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## The Depiction of Law in African Literary Texts

### Emmanuel Yewah

A quick survey of oral literature and African literatures written in received languages reveals an overwhelming amount of works dealing with legal subject matters and an almost obsessive appeal to legal stories by African writers. In spite of that recurrent depiction of court scenes or situations, interdisciplinary scholarship that brings together African literatures and the various traditions in the law, from which a good number of the writers draw part of their inspiration, remains rare. As I have stated elsewhere, such lack of interest could be attributed to a number of reasons: the unease by literary scholars to venture into a relatively unsafe and somewhat intimidating space, a long desire on the part of legal scholars and practitioners of the law to maintain and defend the autonomy of the discipline,<sup>1</sup> even though, as Christopher Norris points out, “recent trends show that disciplinary boundaries are beginning to break down and legal discourses no longer possess anything like the sovereign autonomy it has always claimed.”<sup>2</sup>

This study attempts to fill that important gap in African intellectual history by breaking disciplinary boundaries to show, through textual analyses, how legal stories have been inscribed in literary texts. These inscriptions, given that they are framed within a somewhat legal context, help to establish the legality of the stories themselves. However, those stories, besides illuminating some aspects of the law, might, indeed, subvert both the indigenous and the received traditions in the law or might be used to critically inquire into the various institutions impacted by those traditions.

A major purpose of this work is to use selected African literary texts to explore the various strategies by which those texts attempt to undo, indeed, deconstruct legal structures and traditions by superimposing what is clearly the inner workings and mechanism of indigenous courts on Western court setting. For instance, court participants are allowed to tell their stories unrestrictedly, that is, “without evidentiary constraints.”<sup>3</sup> It will also be shown that undoing or subversion of the judging process takes one of two forms: introducing into the process one or more witnesses, each telling his/her own personal story unrestrictedly and with no relevance to the case in point; or

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1 Emmanuel Yewah, *Court Stories in Selected African Short Narratives*, 26(4) RESEARCH IN AFRICAN LITERATURES 172 (1995).

2 Christopher Norris, *Law, Deconstruction and the Resistance to Theory*, in *Deconstruction Of Theory* 126, 127 (1984).

3 JOHN CONLEY, & WILLIAM O'BARR, *RULES VERSUS RELATIONSHIP: THE ETHNOGRAPHY OF LEGAL DISCOURSE*, 36 (1990).

presenting a defendant who has opted for silence in his own trial. In that case he does not tell any story that might be used as evidence. For as James Chandler and others have noted, facts or stories “can only become evidence in response to some particular question.”<sup>4</sup> Moreover, this study will examine the courtroom as depicted in some of the texts not so much as a place to resolve social contradictions but a space in which the colonized, represented by the masses, generate the power to structure anti-hegemonic, anti-colonialist, and anti-dictatorial discourses and to develop alternative legal ideologies to the dominant ones of society.

It will be argued further that these transgressive narratives, especially in the case of the received traditions in the law, help break down the restrictions imposed by the rules of evidence legal system, thereby empowering court participants by allowing them the freedom to turn the courtroom into a lieu par excellence of free play, a lieu to engage in what I have called legalized subversion. In such a “de-sacralized” space (the sacredness of the awe-inspiring courtroom is broken), it is possible to bring into the judicial process those contextual elements (politics, religion, history, personal stories, and even the role of ancestral spirits) that have been excluded due to evidentiary prohibitions or in defense of disciplinary autonomy. Having thus deconstructed the structure of the received legal system and raised concerns about the indigenous, the question posed by all the texts under consideration is whether truth(s) can ever be determined? Indeed, can justice, which is the ultimate goal in each trial, ever be achieved or, is it something constantly being manipulated by some unknown forces and, therefore, in a permanent state of deferment? Given all the issues raised, the bigger question still remains, how do these texts, inspired by two or more traditions in the law, conceive of justice?

