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The Influence of European Colonialism on Zande Customary Law

Adam Jackson

Laws are the moral foundations of social order. They are established to govern the way in which individuals act within a society in an attempt to impose stability, conformity and acquiescence. Because a specific set of laws functions only within the bound system in which it is established, the effectiveness of the legal system is contingent upon the general acceptance of those rules by that particular society. Law, like any other culturally constructed institution, must therefore be understood in reference to the society in which it is developed.

If a common understanding among all community members is fundamental to the successful implementation of the legal code, then an interesting dilemma arises when examining the application of European law in tribal societies. If colonial powers were to impose European law on tribal society what effect, if any, would it have on indigenous people? Without community solidarity and an understanding of the legal code, it is unlikely that any individual would embrace such laws. Such is the case with the Azande. Here the principles of different systems of law created conflict, when one system of law was superimposed on another. The result was a system of "legal pluralism" where the chiefs, who, prior to colonization, presided over all legal procedures, were forced to simultaneously abide by their customary laws as well as employ the legal sanctions of the colonial powers (Reyntjens 1992:111). In many cases, the legal power of the chief was revoked by the colonial power and transferred to European administrators who had little understanding of jurisprudence within Azande culture (Reining 1966:xvii). If the customary law on which the Azande based their daily practices was distorted by European intervention, then there could be little faith in its prescribed justice. As a result, Azande chiefs lost much of their power, the customary laws of the Azande were compromised and the Azande people turned to vengeance magic as a means of settling legal disputes.

Traditionally, the authority of the chief was never questioned in matters of law (Evans-Pritchard 1962:213). The chiefs held courts in which they exercised a great deal of power, and their judgements served as deterrents to future injustices. Numerous accounts list death or mutilation among the traditional punishments rendered upon the guilty party (Reining 1966:15). Known among the Azande for his particular harshness was the chief Gbudwe. Evans-Pritchard, during his time spent in Zandeland, noted many accounts of Gbudwe's character and the convictions by which he ruled. Evans-Pritchard, in his retelling of such accounts, described Gbudwe as "stern" and "morose," taking harsh action against "disloyal people, sorcerers, witches, adulterers, and those who flouted custom or good manners" (Evans-Pritchard 1962:217).

Such accounts of brutality are not uncommon. Schweinfurth relates that "for the purpose of exhibiting their power over life and death [the chiefs] will occasionally feign fits of passion, and that, singling out a victim from the crowd, they will throw a rope about his neck, and with their own hands cut his throat" (Evans-Pritchard 1962:224). An Italian hunter and trader, Carlo Piaggia, who visited with King Tombo from 1863 to 1865, noted that to incur fear in his people King Tombo would take part in a blood frenzy where a victim would be encircled and murdered (Evans-Pritchard 1962:224). Further accounts of this brutality come from descriptions of Bakangai, a third generation descendant of King Tombo. Bakangai believed that "fear, not love, makes subjects obedient and faithful" and as a result, "he was severe and even cruel, and death was the punishment he inflicted for the least fault" (Evans-Pritchard 1962:224). The ruthlessness by which the Zande kings governed did not, however, endure as a means of control.

Evans-Pritchard, in his account *Zande kings and princes*, notes that although the accounts of Zande brutality are well known, he himself did not witness any such acts (Evans-Pritchard 1962:224). Not only is it the case that "colonial power structure made the object of anthropological study accessible and safe" (Asad 1975:17), it also changed the very nature of Zande justice. It is not unreasonable then, to deduce that brutal practices were phased out with the colonial expansion of European powers during the early part of the twentieth century. Since "Functional Anthropology was born after the advent of European colonialism...and occurred

within the context of...an imperial structure of power already established rather than one in process" (Asad 1975:115), Zande customs of brutality would have already been "subordinated...to the authority of European administrators" (Asad 1975:108). Therefore, any observations of Zande practices were tainted by European colonialism. With the infiltration of the British into the Anglo-Egyptian Sudan, the Azande were placed under British military administration and the prestige of the chiefs as lawgivers was further diminished (Baxter 1953:23).

Subsequent to British military occupation, the colonial administration sought to utilize the Azande chiefs to govern the tribal people. It was often the case that the British Native Commissioner would require the support of the chief to administer law over the tribal peoples (Gluckman 1956:147). The tribal leaders were not, however, permitted to govern using customary law, but were forced to try criminal offences under colonial law (Gluckman 1956:148). Azande customary law stood in direct conflict with the tenets of European law. The colonial government would not allow the continued practice of customary law in its raw form and consequently brutal punishments issued to commoners were forbidden (Reining 1966:17). The chiefs were restricted in their powers of adjudication and punishment, and without murder and mutilation as deterrents, the Zande chief began to lose his hold over his people.

