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Philosophical principles in the Shona traditional court system

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The paper examines the philosophical principles employed in the Shona traditional court system. Premised on the theoretical framework of philosophical sagacity and basing on ethnographic study of actual traditional Shona court sessions in selected Zimbabwean rural areas, the paper traces the logical, epistemic and ethical basic principles used in the Shona court system. Logical principles such as the principle of non-contradiction and clarity of expression, help to ensure consistency of statements and soundness of arguments. Epistemic responsibility is guaranteed by knowledge related principles such as verification, falsification and openness of dialogue. Ethical principles provide a firm grounding for the exercise of ubuntu which encompasses principles such as truth telling, self control, conflict resolution and peace building, among others. The paper argues that these principles form the rational justifications from the time a crime or offence is committed, a report is made, to the time of the court, trial and forgiveness. The philosophical principles, it is further argued, are jointly necessary and sufficient in settling cases in the Shona traditional court system since they work together to ensure social harmony and peace within the communities. Finally the paper acknowledges possible problems in the application of philosophical principles in Shona traditional court system thereby demonstrating the limits of the system.

Key words: Shona, court system, ubuntu, logical principles, epistemic principles, ethical principles.

INTRODUCTION

The traditional Shona court system (*dare*), which is still applicable in contemporary rural Zimbabwe, shows a unique and African approach to jurisprudence and legality. Mberi (2009) observes that the Shona constitute about 75% of Zimbabwe's 13 million people. For the Shona, a crime (*mhosva*) is seen as affecting the whole community, hence the social, ontological and moral dimension of crime. This view can be summed up by Mbiti (1970:141) in the dictum, "I am because we are, and since we are, therefore I am." As a result, the corrective procedures involve all communities with the extended family of the offender as the accused and the extended family of the offended as the complainant. The social aspect of crime demonstrates the web of Shona relationships (Gelfand, 1981). The main objective of the court system is to ensure social order and harmony within the community. In addition, the Shona court system is a process and not an event because it takes care of individuals even after the court trial. The Shona demonstrate some rich philosophical principles that are intrinsically linked to the reasoning process relating to crime, law and judgement. These philosophical principles are inextricably connected to logic, ethics and epistemology. Logical principles reflect the coherence and internal consistency of the Shona thought pattern in relation to interpretation of the law and custom of the land. Ethical principles provide solid justification for the need to value and respect human beings in the court process. Epistemic principles govern responsibility related to knowledge claims.

Gombe (1998) indentifies three types of courts in the Shona traditional system. The first one is the family court (*dare repamusha*). This involves a private court session between members of a single family or between two families of the same extended family. The family head or aunt presides over the case for the purpose of bringing justice to feuding parties without involving members of the public. In this line of thought, Ramose (1999) maintains, "African law or ubuntu law is in the first place, about the philosophical family atmosphere prevailing

among the indigenous African people." The purpose of law and hence the related court system is to build unity, togetherness and harmony which are clear traits of the family atmosphere. The second type is the local court (*dare remumana*) which presides over cases involving two or more different families. This court handles smaller crimes such as thefts, fights and consumption of crops by livestock, among others. For Gombe (1980), local courts are the foundation of law and ethics among the Shona. The aim of the local court is to instill social harmony among the disputing parties. In addition, the court also encourages the complainant to understand that wrongdoing is part and parcel of human nature to facilitate the forgiveness of the accused and promotion of social harmony. The third type of court is the higher court (*dare repamusoro*) which involves the settling of cases by chiefs and sub-chiefs. In this type of court, the chief presides over the case with the help of advisors who were chosen on the basis of intelligence, knowledge and eloquence of speech. In most cases, the advisors are either philosophic sages or folk sages who demonstrate a vast amount of wisdom. This study focuses on the last type of court because it transcends the limitations of both family and local courts to involve the larger community. In addition, it is the type of court that involves sages who are relevant in this study because their articulations involve the logical, ethical and epistemic principles that are being analysed by the research.

