

EFFECTIVE TECHNIQUES FOR TEACHING ABOUT OTHER CULTURES AND LEGAL SYSTEMS - TEACHING AFRICAN CUSTOMARY LAW

Fatou K. CAMARA, PhD.

Associate Law Professor, Faculté des Sciences Juridiques et Politiques,
Université Cheikh Anta Diop de Dakar

How to teach African customary law in a manner that enables students who are unaware or unfamiliar with it to understand it correctly or open up to an entirely different legal system? It is a question that arises even in countries where, as in Senegal, customary law is not part of a foreign culture but is native to the land. However, when one speaks of African customary law, the issue of definition immediately arises. Indeed, the question of an adequate definition of the concept of customary law needs to be solved before one can effectively deal with the best way to teach African customary law.

African customary law can be seen as a fragmented body of laws scattered between different linguistic communities¹, each having a law of its own, which will be the African customary law of that specific group. Consequently African customary law will be made up of an infinite number of customs as varied and diverse as the communities that exist on a given territory'. According to the list of customs applicable in Senegal that was set up by decree on February 23rd 1961, there were at that date 68 customs connected to 30 linguistic communities², 2 nationalities (Dahomey – actual Benin, and Guinea-Conakry), and one Muslim community (the Mourids). On those 68 customs, 20 are identified as being either Muslim or Islam-influenced, 7 are termed Catholic and 8 refer to the indigenous African faith under the name of 'fetishist' or 'animist'. How does one teach African customary law with 68 customs officially listed?

It is a fact that many dissimilarities can be found between the legal rules governing different linguistic communities within the territory of one country in Africa. From such a perspective, teaching African customary law may then be reduced to teaching the customary rules governing a particular group (I).

However, another way to teach African customary law focuses on a comparative and historical approach that allows similarities and common trends to emerge as

¹ I prefer the term « linguistic community » (communauté linguistique) to ethnic group, as from a scientific point of view it is easier to define.

² Badiaranké, Baïnouck, Balante, Bambara, Bassari, Créole, Diakhankhé, Dialonké, Diola, Fandanké, Khassonké, Laobé, Léboue, Malinké, Mancagne, Mandingue, Manjaque, Maure, Mossi, Niominké, None, Ouoloff, Peulh, Pouladié, Sarakolé, Sérère, Socé, Soussou, Toucouleur, Tourka.

being indigenous to Black African culture and constitutive therefore of a body of law that can correctly be termed “Indigenous African law” (II)³.

I. Teaching African Customary Laws

When teachers choose to introduce their students to the legal rules governing a particular linguistic community, then it seems to me that a good way to approach the task is to first acquaint the students with the key terms and concepts of that customary law, in the language of the people whose customs are being explored. The next step would be to use the sayings, myths, stories and sacred artefacts of the community whose customs are being studied as a way of having a direct and inside look at the material that that community used in order to preserve and disseminate legal knowledge and values.

1.1. Identify key legal terms in the language of the group whose customary law is being studied

A good way to open students’ minds to the intricacies of a legal culture they are not entirely, if at all, familiar with is to confront them from the start with words and concepts that will teach them up front that they are literally entering foreign territory. Consequently they need to pay attention and not take anything for granted. For instance, in Senegal, Wolof speakers use the word “jaam” to translate the term slave. In that sense, there is a distinction between the *jaami néegu ndey* (the slaves on the maternal side of the family), and the *jaami néegu baay* (the slaves on the paternal side of the family); the former are captives who have become assimilated to family members, the latter are captives who can be bought and sold.

The same word, *jaam*, is used to name a close relative, one’s cousin: the child of the maternal uncle⁴. Those particular cousins (“cross cousins”, *cousins croisés*)

³ I have explained this approach in detail in the following article (written and published in French): « Pour une méthode scientifique de recherche, d’identification et d’interprétation du droit coutumier africain » *Revue de Droit Sénégalais*, n°5, novembre 2006, Presses de l’Université des sciences sociales de Toulouse, pp. 13-37. I have used the methodology in two books : *Pouvoir et Justice dans la tradition des peuples noirs*, L’Harmattan, Paris, 2000, 240 p ; *L’union matrimoniale dans la tradition des peuples noirs*, cowritten with Saliou S. M. Kanji, L’Harmattan, Paris, 2000, 300 p.