This study contextualizes its analysis by linking the ideas generated by the texts, by the stories produced in the courtroom or any other court setting to the context of their production. Additionally, it draws its critical tools from various literary theories that have become an integral part of literary theory. More importantly, this project has been inspired by the pioneering scholarship of the critical legal studies movement, whose work, interdisciplinary or, indeed, revisionary in its approach to legal studies, attempts to explore the many links between law and literature. The primary goal of this movement, whose proponents and critics cut across academic disciplines, is to challenge, what Sanford Levinson and Steven Mailloux have called in another context, “established boundaries and disciplinary demarcations.”<sup>5</sup> It questions the notion of intentionality in a legal text, or in the words of Christopher

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4 James Chandler, et al. 18 *Critical Inquiry* at 297 (1992).

5 SANFORD LEVINSON & STEVEN MAILLOUX, *INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER*, xi (1989).

Norris “the authority of origins.”<sup>6</sup> It is highly critical of legal practice for its extreme faith in textual evidence, that is, its reliance on the word on the page as all the evidence and also its “blind respect for tradition and precedent.”<sup>7</sup> Similarities could be drawn here with literary theory and its ongoing debate on the idea of intentionality, the canon, and the Formalist notion of treating a text as a self-referential, self-sufficient, and closed world divorced from the various contexts of its production. It argues, quite passionately, as critics have done with respect to literary texts, that to read a legal text, as closely as lawyers do, with the intent of discovering or uncovering a single immanent meaning buried in the text [by its framers], or to uphold the decidability of meaning in such a text is, in itself, an intentional fallacy.

It recognizes that law is a social institution with the implication that rather than operating as a closed, self-referential entity, law should be understood in Peter Goodrich’s words as “a social practice” or “a process or set of processes . . . a discourse which is inevitably answerable or responsible, like any other discourse, for its place and role within the ethical, political and sexual commitments of its times.”<sup>8</sup> In other words, Goodrich writes, “law and legal texts are to be treated as accessible and as committed, precisely because they are in themselves contingent, rather than universal—even if their historical variability is limited—and because the social or cultural value attributed to legal discourse changes—albeit slowly.”<sup>9</sup> Indeed for those revisionists, reading a legal text, just as reading a literary text, becomes an interpretive activity whose outcome might be an indeterminacy of meaning, or at best, the discovery of a multiplicity of meanings. For those critics, “legal reasoning,” in the words of David Kairys, “does not provide concrete, real answers to particular legal or social problems...” The ultimate basis for a decision, he contends, “is a social and political judgment incorporating a variety of factors . . . The decision is not based on, or determined by, legal reasoning.”<sup>10</sup>

Although it takes its origin in the West and has remained largely the purview of academics, I find its interdisciplinary approach to legal studies, its determination to break down what Michel Foucault calls “specialized knowledges,”<sup>11</sup> its emphasis on the reader as producer of

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6 Norris, *supra* note 2, at 126.

7 *Id.*

8 Peter Goodrich, Law as Social Discourse II, in *Legal Discourse: Studies In Linguistics, Rhetoric And Legal Analysis* 158, 159 (1987).

9 *Id.*

10 DAVID KAIRYS, *Law and Politics*, 52 GEO. WASH. L. REV. 243, 244 (1984).

11 Michel Foucault quoted in IAN WARD, *LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES* 19 (Cambridge: Cambridge University Press 1995).

meanings, and its privileging of “creative interpretation” of legal texts over the “original intent” of the speaker to be very useful critical tools that could be used to open up the field of African literatures and to provide new avenues for innovative research. More importantly, these tools could be employed to express the African worldview; a worldview that traditionally does not recognize the very notion of ‘disciplines’ let alone compartmentalizing them. The critical legal studies’ call for legal studies to transcend what they perceive as parochialism or “narrow professionalism”, in order to explore the connections between law and literature/theory, has led to some of the most fascinating and innovative interdisciplinary studies ever. In that light, suffice it to mention here James Boyd White<sup>12</sup> whose writings and lectures were instrumental in defining the mission of the law as literature or law and literature movement. I should mention here Richard Posner<sup>13</sup> whose rejection of the notion of law as literature and opposition to the use of literary theory for the interpretation of law has contributed to the ongoing debate on the educative potential of integrating literature in legal studies.