The paper begins by grounding the research in the theoretical framework of philosophical sagacity because wisdom from the sages is the basis of the court system. This wisdom is the source of philosophical principles that filter in each of the stages of handling crime in the Shona court system. In turn, the wisdom is provided by the philosophy of ubuntu which is passed from one generation to the next. Firstly, when reporting the offence both moral and epistemic principles are required to facilitate truth telling and elimination of false reports. Secondly, the consultation process provides a preliminary brain storming exercise (to judges) that provides the epistemic and logical tools to the mental framework that possibly guide the actual court session. Thirdly, the court session involves tension among the feuding parties and therefore encompasses logical, epistemic and ethical principles to provide clear arguments, verified findings and acceptable behavior respectively. Lastly the post court period provides principles that facilitate conflict resolution, peace building and reconciliation among the parties involved so as to promote social harmony, a cherished aspect in the Shona society.

THEORETICAL FRAMEWORK

The research shall be theoretically grounded in African Sage Philosophy. Oruka (1990) sees sage philosophy as a body of thought produced by persons considered wise in African communities, and more specifically refers to those who seek a rational foundation for ideas and concepts used to describe and view the world by critically examining the justification of those ideas and concepts. This kind of philosophy is evident in the Shona traditional court system where rational thought is highly exercised with the objective of arriving at justice. Sage philosophy is appropriate for this research because individual thinkers in Shona society are eventually included in the panel of judges by chiefs and their reasoning ability keeps them in royal courts. The influence of colonial mentality against unwritten thought, as may be done to the Shona thought system, is challenged by Oruka. By publishing his interviews with the sages Oruka aims to counter negative thinking concerning the marginalisation of African thought, namely that "philosophy is and can only be a 'written' enterprise; and so a tradition without writing is incapable of philosophy" (Oruka, 1990:14). For Oruka, such a claim is based on myth and not on scientific investigation. He argues that there are African thinkers, not yet recorded into the tradition of the written books, whose memories are, in terms of consistency, clarity and organization, as good as the information recorded in books. Responding to adversaries, Oruka warns that: to argue like the critics, not just of Sage philosophy but of African philosophy… that Africa is having a late start in philosophy just because we have no written records of her past philosophical activities is, wrongfully, to limit the sources from which we could detect traces of such activities (Oruka, 1990:50).

According to Oruka (1990:28), Sage Philosophy is "the expressed thoughts of wise men and women in any given community and is a way of thinking and explaining the world that fluctuates between popular wisdom (well known communal maxims, aphorisms and general common sense truths) and didactic wisdom, an expounded wisdom and a rational thought of some given individuals within a community." Oruka, however, makes a clear distinction between a philosophic sage and a folk sage. The ability to express dissatisfaction with the ordinary belief system of their communities is an important critical component and a criterion Oruka uses to distinguish sages as philosophical. Dissatisfaction sometimes motivates the philosophic sage to advance the knowledge that everyone has by subjecting it to critical examination in order to determine its validity and worth. Similarly, Shona philosophic sages have the ability to go beyond common knowledge or wisdom. While philosophic sages may still share with others some customary practices and beliefs, or aspects of them, unlike other members of their community, they emphasize rational explanations and justifications of courses of action. They owe greater loyalty to reason than to custom for its own sake. As a result, not only are sages often a source of new knowledge, but they are also a catalyst to change within their communities.

In Oruka's view, not every member of society can

demonstrate consistent elaborations and profound conceptual clarifications of the principles that underlie common beliefs. While Oruka acknowledges that there are other indigenous sages in African communities, he distinguishes these from philosophic sages, who are committed to critical inquiry and to the rational grounding of values and beliefs. Other indigenous sages, who may be wise in some sense, but not critically oriented, act as repositories of the statements of the beliefs of their communities, which they have learned and can repeat, or teach, to others exactly as they are supposed to be remembered.