⁴ The child of the paternal aunt is called “master”, *sang bi*; the children of the paternal uncle and those of the maternal aunt are neither masters nor slaves they are plain brothers and sisters (there is no word for “cousin” in Wolof, that lack of a word for distinguishing between a close relative, the sibling, and a more distant one, the cousin, is telling of a society where bringing people together and making everyone feel like they are part of one big family is one constant endeavour).

are called *kal*⁵, they share an obligation to joke mercilessly with each other. Besides the *jaam* in that relationship is entitled to anything their *sàng* have. *Jaam* can ask for whatever good they want, food, clothes, jewellery and not be denied, even if they don't ask the *sàng* are under the obligation to shower their *jaam* with gifts. On the other hand *jaam* are duty bound to act as their *sàng*'s servants in all occasions where the latter would have needed hired help.

The King's close companions, who are among the dignitaries of the kingdom, are also called "the king's slaves", *jaami buur*. Hence, referring in Wolof to someone as being someone else's slave does not mean that that person is a slave in the way Western, Christian and Muslim law understand it. Moreover the different legal regimes associated with the word *jaam* should bring the students to explore the ways in which African customary laws may have been influenced by external factors such as the Muslim and the Christian slave trades (i.e. the transsaharian and the transatlantic slave trade).

African words and concepts can also be used to introduce students to a specific indigenous African constitutional system. Let's take the expression "Fal buur" which means "to elect a king" in Wolof (before the colonial conquest wiped them off, the Wolof kingdoms covered a good part of the territory that is now the Republic of Senegal)⁶. The combination of the verb "to elect" with the word "king" can be confusing to students who never heard of such a thing as an elected royal. In what kind of a system is a king ever elected? What are the criteria to become firstly a member of the royal family, and secondly an eligible royal? Who elects the king?

What about the word "folli"? It is the direct opposite of "fal" (to elect), *folli* means "to depose (an elected official)". "Folli buur" means "to depose a king", so in a system where the legal terms indicate that the king is not only elected but can also be deposed, it can be assumed that there is also a system of checks and balances worth researching. Thus, with just two legal Wolof concepts (*fal*

⁵ *Kal* is another interesting concept which can translate into "a relationship that makes joking mandatory", there is *kal* between cross cousins (children of the paternal aunt and children of the maternal uncle), and also between the former clans who are now identified with their family name (for instance all those who are named Camara, share an obligation to joke with every individual who bear the family name of Cissé, Diakhaté, Kébé, Mbaye, Mboup). The same mandatory joking relationship exists between linguistic communities; it is then called *gàmmu*. In Senegal, Peulh, Seereer and Joola are *gàmmu*, which means that when a Peulh meets a Seereer or a Joola, they should joke and act like siblings, ribbing each other mercilessly and helping each other out if needed even if they are total strangers, who have never met before).

⁶ In 1855 the Wolof kingdom of Waalo is the first kingdom to be annexed by the French. Direct rule over most of Senegal is achieved in 1886, with the defeat of the armies of the Wolof kingdom of Kajoor.

buur/folli buur), the students are being introduced to a whole new kind of constitutional monarchy.

Teaching African customary law using African words and concepts is a method which has the advantage of literally showing the students that any legal system is a universe in itself, and words are the means by which a people create their own universe. Working with sayings and stories can achieve the same results as selecting specific legal terms.

1.2. Exploring the multi-layered meanings of myths, sayings and stories

The division of legal systems into patriarchal legal systems and matriarchal legal systems cannot be understood and fully explained without reference to the myths that, in each culture, define the roles of men and women on the basis of which, the behavioural patterns that will be entrenched in legal status as customary or statutory laws are justified. Religions have been and in many states continue to be the sources of legal rules. In Africa followers of the Indigenous faith were exposed to priestesses and to a feminine (feminist?) spirituality based on the concept of a Mother God and of powerful female spirits guarding the lands and its inhabitants⁷. From there derives a vision of the woman that was not tainted with misogynistic prejudices carried by sacred myths or stories.

The Wolof language conveys the concept of gender equality by being gender neutral (there is no Wolof equivalent to she/he, her/his). There are also sayings which harbour the meaning that age is more important than gender. For instance a Wolof child will hear this saying many times during his early years: *Nit dina mag yaayam, mag baayam, waaye kenn du mag magam* ("A person can be older than his/her father, older than his/her mother, but no one can be older than their elders"). This Wolof saying is a good enigma for students who are learning about Wolof customary laws. How can one be older than one's own parents? How can that make sense? The saying can only make sense in a legal system where individuals have as many mothers and fathers as their biological parents have brothers, sisters and cousins. In Wolof, the same word "yaay" is used for mother and maternal aunt, and "baay" means "father", but it also means "paternal uncle". Paternal uncles and maternal aunts can be younger than their nephews and nieces; in which case the nieces and nephews will be older than their "mums" (*yaay*) and "dads" (*baay*). However, whether she/he is a close relative or a total stranger, whether she/he is a poor woman or a rich man, an older person will always be your elder. Hence, this saying is used to

