court room situation ⁽³⁾ in order to see how the demand for reparation will stand in the face of western cross-examination. The 'petitioner' is hereafter referred to as Chief Africa. The 'defendant' will simply be referred to as 'Defence Counsel'. My hypothetical judge is definitely not of Arab extraction, but a 'neutral' observer in the 'game' of slavery and slave trade.

LITIGATION

Chief Africa:

Your lordship, I pray this court to grant the sum of 800 billion

American Dollars as reparation for the over four hundred

years of slavery and slave trade. This is based on our

^{3.} Dr. F. N. Ndubulsi refers to my hypothetical court room situation as 'kangaroo' though hypothetical, the litigation is neither spurious nor berefyt of logic and equity as he claims. See F. N. Ndubulsi 'Ethical issues in Reparation' Guardian on Sunday 18th October, 1992. p. All.

conversative calculation of the lives lost, civilizations destroyed, families separated and other innumerable distortions in the lives of Africans on the continent and in the diaspora.

Defence Counsel:

Chief, can you be more specific? Can you give us the exact number of lives lost, the civilizations destroyed and families separated? Can you also tell us how many whitemen came to Africa to carry away millions of Africans, destroy civilizations etc.?

Chief Africa:

I cannot give you the exact number but certainly many lives were lost. Many whitemen came, but not as many as the slaves they carried away.

Defence Counsel:

Does it then mean that few whitemen carried away millions of Africans as slaves?

Chief Africa:

Yes, but ...

Defence Counsel:

Could this have been done without the active connivance of Africans, influential ones for that matter?

Chief Africa:

Certainly, there were African collaborators. Those were bad Africans

Defence Counsel:

Don't you think the whitemen who 'carried' slaves were also bad whitemen?

Chief Africa:

There are bad people in every society, my lord.

Defence Counsel:

Besides, Chief Africa, can you identify the Africans who

collaborated with the whitemen?

Chief Africa: No, my lord, but history documents the names of key whitemen

who were slave traders.

Defence Counsel: Since you know the slave traders, why don't you ask them or

their descendants for reparation?

Chief Africa: We cannot because we hold their entire race culpable for their

crime. Afterall, all whitemen are directly or vicariously liable

because they all benefited from slave trade.

Defence Counsel: If that is the case, we equally hold the entire black race culpable

for willingly allowing themselves to be carried away as slaves.

And again, on the allegation that the whitemen disrupted a

thriving civilization, comparable to that of the West in Africa. As

a matter of fact, we did Africa a favour by carrying some of you

away as slaves and to civilize you. If indeed Africa had a

thriving civilization, it would have been impossible for a handful

of Europeans to subjugate millions of Africans as slaves (4)

Chief Africa: My lord, this is an unfair statement from the defence counsel.

Africans were deceived and brain washed. Judge;

Chief Africa: I'd like to agree with you, but you earlier said Africans were very

wise. How come they were deceived so easily. Chief Africa;

my lord, rum, umbrellas, mirrors, gun powder etc. did the trick.

^{4.} This argument was earlier developed by Professor Peter Bodunrin. See P. O Bodunrin 'The Question of African Philosophy' in H. O. Oruka (ed) *Sage Philosophy* (London: E.J. Brill. 1991)

Defence Counsel: Chief Africa, have you asked the Arabs for reparation for the slaves they also carried away from East Africa? Or are you saying the Arabs were more humane in their slave trading activities and that Arab slave trade is more tolerable than western slave trade?

Chief Africa: My lord, we intend this to be the first step. Soon we shall turn to the Arabs.

Defence Counsel: Have you also thought of asking the present of generation of

Africans whose forefathers supported and connived with the

slave traders for reparation?

Chief Africa: My lord, that is an unfair thing to do. I have explained that the Africans who 'connived' were deceived.

Defence Counsel: I put it to you, Chief Africa, that your attempt to get reparation is not as a result of any slave trade but a way out of the present economic situation Africans have put themselves.

Chief Africa: This is not true, my lord. I agree, however, that the economic situation has reminded us of the need for reparation.