The colonial powers occupied Zandeland, but what gave them authority over the Azande? Evans-Pritchard, in an outline of Zande culture, states "the Azande are so used to authority that they are docile; that it is unusually easy for Europeans to establish contact with them...[The Azande offer] little opposition to foreign administration and [display] little scorn for foreigners" (Evans-Pritchard 1937:13). However, Turner points out that colonial anthropologists were "'apologists of colonialism' and subtle agents of colonial supremacy" (Asad 1975:15), so the conclusion that the Azande would willingly submit to colonial rule is suspect. How then, did the colonial administration exert power over the Azande?

According to Foucault, "law...was the monarchic system's mode of manifestation and the form of its acceptability. In Western societies since the Middle Ages, the exercise of power has always been formulated in terms of

law" (Hunt and Wickham 1994:43). While it may very well be that the power of the colonial government was vested in law, how venerable were colonial laws among the Zande people? The laws of colonial administration were foreign and complex. They were grounded in years of European history, and would not simply apply to the customs and traditions of the Azande. Furthermore, foreign laws must have seemed repressive, as they favoured European interests and morals, and did not include or relate to the values of the Azande people.

A series of judgements made by British colonial officers in Africa illustrates the partiality of the courts to British law. In one such judgment the court proclaimed that "the only standard of justice and morality which a British court in Africa can apply is its own British standard" (Hooker 1975:133). Similarly, the French colonial government believed that customary law should be restricted so that it did not exist "contrary to the principles of French civilization" (Hooker 1975:223).

In the case of the Belgian Congo, the colonial administration was not entirely opposed to customary law, declaring "indigenous chiefs shall exercise their authority in conformity with usage and custom, provided these are not contrary to public order and the laws of the state. However, the chiefs shall be placed under the direction and control of the district commissioners" (Reyntjens 1992:113). In effect, the chiefs were intended to act merely as convenient vehicles for European infiltration.

The influence of the colonial administration on customary Zande law can be seen in the colonial laws pertaining to theft. Traditionally, the punishment for theft was either mutilation or death. Following the implementation of European law, mutilation and death were no longer considered appropriate punishments; restitution, or monetary compensation was required as an alternative (Vanderlinden 1970:346). Further evidence of colonial involvement in customary law can be seen in cases involving physical injuries. Customary law dictated that the chief was to determine the extent of a victim's injuries and equal suffering was to be administered to the guilty party. Under colonial law, the chief was still required to assess the condition of the victim, but compensation came in the form of a monetary settlement (Vanderlinden 1970:344). The influence of the colonial administration served to remove reciprocal action as a means of justice, replacing it with a punishment that was not

relevant to Azande society. It was a legal sanction, the moral foundations of which must have been beyond traditional Azande experience and jurisprudence and, therefore, one which the Azande could not consider acceptable. It should be noted that consent or acceptance always involves contestation and conflict; acceptance, or lack thereof, would not have been homogenous among the Azande, but may represent popular opinion as presented by the ethnographic literature.

According to Durkheim, "moral ideas are the soul (*l'âme*) of the law" (Cotterrell 1999:5). It is important to recognise, however, that morality is manifested differently between societies. Consideration must therefore be given to whether laws based on an uncertain moral order command power and adherence. "Durkheim sees law as the most important expression of morality as a social fact" (Cotterrell 1999:56); it is an objective construct "existing outside the individual consciousness" (Durkheim 1938:2). Therefore, the imposition of legal rules that oppose the popular moral sense can only contribute to an eventual social breakdown, and regimes which impose such legal rules are destined to collapse (Cotterrell 1999:57). In excluding Zande custom from law the colonial administration alienated the masses, and isolated the individual from the judicial institution and ultimately the colonial government itself. Ultimately, the Azande could not possibly accept colonial laws, and the government, in basing its rule on laws which were founded on principles alien to the indigenous population, undermined its hold on the community and its position of power.

