

# TOWARDS UNIFICATION OF MUNICIPAL LAWS IN AFRIKA: NIGERIAN EXPERIENCA\*

By OLU AGBEDE

One distinctive legacy of colonial rule bequeathed to most of the independent African states is the conflict and confusion brought about by the co-existence of a plethora of autonomous customary and religious laws on the one hand and the general (imported or imposed) laws on the other.

Perhaps, no other country in Africa and certainly none in the common law world is confronted with greater problems of conflict of laws than those now obtaining in the Federal Republic of Nigeria. For apart from the federal form of government with its separate federal and state laws we have a dual system of court and multiplicity of laws co-existing within most of the state frontiers. The problem of resolving conflict between the general and customary laws has aroused considerable interest for the reform and integration of laws in the various African states<sup>1</sup>. But inspite of the complexity of the Nigerian situation little or no positive efforts have been made so far towards internal unification in the field of civil law<sup>1a</sup>.

Viewed against this background it seems an exerting task to discuss the problems of unification of the municipal laws in Nigeria. More so, as the discussion may not be limited to the problem of unification of laws at the ethnic or state level but may also involve the problem of unification of laws at the federal level. The latter two situations presuppose unification of the numerous customary and religious laws at state and national levels respectively.

Furthermore, a meaningful discussion of problems of fusion of law should not be limited to the unification of the substantive laws but must also include fusion of administration of law. Moreover, it seems necessary that one should discuss this topic under the headings namely:

- (a) Whether unification of law is itself desirable.
- (b) To what extent has unification been, or should be achieved.
- (c) The methodology or mechanism of unification.

In view of the diversity of the issues involved in discussing this topic it seems somewhat impossible to undertake a detailed discussion of the various issues within the scope of this paper. It is proposed therefore to touch on the major problems that unification of law, if considered necessary, will entail in the light of present experience.

---

\* This essay is based on an unpublished paper entitled "The Fusion of Customary Law and General Law in Nigeria", previously read by the writer at the Conference of the Nigerian Association of University Law Teachers held in Enugu in 1973. The research for this essay was partly supported by a grant by the Max-Planck-Institut, Hamburg.

1 Kenya, Ghana, Uganda, Zambia, Malawi, Tanzania and Ethiopia, to mention a few, have in varying degrees, embarked on unifying certain branches of their municipal laws.

1a There is a unified criminal law all over the federation viz the Criminal Code for the Southern states and the Penal Code for the Northern states.

## Whether Unification of Law Itself is Desirable.

The question whether it is necessary to unify the general and customary laws must be answered against a background of existing conditions.

In the field of administration of law we have, in the Northern states, a somewhat parallel system of court<sup>2</sup> comprising the British type of court with unlimited jurisdiction<sup>3</sup> over persons and things on the one hand and Area Courts (with limited jurisdiction) at the apex<sup>4</sup> of which we have the Sharia Court of Appeal which is the final court of Appeal over certain matters of Muslim personal law.

The customary courts administer basically the customary law though they are authorised to administer specific statutes and rules of imported law<sup>5</sup>. Nevertheless, their personal jurisdiction is limited to persons of African descent and non-Africans who have submitted to the jurisdiction<sup>6</sup>. If the rationale behind giving these courts jurisdiction over every person who cares to submit to their jurisdiction is that the personnel of these courts are competent to administer justice to both Africans and non-Africans alike it seems anomalous that while a Syrian could for example, sue an African in these courts, an African cannot sue another Syrian in the same court unless the latter consents to the exercise of jurisdiction over him. The fact, of course, is that the product of a piecemeal amendments to a "colonial statute" will always reflect a "built-in" colonial policy. Such is clearly the defect of these Area Court Edicts.

In the Southern states customary courts are given jurisdiction over all „Nigerians<sup>7</sup>". The result is that an African from a neighbouring country (even if he has acquired Nigerian citizenship) who involves himself in customary transactions must go to the Magistrates Court or the High Court<sup>8</sup> to vindicate his right no matter how small the value of the subjectmatter may be. When it is recalled that all grade A Customary Courts and most of grade B are presided over by trained lawyers and that legal representation is allowed in these courts it will be seen that the rules that limit their jurisdiction to Nigerian are morally unsupportable and legally absurd. These rules are equally unconstitutional to some extent<sup>9</sup>.