While both critics have brought out important connections between law and literature in spite of their disagreement on certain issues, Brook Thomas is more concerned with the dangers of misreading the cross-breeding of literature and law by opening the law up such that it is seen merely as reflection of its social context rather than an integral part of society. Such a reflection theory remains the dominant critical approach to the reading of African literatures among some critics today. This has led some dictators who see themselves reflected in some texts to mobilize their censoring machinery. However, as Thomas is quick to caution, many members of the critical legal studies who encourage interpreting the law in its given social context “recognize the limitations of a reflection theory which explains the law as a mirror of a society’s existing power structure.”<sup>14</sup> He goes from such limitations to draw an important parallel between law and literature. He argues, quite convincingly, that “Law is not merely a reflection of social conditions, it remains a social text that responds to its historical situation by finding ways to resolve social conflicts.”<sup>15</sup> As for literature, he agrees with critics

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<sup>12</sup> See James Boyd White, *Law as Language: Reading Law and Reading Literature*, 60 TEX L. REV. 415 (1982).

<sup>13</sup> See RICHARD POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION*, 254-263 (Cambridge: Harvard University Press 1998) (for his “hardened opposition to using literary theory for the interpretation of legal texts.”)

<sup>14</sup> BROOK THOMAS, *CROSS-EXAMINATION OF LAW AND LITERATURE: COOPER, HAWTHORNE, STOW AND MELVILLE*, 4 (Cambridge: Cambridge University Press 1987).

<sup>15</sup> *Id.* at 4

who have argued that a literary work is “an imaginative response to its historical situation, rather than a reflection of that situation.”<sup>16</sup>

In addition to the numerous links between literature and law that the critical legal studies movement and their critics have identified, both disciplines do share another very important element, that is, storytelling. In the courtroom, litigants and their witnesses tell stories just as the writer does. Referring to what they call the new storytellers, David Farber and Suzanna Sherry say they “believe that stories have a persuasive power that transcends rational argument.”<sup>17</sup> Stories, these critics contend, “‘explode’ ‘stock stories’ or ‘received knowledge’, ‘disrupt’ the established order, ‘shatter complacency,’ and ‘seduce the reader.’<sup>18</sup> They provide a ‘flash of recognition’ and ‘resonate’ with the reader’s experience. Outsiders’ stories recount the experiences of those who have ‘seen and felt the falsity of the liberal promise.’<sup>19</sup> Lance Bennett’s lucid essay explores storytelling in ways that are appropriate here. As he writes, a story “is a reconstruction of an event in the light of the teller’s initial perception and immediate judgments about the audience, the interest that appears to be at stake, and, perhaps most importantly, what has gone before in the situation in which the story is presented.”<sup>20</sup> Stories told by litigants may help to shape society’s thinking or raise its consciousness about the need to revise existing rules in accordance with its socio-political, economic and historical situations.

While those stories are vital, if astutely manipulated, however, they can also be used to destabilize, or to borrow from Derrida, to ‘undo’ the entire legal system “while analyzing the structure of the different layers of [its] structure to know how it has been built.”<sup>21</sup> What follows is, indeed, African writers’ use of their knowledge of both traditions in the law and their poetic license to create legal discourses that illuminate or subvert various institutions of their society including the legal institutions themselves.