Defence Counsel: May I ask you, Chief Africa, what have Africans achieved for the almost two hundred years since slave trade officially ended?

Chief Africa: You people have not really left us alone. You have colonized us directly and indirectly.

Defence Counsel: But many African states have been ruling themselves for

upwards of thirty years.

Chief Africa:

Yes, but ...

Defence Counsel:

Your economies are in shambles, politically, their is instability, your leaders are rapacious, despotic and greedy. Socially, anarchy, deprivation, tribalism, corruption etc. thrive on the continent. Do you equally want us to pay reparation for all these..? What about the millions of dollars we have spent in helping you feed millions of Africans in Angola, Somalia, Rwanda, Burundi, Liberia etc? What about the thousands we have taken in as refugees in Europe and America?

Chief Africa:

You are only paying back what you stole from us.

Defence Counsel:

Chief Africa, don't you think many Africans will willingly go to Europe and America today if they have the opportunity?

Chief Africa:

This is an unfair statement. Africans run away from the continent because you people stimulate crises and wars in order to divide and rule the continent indirectly. In any case, the West never wanted to leave the continent, we forced you to against your wish. You are still bitter about that. Are you not?

Defence Counsel:

What is unfair? Go to the American and British visa offices, then you'll see my point. If your leaders have been honest and reasonable, we would have been struggling for visa into African countries and not the other way round.

Chief Africa:

Our demand for reparation has nothing to do with the visa offices.

Defence Counsel: I put it to you, Chief Africa, that your demand for reparation

lacks merit.

Chief Africa:

Your lordship, the defence counsel is unfair and biased.

Judge:

I have listened to both the 'petitioner' and the respondent' I

shall adjourn briefly to consider my judgement.

Judgement

Judge: I have considered with great attention to details, the submissions of both Chief Africa and the defence counsel. I have spent many hours trying to fathom the basis of the demand of Chief Africa for reparation. Is the demand for reparation for the 'injustice' of slave trade really a legal issue?

My conclusion on this issue is that indeed, it must be both legal and moral, with emphasis on the moral aspect. I acknowledge the fact that it is hairsplitting to draw a clear cut line of distinction between law and morality, ⁽⁵⁾ nevertheless, both aim at the same goal - justice and social harmony. For the sake of social justice, I shall take the question of reparation as both a legal and moral issue, realizing the fact that Chief Africa's case may crumble easily at the slightest push of legal wind. But first, some legal points must be raised.

First, chief Africa fails to show how and why the West is culpable for the offence of slavery and slave trade. In the first place, there were no anti-slavery laws at that time violated by the slave traders. If there are such laws now, they cannot be applied retroactively. More importantly, societies have not always seen slavery

^{5.} See R. M. Dias; Jurisprudence (London: Butterworths 1976) pp. 130 - 135

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as bad. Aristotle, one of the greatest philosophers that ever lived considered slavery as normal. Plato, his predecessor, did not think differently. The goodness or badness of slavery and slave trade is a function of the time or period in question. It will therefore be absurd to assess the events of that period with contemporary values, mores and laws.

Secondly, the arguments for reparations do not show us why we must visit the sins of the father on the son. The law does not permit the son to stand in, in the court of law for the offence committed by the father. It will amount to a miscarriage of justice for reparation to be paid by a generation which has not directly participated in the slave trade. I also fail to see how the generation which actually suffered during the unfortunate era of slave trade will benefit from reparation, if paid. I fail to see how we can treat the issue of reparation like inheritance to be passed from father to son, at least legally.

Thirdly, I find it very difficult to decide on the locus stand of those demanding reparations in this court. They have failed to show how they have, as individuals or as a group, suffered 'injuries' or have had their lives threatened by the slave trade which officially ended before our great-grandparents were born. As was held in the case of Adesanya Vs The President of Nigeria (1981) 2NCLR P.358, Chief Africa would only be a 'busy body and a meddle some interloper' in any demand for reparation. A citizen seeking to enforce public right must prove that he has been personally injured by the wrongful act or that a case in controversy exists between him and the defendant. (6) I do not think Chief Africa would suffer any injury if the

demand for reparation is denied.