Turning to the field of substantive law, it will be recalled that there exists in every locality a dual system of law and in some cases a tripartite system made up of the general law, the customary law and Islamic law. It will be helpful to comment briefly on each of these laws.

There are, in the Federal Republic of Nigeria, some 250 ethnic groups<sup>10</sup> each with its own variety of customary law. Although rules within one group are broadly similar yet there could be significant differences as to matters of detail whilst as between the customary law of one ethnic group and another there may be wide differences. Notwithstanding these differences they all have in common

---

2 One may speak of parallel system of court in the Northern states in relation to muslim personal law whereas in the Southern states we have an integrated system with the exception of the East Central State which has a unified system.

3 There are however certain matters subject to the jurisdiction of customary courts which the High Court can only entertain on appeal. Moreover certain matters are only cognizable by the Supreme Court.

4 The Sharia Court of Appeal can only be described as being at the apex of the Area Courts only in relation to muslim personal law.

5 Particularly in the Northern States. See, for example, Section 20 (3) Area Court Edict (Kwara State) No. 2 of 1967.

6 See above section 15 (1) (c).

7 The customary court in the South-Eastern and Rivers States have, in addition, jurisdiction over persons who have at any time instituted proceedings in any customary court or have by their conduct submitted to the jurisdiction of a customary court.

8 Particularly in matters that cannot be litigated in the Magistrates' Courts e. g. title to land.

9 Insofar as they discriminate against citizens of Nigeria on account of their racial origin.

10 See Obafemi Awolow, *Thoughts on Nigerian Constitution* (Ibadan: 1966) p. 24.

the characteristics that they are unwritten, uncertain and sometimes unascertainable and very often of unknown geographical dimension in their practical application. Although customary laws are generally acclaimed to be flexible and responsive to social changes<sup>11</sup> nevertheless, there is no denying that they are hopelessly inadequate, in several departments of the law, to meet the economic and social requirements of modern African society. It is hardly any wonder therefore that the application of this law is made subject to its not being repugnant to justice, equity and good conscience. However, justice equity and good conscience is a nice and comfortable formula meaning as much or as little as the judge for the time being cares to make it mean. The consequence is that the practical application of this clause has sometimes been surprising and even unjustifiable. Notwithstanding the above-mentioned defects however, this system of law reflects, to a large extent, the culture and habits of the people more than any other system in force.

In addition to customary law, we have in some states a distinct system of Islamic law. This law is as much a legal system as it is a way of life, a religion and an ethic all in one. It makes no distinction between the religious and the secular or between the church and the state. Unlike the customary laws Islamic law is written. Its principles are well defined and in some respects worked out with detailed thoroughness and meticulous precision.

Up to 1956, Islamic law was applied in Nigeria as a variant of customary law. This condition, as stated by Anderson, permitted of "an infinite number of gradations between fairly strict application of Islamic law in strongly muslim areas, an application of purely pagan customary law in entirely pagan areas and a variety of amalgam in the area in between<sup>12</sup>". Since then however, Islamic law has been applied in the Northern states as a distinct system but only in relation to muslim personal law<sup>13</sup>. The consequences of applying Islamic law as a distinct system of law is that changes in the law will involve matters of conscience and faith and as such it will hardly be responsive to social changes.

Apart from these two streams of law, there is yet a third system often referred to as the "general law" which comprises the local statutes and case-law and the received English law. By far the main source of law in Nigeria today is the local legislation. However, the technique of modelling these statutes on British pattern whereby rules of customary law are given ample scope in the same areas covered by these statutes<sup>14</sup> has merely intensified internal conflict of law problems. Furthermore, a good deal of these statutes are no more than an uncritical copying of foreign statutes depicting here and there borrowed obscurity and confusion<sup>15</sup>.

Again, the readiness with which Nigerian courts adopt and apply decisions of English courts without much regard to local conditions which very often results in unpleasant consequences has been the object of continuous criticism by many legal writers.

