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COURT STORIES IN SELECTED AFRICAN SHORT NARRATIVES[1]

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SUMMARY

This article attempts to cross-examine African Literature and African costumary, Islamic and inherited colonial laws. It opens a new topic in the study of African literature by showing how legal discourses are inscribed in certain African narratives and how these discourses link the narratives to the overall context of their production.

KEY WORDS : *African law, literature, traditional courts.*

Il n'existe pas une Vérité, il y a des vérités; chacun détient et expose sa vérité. Entre la vérité psychique et la vérité matérielle, il y a une vérité fondamentale, objective que l'humanisme professionnel érige en vertu.

(There is not one single Truth, but truths; each person has his/her own conception of truth. Between psychic and material truths, there is a fundamental and objective truth that the professional humanist presents as virtue)

(Ndaot, *Le Procès d'un Prix Nobel*)

Introduction

In *Law and Literature: A Misunderstood Relation*, Richard Posner notes that until recently "the links between law and literature, numerous as they are, went largely unremarked and unexplored." Until the 1960's, he adds, "academic law was for the most part an atheoretical discipline." He concludes, "issues of general theory such as justice and interpretation, which might conceivably have been illuminated by the study of literary texts and literary methods received little attention"(9). Although Posner's statements were made in reference to Western literatures, they may be applied to the African situation as well, where, to my knowledge, very few attempts, if any, have been made to cross-examine African literatures and African customary, Islamic, and inherited colonial laws. In spite of considerable comparative studies of African literatures and such disciplines as politics, linguistics, history, philosophy, anthropology etc., studies of law as it relates to African works of fiction or oral literature have been seriously neglected.

One reason for such a neglect may be an attempt by practitioners of law and legal scholars to maintain and defend the autonomy of legal studies and the fear by literary scholars to venture into relatively unsafe space. Perhaps the more plausible reason lies in the difficulty to adequately define the very concept of African law. Julius Lewin makes this point very succinctly when he says that one of the difficulties in the study of African law is "in making the distinction between customs that might be be regarded as mere social conventions and those which are 'laws', that is, features essential to the validity of a legal process"(4). This difficulty has come largely from defining law rather narrowly as "rules enforced by specific and limiting procedure. . ." or as that which is "recognized by the courts," "social control through the systematic application of force by politically organized society. . . a rational, systematic, codified body of rules"(4-5).

In spite of the difficulties, the need for studies that pull together African literatures and law is all the more pressing given the fact that so many African writers have drawn part of their inspiration from the traditional, Islamic, and inherited colonial legal systems. This is evident in the recurrent use of legal stories and the depiction of courtroom situations in many of their works. This study, therefore, seeks to open a new topic in the study of African literatures, or, more precisely, to connect an emerging topic in literary studies by showing how legal discourses are inscribed in certain African narratives, and how these discourses link the narratives themselves to the overall context of their production.

One of the central concepts in trials in real courts of law and in fiction is truth. As Peter Goodrich has stated, "legal discourse is...concerned with truth, both in terms of evidence or verification, and also, more generally in terms of the definition or delimitation of power..."(157). For Michel Foucault, each society has its "own regime, its 'general politics' of truth; that is, the types of discourse which it accepts and makes function as truth...the techniques and procedures accorded value in the acquisition of truth..."(131). In the societies represented in the texts in question here, "the techniques and procedures accorded value in the acquisition of truth" are: oracles, the use of the turtle or the poison ordeal. The turtle moves within a circle of suspected criminals and the person in front of whom it stops is considered guilty. For example, in David Ndachi-Tagne's *La Reine captive.* the turtle is used to determine the guilt of Demayo, accused of having accumulated his wealth by killing through sorcery. As for the poison ordeal, the myth that supports it, Hilda/Leo Kuper report, "is said to have been invented by a man named Justice"(114). It consists of a poison, normally a drink prepared and administered to the accused by a shrine priest. If the accused survives, s/he is declared innocent.