A folk sage is a highly intelligent and good narrator of traditionally imposed beliefs and myths. He, or she, may explain such beliefs and values with great detail and may even expound on the relation between the mythical representations and the lessons in and for society that they are intended to illustrate. In the Shona traditional set up, such sages can narrate how old cases were handled and inductively, they treat similar cases alike. But while the folk sage hardly veers off the narrative, by contrast, a philosophic sage is a person "of traditional African culture, capable of the critical, second-order type of thinking about the various problems of human life and nature; persons, that is, who subject beliefs that are traditionally taken for granted to independent rational reexamination and who are inclined to accept or reject such beliefs on the authority of reason rather than on the basis of a communal or religious consensus" (Oruka, 1990:5–6). Oruka distinguishes between folk and philo-sophic sages, in terms of those who pursue the rational grounding of beliefs and values, as opposed to those who merely narrate them as they appear in their community's belief systems. In the context of the present study, Shona philosophic sages handle court cases in a manner that demonstrate ability to think through complex and intricate cases as opposed to mere familiarity with customs and laws of the land.

RESEARCH METHODOLOGY

The research is based on actual ethnographic observation of several traditional Shona court sessions in rural Zimbabwe mainly in the Bikita, Chivi and Zaka districts of Masvingo province for the period between September 2007 and February 2011. The researcher pays particular attention to the alleged criminals and documents how they present themselves before a panel of traditional judges and ordinary villagers as onlookers or witnesses. Necessary inferences are drawn from the reasoning, behavior and knowledge claims of the accused to determine their logical, ethical and epistemic thinking respectively. The way judges handle the cases is taken as an important aspect that shape and give credibility to the traditional court system. Witnesses are also key elements in the traditional judicial system and observations are made on them to facilitate the inference of axiomatic patterns in their thinking and behavioral aspects. A comparative analysis of the structure, procedural aspects and results of the court session is made based on the observed cases. Based on the similarities in the steps taken and the reasons for the stages, the researcher draws out principles based on a tripartite division of logical, epistemic and

moral principles. In addition, court opening speeches made by traditional judges were recorded and their views concerning the significance of each of the steps were recorded and analyzed. Ordinary villagers participated by giving their opinions in court sessions and inferences were made by the researcher on the principles behind the Shona traditional court thought system. The research methodology is therefore a combination of ethnographic study and philosophical analysis. The ethnographic component provides the raw facts and qualiative data while the philosophically analytic component provides the principles employed.

UBUNTU AS A SOURCE OF SHONA TRADITIONAL COURT SYSTEM

The philosophy of ubuntu is concerned with unity, oneness and solidarity (Ramose, 1999). Ubuntu is a multi-faceted philosphical system that involves logic, metaphysics, epistemology and ethics. The distinctive nature of ubuntu is that the philosophical facets are practically aimed at promoting social harmony and peace within the community through some wise application that is based on both knowledge and experience. This therefore opens the connectedness between ubuntu and the Shona court system. Ubuntu attempts to supply the rational principles to the Shona court system through the guidance of individuals who have already been identified as sages. Ubuntu is logically the basis of law and consequently the court system. According to Bourdillon (1981), the primary aim of the Shona court system is to reconcile disputants. This aim is clearly consistent with the philosophy of ubuntu and the practical consequence is that the court reasoning procedures, the assessment of knowledge claims and the code of conduct to be exercised all aimed at conflict resolution, a key tenet of ubuntu philosophy. The philosophy of ubuntu is transmitted mainly through oral tradition. The mental framework of the Shona court system is made up of collective ideas that are absorbed and become models of thinking and inference (Vansina, 1990). It is necessary therefore, to dig down into the all embracing system of ubuntu and draw out philosophical principles that are used in the Shona traditional court system. African law based on Ubuntu is a living law, based on their recognition of the continuous oneness and wholeness of the living, the living-dead and the unborn (Ramose, 1999). By implication, the Shona traditional court system is aimed at promoting this African unity. It is for this reason that the Shona traditional court system responds easily and organically to the demands for reconciliation as a means of restoring the equilibrium of the flow of life when it is disturbed.

Philosophical principles used in reporting an offence

The philosophical thinking in the Shona court system is inferred from the traditional institutions of courts. Gyekye (1973:45) argues:

"When studying African thought, we must rely on stories, oral traditions and social institutions, and so forth, as purveyors of thought."