Alexandre Kum’a Ndumbe’s LE SOLEIL DE L’AURORE depicts life under colonial rule and the transition to a dictatorship, both systems of oppression, with all that is associated with oppressive

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16 *Id.* at 6

17 *Id.*

18 DANIEL FARBER & SUZANNA SHERRY, LEGAL STORYTELLING AND CONSTITUTIONAL LAW: THE MEDIUM AND THE MESSAGE, LAW’S STORIES: NARRATIVE AND RHETORIC IN THE LAW 42 (Peter Brooks & Paul Gerwitz eds. New Haven: Yale University Press, 1996).

19 *Id.*

20 Lance Bennett, *Storytelling in Criminal Trials: a model of Social Judgment*, 64 Q. J. of SPEECH 20 (1978).

21 IMRE SALUSINZSKY, CRITICISM IN SOCIETY: INTERVIEWS WITH JACQUES DERRIDA 164 (Imre Saluszinsky ed., New York: Methuen 1987).

regimes: arbitrary use of power; power possessed by the leader rather than relational or shared by society; psychologically unstable as in 'uneasy lies the head that dictates;' omnipotent dictator, extremely 'allergic' to intellectuals; extremist reaction to imagined and imaginary threat to the power structure. In the fear-pervading atmosphere of the text, the leader of the rebellion, one nameless character, simply known by the generic name of "le frère du président,"(the president's brother) is arrested on a trumped-up charge of subversion and brought before the dictator, who happens to be his own brother. However, when the dictator's attempt to make him compromise his intransigent position fails and he is brought to trial. Following a sham trial described by the accused as "cette parodie de justice," [this parody of justice] "un procès de pure forme" [a mock trial], a trial in which he opts for silence as a way of subverting the evidentiary process, he is found guilty to have committed 1432 murders, 93 arsons, 37 thefts, and one plot to assassinate the supreme leader. He is sentenced to die, in what textual evidence shows as a predetermined verdict.

The verdict comes against the protest of the defense lawyer who argues that there cannot be any verdict based on his client's earlier, and perhaps coerced statement. In his words, " le procès est inexistant tant que l'accusation se fonde sur les aveux de ces mêmes accusés qui n'ont pas parlé ... l'audience. Or l'aveu ne constitue plus depuis fort longtemps une preuve suffisante en droit penal"[there is no basis for the trial as long as the accusation is based on the confession of those who have not spoken . . . the audience. Admission of guilt no longer constitutes sufficient proof in criminal law].<sup>22</sup> The verdict underscores how, in the society in question here, law and politics have become strange bedfellows. It brings out the collusion between the legal system and the power structure, both controlled by the dictatorship engaged, as it were, in a mutual search for legitimacy. On the one hand, the power structure shapes the legal system by appointing members of the institution; on the other, those illegal and illegitimate regimes, have to rely on the legal system for some form of legitimacy, including the rubber stamping of rigged election results.

Exposing the corrupt nature of the imported legal system is also one of the themes of *COUS ROMPUS*.<sup>23</sup> Aboubacar, one of the big farmers in his society, finds himself entangled in a maze of deceit, manipulation, and empty promises; all of which finally lead to his destitution and near psychological breakdown. His pent-up emotions and resentment toward the oppressive machinery of his society explode when he attacks the director of the cooperative whose agent had not only extorted his money, but had also manipulated him into giving the cooperative monopoly over

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22 ALEXANDRE KUM'A NDUMBE, *LE SOLEIL DE L' AUREOLE* (1976).

23 MOUSTAPHA DAÏTÉ, *COUS ROMPUS* (1978).

buying his produce. While at the police station to file a suit of extortion and abuse of power against the cooperative and its director, he is arrested, charged with trespassing [for entering the premises of the cooperative without permission], assault and battery with intent to inflict bodily harm. During the trial, rather than respond to the judge's questions or be constrained by the rules of evidence, Aboubacar digresses into telling the court his own personal story; a story that seems to highlight the collective plight of the subjugated, that is, all the farmers. A written statement represents the plaintiff, still in recovery. Although the contents of the statement are not known, one can assume that they are fabrications. Following the defense counsel's plea for leniency in the sentence citing his client's state of mind at the time he is alleged to have assaulted the director, Aboubacar is sentenced to two years imprisonment and a fine.