The methods identified above are used for cases of theft, witchcraft, and criminal cases dealing with life and death which are believed to be beyond the jurisdiction of the king or chief who, in those societies, also plays the role of a judge. Hence cases outside of those jurisdictions require of the judge not only to tap into his/her traditions in the law, that is, customary, Islamic, common or Napoleonic laws, but also that s/he be creative and, in the words of the late judge Elias Taslim, "truly dynamic." For, as he says in reference to Commonwealth African judges, "the African judge is faced with tasks or series of tasks that require a good deal of judgement and stamina...the judge must have an underlying philosophy that should guide his action...to effect a dynamic compromise between law and society, between the technicalities of legal science and the requirements of social justice"(210-211). Andrew Watson's emphasis on the psychological or mental state of the trial judge reinforces Taslim's point. As he asserts, trial judges "have a multitude of role-defined tasks that we expect them to carry out with impeccable honesty, resolute evenhandedness, conspicuous humanity, and a high degree of judicial wisdom"(938). Or as D. Jackson stresses citing Justice John Parker, "a judge should be 'honest' 'absolutely courageous,' 'of understanding heart,' and 'a kindly man"'(941).

The discussion that follows does not pretend in any way to be exhaustive, but does use a few stories as an entry into a major project on African works of fiction dealing with different aspects of the legal process; for example, the

strategies of story-telling by litigants and their witnesses, the interpretation of those stories by the judges and other participants; the questions of evidence in the courtroom, the creation of legal ideologies that shape the stories, the nature of truth and justice, etc. The short stories under consideration here have been selected from a number of court stories in African oral literature and fiction both to illustrate the various methods for determining truth and on the basis of the kind of difficulties -- legal or extralegal -- that they raise. "Un jugement" (Diop) and "Ijapa and Yanrinbo Swear an Oath" (Courlander), both collected from oral literature, present the rather complex process of establishing truth, for settling disputes. They also show the inability of a legal system to protect itself from inherent cracks that such shrewd trickster heroes as the turtle or Ijapa (in Yoruba lore) exploit for their own selfish ends as they struggle over meanings or the process of empowerment. "Un jugement" reveals the difficulty of deciding on a case without precedent since this, as other cases prior, took place in an oral context and because this particular case is based on conflicting oral testimony by litigants. Moreover, since "Ijapa" reflects a "miscarriage of justice," the story seems to question the nature of justice itself and the society's attitude towards the concept of justice which, in the words of Courlander, is "imperfect and sometimes absent"(l44). He continues "while the Western literary tradition demands that justice prevail over evil, the view in the African society is that good and evil exist as components of life. Sometimes justice wins out, sometimes not"(l44).

The point of connection between these two stories and the third selection, *i.e.* Ousmane Sembene's "Souleymane" is that even though the latter is a product of the writer's imagination, itS form-- short story-- and content-- legal situation related to family matters-- show that it is also nourrished by oral narrative device. The story uses the context of received tradition in the law to dramatize the dilemma that results from the subversion of the rules and codes of the story. Moreover, it raises a legal argument, as in child custody, in its attempt to re-define social re lationship s and to challenge the types of male di scourses that h ave been made to fu nction in the guise of tradition or as truth in society. The stories are unique and, therefore, excellent case studies not only for the kinds of questions they raise or the type of attitude that they show towards the received tradition in the law, but also for the ways they are used to exploit loopholes in the law and in the rather unorthodox but clever method they use to arrive at truth.

My approach will be textual, that is, I shall examine the stories themselves both in terms of the strategy of litigants' presentations, the kinds of legal arguments raised by such presentations, and how those arguments help in the

judging process or in subverting that process. Even though I am using stories from oral and written traditions, I have not attempted to deal with the problem of orality as such or the oral context of the two stories collected from oral literature. My concern is not whether what has been transcribed from the recording of the griot's oral narratives actually happened at some remote time in the past or whether they might happen again but rather with the legal aspects of what has been transcribed, that is, the written texts. I am equally concerned here with the question of interpretation and the legal implications of such stories in the context of today's African societies. Consequently, I shall also argue that the texts under consideration use court scenes and stories not just for aesthetic purposes but to make socio-political, cultural, historical, and legal commentaries on the context of their production. The reference to text and context always raises the question of how to make the link between the text as a fictional creation or as collected from oral literature and the real world (context) in which the text is created. In this case, such a link seems quite obvious when one considers that the story-telling processes of the writer and the characters that produce stories in court situations are very similar to the production of stories by litigants in a real court of law.