I find the argument of Chief Africa on the culpability of the entire race amusing, at the same time, compelling. I am aware that for several years after the slave trade was officially abolished, many Africans refused to end it. Ingenious routes were opened by those Africans who made a fortune out of the trade. Both races are culpable. But, are we legally justified to ask a whole race to pay for the sins of a few, granted those who carried slaves were few and those who connived equally few? Methinks the entire episode represent the sins of a few against many. Legally, only the few are culpable. They must be found and punished. But, can we find them?

I must comment on the relative ease at which millions of Africans were carried away be a few whitemen. I am surprised that such mundane things as rum, umbrella and gun powder could have led a people astray. Gun powder for what? I guess to help Africans destroy each other, as their history is replete with inter-tribal wars even well before slave trade. Some of these wars were waged with the singular aim of plundering. I would have thought those Africans whose grandparents connived with the slave traders would by now have been arraigned before the court of law and punished if found guilty. If this suggestion sounds naive, then the demand for reparation equally appears misplaced. Should charity not begin at home?

From the arguments of Chief Africa, it appears to me that the demand for reparation relies more on morality than on legality. I guess Chief Africa is appealing more to the conscience of the whiteman rather than his legal system. Morality, it must be noted, is purely an internal thing ⁽⁷⁾ There are only moral obligations, there

^{6.} Also see the case of Chief Adeniran ogunsanya V Professor Ishaya Audu (1981) 3 NCLR p.529

are no moral duties. The demands for reparation must not be seen as a moral duty but as an obligation Africans must earn. I sympathize with Chief Africa, especially as regards the apparent poverty and political ineptitude of African leaders. If I had the power, I would have asked the West to forgive all the debts owed by African nations, not as a reparation, but in the realization of social justice and global harmony. On the other hand, will debt forgiveness not violate law and moral norms? Ought one not pay his debt?

I take exception to the argument that African nations have been independent for over thirty years and yet have little or nothing to show for it. I believe thirty to thirty eight years is too short in the life of a nation to draw absolute conclusions. The world should allow African nations more time to sort out themselves. Afterall, it has taken the West many more years to reach the stage they are today.

It is my thinking, however, what even if reparation were paid today, such a huge amount will suffer the same fate as the treasuries of many Africans nations. My advice here is that Africans should first tackle the problem of bad and light fingered leadership. I remember Chief Africa complain about being deceived and brainwashed. I wonder if African leaders today can also hide behind this facade. I am almost certain that if reparation is paid today, such money will either find its way back to American and European banks or encourage more African leaders to sit tight. I only hope we shall not one day be arguing in a court of law for reparations from Europe for the money African leaders have kept in their banks or for encouraging

^{7.} See J. I. Omoregbe Ethics: A Systematic and Historical Study (Lagos: Joja Educational Research Publishers LTD., 1991) p.38

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African leaders and military 'coconut heads' (8) to sit tight.

Again, in very many ways, albeit indirectly, Europe has paid reparation. I cannot repeat the many occasions money has been given out to African countries for developmental purposed I suggest that what Africa needs today is not reparation but effective and purposeful leadership. Europe has not left Africa alone because African leaders have not left Europe alone. Moral values are at their lowest ebb, much lower than what they were when the whitemen first came. Without the people realizing it, many African leaders have sold their nations into another form of slavery. The slavery of debt.

Africans themselves have not helped matters. They scurry out of their countries like rats under the threat of the cat. I find the visa issue raised by the defence counsel relevant. Africans are so desperate that they will willingly go to Europe and America today as 'modern slaves'. I just hope they will not turn round tomorrow to ask for reparation.

Finally, my hands are tied. I have a moral obligation to condemn slave trade. I also have a duty to look at law from the point of view of Hans Kelsen (pure theory).

The two advices should approach the bench. I strongly advice you two to settle out of court.

Case dismissed.

^{8.} I owe the use of thies term to Professor Ayittey