Bonny Ibawoh

*Imperial Justice: Africans in Empire’s Court*

Introduction

Dr Bonny Ibawoh is a professor of History and Global Human Rights at McMaster University in Ontario, and has authored several works on human rights, peace studies, and colonial history. He conducted research in five national archives in Kenya, South Africa, Nigeria, Ghana and the United Kingdom, the result of which is *Imperial Justice: Africans in Empire's Court*. The book is a contribution to the scholarship on historical globalisation, focusing on the legal and socio-cultural aspects of a globalising movement of ideas that occurred across the British Empire through the agency of the Judicial Committee of the Privy Council (JCPC), and to a lesser extent, two regional courts in Africa: the East African Court of Appeal (EACA) and the West African Court of Appeal (WACA). The focus is on Africa as both source and recipient of these globalising trends.

The book can be said to tell two stories concerning the JCPC’s adventures in Africa. One is the story of an imperial court’s efforts to manage tensions between lower British courts operating in the colonies, and the indigenous populations over whom these courts “in the peripheries” (p. 6) exercised primary or appellate jurisdiction. The distant JCPC, along with the two regional appellate courts, appear almost to lose their colonial apparel and to objectively adjudicate with fairness over the natives and their colonist governments and courts in seemingly endless court-dramas. A second tale in the book has the JCPC play a role that is much closer to the central drama, as a beleaguered
court, challenged from all quarters of the empire as to its unsuitability and/or sheer incompetence in dealing effectively with local disputes from the varied dominions in the empire, owing to its physical, cultural and political distance from the colonies. The JCPC’s detached quality is shown in the two tales to paradoxically constitute a pillar of the court’s legitimacy in the eyes of British subjects outside Europe, as well as a crack in it.

The tales are not told in a linearly fashion, but in a seven-part thematic structure, focusing first on introducing the key thesis, themes and the judicial institutions (Sections I and II) before zeroing in on selected themes in the next four sections, and a conclusion in the last one. Scholars of international law, particularly international courts, might be interested in ‘The Great Chief Overseas’ (Section II, pp. 25–51) which describes the historical and legal origins of these colonial supranational appellate bodies, their structure and functional organisation. In ‘Unknown God: The Limits of Imperial Justice’ (Section VI, pp. 148–177), the author tells not only of the decline of these courts, but also of the attempt and failure to retain them in a post-colonial and therefore truly international sense. As Ibhawoh himself notes, the challenges faced by these old supranational courts and the judges who sat in them parallel those faced by modern international courts and the judges who sit in them, adjudicating as they do, over politically and culturally diverse territories from across vast regions and the world. International legal scholars might also be interested in the discussion on indigenous customary rights to land in British Africa as told in ‘Litigious Chiefs and Land Palavers’ (Section 5, pp. 121–147).

1 The Referee Imperial Court

The tensions over which the JCPC and the imperial appellate courts presided arose, among other things, from a clash between imported English law and the various indigenous laws of African peoples colonised by Great Britain in the 19th and 20th centuries. A great deal of this book is dedicated to describing in vivid detail and through carefully selected case-law, local disputes over which the JCPC ultimately presided between colonial officials and elites of the indigenous populations. These African elites included the traditional higher classes as well as modern, western-educated Africans.

Through the indirect rule system and the establishment of native tribunals headed by Africans in the lowest rank of the colonial judicial structure, the two systems of law were grafted into each other in an uneasy co-existence. This was managed through the device of the ‘repugnancy clause’ in British statutes that, while adopting indigenous or customary law into the imported English legal and judicial system, allowed British courts leeway in determining the extent to