Given this kind of link between the story-telling processes in real courts of law and in courtroom situations in fiction, Ron Christenson's conception of law as "the union of primary stories and secondary rules"(8) becomes very useful. To this may be added the word "code." I use "code" here in terms of what Goodrich calls institutional code, that is, "a set of social conventions governing and instructing behaviour, issuing imperatives or offering generalized instructions as to how to act"(66). This study will focus on primary stories, that is, stories (true or fabricated) that are produced by characters as litigants during their trials which, as other stories in works of fiction, do lend themselves to interpretations; interpretations from which new rules could be derived. Such interpretations must go beyond the texts or the stories themselves to the contexts (historical, social, political, etc.) that generated the stories.

As Christenson has suggested elsewhere, stories by litigants are the vital elements of law, especially if such stories have neither persuasive nor binding precedents. The stories told by litigants may help to shape society's thinking or raise its consciousness about the urgent need to revise existing rules in accordance with its socio-political, economic and historical development. The judgement may become a source of law, that is, it may help to formulate new rules. As stated earlier, the bibliography on African texts that explore legal situations (court scenes or trials) is extensive, which

is testimony to the fact that the legal institutions, just as other institutions in African societies, has inspired many fiction writers. Some of those writers have used their knowledge of those legal systems by way of subversion as the following literary stories with legal implications clearly illustrate.

The search for truth

In "un jugement," a woman is seeking divorce on grounds that she had been repudiated by her husband; an accusation that the husband vehemently denies in spite of textual evidence to the contrary. The husband, frustrated by the devastation of his watermelon farm by monkeys (his only source of income), had displaced his anger onto his wife, finding fault in everything she did and had, indeed, said to her, "retourne chez ta mere, je te repudie"[Return to your mother, I repudiate you](22). But realizing the economic, social, and legal implications of his statement (he forfeits all rights to the woman including the bride wealth), he had tried to win back his wife. However, her steadfast refusal to return home to a husband who had repudiated her sets up a legal situation in which they must consult with judges and wisemen from various religious and traditional backgrounds and from many countries to validate their statements. The exchange between Demba and his wife had been verbal, the question then becomes how to determine who--the husband or the wife--is telling the truth; how to resolve a dispute based on two conflicting oral testimonies.
Even more pertinent is the fact that the judge has to use his/her ingenuity and ability to draw from various traditions in the law given that cases tried in the context of oral tradition are not recorded or documented in writing and, therefore, could not be used as precedents. In the absence of any precedents, Madiakate, the Imam and judge in the village of Maka-Kouli displays the kind of wisdom required of judges by linking the legal to the spiritual through prayers. In that way he, unlike other great judges, spiritual and political figures who have tried this case unsuccessfully, manages to extract truth from the husband and rule in favor of the wife. Indeed as a family dispute, the Imam's appeal seems to be the area of Islamic law that deals with family matters and forms the core of the moslem society's moral code.

The time of prayer is the moment of temporary retreat into the subconscious and spiritual world to enter into communion with God, Allah or the ancestral spirits as the case may be. The amen or assaloumou aleykoum (Allah be with you) said at the close of a prayer is the critical point where one begins the slow transport from the spiritual back to the conscious state. It is precisely at that transitional stage where one is no longer in the subconscious, yet not

fully in the conscious state that the Imam asks the simple but crucial question: "ou est lthomme qui a repudie sa femme?"[where is the man who repudiated his wife?] Demba still in a state of trance, answers, "me voici"[Here]. With these words, Demba exteriorizes what he might have been confessing to in the silence of prayer. The Imam's verdict is, "homme, ta langue a enfin devance ton esprit et ta bouche a consenti a dire la verite." [Man, your tongue has finally moved faster than your mind and your mouth has consented to tell the truth](29-30).