In line with Gyekye, the Shona court system demonstrates and preserves Shona legal reasoning. The first stage involves making a report of a crime to the chief. The aim of the report is to initiate the process of justice on the part of the offended. The crime is described by the offended party in terms of the nature, extent, gravity and harm it gives. If the crime, for instance, consists in one's cattle destroying another person's crop, the type of cattle involved is noted, the dates given and the extent of the damage is captured. The details have to be fully captured so that no questions may arise from the report. At this stage, the principle of truth telling is widely upheld. The report is supposed to be substantial, detailed and accurate. Accuracy entails correspondence with reality on the ground. This is something akin to Aristotle's concept of truth which says:

"To say of what is, that it is not or of what is not, that it is, is false while to say of what is, that it is, and of what is not that it is not is true" (*Metaphysics* 1011b25-28).

Aristotle's dictum is an expression of the correspondence theory of truth (Cohen, 1978; Barnes, 1982). This implies that the moral principle of truth telling is highly expected in reporting a case. Exaggerated claims are seen as weighing against credibility thereby discrediting the truth claims involved. In addition, the report is supposed to be backed by witnesses and independent verification of truth claims is supposed to be possible both theoretically and practically. A theoretical verification spells out the steps to be taken to establish the truth of a claim, for example, if X goes to place Y she will see hidden stolen items. A practical verification entails taking actual steps to establish the truth of a claim. The principle of verification is used in Shona traditional court systems, not in the abstract and positivistic manner of logical positivism but in a pragmatic and existentially inclined manner. It is practical because it aims at solving an issue at hand and it was existentially inclined because it focused on improving the quality of life among the Shona. If someone was injured by a member of the community, for example, the injured person showed the injuries to the members of the court session as verification of claims. In addition, the verification requires the help of eye witnesses to give further evidence. In addition, the verification process would involve practical verifiability as elders would literally walk to the site of the offence in a bid to prove the claims of either the offender or the offended. Verification gives first hand information and it enables participants of the court session to observe the nature, extent and gravity of the wrongdoing (beyond mere statements) so that the court judgment is rationally based on established facts. In addition, the arguments to be used are to be

based on what is really on the ground so that they may be credible. This thinking is in line with the medieval dictum which states that against the facts, no argument holds water. The opposite of verification is falsification. Falsification, among the Shona system, is a process that was done to show that a given statement is false. It is used to disprove allegations. The Shona people are aware that despite the need to uphold moral principles of ubuntu by members of the community, certain individuals can get false allegations on the basis of hatred or out of mischief, among other reasons. If a virgin girl falsely claims having been raped for example, examination by elderly women can demonstrate the falsity of the claim. Falsification therefore, helps to root out pseudo-claims.

The principle of confidentiality is used especially in cases that involved private family matters. Under the principle, members of a dispute are supposed to keep the matter secret so as to respect the offender despite having committed an offence (Gwaravanda and Masaka, 2008).The principle of collective responsibility is a direct consequence of the philosophy of ubuntu. This entails that an offence is seen as harming every member of the extended family of the accused. Family members may not leave the accused in isolation but they are involved in all the steps of the court session until the accused is proven guilty or innocent. In the event that the accused is found guilty, family members may assist to pay the fines involved especially when the person found guilty is a poor person. Conversely, the one who has been offended sees the offence not as directed to him or her alone but to the entire extended family. If a woman is beaten by her husband, for example, the woman's family complains *mwana wedu arohwa* (our daughter has been beaten). Among the Shona, the virtue of honesty means trustworthiness. Honesty is central in reporting a case, giving witness and in judging a case. Dishonesty is considered a vice that gave room to fabrication of offences, false witnesses and a recipe for unfair judgement in the Zimbabwean court system.

Philosophical principles of the consultation process

Secondly, before the actual trial, there is a consultation process which is to determine whether the crime is within the judicial panel's scope of experience. Seymour (1970) observes that in African traditional legal systems, relevant questions are asked and some probing is done to find out circumstances surrounding the crime and to find out whether any extenuating circumstances can be identified. This preliminary exercise sharpens the reasoning process before the actual court case. Serious probing is done by the judges to prepare for the actual trial. In the preliminary exercise, it is necessary to exchange ideas and to correct each other in the reasoning process. The epistemic principle of dialogue is used to give a wide scope of views and to determine the merits of the case.