---

11 See dictum of Osborne, C. J., in *Lewis v. Bankole* (1908) 1 N.L.R. at p. 101.

12 See Anderson "Relationship Between Islamic Law and Customary Law in Africa". (1960) J. A. A. p. 228.

13 See Section 14 Sharia Court of Appeal Law cap. 122 (L. N. N. 1903).

14 Such is the position with the Federal Marriage Act and the property legislation of Western and Midwestern States.

15 See for example the Company Decree 1968, Matrimonial Causes Decree 1970, The Trustee Law cap. 12 (L.W.N. 1959).

Perhaps, the bulk of the general law in force today derives from the imported rules of common law, the doctrines of equity and statutes of general applications<sup>16</sup> in force in England on January 1, 1900. It may be helpful to enumerate the objections against the continued application of this law in its present form.

First, there is the unresolved controversy whether the reference-date applies to common law and equity. The consequence is that it is not easy to say what the rule of Nigerian common law is on any particular issue where decisions of local courts do not exist.

Secondly, both the English common law and statutes of general application were fashioned to cope with English social circumstances but different conditions obtain, to a large extent, in Nigeria. The application of English rules under these circumstances is bound to work injustices in some respects.

Thirdly, the question as to which English statutes are of general application does not permit of ready answer. The view may be ventured that the clause — of general application — is a convenient formula which will permit particular judges to adopt or reject the relevant English statutes according to the dictate of their conscience or caprice. The danger of this position is that in a federation where there are several High Courts whose decisions are not binding on each other such an approach may produce an incoherent assortment of conflicting decisions<sup>16a</sup>.

Moreover as almost all of this class of statutes has been repealed in England, the English text-books on them are nearly all out of print and difficult to obtain in Nigeria. The courts therefore cannot be said to possess accurate knowledge of them.

Finally, it must be observed that it is unsatisfactory that the application of English law is not made subject to the repugnancy doctrine. For, it is doubtful whether the ends of justice is being served by the indiscriminate application of English rules and concepts in situations where they are plainly contrary to the expectation of the parties and patently incongruent with the rest of the system. For, a rule of law can hardly be consistent with justice, equity and good conscience when it is not only incomprehensible to the people whose affairs it is intended to regulate but completely out of touch, in certain respects, with the social realities of the society.

It is against this background that we must answer the question whether unification of law is desirable.

In the field of administration of law it should be recalled that the Korsah Commission has rightly pointed out that as modern secular society develops there comes a time when special courts for particular classes of inhabitants must give way to general courts for all manner of men<sup>16b</sup>. It is the view of this writer that the time has come in Nigeria when the customary courts should have jurisdiction over all persons (of whatever race or creed) who are parties to any cause or matter properly cognisable by these courts.

If by unification of law we mean the creation of a new single system to replace the existing dual or tripartite one such unification is desirable in the field of substantive law for the following reasons:

---

16 English statutes of general application have no application in the Western and Midwestern states.

16a There are at least twenty cases in favour of Regional domicile in Nigeria and far more than that number in favour of federal domicile until the issue was settled by statute under the Matrimonial Causes Decree 1970.

16b See Native Courts Commission of Inquiry (Gold Coast) 1951 p. 3.

- (i) **Legal Simplification:** A uniform or integrated legal system will not only simplify the study and teaching of law but also its administration. The courts will be saved the perplexing task (of which the law reports show more than ample evidence) of having to decide in any given case whether the general or customary law applies and to ascertain the particular customary law to be applied.
- (ii) **Legal Certainty:** The performance of our judges in matters of internal conflict of laws has made it almost impossible to tell in advance, in most cases, which particular system of law the courts will apply to a given situation<sup>17</sup>.
- (iii) **Social Convenience:** An integrated legal system which takes account of contemporary social requirements will be more suitable to the needs of the time than either the inchoate and somewhat outdated rules of customary laws, the exotic rules and concepts of the received (English) law or the immutable rules of Islamic law.
- (iv) **Matter of Policy:** There is the issue of policy as to whether it is right and proper that citizens of a sovereign state in the modern world should continue to be governed by different laws in their legal relations.

#### **Extent to which unification has been or should be achieved**

We have observed that the Area Courts in the Northern States are authorised to administer parts of the general law and that they have jurisdiction over Africans and non-Africans who submit to their jurisdiction. Clearly then it is high time we absorbed these courts into the British-type system. The Area Courts Grades I, II, III should be merged and styled "Local Court" which will be a subordinate court to the existing Magistrates' Courts. The Upper Area Court should assume the role of the non-functioning District Courts by taking over the civil jurisdiction of Magistrates' Courts. Whether the Sharia Court should be retained or abolished pertains to issues of faith and conscience. But from the practical point of view the High Court can conveniently perform its existing role with the assistance of muslim assessors. After all, the Upper Area Court administers both the general, customary and Islamic laws. Alternatively a Division of the High Court may be created with the Grand Kaddi as one of the judges to hear appeal over matters of muslim personal law.