The Imam helps Demba to state or indeed re-state a fact, a fact that places his wife in a position to make a choice between returning home to her husband and leaving him. But in a society in which rights and duties seem defined by status, age, and gender, such as the one represented in the story, one would expect the husband to be given the benefit of the doubt, especially in a case without concrete evidence. Ruling in favor of the wife or actually creating that opportunity for choice for the wife subverts that expectation. The ruling has no precedents, either in terms of the technique used to extract truth (which is testimony to the Imam's wisdom) or in its social and political ramifications. Following the successfull resolution of the case, one may conclude that the expert judges who had tried the case earlier had failed to reach a verdict because they had foreseen the social, political and legal impact of ruling in favor of a woman (a wife) in a society that was striving to preserve its status quo in a constantly changing world.

Moreover, the failure of those judges seems to have been designed to create suspense or temporally defer resolution so as to build up expectations to the dramatic point where Islam, which in this case is competing with other religions, could be shown as non judgemental and especially as very effective in creating conditions suitable to finding solutions to extremely difficult moral questions. Creating those conditions also helps to define what might be called an Islamic ideology since Islam, as many traditional African religions, does not judge but simply makes conditions propitious for its followers to look within themselves and to become their own spiritual judges.

The traditional legal system does have an appeal process and Demba could have used it to challenge the verdict, using as a premise of his argument, his state of mind at the time he allegedly made the statement repudiating his wife. He could claim, for instance, that as an angry man, he was temporarily out of his mind. Furthermore, he could argue, and rightly so, that there cannot be a fair judgement at the conscious level based on an utterance "me voici" made while still at the subconscious, indeed, a hypnotic level.

However, as Maurice Doumbe-Moulongo has noted in reference to cases tried in the traditional courts of the Douala in Cameroon, challenging the decision of the patriarchs on the court is tantamount to signing one's death warrant. As he writes, "meme quand, dans son fort interieur, on ne se sent vraiment pas en tort, on se resigne, car on...a peur de ces patriarches aux yeux injectes, signe inevitable de sorcellerie...Les vieux ne sont-ils pas, partout en Afrique, les premiers sorciers? Si l'on s'oppose a leur verdict, on est perdu"(28). [Even when, deep inside, one does not really feel a sense of guilt, one dares not oppose those patriarchs with bloodshot eyes, sign of sorcery...who can ignore the fact that those old men are the first sorcerers all over Africa? Slhe who questions their verdict is done for].

The Imam incarnates judicial, spiritual and political powers. Hence, challenging his ruling might be interpreted, not so much as a challenge of the legal process itself or a challenge of the intrusion of the Islamic religion into the legal process, but as a questioning of the powers and even a personal attack on him. So, inasmuch as the Imam has set a legal precedent by subverting expectations and ruling in favor of a woman, he still remains the patriarch or "le vieux sorcier" of yesterday who has been replaced by the absolute ruler, indeed the dictator of today who controls all the institutions, including the legal.

The subversion of the method of establishing truth

One of the methods identified above for determining truth is the poison ordeal. The question is, can the ordeal be effective, that is, can it still lead to the acquisition of some form of truth in the hands of such astute creatures as Ijapa or the turtle in the story "Ijapa and Yanrinbo Swear an Oath"? Ijapa shares many qualities with other tricksters in African lore. He is described variously as "shrewd, cunning, greedy, indolent, unreliable, ambitious, exhibitionist, unpredictable, aggressive, generally preposterous, and sometimes stupid"(127). He is alluded to in many proverbs, one of which seems particularly appropriate for the ensuing discussion. "Though Ijapa has no legs on the ground, he has wisdom in his head"(a person who is deficient in one quality may be strong in another) (Courlander). Ijapa certainly had the wisdom and the vision when he and his wife Yanrinbo, driven by hunger, broke into their neighbor's storage. The method employed to reach the storage reveals both shrewdness and foresight as Ijapa and his wife seem to have staged a mock trial in their minds prior to the theft and in the process had discovered a loophole that they would eventually exploit to subvert their

real trial by ordeal. They seem to have made some connection (even if arbitrary) between the words or language of swearing an oath and the effect of the drink or the outcome of the poison ordeal.