The verdict exemplifies a miscarriage of justice. It shows how in that society "la loi du lion" [the law of the jungle] reigns. The rich and the powerful can manipulate even the legal system such that it no longer plays its role of conflict resolution or a mechanism for seeking the truth and the administration of justice, but rather serves the interests of the existing power structure; indeed, it can become machinery for the oppression of the masses. Moreover, since litigants operate in two different traditions to tell their story, one oral and the other written, deciding on the case based on a written deposition may be a commentary on Norris' statement earlier about the Western court's reliance on the written word. In this context, it shows that the powerful have control over the legal institution and the continued domination of indigenous cultures by imported/imposed written cultures. The expeditious nature of the case suggests that we are dealing with a parody of justice in that, as in the case discussed earlier, the outcome seems to have been predetermined based on the social status of the litigants. Knowing the real societies that served as a context for these works, it will not be far fetched to conclude that the judge had been bribed prior to the trial and that the decision had already been made.

As in the preceding cases where there is interplay between politics and law, *L'AFRIQUE A PARLÉ* might be said to deal not only with a political trial but the trial of the indigenous legal system itself. The text develops from the story of a stolen mask, which, as textual evidence suggests, represents the African soul, indeed her past. Paulin, a European, and obviously an outsider to the society had replaced Namori the charlatan, a long time counselor to the chief in that position of authority and power. As charlatan, one of his duties is using cauris to detect thieves. Nonetheless, pushed by the desire for revenge against his usurper, he manipulates the cauris to point to Paulin as the thief. But when the mask is returned having been recovered from a vagrant, it raises the crucial question of the reliability of this method as well as

many others used in African societies to seek the truth. Indeed, who determines what is true? What is truth? The deeper question is, what to make of a society in which spider or tortoise divinations are held to be authoritative evidence against someone accused of witchcraft or when the poison oracle is relied upon to arrive at truth?

On the one hand, the indigenous legal systems that rely on animals, objects and the interpretation of the actions of those diviners, by one manipulating individual with absolute powers, come under scrutiny. Having animals and objects participate in the truth-finding process highlights the interconnectedness of various elements and the important role that each component of an African society is called upon to play. On the other hand, and more importantly, Paulin's trial might indeed be a metaphor for the trial of Europe for her rapaciousness, for her continued plundering of what is most intimate to the continent, her artefact. As one character asks in disgust, "qui a pris l'essentiel des trésors de l'Egypte? Qui a pris l'essentiel des trésors de l'Afrique occidentale et centrale? Qui nous a ravi ce que l'Afrique ancienne destinait aux générations futures? [Who has stolen the treasures of Egypt? Who has stolen west and central African treasures? Who has robbed us of what ancestors had preserved for future generations?].<sup>24</sup> And his answers in respective order, "c'est l'Europe!" "C'est l'Europe, toujours l'Europe insatiable!" "C'est encore l'éternelle Europe!" [It's Europe! It's Europe! Europe, always the insatiable Europe! It's again the eternal Europe!] In fact these African artistic expressions infused with some dynamic forces in the land of their creativity and the vital force that makes them serve as the link between the past and the future, have become simply lifeless objects displayed or, indeed, stacked in 'warehouses' called museums.

Paulin uses the episode, however, to question not only the arbitrary method of detection, since to him it is not based on logic, but also to challenge the African conception of justice. As he asks, "est-ce là la justice de l'Afrique? Peut-elle condamner sans avoir jugé?" [Is that African justice? Can she condemn without trial?].<sup>25</sup> And to add rather sarcastically, "ah l'Afrique! Est-elle donc le continent de la passion aveuglante?" [Ah Africa! Is she the continent of blind passion?].<sup>26</sup> His juxtaposition of passion and lack of reason to question the system that has condemned him is significant. For him, judgment must be carried out in a court of law with lawyers, witnesses, police investigation, etc. All elements of his European legal systems, rule-oriented systems in which the emotive, the intuitive, and, as will be shown later, the spiritual have been repressed.

