

AT ISSUE

Africa Versus the West in the Court of Reparations

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INTRODUCTION

When Alex Haley's *Roots* was first serialized on Nigerian television in the 1970's, 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 work 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 many generations of young people, perhaps its most important resource. The result has been a retardation, in some cases a total stagnation, of the hitherto advancing African civilizations.

For these reasons, Africans of our time are demanding reparations for atrocities committed hundreds of years ago. The timing of the return of *Roots* to the Nigerian Television screen in 1992 was anything but a coincidence¹. It 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 over four hundred years of slavery and slave trade. *Roots* is a powerful recounting of those terrible days. No one in their right mind can refuse to condemn the obnoxious trade in human beings, whatever the reasons for it.

In this forum, I intend to raise some fundamental questions which I expect will crop up in the course of these demands for reparations. Such questions are already, albeit in another direction, being debated in the SORAC discussion². When the modified version of this paper was first published in *The Guardian* (Nigeria), the controversy it generated lasted for more than a year. I admire the courage of the late Chief M. K. O. Abiola for almost single-handedly standing up against the intimidation and manipulation that resulted from demanding reparations for what he and his allies perceive as 'injustice and rape of Africa's resources, human and material. However, I must begin by concurring that reparation is good and dear, at least in these trying times, but the truth, I dare say, is better and dearer.

Using the facts of history, the polemics of philosophy and evidence in law, I simulate a court room situation³ in order to examine how the demand for reparation will stand in the face of 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.

<http://www.africa.ufl.edu/asq/v3/v3i1a3.pdf>

LITIGATION

Chief Africa: Your lordship, I pray this court to grant the sum of 800 billion U.S. dollars as reparation for the over four hundred years of slavery and slave trading. This is based on a conservative calculation of the lives lost, families separated, civilizations destroyed and other innumerable distortions that affected 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, civilizations destroyed, families separated? Can you also tell us how many whitemen came to Africa to carry away millions of Africans?

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 this mean only a few whitemen carried away millions of Africans as slaves? 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: 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: Don't you think the whitemen who 'carried' the slaves were bad whitemen?

Chief Africa: There are bad people in every society, my lord.

Defence Counsel: Since you know the slave traders, why don't you ask them or their descendants for reparation?

Chief Africa: We do not because we hold their entire race culpable in this crime. All whitemen are directly or vicariously liable because they all benefited from the slave trade.

Defence Counsel: If that is the case, should we not hold the entire black race equally culpable for the participation of a few "bad Africans"? You have also alleged that the whitemen disrupted a thriving civilization, comparable to those of the West. If indeed Africa had thriving civilizations, it would have been impossible for a handful of Europeans to subjugate millions of Africans as slaves⁴. As a matter of fact, we did Africa a favour by carrying some of you away as slaves and beginning to civilize you.

Chief Africa: My lord, I must object. This is a pejorative statement. Africans were certainly deceived and brain washed.

Judge: I'd like to agree with you, but you earlier said Africans were very wise. How was it they were deceived so easily?

Chief Africa: My lord, rum, umbrellas, mirrors and gun powder did the trick.

Judge: Objection overruled.

Defence Counsel: Have you also thought of asking the present 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: 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: Is it not true, Chief Africa, that your attempt to get reparations is not the result of any slave trade, but simply a way to escape the present economic situation Africans have put themselves in?

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

Defence Counsel: May I ask what Africans have achieved in the almost one hundred and fifty years since slave trade officially ended?

Chief Africa: This is a misleading question. You people have not really left us alone. You have colonized us directly and indirectly.

Defence Counsel: Perhaps, but many African states have been ruling themselves for upward of thirty years.

Chief Africa: Yes, but 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: Your economies are in shambles, plagued by political instability. Your leaders are rapacious, despotic and greedy. Anarchy, deprivation, tribalism, corruption all thrive on the continent. Do you expect us to pay reparation for all these internal issues? What about the millions of dollars spent helping feed millions in Angola, Somalia, Rwanda, Burundi, Liberia? What about the thousands taken in as refugees in Europe and America?

Chief Africa: This is only paying back what was stolen from us.

Defence Counsel: I put it to you, Chief Africa, that your demand for reparations 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 to consider my judgment.