In the Western State, Customary Court Grades A and B should be merged with the Magistrates' Courts and Grade C Court should remain as a "Local Court" subordinate to the magistrates' courts.

In the Midwestern state there is only one grade of customary court from where appeals lie to the Magistrate courts. This court should be styled "Local Court" and given jurisdiction over all persons in matters within its jurisdiction<sup>17a</sup>.

The customary court of Appeal in the South Eastern and Rivers states<sup>18</sup> should be merged with the magistrates' court whilst the District court should be styled "Local Court" which must be a subordinate court to the Magistrates' Courts.

<sup>17</sup> There is ample evidence of this in decided cases.

<sup>17a</sup> Customary courts have been abolished in the Midwestern State.

<sup>18</sup> There are no separate systems of customary Court in the East Central State.

All the Local Courts should be authorised to administer part of the general law in addition to customary laws. They should have jurisdiction over all persons in relation to matters within their jurisdiction.

In discussing problem of unification of the substantive law, it will be necessary to point out the varying influence of customary law in the several departments of law. For there are areas where rules of customary law do not exist<sup>19</sup> whilst they have been expressly abolished in some areas<sup>20</sup>. In some other areas too these rules are vague, rudimentary or inadequate<sup>21</sup> whilst in other areas they are fully developed and still dominant<sup>22</sup>.

In the light of the above analysis, discussion of unification of the substantive law may be limited to the fields of commercial law, law of civil wrongs, land law and law of personal relations.

**Commercial Law:** We must recognise that Nigeria is an integral part of a global commercial community. No nation can afford to go its own way in this field in order to meet the needs and requirements of ago-long tradition or chauvinistic nationalism. Besides, the needs of practical governments in modern times call for certainty and uniformity in the law regulating economic activities. While a uniform commercial law must take into account some peculiar features of our customary laws it must basically be a creative response to the requirements of national economics and international trade and commerce.

**Law of Civil Wrongs:** The primary purpose of the law of civil wrongs under modern legal systems is probably to fix the measure of protection to which each person is entitled against his fellows. The customary law of civil wrongs with its emphasis on group responsibility and strict liability may be justified in an era when the only insurance company was the "clan or lineage" and when the subject of legal address included not only human beings but also the Deity. But with the gradual breakdown of the traditional corporate life, the emergence of individuals as the unit of social and economic activities and the spread of Western education a wholly new situation has arisen which has rendered inconvenient a good deal of the customary law rules of civil wrongs.

It is however not being advocated that unification in this area should be achieved by a wholesale adoption of the imported general law to the exclusion of rules of customary law. On the contrary, the uniform law must take account of the existing laws but opportunity must be taken to look beyond these laws with a view to building up a new body of law suitable to contemporary Nigerian society.

**Land Law:** The co-existence and interaction of two concurrent bodies of land law has produced far greater difficulty in this field than in any of other areas of the law. Sometimes an interest may be governed by elements drawn from both the imported (English) law (or its local adaption<sup>23</sup>) and customary law or an interest created under one of these laws may devolve, be transferred or "converted" to a new interest, under the other. Whereas to reach a decision in any given case the court must ascertain the law that governs the transaction for the following reasons:

---

19 Such as in the fields of Banking, insurance, bankruptcy, motor traffic and so on.

20 Such as in the field of criminal law and punishment.

21 Particularly in the areas of contract and tort laws.

22 Such as in the areas of land and family relations.

23 Particularly the Property and Conveyancing Law Cap. 100 L.W.N. 1959 ed. which will hereinafter be included under the expression "imported law".