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<sup>24</sup> MBAYE GANA KEBE, *L'AFRIQUE PARLE* (1972).

<sup>25</sup> See *id.* at 42

<sup>26</sup> See *id.* at 47

Paulin's last question above would seem to suggest that in a reversal of roles, Europe that he symbolizes, now finds herself on the defensive for destabilizing many African structures including the legal system now being used to judge her. Ironically, the king whose daughter had killed herself in protest over what she perceived as a false accusation against Paulin, calls for his people to get beyond their passions for their legal structure. He comes out in defense of Paulin against the masses including his counselors and wise men who are calling for the death of the accused. Paulin's case raises the king's awareness about the shortcomings of that particular method used in his society to determine truth. The trial has, therefore, helped to illuminate some aspects of the indigenous legal system, such as having blind faith in objects in major decisions that could very well have to do with life and death. These aspects, according to the king, urgently need revisions because they can no longer serve the needs of today's constantly changing society.

As a clairvoyant leader, the king's re-evaluation of the system that he has manipulated so far helps to bring all those who had called for the death of Paulin to rethink their position and in so doing realign themselves with their leader. This change of mindset by readily accepting this outsider as one of their own, mechanical as it appears, helps to bring about some form of reconciliation between Europe and Africa which is the ultimate in trials carried in indigenous court settings. As a reversal of the type of Manichean worldview of Europe as dominant and Africa as the dominated that these textual elements have naturalized, Paulin, who by all indication epitomizes the reverse metaphor, white skin black mask, pleads that henceforth, he be judged by the content of his character which is deeply African, rather than by the color of his skin which is white.

If cauris are used to blur the boundaries between the physical and mystic worlds, in LE PROCÈS DU PILON (The Trial of the Pestle), the pestle serves in a similar way. The play presents many cases tried in a Western style court, but the most dramatic of all is the case of Malang Dramé, the charlatan, licensed for over forty years as one who can use a magic pestle to identify thieves. Following a case in which his pestle had successfully detected the thieves who had stolen substantial sums of money from the cooperative, Dramé, is arrested and charged with defamation. His trial dramatizes the dilemma faced by modern justice based on written codes of law and traditional justice based on the occult sciences. In the case in point here, the question becomes who is really on trial, the person whose litanies empower the pestle or the pestle itself that does the actual identification? In fact, when Dramé is asked by the judge to demonstrate his technique/art to the court, he is unable to do so, because certain ideas or concepts cannot be translated from the mystical language that conveys them to one understandable to the uninitiated.

There is no way to explain the connection between the words of the litanies he pronounces and the mystic forces that take hold of the pestle and prompt it into action. And since such irrational, illogical actions based on faith in the indigenous system have been repressed due to evidentiary prohibitions or left out of the modern court system in the name of disciplinary autonomy, it becomes impossible to attempt to make sense out of them. When the crucial decision of determining the truth is carried out by an object endowed, as it were, with exceptional powers, the modern court whose *raison d'être* is the search for truth loses its authority. By the end of the trial, it is no longer simply the trial of an individual or one legal system but that of two societies, the traditional and the modern; two legal institutions, the indigenous represented by Malang Dramé's story and the imported that offers the structure or the framework for the trial. As the defence lawyer puts it, "aujourd'hui il ne s'agit pas de procès de mon client- il s'agit du procès de cette Afrique écartelée- entre ses croyances qui sont effectivement des religions et le modernisme importé" [today it is not the trial of my client—it is that of an Africa torn between her beliefs which are effectively religions and imported modernism].<sup>27</sup>