JUDGMENT

I have considered with great attention to details the submissions of both Chief Africa and the defence counsel, trying to fathom the basis of the demand of Chief Africa for reparations. Is the demand for reparations really a legal issue?

My conclusion 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, nevertheless, both aim at the same goal -- justice and social harmony⁵. For the sake of social justice, I shall take the question of reparation as both a legal and moral issue. First, some legal points must be raised.

Chief Africa has failed to show how and why the West is culpable for the offence of slavery and slave trade. Societies have not always seen slavery as bad. Aristotle, one of the greatest philosophers that ever lived considered slavery as normal. Plato, his predecessor, did not think any differently. The goodness or badness of slavery is a function of the time or period in question. There were no anti-slavery laws at that time. If there are such laws now, they cannot be applied retroactively. It would therefore be absurd to assess the events of that period with contemporary values, mores and laws.

Secondly, the arguments for reparations cannot compel us to visit the sins of the father on the son. The law does not permit the son to stand for the offence committed by the father. It would 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 reparations. How can we treat the issue of reparations like an inheritance to be passed from father to son?

Thirdly, I find it very difficult to decide on the locus standi of those demanding reparations in this court. The plaintiffs failed to show how they have, as individuals or as a group, suffered 'injuries' or have had their lives threatened by a trade which officially ended before our great-grand-parents were born. 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 reparations is denied. In fact, Chief Africa would only be a 'busy body and a meddling interloper' in any demand for reparations.

I find the argument of Chief Africa on the culpability of the entire race amusing, yet compelling. I am aware that for 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. It seems both races are culpable. Are we legally justified to ask a whole race to pay for the sins of a 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. They have not been named as defendants in this case.

I must also comment on the relative ease at which millions of Africans were carried away by 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? Perhaps to help Africans destroy each other, as their history is replete with inter-tribal wars even before the slave trade. Some of these wars were waged with the singular aim of plundering. Furthermore, I would have thought those Africans whose grandparents connived with the slave traders would have been arraigned before a court of law and punished if found guilty. If this suggestion sounds naive, then the demand for reparations appears equally misplaced. Should charity not begin at home?

From the arguments of Chief Africa, it appears to me that the demand for reparations relies more on morality than on legality. Chief Africa appeals more to the conscience of the whiteman than any legal system. Morality is purely an internal thing⁷ There are only moral obligations, not moral duties. Reparations must not be seen as a moral duty, but as an obligation Africans must first earn. I sympathize with Chief Africa, especially regarding the apparent poverty and political ineptitude of African leaders. If I had the power, I would ask the West to forgive all the debts owed by African nations, not as reparations, but in the spirit of social justice and global harmony. On the other hand, will debt forgiveness not violate legal and moral norms? Ought one to escape paying a debt?

My advice is that Africans should first tackle the problem of bad and light-fingered leadership. I remember Chief Africa's complaint about being deceived and brain-washed. I wonder if African leaders today can also hide behind this façade? 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 consider extended terms in office. 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 African leaders and military heads to sit tight.

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.

Sadly, my hands are tied. I have a moral obligation to condemn the slave trade. I also have a duty to look at law from a purely legal point of view. Case dismissed.

Notes

1. Alex Haley's *Roots* was first aired on Nigerian television in the 1970's. It suddenly reappeared on screen in 1992 at a time when late Chief M. K. O. Abiola was championing reparations. A coincidence?
2. I refer to the Ayittey Vs Mengara et al on SORAC discussion forum.

3. Dr. F. N. Ndubuisi refers to my hypothetical courtroom situation as kangaroo. Although hypothetical, the litigation is neither spurious nor bereft of logic and equity as he claims. See F. N. Ndubuisi 'Ethical issues in Reparation' *The Guardian* 18 October, 1992.
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).
5. See R. M. Dias, *Jurisprudence* (London: Butterworths 1976) pp. 130-135.
6. See the case of Adesanya V The President of Nigeria (1981) 2NCLR p. 358. Also see Chief Adeniran Ogunsanya v. Professor Ishaya Audu (1981) 3 NCLR p. 529.
7. See J. I. Omoregbe, *Ethics: A Systematic and Historical Study*. (Lagos: Joja Educational Research Publishers Ltd., 1991), p. 33.
8. I owe the use of this term to Professor Ayittey.