The storage in question stands on stilts, and therefore, to reach it, Ijapa and his wife, each, has to perform a distinct but complementary function. Ijapa's is to carry his wife on his shoulder and hers is to stretch her hand to remove the food from the storage. In the trial, rather than swearing an oath on the specific function that each performed, each swears his or her innocence on the function performed by the other. For instance, "If I Ijapa, the husband of Yanrinbo, ever stretched my hand to remove yams from Bamidele's storage house, may I fall sick instantly and die"(71). The truth is that he did not stretch his hand. Yanrinbo on her part did not stand on her legs when she reached her hand into the neighbor's storage. Courlander's conclusion is that the poison had no effect on them because what they had sworn to was not false. Consequently, they were both acquitted.

Emerging as "the victor over both the victims of his theft and the trial by ordeal" shows how tricks, if ingenious enough, could be used dangerously to subvert a legal process. Of course, such practices of exploiting loopholes are commonplace in our societies today. In that context, and to borrow from Posner who argues that "law as depicted in literature is often just a metaphor for something else that is the primary concern of the author"(l 15), the story may be read as a metaphor, indeed, an allegory of a society that is getting alarmingly greedy, individualistic and dishonest. The trial also raises the question of the effectiveness of the ordeal as a means of getting truth and through that to the administration of justice. As stated earlier, this story is a commentary on the African conception of justice. The link between the words and the (in)action of the poison seems to be based on the fact that the ordeal is directed supernaturally by God and the nature spirits . Consequently, it is based on faith or belief in those force s, which , in a sense, translates into faith in the legal procedure itself. Ijapa and his wife accept to swear their innocence because they have faith that if they swear to each other's function, the poison will be rendered powerless, thereby subverting the process and setting them free.

Having faith in a process has its own advantages. Relying on faith, however, may result in the total surrender of oneself to the spiritual forces to the extent that one becomes passive, disengaged and, as such, loses one's freedom to question and to re-examine certain elements of the legal tradition. Demba, the husband in "un jugement," accepts the verdict without questioning because, as mentioned earlier, he does not want to be perceived

as challenging the personality of the Imam. More importantly, accepting the verdict seems to be an affirmation of his faith in Imam's judgement, the legal tradition that he incarnates, and his submission to the Islamic moral order that is implicit in the whole trial. The chief who acquits Ijapa and Yanrinbo does so without examining the words of the swearing because, as the incarnation of the spiritual beings in his society, he has faith in them, in the tradition and the means by which they administer justlce.

Elusive truth, justice deferred

If the court stories in oral literature discussed so far have raised such pertinent issues as the methods employed by the traditional legal system to establish "its regime of truth, its 'general politics' of truth," and the question of faith in the process, some stories in contemporary African narratives dramatize the dilemma of the legal system that is itself on trial because it has not kept pace with the socio-political and historical changes in society. The stories use the contexts of received tradition in the law to attempt to "de-naturalize" the meanings that had hitherto served the interests of the patriarchy. An example of a story in that category is Sembene's "Souleymane," in which a court scene in a divorce trial becomes a platform for Yacine, Souleymane's wife, driven like other women in her society into silence, to develop her own voice so as to challenge the status quo. She challenges the system by raising issues that call for a re-evaluation of the marriage institution to better deal with the new element of divorce and child custody.

In the traditional societies, marriage was conceived as an arrangement between two families or between two heads of families (males) without regard for the woman involved. By asking for the restitution of her virginity as a condition of her return of the bride wealth, Yacine implicitly introduces into the traditional marriage institution a new legal concept. Her statement seems to suggest that marriage be seen as a contractual union which would therefore require the mutual assent of the parties directly involved, that is, the future couple themselves. This means that each party to the contract brings in something. In the case in point here the "unspoken" terms of the contract are Yacine being a virgin and Souleymane paying bride wealth.

Yacine had been found guilty by a group of elders (all men) of having deserted her husband, which, according to local law and custom, is valid reason for divorce. The same law and custom also stipulate that the penalty for desertion is the return of the bride wealth or its forfeiture as the case

may be. Because of the emphasis on the financial rather than on the more important emotional and human aspects in divorce cases, many women have been forced to quietly accept abuses, exploitation, mental cruelty, and endure hardships rather than seek divorce as their fathers who had received the bride wealth were unable to pay it back. On their part, some men have been very reluctant to repudiate their wives or file for divorce for fear of forfeiting the exhorbitant bride wealth that they had paid. "Souleymane" is a vivid illustration of that situation. Yacine is caught between her father's greed, his inability to pay back the bride wealth he had received from Bilhal and her old husband's inability to satisfy her needs.