- (a) Under the customary law the land-owning unit is the family though individual ownership has been evolved by the judiciary<sup>24</sup>. This family land cannot be sold without the consent of the principal beneficiaries<sup>25</sup> whereas under the imported law the land-owning unit is the individual. The beneficiaries of family land would have been regarded as tenant-in-common under this law. The legal consequences are that unlike tenants-in-common under the English law, the jointowners of family property have undivided shares which cannot be disposed of inter-vivos or by will<sup>26</sup>.
- (b) It is generally accepted that Limitation Statutes have no application to claims over land held under the customary law<sup>27</sup> but they do apply to land causes under the imported law.
- (c) Disposition of interests in land under the imported law must be evidenced in writing whereas no such requirement is necessary under the customary law<sup>28</sup>.
- (d) A tenancy held under customary law may be determined on grounds not recognised by the imported law and vice versa.
- (e) There is often much uncertainty as to the rights of the occupier, and as to who is entitled to convey or indeed whether there is any right to convey where land is held under the customary law. This is not so under the imported law.

As registration of title is not obligatory in most of the consistent states<sup>29</sup> the position is that when a person buys a piece of land he probably buys a law suit. Although the imported law has the advantage of certainty and encourages greater degree of economic exploitation of land nonetheless it appears unnecessarily too technical and too complex for the Nigerian society<sup>30</sup>. Indeed in a society which practices shifting agriculture the application of the imported law to farm land will not only be inconvenient but will hardly be workable.

On the other hand, the uncertainty that beclouds title to land under the customary law and the restrictions on, or complete absence of, the right of an undivided occupier to alienate his interest have rendered customary land law inadequate to meet the needs of contemporary Nigerian society. Furthermore, the problem of choice of law confronting the courts in this field which invariably renders title to land uncertain is too high a prize to pay for the luxury of maintaining two systems of law in the field of land transactions concurrently. To borrow Read's illustration in another context<sup>31</sup>, the different interests obtaining under the two systems may be regarded as represented by the metaphor of parallel railway tracks, but in practice there are numerous "points" at which particular interest may move from one track to another — and very often it may be difficult to determine upon which track a particular interest has in fact commenced its journey.

This situation obviously calls for an urgent action in achieving a unification of law in this field. While such a single system must take account of existing laws, social practice and national aspiration it should primarily aim at making title to

---

24 By judicial partition of family property.

25 See for example, *Adewoyin v. Ishola* (1958) 10 W.A.C.A. 33.

26 See *Akilade Caul Crick v. Aina Harding* 7 N.L.R. 48.

27 See *Akpan Awo v. Cookey Gam*, 2 N.L.R. 100 though the equitable doctrine of "larches" and "acquiesce" apply.

28 Section 4 Statute of Fraud 1677, Section 67 Property and Conveyancing Law Cap. 100 (L.W.N. 1959 ed.).

29 Registration of title is only obligatory in Lagos State.

30 Hardly can a non-lawyer draw up a valid deed of conveyance under the imported law much less can the vast majority of the population who can neither read nor write do so.

31 James Read "The Law of Husband and wife in East Africa" in *Integration of Customary and Modern Legal System in Africa* (1971) ed. by the Faculty of Law, University of Ife.

land certain and easy to prove and to ensure that the title must be easy, cheap and quick to convey. Above all, there must be provisions in the law to prevent the land from becoming object of speculation as is too often the case in most of the advanced countries.

## Law of Personal Relations

The London Conference on the "Future of Laws in Africa" came to the conclusion that:

"Questions of family relations, marriage, divorce, wills and succession are so essentially personal that they must in large part continue to be governed by the customary law of the community to which the person belongs<sup>32</sup>."

The problem in Nigeria is not so much that the substantive customary law on these matters is unsatisfactory as it is the conflict and confusion brought about by the existence of dual or tripartite<sup>33</sup> system of law on these issues. For example, in the field of marriage law, there are variable consequences attaching to the different kinds of marriages. The result is that the courts are faced with difficult choice of law problems whenever an individual marries under the different systems either consecutively or concurrently<sup>34</sup>. Very often the law chosen to regulate the relationships between parties to the particular type of marriage has also been applied to matters of succession to the intestate estate of the parties to the marriage on the assumption that succession is an incidental part of marriage<sup>35</sup>. The result has been the frustration of the legitimate expectation of the "successors" under the law that should have been applied.

It is however not being argued that any of these systems of law is entirely satisfactory. For example, the general law of marriage and divorce with its single-minded emphasis on monogamy is undoubtedly unacceptable to a vast majority of Nigerian citizens. Moreover, the prohibitive cost and the protracted procedure for obtaining divorce under the general law will, for a long time to come, keep marriage under this law beyond the reach of the common man.