This stage is based on the assumption that wisdom is not a monopoly and sharing ideas enriches individual perceptions and insights on the matter to facilitate binding and logical decisions on the matter. This demonstrates the uniqueness of African jurisprudence in general and Shona jurisprudence in particular as opposed to the marginalization by the west; "Construing the Africanness of African jurisprudence as marginal to jurisprudence or construing the Africanness of African philosophy as marginal to African philosophy is equally contestable. To see why this may be contestable one can imagine the absurdity of construing what it is to be human in a manner that marginalizes individual human beings. If one were to try to turn away from individual human beings and try to focus attention on human being as such, one would be focusing on nothing" (Murungi, 2004: 519).

In the consultation process, useful ideas are separated from less useful or useless ones and this helped the panel of judges to concentrate on relevant points. Integrity of character is a principle that is upheld by elders in settling a case. The elders are supposed to demonstrate reasonableness and objectivity in treating cases. This keeps their records as fair judges high. The judges are expected to be of high moral caliber and with the ability to reason out clearly and objectively. In most cases related to Shona courts, as with other African societies, sages are among the judges (Koyan, 1980). In addition, judges are supposed to be highly inquisitive so as to unearth the details of the case under consideration. Maturity and experience in handling court cases is also expected of the judges. Epistemic dialogue, among the judges, implies exchange of views or truth claims before the actual offence is considered. In dialogue, the judges brain storm on their own to see the merits and demerits of the matter at hand. In the process, of dialogue, apparently false claims are laid bare among the judges. In the attempt to establish truth, ambiguities and vagueness of the case are examined and the speaker is guided to affirm truth which can be clearly understood to listeners.

Philosophical principles in the trial

The third stage involves the analysis of the offence in the real court session. The nature of the offence is analysed with reference to the law and the custom of the land. Sages are of primary importance because they preserve the law of the community in their memories even without writing anything down. Allot (1960:62), observes:

 "Writing was entirely absent from all traditional African societies…and this fact alone has had a tremendous effect on African laws in a number of ways."

In response to such narrow thinking, Ramose (1999) argues that lack of writing is not tantamount to lack of

thought. Further, Ramose (1999:113) argues that the library is just "a symbolic of the re-presentation of thought." This entails that the codification of Shona law is not abstract but particular and specific. In the Shona traditional court system, the guiding principle is the philosophy of ubuntu which places emphasis on togetherness, solidarity, sharing, hospitality, sympathy, generosity inter alia and shuns individualism, solitariness, selfishness, hostility and so on. In the cherishing of the above values, an action is viewed as morally upright if it conforms with the above values and morally bad if it is inconsistent with the values. The nature of the offence is analysed seriously with the aim of bringing peace to resolve conflict on the feuding parties.

The parties involved are then brought before the actual court session and the offended is asked to speak first outlining the nature of the offence done to him or her. Specific details are given and these details are supposed to tally with the initial report given. As much time as possible is given to the offended to give details and witnesses are given chance to testify. The ability to control tempers is a central virtue among traditional societies since some cases would make even the judges angry. Self-control ensures that peace prevails in the communities. If a fight, for example, would erupt among the feuding parties, chaos would prevail in the community if self-control is not exercised. Self control facilitates the exercise of a certain degree of level-headedness to ensure that justice prevails in the community. The lack of self–control entails failure to administer justice rationally in the community. In addition, the panel of judges asks questions relating to the logicality, connectedness and coherence of the details involved. At this stage, the principle of truth telling is adhered seriously. The accused is also given the chance to give his or her side of the matter at hand. At this stage, the accused comments on the details given by the offended and this done by pleading guilty or not guilty to the offence. The panel of judges then gets the chance to question the statements of the alleged offender in terms of the coherence and flow of the given statements. This involves rebuttal of assumptions and refutation of certain claims. Witnesses of the offended are also asked to testify and demonstrate whether the said claim constitutes an offence. The responses of the witnesses are analysed to find out whether what they claim conforms to the truth. Sometimes the panel of judges asks the witnesses separately to find out whether there are any contradictions in the claims. If there are no contradictions, they can tell that the statement is likely to be true. If there are contradictions then, it will be reasoned that contrary opinions cannot be simultaneously true (Aquinas, 1960).