As I have suggested elsewhere "any interpretation of legal stories in African works of fiction must take into consideration . . . the role of the ancestors"<sup>28</sup> and "other supernatural agencies that act as third parties in the management of cases."<sup>29</sup> These unseen agencies are important components of the indigenous judicial process that have been left out of rule-centered systems. A good illustration of supernatural intervention in the trial process is *LE FRUIT DÉFENDU*.<sup>30</sup> The forbidden fruit, as the title suggests, deals with the issue of transgression of moral and ethical principles that forbid incestuous relationships. Mengue, a fifteen year old girl, has been sent by her parents to live with her uncle in the capital; as is customary on the continent. Upon her arrival she meets her cousin Guillaume, the son of her uncle whose attitude begins to suggest he sees his cousin as a sexual object that will help him challenge taboos and established rules of his society. Therefore, he nurtures those destructive passions for her by systematically attempting to negate their blood relationship. He questions the definitions, the origins, and his traditions that continue to uphold such taboos. He does everything to alienate himself, at least psychologically, from his traditions.

27 OUSMANE GOUNDIAN, *LE PROCESS DU PILON: PIECE EN QUATRE TABLEAUX* (1980).

28 Emmanuel Yewah, *Court Trials in African Fiction*, 19 *AFRICAN LITERATURE TODAY* 80 (1994).

29 MICHAEL J. LOWRY, *A GOOD NAME IS WORTH MORE THAN MONEY: STRATEGIES OF COURT USE IN GHANA, THE DISPUTING PROCESS LAW IN TEN SOCIETIES*, 188 (Laura Nadar & Harry Todd eds., 1978).

30 AHANDA ESSOMBA, *LE FRUIT DÉFENDU* (1975).

As if pushed by some malefic forces, he subverts all the rules physically by frequently going into her room unannounced; philosophically, he thinks about her continuously, imagining both of them engaged in violent sexual acts. He attempts to break down all the walls between him and this forbidden fruit or what he has built into a destructive object of desire. In a final act, these uncontrollable emotions lead him to rape his cousin. Following weeks of trying to keep the secret because of the violent loss of her purity and the fear of tearing their family apart, and the threat of reprisal from her assailant, Mengue finally decides to reveal her ordeal to her parents. Her uncle still in shock, in denial, disbelief that his son could have committed such a hideous crime, acquiesces to the village chief's call for a public hearing/confession in an indigenous court setting.

However, while Mengue is testifying, her assailant who is finally named in public slips away and disappears. Unfortunately for him, while on the run, he gets into an accident in which he loses one of his legs. Although the act of public purification takes place later, his accident at that crucial moment is significant. This type of intervention in the judicial process suggests that there is another crucial dimension to be considered in court trials. And this is when competence in the culture becomes important in that it helps to interpret this extralegal dimension as perhaps orchestrated by fate, destiny or indeed by ancestral spirits who act as real judges, while those that appear as real judges in the trials are simply marionettes controlled from outside the court by those spiritual forces.

Narratives that subvert the imported legal system find their most vocal expression in T.M. Aluko's WRONG ONES IN THE DOCK. The text raises serious questions about the imported legal system, which is presented as "truth-inhibiting." Jonathan Egbor and his son Paul have been arrested and falsely charged with the murder of a woman. Textual evidence shows that the woman's son had accidentally killed her during his struggle with his father. During the trial, however, many people who had witnessed the crime either refuse to testify for the accused or simply tell lies in the witness box. Telling such lies might be out of fear of reprisal from the community or the fear created by the aura of awe that surrounds a courtroom. In one occasion, the blatant lie by a witness draws this outburst from Egbor in defiance of court orders that demand respect for the rules of evidence: "what kind of legal system was this that saw a witness telling such awful lies on the so-called oath and yet wrote down such evidence in the record of the court."<sup>31</sup> For him, he "did not see any sense in a legal system in which a witness who tells a lie is allowed to go unchallenged immediately while the lie is still hot."<sup>32</sup>