On the other hand, marriage under the customary law is more of an affair between the families rather than between the actual parties to the marriage. Such a law is bound to become increasingly unsuitable in an age of economic individualism. Moreover, as it is not necessary to register marriages under this law it has been very difficult to prove the existence of these marriages. Furthermore, the inferior position of the wife under the customary law has rendered it unacceptable to most educated females.

In evolving a single law of marriage and divorce it must be borne in mind that husband and wife relationship is not a thing that can be changed overnight at the stroke of the pen. Only marionettes can be made to act and move exactly according to another's will.

The law must provide uniform procedural requirements for all marriages. Requirements for essential validity of marriages must be rooted in our social

---

32 "Future of Law in Africa" (1960) pp. 45—46.

33 One has in mind the existence of a distinct system of Islamic law in some states.

34 See *Cole v. Cole* (1898) 1 N.L.R. 15, *Adegbola v. Folaranmi* (1921) 3 N.L.R. 89, *Gooding v. Martins* (1942) 8 W.A.C.A. 108.

35 See J. W. Salacuse "Birth, Death and the Marriage Act: Some problems of conflict of laws" in *Integration of Customary and Modern Legal Systems in Africa* (1971) pp. 440—443.



mores. Basing age of marriage and prohibited degree of relationship on the English law as provided under our general law<sup>36</sup> is socially indefensible and legally absurd. There must be a simple procedure for registering all marriages. The law must provide for options for monogamous and polygamous marriages. Parties should be permitted, in exceptional cases, to convert one form of marriage to the other. There should be no room for unequal treatment of parties on the ground that they have opted for one form of marriage as against the other. Procedure for obtaining divorce must be simplified and the cost must be kept within reasonable bounds<sup>37</sup>.

The law of wills and custody of children has been judicially unified by an outright rejection or rules of customary law on these matters<sup>38</sup>. While the welfare principle may continue to govern questions of custody of infants in accordance with present practice the law of will must take account of the social fact of Nigerian society where the vast majority are illiterate and as such, effect should be given to oral wills under certain conditions. There must also be provisions to upset a will that does not provide at all or sufficiently for the dependants of the testator.

A uniform law of intestate succession must strike a comfortable balance between the competing claims of the immediate and the extended families.

### **Mechanism or Methodology of Unification**

Perhaps, it has been made clear from the preceding pages that unification of the substantive as well as the administration of law is not only desirable but equally deserving of urgent attention. The unresolved problem is how to bring about this unification.

Much has been said previously on the unification of the dual system of court. It may be sufficient to add that the unification of the judiciary will further the growth of unitary case-law which will be more responsive to the requirements of an evolving society in contradistinction to the disintegrating effect of the development of the general law, the customary and religious laws in separate water-tight compartments which is the tendency under the existing judicial set-up. It will be necessary to appoint personnel of higher standard of education to the suggested Local Court bench than those presently presiding over the lower grade customary courts. Alternatively facilities should be provided for short-term professional training for the existing members of these courts. A simplified or a re-statement of the unified law must be produced in the form of existing customary courts Manual obtaining in some of the states<sup>39</sup> for the guidance of the court panels in relation to matters within the jurisdiction of these courts.

The desirable method for bringing about unification of the substantive law does not permit of ready answer.

It may be argued that such unification should be done at the ethnic level since it is at this level that one can obtain authoritative statement of the customary law.

---

36 That is, the Marriage Act Cap. 115 L.F.N. & L. 1958 ed.

37 This can be done by given Magistrates' Courts jurisdiction on these issues.

38 Any written will only be admitted to probate if it complies with the requirements of the general law. The welfare principle has been uniformly applied to all custody cases. This principle is however, not unknown to the customary laws.

39 Particularly the Western and Midwestern States.

Moreover, unification effected on a higher level may prove too disruptive of traditional values and may therefore be ignored in practice.

The objection against this approach is that unification at the ethnic level will leave us with a conglomeration of unified systems of law within a single state. A meaningful unification can be done at a level where account will be taken of the several ethnic customary laws and the existing general law.