After three years in a marriage during which she had one child and endured her aging husband's inability to satisfy her sexual needs, she had taken her husband's nephew as a lover, an adulterous act which is valid ground for divorce. But the law also states that divorce can be granted a woman who has suffered neglect and mental cruelty. On that basis, Yacine may claim that her act was as a result of her husband having failed to honor an implied verbal contract made before marriage, that is, to cater for her physical, emotional, economic, sexual and other needs.

But the difficulty in such a case is how to substantiate those accusations, or how to quantify emotional and mental cruelty, especially in her society in which women have been turned into economic and sexual objects and, as such, are not seen as capable of feeling, or of being hurt emotionally.

Faced with this dilemma of not being able to prove the unsubstantiable, that is, mental torture, Yacine sets a legal precedent in her tradition and in the received legal tradition, as mentioned above, by making as a condition of her return of the bride wealth her husband's return of her virginity. As she bursts out, " si vous voulez, et vous trouverez juste. . .Je ne serai d'accord qu'a condition que Souleymane me rende ma virginite"(154). The reaction of the elders, stunned by this rather bold, legally challenging, biologically impossible, and morally compelling declaration, is to retort," cela n'etait pas ecrit dans les ordres et les ordonnances"(154). Such a reaction shows, of course, that her demand has raised a legal argument, contractual in nature, that challenges both the traditional and the received systems. The argument also questions historical assumptions or beliefs in ways that will compel the society to re-examine its fundamental values as a step towards major revisions in various aspects of the legal system. The question still remains as to why they had never thought of or envisioned such a scenario. Why was it not written? Why had they not questioned those aspects of their traditions that had, up to then, marginalized and objectified women, young men and

children to the extent that their rights as human beings were not taken into consideration when the traditional laws and customs were formulated?

The reaction from the court audience is divided along gender and generational lines. While the young people and the women in the audience support Yacine's stands, the elders (all men) fail to see the logic of it. Of course, to moral, historical and legal revisionists, the logic in her demand is quite clear. Prior to the wedding Souleymane had promised "devant le peuple, qu'il tuerait deux taureaux pour la virginite de Yacine"(145). It is also said that the day followin the wedding, a white blood-stained cloth was shown around, "le lendemain, un pagne blanc macule de sang se promena dans les bras des unes et des autres, de concession en concession, au grand vivat de toutes et de tous"(146). The blood stain was concrete proof that she was still a virgin when she got married. One could conclude that being a virgin was the single most important factor used by Souleymane to contract the marriage. Thus, the substantial amount of money paid to Yacine's greedy father as bride wealth was, to a large extent, on the assumption that she was still a virgin. By adopting as premise of her argument her virginity, Yacine is introducing into the trial process the only concrete, verifiable evidence that she has. The logic is that, in a contractual relationship such as her demand suggests, fairness be exercized during the termination of the contract, which, in this case, is quite logically that she has back her most precious possession in exchange for the bride wealth that had been paid for it.

As to who should have custody of the child, " tous. . . reconnaissaient le 'droit' sacre du pere de s'approprier son heritier"(155). Saying "son heritier" rather than "leur heritier" shows a biased opinion in favor of the father. Again putting things in contractual terms raises the question of whether either parent can be said to have sacred rights over "leur heritier." The Froh-Toll acting as Yacine's defense counsel asks a question that identifies and problematizes that issue. He puts this to the elders on the court and the audience, " en toute apparence, l'enfant revient au pere. Mais est-on sur qutun enfant revient a son pere en droit de naissance?" And the choral response is, "Oh . . .oui . . . il est mentionne dans le livre sacre"(155). Evident in the response of the audience and the statement above is the use, by that audience, of some elements of tradition and religion rather uncritically to defend the status quo.