The analysis of the offence is based on moral determinants such as time, space, reason and gravity of the offence among other details. In the Shona court system, the logical principle of non-contradiction is upheld in examining claims. In simple terms, the principle

states that a statement cannot be true and false at the same time and under the same respect. This principle is implicit in all cross examinations and it is an axiomatic assumption for consistency. In the Shona traditional court system, logically contradictory positions cannot both be true. This principle demands consistency among the key witnesses. The principle of non-contradiction is therefore a philosophical principle of great logical significance. Another logical principle which is used in the traditional court system is clarity of ideas or expressions. The presentation of a case is supposed to be understandable to both the judges and witnesses, so the language used must be free from ambiguity, vagueness and obscurity. If a case would be subject to two or more meanings or if it involved hidden meaning, then it would bring out different senses to listeners thereby making the process of judging very difficult. The arguments used in the court session were supposed to be straight forward. The statements supplied by the witnesses, the offended and the offender constitute the premises of the arguments. These premises are evaluated to determine their truth value. If these premises are found to be true, they would entail the conclusion of the argument but if they are false, this would also guarantee a false conclusion. Elders in the community or sages direct the logical steps of the argument in a manner which is both calm and reasonable. The principle of justice is closely followed in settling cases in the sense that both the offender and the offended are supposed to be treated fairly. Among the Shona, there is a careful distinction between an offender as a person and the offender's deeds, a distinction between being and doing. This implies that in traditional Shona thought, the offender is an otherwise good person who has made a mistake and who has the potential to be corrected. Because of the metaphysical assumption of the intrinsic worthiness of a person, the offender is treated with respect even when found guilty (Bohannan, 1957). Fairness is exercised in passing the verdict because it is supposed to be a firm measure of a similar offence in the future. The offender is also treated with fairness. Tuso (2006) insists that in traditional African institutions, the administration of a penalty is not necessarily to isolate individuals from the community but to restore social value. If an offence is proved, some due and fair compensation is given. If for instance, X's cattle stray into Y's field to destroy a maize crop, it is seen as fair to give Y some maize grain that matches the potential yield destroyed.

Philosophical principles after the court session

In stage four, elders meet with conflicting parties to control tempers. The Shona traditional court system cherishes peace and harmony even if an offence will have been committed. In most cases elders meet with the conflicting parties separately. The offender is asked to be

calm since justice is supposed to prevail. Driberg (1934:231) observes:

 "African law does not create offences, it does not create criminals; it directs how individuals and communities should behave towards each other. Its whole objective is to maintain equilibrium, and penalties of African law are directed, not against infractions, but to the restoration of this equilibrium."

Driberg's observation is also true of Shona law which is demonstrated specifically in the court sessions. In this stage, after the matter has been settled, a panel of elders makes sure that peace prevails among the conflicting parties and they warn the parties that if one of them or both of them start another misunderstanding based on the judgment, another penalty would be administered. This constitutes a practical philosophy whose focus is to solve existential problems. Wiredu (1972:3) argues:

"There is a certain fluctuation in the connotation of the word philosophy…a shift back and forth from the broad sense of the word in which philosophy is, so to speak, a guide to living life, to the narrower sense of philosophy as a theoretical discipline."

The Shona court system therefore demonstrates a practical philosophy of life, the rich sense of the word philosophy. As such, the law is a deterrent mechanism that helps to avoid further conflict. In addition, the elders use their wisdom to provide some kind of counseling to the parties so that peace and harmony prevails in the communities. Despite the penalties imposed, the parties are encouraged to forgive each other since they belong to the same community. Forgiveness is valued as a necessary condition for peace and harmony in the Shona communities. Osaghae (2006) argues that resolution of day to day conflict helps to ensure the stability needed for the resolution of more serious local conflicts. The principle of social harmony presupposes and forms the outcome of settling cases. Any proven offence is regarded as disturbance of harmony and as such, harmony is supposed to be restored through an indigenous judicial system. Offenders are seen as disturbing social harmony hence the need for urgent restoration of order. The aim of the court system is therefore to restore and not to fragment social order. Bohn (1971; 1980) sees westernization as the fragmentation of this social order through the imposition of foreign judicial systems which are individualistic, positivistic and legalistic. For harmony to prevail, Shona society ensures that parties of a feuding dispute are reconciled. Two main reasons are given for reconciliation; first it ensures peace in the communities and secondly, reconciliation is an acceptance of the mistakes in human nature. Peace building is the ultimate goal of the entire court system among the traditional Shona societies of