The colonial obsession with written law further separated the community from its customary laws. The colonial administration forced the tribal leaders to compile customary law. Case-law and precedence became the determinants of judgement with the resultant loss of flexibility in the customary judicial system (Reyntjens 1992:119). Furthermore, this compilation of laws made it easier to interject colonial law into the Azande legal system and consequently European laws began to replace those of custom. The rights granted to women through European colonial law are an illustrative example. According to Zande custom, women could be married against their will and "were frequently paid in compensation for murder by witchcraft or for adultery" (Evans-Pritchard 1937:16). The law of marriage, law of adultery, and law of

concubinage altered the rights and responsibilities of women (Reyntjens 1992:122), and invested women with "privileges which they did not previously enjoy. Azande unanimously declare that this reform has led to serious disruption of family life" (Evans-Pritchard 1937:16). Although this may not have been unanimous, European laws meant very little to the Azande, as they did not reflect the dynamic social framework of their society, but instead represented laws "given to them by the whites" (Reyntjens 1992: 119).

Inscribing for the record, cases and verdicts normally have the effect of freezing in time the customs of a people, but for the Azande the effect of written law was devastating. Rather than documenting and preserving local custom, the written laws served to destroy oral tradition. Bourdieu refers to the passing of information through text as a "codification" of culture, and Calhoun notes that the introduction of codified, or textual means, "introduced a new institutional dimension-the role of authorized arbiters of correctness" (Calhoun 1995:150). Furthermore, Bourdieu points out an

opposition between official knowledge...and all kinds of unofficial or secret, even clandestine, knowledge and practices which, though they are the product of the same generative schemes, obey a different logic...[T]he transmission of 'official' information through authoritative channels has in fact been destructive to the transmission of information through direct interpersonal relationships. (Calhoun 1995:150-151)

Essentially, text has the effect of weakening the exchange of customary knowledge and, consequently, the ability of such customs to adapt and change. With limitations on their capacity to change, the customs of the Azande could not incorporate European rules and, consequently, the only alternative was to rely on previously ingrained models of behaviour.

With the control over legal proceedings in the hands of the colonial administration, the decline in the authority of tribal chiefs set up an interesting relationship between the chiefs and the Azande. The Azande chiefs were in fact descendants of a ruling caste, which took power

over the Azande state through military conquest. This super-privileged caste, known as the Avungara, took control prior to European infiltration and, as previously noted, imposed social order through brutality, torture and death (Hoebel 1954:268).

The Avungara used brutality as a means of power, with fear at the centre of their psychological hold over the masses. However, a distinction must be made between coercive power and leadership. The leadership of the Avungara chiefs can be described in relation to Gramsci's concept of hegemony. Gramsci distinguished between the state and civil society, and defines the state as "the source of coercive power in a society and civil society as the site of hegemonic leadership" (Bocock 1986:28). Subsequently, Gramsci links the state and civil society within the body of the "integral state," which he describes as "hegemony protected by the armour of coercion" (Bocock 1986:28). The brutality of the Avungara served to protect their position, but their leadership was accepted and understood. Major P. M. Larken, a British Colonial Administrator, recorded, prior to 1923, the myth of the founding of the Avungara royalty by Basenginonga who "when he had meat...invited everyone to come and eat with him, which appealed greatly to the people, and they elected him their ruler and gave him a wife" (Evans-Pritchard 1971:423). Other versions include "the acceptance of Basenginonga's authority on account of certain qualities of personality, in particular liberality and good judgement" (Evans-Pritchard 1971:427).

Bourdieu furthers the argument for the acceptance of the Avungara chiefs in his analysis of symbolic capital. "Symbolic capital is any property (any form of capital whether physical, economic, cultural or social) when it is perceived by social agents endowed with categories of perception which cause them to know it and to recognize it, to give it value" (Bourdieu 1998:47). The authority and cultural leadership of the Avungara was recognised by the masses. The chief maintained a royal court, held feasts, received gifts of spears, and upon entering the court "the people...bow and greet him with the words *Bia mipe cotiro* ('King, we salute thee')" (Evans-Pritchard 1971:181-192). The chiefs held symbolic capital, and in turn were accepted as leaders of the Zande people.

Bourdieu's notion of symbolic capital reveals why reverence was shown to the Avungara chiefs, and the acceptance of the

Avungara royal house is further explained through Gramsci's concept of hegemony:

hegemonic leadership involves developing intellectual, moral and philosophical consent from all major groups in a nation. It involves an emotional dimension too, in that those political leaders who seek hegemonic leadership must address the sentiments of the nation people and must not appear as strange or alien beings who are cut off from the masses. (Bocock 1986:37)

This form of rule remains in sharp contrast with colonial occupation, which made little effort to seek acceptance from the Zande people and relied on the courts, which, according to Gramsci, have a "negative and repressive education function" (Bocock 1986:29). There was little attempt to obtain "intellectual, moral and philosophical consent," and the supremacy of the colonial government was based on what Gramsci referred to as "domination," rather than hegemony, that is, force rather than consent (Bocock 1986:86). It is not surprising then, that the success of the colonial administration and its legal system was limited, leaving room for the Azande to develop a system of justice which, while foreign to western jurisprudence, was fair and equitable as it related to their own moral boundaries.