However, the Froh-Toll, aware of the audience's non-evolutionary conception of traditions and its unchallenging acceptance of the Holy Book, then proceeds to use his own personal story to authenticate, indeed, to dramatize his argument: " moi, que vous voyez la, j'ai perdu mon pere,

lorsque j'avais deux mois dans le ventre de ma mere.... La mort n'a pas empeche ma venue au monde"(155). But consider that the opposite had happened; "qu'au deuxieme mois, ma mere mourut. Est-ce que je serais en vie?" And the crowd shouted, "non. . . Non." He then asks rhetorically, " donc de quel droit Souleymane exige-t-il la garde de ltenfant? In conclusion, he remarks, "on peut toujours douter d'etre le pere d'un enfant. . . Jamais de doute sur sa mere. . ."(156). Raising these issues helps the Froh-Toll to point out the absurdity in custody fights and the moral basis of the Holy Book itself (which is at the very root of the fights) since it is used to justify giving custody to one and not the other parent.

Yacine's insistence on having back her virginity introduces human and emotional dimensions into a legal system that, in divorce cases, had hitherto focused on financial and, to some extent, material aspects. The Froh-Toll's eloquent defense adds the ethical dimension, another element that, unfortunately, seems to be lacking or seems to have been neglected by the traditional and inherited legal systems, developed and manipulated, rather conservatively, by men of a certain age to cater to their needs. The Froh-Toll expresses those ethical issues in the form of rhetorical questions in a very subtle attempt to raise the consciousness of the patriarchs on the courts . Rai sing consciousnes s as such i s j u st a stage in the proces s of revising the tradi ti on al legal system as it applies to the marriage institution. Such a revision would adequately reflect the present context by protecting the rights of all people in the society irrespective of their age and gender, especially in divorce and custody.

Conclusion

Truth, Foucault asserts, "is a thing of this world" and one might add a thing of the world of fiction. The court stories discussed here do wrestle with the question of truth and the methods of its acquisition. The Imam invokes the presence of Allah and the nature spirits to extract truth from Demba. The chief has recourse to the poison ordeal in his effort to determine the veracity of the statements of both the accused and the plaintiff. In both cases, there is a resolution, even if justice has not been served, especially for Ijapa's neighbor, who cannot have two criminals
punished because they have exploited a loophole in the law. In "Souleymane," truth is elusive and the dispensation of justice permanently deferred because the story attempts to re-define one of the foundations of human society, *i.e.*, the family, by proposing that marriage be conceived as a contractual union in which all the terms of the contract are clearly articulated. At least in that way, when the contract is being terminated

because of divorce, as in the case in point here, the parties can legitimately lay claim to what they brought into the marriage even if such claim, although legally workable, is biologically impossible to honor, as in giving back a woman's virginity. In this case, the man who pays the bride wealth and especially the woman, whose emotional and financial needs were not taken into consideration, and the innocent child(ren) born out of such a union, are protected.

All the stories reflect a certain attitude towards the legal traditions which may be a function of their relationship to the received tradition in literature.. The resolution of the cases in the two stories from oral tradition shows a certain faith in the traditional legal system. Even though in one case the resolution comes after several trials, even though there is subversion of the process in another case, the wisdom of the judge in one tradition and the faith in the poison ordeal in the other triumph. Such is also the triumph of the traditional legal system. Sembene's story shows the loss of faith in both traditional and the inherited colonial legal systems. The former has hopelessly failed to correct the injustice created by a society that excludes one of its segments by reason of sex, age and status. The latter has created a framework for even the marginalized to seek justice but the very way that the story presents the case by raising issues that question the marriage institution, indeed, the status quo systematically subverts the system and makes resolution impossible. The attitude towards the received tradition in the law manifested in Sembene's short story serves as a transition from oral to received tradition in literature and especially such novels as *Le Proces d'un Prix Nobel* (Ndaot,1983), *Wrong Ones in the Dock* (Aluko,1982), *Taboo Love* (Ngongwikuo,1980), *The Night Harrv Died* (Ulasi,1974), *Le Proces du muet* (Ilboudo,1987) etc. in which legal stories are used not to affirm one's faith in a system but rather to subvert the received legal systems, to make critical commentaries on legal institutions and to raise pertinent questions about the nature of justice itself which is the ultimate in any trial.

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