It has been suggested that it would be better to let the two systems evolve side by side since they will naturally converge with the passage of time and that a uniform common law will eventually emerge through judicial decision<sup>40</sup>. Unification through the judiciary has the advantage of being gradual and obtrusive. It is unlikely to prove too revolutionary or disruptive as it is often the case with statutes. Indeed the Ghanaian legislature expressly conferred, by statute, authority on the High Court in Ghana to absorb deserving rules of particular customary law to the body of general common law<sup>41</sup>.

The danger of this approach is that the advantage claimed in its favour is its unfortunate trait. Because judicial changes are often obtrusive they are invariably ignored in practice.

Moreover, we can hardly afford the time to wait for judicial unification in the face of many urgent problems. Again the nature of judicial process itself, with the crippling effect of the doctrine of 'stare decisis', limits the scope of judicial law-making. Furthermore, the judiciary lacks the investigatory powers and procedure that a meaningful unification entails.

Commenting on the authority given to the court in Ghana to absorb rules of particular customary law into the stream of the common law Bentsi-Enchil wrote:

“. . . it is not easy to see how it can be left to the courts to decide which customary law rules to assimilate and generalise and how communities subject to a different system of customary law of which they are equally proud are going to be induced to drop their own rule merely because the court has seen fit to declare that a particular rule of customary law in one system is suitable for universal application and should be assimilated into the common law<sup>41a</sup>.”

On the contrary the central legislature has the means of equipping itself with thorough knowledge of the customary laws as well as the general law. In producing a uniform law he is fully aware of what is being abolished, modified or created. Moreover, he has at his disposal wide investigatory powers. There appears to be general agreement that unification can be more effectively carried out by the central legislature<sup>42</sup> which, in a federation, means the state government. It is hardly practicable to achieve more than unification at state level for a start.

The view has been expressed elsewhere, and appears convincing, that unification should be achieved by ordinary legislation implementing the integration scheme which will entail less onerous drafting efforts and can be completed quite quickly than codification. If a need is felt for codification, in the writer's view, this can be undertaken later on<sup>43</sup>.

---

40 See Eugene Cotran "Integration of the laws of Marriage and Divorce in Kenya" in *Integration of Customary and Modern Legal Systems in Africa* (1971) p. 426.

41 See s. 17 (1) Interpretation Act 1960 (Ghana) also Court Act 1960 (Ghana).

41a Bentsi-Enchil "African Law" 1963 ed. Baade pp. 47—70 at p. 61.

42 See, for example, *Integration of customary and modern legal system in Africa* pp. 4, 154, 426.

43 See Nwabueze "Integration of the Law of Contract" in *Integration of Customary and Modern Legal Systems in Africa* (1971) p. 154.

The warning must be sounded against “revolutionary legislation” or the unwarranted importation of alien legislation which we are already used to.

In the present writer’s view, an effective unified system requires the co-operative efforts not only of the central legislature, the judiciary and the local authority but also those of legal practitioners, law teachers and members of the public of large. There must be opportunity for consultation and discussion. The legislation must take account of the feelings of the public whose affairs the law is intended to regulate. He must listen to the views of the judges and the legal practitioners. He must take advantage of the result of research carried out by law teachers. And above all the government must “hasten slowly”. It may be appropriate to remind ourselves of the Greek story retold by Dr. Paolo Contini at the University of Ife Conference on the present topic some nine years ago when he said:

“The approach to the work of integration can be described by a story of ancient Greece: during the Peloponnesian War, a courier was running to Athens with an urgent message. On his way, he met an old shepherd and stopped to ask “How far is Athens from here?” The shepherd did not answer. The messenger, thinking the old man was deaf, started off again at a brisk trot. When he had gone about 100 yards the shepherd shouted “Two hours away!” The messenger turned his head and shouted back “Why didn’t you answer before?” And the shepherd replied “How did I know how fast you run?”

If we are to make real progress, we need the speed of the Greek messenger coupled with the wisdom of the old shepherd, who gave the right answer only after weighing all the elements of the problem.<sup>44</sup>”

In conclusion let me repeat here my previous appeal in another context<sup>45</sup>. Let each of us bring his gift however modest towards the reform and unification of law in our age.

---

44 See Paolo Contini “Integration of Legal Systems in the Somali Republic” in *Integration of Customary and Modern Legal System in Africa* (1971) pp. 112–113.

45 “Domicile in Nigerian Law: A functional Analysis” title of paper read at the Advanced Seminar at the School of Oriental and African Studies 23rd October, 1968.