In supporting the ruling Avungara caste, the colonial administration affected what was to be conceived of as "traditional," or "customary." It cannot, therefore, be assumed that the Azande as a whole would have unanimously agreed upon the validity of customary law, or on the legitimacy of the chiefs. As Mamdani notes, "instead of a consensual traditional notion of custom, the colonial era really began in the midst of conflicting and even contrary claims about the customary" (Mamdani 1996:118), and "enforcing custom became a euphemism for extending colonial administration" (Mamdani 1996:124). This would have undermined the legitimacy of Avungara rule and the authority of established customary law.

The European invasion had imposed a new social order on the Azande people by restricting the brutality of the ruling caste, thereby removing the means of coercive force. The chiefs, therefore, no longer posed a serious threat

to the Azande who, now free from terror, were able to pursue magic as a means of justice. They no longer needed to rely on a system of legal proceedings set up by "supercilious aristocrats of an alien, conquering caste" (Hoebel 1954:271) and administered under a system of brutality, but could instead rely on a system of justice which was viable in the context of their own beliefs.

Previously, chiefs had been opposed to many forms of magic. Gbudwe, for example, found any form of magic intolerable "unless it had been known to his father" (Evans-Pritchard 1964:221). Although Gbudwe made use of the poison oracle on many occasions (Evans-Pritchard 1937:290, 310), there were many forms of magic which were unknown to the Azande during his lifetime. They included vengeance-magic, thunder-magic against wrongdoers, and sorcery-magic to aid in the pursuit of vengeance (Evans-Pritchard 1964:221).

The appearance of new forms of magic was directly related to colonization since it had the specific purpose of providing punishments in lieu of those which were forbidden by the colonial administration. *Ngbasu Mani* is one such magic belonging to the closed association of *Mani* (Evans-Pritchard 1937:416). According to members of the association, this magic only attacks wrongdoers and will have no effect on the innocent (Evans-Pritchard 1937:417). Consequently, the magic is "never employed in direct opposition to the law" (Malinowski 1926:92). According to Evans-Pritchard (1937:419), a second new magic appeared in Zande culture subsequent to the infiltration of colonial powers; *Amatangi*, or medicine of the hunt, comes to the Azande from Bongoland. *Amatangi* is considered good medicine, as a man who has permission to take something from its owner's homestead will not be harmed (Evans-Pritchard 1937:419). Conversely, a man who steals will be struck down. The magic of *amatangi* includes a ritual where "if someone hates you and does you ill without cause you take a white fowl and cut its throat in the path of the man's homestead and leave it there" (Evans-Pritchard 1937:419). According to Azande beliefs, if the man steps over the fowl he will die (Evans-Pritchard 1937:419). *Amatangi* is also useful for driving away witches and sorcerers, as a sorcerer who comes with ill intent will be plagued with "pain in the wrists, crutch of the arms, knees and elsewhere, and he will be forced to crawl on all

fours or stumble slowly on his feet" (Evans-Pritchard 1937:419). These new magic tools yielded punishments which would otherwise be restricted by the colonial government. In as much as the government did not validate magic in the court it could not, therefore, prosecute its use and the Azande were then free to seek justice through channels which, according to the Azande, showed far more prudence than colonial and tribal courts.

Colonialism did not provide an adequate model for justice within Zande society and at the same time restricted the power of the chiefs. The Avungara chiefs, who opposed many forms of magic, were now powerless to stop its evolution within the closed associations. But why did magic in particular evolve as a viable alternative to legal action? "Bourdieu argues that agents act within socially constructed ranges of possibilities, durably inscribed within them...as well as within the social world in which they move" (Calhoun 1995: 144). Some magic, like the poison oracle, remains a longstanding custom, prevalent in the daily lives of the Azande, and magic therefore falls within their social world. Bourdieu states:

The source of historical action...is not an active subject confronting society as if that society were an object constituted externally. The source resides neither in consciousness nor in things but in the relationship between two stages of the social, that is, between the history objectified in things, in the form of institutions, and the history incarnated in bodies, in the form of that system of enduring dispositions which I call habitus. (Calhoun 1995:144)

According to Bourdieu, individuals, as agents, make use of possibilities available to them, whether conscious or not, and "the habitus is the source of these series of moves which are objectively organized as strategies without being the product of genuine strategic intention-which would presuppose at least that they are perceived as one strategy among other possible strategies" (Calhoun 1995:145). Witchcraft was part of the Zande social world and as such, was a viable strategy for administering justice. The traditions, customs, myths and experiences within Zande society contribute to the habitus, which "makes

possible the achievement of infinitely diversified tasks, thanks to the analogical transfers of schemes permitting the solution of similarly shaped problems, and thanks to the unceasing corrections of the results obtained" (Calhoun 1995:149). The extensive use of witchcraft is therefore an evolution made possible by the habitus in the face of colonial administration and the destruction of the institution of Avungara rule.