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31 T. MOFORUNSO ALUKO, WRONG ONE IN THE DOCK, (1982)

32 *Id.* at 164

Egbor's outburst shows both his frustration and his attempt to break out of the constraints imposed by a rule-centered system. As Virney Kirpal notes,

“unlike the imported Western court system, in the African indigenous courts system (in operation before colonialism), it was normal for the accused to cry out that the man in the witness box was lying, or that the judge himself was wrong. ‘That is your judgment,’ he could say, and I tell you I don’t accept it.”<sup>33</sup> An experienced judge, he concludes, “could always determine who was telling the truth and who wasn’t because the indigenous system had a truth-establishing mechanism built into it.”<sup>34</sup>

The courtroom as depicted in some of the texts is used to subvert the legal ideology of the time and to develop alternative ideologies to the dominant ones. Ngugi's THE TRIAL OF DEDAN KIMATHI<sup>35</sup> represents an interesting example of that category. Although the amount of critical studies on Ngugi is overwhelming, and has, to a large measure focused on his Marxist ideology, his cultural/linguistic ethnocentrism or nationalism, his anti-colonialist, anti-capitalist, anti-dictatorial positions, few critics have examined his recourse to the indigenous and received traditions in the law to articulate his views. THE TRIAL provides another reading in that it reconstructs imaginatively the Kenyan colonial experience envisioning, in Ngugi's words, “the world of the Mau Mau and Kimathi in terms of peasants' and workers' struggle before and after constitutional independence” (preface).<sup>36</sup> The trial of Dedan Kimathi, one of the leaders in the struggle for Kenyan independence, is used as a vehicle to expose a capitalist legal ideology represented by the banker, the businessman, the judge, all protected by a very strong police presence, and by land laws to protect the property of the settlers. At the same time, the text uses the trial scene to shape what might be called a participatory legal ideology similar to that of the indigenous legal system in which the court audience participates unrestrictedly in the proceedings and in shaping the legal system since it is not based on precedent but individualized. In this case, the masses or the workers' active participation takes the form of a victory song and dance in reaction to Kimathi's conviction.

Such mass action in the courtroom presided over by a colonialist not only violates the awe that surrounds it but also shows that the masses conceive of law as an institution whose role is not to control people but to be constantly shaped and revised by the people. In such a society, law

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33 Virney Kirpal, *The Structure of the Modern Nigerian Novel and the National Consciousness*, 34 MODERN FICTION STUDIES 45 (Spring 1988).

34 *Id.* at 52-53

35 NGUGI WA THIONG'O, *THE TRIAL OF DEDAN KIMATHI* (1977).

36 *Id.* at 41

is an adjudicative mechanism used to maintain order and restore social equilibrium following a disruption as that caused by colonialism. In that sense law is no longer just part of the superstructure reflecting “capitalist control of political power” and, therefore, as serving the interests of the ruling class, as in orthodox Marxism. It is no longer just a reflection of “competing demands of society’s interest groups,”<sup>37</sup> with a strong economic and political power to lobby, as in liberal democracies, but a social institution serving the interests of the masses.

What comes out of the discussion is that while the trials are used as a forum to subvert the structures and procedures in an imported courtroom setting, extratextual, extralegal forces themselves manipulate textual elements. The connection between these manipulations in the various texts and the contexts of their production, that is, the current socioeconomic and political realities of the African continent is evident. Perhaps a look at dictatorships that today infest the continent will show that while those monsters seem to have arrogated to themselves the power to subvert all the structures of their societies, they are in turn being manipulated by forces outside of the continent, forces on which they depend economically for their continued existence. So the dramas being played in these fictional courtrooms may be a sad commentary, or, indeed, the dramas of the African continent itself that has fallen prey to outside influences carefully channeled through their homegrown satraps.

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<sup>37</sup> Brooks, *supra* note 14, at 4.