Zimbabwe since peace in the community is the ultimate aim. Peace building depends on truth telling and reconciliation among the members of the community. The principle of conflict resolution is used to bring peace among the members of the community. The ability to resolve a conflict depends on heavily on justice, objectivity, and respect for both parties involved.

POSSIBLE LIMITATIONS OF THE TRADITIONAL SHONA COURT SYSTEM

Although the traditional Shona court system involves some rich philosophical principles, it is weighed down by several limitations especially in the attempt to apply the philosophical axioms. Firstly the logical reasoning process to assess the nature and extent of crime may inevitably involve some fallacious reasoning process resulting in long and winding court sessions. Mistakes in the reasoning process such as missing the point, appeal to pity, irrelevant conclusion, false cause and hasty generalization, among others, result in confusion of judges and witnesses thereby making the procedural aspects difficult to examine. Bourdillon (1981) indentifies a case where a man lost a case because he had not followed the proper channel in reporting the case. In Bourdillon's view the basis of losing the case in the cited example is simply procedural. In addition, clarity and soundness of argument are undermined especially by the less experienced panelists who may be confused by the offender's attempt to avoid facts. Eloquence mostly from the judges may easily be confused for wisdom and this result in mistakes that reduce the logical strength of arguments. Secondly, moral principles surrounding harmony, peace building and forgiveness are often undermined by immoral persons such as criminals who display violent tendencies. Despite the apparent success of several sessions, some courts are abandoned after criminals make it difficult to proceed (Bourdillon, 1981). This limitation is eventually solved by handing over difficult criminals to the parallel state court system which involve professionally trained judges, lawyers and prosecutors (Economic Commission for Africa, 2007). Although the unethical behavior of criminals often make Shona court proceedings difficult, the imposition of heavy penalties for misbehavior acts as a management mechanism (Bourdillon, 1981). Thirdly, epistemic principles of verification, falsification and openness to dialogue are reduced in force by the adoption of rigid thinking that knowledge and wisdom are exclusively male attributes. Like other masculine African societies, the traditional Shona court system largely excludes women since women are presumably represented by their hus-bands or fathers. As a result, useful insights from women are thrown away and this reduces the scope of objectivity and openness of dialogue. Besides the sidelining of wo-men, men who are considered as incapable of reasoning

are send away to do minor and less intellectually demanding tasks like goat skinning (Hamutyinei and Plangger, 1987). Finally, the fact that the chief preside over cases has limitations in that there is no separation of judicial and executive powers and this may intimidate subjects.

Conclusion

The paper has argued that the Shona traditional court system, drawing from philosophical sagacity, is richly rational. This is evidenced by the logical, ethical and epistemological principles employed therein. Logical principles, the paper demonstrated, are used in a pragmatic manner to guide the soundness of arguments and to regulate focus on the matter at hand in a clear and understandable manner. Ethical principles, which form the bulk of the philosophic base, ensure the exercise of justice in a fair and firm way with the overall aim of arriving at solidarity, peace, unity and harmony within the community. The Shona traditional court system does not therefore aim at competing and outwitting each other in the identification of offences and criminals but at ensuring that peace prevails in the community so as to be consistent with the rich and diverse dimensions of ubuntu. Epistemological principles guide the Shona people in the stages of the court system to justify their knowledge claims on unshakeable factual foundations so as to make the system both reasonable and credible within the community. Despite the said principles, there are several limitations to the Shona traditional court system that undermine the force and credibility of logical, ethical and epistemic principles involved.

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