Magic, as an alternative to legal procedures, became prevalent when customary law stood in opposition with the colonial courts. This conflict manifested itself within the institution of marriage and the concept of divorce. Divorce was essentially unheard of in pre-colonial Zandeland; a marriage, once established, was considered a "permanent indissoluble union between a man and a woman" (Baxter 1953:68). With the colonial government came a new set of laws, which were not as restrictive on divorce and likely contributed to the instability of the institution of marriage in Zande society. The possibility of divorce caused tension among the Azande. Evans-Pritchard cites a case brought before the courts where a divorce, as granted by the court, prompted a husband to seek vengeance magic (*amatangi* or *rikikpa*) against the man who committed adultery with his wife (Evans-Pritchard 1937:420). The law, having no protocol to punish this individual, created a situation in which magic provided what could be considered an acceptable alternative to legal justice.

Magic became more prevalent after the appearance of colonial powers in Zandeland and it has manifested itself in the form of ritual associations. Associations for the practice of magic were made illegal and the Government of the Anglo-Egyptian Sudan punished members of such associations. As a result, associations such as *Mani*, *Biri*, *Nando*, *Kpira*, *Siba*, and *Wanga* became "subterranean and subversive" (Evans-Pritchard 1937:511). Evans Pritchard (1937:512) sites this trend as being indicative of social change, a function of European rule and a sign of the deterioration of tradition. The appearance of the associations coincided with the appearance of colonial government and although this intervention brought sanctions against associations, they continued to flourish as a means of judgement for those who committed, or who intend to commit an offence recognized by traditional Zande law (Evans-Pritchard 1937:523).

Witchcraft has, to some extent, worked its way into the legal system of the state. The use of witchcraft could not be ignored and has manifested itself within the boundaries of the "sound mind." In a legal decision from South Africa the court concluded the following:

A mind [which] though not diseased so as to provide evidence of insanity in the legal sense, may be subject to a delusion, or to some erroneous belief or some defect, in circumstances which would make a crime committed under its influence less reprehensible or diabolical than it would be in the case of a mind in normal condition...When we find a case like this, where there is profound belief in witchcraft, and...we find that this has been the motive...we feel bound to regard the accused to be labouring under a delusion which...thus provides extenuating circumstances. (Hooker 1975:135)

The defence of insanity also appears within the scope of the 1899 Sudanese Penal Code, where, according to section 63, "nothing is an offence which is done by a person who, at the time of doing, by reason of unsoundness of mind, is incapable of knowing the nature of the act..." Although there is no record of its use prior to Sudan's independence, individuals began to use the defence of insanity for crimes resulting from the use of witchcraft. In the case of Sudan Government v. Fatma Hussein el Bakheit, the accused was said to be practicing native medicine, which in turn caused the death of another. Although the accused was convicted of negligent homicide, the charge of culpable homicide was dropped, as the accused claimed to be possessed by the "Kugur" spirit, and "was ignorant of what she was doing" (1966). The absence of any such cases under the colonial administration may suggest that the Azande had little faith in a foreign legal system, but that over time, individuals were able to bridge the gap between custom and law.

Industrialization and the global economy have no doubt had an effect on the Azande. Since the work of Evans-Pritchard, Africa has undergone significant political and economic

changes and it is likely that many Azande have sought work in urban and rural settings—in situations where there is competition for jobs and wages. Rather than abandon tribal custom, the Azande may have adapted their beliefs so that witchcraft may reflect the conflict arising from said competition. This paper establishes a basis for understanding the influence of colonial expansion on the efficacy of customary law among the Azande, and leaves open for further investigation whether recent ethnographic material agrees with the stated conclusions. In the absence of strong tribal authority, magic became a means of administering justice without the abandonment of customary practices. Colonial rule may have removed the customary court systems of the Avungara chiefs and restricted the brutality of punishment, but its intrusion did not serve to eradicate custom. Instead, custom adapted and continued as a strong part of Zande morality and social order.

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