⁷ Women in the Indigenous African religion (called animism in Senegal) is the topic of an unpublished paper "The Temple of Initiated Women: A Framework for Culturally Meaningful Feminist Expression in Rural Areas", presented at the conference *Untying the Knots: Theorizing Conflicts Between Gender Equality and Religious Laws*, Hadassah-Brandeis Institute, Brandeis University, Boston, 15 April 2008.

underline the fact that age takes precedence over gender, social status and any other kind of privilege. The division of the society into age groups with specific roles and statuses derives from this value system.

The second method of teaching African customary law combines the method that has just been described with a comparative approach and a historical perspective.

II. Moving from Teaching African Customary Laws to Teaching African Indigenous Law

In a course named “The Egyptian sources of African customary law”⁸ I have explored with students from different Senegalese linguistic communities (such as Seereer, Joola, Pulaar and Wolof), the concept of Indigenous African law and Indigenous African jurisprudence (legal theory). The course was designed as follows: the students were given to read, and asked to research,

- original texts from Pharaonic Egypt⁹ ;
- studies of specific African communities, kingdoms or practices made by historians and explorers from ancient times to the contemporary time period (Herodotus, book two; Diodorus of Sicily, book one; Ibn Khaldûn’s *Al Muqaddima*; Ibn Battuta’s account of his stay in the capital of the empire of Mali in the 14th century; the French Gaspard Theodore Mollien’s account of his journey through Senegal in the late nineteenth century, Leo Frobénius, Cheikh Anta Diop, T. Olawale Elias ...),

Specialists in oral literature and customary laws of different linguistic communities were invited to give lectures on oral traditions, ancient myths and stories, initiation practice...).

Each student was then asked to choose a subject and use it as basis for a comparative study involving the laws of Ancient Egypt, the customary laws of their linguistic community and the customary laws of other indigenous African communities. Students have freely chosen the subjects they wished to research and write about. The only constraint was that they use as focal point, or basis of their research a specific African linguistic community, and then expand their research on the topic chosen, not only to ancient Egypt, but also to as many other black African communities as they cared to base their comparative work

⁸ Master of History of Law and Institutions, Faculté des Sciences Juridiques et Politiques, University Cheikh Anta Diop, Dakar.

⁹ Excerpts from the following books were given to the students: *Textes sacrés et profanes de l’ancienne Egypte*, Traductions et commentaires par Claire Lalouette, Connaissance de l’Orient, Collection UNESCO d’oeuvres représentatives, Gallimard, 1984, 277 pages; *La philosophie africaine de la période pharaonique, 2780-330 avant notre ère*, L’Harmattan, Paris, 1990 , 567 pages.

on. The goal was to lead them to see for themselves the similarities between these various groups, rather than studying them in separate courses or separate classes as if they were fundamentally different socio-legal systems. In making the effort to cross language barriers, geographical and temporal boundaries, the students could see the identity of fundamental legal principles beyond differences in terminology.

The purpose of the course was to get students to realize by themselves that, just as the Civil law legal system derives its consistency from its reference to Roman law, an indigenous African law can be identified in reference with the single most documented and ancient indigenous African state, Egypt at the time of the Pharaohs. Reference to ancient Egypt makes it possible to demonstrate that many rules and values indigenous African communities have in common originate from the African continent and can therefore qualify as indigenous (i.e. circumcision as a coming of age ritual ; the improperly named “bride price” ; the fraternity rule which makes total strangers, but also spouses, call each other “brother”, “sister”, or father”, “mother”, “grand-mother”, ... according to age and social status ; women’s freedom of movement and of dress, the various descriptions of Black African people made by foreign explorers who travelled through pre-colonial Africa regularly points to the fact that women do not mind showing themselves naked or bare-breasted, ancient Egyptian art shows the same reality ; the principle of gender parity in the running of public affairs as well as private family matters, female elders yielded effective political power as “queen-mother” or “first wife” in many African communities and kingdoms, elder sisters lord it over their younger siblings, male and female, in many indigenous African communities).

Students enjoyed the exercise; they seemed to be rediscovering their own customary laws as they paid attention to the similarities with other African customary laws in remote parts of the continent. The exercise also made them pay attention to the small details that hinted at the fact that maybe some customary rules were not as ancient as they were led to believe, and maybe others were worth researching more thoroughly in order to find a way to usefully adapt them to modern times.